



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

March 4, 2015

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, 2015 Meeting**
PLACE: **Michigan Hall of Justice**, 925 West Ottawa, downtown Lansing (map enclosed)

Below is the agenda for the March 12, 2015 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. **Forfeitures – Changes Made by 2014 PA 333**

A number of changes were made to forfeiture statutes, which require modifications to some forms:

A. **DC 43, Notice of Seizure and Intent to Forfeit and Dispose of Property**

The note on the second page indicating when the notice must be served should be changed from 7 days to 28 days, consistent with the change made to MCL 600.4704(1).

B. **DC 44, Order for Return of Property or Discharge of Lien in Forfeiture Proceedings**

Item 1 needs to be modified to reflect that the time frame is now 28 days for both references, not 7 days, consistent with the changes made to MCL 600.4706(1)(a).

C. DC 46, Order Following Forfeiture Proceedings

MCL 600.4707 was modified to restructure what the plaintiff must prove. What is currently a. and b. on the form must now be combined as the amended statute combines the references to real and personal property in MCL 600.4707(6)(a) to require a showing “that the property is the proceeds of a crime, the substituted proceeds of a crime, or an instrumentality of a crime.”

Additionally, another option must be added under (2), to cover circumstances under MCL 600.4707(6)(c), which provides: “If a person, other than the person convicted of the crime, claims an ownership or security interest in the property under section 4703(7), that the transfer occurred subsequent to the criminal conduct that gave rise to forfeiture.” MCL 600.4703(7) provides that title to property subject to forfeiture vests with plaintiff upon commission of the conduct giving rise to forfeiture. Subsequent property transfers are void unless the transferee can establish that: (a) the transferee has an interest of record in the property; (b) the transferee purchased the property in good faith and for fair value; and (c) the property interest was acquired without notice of the forfeiture proceeding or the facts that gave rise to the proceeding.

D. DC 47, Order of Distribution in Forfeiture Proceedings

A new section (3) was added to MCL 600.4708 that provides:

If any property included in the order of forfeiture under this chapter cannot be located or has been sold to a bona fide purchaser for value, placed beyond the jurisdiction of the court, substantially diminished in value by the conduct of the defendant, or commingled with other property that cannot be divided without difficulty or undue injury to innocent persons, the court may order forfeiture of any other reachable property of the owner up to the value of the property that is unreachable as described in this subsection. This subsection only applies against an owner that is also the person convicted of the crime underlying the forfeiture action.

Should the form be modified to add a provision specific to MCL 600.4708(3)?

E. Other Forms Relating to Forfeiture Proceedings that May Be Affected by 2014 PA 333

Also consider whether any of the following forms need to be modified in light of the changes made:

DC 40, Notice of Seizure of Personal Property Subject to Forfeiture without Process and Order

DC 41, Motion and Order to Seize Personal Property Subject to Forfeiture

DC 42, Application and Ex Parte Order to File Lien on Real Property Subject to Forfeiture

DC 45, Notice of Intent to Forfeit and Dispose of Property

Do any of these forms need to be modified?

2. **CC 20a, Order Regarding Suspension of Prisoner Fees/Costs**

There are three questions with respect to this form:

- A. It has been suggested that this form should be an “MC” form instead of the circuit court specific “CC” form because MCL 600.2963 is applicable to all courts, not just circuit court. In considering this issue, be aware that the form was originally designed for use in circuit court. Should the form be modified to an “MC” form?
- B. It has been suggested that the form should be modified to be more consistent with the statutory language. Item 6 on the form, at the bottom, allows the court to order a specific amount to be paid monthly if only a partial payment has been made. However, MCL 600.2963(5) provides that where only a partial payment has been made, “the court shall order the prisoner to make monthly payments in an amount equal to 50% of the deposits made to the account.” It has been suggested the court should order that 50% of deposits made to the account should be paid, not a specific dollar amount that does not relate to the future deposits. Should the form be modified as suggested?
- C. It has been suggested that this form should indicate that no further filings may be made until the obligations outlined in the order are satisfied. MCL 600.2963(8) provides, “A prisoner who has failed to pay outstanding fees and costs as required under this section shall not commence a new civil action or appeal until the outstanding fees and costs have been paid.” However, there are at least some circumstances where the Michigan Supreme Court has determined this provision did not apply where it otherwise would have prohibited a filing for constitutional reasons. See *Palmer v Oakland Circuit Judge*, 463 Mich 958; 621 NW2d 221 (2001). Should the form be modified to reflect the statutory prohibition on filing further actions if outstanding fees and costs remain?

3. **CC 79, Claim of Appeal on Application for Concealed Weapon License and Request for Certified Record**

Two courts have expressed concern with the language in the instructions relating to the time frame to appeal. On page 2 of the form it currently says, “Complete this form within 21 days after receiving notice that (a) the application was denied or (b) the licensing board failed to issue a timely decision.” However, the date an appeal runs from is generally the date an order is entered. See *General Electric Credit Corp v Northcoast Marine, Inc*, 402 Mich 297, 300; 262 NW2d 660 (1978). MCR 2.602(A)(2) provides that the date an order or judgment is signed is “the date of entry.” MCR 7.121(B)(1) specifically addresses the time requirements for filing an appeal as of right from a decision of a concealed weapon licensing board. It states, “Time requirements are governed by MCR 7.104(A).” This section provides that in section (1), that an appeal of right must taken within “ 21 days or the time allowed by statute after entry of the judgment, order, or decision appealed . . .”

Additionally, MCL 28.425d allows for an appeal where the board “fails to issue that license as provided in this act.” This appears to be distinct in the statute from a denial. This distinction carries over to MCR 7.121 which provides that it governs appeals for a refusal to restore rights, a denial, revocation, suspension, or “failing to issue” a license to carry a concealed pistol. Therefore, a question remains about cases in which the board fails to issue an order or judgment. It would appear in such cases that there is an appeal as of right at any time.

It is suggested that the instruction should say: Complete this form (a) within 21 days of the application being denied or (b) if the licensing board failed to issue a timely decision.

Should the instruction relating to the time frame to appeal be modified?

4. **MC 11, Subpoena, Order to Appear and/or Produce**

It has been suggested that the court address and telephone number at the top of the form are sometimes overlooked due to their location on the form. Should these items be moved to be left-aligned to enhance their visibility?

5. **MC 13, Request and Writ for Garnishment (Nonperiodic)**

It has been suggested that item 2.d. of the instructions for the defendant may be misleading with respect to when an objection may be filed. Currently it says that the defendant may object if “you have an installment payment order.” However, an installment payment order would not necessarily foreclose all possible nonperiodic garnishments. Instead, MCL 600.6231 provides: “The garnishment of any money due or to become due for the personal work and labor of the defendant upon a judgment made payable in installments either by the court order or agreement of parties is prohibited,

excepting upon the written order of the judge. Any writ of garnishment issued without the order is void. The order may be made following due notice to the defendant if installments are due.” See also *Meyer Jewelry Co v Johnson*, 229 Mich App 177, 581 NW2d 734 (1998).

Should the form be modified to reflect a limitation on the right to object when the defendant has an installment payment order by clarifying that the objection may only be made where “this garnishment relates to money due or to become due for your personal work and labor” or should this example be removed given that may only apply in a limited number of nonperiodic garnishment cases?

6. **MC 306, Substitution of Attorney**

It has been suggested by the family law section of the State Bar of Michigan that this form should be modified to make it clear that the form requires the signature of both attorneys of record and the new attorney, not just the attorney who is withdrawing and the new attorney.

MCR 2.117(C) provides that “[a]n attorney who has entered an appearance may withdraw from the action or be substituted for only on an order of the court.” There is concern that an order signed with only the signature of one party/attorney does not comport with one of the four ways an order is supposed to be entered under MCR 2.602(B).

Further, if this order is to be entered as a stipulated order, MCR 2.119(D)(1) provides: “Before filing a motion, a party may serve on the opposite party a copy of a proposed order and a request to stipulate to the court's entry of the proposed order.” Such stipulations must include the language, “I stipulate to the entry of the above order.” MCR 2.119(D)(2)(a).

Should an additional signature line be added to the form to allow for the signature of the opposing party/counsel?

7. **MC 325, Request for a Hearing on a Motion**
MC 327, Order

A question has arisen with respect to whether these forms are still used. If these generic forms are not still used it is suggested that they should be deleted. Should one or both of these forms be deleted?

Comment 1: 52-3 District Court uses MC 327 frequently as the order on motions and are handed out. However, as for the motion, this Court uses MC 326, not MC 325.

Comment 2: 48th District Court uses both MC 325 and 327. The motion is used frequently by pro se individuals and the MC 327 is used by attorneys who come to court and need to prepare an order right away.

8. **New Proposed Forms For Use in Receiverships under MCR 2.622**

The Receivership Forms Committee of the Debtor/Creditor Rights Committee of the Business Law Section of the State Bar of Michigan has drafted proposed forms in response to the adoption of the new receivership court rule, MCR 2.622. The committee, consisting of judges and attorneys, believes that the proposed forms will promote uniformity and assist the bench and bar in addressing requirements imposed by the new rule. The following forms have been proposed:

1. Checklist for Motion For Order Appointing Receiver Under MCR 2.622;
2. Checklist for Order Appointing Receiver;
3. Receiver's Statement of Disinterestedness Pursuant to MCR 2.622(B)(6);
4. Acceptance of Appointment as Receiver under MCR 2.622(D)(2);
5. Notice of Receivership Under MCR 2.622(D)(2);
6. Accounting of Receiver Pursuant to MCR 2.622(D)(4);
7. Notice of Request for Fees and Expenses By Receiver Under MCR 2.622(F)(4);
8. Final Report and Account Pursuant to MCR 2.622(D)(7); and
9. Order Regarding (I) Discharge of Receiver, (II) Administration of the Receivership Estates, And/Or (III) Termination of the Receivership.

Drafts of each form are included with your attachments.

Attachments.