



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

April 16, 2015

MICHIGAN COURT FORMS COMMITTEE
Civil Infractions, Other Civil, and Summary Proceedings Committee
Minutes of March 26, 2015 Meeting

Present: Laura Echartea, 36th District Court
Lee Ann Gaspar, Michigan Department of State
Chalunda Hamilton, 46th District Court
Christopher Kittman, 62A District Court
Christina McDonald, Dickinson Wright PLLC
Hon. Donald Passenger, 61st District Court
James Schaafsma, Michigan Poverty Law Program
Ms. Liz Stankewitz, 89th District Court (via polycom)
Colin Boes, State Court Administrative Office (staff)
Bobbi Morrow, State Court Administrative Office (staff)
Julia Norton, State Court Administrative Office (staff)

Absent: Carolyn Povich, 40th District Court
Angela Tripp, Michigan Poverty Law Program
Amy Garoushi, State Court Administrative Office (staff)
Jim Inloes, State Court Administrative Office (staff)
Jonie Mitts, Judicial Information Systems (staff)
Julia Norton, State Court Administrative Office (staff)
Jay Francisco, Judicial Information Systems (staff)

Meeting called to order, 9:35 a.m.

The committee first discussed the fact that this committee frequently does not have a sufficient number of agenda items to warrant an in-person meeting. In light of this, SCAO staff suggested

merging this group with the general civil group. If done, a district court section of that group could review the DC/MC forms, and a circuit court section could review the MC/CC forms, with the two groups overlapping on the same day with MC forms. The committee was receptive to this idea and SCAO staff will consider whether merging the groups makes logistical and practical sense.

1. **Corrections**

- A. The committee discussed that various forms retain links to the Michigan Supreme Court's old web address. These links will be updated on forms as they are modified for substantive reasons. Some of the links to the self-help website will be changed to link to Michigan Legal Help.
- B. **DC 85, Judgment (Small Claims):** The committee was informed that MC 10, Civil Judgment, was updated a number of years ago to remove, "[a] note or other written evidence of indebtedness has been filed with the clerk for cancellation." The same was not done on this form and will now be changed, as a note or other written evidence of indebtedness is no longer required by MCR 2.603(B)(2), following the 2008 amendment of the rule. See 2008 Staff Comment to MCR 2.603 ("This amendment eliminates the requirement to file for the cancellation of a note or writing indicating written evidence of indebtedness when applying to the clerk for a default judgment."). The committee agreed and made the change.

The form was approved as revised.

- C. **DC 111b, Answer Damage/Health Hazard to Property (Landlord-Tenant):** The committee noted that item 3 on form asks if the person named in item 3 of the complaint is the owner of the property described in the notice to quit. MCL 600.5714(1)(d) covers damage or health hazards on the premises, indicates a "demand for possession" is what would be used. The committee changed the reference to "demand for possession."

The form was approved as revised.

Staff Note: The reference on this form to the self-help center on the second page will be modified and replaced with a reference to Michigan Legal Help.

Additionally, the link with information on how to collect a money judgment on page 5 was updated to: <http://courts.mi.gov/self-help/center/collect/pages/default.aspx>.

- D. **DC 111d, Answer, Termination of Tenancy of Mobile Home Park – Mobile Home Owner (Just-Cause Termination):** The committee noted that item 3 on this form should say "demand for possession" not "notice to quit." MCL 600.5775 refers to a demand for possession that would be filed with a just-cause termination. Item 3 on this form was changed consistent with the phrasing used in item 3 on DC 102d.

The form was approved as revised.

Staff Note: The reference on this form to the self-help center on the second page will be modified and replaced with a reference to Michigan Legal Help.

Additionally, the link with information on how to collect a money judgment on page 5 was updated to: <http://courts.mi.gov/self-help/center/collect/pages/default.aspx>.

2. **CIA 03, 14-day Notice Civil Infraction**

The committee discussed a suggestion from a district court clerk that the language on this form, pertaining to payment, should be modified. It currently says: “Payment may be made in person or by mail. If you make payment by mail, it must be in the form of a certified check or money order only, and received by this court no later than the due date above.” The committee noted that similar language appears on CIA 07, Default Judgment (Civil Infraction) and should be considered for modification as well.

The committee pointed out that some courts allow payments to be made online and, according to the inquiry, not all courts require payments by mail to be in the form of a certified check or money order. The committee spent some time considering how best to modify the language so that it was generic enough for use in courts with varying payment procedures. The committee noted it would be better to omit reference to the way payment by mail would be accepted, given the variance in practice. The committee changed the second sentence in the payment paragraph on this form should be modified to read: “If you make payment by mail, it must be received by this court no later than the due date above.” The committee also added the following language should be added to this paragraph: “Check the court’s website for other payment options.” This would serve as a reminder there may be other ways to pay, such as online payments, without specifically noting this is an option when not every court accepts online payments.

The language on CIA 07 was modified in a similar fashion. Specifically, the reference to certified check or money order being required will be removed. If space permits, a sentence indicating the individual should check the court’s website for other payment options will be added.

The forms were approved as revised.

Staff Note: After further review, it was determined that a reference to the court’s website should not be made, as not all courts have websites or allow online payments. Further, because all courts are not uniform in the method of accepting payment, it was determined that the note regarding payment methods should be removed entirely. Additionally, the lead in sentence in bold will be modified to say, “If you fail to comply with the judgment and pay the amount due on or before _____.”

3. **CIA 04, Motion to Set Aside Default Judgment and Order, Civil Infraction**

The committee considered a suggestion from a district court magistrate that this form should be modified to make it clear a district court magistrate may hear and sign it. 2014 PA 384 amended MCL 600.8512 to allow a district court magistrate to hear and preside over motions to set aside default or withdraw civil infraction admissions. The committee agreed this change was appropriate and agreed “/magistrate” should be added after lines that list judge at the bottom of the form.

The form was approved as revised.

Staff Note: The second checkbox option in item 6 on the form will be modified consistent with MCR 4.101(D)(2)(a). Currently, the form says, “granted and the default is set aside.” However, MCR 4.101(D)(2)(a) requires that if the default is set aside the court must also “direct that a hearing on the complaint take place.” Therefore, this checkbox item was modified to say, “granted, the default is set aside, and a hearing on the complaint shall take place.”

4. **DC 53, Appeal Worksheet for Application for Leave to Appeal**

The committee considered a suggestion that item 7(k) in the instructions should be clarified. Specifically, it was suggested that the parenthetical indicating, “(NOTE: Filed with application),” should be removed. Item 7(k) appears to be referencing what is served on the district court, but item 7(k)(iii), in the parenthetical, appears to be referencing something that should be filed with the circuit court. MCR 7.105(E)(5), which appears to be what this item covers, involves what should be filed with the circuit court. After reviewing the form, the committee determined the reason this was confusing was that the item itself is referencing something to be done in the district court, after the appeal is filed in circuit court, but the parenthetical is referencing what was filed with circuit court. The committee concluded the parenthetical “(NOTE: File with application)” was not helpful and caused confusion and removed it accordingly.

The form was approved as revised.

Staff Note: After further review, the other parentheticals that said “(NOTE: File with application)” were removed from the form in items 7.a. and 7.e. to avoid confusion.

5. **DC 84, Affidavit and Claim, Small Claims**

The committee considered a question regarding whether the lines for notarization should list Michigan as the default state or if there should be a blank line for the state of notarization. The committee concluded no change should be made because in most cases, the notarization will be done in Michigan. Further, there were some questions about use of out-of-state notaries and whether there would be additional legal requirements. In any event, the committee determined if an individual wishes to have an out-of-state notarization, they could cross out Michigan and put the appropriate state.

No change was made to this form.

6. **DC 86, Demand and Order for Removal (Small Claims)**

It has been suggested by a district court clerk that it would be helpful if the form was modified to add a space for attorneys to list their bar number. The committee agreed that this information should be added for both parties. Additionally, the committee requested that, if possible, the format be in the standard format with the plaintiff/plaintiff's attorney on one side and the defendant/defendant's attorney on another side. It was noted that the form may currently appear this way for use in window envelopes. SCAO staff indicated they would review whether the standard format could be used on this form.

The form was approved as revised.

Staff Note: After further review of the technical specifications and the use of this form, it was determined the format at the top will not be changed. Instead, a place to list the removing party's attorney will be added to the body of the form.

7. **DC 99b, Motion to Set Aside Default Judgment**

The committee discussed that MCR 4.201(M)(3) has been amended, effective May 1, 2015, to clarify the rules for setting aside a default money judgment. The rule now specifies that where a motion is filed to set aside a default money judgment, the motion must be accompanied by an affidavit of facts showing a meritorious defense and good cause must be shown. The committee reviewed the form and determined that the portion of the form dealing with money judgments should be separated from the portion dealing with possession judgments, given the different requirements for each now under the modified rule.

The committee discussed at length what was intended by the modification to the court rule and whether the court must still refer back to the general civil rule on default judgments when handling motions under MCR 4.201. Some on the committee believed the general civil rule on defaults, MCR 2.603, would still apply. Others noted that it appeared the modification of MCR 4.201(M) was done so as to have the requirements for setting aside summary proceedings mostly self-contained in MCR 4.201. The staff note to the rule change indicates the addition of (M)(3), relating to money judgments, was added for the purpose of making the same standard found in MCR 2.603(D)(1) applicable to money judgments in summary proceedings cases. However, the committee ultimately concluded that this meant that these provisions do not apply to possession judgments.

The committee noted that the modifications to the form, with respect to how money judgments are treated, should be similar to MC 99, which is used to set aside a default judgment in general civil cases under MCR 2.603.

The committee determined item 2 on the form should become two separate items with a

checkbox in front of each. The new item 2 would deal with a request to set aside a possession judgment and will provide:

- 2. **I ask** the court to set aside the default judgment for possession (motion must be filed within 10 days of default judgment).
 - I ask the court to stay (delay) eviction proceedings until the court holds a hearing on this motion.
 - a. One month's rent is deposited with the court along with the motion.
 - b. Reasons for granting this stay are:

A new item 3 will be added to cover money judgments. It will provide:

- 3. **I ask** the court to set aside the default money judgment (motion must be filed within 10 days of default judgment).
 - a. I have good cause for my failure to appear/answer. I did not appear or answer because: (Attach a separate sheet if needed.)
 - b. I have a meritorious (valid) defense to the money judgment. My defense is: (Attach a separate sheet if needed.)
 - c. This affidavit is made on my personal knowledge and, if sworn as a witness, I can testify competently to the facts in this affidavit.

A notary block will be added to the form, with a note that the form need only be notarized when used as an affidavit.

Additionally, the committee agreed that item 2.b. on the form should change to reference a time frame for filing the motion of 10 days, consistent with MCR 4.201(M).

The committee also noted that with the proposed changes, the form would likely become three total pages (including the instruction page).

On the instruction page, the references in item 2 will be updated consistent with the changes made to the numbering and structure of the form. This means the third paragraph under 2 will now reference completing item 2. The fourth paragraph will reference completing item 3. The fifth paragraph will be moved to the portion dealing with possession judgments, as that is the only type of judgment where a stay must be requested with certain conditions for the purposes of the initial motion. See MCR 4.201(M)(1)-(2).

The reference in the instructions under item 5 to the ex parte order being appropriate if box 3 was checked will be changed to say if a stay was requested in item 2.

Under item 8 of the instructions, the hyperlink will be changed to www.michiganlegalhelp.org instead of the SCAO self-help center, which is largely being phased out.

The form was approved as revised.

Staff Note: After further internal review, it was determined that it makes more sense to have a separate motion form to set aside a default for a money judgment and a separate form for possession judgments. This is due in part to the fact that only the money judgment form will need a notary block. The new form was created and named “DC 99c, Motion to Set Aside Default Money Judgment.” DC 99b was renamed “Motion to Set Aside Default Possession Judgment.”

Additionally, under the blank line in item 1 on both forms the subheading “date” was added.

8. **DC 100c, Notice to Quit to Recover Possession of Property, Landlord-Tenant**

The committee considered three questions relating to this form:

A. The committee first considered a district court judge’s suggestion that the note on the form relating to exceptions to when a landlord must give notice equal to at least one rental period should be modified. The committee discussed that in 2012, following review by the Solutions on Self-Help Task Force, the note was modified to remove the reference to a 7-day demand for possession under MCL 600.5714(1)(a) for nonpayment of rent and to a 24-hour demand for possession for a drug eviction, pursuant to MCL 600.5714(1)(b). While both of these provisions require a demand for possession, not a notice to quit, the committee considered whether the note was now misleading regarding other ways in which a landlord may have a tenant removed that would not allow for one rental period. For example, the committee discussed that a notice to quit may be used in certain circumstances relating to drug evictions under MCL 554.134(4).

The committee discussed that there may frequently be changes in the law and that it may also be difficult to draft the note to account for all circumstances that would not require a full rental period without making it overly complicated or confusing. The committee believed the most important role of the note was to inform both the landlord and tenant that in most cases the time period for notice must generally be one rental period. After discussing the balance between providing guidance and detail, the committee replaced what appears now in the note with: “Unless otherwise allowed by law, the landlord/landlady must give notice equal in time to at least one rental period.” This was changed on both the court copy and the tenant’s copy. The committee believed this change, as well as the link to Michigan Legal Help on the tenant’s copy, would be sufficient, as more information may be found on the eviction process at Michigan Legal Help.

B. The committee discussed a suggestion that the “other” field on the form, following the letter “C” which is for indicating the legal basis for eviction, should be expanded. The committee discussed that this field is usually filled in with a statutory citation or a short comment. Some on the committee noted this was not the place for an elaborate

description. The committee generally agreed this space was sufficient for the intended purpose and would be more confusing if too much space was provided. No change was made in this regard.

- C. The committee discussed the fact that the form currently references a “90-day notice given under the authority of Public Law No. 111-22, Section 702; 123 Stat 1660.” This was a provision of the Protecting Tenants at Foreclosure Act, which after an extension included in the Dodd-Frank Act, expired December 31, 2014. Therefore, this reference will be removed from the form. However, some on the committee noted that while the law is no longer in effect, it may be effective for cases filed during the period when the law was still in effect and are still pending. The committee discussed whether this reference should be retained for another year, as it might be applicable in some cases. However, after further discussion, in light of the removal of the other specific time periods discussed in A. above, the committee removed it. Additionally, because these changes would not be implemented until the forms are released in June, there was less of a concern about pending cases that could be affected.

The committee also replaced the references in the instructions to the self-help center on pages 2 and 4 of the instructions with references to Michigan Legal Help. This change was also made on the tenant’s copy of the notice.

The committee also noted that the instructions for the notice to quit still refer to “demand for possession” in places in item 1. The references were corrected. Additionally, the committee replaced the reference to eviction in item 2 of the instructions with “recover possession.”

The committee also commented on the formatting of web addresses and noted that generally, at least when typing in a web address, neither the “Http” nor the “www” are necessary at the beginning of a web address. These comments will be considered as the formatting is modified.

The form was approved as revised.

Staff Note: Item 1 on the notice checklist on page 2 of the form was removed, as the referenced portion of the Self-Help center no longer exists and there is no direct corollary available elsewhere.

Additionally, given the removal of the reference to the 90-day notice under Public Law No. 111-22 that citation was removed from the foot of the form.

9. **DC 105, Judgment, Landlord-Tenant**

The committee considered three suggestions regarding this form:

- A. The committee considered a suggestion from an attorney that the language “TO THE DEFENDANT” should be removed from the middle of the form because not

every item is solely for the defendant. Instead, it was been suggested it say, “IT IS ORDERED.” The committee agreed that while the “TO THE DEFENDANT” may be a useful trigger for the defendant to focus on the provisions applicable to him or her, it is not entirely accurate. Some of the provisions would relate to the plaintiff and it is the court order portion of the form. The committee changed the language as suggested. This change was also made to DC 105a, Judgment, Termination of Tenancy, Mobile Home Park – Mobile Home Owner (Just-Cause Termination).

- B. The committee considered a suggestion from two attorneys that the language in paragraph 2.a. should be modified. Instead of referencing rent, they have suggested it say should also reference “Rent and other sums due under the lease.” It was suggested that this is necessary pursuant to MCL 600.5741, which allows for a judgment of possession to include “any money due under a tenancy,” not just rent. It is suggested that this follows from MCL 600.5716, which allows a demand for possession to request money for “nonpayment of rent or other sums due under the lease.” The committee discussed that some courts, relying on the language on the form, only allow for rent as part of the judgment of possession, but not other sums due under the lease. The committee agreed this language should be changed but were concerned if the rent and other sums due were lumped together in one item, it might suggest rent need not be due to make a claim. To this end, the committee believed the lead in to item 2 should make it clear it is for rent “and” other money due under the lease, not “or.” Item 2 was reworded as follows:

2. There is now due to plaintiff for nonpayment of rent and other money due under the lease:

- a. Rent to retain possession \$ _____.
- b. Other money due\$ _____.
- c. Costs\$ _____.
- d. Total.....\$ _____.

- C. The committee considered a suggestion from a civil unit leader of a court that this form should have information indicating that the order of eviction must be issued no later than 56 days from the date of the judgment. This was based on the language in MCR 4.201(L)(4)(a), which states limitations on the time for issuance and execution. Unless a hearing is held after the defendant has been given notice and an opportunity to appear, the order of eviction may not be issued later than 56 days after the judgment is entered. The committee discussed this proposal and determined it was not necessary to include as a note. The form does not explain all the limitations on the process and a failure to have an order of eviction entered within 56 days after the judgment would mean the plaintiff would have to come back to court.

The form was approved as revised.

Staff Note: Due to the renumbering of item 2 of the possession judgment, references in items 4 and 6 were changed from 2c to 2d.

10. DC 107, Application and Order of Eviction Landlord-Tenant / Land Contract

The committee considered a suggestion from a civil unit leader of a district court that at the bottom of the form, in the note indicating that the order must be served within 56 days, it should also indicate it must be executed within the same time frame. MCR 4.201(L)(4)(b) provides that, unless a later hearing has been held, the order of eviction must “be executed later than 56 days after it is issued.” Further, MCR 4.201(L)(2) provides, “Issuance of Order of Eviction and Delivery of Order. Subject to the provisions of subrule (L)(4), the order of eviction shall be delivered to the person serving the order for service within 7 days after the order is filed.” After reviewing this language, the committee determined that the term “served” should be changed to “executed” to mirror the language in the court rule.

The committee also considered whether any reference was necessary on the form to the judgment having been issued within 56 days of the order of eviction. The committee concluded this was not necessary, as the court is entering the order and should be aware of this fact.

The committee also considered the comment regarding this proposed change that it must remain clear this rule is applicable only to landlord-tenant cases and not land contract actions. Given that the note retained the restriction that it applies to tenancy cases, the committee believed the note was clear regarding when it applies.

The form was approved as revised.

Respectfully submitted,

Colin Boes