



**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  
Domestic Relations Committee  
Minutes of March 19, 2015 Meeting

Present: Amy Billmire, Michigan Poverty Law Program  
Hon. Kathleen Feeney, 17th Circuit Court (via polycom)  
Erin Magley, 20th Circuit Court, Family Division  
Johanna Peltier, Washtenaw County FOC  
Shelly Spivack, Genesee County  
Ellsworth Stay, 27th Circuit Court  
Gail Towne, Lennon, Miller, O'Connor & Bartosiewicz, PLC  
Angela Tripp, Michigan Poverty Law Program  
Kent Weichmann, 3rd Circuit Court  
Amy Yu, Amy Yu, PC  
Bill Bartels, State Court Administrative Office (staff)  
Colin Boes, State Court Administrative Office (staff)  
Amy Garoushi, State Court Administrative Office (staff)  
Stacy Westra, State Court Administrative Office (staff)

Absent: Carol Bealor, 43rd Circuit Court  
Laura Cleland, OCS-DHS  
Hon. Suzanne Kreeger, 8th Circuit Court  
Kelly Morse, OCS-DHS

Meeting called to order, 9:45 a.m.

1. **Review of Changes Necessary as a Result of 2014 PA 378, Relating to Civil Contempt in Support Cases**

2014 PA 378 modified a number of statutes that pertain to civil contempt in support cases. The committee reviewed the following forms to determine if changes were

necessary: FOC 2, FOC 2a, FOC 4, FOC 6, FOC 14, FOC 19, FOC 58, FOC 81, FOC 82, FOC 83, FOC 84, FOC 85, and FOC 86.

At the outset, the committee discussed the change in terminology, which changed the references to a show cause process to a civil contempt proceeding. MCL 552.631 now provides that the proceeding is a civil contempt proceeding as provided by Supreme Court Rule. The committee discussed whether this meant the general civil contempt rule MC 3.606 would apply. The committee did not believe this rule applied and several committee members commented that they believed separate rules for contempt in domestic relations matters were being developed. In light of this, the committee recommended that the forms not be modified to comport with MCR 3.606 specifically and instead track the statute. The committee decided it should continue to rely on MCR 3.208 and not apply MCR 3.606 to the forms.

a. FOC 2, Motion and Order to Show Cause for Contempt (Support)

In light of the decision above regarding the applicability of MCR 3.606, no change was made to this form and it was tabled for further consideration in the future once it is determined whether there will be separate contempt rules for these cases. The committee agreed that before further changes were made, the court rules would need to be amended to provide further specifics on the procedure.

b. FOC 2a, Motion and Order to Show Cause for Contempt (Medical)

In light of the decision above regarding the applicability of MCR 3.606, no change was made to this form and it was tabled for further consideration in the future once it is determined whether there will be separate contempt rules for these cases.

c. FOC 4, Cash Performance Bond (Civil Contempt)

The committee added “/appearance” after “date of arrest.” This change was made so that the form can also be used as a receipt where the individual shows up at the front of the court office and posts the cash performance bond and was not arrested, consistent with MCL 552.632(7). The committee discussed how the “agency file no.” line and the “arresting agency” lines would fit with this and determined they would simply be left blank when it was not a cash-performance bond stemming from an arrest.

The committee determined that the language at the top of the receipt was confusing, in that “received from” could be misinterpreted in light of the parenthetical that

follows “(the payers of support).” The committee agreed that the first line should list the payer of support and if someone else was paying on the individual’s behalf, that person’s name would appear on the signature line for a depositor of money. To clarify this on the form, the word “from” was removed from the first sentence of the receipt and replaced with “on behalf of.”

The committee agreed that the terminology on the form should be modified to be consistent with the modifications made to the statute. In MCL 552.632, the term “show cause” was replaced with “contempt proceeding” where it is describing the process used. The two references to show cause were replaced with “contempt proceeding.”

The committee also determined that, under the terms and conditions, item 2 should indicate that the individual should inform the court and the friend of the court, not just the court, and a reference to the friend of the court was added to this item.

Additionally, in the sentence after item 2 in the terms and conditions the phrase “to me” was removed because the bond may be returned to someone else who paid on the individual’s behalf.

The form was approved as revised.

d. FOC 6, Support Enforcement Order

The committee added a new item 7.g. to this form (making the “other” item h), which says, “failure to satisfy the conditions of the commitment order.” This is necessary to allow the court to use this order where an individual has already been ordered to satisfy certain conditions and fails to do so.

The committee added an option under item 10 that tracks the new language added by MCL 552.631(5). It says “A law enforcement agency is authorized to render any vehicle owned by the payer temporarily inoperable, by booting or another similar method, subject to release on deposit of the cash-performance bond described above.

The committee moved item 25 on the form to item 9, because it makes the most sense in this location. This resulted in the renumbering of all subsequent items.

In item 19, the committee removed that the last sentence, which says, “a bench warrant for arrest may be issued for failure to comply” because it is no longer necessary.

The committee discussed whether item 24 should be simplified to reference an attached commitment order. The committee rewrote item 24 to allow the court to specify under what conditions the respondent may be released. The committee also discussed whether the fact that the commitment order was stayed should be referenced on this form or left to the commitment order. After some discussion, the committee determined it would be better to at least reference that the commitment order was stayed on this form. Other details relating to the commitment would be on the commitment order itself. Item 24 was modified to read:

The respondent shall be committed to \_\_\_\_\_ days in the county jail.  
The respondent may be released  upon payment of \$ \_\_\_\_\_ to the county sheriff, friend of the court, or clerk of the court as appropriate.  
The sum shall be applied as directed by the friend of the court.  
 The respondent may be released as provided in the attached commitment order.  Commitment is stayed according to the terms of the commitment order.

In light of these changes, SCAO staff will draft a proposed commitment order and a proposed supervision order. The committee agreed that until such time as approved forms are available for this purpose, courts will need to draft their own commitment and supervision orders. Both proposed orders will be presented to the committee at the next meeting.

The committee discussed whether item 26 should be removed, which relates to license suspension. After reviewing the statutory changes, the committee agreed that while this specific penalty was removed, it still falls under the catch-all penalty provision and is a possible outcome. Therefore, it was left on the form.

The committee discussed whether the blank space in item 29, used for listing the conditions, should be removed. The committee discussed that on the physical form there might be too much information for the blank space to be useful in many cases. However, the committee noted that when the form is created in other systems, this field is expandable. Therefore, the committee concluded the space should be retained and changed the last line to say “with the following conditions or as provided in the attached order of supervision:” to allow it to be used both ways.

The committee also reviewed the citations on the bottom of the form to determine if there should be any changes. The committee was satisfied with the reference to “MCL 552.601 *et seq.*” and did not believe each specific provision should be

referenced instead.

The form was approved as revised.

**Staff Note:** Due to the additional material added to the form, the form became three pages. This extra spacing allowed some of the fillable fields to be expanded. Therefore, the parenthetical after item 30 for “other” now says “(Attach additional sheets if necessary.)”

Because FOC 56, Referee Findings and Recommendation For Order After Hearing On Bench Warrant/Show Cause (Support) is used to make findings that may lead to the issuance of an FOC 6, a new item 11 was added to FOC 56 as follows: “11. Payer has failed to satisfy the conditions of the commitment order.” This correlates to the possible finding added to FOC 6, as noted above. Subsequent items on FOC 56 were renumbered.

e. FOC 14, Bench Warrant

The committee discussed the process for requesting a bench warrant if someone fails to comply. Some suggested that perhaps the MC 229, Motion, Affidavit, and Bench Warrant could be used. Others thought that this form could be modified for use. However, some expressed a concern that MC 229 was not tailored narrowly enough for purposes in these cases and that FOC 14 is used for other issues as well and should not be bogged down with the specifics relating to these particular contempt proceedings. The committee considered modifying MC 229, but indicated that there would be a problem using this form because it was designed under MCR 3.606, which the committee did not believe was meant to apply under MCL 552.601 *et seq.*

After further discussion, it was suggested FOC 14 could be modified for use. However, others on the committee expressed concern over modifying the FOC 14 because it is used in a number of other circumstances. Instead, committee members suggested the creation of a new form, modeled after MC 229, for use in these circumstances. The proposed form would be used in conjunction with FOC 14 and would be a separate motion and affidavit form. SCAO staff indicated they would work on drafting a proposed form for this purpose.

The committee agreed that FOC 14 should reference MCL 552.632, which is the statute dealing with cash-performance bonds. This citation was added to the bottom of the form.

FOC 14 was approved as revised.

f. FOC 19, Motion and Order to Show Cause for Contempt (Custody/Parenting Time)

The committee reviewed this form and determined no change was necessary at this time. As discussed above, the form will be reviewed again if court rules affecting the forms are approved.

g. FOC 58, Order After Hearing on Alleged Custody/Parenting Time Violation

The committee discussed that this form, in item 6 pertaining to the issuance of a bench warrant, should also reference the ability of the court to order the vehicle disabled. The committee added an option under item 6 that tracks the new language added as MCL 552.644(9). It now reads: “A law enforcement agency is authorized to render any vehicle owned by the payer temporarily inoperable, by booting or another similar method, subject to release on deposit of the cash-performance bond described above.”

The committee discussed that under MCL 552.644, it may be someone other than the “payer” of support who would be in contempt for a custody or parenting time violation. Some on the committee indicated that this has already been noted and there will be an attempt to fix this language in the statute and that the language of the statute should say “respondent” and not “payer.” However, until the language in the statute is changed, the form must reflect the term “payer” and be limited in the same way that the statute is limited.

The form was approved as revised.

h. FOC 81, Motion to Suspend License

The committee reviewed this form and determined that the citation to MCL 552.635(4) at the bottom of the form should be removed because section 635 was repealed.

The form was approved as revised.

i. FOC 82, Order Regarding Payment of Arrearage (License Suspension)

The committee reviewed this form and removed the citation to MCL 552.635(2)(b) at the bottom of the form because section 635 was repealed.

The form was approved as revised.

j. FOC 83, Notice Following Order for Payment of Arrearage (License Suspension)

The committee reviewed this form and removed the citation to MCL 552.635(4) at the bottom of the form because section 635 was repealed. The committee also added a reference to MCL 552.629 to the bottom of the form, because MCL 552.633(2) authorizes, among other things, an order applying “any other enforcement remedy authorized under this act or the friend of the court act for the nonpayment of support.” This includes license suspension, as provided in MCL 552.629.

The form was approved as revised.

k. FOC 84, Order Suspending License

The committee reviewed this form and removed the citation to MCL 552.635(4) from the bottom of the form because section 635 was repealed.

The committee also discussed the use of this form and why there was no corresponding motion. It was determined that this order would generally come out of the contempt proceeding as one of the possible consequences and no motion form was needed.

The form was approved as revised.

l. FOC 85, Motion to Rescind License Suspension

The committee reviewed this form and determined no change was necessary at this time.

m. FOC 86, Order Rescinding License Suspension (Child Support/Parenting Time)

The committee reviewed this form and determined no change was necessary at this time.

2. **New Forms For Use Under the Revocation of Paternity Act**

The committee considered forms created by a subcommittee of the domestic relations form committee, which included members of the domestic relations committee and other

individuals with knowledge of paternity actions and the Revocation of Paternity Act (RPA). After considering draft forms under sections 7, 9, and 11 of the RPA, the subcommittee proposed the following forms for use under section 7 and 9:

Order for Genetic Testing

Complaint/Motion and Affidavit to Revoke Acknowledgement of Parentage

Order Regarding Request to Revoke Acknowledgment of Parentage

Motion to Set Aside Order of Filiation

Order on Motion to Set Aside Order of Filiation

The committee was advised that forms for use under section 11 were considered by the subcommittee, but it was determined they should not be developed due to unanswered questions with respect to the operation of section 11. Michigan Legal Help plans to develop its section 11 forms that will be completed through an interview process. The committee agreed this course of action was appropriate.

The committee was also advised that forms under section 8, relating to the genetic father, will not be considered at this time because this section was only recently enacted. The committee agreed it could revisit the need for forms in this area at a future date if it becomes necessary.

a. Order for Genetic Testing

The committee reviewed the proposed order for genetic testing. The committee was informed that the idea behind this form was an order that would be used in any case under the RPA that required an order for genetic testing.

The committee was advised that the language “To assist the court in making its determination in this action” was specifically included on the form because of a lack of certainty as to what is meant by MCL 722.1443(5). This subsection provides: “The court shall order the parties to an action or motion under this act to participate in and pay for blood or tissue typing or DNA identification profiling *to assist the court in making a determination under this act.*” (Emphasis added). The committee agreed it was best to track the language of the statute and let judges decide whether the “shall” in that section makes it mandatory to order testing in every case. There were some who interpreted the “to assist the court” language as a modifier that allows discretion whether to order genetic testing.

Item 4 on the form was also discussed and the committee agreed it was appropriate to leave it blank as to who would pay what amounts. The RPA only requires the court to

order the parties pay for the genetic testing. It does not provide guidance as to how those costs should be split. See MCL 722.1443(5).

Item 5 was discussed and the committee was informed that the subcommittee spent some time thinking about whether to include this item. On the one hand, the RPA does not provide any specific statutory period for completing genetic testing. Therefore, no specific time frame could be built into the form. However, judges have the authority to set time parameters applicable to their orders and the subcommittee believed it was better to provide a built-in place to do so, rather than require the court to modify the order. The committee agreed this approach was appropriate.

After reviewing the form, the only change was to note that the form should be a “CC” form, not an “MC” form.

The form was approved as revised.

b. Complaint/Motion and Affidavit to Revoke Acknowledgement of Parentage

The committee next considered the complaint/motion that would be used under section 7 of the RPA. The committee moved the “In the matter of” line to the left margin.

The committee noted there were a few erroneous references to affiliated father on the form and those were corrected to say “acknowledged father.” Similarly, the reference to an “acknowledgment of paternity” was corrected to “acknowledgment of parentage” on the second page of the form.

The committee discussed the way item 1 was worded in asking whether or not the child was conceived as a result of criminal sexual conduct. It was pointed out that this is not enough, because for the RPA’s prohibition on filing to apply, it must be an action by an alleged father and it must be because the child was “conceived as the result of acts for which the alleged father was convicted of criminal sexual conduct under sections 520b to 520e of the Michigan penal code, 1931 PA 328, MCL 750.520b to 750.520e.” MCL 722.1443(14). Therefore, members concluded this is only applicable when the alleged father is bringing the action. Instead of having this information under item 1, it was moved to the end of item 2, after the checkbox for the alleged father.

The form designation was changed from “MC” to “CC.”

The committee also discussed the subcommittee's decision to have the user of the form check one or more boxes in item 4 as to the basis for revoking the acknowledgment and having item 5 be the place where the reasons are listed. The subcommittee considered having a list of each possible basis, followed by a blank space. However, there were concerns that for some litigants, particularly pro se litigants, might have trouble matching the checked item to a specific reason. Instead, it was determined to be better to allow the party completing the form to do the best they could to break up their reasons as to each item checked. Additionally, it cuts down on the space required on the form and does not result in large blank areas for items not checked. The committee agreed this approach was appropriate.

The committee discussed the wording of item 6, which indicates, as part of the request, that the court “. . . if necessary, order genetic testing to assist in making its determination.” It was discussed that the subcommittee believed it was important to include a reference to genetic testing on the form that was consistent with the language in the statute. Some on the committee asked why it was not an optional item and it was concluded that it is not up to the individual whether to request genetic testing. Whether or not genetic testing is requested, the court must order it when required by MCL 722.1443(5). The committee agreed the wording for this provision was appropriate.

The form was approved as revised.

c. Order Regarding Request to Revoke Acknowledgment of Parentage

The committee considered the order that would be used under section 7 of the RPA. The committee moved the “In the matter of” line to the left margin.

The language in item 7 was modified to reflect the requirement that the child was conceived as a result of acts for which the alleged father was convicted of criminal sexual conduct. It was determined that it was not enough for the child to be conceived as a result of such acts absent a conviction, under the language of MCL 722.1443(14). After discussing the language of MCL 722.1443(14), the committee agreed this change was appropriate.

References on the draft form to the “acknowledgement of paternity” were corrected to say “acknowledgment of parentage.”

The citation to termination of parental rights was completed to read “MCL 712A.2(b).”

The committee also discussed the placement of the statement relating to the child support arrears being preserved as of the date the complaint/motion was filed. There was some discussion about making it a separate item because it would be true whether the motion was granted or denied. However, after further consideration the committee agreed it was only relevant when the motion was being granted because it provides a date after which the support might not be continued. However, if the motion is denied nothing changes and support continues as it did before the motion/complaint and any arrears remain in place. The committee determined it would be less confusing to retain this sentence as part of item 10.

The form designation was changed from “MC” to “CC.”

The form was approved as revised.

d. Motion to Set Aside Order of Filiation

The committee discussed the way item 1 was worded in asking whether or not the child was conceived as a result of criminal sexual conduct. It was concluded this is not enough, because for the RPA’s prohibition on filing to apply, it must be an action by an alleged father and it must be because the child was “conceived as the result of acts for which the alleged father was convicted of criminal sexual conduct under sections 520b to 520e of the Michigan penal code, 1931 PA 328, MCL 750.520b to 750.520e.” MCL 722.1443(14). Therefore, the committee concluded this is only applicable when the alleged father is bringing the action. The information under item 1 was moved to the end of item 2, after the checkbox for the alleged father.

Additionally, the committee concluded that the language pertaining to whether a petition for termination was filed, like that found on the section 7 form, should be included on this form. Therefore, the subpart a. and b. found on the section 7 form was added to the section 9 form.

The committee discussed why the language in item 4 only says that the motion is based on the affiliated father’s failure to participate without explaining what that means. It was discussed that section 9 does not define what “failure to participate” means and that the form was drafted this way to track the language of the statute as closely as possible. As to interpreting what circumstances might qualify under this description, it would be for the court to decide. The committee agreed this approach was appropriate.

The committee discussed item 5 on the form, which says: “The reason(s) for this motion are:” and whether it was necessary. Some on the committee thought it was necessary to state more than just a failure to participate for purposes of pleading with particularity. Others indicated that the section 9, unlike section 7, only requires one thing for the motion to be brought, which is that the affiliated father failed to participate in the proceedings. After some discussion, the committee decided that it would be best to track the language of the statute and not include additional items. Item 5 was deleted from the form.

The committee discussed whether a use note should be included on the form that warns the person filing the motion that if the motion is denied, the court must order the person who filed the motion to pay attorney fees and costs incurred by the other parties. See MCL 722.1439(3). While the committee agreed this did not have to be on the form, they felt it was best to include it as a use note so that an individual who may wish to file a motion under section 9 understands they will be responsible for these fees and costs if the motion is denied. A use note was added as follows: “If the court determines that this motion should be denied and the order of filiation not be set aside, the court shall order the person who filed the motion to pay the reasonable attorney fees and costs incurred by any other party because this motion.”

The form designation was changed from “MC” to “CC.”

The form was approved as revised.

e. Order on Motion to Set Aside Order of Filiation

Item 7 was modified to specify that it only applies if the child was conceived as a result of criminal sexual conduct that results in a conviction. Additionally, this item was modified to make it clear this item is only applicable where it is the alleged father that brought the motion, consistent with MCL 722.1443(14).

The committee determined that item 6, relating to the affiliated father not participating, should become item 4 because this is the threshold requirement for the court to move forward on this motion. As a result, items 4 and 5 were renumbered as 5 and 6.

The committee discussed whether there should be a finding on the form that the genetic testing was done. After some discussion, the committee did not believe it

was necessary to state in the order whether testing was done as it was not a necessary finding under section 9.

There was some discussion about adding a legal standard in the order, specifically whether it is or is not in the child's best interest by clear and convincing evidence. This discussion was guided in part by recent case law from the Michigan Court of Appeals addressing the RPA. See *Demski v Petlick*, \_\_\_ Mich App \_\_\_; \_\_\_ NW2d \_\_\_ (issued March 5, 2015, Docket No. 322193). However, the committee determined it was not necessary to include the burden of proof on the form. Given that this is still an issue being litigated in appellate courts, it would be premature to include the information until the matter is fully settled. It was noted that at least one case, *Helton v Beaman*, 304 Mich App 97; 850 NW2d 515 (2014), addressing the RPA is currently pending before the Michigan Supreme Court.

The form designation was changed from "MC" to "CC."

The form was approved as revised.

3. **FOC 29, Order Regarding Change of Domicile/Legal Residence**  
**FOC 115, Motion Regarding Change of Domicile/Legal Residence**  
**FOC 116, Response to Motion Regarding Change of Domicile/Legal Residence**

The committee discussed the change of domicile forms and whether they could be read to suggest that the only applicable standard for a change of domicile motion and order is the best interests of the child, which is not accurate. The committee considered the following guidance from the Michigan Court of Appeals in *Rains v Rains*, 301 Mich App 313, 325; 836 NW2d 709 (2013):

A motion for a change of domicile essentially requires a four-step approach. First, a trial court must determine whether the moving party has established by a preponderance of the evidence that the factors enumerated in MCL 722.31(4), the so-called D'Onofrio factors, support a motion for a change of domicile. Second, if the factors support a change in domicile, then the trial court must then determine whether an established custodial environment exists. Third, if an established custodial environment exists, the trial court must then determine whether the change of domicile would modify or alter that established custodial environment. Finally, if, and only if, the trial court finds that a change of domicile would modify or alter the child's established custodial environment must the trial court determine whether the change in domicile would be in the child's best interests by considering whether the best-interest factors in MCL 722.23 have been established by clear and convincing evidence.

The committee agreed FOC 29 currently does not fully account for the possible findings needed, given the lack of a reference to whether the request would amount to a change in the custodial environment. A new item 5 was added to the form, which says: “The requested change of domicile  will  will not change the child(ren)’s established custodial environment.” Subsequent items were renumbered. With this change, the committee agreed the form provides the options needed. It would be up to the court to apply the correct standard, depending on the factual circumstances, and make the appropriate findings on the form.

The committee also determined that item 7 should reference both domicile and legal residence. A reference to “/legal residence” was added after the domicile reference in this item.

Item E on page 6 of the instructions was modified to reflect the changes in the item number and references to item 6 were changed to 7. Similarly, the reference items 7 through 11 in item F was modified to 8 through 12.

FOC 29 was approved as revised.

**Staff Note:** A number of years ago, the heading explaining how the order is entered was modified on the FOC 10, Uniform Support Order, to combine stipulation/consent into one checkbox. This was done because the committee determined that, for purposes of explaining the basis for entering the order, it was not important to distinguish between stipulation and consent. Consistent with this change, the consent checkbox on FOC 29 and the stipulation checkbox will be combined to appear the way this item appears on FOC 10, which has as an option, “on stipulation/consent of the parties.”

#### FOC 115

After reviewing FOC 115, the committee determined that the person filing the motion will not know whether the court is going to find the request amounts to a change in the custodial environment. Therefore, the committee concluded no change was necessary on the motion.

#### FOC 116

After reviewing FOC 116, the committee determined that the person responding to the motion will not know whether the court is going to find the request amounts to a change in the custodial environment. Therefore, the committee concluded no change was necessary on the motion.

#### 4. **MC 306, Substitution of Attorney**

The committee discussed a recommendation from the family law section of the State Bar of Michigan that this form 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.

It was discussed that 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 was a 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).

The committee was informed that the general civil committee considered this question and determined no change should be made to the form. The general civil committee had been concerned that changing this form to be used for stipulated orders would make it appear the consent of the other side is necessary before withdrawing, which is not true. Instead, there may be circumstances (after a hearing, a valid ex parte basis) for the court to enter an order allowing withdraw without the consent of the opposing party.

Several on the committee echoed that concern and commented that many attorneys view the matter as one between the attorney and client that does not involve the other party. However, others indicated the court must sign off on a withdraw of any party who has entered an appearance. Committee members also commented that, like any order of the court, it should be entered by one of the specified methods, i.e. after a hearing or with the consent of the other side. Members of the committee stated that they believed this form should be in the form of an ex parte order because it does not reference consent or that a hearing was held and the form was revised accordingly. It will be up to the trial court to determine when it is appropriate to enter this as an ex parte order.

Some on the committee expressed a concern with how this practice is handled by certain attorneys and a difficulty in determining when the next hearing on a case might be in order for the judge to decide whether or not to grant the request. In order to alleviate this issue, the committee added a new line to this form that says: “The date of the next scheduled hearing is \_\_\_\_\_ (date).”

The committee also determined this form should be clarified as to who is signing it. To this end, the heading of “CONSENT” was removed, as it was leading people to believe it was a stipulation. Additionally, “client” was added to the caption of the first signature line and “withdrawing” was added to the caption of the second signature line.

The committee also expressed a desire for a form for use when it is a stipulated order consenting to opposing counsel's withdraw or substitution. The committee did not believe MC 306 should be modified to accommodate this. Instead, it was determined that a new form should be developed specifically for this purpose. This form will be developed by SCAO staff and presented for consideration to the committee at the next forms meeting. The committee requested that this new form also include the same line for indicating the date of the next hearing.

The form was approved as revised.

5. **Should New Forms be Created for Use Under MCR 3.210 Regarding Domestic Relations Cases that Involve a Default**

The committee considered a proposed form for use under the recently amended MCR 3.210. The committee discussed that MCR 3.210 previously referred back to MCR 2.603, the general civil rule on defaults. This cross reference was removed and the rule was largely rewritten to provide the procedure to be used with respect to domestic relations cases involving a default. A proposed form was considered entitled "Verified Motion for Default Judgment." Some of those on the committee who were involved in drafting the proposed form indicated that it was somewhat difficult to strike a balance between a minimalist approach and including all the information that a court might want included on the form.

Some on the committee questioned whether SCAO should create a verified motion with additional information when the rule does not specify what it must include. While MCR 3.210(B)(4) allows for the filing of a verified motion requesting a judgment without a hearing, it does not expressly provide what is required in such a motion. However, others believed that the court would need certain information before it can enter a judgment without a hearing and it might be easier if the form asked for this information to be provided. The committee also agreed that MCR 3.210(B)(5) allows the court to require the moving party to present further evidence to satisfy the court that the proposed judgment is in accordance with the law.

Some indicated that it may be better in this circumstance not to create a form. There is no requirement in the rule that there be an SCAO-approved form and because of the many ways a verified motion could be drafted, it might be better not to suggest by form what the practice should be. Some on the committee commented that a form with as much detail as the proposed form would not be practical in some courts for the prosecutors to use because they would not usually have that much information. Others

on the committee believed it was important to have some version of an SCAO-approved form in order to provide some form that judges could reference when they receive a verified motion that lacks sufficient information.

The committee discussed that without a requirement in the court rule that this form be used, it cannot be mandated for use. Some on the committee suggested that if there were jurisdictions willing to try using this form, they could provide feedback on how well the proposed form worked. Some on the committee indicated they would take the proposed form back to their local prosecutor and see if they would be willing to use some iteration of this draft form.

The question of whether a form should be created was tabled until next year. Once the rule has been in place for longer, the draft form can be revisited to determine whether the form will be helpful in practice and what should be included in the form.

#### 6. **FOC 52, Instructions For FOC 10 or FOC 10a**

The committee considered a suggestion that the instructions included with this form should be modified to include a reference to the new FOC 10d, Deviation Addendum form. The committee discussed that the instructions were generally intended to help pro se litigants. Some on the committee inquired as to how often pro se litigants request a deviation and it was discussed that pro se litigants frequently request a deviation. It was also discussed that the FOC 10 and 10a both specifically indicate in the body of the form that a deviation addendum, FOC 10d, must be included if deviating. The committee agreed that this was sufficient to put an individual seeking a deviation on notice of the additional form required.

No change was made to this form.

#### 7. **FOC 71, Notice of Child Support Review**

The committee considered a suggestion that the form, possibly in item 2 or 4, be modified to allow the friend of the court to specifically identify what will happen if the individual does not respond. It was suggested that the form is not clear enough regarding the consequences of a failure to provide the information in response to the FOC 71, which may include imputation of income or an assumption regarding the number of overnights, which might be detrimental to the individual.

After reviewing the form, the committee determined that the wording of the second sentence in item 2 is less definitive in asking for the information than the committee would like. After discussing how best to word this item, the committee replaced “please” with “You must.” Additionally, to warn of potential consequences, the phrase “or court action may be taken without your input” was added to the end of item 2.

The form was approved as revised.

8. **FOC 102, Order Exempting Case From Friend of the Court Services**

The committee considered a suggestion from a local friend of the court office that because some courts require the friend of the court to on the FOC 102 before the court will enter the order, a signature line should be added for the friend of the court. The committee pointed out that because not all courts require the friend of the court to approve the order, this practice has been addressed on other forms (i.e. FOC 10) by adding a “court use only” section to the bottom of the form. The committee agreed and added a “court use only” space at the bottom of page 1.

The form was approved as revised.

9. **FOC 22, Employer’s Disclosure of Income and Health Insurance Information**

The committee considered a number of suggestions regarding this form:

- A. The committee considered a suggestion by a friend of the court worker that an item be added to this form to inquire as to layoff status and, if it is a temporary layoff, a possible return date. The committee discussed how this form is used and whether the employer should be required to indicate layoff status or a return date. Some on the committee commented that even if it was a temporary layoff, the employer might not want to indicate on this form a specific return date, because circumstances may change. Additionally, given that most individuals are not in positions where temporary layoff applies, the committee decided this should not be included on this form.
- B. The committee considered a suggestion that this form be clarified so employers can more easily understand their obligations. It has been suggested that in the current format, the notice to employers, which is lifted directly from MCL 552.518, is confusing. Further, the form does not explain the limitation from MCL 552.518(4) that former employers have an obligation to provide information for an individual who was employed with three years of the date of the request. After discussing whether all the language of the statute really needed to be on the form, the committee determined a simpler introductory statement would suffice. To this end, the committee replaced the section at the top of the form under “Notice to Employer,” with “Under Michigan law, you are required to provide information as it relates to the custodial or absent parent according to MCL 552.518.” The committee agreed that by asking for information in the section below after making this statement, it is indicating that this is the information required by law. It is not necessary to repeat the statutory language. The committee declined to include the specific time limit in MCL 552.518(4).

In light of this discussion, the committee added the citation MCL 552.518 to the foot of the form.

- C. The committee considered a request from the Office of Child Support that the form be modified to add lines to track prescription insurance, mental health insurance, and other coverage separately from medical, dental, and vision insurance. Specifically, this would mean add new items to allow this information to be reported after item 10 and include the following information:
- a. Prescription insurance company name, address, telephone no., policy no., and group no.
  - b. Mental health insurance company name, address, telephone no., policy no., and group no.
  - c. Other: \_\_\_\_\_ insurance company name, address, telephone no., policy no., and group no.

The committee did not believe it was necessary to go into this much additional detail. Instead, the committee added a box for other insurance to the form as a new item 11. The subsequent items were renumbered and cross references throughout the form were updated accordingly.

- D. The committee considered a request from the Office of Child Support that this form be expanded in item 25 to include mandatory and voluntary employee and employer retirement contributions, consistent with the Michigan Child Support Formula, 2013 MCSF 2.01(C)(8) and 2.07(E). The committee considered whether this information would already be provided if pay stubs were attached but concluded it might not be accounted for on such documentation. The committee added a new item 27, similar to the other fields entitled “Retirement Contributions” followed by a field for mandatory employee contributions, voluntary employee contributions, and employer contributions. The items following 27 were renumbered.
- E. The committee considered a request from a friend of the court office that this form be modified to indicate a time period for responding. The committee considered the requestor’s comment that when completing a support review friend of the court offices generally need the information within one or two weeks. The committee discussed the fact that while MCL 552.518(2) provides that responses to administrative subpoenas must be within 15 days, there does not appear to be any specific statutory time frame for the response to a request (as opposed to the subpoena) in MCL 552.518. There were concerns that many courts may have different ideal time frames and it was discussed if the form included a time

requirement, it would first have to derive from a court rule or statute. Ultimately, the committee concluded the form should not be modified to reflect a specific amount of time in which there should be a response because there was no basis in court rule or statute for doing so.

The form was approved as revised.

**Staff Note:** Due to the changes, additional space was available on the first page. Two more lines to list the name of the dependent were added to what is now item 13.

10. **FOC 10, Uniform Child Support Order**  
**FOC 10a, Uniform Child Support Order (No Friend of the Court Services)**

The committee considered two suggestions regarding these two forms:

- A. **FOC 10 Only:** MCL 552.605d was amended to change the phrase “legally responsible for” to “who is providing” the actual care, support and maintenance. Item 8 on the FOC 10 currently uses the term “legally responsible for.” The committee agreed this change should be made.
- B. The committee also considered whether these forms should now have a checkbox at the top of the form to indicate the order was entered after a default without a hearing, in light of the recent amendments to MCR 3.210. The committee concluded it would be helpful and consistent with the current design of the form to add such an option.

The committee discussed the minor nature of the changes and whether it was necessary to modify the form this year for these changes. The committee considered that major revisions were made last year and that the form has now been translated and every time the form is changed, it needs to be translated again. After discussing it, the committee concluded that the suggested changes should be made, but could be held until other necessary revisions to the form are made.

The committee also discussed whether item 1 should have subparts which would make it easier to identify on the deviation addendum which portion was being deviated from. The committee determined this might be beneficial, but concerns were raised about how this would impact the effective date provision and how it could be made clear it applies to all of item 1. Ultimately, the committee concluded this might be something worth considering at the next meeting, but would be tabled for the time being.

Therefore, while the form was approved as revised, the changes are being held until the form is changed for other reasons.

11. **FOC 39, Friend of the Court Case Questionnaire**

The committee considered a number of suggested changes to this form. The committee was advised that the form originated for a specific purpose at the origination of a case, but has now expanded in use. The Friend of the Court Bureau asked local friend of the court offices several years ago whether this form should be one form or multiple forms for different purpose (i.e. custody investigation, support investigation) and the response was fairly evenly split. However, due to time constraints, the proposed revisions were tabled for consideration at a future meeting. SCAO staff indicated they would review this form and determine if certain stylistic changes could be made to make the form easier to use in various circumstances, by allowing individuals to identify portions of the form that need to be completed. The committee responded this might be helpful, given that all the information may not be needed depending on the reason for the request. As this approach is reviewed for viability, SCAO staff will keep in mind the suggestions made regarding this form this year.

The committee agreed that this form should be tabled for now to allow SCAO staff to rethink the approach to the form and evaluate how it might be changed to work more effectively.

12. **Should Forms Be Created For Use Under the Uniform Child Custody Jurisdiction and Enforcement Act?**

The committee considered a suggestion that forms should be created for use under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), MCL 722.1101 *et seq.* The committee considered some sample forms from Wayne County. Some on the committee indicated that in the past when this issue was considered, it was determined the statute did not provide enough specific guidance as to procedure to allow for the creation of forms. However, others on the committee believed standardized SCAO-approved forms would be helpful and should be considered again. The committee noted that there are frequently issues with parties filing things that do not meet all the requirements of the UCCJEA. Committee members suggested SCAO staff review whether forms would be viable and, if so, form a subcommittee of individuals familiar with UCCJEA to help craft forms.

SCAO staff agreed to review this issue, as time permits, and bring it back to the committee after it has been further reviewed for viability.

Respectfully submitted,

Colin Boes