



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

April 2, 2014 (Amended April 27, 2014)

MICHIGAN COURT FORMS COMMITTEE
Criminal Committee
Minutes of March 6, 2014 Meeting

Present: Honorable Joseph Farah, 7th Circuit Court
Honorable Gary Giguere, 9th Circuit Court
Kathryn Griffin, 45th Circuit Court
Elaine Richardson, 28th Circuit Court
Alisa Shannon, 3rd Circuit Court, Criminal Division
Honorable Sara Smolenski
Honorable Kirk Tabbey, 14A District Court
Stephen Taratuta, Wayne County Prosecutor's Office
Jessica Testolin, 73B District Court
Colin Boes, State Court Administrative Office (staff)
Jay Francisco, Judicial Information Systems (staff)
Amy Garoushi, State Court Administrative Office (staff)
Jim Inloes, State Court Administrative Office (staff)
Julia Norton, State Court Administrative Office (staff)
Stacy Westra, State Court Administrative Office (staff)

Absent: David Baxter, 3rd Circuit Court, Criminal Division
Honorable Prentis Edwards, Jr., 36th District Court
Beryl Frenger, 56A District Court
David Gilbert, Calhoun County Prosecutor
Jonathan Sacks, State Appellate Defender Office
Angela Tripp, Michigan Poverty Law Program
Jonie Mitts, Judicial Information Systems (staff)
Bobbi Morrow, State Court Administrative Office (staff)

Meeting called to order, 9:40 a.m.

1. **Minor Corrections**

The committee was informed that MC 227, Application to Set Aside Conviction, would be modified. This form contains a web address for the Supreme Court's old website. The link to information regarding how to set aside a conviction on the form will be replaced with a link to the Michigan Legal Help website. The address for the State Police on MC 227 [as well as on JC 66, Application to Set Aside Adjudication(s)] will also be updated. The committee agreed these changes were appropriate and the form was approved as revised.

The committee was informed that the reference to the seal at the bottom of MC 294, Order Delaying Sentence, will be removed. The committee agreed this was appropriate and the form was approved as revised.

The committee next considered a proposed modification to several forms regarding the addition of a checkbox option relating to mental health courts. The forms considered included: DC 243, Order of Probation; CC 243a, Order of Probation; and MC 245, Motion and Order for Discharge from Probation. The committee briefly considered 2013 PA 274, 275, 276, and 277, which provide statutory authority for mental health courts in Michigan. The committee discussed a proposal that the listed forms be modified to include as a checkbox option mental health court when indicating why the judgment of guilt is deferred on DC 243 and CC 243a, and on MC 245, under item 1 and 3. The committee agreed a checkbox should be added to these forms to indicate one option is for mental health courts. In order to make room on the form, the committee agreed the formatting of the box can be adjusted so that there is less space for the offense/PACC. The forms were approved as revised.

Staff note: While item 1 on MC 245 was noted in the agenda, no specific decision was made regarding the addition of language for mental health courts similar to that found for drug treatment courts and veterans treatment courts. See MCL 600.1076(1); MCL 600.1209(1). However, MCL 600.1098(1) contains a substantially similar requirement regarding a statement by the court. Therefore, item 1 will be modified. The line above the three treatment court options will now say, "The defendant was ordered to:" with each current checkbox option having the language "The defendant was ordered to:" removed. Additionally, a new item c. will be added, which will be preceded by a checkbox and indicate: "Mental health treatment court and did did not successfully complete the program." In order to accommodate this change lines were removed from the blank area for the probation officer to complete.

Additionally, the citation to be included with mental health court was determined to be MCL 600.1095 on DC 243, CC 243a, and MC 245.

On CC243 and DC 243, the area for listing the offense was moved up to the line where the probation officer and term are located, in order to create enough space for the additional checkbox provision for mental health court.

Also, on both CC 243a and DC 243 the asterisk in front of veterans court was removed. On DC 243 the asterisk in front of practicing under the influence was removed. The language on both forms relating to forms being maintained as a nonpublic record “except those noted with an asterisk” was removed. This is due to the fact that both veterans court and practicing under the influence cases are now maintained as a nonpublic record where the judgment of guilt is deferred.

2. **Should any Changes be made in Light of PA 612 of 2012 Relating to Work/School Release?**

The committee discussed a suggestion from a circuit court employee that a new form, or changes to existing forms, may be needed in light of the changes made by PA 612 of 2012. Specifically, the Act added MCL 771.3d, 3e, and 3f. The committee discussed the fact that these statutes provide for certain conditions in an order releasing an individual from jail for the purpose of work or school. The committee began by discussing the parameters of the statutory language and how the process would generally work. The committee next considered whether it required any change to MC 219, Judgment of Sentence/Commitment to Jail, or the development of a new form. The committee discussed that if a judge was going to order work or school release under these provisions, the court would generally draft a separate order. The committee generally agreed with this sentiment and discussed whether or not this was the type of form SCAO should develop and maintain. During this discussion, several committee members noted that some local courts have already developed methods for dealing with this issue and for addressing how the sheriff signs off on the release. Based on this discussion, the committee concluded that because of the possible varied circumstances and localities that have their own method of dealing with this issue, no SCAO form should be developed at this time and no other changes to any forms needed to be made.

3. **Issues Relating Probation Officers Signing Petitions/Motions**

The committee discussed issues that have come up regarding the ability of a probation officer to sign a petition or motion (for MC 244, Petition and Order for Amendment of Order of Probation; MC 245, Motion and Order for Discharge from Probation; and MC 246, Motion and Summons Regarding Probation Violation). The committee discussed the fact that, generally, a nonparty is not authorized to file a motion in a case. The committee also discussed the fact that MCR 2.114 indicates all documents, which include motions, must be signed by a party or their attorney. The committee considered who would sign the form, if not the probation officer. The committee also discussed the fact that the statute and court rule for revocation, see MCL 771.4 and MCR 6.445(A), generally do not specify how the information regarding a violation or a request for amendment comes to the attention of the court. Similarly, the statute governing termination of the probation period, MCL 771.5, does not explain how the court should receive the probation officer’s report to the court. The statute referencing amendment of the probation order, MCL 771.2(2), also does not explain the procedure by which a court might be informed by a probation officer of a request to amend the terms of probation. The committee agreed that

there did not appear to be any explicit authority for a probation officer to sign a motion or petition, but also noted that as a practical matter this information must get to the court.

The committee next discussed how the issue could be addressed and how the information would get from the probation officer to the court without some form of filing. The committee discussed whether calling the documents a report instead of a petition or motion would resolve the issue. However, some on the committee noted this did not really resolve the underlying problem regarding the authority of probation officers and could lead to other issues, like the notice not being filed if it was not considered a pleading. Some on the committee noted this could also create questions relating to whether a notice, if not filed, would be an improper ex parte communication. The committee considered whether the prosecutor should be the one signing the orders, but after some discussion concluded this was not practical and should not be required. The committee then considered a suggestion that the court rule should be amended to specifically allow a probation officer to sign a motion or petition filed with the court for the purposes of reporting on or amending the terms of probation. Ultimately, the committee believed the best approach was to recommend a rule change that would authorize probation officers to sign the documents necessary to inform the court of information pertinent to a probationer's case.

The committee discussed a suggestion from SCAO staff that MCR 3.606 could be amended in a way that would give individuals, not just probation officers, who have information relating to the probationer's case, to file a document with the court informing the court of the relevant information. The committee asked that SCAO staff come up with a proposal for a change to the court rules that would allow probation officers and others to file motions and petitions for the limited purpose of informing the court of about a probationer's case. This may involve changes to MCR 3.606 and also somewhere in the rules relating to criminal procedure.

No changes were made to the forms at this time.

4. **CC 265, Notice of Right to Appellate Review and Request for Appointment of Attorney**

The committee considered a suggestion from an attorney from the State Appellate Defender Office (SADO) that indicated that there are frequently issues with this form not being completed in full. The committee considered the comment that many SADO clients do not realize the need to fill out both parts of the form, as well as the supporting documents. Due to this failure to complete the form properly, many SADO clients inadvertently let the period to appeal by right elapse and are left asking for leave to appeal. The committee discussed this issue and considered the suggestion that the form be modified in a way similar to that done in Macomb County. Macomb County includes an additional warning on the bottom of the form that states: "Note: To properly start an appeal and request counsel, please fill out the entire form, including the receipt of notice of appeal rights and request for appointment of attorney. This form must be received by the court within 42 days of entry of the judgment of sentence."

Some on the committee noted that some judges inform defendants of this information on the record and then hand the defendant the form. Despite this, some on the committee noted that many defendants may not be fully processing all the information being provided, given the gravity of the situation. The committee discussed the balance between providing sufficient information on the form so that it can be completed properly and allowing defendants to take personal responsibility for properly completing the form. Ultimately, after some discussion, the committee believed that because this is an important issue and because the modification to the form appears to have worked well in Macomb County, the form should be modified to add the same language as noted as being used in Macomb County as a use note, with some portion of the note emphasized to draw attention to it.

The form was approved as revised.

Staff Note: The note on the form was revised to more clearly identify the exact portions of the form that require completion. The note now reads, “**Note:** To properly start an appeal and request counsel, you must fill out the Receipt of Notice of Appeal Rights and the Request for Appointment of Attorney, above, as well as the Affidavit on the back. This form must be received by the court within 42 days of the entry of the judgment of sentence.”

5. **MC 227, Application to Set Aside Conviction**

The committee considered a suggestion from a staff member of a trial court that the form should be modified to include a place in the caption, under defendant’s name and address, to list the attorney’s name and address. The committee considered the comment that trial courts encounter problems where this form is filed and the court does not know until the day of the motion hearing that the defendant is being represented. The committee discussed the fact that there is already a court rule requiring an appearance to be filed and if an appearance has not been filed, there is nothing in the rules, see MCR 2.117(B), requiring something be filed earlier. The committee did not believe this was a major issue and determined that the requested change to the form should not be made and the information requested should generally appear on an appearance filed in the case.

No change was made to this form.

6. **MC 241, Bond**

The committee considered a suggestion from a county court’s staff regarding whether the form should be modified to allow a court to make a no contact provision applicable as soon as the bond order is entered, instead of only effective upon release. The committee discussed the court rules and statutes relating to bond at length and how and when they apply to a defendant. The committee discussed that MCL 765.6b allows a defendant to be released subject to protective conditions and that this form provides for those release conditions. However, it was suggested that the court may also want to order a no contact

provision to be effective while the defendant is in jail, before posting a bond. The committee discussed at length whether this was authorized by the court rules and what the appropriate method was to enter an order of this type. The committee noted that, currently, the form does not address this situation. Because there is no explicit language on the form that the defendant shall have no contact with the protected individual, whether or not bond is posted, some jails are allowing a defendant to call the protected individual.

The committee discussed when the release order becomes effective. The committee noted that generally orders signed by a judge are effective immediately, but that this does not mean that all conditions in an order necessarily become effective immediately. The committee discussed that MCR 6.106(D) contemplates a conditional release and discussed at length when the conditions were to take effect. Some on the committee indicated they interpret the rule as only applying conditions *if* the individual is actually released. Some judges, who follow this view, issue separate orders to the jail to indicate conditions to be imposed on a defendant while still incarcerated. The committee discussed the potential necessity of such orders in cases like those where a defendant may attempt to try and intimidate witnesses. However, in some counties this creates problems because if an individual is ordered to have no contact, the jail essentially puts the defendant in lockdown because the jails claim there would be no practical way to restrict telephone privileges of an inmate in the general population. Some on the committee indicated that regardless of any change to the form, local courts are going to take the approach that works for it locally.

The committee next discussed that because the release conditions can be read as only applying if an individual is actually released, an additional item should be added to allow a court to make an immediate order for a no contact provision. However, as the committee discussed a possible provision, it was determined the form that actually should be modified is not the bond form, but instead the underlying Order for Pretrial Release/Custody, MC 240. Language was suggested that would allow a court to check a box to order that a defendant “have no contact with” a named individual. The committee discussed whether or not this would cause issues with jails that already have rules regulating inmates and whether a jail would be required to monitor a defendant ordered not to have contact with a named individual. Some suggested the burden would not be on the jail, but instead it would give the court a basis for contempt or other proceeding if defendant is found to have violated a no-contact provision.

The form was approved as revised.

Staff note: Following internal review, SCAO staff has recommended to the Supreme Court Administrative Counsel that the recommended checkbox not be approved as an addition to the form. Specifically, there is a concern regarding whether there is explicit authority for a court to impose a no-contact provision on an individual before they are released from jail. This should not be taken to mean SCAO staff believes such a condition could never be imposed. Instead, it is a recognition that the options on the form should flow directly from statute or court rule and should not imply something is an

option which may or may not be appropriate.

Pending review of the form by Administrative Counsel, the form will not be modified until it has been determined whether the change is approved.

7. **MC 262, Order of Acquittal/Dismissal or Remand**

The committee considered two suggestions relating to this form from SCAO staff. The first issue the committee considered was whether the reference on the form to remanding to district court should be removed. The committee briefly considered whether there were circumstances under which this form could properly be used to remand a case to district court and determined that there were some circumstances when this would be appropriate. In light of this discussion, it was determined a citation to MCR 6.110(F) and (H) should be added to the bottom of the form, because these rules relate to the circumstances where a case could be remanded back to district court.

The committee was also informed that the reference to MCR 7.101(M) needed to be removed. The committee was informed by SCAO staff that after the revamp of the appellate rules, this subrule no longer exists. This subrule previously explained the process for appeals to circuit court and stated, "After the appeal is decided or dismissed, the circuit court clerk shall promptly send to the trial court clerk a copy of the judgment, order, order opinion entered in the circuit court and all documents previously received from the trial court." The committee was informed that while there is no rule that exactly tracks this provision, MCR 7.109(H)(2) does explain how the record should be returned. Following a brief discussion, the committee determined it was appropriate to add this citation to the form.

The form was approved as revised.

8. **Should a New Form be Developed for use under MCR 6.433(B) and (C)**

The committee considered whether a new form should be developed for use where a defendant requests court documents or transcripts under MCL 6.433(B) and (C). A proposed version of a form had been submitted with the request and was considered by the committee. After reviewing the proposed form and court rules, some on the committee considered whether a new form developed and maintained by SCAO was necessary. The committee generally agreed that no form needed to be developed and local courts could continue to handle this matter locally, without a statewide form.

The committee did not recommend the creation of a new form.

9. **Should a New Form be Developed Specifically for use in Misdemeanor Appeals under MCR 6.625(B)?**

The committee considered whether a new form should be developed for use in misdemeanor appeal cases where the individual is entitled to an attorney under MCR

6.625(B) and determined that no form should be developed at this time. The committee did not believe it was a significant enough issue to warrant development of an SCAO-approved form. The committee noted that if an individual wants to appeal from a misdemeanor case, he or she can consult the rules to determine what is required.

The committee did not recommend the creation of a new form.

10. **Should a New Form be Developed Specifically for use Following a Probation Violation?**

The committee considered a suggestion from a court administrator that a form should be developed for use in probation violation hearings. The committee discussed that there is not currently a uniform practice regarding what form, if any, to use in these situations. The committee reviewed a draft version of the form prepared by SCAO staff. The committee, after some discussion, believed that this form should be developed and that it would help ensure proper procedure was followed. It would also help ensure that there is a clear record in the file of what occurred at the probation violation hearing.

The committee discussed how probation violation hearings work in practice and how the form should be crafted in order to allow it to be used for the variety of situations that may result from a probation violation hearing.

The committee determined the box at the top of the proposed form should be modified to include space to write the attorney's name and bar number.

The committee also determined that the language at the bottom of the form that "all other conditions not inconsistent with this order shall remain in effect" was not necessary on this form and should be removed from the draft.

The committee also considered whether the language at the bottom of the form and signature line indicating that the defendant received the order and agrees to comply, which is similar to the language found on MC 244, should be included. The committee determined this was not necessary on the proposed form and should be removed. The committee indicated that if there was to be a modified order of probation, it would generally be the probation order that was signed.

The committee also considered whether it was necessary to have two pages, with the second page including a special box for use when protective conditions are put in place. The committee determined this was not necessary, as an amended probation order should be created. The form being proposed is primarily for use as a tool to record what happened at the hearing. Therefore, the proposed second page was deemed unnecessary and was deleted.

The committee discussed clarifying on the form that there should be an amended order of probation in some circumstances. To this end, the committee added a new item to the proposed form that would have a checkbox in front of it and say, "An amended order of

probation shall be prepared by the appropriate agency.”

The committee also discussed that in some circumstances, the only thing done at the conclusion of the probation violation hearing is to schedule a sentencing hearing. Therefore, the committee determined the language “A sentencing hearing is scheduled for _____ (Date) at _____ (Time)” should become a separate item with a checkbox in front of it.

The new proposed form was approved as revised.

Meeting adjourned at 11:30 a.m.

Respectfully submitted,

Colin Boes