



**Michigan Supreme Court  
State Court Administrative Office  
Trial Court Services Division**  
Michigan Hall of Justice  
P.O. Box 30048  
Lansing, MI 48909

March 4, 2014

TO: Michigan Court Forms Committee, General Civil and Miscellaneous Work Group

FROM: Colin F. Boes, Forms and Manuals Analyst

RE: Agenda and Materials for **March 12, 2014 Meeting**

PLACE: **Michigan Hall of Justice**, 925 West Ottawa, downtown Lansing (map enclosed)

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Below is the agenda for the March 12, 2014 meeting of the Michigan Court Forms Committee, General Civil and Miscellaneous Work Group. The meeting starts at 9:30 a.m. and ends at approximately 3:30 p.m. Lunch reservations have been made for you. **If you cannot attend, please contact me at least two days before the meeting.** Please note that our office is located at 925 W. Ottawa in Lansing. A map and directions are provided.

Please bring these agenda materials to the meeting. Although documentation is provided with the agenda, it would also be helpful to bring a copy of the Michigan Court Rules and any other resources you believe are necessary.

1. **Minor Corrections/Internal Modifications**

- a. **MC 09a:** The citation at the bottom of the form to MCR 2.102(D) should be MCR 2.102(E) and will be corrected.
- b. **MC 11:** This form will be modified on the second page to have the fee box match the style found on other forms, see MC 12.
- c. **MC 82:** The amount noted on the form as 7% of the first \$5,000 is no longer accurate. MCL 600.2559(1)(j) was amended to make it 7% of the first \$8,000 and the form will be updated accordingly.
- d. **CC 376m:** This form will be modified on the second page to have the fee box match the style found on other forms, see MC 12.
- e. **Other Forms Already Corrected to Be Released:** MC 31.

## 2. General Questions Regarding the Use of Garnishment Forms

Our office has received a number of comments regarding the use of garnishment forms and how plaintiff and defendant are identified on the forms. Both attorneys and the public appear to be confused by the fact that, regardless of their designation in the underlying case, the plaintiff is the judgment creditor and the defendant is the judgment debtor. See MCR 3.101(A). Therefore, the forms use the same format and are suitable for use even where a defendant obtains a judgment against a plaintiff. Should anything be done to clarify the use of these forms?

Additionally, there have been complaints from court personnel relating to the back copy of the garnishment form being the court copy. Court staff have indicated that the back copy (4<sup>th</sup> copy) is not always legible. It has been suggested that the second copy should be for the court, even though this would make it less accessible for the court to tear off in processing. Should any change be made to the distribution on garnishment forms?

## 3. MC 03, Answer, Civil

In the recent case of *Tyra v Organ Procurement Agency of Michigan*, 302 Mich App 208; 840 NW2d 730 (2013), the Court of Appeals clarified how specific the facts in support of an affirmative defense must be. However, this form does not really encourage free writing of facts in support of the affirmative defenses. In *Tyra* the court indicated: “[A] statement of an affirmative defense must contain facts setting forth why and how the party asserting it believes the affirmative defense is applicable.” The court indicated that because the statement of affirmative defense was insufficiently specific, the defense was waived under MCR 2.111(F). *Tyra*, 840 NW2d at 735.

This statement came in the context of the court criticizing the practice of filing “boilerplate” affirmative defenses that were “generic, unsupported, bald assertions of every conceivable affirmative defense irrespective of, and possibly even contrary to, any known facts...” *Tyra*, 840 NW2d at 733. The court indicated that the purpose of the requirement for stating the facts constituting the affirmative defense is so that the opposing party has sufficient notice of the alleged affirmative defense so as to enable the opposing party to take a responsive position. *Id.* The example the court used was:

However, “[j]ust as the plaintiff must plead something beyond a general the ‘defendant injured me,’ the defendant must plead something more specific than, ‘I deny I’m liable.’” *Stanke v State Farm Mut Automobile Ins Co*, 200 Mich App 307, 318, 503 NW2d 758 (1993) (internal footnote omitted). Put another way, a statement of an affirmative defense must contain facts setting forth why and how the party asserting it believes the affirmative defense is applicable.

*Tyra*, 840 NW2d at 733. In providing some guidance as to what a properly pled affirmative defense would look like, the court noted:

Therefore, by extension to other filings, the statement of facts required under MCR 2.111(F) should not need to be extensive or detailed. However, the statement here is merely a conclusion, not even a vague statement of “facts constituting” an affirmative defense. MCL 2.111(F)(3). The statement fails to explain why defendants believed plaintiff “failed to comply with the notice provisions of MCL 600.2912b.” Rather, it is merely the equivalent of a plaintiff baldly stating that “defendant breached the standard of care” and leaving it at that.

MC 03, unlike the boilerplate list the court decried on multiple occasions in *Tyra*, asks that only those defenses applicable be checked. However, some of the defenses may not be specific enough. For example, item 5 does not explain how the contract was unjust or one-sided, item 6 does not explain or provide space to explain the contributory negligence alleged, item 9 does not provide space for explanation of the fraud, item 10 does not allow for any brief factual basis explaining how the goods were defective, and item 11 does not explain the mutual mistake alleged. Should the form be modified in some way to allow additional specific facts or more specifically reference the requirements of MCR 2.111(F) in light of *Tyra*?

4. **MC 09, Dismissal**

An attorney has suggested that the language from MCR 2.602(A)(3), regarding whether or not the dismissal resolves the last pending claim and closes the case, should be added as a checkbox option on the form. Should this be added to the form? This request should be considered in light of the reason this requirement was added to the rule, which was “to facilitate docket management.” Staff Comment to 1998 Amendment to MCR 2.602. Additionally, should the form contain an option that includes this language or is it better left to the individual practitioner to determine when this language is appropriate and add it to the form as needed?

5. **MC 14, Garnishee Disclosure**

The use of this form was discussed by the recent Court of Appeals decision of *Ladd v Motor City Plastics Company*, 303 Mich App 83, \_\_\_ NW 2d \_\_\_ (2013) that indicated the form was somewhat confusing and did not meet the specific needs of the garnishee in that case. In *Ladd*, a bank claimed a right of setoff for loans due by defendant in its garnishee disclosure, but subsequently allowed the defendant to continue to use the account and withdraw funds. Plaintiff subsequently claimed the bank garnishee had “knowingly provided false answers on its garnishee disclosure.” *Ladd*, 302 Mich App 83. The court, in its opinion, specifically addressed MC 14, which had been used by the garnishee in the case. In doing so, the court indicated, “[f]orm MC14 is confusing insofar as it does not provide a checkbox or blank where a garnishee can claim a right of setoff.” *Id.* The court went on to note that the form only allows for three options under nonperiodic garnishment, none of which fit the situation in *Ladd* where the garnishee claimed a setoff in excess of the amount of assets of defendant the garnishee held.

Instead, the garnishee checked box 2.a., indicating the garnishee was not indebted to defendant for any amount and did not possess or control defendant's money, but added an explanation about setoff. The court of appeals agreed with the circuit court that the garnishee should have removed the inapplicable language or prepared its own form. Should the form be changed in any way to accommodate situations where a garnishee does possess or control defendant's property, but claims a setoff in excess of the amount it controls?

A county court employee has also suggested that the language on the garnishee disclosure form results in confused garnishees. Specifically, garnishees are confused by item 2.e., which says: "The garnishee is obligated to make periodic payments during the effective period." It was noted that this language results in calls from confused garnishees who think they should make the payments to the defendant. Should the language be modified in any way to clarify what is being asked for in item 2.e.?

Additionally, if a substantive change is made to the form, the chart indicating the 2008 and 2009 figures will be modified to remove the reference to outdated figures that no longer apply.

6. **MC 15a, Order Regarding Installment Payments**

An attorney has suggested that item 5 on this form should be modified. Currently, the form says, "the writ for periodic payments issued on" and this attorney believes it should say, "the writ of garnishment issued on" instead. Consider this request in light of MCR 3.101(N)(1), which indicates that:

An order for installment payments under MCL 600.6201 *et seq.*, suspends the effectiveness of a writ of garnishment of periodic payments for work and labor performed by the defendant from the time the order is served on the garnishee. An order for installment payments does not suspend the effectiveness of a writ of garnishment of nonperiodic payments or of an income tax refund or credit.

See also *Meyer Jewelry Co v Johnson*, 229 Mich App 177, 180; 581 NW2d 734 (1998) (discussing the interaction of MCL 600.6231 and garnishments). Should the form be changed?

7. **MC 20, Waiver/Suspension of Fees and Costs (Affidavit and Order)**

A judge has suggested that MC 20, item 1.b. be revised. Specifically, it has been suggested it be revised to read: "b. indigent, and that payment of fees and costs are waived/suspended pursuant to MCR 2.002(D). [The waiver/suspension shall be considered at the final hearing.]" This would add the warning that the waiver/suspension can be reconsidered at the final hearing. Should the form be modified to include this language?

Additionally, the form will be modified to reflect, in the distribution section at the top of the form, that a copy should be sent to an opposing party. This is in light of the fact that MCR 2.107(A)(1) requires any paper filed to be served on the other parties in a case.

8. **MC 52, Request and Writ for Garnishment (Income Tax Refund/Credit)**

A court has indicated it received a complaint regarding this form. The complaint related to confusion over the box on the upper left indicating which portion was for court use only. The individual thought that due to this being at the top of the form, the court would complete the form for them. Should the court use only note be highlighted to make it clearer which portion it is referring to or should some other change be made to clarify which part of the form is for court use only?

9. **MC 60, Notice of Record Return from Circuit Court/Court of Appeals**

An attorney has made two suggestions relating to this form. (1) It has been suggested the form be modified in some way to accommodate courts that submit electronic records. It has been suggested it is confusing where the record returned is an electronic copy of the original. Currently, the form follows the language of the rule which refers to what will be transmitted as the “original record.” Should the form be clarified in some way to avoid confusion regarding this issue? In considering this issue, consider whether the way the process is described in rule should be modified in light of electronic records. (2) It has been suggested that a note be added to the form to inform the parties that any appeal bond or escrow amounts the party may be entitled to have released or returned must be addressed with the trial court by separate motion. Should a note like this be added to the form?

10. **CC 377, Petition for Personal Protection Order (Nondomestic)**

It has been suggested that some individuals, when filling out this form, are not aware that if the individual seeking the personal protection order is an unemancipated minor, his or her next friend must sign the form on his or her behalf. Item G in the instructions indicates that if the individual is under 18, they may need a next friend to petition for them. Should this be clarified in some way to make it clear that this means the next friend signs the form? See MCR 2.201(E)(1)(b) (requiring a minor that does not have a conservator to be represented by a next friend). However, an emancipated minor can sue in their own name, as provided for in MCL 722.4e(1)(b).

11. **CC 395, Petition for Personal Protection Order (Nondomestic Assault)**

A question has been raised regarding the use of this form, specifically items 3.a. and 3.b., where the other pending actions or order/judgment is from another state. Currently, the form only asks for the court and county. Should the form also ask for the state? Any change made to this form in this regard would also need to be made to CC 395m, Petition for Personal Protection Order Against a Minor (Nondomestic Sexual Assault).

## Attachments