



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

April 27, 2014

**MICHIGAN COURT FORMS COMMITTEE
General Civil and Miscellaneous Committee
Minutes of April 17, 2014 Meeting**

Present: Kathy Griffin, 45th Circuit Court
Hon. Jon Hulsing, 20th Circuit Court
Cheryl Jarzabkowski, 70th District Court
Nick Little (on behalf of Mary Hollinrake), 17th Circuit Court
Michael Navin, 3rd Circuit Court, Civil Division
Hon. David Parrott, 34th District Court
Curtis A. Robertson, Weber & Olcese PLC
Angela Tripp, Michigan Poverty Law Program
Colin Boes, State Court Administrative Office (staff)
Jay Francisco, Judicial Information Systems (staff)
Amy Garoushi, State Court Administrative Office (staff)
Bobbi Morrow, State Court Administrative Office (staff)

Absent: Hon. Annette Berry, 3rd Circuit Court
Tera Jackson-Davis, 46th Circuit Court
Hon. Patricia Jefferson, 36th District Court, Civil Division
Maury Klein, Attorney
Hon. Pam Lightvoet, 9th Circuit Court
Porferia Mellado, 6th Circuit Court
Stuart Sandweiss, Sandweiss Law Center PC
Jim Inloes, State Court Administrative Office (staff)
Jonie Mitts, Judicial Information Systems (staff)
Julia Norton, State Court Administrative Office (staff)
Stacy Westra, State Court Administrative Office (staff)

Meeting called to order, 9:30 a.m.

1. **Minor Corrections/Internal Modifications**

The committee was informed that a number of minor corrections would be made to certain forms as follows:

- a. **MC 09a, Dismissal, Nonservice/No Progress:** 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, Subpoena, Order to Appear and/or Produce:** 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, Partial Payment Receipt and Inventory of Seized Property:** 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, Personal Protection Order Against a Minor (Domestic Relationship):** 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. **MC 31, Case Evaluation Notice:** At the March 2013 forms meeting, it was determined that the word “or” should be added between the options in item 1 on the back of the form. At that time, members decided to wait until a substantive change was made to the form. However, it has now been determined that the agreed upon change should not wait any longer for a substantive change and will be revised.
- f. **CC 08, Motion for Consolidation:** The citation on the form to MCR 2.205 will be corrected to MCR 2.505, which is the rule dealing with consolidations.

The committee agreed that the above changes were appropriate. The forms were approved as revised.

Staff note: MC 31 will have the note at the bottom of the first page modified from “see reverse side” to see “other side.” The parenthetical below the note will be modified to “continued on other side.”

CC 376m will also have the note at the bottom of the first page modified from “PLEASE SEE OTHER SIDE” to “SEE SECOND PAGE” consistent with an ongoing stylistic change moving away from referencing a two-sided document on certain types of forms.

CC08a, Order for Consolidation, will also have the citation corrected to MCR 2.505, consistent with the change made to CC 08.

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

The committee discussed a question relating to the use of garnishment forms and how plaintiff and defendant are identified on the forms. The committee considered the

comment that some individuals are still confused regarding the designation of plaintiff and defendant on the forms. The committee discussed 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). Committee members noted that the form was modified recently in order to try to clarify this by adding judgment creditor/ judgment debtor. The committee generally agreed that nothing else needed to be changed in order to make it clear how the parties should be identified under the rule.

The committee also considered an issue relating to the distribution of the garnishment forms and who should receive a particular copy. Specifically, there have been complaints from court personnel relating to the back copy of the garnishment forms being the court copy. Court staffs have indicated that the back copy (4th copy) is not always legible. The committee considered a suggestion that 1st copy should be for the court, even though this would make it less accessible for the court to tear off in processing. The committee discussed the fact that while the processing may take slightly longer in some circumstances, it would be better if the most legible copy was provided to the court. Others noted that even as the forms are currently distributed, the packet generally needs to be completely taken apart in order to distribute copies and it does not always save time by having the last copy as the court copy. After some discussion, the committee determined that the court copy should be moved to the 1st copy, with all other copies moved down one position. Therefore, the 2nd copy will go to defendant, the 3rd is the return copy for proof of service, and the 4th copy is for plaintiff/attorney. This will result in a change in the distribution on: MC 12, Request and Writ for Garnishment (Periodic); MC 13, Request and Writ for Garnishment (Nonperiodic); and MC 52, Request and Writ for Garnishment (Income Tax Refund/Credit).

The forms were approved as revised.

Staff note: Under the writ of garnishment portion on MC 13, in item 1 under “TO THE DEFENDANT,” the phrase “negotiable instruction of title” needs to be corrected to “negotiable instrument of title” and will be modified.

3. **MC 03, Answer, Civil**

The committee discussed whether any changes to the form were necessary with respect to affirmative defenses in light of *Tyra v Organ Procurement Agency of Michigan*, 302 Mich App 208; 840 NW2d 730 (2013), and MCR 2.111(F). In *Tyra*, the Court of Appeals clarified how specific the facts in support of an affirmative defense must be. The committee discussed the reasoning in *Tyra* and whether any change should be made to MC 03 in order to help ensure individuals realize that they may need to include additional facts in support of any claimed affirmative defense. Some on the committee noted that the form already informs a defendant that, as it relates to the affirmative defense checkboxes, “for each box checked, attach a statement of facts.” The committee believed this was sufficient in terms of allowing a defendant to comply with the requirements of MCR 2.111(F). However, others on the committee noted that with this language offset to the left of the heading for affirmative defenses, it can sometimes be missed. In order to

make this information more prominent within the affirmative defense section, it will be moved to the area right above item 1 under the affirmative defenses heading. Additionally, the font of this text will be increased to 10 point font. With these minor changes, the committee believed the form allowed a defendant to meet the requirements of MCR 2.111(F) and that no other changes needed to be made in light of *Tyra*.

The committee also briefly considered whether any of the listed affirmative defenses should be removed, but ultimately concluded no change was needed to the list at this time.

The form was approved as revised.

Staff note: On page 3 of MC 03, it currently says, “ continued on page ___.” However, the intent of this item is only to indicate that additional pages are attached and, in some circumstances, there may be more than one additional page. Therefore, this checkbox will be changed to, “ continued on additional page(s).”

4. **MC 09, Dismissal**

The committee considered a suggestion from an attorney 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. The committee discussed the language of the court rule regarding when such a statement should be included on the form. After some discussion, the committee determined language should be added to the bottom of the form as follows, “ This order resolves the last pending claim and closes the case.”

The committee also considered whether similar language should be added to the MC 09a. However, after some discussion the committee decided this form should not be modified at this time, given that this form will sometimes be generated automatically and could cause additional logistical problems distinct from MC 09. Some on the committee indicated they did not want a similar box on MC 09a. In light of the fact that MC 09a is used differently, the committee decided to ask for further input regarding whether a checkbox option like that added to MC 09 would be appropriate. Committee members indicated that if there was a desire to revisit this issue, they would contact SCAO staff and request it be considered at a future meeting.

The form was approved as revised.

5. **MC 14, Garnishee Disclosure**

The committee considered the use of MC 14 in light of the recent Court of Appeals decision of *Ladd v Motor City Plastics Company*, 303 Mich App 83, ___ NW 2d ___ (2013). The committee discussed *Ladd* and the fact that *Ladd* indicated that the form was somewhat confusing and did not meet the specific needs of the garnishee in that case. The committee considered whether the form should contain a checkbox specifically for use where a garnishee wants to claim a right of setoff in item 2.a. The committee also

considered whether an “other” box would be helpful on the form. After some discussion, the committee determined that no change was needed on the form. The committee noted that the goal is for the form to be useable in most circumstances and it may not be possible to make it useable without modification in all circumstances. The committee also noted that they did not believe the situation in *Ladd* was that common. Instead, where a garnishee has an issue not specifically covered by the form, the garnishee should make whatever adjustments are necessary to adapt the form for their specific use.

The committee also considered a suggestion from a court that the language on the garnishee disclosure form results in confused garnishees. Specifically, the committee discussed a comment that garnishees are confused by item 2.e., which says: “The garnishee is obligated to make periodic payments during the effective period.” The committee discussed that the language used in both 2.d. and 2.e. and concluded, after some discussion, that the term “periodic payment” is somewhat confusing, even though that is the term used by MCR 3.101(A)(4). The committee discussed whether there was a more plain language way to convey the same information. The committee discussed how the language at issue could be modified to make it clearer what the form is asking for. Ultimately, the committee determined that the term “periodic payments” in item 2.d. and 2.e. should be replaced with the word “pay.” Additionally, instead of indicating the “effective period” the end of both 2.d. and 2.e. will be modified to “. . . during the period of the writ.” The committee believed these changes would make it clearer what the form was asking for and would help alleviate some of the confusion regarding use of this form.

Additionally, the chart indicating the 2008 and 2009 figures will be modified to remove the reference to outdated figures that no longer apply.

The form was approved as revised.

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

The committee considered a suggestion from an attorney that item 5 on this form should be modified. Currently, the form says, “the writ for periodic payments issued on,” and it was suggested this item should say, “the writ of garnishment issued on” instead. The committee considered 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.

The committee determined that this change in language, to reference any writ of garnishment, instead of only writs for periodic payments, was not appropriate and goes beyond what is allowable by law.

No change was made to this form.

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

The committee considered a suggestion from a judge that MC 20, item 1.b. be revised. Specifically, it was suggested that this item 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. The committee considered whether it would be helpful to have a warning regarding the revisiting of fees and costs on the form. Some on the committee noted that it might be helpful for the litigant to be made aware of this possibility. The majority of the committee believed that the unintended deterring effect, coupled with additional confusion regarding what this might mean, weighed against adding this language. Several on the committee noted that many judges do not revisit this question very often and for those judges that do, they generally have a way of communicating this policy to litigants. Ultimately, the committee agreed that no change in this regard should be made to the form.

The committee also considered an issue regarding the distribution portion of this form. The committee considered the fact that this form, under MCR 2.107(A)(1), should be distributed to the other party, but the distribution portion of the form was previously modified to remove reference to distribution to another party. MCR 2.107(A)(1) requires any paper filed to be served on the other parties in a case.

The committee discussed at length whether the opposing party really needed a copy of this form. The committee considered requesting a rule change to exempt waiver/suspension of fees and costs requests from the requirement that it be served on the opposing party. Initially, there was support for a proposal to modify the rule in this fashion. However, after further discussion, the committee concluded it was probably best not to allow for this form to be filed without notice to the other party or without providing a copy. Some on the committee noted that in private practice, the opposing party wants to know everything about what has been filed and that there was not a sufficiently strong reason to exempt this form from the general requirements relating to serving papers filed on the other parties. The committee determined no proposal regarding a change to the court rule should be made at this time. Instead, the distribution portion of the form will be modified to add “2nd copy – Other Party.” The friend of the court copy will now be the “3rd copy.”

Additionally, in order to help provide some clarity regarding who the “other party” needing to be served is, a note at the bottom of the form will be added which says: “NOTE: This order must be served on the other party at the time the pleading is served.” The committee believed this would help make it clear that until a case is filed there is no requirement to serve other potential parties. In order to accommodate this change, some of the spacing on the form will be slightly changed.

The committee also determined an instruction relating to this on the instructions portion

of the form. Under the section relating to “Getting a Signed Order,” an instruction will be added to indicate that the individual obtaining a signed copy of the order needs to make sure a copy is sent to other parties.

The form was approved as revised.

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

The committee considered a comment from a court that 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 entire form. The committee discussed whether the court use only note should be highlighted to make it clearer which portion it relates to on the form. After a brief discussion, the committee concluded this portion should be highlighted so that it is clear it relates only to the highlighted options at the top of the form, not the entire form being for court use only.

The form was approved as revised.

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

The committee discussed two suggestions from an attorney relating to this form. The committee first discussed a suggestion that the form be modified in some way to accommodate courts that submit electronic records. It was suggested that the form is confusing when used in situations 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.” The committee discussed this issue and concluded that the original record is the record that was sent to the appellate court under the rule. At this time, given the possibility of changes in the future relating to the use of electronic records, it was determined it was premature to make any changes to the forms. At the present, the committee determined it was better for the form to continue to track the language found in the court rule. This issue was tabled until there is further clarity in the rules regarding the use of electronic records.

The committee next considered a suggestion that a note should 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. The committee discussed the fact that forms generally do not include instructions that are not directly related to the form itself and only provide useful, but not required, information. After some discussion, the committee determined that while a note of this nature could be helpful for those with a bond or escrow with the court, it was not something that belonged on the form.

No changes were made to the form.

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

The committee considered a suggestion 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. After some discussion, the committee decided that the signature line should be modified to add “/next friend’s” under the line to make it clear there are some circumstances where the next friend would sign on behalf of the petitioner.

Additionally, item “G” in the instructions will be modified to add at the end of the line, “, and have the next friend sign the petition.” The committee believed this would also help clarify that the next friend, in some circumstances, needs to be the one to sign the form.

The same changes made regarding the next friend instructions and signature line will also be made to CC 375, CC 375m, CC 377m, CC 395, and CC 395m.

The forms were approved as revised.

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

The committee considered a question regarding the use of items 3.a. and 3.b. on this form. The issue was whether the form should prompt a petitioner to fill in another state’s name if the other pending action or order/judgment is from another state. Currently, the form only asks for the court and county. The committee discussed the fact that the court rule requires the information pertaining to other pending actions or other orders/judgments in any case, not just from those in Michigan. After some discussion, the committee believed it would be beneficial for the court to know what other state, if any, the other action/order is from. Therefore, the committee decided that the boxes in item 3.a. and 3.b. should now ask for “Name of court, county, and state.”

The same changes made regarding the addition of “, and state” will also be made to CC 375, CC 375m, CC 377, CC 377m, and CC 395m.

The forms were approved as revised.

Staff Note: To further clarify what should be completed, the modified form will ask for “state or province.” Additionally, the instructions on the forms pertaining to this item will be updated to add the phrase “state or province.”

Meeting adjourned at 11:25 a.m.

Respectfully submitted,

Colin Boes