Michigan
Trial Court Administration

Reference Guide

State Court Administrative Office

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Management Overview

1-01 Michigan Court System

This reference guide provides a summary of the six primary functional areas of trial court administration (see Sections 3 through 8) and links to related resources. In addition to this reference guide, there are summary pages of Trial Court Administration Resources on the One Court of Justice website to easily access this related information about trial court operations, policy, and procedures.

The concept of Michigan's "One Court of Justice" was introduced in Article 6, Section 1, of the 1963 Michigan Constitution. This concept allows the judicial system to function as one unit consisting of different courts, each performing a distinct role. After Michigan became a state in 1837, the citizens adopted a state constitution, which included the judicial branch of government.

A. Jurisdiction

Michigan has three trial courts – circuit, district, and probate. See the organization chart of the Michigan court system. A summary of the three trial courts is available online for the general public.

B. Concurrent Jurisdiction

1. Authority

Within each judicial circuit, subject to approval by the Michigan Supreme Court and to the limitations contained in sections MCL 600.410, 600.841, and 600.8304, a plan of concurrent jurisdiction shall be adopted by a majority vote of all of the judges of the trial courts in the plan unless a majority of all of the judges of the trial courts in that judicial circuit vote not to have a plan of concurrent jurisdiction. If a majority of all of the judges of the trial courts in a judicial circuit vote not to have a plan of concurrent jurisdiction, the chief judge of the circuit court of that judicial circuit shall report the results of that vote to the state court administrator. MCL 600.401(1). This statute does not apply to Genesee, Ingham, Kent, Macomb, Oakland, Washtenaw, and Wayne Counties. MCL 600.401(6).

Under MCL 600.401(2), a plan of concurrent jurisdiction may provide for 1 or more of the following:

a. The circuit court and 1 or more circuit judges may exercise the power and jurisdiction of the probate court.

b. The circuit court and 1 or more circuit judges may exercise the power and jurisdiction of the district court.

c. The probate court and 1 or more probate judges may exercise the power and jurisdiction of the circuit court.

d. The probate court and 1 or more probate judges may exercise the power and jurisdiction of the district court.

e. The district court and 1 or more district judges may exercise the power and jurisdiction of the circuit court.

f. The district court and 1 or more district judges may exercise the power and jurisdiction of the probate court.

g. If there are multiple district court districts within the judicial circuit, 1 or more district judges may exercise the power and jurisdiction of judge of another district court district within the judicial circuit.

2. Purpose

Courts develop and implement these plans to remove institutional barriers to efficiency, innovation, and enhanced public service. Some of the benefits of initiating this process include the opportunity to:

- Design a local court system customized to meet the specific needs of the community.
- Assign and organize the judicial and administrative workload to maximize access to the courts and the timely resolution of cases.
- Develop and assign support services that improve public availability and fully utilize the multiple skills of experienced staff.
- Improve local communication and cooperation among the judges and staff.
- Standardize practices and reduce appearances by counsel and litigants.
- Combine duplicative programs and services.

3. Establishing a Plan

A plan of concurrent jurisdiction under MCL 600.401 shall provide for the transfer or assignment of cases between the trial courts affected by the plan and to individual judges of those courts as necessary to implement the plan and to fairly distribute the workload among those judges. MCL 600.401(3).

It may also include agreements as to other matters involving the operation of the trial courts participating in the plan, as approved by the Michigan Supreme Court. MCL 600.401(4). The plan of concurrent jurisdiction becomes effective upon the approval of the plan by the Michigan Supreme Court. MCL 600.401(5).

Courts who desire to establish a concurrent jurisdiction plan must apply to the State Court Administrative Office. An application with instructions has been developed for this purpose. Guidelines for planning and applying are also available.

See more information at the Concurrent Jurisdiction web page.

1-02 Judicial Power and Conduct

A. Authority

Michigan's current Constitution (Const 1963) created the "one court of justice," incorporating the concept that the state of Michigan has a single court with several divisions.

The Constitution invests the judicial power of the state "exclusively in one court of justice, divided into one Supreme Court, one Court of Appeals, one trial court of general jurisdiction known as the circuit court, one probate court, and courts of limited jurisdiction that the Legislature may establish by a two-thirds vote of the members elected to, and serving in, each house" Const 1963, art 6, § 1. Each of these several divisions devotes attention to judicial administration.

B. Conduct

A judge should uphold the integrity and independence of the judiciary. An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should personally observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. A judge should always be aware that the judicial system is for the benefit of the litigant and the public, not the judiciary.

The provisions of this code should be construed and applied to further those objectives. Michigan Code of Judicial Conduct, Canon 1.

C. Investigations

The Michigan Judicial Tenure Commission (JTC), created pursuant to Article 6, Section 30 of the Michigan Constitution, is charged with investigating complaints regarding judicial misconduct or disability. The JTC investigates based on verified statements received from any source alleging misconduct or disability, pursuant to requests from the Attorney Grievance Commission, or on the request of the chief justice or state court administrator.

As a result of the investigation, the JTC may dismiss the investigation, admonish the judge who is the subject of investigation, recommend private censure by the Supreme Court, or file a complaint to initiate formal proceedings. At the conclusion of formal proceedings, the JTC may dismiss the complaint or recommend discipline, removal, retirement, or suspension of the judge to the Supreme Court. All commission proceedings are confidential until the time a complaint is filed, at which time proceedings are available for public inspection and are open to the public.

Michigan Judicial Tenure Commission
3034 West Grand Boulevard, Suite 8-450
Detroit, MI 48202
313-875-5110
FAX 313-875-5154
E-mail: judicialtenure@courts.mi.gov
http://jtc.courts.mi.gov/

D. Elections

1. County Election Commissions

The chief judge or only judge of probate, with the county clerk and county treasurer, constitute a board of county election commissioners, two of whom shall be a quorum for the transaction of business. The chief judge or only judge of probate shall be chairperson. MCL 168.23.

2. Petitions for Recall

The board of county election commissioners shall determine whether or not the reasons for recall stated in the petition for recall are of sufficient clarity to enable the officer whose recall is sought and the electors to identify the course of conduct claimed to be the basis for the recall. MCL 168.952.

3. Delivery of Election Results on Election Night

Election returns are to be delivered to the board of county canvassers, in care of the probate judge, on election night. The probate judge shall deliver the returns received by him/her to the board of canvassers when it meets to canvass the returns. MCL 168.809.

For details on election procedure lawsuits, see Section 1-05.

1-03 Chief Judge Rule – MCR 8.110

A. Applicability

The Chief Judge Rule applies to all trial courts: the judicial circuits of the circuit court, the districts of the district court, the probate court in each county or a probate district established by law, and the municipal courts. MCR 8.110(A).

B. Chief Judge, Chief Judge Pro Tempore, and Presiding Judges of Divisions

1. The Supreme Court shall select a judge of each trial court to serve as chief judge. No later than September 1 of each odd-numbered year, each trial court with two or more judges may submit the names of no fewer than two judges whom the judges of that court recommend for selection as chief judge. MCR 8.110(B)(1).

2. Unless a chief judge pro tempore or presiding judge is named by the Supreme Court, the chief judge shall select a chief judge pro tempore and a presiding judge of any division of the trial court. The chief judge pro tempore and any presiding judges shall fulfill such functions as the chief judge assigns. MCR 8.110(B)(2).

3. The chief judge, chief judge pro tempore, and any presiding judges shall serve a two-year term beginning January 1 of each even-numbered year, provided that the chief judge serves at the pleasure of the Supreme Court and the chief judge pro tempore and any presiding judges serve at the pleasure of the chief judge. MCR 8.110(B)(3).

4. Where exceptional circumstances exist, the Supreme Court may appoint a judge of another court to serve as chief judge of a trial court. MCR 8.110(B)(4).

C. Duties and Powers of Chief Judge

A chief judge shall act in conformity with the Michigan Court Rules, administrative orders of the Supreme Court, and local court rules, and should freely solicit the advice and suggestions of the other judges of his or her bench and geographic jurisdiction. If a local court management council has adopted the bylaws described in Michigan Supreme Court Administrative Order 1998-5, the chief judge shall exercise the authority and responsibilities under this rule in conformity with the provisions of the administrative order. MCR 8.110(C)(1).

1-04 General Management Duties of Chief Judge

A. General Responsibility

All the duties and responsibilities enumerated in the Michigan Court Rule 8.110 (Chief Judge Rule) apply to the chief judge appointed to each court. Obviously, there will be no need for a chief judge pro tempore or a presiding judge in a single-judge court.

B. Specific Duties

1. Presiding Officer

The chief judge is the presiding officer of the court and shall: (a) call and preside over meetings of the court, and (b) appoint committees of the court. MCR 8.110(C)(2)(a)-(b).

2. Director of Administration

As director of the administration of the court, a chief judge shall have administrative superintending power and control over the judges of the court and all court personnel, including the friend of the court (see Section 1-08). MCR 8.110(C)(3). Furthermore, the chief judge has the authority and responsibility to perform any act or duty or enter any order necessarily incidental to carrying out the purposes of the chief judge rule. MCR 8.110(C)(3)(i).

Specified authority and duties are set forth in MCR 8.110(C)(3)(a)-(g) and in MCR 8.110(C)(4)-(7). Some of these duties include:

- Determining hours of operation and staffing.
- Issuing policy.
- Managing caseloads.
- Effecting compliance with all applicable court rules and provisions of the law.
- Making certain appointment and filling certain vacancies.
- Managing assignment and reassignment of cases, requesting visiting judges.
- Supervising court finances.
- Supervising personnel.

The above authority and duties are addressed more fully in the functional areas of court management (see Sections 3 through 8 of this guide). Each of these sections contains links to specific related resources. Additionally, links to these resources have been compiled on summary Trial Court Operations web pages. See also Section 1-05 for a list of selected chief judge resources and 1-07 for a list of selected trial court administrator resources.

3. Delegation of Duties and Delegation of Authority

The chief judge may delegate administrative duties to a trial court administrator or others. MCR 8.110(C)(6). The chief judge may also delegate authority to a probate register, district court magistrate, juvenile referee, and domestic relations referee in accordance with statute. For details, see Section 5-01.

4. Internal and External Court Relations

As presiding officer of the court, a chief judge shall initiate policies concerning the court's internal operations and its position on external matters affecting the court; represent the court in its relations with the Supreme Court, other courts, other agencies of government, the bar, the general public, and the news media, and in ceremonial functions; and counsel and assist other judges in the performance of their responsibilities. MCR 8.110(C)(2)(c),(e)-(f). For details, see Sections 1-09, 1-10, and 5-01.

The chief judge of each trial court, the other judges of that bench, and the court administrator must establish and maintain an environment that promotes and protects equal opportunity, bias free attitudes, and fair treatment. See Sections 1-10 and 5-01. A chief judge must meet regularly with all chief judges whose courts are wholly or partially within the same county. MCR 8.110(C)(2)(d); Michigan Supreme Court Administrative Order 1998-5.

5. Annual Review of Friend of the Court

The chief judge annually shall review the performance record of each friend of the court serving that circuit to determine whether the friend of the court is guilty of misconduct, neglect of statutory duty, or failure to carry out written orders of the court relative to a statutory duty; whether the purposes of this act are being met; and whether the duties of the friend of the court are being carried out in a manner that reflects the needs of the community being served. Public notice of the annual review shall be given. MCL 552.524. See also Section 1-08.

1-05 Selected Chief Judge Resources

Selected resources pertaining to the chief judge's responsibility to oversee and supervise staff and court operations pursuant to MCR 8.110 are listed below and online.

A. Online Resource Center

The Online Resource Center is a password-protected site where chief judges may access information and discussion boards exclusively for chief judges. Contact the regional administrator for a user name and password.

B. Administration

The State Court Administrative Office provides management assistance and direction to the trial courts on the administration of the courts' business. Some of this advice and direction is distributed by way of: (1) policy and procedural manuals produced for specific positions within the courts; (2) policy and procedure directives issued by the State Court Administrator as administrative memoranda; and (3) procedures, guidelines, and standards developed and implemented for various areas of court operations.

As the director of the administration of the court (see Section 1-04), the chief judge should be familiar with the following resources and services:

1. Conduct and Ethics of Staff

2. Local Administrative Orders and Plans

3. Management Assistance

4. Procedural Manuals

6. Recent Communications and SCAO Communications

7. SCAO Administrative Memoranda

8. Standards and Guidelines

9. Trial Court Operations

10. Trial Court Performance Measures

11. Trial Court Performance Measures Resources

C. Appointments and Vacancies

The chief judge has the duty to make appointments to certain positions and to fill certain vacancies pursuant to statute. For details, see Section 1-12.

D. Reporting

Alphabetical and chronological lists of reporting that the trial courts and judges must prepare and submit to the State Court Administrative Office (SCAO) or to state agencies or departments are available online. Materials explaining the reporting requirements of reports to SCAO are also available online. The chief judge is required to either sign or verify the following reports have been sent to the SCAO:

1. Caseload and Caseflow Management

- Court Caseload
- Delay in Criminal Proceedings
- Deficiencies in Guardianship/Conservatorship Administration

2. Family Services

- Friend of the Court Statutory Review
- Permanency Indicator Reports
- Report of Grievances

3. Judicial Reports

- Delay in Matters Submitted to Judge
- Financial Disclosure for Magistrates and Referees
- Judicial Absence Report

4. Performance Measures

- Public Satisfaction Surveys

E. Attorney General Representation

If a court, or a judge when sued in his or her official capacity, needs to be represented by the Attorney General, a written request must be made through the chief judge in accordance with SCAO guidelines. See Section 5-07 for details regarding liability protection for the court.

F. Election Procedure Lawsuits

1. The Clerk of the Supreme Court must be notified upon the filing of a complaint in any court regarding election procedures. The chief judge of the court concerned is responsible for ensuring that this notice is given to the Supreme Court Clerk's

Office and must provide the following information by phone at (517) 373-0120 or by e-mail at MSC_Clerk@courts.mi.gov:

- Case number and names of the parties
- Name of assigned judge and telephone number where he/she can be reached
- Brief statement of the issues
- Brief statement of the case status

2. The State Director of Elections must also be notified upon the filing of a complaint in any court regarding election procedures at 517-373-2540.

3. The Attorney General's Civil Litigation, Employment, and Elections Division will oversee legal representation for the state on election matters. The Assistant Attorney General must be immediately notified of any complaint filed against the state or one of its subdivisions at 517-373-6434 from 7:00 a.m. to 9:00 p.m. After 9:00 p.m., call 734-368-6606.

4. No court proceedings regarding election procedures are to be instituted or orders issued except upon written complaint filed pursuant to the pertinent MCR provision. A full and complete record of the proceedings must be kept. Before issuing any order or opinion regarding election procedures, the court shall inform the Supreme Court Clerk of the lawsuit so the Supreme Court can decide whether the trial court should certify the controlling question(s) to the Court in conformity with the procedures set out in MCR 7.305(A). No order or opinion shall be issued until the Supreme Court Clerk notifies the chief judge of the trial court of the decision regarding certification. If directed to prepare the certified question(s), the trial court shall address the matter directly to the Supreme Court without prior reference to the Governor.

   In the event that the Supreme Court declines to certify the question, the trial court shall proceed in handling the case without delay. The trial court shall notify the Supreme Court Clerk and the parties of any orders or opinions issued immediately when it disposes of the case. Before Election Day, the Court of Appeals will publish information for contacting the clerk after business hours and the steps required of a party who seeks emergency appellate relief.

G. Jail Overcrowding

The chief circuit judge has statutory responsibility relating to rules and regulations and jail overcrowding for the county jail. For details, see Section 1-11.

1-06 Trial Court Administrators

A. Authority and Scope

MCR 8.110(C)(6) provides for "delegation of administrative duties by a chief judge to a trial court administrator or others." The duties of these trial court administrators vary depending upon the location and size of the court in which they are employed. The court administrator functions in management areas rather than legal areas. They provide an executive component to the court, blending judicial management skills with the discipline of business and public administration.

B. Function

Professional administrators, under the general guidance of judges, manage the business of the court. It should be emphasized that all judges, particularly the chief judge, are responsible for the administration of the court. The judges determine the policy; the court administrators implement this policy.

The court administrator brings professional management knowledge and experience to the judiciary, thereby reducing the time demands on the chief judge in order to increase the amount of time the judge has for adjudication. Professionally trained administrators, schooled in judicial procedures and modern administrative principles, can provide court systems with managerial confidence.

Court administrators can serve efficiently and effectively in small courts with two or three judges, as well as in larger courts. Professional administrators can administer juries, handle budgets, administer and supervise personnel, automate systems, and reduce delay. Regardless of the size of the court, the success of a court administrator depends largely on clearly defined job descriptions, acceptance by the judges, appropriate funding, and good communication between the court administrator and others in the court system. In order to make the best use of the court administrator position, courts should clearly delineate the duties and clarify the functions of the administrator. Also, if the court administrator is tasked with implementing any policy, the policy and associated responsibility should be clearly documented and defined. See also Section 5-08.

C. Core Competencies

A trial court administrator must possess abilities in leadership, administration, and human resources management and should be competent to some degree in each of the functional areas described in this guide. Some of the specific expectations of the position and the associated skills and abilities include:

Management Overview

1. Leadership

a. Actively engage in and support the process for trial court strategic planning and the trial court's vision.

b. Oversee trial court management.

c. Oversee case-management procedures and process (see Sections 3-01 and 3-02).

d. Generate and interpret case management system reports (see Section 3-08).

e. Understand the role and structure of any judicial council.

f. Identify and prepare responses on sensitive issues of judicial performance.

g. Liaison with outside groups.

h. Maintain positive working relationships with the chief judge and employees of the trial court, other courts, other agencies of government, the bar, the public, and the news media.

2. Administration

a. Understand the structures and practices of trial court governance.

b. Understand the structure and process for the governance and protocol of the funding unit (see Section 6).

c. Prepare and implement the annual trial court budget and manage the process of fiscal administration of the trial court (see Section 6).

d. Understand local administrative practices for purchasing.

e. Prepare and conduct trial court orientation of new judges and employees.

f. Understand local administrative practices for human resources management (see Section 5).

g. Understand the roles and functions of clerical staff, court reporters and recorders, pretrial services staff and probation officers, and in some courts, the friend of the court (see Section 8-04).

h. Understand the court reporting management plan and the types of reporting services.

i. Establish the performance expectations of various staff and identify and address performance issues.

j. Oversee jury management services and juror reimbursement (see Section 3-05).

k. Develop and oversee emergency management plan and the trial court continuity of operation (COOP) plan (see Section 7).

l. Oversee IT services provided to the trial court (see Section 7).

m. Understand the appointment process and the compensation scale for counsel and other representatives for indigent parties, court interpreters, and other related services (see Section 3-04).

o. Understand the administrative requirements of the Americans with Disability Act and ensure they are implemented.

p. Understand the administrative requirements associated with language access and ensure they are implemented.

3. Communication

a. Build and maintain positive professional relationships.

b. Be an active listener.

c. Serve as a resource and consultant for other employees.

d. Establish and implement an effective communication and information distribution process.

1-07 Selected Trial Court Administrator Resources

Selected resources pertaining to the trial court administrator's position and responsibility are listed below and online.

A. Trial Court Administration and Operations

The State Court Administrative Office (SCAO) provides management assistance and direction to the trial courts on the administration of the courts' business. Some of this advice and direction is distributed by way of: (1) policy and procedural manuals produced for specific positions within the courts; (2) policy and procedure directives issued by the State Court Administrator as Administrative Memoranda; and (3) procedures, guidelines, and standards developed and implemented for various areas of court operations.

Trial Court Services is the primary source for management support for the trial courts. It provides management assistance and oversight to trial courts in conjunction with regional offices; develops and implements standards and guidelines for various areas of trial court operations; develops SCAO-approved forms; provides collections program assistance; certifies court reporters and recorders; certifies foreign language interpreters; administers problem-solving court grants and assists courts in the management and development of problem-solving courts; provides liaisons to court organizations and external stakeholder agencies; and distributes information to trial courts.

The functional areas of court management are discussed in detail in Sections 3 through 8 of this guide, with links to specific related resources. Additionally, links to these resources have been compiled on summary Trial Court Operations web pages. Also accessible from this web page are links to information about the operation of courts with regard to collections, concurrent jurisdiction, and performance measures and how to establish and operate a problem-solving court.

The chief judge, as the director of the administration of the court (see Section 1-04), and the court administrator should be familiar with the following resources and services:

1. Conduct and Ethics of Staff

2. Local Administrative Orders and Plans

3. Management Assistance

4. Procedural Manuals

6. Recent Communications and SCAO Communications

7. SCAO Administrative Memoranda

8. Standards and Guidelines

9. Trial Court Operations

10. Trial Court Performance Measures

11. Trial Court Performance Measures Resources

B. Best Practices

Trial Court Services has identified best practices for certain areas of court administration such as trial court collections, problem-solving court operations, caseflow management and related monitoring and reporting, ADA, EEO practices, and reproduction of records for long-term records maintenance. Some of these resources are listed below. Other best practices have also been published by our office to assist judges in the oversight of certain persons who are subject to the jurisdiction of the court, but those resources pertain primarily to judges and referees.

- ADA Best Practices Tool Kit for State and Local Governments
- Best Practices for Capturing Digital Images from Paper or Microfilm
- Best Practices for Improving Equal Employment Opportunity Practices
- Best Practices for Microfilming Digitized Records
- Best Practices for Microfilming Paper Records
- Best Practices for Reproducing Public Records
- Best Practices for Serving the Self-Represented
- Trial Court Collections Best Practices Manual

C. Charts, Lists, and Other Guides

Trial Court Services is developing to provide courts with a summary of operational and procedural steps associated with more complicated case processes. Thus far, it has developed flowcharts for guardianship of an Indian child and the appeal process for probate cases and is working on circuit appellate flowcharts, and felony and misdemeanor processing flowcharts. As they are developed, they will be made available.

- Appeals from Probate Court: Overview of What Appeal Goes Where
- Involuntary Guardianships – MIFPA Quick Glance Sheet on MCR 5.404
- Voluntary Guardianships – MIFPA Quick Glance Sheet on MCR 5.404

Other charts and lists compiled, designed, or made available by Trial Court Services provide the trial courts with convenient reference tools and include:

- Bond Disbursement Procedure
- Collection of Late Fees Penalty
- Comparison Between Deferred Judgments, Delayed Sentencing, and Traditional Sentences
  See also SCAO Memorandum, dated January 24, 2013, clarifying deferred judgments.
- Crime Victim Assessment
- Filing Fee Schedules for Circuit, District, and Probate Courts
- Judgment Fee Chart – Fish
- Judgment Fee Chart - Wildlife
- Mileage Rates for Jurors and Witnesses
- Nonpublic and Limited-Access Court Records
  See also SCAO Memorandum, dated January 16, 2014, on nonpublic status of deferred judgment cases.
- Recommended Range of Civil Fines & Costs for First-Time Civil Infractions
- Schedule of Process Server Fees
- State Civil Infractions
- Travel Rates

For other lists and schedules not identified above, see Fines, Fees, Costs, and Rates.

D. Reporting Requirements

Alphabetical and chronological lists of reporting that the trial courts and judges must prepare and submit to the State Court Administrative Office (SCAO) or to state agencies or departments are available online. Materials explaining the reporting requirements of reports to SCAO are also available online.

Although the chief judge is required to sign or verify that caseload and caseflow management reports have been sent to the SCAO, the court administrator should make sure these reports are generated and reviewed before submission to the chief judge. Specific reports include court caseload, delay in criminal proceedings, deficiencies in administration of guardianship/conservatorship cases, and public satisfaction surveys.

1-08 Oversight of Friend of the Court Office

A. Authority and Responsibility

As director of the administration of the court, a chief judge has administrative superintending power and control over both the friend of the court and the friend of the court office, including its internal operations and personnel. As such, the chief judge, along with the presiding judge of the family division, should periodically review the general administrative operations, management, and procedures of the friend of the court office. MCR 8.110(C)(2). The chief judge may delegate some of these administrative duties to a trial court administrator or others. MCR 8.110(C)(6).

The chief judge has authority and responsibility to "effect compliance by the court with all applicable court rules and provisions of the law." MCR 8.110(C)(3). Furthermore, the chief judge has the authority and responsibility to "perform any act or duty or enter any order necessarily incidental to carrying out the purposes of the chief judge rule." MCR 8.110(C)(3)(i), MCR 8.110(C)(3)(a)-(g) and in MCR 8.110(C)(4), (5).

See also 1-12 regarding appointment and removal of the friend of the court.

B. Operations of Friend of the Court Office

The duties of the friend of the court office are under the direction and supervision of the chief circuit judge. MCL 552.503(5). See also Section 5-11 for information about the friend of the court and the office.

While MCL 552.523 and MCL 552.525 require approval by "a majority of the circuit, probate, and district court judges serving in all districts that have any area in common with the geographic area served by that friend of the court" to appoint or remove a friend of the court, MCR 8.110 controls with regard to direction and supervision, and the chief judge has the ultimate authority over the friend of the court and the friend of the court office. The chief judge must also ensure that the friend of the court office fulfills its statutory responsibilities. MCL 552.503(5). This requires oversight, including communicating clear goals, objectives, and policies to the office director; willingness to provide regular input; and documenting performance through regular evaluations.

The compensation and expenses of the friend of the court for each judicial circuit and of the employees of the office and all operating expenses incurred by the office shall be fixed by the chief judge as provided in MCL 600.591. The compensation and expenses shall be paid by the county treasurer from the general fund and the friend of the court fund created under section MCL 600.2530, of the county or counties served. MCL 552.527.

C. Local Policies, Administrative Orders, and Procedures

As presiding officer of the court, a chief judge shall initiate policies concerning the court's internal operations and its position on external matters affecting the court and represent the court in its relations with the Supreme Court, other courts, other agencies of government, the bar, the public, the news media, and in ceremonial roles. The friend of the court office has its own relationship with the local funding unit, legislature, local bar association, other institutions, and the general public. However, because a chief judge initiates policies concerning the court's position on external matters affecting the court, the chief judge must also review and approve all new and amended friend of the court office policies before they are implemented. The friend of the court office should have an established procedure for chief judge approval. MCR 8.110(C). See also Section 1-09.

1-09 Adopting Local Court Rules, Administrative Orders, and Plans

A. Introduction

Generally, local court rules are adopted to supplement the Michigan Court Rules. Local court rules regulate practice in the court adopting them. The Supreme Court's goal is to achieve uniformity of practice through the Michigan Court Rules and, as such, has adopted few local court rules.

Local administrative orders are adopted to govern only internal court management. Trial courts are encouraged to adopt administrative orders to document delegations of authority and directions to court staff. See guidelines for local court rules and guidelines for local administrative orders. See also Section 5-01.

B. Local Court Rules

1. Authority

A trial court may adopt rules regulating practice in that court if the rules are not in conflict with the Michigan Court Rules and regulate matters not covered by the court rules. MCR 8.112(A)(1).

2. Purpose

If a practice of a trial court is not specifically authorized by these rules, and (a) reasonably depends on attorneys or litigants being informed of the practice for its effectiveness, or (b) requires an attorney or litigant to do some act in relation to the practice before that court, the practice, before enforcement, must be adopted by the court as a local court rule and approved by the Supreme Court. MCR 8.112(A)(2).

3. Notice of Proposed Local Court Rules

Unless a trial court finds that immediate action is required, it must give reasonable notice and an opportunity to comment on a proposed local court rule to the members of the bar in the affected judicial circuit, district, or county. The court shall send the rule and comments received to the Supreme Court clerk. MCR 8.112(A)(3).

4. Numbering

If possible, the numbering of a local court rule supplementing an area covered by Michigan Court Rules (MCR) must correspond with the numbering of these rules and bear the prefix LCR. MCR 8.112(A)(4).

C. Local Administrative Orders

1. Authority, Scope, and Procedure

A trial court may issue an administrative order governing only internal court management. MCR 8.112(B)(1). Administrative orders must be sequentially numbered during the calendar year of their issuance. MCR 8.112(B)(2). Before its effective date, an administrative order must be sent to the state court administrator. If the state court administrator directs, a trial court shall stay the effective date of an administrative order or shall revoke it. A trial court may submit such an order to the Supreme Court as a local court rule. MCR 8.112(B)(3).

2. Required Local Administrative Orders

All trial courts are mandated to issue local administrative orders to establish court policies for regulating certain procedures, including but not limited to, access to records, access to juror personal history questionnaires, requests for ADA accommodations, requests for court interpreters for persons with limited English proficiency, caseflow management plans, court hours, court closure due to weather conditions, case evaluation, and designation of specific court duties. See details and models for required local administrative orders.

3. Local Administrative Orders Required Under Certain Circumstances

In addition to the mandated local administrative orders, there are a number of local administrative orders that are required under certain circumstances. Also, a court may, but is not required to, delegate authority and issue directives to court staff about certain functions. These functions are: 1) multiple district plan for magistrates, 2) referrals to domestic relations referees and juvenile referees 3) access to friend of the court records, 4) providing forms to litigants and lawyers, and 5) authorizing probate registers to perform judicial acts. If a court opts to delegate authority or issue directives regarding any of the above, a local administrative order is required. See details and models for local administrative orders that are required under certain circumstances.

D. Required Plans

There are a number of plans required for certain areas of court administration. All of them except for the plan for judicial availability are implemented through a local administrative order. See details and models regarding required local administrative orders for these plans.

1. Plan for Appointment of Counsel for Indigent Defendants. MCR 8.123, MCR 6.005(C).

2. Plan for Caseflow Management. Michigan Supreme Court Administrative Order 2011-3.

3. Plan for Family Court. MCL 600.1011; Michigan Supreme Court Administrative Order 2003-2.

4. Plan for Judicial Availability. MCR 6.104(G).

5. Plan for Language Access. Michigan Supreme Court Administrative Order 2013-8.

6. Plan for Remote Hearings on Support and Parenting Time Enforcement Act Bench Warrants. MCR 3.221(K).

7. Plan for Selecting Case Evaluator and Case Evaluation Plans. MCR 2.403, MCR 8.112(A).

8. Plan Involving Children Who Are Absent Without Legal Permission (AWOLP). Michigan Supreme Court Administrative Order 2002-4.

E. Informing the Public

While it is not required that a court post its local administrative orders, plans, and court rules in the courthouse, it is recommended that each court provide a means to adequately inform the general public about the content of these documents, including accommodating requests to view or copy the documents. The court is required to provide public notice regarding its local language access and ADA plans. Also, if the court has a website, it must post all local administrative orders, court rules, plans, and other external policies on the website as required by the State Court Administrative Office website standards. See also Section 8-03.

1-10 Court Relations – External and Internal

A chief judge shall initiate policies concerning the court's position on external matters affecting the court. Furthermore, a chief judge shall "represent the court in its relations with the Supreme Court, other courts, other agencies of government, the bar, the general public, the news media, and in ceremonial functions." MCR 8.110(C)(2)(e). See Sections 5-01 and 5-02 for details.

1. Local Court Management Councils

Michigan Supreme Court Administrative Order 1998-5 (AO) provides direction to the courts in serving on local court management councils created by funding units. In serving as a member of a council, a chief judge assists in developing agreements on court personnel policies and budgets with local officials. A county that funds circuit, probate, and district courts may choose to create a single council that includes chief judges from all three types of courts to open avenues of communication and coordination among them. In multicounty circuits and districts, local court management councils may help deliver streamlined court services and cost savings to the taxpayers.

2. Funding Disputes; Mediation and Legal Action

Disagreements between courts and their funding units about court financial needs can result in lawsuits. Although the State Court Administrative Office (SCAO) mediates funding disputes under AO 1998-5, representatives of funding units or chief judges may request SCAO's assistance to mediate potential disputes before differences escalate to a formal funding dispute.

B. Media Relations

The court, under the supervision of the chief judge, should develop a media plan and ensure that it is shared with all judges and court staff. The plan should specify:

- Who speaks for the court, when, and about what issues.
- Court staff can respond to routine media and public inquiries without first obtaining a judge's approval (for example, when a reporter calls to ask the time that a court hearing will begin).
- What is and is not public information.
- Generally, court proceedings and files are considered to be open to the public absent good cause to the contrary.

- How the court will plan for and handle high-profile cases.
- The process for creating, approving, and distributing press releases or other public statements.
- Which judge or staff person is responsible for developing and maintaining a contact list of local media.
- What educational materials and guidelines (for example, AO 1989-1) the court will provide journalists, especially those covering the court for the first time.
- How the court will work with the media to publicize court policies or initiatives.
- If the court elects to use any social media (Twitter, Facebook, etc.), the plan should specify who is responsible for content and for monitoring that social media account.
- Which judge or staff person is responsible for keeping an archive of important media coverage of the court.

MCR 8.116(D), MCR 8.119(F).

The chief judge should review the media plan and media contact list at least once a year with other judges and court staff.

The Michigan Supreme Court Office of Public Information offers a wide variety of resources on media relations, including guidelines for handling high-profile cases and preparing for media interviews. The office can be reached at 517-373-0129.

See also Section 7 for standards and guidelines related to use of social media and the trial court website in interacting with the local media.

C. Internal Relations of the Court

The chief judge shall "initiate policies concerning the court's internal operations." MCR 8.110(C)(2)(c). The chief judge shall "counsel and assist other judges in the performance of their responsibilities." MCR 8.110(C)(2)(f).

D. Gender and Racial/Ethnic Issues, ADA, and LEP in the Courts

The Supreme Court is committed to ensuring the fair and equal application of the rule of law for all persons in the Michigan court system by directing that judges, employees of the judicial system, attorneys, and other court officers commit themselves to eliminating racial, ethnic and gender discrimination in the Michigan judicial system. It is also

committed to making the courts accessible to persons with disabilities and persons with limited English proficiency. For details, see Sections 8-01, 8-02, and 8-03. See also Michigan Supreme Court Administrative Order 1990-3.

1-11 Jail Overcrowding

A. Chief Judge Responsibility

The chief judge has statutory responsibility relating to rules and regulations and jail overcrowding for the county jail. Case law has also recognized the right of a circuit court judge to appoint a jail monitor. Any rules and regulations in the county jail relating to the conduct or guidance of prisoners or inmates must be submitted to and approved by the chief judge of circuit court. MCL 8.41, MCL 51.281; 1979 AC R 791.644.

After a county sheriff has declared a jail overcrowding state of emergency and attempted to reduce the jail population and this proves insufficient, the chief judge of circuit court must classify prisoners in two categories: 1) those whose release would present a high risk to the public safety, and 2) those whose release would not present such a risk. The sheriff is then directed to reduce the sentences of the low risk prisoners by an equal percentage, set by the chief circuit judge, until the overcrowding is alleviated. MCL 801.56; *Kent Co Prosecutor v Kent Co Sheriff* (On Rehearing), 428 Mich 314 (1987).

See Section 1-12 for information on appointment of a county jail monitor. See *Best Practices in Michigan Trial Courts to Control Jail Overcrowding*.

B. County Jail Population Management Plan

A county or judicial circuit is authorized to adopt and implement a written county jail population management plan to reduce or prevent chronic jail overcrowding. MCL 801.59a(1). The plan shall not take effect unless it is approved by all the following individuals:

1. The sheriff of each affect county.

2. The prosecuting attorney of each affect county.

3. The chief circuit judge of the judicial circuit, or in the case of a county plan, the chief circuit judge of the judicial circuit that includes that county.

4. A district judge designated as follows:

    a. if the plan affects a single-county or multicounty judicial district, the chief judge for that judicial district.

    b. in all other cases, a district judge chosen by the chief district judges of all judicial districts affected by the plan.

The plan may be amended if approved by all the parties listed above. MCL 801.59a(2).

A written county jail population plan adopted under MCL 801.59a(1) is effective for the term prescribed in the plan, but not more than 4 years. Amendment of a plan pursuant to MCL 801.59a(2) does not extend the 4-year limit prescribed in this subsection.

A written county jail population management plan shall provide for the delegation of judicial sentencing authority for the purpose of reducing prior valid jail sentences, consistent with MCL 801.59b(1).

A written county jail population management plan shall provide for the delegation of judicial authority for the purpose of reviewing bonds for unsentenced prisoners. MCL 801.59a(5).

For purposes of this act, a sentencing judge may suspend or reduce any validly imposed jail sentence imposed by that judge. A sentencing judge may delegate the authority conferred under this subsection to the chief judge of the judicial district or circuit in which the sentencing judge serves or his or her designee. MCL 801.59b(1).

For purposes of this act, a judge may modify bond set by the court for unsentenced prisoners. A judge may delegate the authority conferred under this subsection to the chief judge of the judicial district or circuit in which the judge serves, or his or her designee. MCL 801.59b(2).

See SCAO Memorandum, dated January 10, 2008, on Amendments to Jail Overcrowding Emergency Powers Act.

1-12 Office Appointments and Filling Certain Vacancies

A. Circuit Judge

1. Vacancies in Elective Offices

a. County Office

If a vacancy occurs in an elective or appointive county office, it shall be filled in the following manner: (1) If the vacancy is in the office of county clerk or prosecuting attorney, it shall be filled by appointment by the judge or judges of that judicial circuit. Const 1963, art 6 § 14; MCL 168.209.

When a vacancy shall occur in an elective or appointive county office, it shall be filled in the following manner: (1) If the vacancy shall be in the office of county clerk or prosecuting attorney it shall be filled by appointment by the judge or judges of that judicial circuit and the person appointed shall hold office for the remainder of the unexpired term. MCL 201.35.

When at any time there shall be in either of the offices of county clerk or prosecuting attorney, no officer duly authorized to execute the duties thereof, the judge of the circuit court of the circuit in which the county where such vacancy exists shall be situated may appoint some suitable person to perform the duties of either of said officers for the time being; and when at any time there shall be in either of the offices of sheriff, coroner, register of deeds or county surveyor, no officer duly authorized to execute the duties thereof some suitable person may be appointed by the county clerk and prosecuting attorney of the county to perform the duties of either of said offices for the time being. MCL 201.15

See also Section 5-09.

b. Special Prosecutor

If the prosecuting attorney of a county is disqualified by reason of conflict of interest or is otherwise unable to attend to the duties of the office, the circuit court for that county may appoint an attorney at law as a special prosecuting attorney. This is a statutorily-created process requiring findings of fact and certain limitations if an assistant prosecuting attorney has been or can be appointed by the prosecuting attorney. MCL 49.160.

2. Other Appointments

a. Attorney to Assist Friend of the Court

Where neither the friend of the court nor any member of the staff is an attorney, the chief judge may appoint an attorney who is a member of the State Bar of Michigan to assist the friend of the court when legal assistance is needed in order to carry out the office's statutory duties. MCL 552.522.

b. County Jail Monitor

Case law has recognized the right of a circuit court judge to appoint a jail monitor. A circuit court judge can appoint a monitor to help effect relief given in a lawsuit brought to determine whether a statutory duty to provide a suitable and sufficient county jail has been established. *Wayne Co Jail Inmates v Wayne Co Sheriff*, 391 Mich 359 (1974). See also Section 1-11 for chief judge responsibility with regard to jail overcrowding.

c. Friend of the Court

If the position of friend of the court becomes vacant for any reason, the chief judge shall appoint a person to the position of friend of the court not later than 6 months after the vacancy occurs. The appointment is not effective until approved by a majority of the circuit, probate, and district court judges serving in all districts that have any area in common with the geographic area served by that friend of the court. MCL 552.523(1). If necessary, the chief judge may appoint an interim friend of the court to serve for not longer than 6 months until a friend of the court is appointed and approved under MCL 552.523(1). MCL 552.523(2).

d. Juvenile Register

MCL 712A.7 indicates that the judge of probate may appoint either the probate register, deputy probate register, or clerk of the court to the position of juvenile register. See also Sections 5-01, E. and 5-19.

e. Juvenile Probation Officer

MCL 712A.9 indicates that the probate judge in each county may appoint one or more suitable persons of good character and qualified training or experience, other than the county agent or assistants, to act as probation officer. The judge may also appoint "volunteer" probation officers who receive no compensation. Local implementation of family division of the

circuit court has resulted in various plans for this position. See also Sections 5-01, E. and 5-20.

f. Juvenile Court Referee

The probate judge may designate a probation officer or county agent to act as a juvenile court referee. Local implementation of family division of the circuit court has resulted in various plans for this position. A local administrative order is required for the appointment. See also Sections 5-01, E. and 5-21.

g. County Juvenile Officer

The probate judge or judges in each county shall appoint a suitable person who shall serve as the county juvenile officer of the county. See also Sections 5-01, E. and 5-22.

3. Approval of Others' Appointments

a. Deputy County Clerks

Each county clerk shall appoint one or more deputies, to be approved by the circuit judge. See also Section 5-09.

b. Assistant Prosecuting Attorneys

1) The prosecuting attorney of any county is authorized and empowered to appoint an assistant prosecuting attorney, by and with the consent of the circuit judge of the judicial circuit in which the county is situated. The appointment shall be in writing and filed with the county clerk. MCL 49.41.

2) The prosecuting attorney of any county in this state having a population of over 60,000 inhabitants and less than 350,000 inhabitants is authorized and empowered to appoint a second assistant prosecuting attorney, by and with the consent of the circuit judge of the judicial circuit in which the county is situated. The appointment shall be in writing and filed with the county clerk. MCL 49.51.

B. District Judge

1. District Court Clerk

In each county within a district of the first class, in each district of the second class, and in each political subdivision where the court sits within a district of the third class, the district judge or judges of the court shall appoint a clerk of the court. In districts of the first class, the judge or judges may appoint the county clerk to act as clerk of the court. MCL 600.8281(1). The clerk of the court shall appoint deputy clerks of the court subject to the approval of the judges. In the 36th District Court, the chief judge of the district shall appoint the clerk of the court and deputy clerks. MCL 600.8281(2), (4). See also Section 5-12.

2. District Court Magistrate

In each district of the third class, the judge or judges of the district may appoint one or more district court magistrates. MCL 600.8501(2). A local administrative order is required for the appointment. See also Section 5-14.

3. Court Reporter/Recorder

Pursuant to court rule, the chief or only judge of the district court may appoint additional certified recorders and reporters. MCL 600.8602(2). See Section 5-27.

C. Probate Judge

1. Vacancies in Elective County Offices

a. County Office

If a vacancy occurs in an elective or appointive county office, it shall be filled in the following manner: (1) If the vacancy is in the office of county clerk or prosecuting attorney, it shall be filled by appointment by the judge or judges of that judicial circuit. (2) If the vacancy is in any other county office, the presiding or senior judge of probate, the county clerk, and the prosecuting attorney shall appoint a suitable person to fill the vacancy. MCL 168.209. See also Section 5-16.

When a vacancy shall occur in an elective or appointive county office, it shall be filled in the following manner: (1) If the vacancy shall be in the office of county clerk or prosecuting attorney it shall be filled by appointment by the judge or judges of that judicial circuit and the person appointed shall hold office for the remainder of the unexpired term. (2) If the vacancy shall be in any other county office, either elective or

appointive, the judge of probate, the county clerk and the prosecuting attorney shall appoint some suitable person to fill such vacancy and the person so appointed shall hold such office for the remainder of the unexpired term. MCL 201.35.

b. Register of Deeds

In the event of vacancy in the office of register of deeds, or absence or inability to perform the duties of office, and in the absence of the deputy register, the probate judge may appoint some suitable person to perform the duties of the register of deeds for the time being. MCL 53.93.

c. County Drain Commissioner

When a county drain commissioner is disqualified because of conflict of interest or otherwise, the probate judge shall appoint a disinterested commissioner of an adjoining or nearby county to make the apportionment of benefits on said drain within 15 days. MCL 280.382.

2. Other Appointments

a. Probate Register

In each county the probate judge of the county or probate court district, or the chief probate judge in a county having two or more probate judges, may appoint a probate register. MCL 600.833(1). A local administrative order is required for the appointment. See also Sections 5-01, E. and 5-16.

b. Court Reporter/Recorder

The probate judge or chief probate judge of any county or probate court district may appoint, and in counties having a population of 50,000 or more shall appoint, one or more official court reporters or certified recorders of the probate court. MCL 600.835(1). See also Section 5-27.

c. Appointment to State Boundary Commission

The presiding probate judge in each county shall appoint two persons and two alternates for those persons residing in that county as required by statute to serve on the State Boundary Commission during such time as the commission shall have under consideration municipal boundary adjustments for territory lying within his or her county. MCL 123.1005.

d. Soldiers' Relief Commission

The judge of probate in each county shall appoint three honorably-discharged veterans to be known as the "Soldiers' Relief Commission." The judge shall have the authority to remove any such member for cause. MCL 35.22. "In any county in which the board of supervisors adopts the provisions of this act (by creating a county department of veterans' affairs), section 2 of the act creating the soldiers' relief commission created under the provisions of Act No. 214 of the Public Acts of 1899, as amended, being section 35.22 of the Compiled Laws of 1948, is hereby declared to be inoperative and the powers and duties of commissions are hereby transferred to the county department of veterans' affairs created under the provisions of this act …." MCL 35.622.

e. County Tax Allocation Board

The probate judge shall select one of the members of the County Tax Allocation Board according to the provisions of MCL 211.205(d). This does not apply in counties where a majority of the registered and qualified electors have adopted separate tax limitations. MCL 211.205(d).

1-13 Management Assistance

The State Court Administrative Office provides chief judges and trial court administrators with guidance to improve the management and business of the court. Assistance includes, but is not limited to, management guidance in the areas of case processing, records, human resources, finance, facilities and technology, and programs and services. See the Trial Court Services web page for other information.

Various professional organizations also provide other avenues for keeping informed of current advancements affecting court management, including the National Association for Court Management, the National Center for State Courts, and the National Association of Drug Court Professionals. Information about the above-mentioned organizations can be found in Section 2. Michigan organizations include the following.

A. Circuit Court Related

- Michigan Judges Association
- Michigan Association of County Clerks
- Michigan Association of Circuit Court Administrators
- Michigan Association of Family Court Administration
- Michigan Association of Court Mediators
- Michigan Friend of the Court Association
- Michigan Probate and Juvenile Registers Association
- Northern Michigan Juvenile Officers Association
- Juvenile Justice Association of Michigan
- Referees Association of Michigan

B. District/Municipal Court Related

- Michigan District Judges Association
- Michigan Court Administration Association
- Michigan Association of District Court Magistrates
- Michigan Association of District Court Probation Officers
- Southeastern Michigan Court Administration Association

C. Probate Court Related

- Michigan Probate Judges Association
- Michigan Probate and Juvenile Registers Association

D. Court Reporter and Recorder Related

- Michigan Association of Professional Court Reporters
- Michigan Electronic Court Reporters Association
- National Court Reporters Association

E. Problem-Solving Courts

- Michigan Association of Treatment Court Professionals

1-14 Performance Measures

Performance measurement is a critical means to assess the services provided to the public and the processes used to deliver those services and in recognizing areas within courts that are working well and those that require attention and improvement.

A. Authority

Pursuant to Michigan Supreme Court Administrative Order 2012-5 (AO), the State Court Administrative Office (SCAO) is directed to:

1. Develop a plan for implementation of performance measures in all trial courts. The initial plan shall be submitted to the Supreme Court for approval, and the plan subsequently shall be periodically reviewed by the Court.

2. Assist trial courts in implementing and posting performance measures.

3. In conjunction with the Trial Court Performance Measures Committee, assess and report on the effectiveness of the performance measures and modify the measures as needed.

Additionally, the SCAO is required to make available to the public on the Internet any standardized statewide performance measure reports, as approved by the Michigan Supreme Court.

B. Trial Court Requirements

Trial courts must comply with the trial court performance measures plan developed by the SCAO and report performance measure information to the SCAO. See current required performance measures.

C. Resources and Updates

In conjunction with AO 2012-5, the SCAO announced the initiative, *Driving Change to Improve Service to the Public*. See details about the initiative, current implementation plans, performance measures data and dashboards, educational resources and reference materials, and the Trial Court Performance Measures Committee.

Information on the progress in improving outcomes, implementing technology to increase efficiency and improve access, and re-engineering courts to streamline operations is available online.

2-01 State Court Administrative Office

Under the general direction of the Supreme Court, the State Court Administrative Office (SCAO) is responsible for assisting in the administration of justice in Michigan's trial courts. Const 1963, Art 6, § 3. The state court administrator is responsible for advising the Supreme Court, as well as the executive and legislative branches, on matters relating to management of the state's "one court of justice." The responsibilities of the state court administrator are specified in MCR 8.103.

A. Functions

1. Advises the Supreme Court on matters relating to the administration of the state's judicial business. MCR 8.103(1). See SCAO Offices and Programs.

2. Prepares and submits budget estimates of state appropriations necessary for the maintenance and operation of the judicial system. MCR 8.103(6). See Budget Information.

3. Provides management assistance and direction to the courts on the administration of the courts' business through such means as dissemination of relevant information, advice and direction on specific issues, and on-site management reviews. MCR 8.103(1), (2). See Resources for Trial Court Administration.

4. Collects and analyzes statewide information regarding the work of the state's courts in order to take proper action in the administration of justice. This includes determining how quickly courts are resolving cases, assessing whether individual courts need more or fewer judges, recommending actions to eliminate delays, determining the need for more education, etc. MCR 8.103(5). See Statistics and Reporting Materials.

5. Helps courts improve collection of court-imposed fines, fees, and costs, much of which goes into state funds and to local governments. See information on trial court collections requirements and resources.

6. Acts as liaison between courts as well as between the courts and media and executive and legislative branch agencies. This includes mediating disputes between courts and their funding units or other government officials and agencies. Michigan Supreme Court Administrative Order 1998-5. See Trial Court Services, Child Welfare Services, Friend of the Court Bureau, Public Information Office, and Regional Offices.

7. Issues statewide policies, procedures, guidelines, and standards for operations and certain decision-making functions, such as case reporting requirements and time guidelines for deciding cases. MCR 8.103(3), (7). See Trial Court Services.

8. Develops and maintains automated trial court information systems, including providing technological assistance, computer hardware, software, and training. See Judicial Information Services.

9. Operates court improvement programs and other specialized state-level, court-related programs such as Child Welfare Services, Community Dispute Resolution, Foster Care Review Board Programs, and Problem Solving Courts and oversees the courts' involvement in these areas in order to offer ways to improve case management. MCR 8.103(8).

10. Provides training and other support for local community dispute resolution centers throughout Michigan. MCL 691.1551 *et seq*. See Office of Dispute Resolution.

11. Analyzes administrative impact of court rules, legislation, and other administrative policy on court operations, and offers changes to improve the administration of justice. MCR 8.103(8). See Trial Court Services.

12. Provides continuing education, including publications, for judges and court staff in a wide variety of areas. See Michigan Judicial Institute.

13. Approves and publishes forms. MCR 8.103(9). See SCAO-Approved Court Forms.

14. Recommends to the Supreme Court the assignment of judges when courts are in need of assistance. MCR 8.103(4). See Assignment Procedures.

15. Educates the public about the judicial branch. See Michigan Judicial Institute.

Judges and trial court staff work directly with regional administrative offices to receive assistance and direction from the SCAO. See a map of the administrative regions.

See an abridged version of the functions and constraints of the office.

B. Management Assistance

As part of its responsibilities, the State Court Administrative Office provides management assistance and direction to the trial courts on the administration of the courts' business by disseminating relevant information, giving advice and direction on specific issues, and providing on-site management reviews. Some of this advice and direction are distributed by way of: 1) policy and procedure manuals produced for specific positions within the courts, 2) standards and guidelines developed and implemented for various areas of court operations, and 3) policy and procedure directives issued by the state court administrator as administrative memoranda.

Specific resources are:

- SCAO Administrative Memoranda.
- Standards, Guidelines, and Best Practices.
- Policy and Procedural Manuals and Benchbooks.
- Model Local Administrative Orders (LAOs) and Guidelines for Submitting LAOs and Local Court Rules.

C. Standing Advisory Committees

As a matter of policy, the State Court Administrative Office (SCAO) makes extensive use of advisory committees composed of justice system professionals, attorneys, and the general public to provide advice on the conduct of court improvement projects, the development of forms, procedures, manuals, and other initiatives. While most of these advisory committees are created for specific projects and, therefore, exist only for the period of time that the initiative or project is underway, some committees are established as "standing" committees and operate continuously.

The following is a description and functions of the current standing advisory committees.

1. Court Reporting and Recording Board of Review

The Michigan Court Reporting and Recording Board of Review is established by Michigan Court Rule 8.108(G)(2). The board administers certification examinations for court reporters, recorders, and electronic operators twice a year. The board also monitors certification requirements for reporters, recorders, and operators and conducts hearings on complaints against reporters, recorders, and operators relating to violation of rules of procedure. See http://courts.mi.gov/Administration/SCAO/OfficesPrograms/CRR/Pages/Board-of-Review.aspx.

By court rule, the board is composed of one Court of Appeals judge, three trial judges, two court reporters, two court recorders, one attorney, and a board secretary assigned from the staff of the SCAO. The board is administered by Trial Court Services.

2. Michigan Court Forms Committee

The Michigan Court Forms Committee is an advisory committee established to assist the SCAO in creating and revising forms for use in the trial courts and consists of eight work groups in the areas of adoption, child protective, civil,

criminal, delinquency, domestic relations and other family division, estates and protected individuals code, and mental health code proceedings.

Work group members are selected from trial court judges, administrators and staff; attorneys; prosecutors; and representatives of key executive branch agencies and legal organizations and associations. See the current member lists. The Michigan Court Forms Committee is administered by Trial Court Services.

3. Foreign Language Board of Review

The Foreign Language Board of Review establishes criteria for certification of foreign language interpreters and administers tests for certification of court interpreters in accordance with Michigan Court Rule 8.127. The board makes recommendations to the State Court Administrator regarding an interpreter code of ethics and interpreter certification requirements for individuals and companies and receives allegations of interpreter misconduct in the course of a trial or other court proceeding. Board members are appointed by the Michigan Supreme Court and serve staggered three-year terms.

The State Court Administrative Office provides an executive secretary for the board.

4. Foster Care Review Board Advisory Committee

The Foster Care Review Board Advisory Committee includes a representative elected from each of the 27 local boards, with others appointed by the state court administrator from within the state child welfare system pursuant to MCL 722.133(m). The committee advises SCAO staff with regard to policies and procedures affecting the foster care system and assists in developing an annual report to the Legislature and the Governor.

The committee is administered by Child Welfare Services.

5. Foster Care Review Board

The Foster Care Review Board was established by the Legislature to improve the care of children in foster care services throughout the state. The program creates citizen review boards to review individual neglect/abuse cases within the foster care system to assist the court and child placing agencies in their efforts to ensure the safety, wellbeing, and timely permanency of children in foster care. The program was continued and expanded by MCL 722.131 *et seq*. in 1998 and includes 30 review boards covering all 83 counties.

At that same time, MCL 712A13(b) was established authorizing the board to investigate and make recommendations regarding appeals by foster parents when children are removed from their homes and the foster parent disagrees with the removal.

The citizen review boards are comprised of citizen volunteers and supported by SCAO's Child Welfare Services staff in the Lansing, Detroit, and Gaylord offices. The program is administered by Child Welfare Services.

6. Friend of the Court Bureau Advisory Committee

A nine-person Friend of the Court Bureau Advisory Committee was established by MCL 552.501 *et seq.*, which provides that the committee shall have three public members, three attorneys, and three human services professionals. Two local friends of the court have been appointed by the SCAO to serve as nonvoting members. The committee advises SCAO regarding policies and procedures for friend of the court offices. The committee is administered by the Friend of the Court Bureau.

7. Manual Revision Committees

Committees have been created by the SCAO to provide assistance in updating procedural manuals provided by the SCAO for reference by trial court judges and staff. Each of these manuals focuses on a specific functional area of trial court operations.

The manual revision committees' membership is composed of trial court judges, court administrators, and other trial court and executive branch staff as appropriate to the content of the manual. Because the manuals must be updated on a periodic basis, depending on the frequency of changes in the rules or the law, the committees are convened from time-to-time as necessary to ensure that the substance of the manuals is current. These committees are administered by Trial Court Services.

8. Trial Court Performance Measures Committee

The Trial Court Performance Measures Committee assists the SCAO in identifying and implementing performance measures of all trial courts as an aid to courts in providing high-quality public service in the most efficient way. Because transparency and accountability are integral elements of an efficient judiciary, standardized statewide performance measure reports will be made readily available to the public. The committee piloted performance measures and offered recommendations in its 2011 report.

The committee is comprised of judges, court administrators, and representatives from the State Bar of Michigan. It is administered by Trial Court Services.

D. Manuals and Court Forms

A list of the manuals prepared and distributed by the State Court Administrative Office is available on the One Court of Justice website. Most manuals and handbooks are designed for a specific audience or for a specific purpose and are distributed to the appropriate court staff. These manuals and handbooks are available electronically. Other publications available to the trial courts are produced by the Michigan Judicial Institute and Judicial Information Services.

Trial Court Services of SCAO is responsible for developing, revising, approving, and distributing court forms. The details of this process are described in Section 2-02, and a summary of the process is available on the website for the public's benefit. The SCAO-approved court forms are searchable from the website.

E. Michigan Judicial Institute and Education

The Michigan Judicial Institute (MJI) was created by the Michigan Supreme Court to provide a range of continuing education programs and services for the Michigan judiciary and trial court administrative staff. MJI conducts seminars on a variety of topics throughout the year. These programs are free of charge to eligible participants.

Announcements of the programs are made automatically to judges and others eligible to participate. MJI maintains an extensive audio-visual resource library of material available free of charge to court employees. In addition, MJI is engaged in a publication program designed to provide the judiciary and trial court administrative staff with up-to-date information regarding recent developments in case law, statutes and judicial/court administration. Various MJI publications are available online.

Professional excellence on the part of all those engaged in judicial service is the keystone of substantive and procedural justice. The Michigan Judicial Institute's mission is to promote professional excellence by leading and directing a comprehensive program of high-quality education and training for all court personnel.

MJI is required to provide appropriate training for all probate judges and circuit judges who are serving under a family court plan (MCL 600.1019) and to circuit judges who are serving as business court judges (MCL 600.8043).

2-02 SCAO-Approved Court Forms

A. Authority

1. Approving and Publishing Forms

a. The state court administrator, under the Supreme Court's supervision and direction, shall approve and publish forms as required by the Michigan Court Rules and such other recommended forms as the administrator deems advisable. MCR 8.103(9).

b. For the purpose of achieving uniformity of forms throughout Michigan in the probate court, effective July 1, 1979, only forms approved by the Supreme Court or state court administrator shall be used. MCL 600.855.

c. Except as provided in MCL 330.1404, the Department of Health and Human Services shall prescribe the forms to be used under the Mental Health Code, and all hospitals shall use department forms. At the direction of the Supreme Court, the State Court Administrative Office shall prescribe the forms used for court proceedings under the Mental Health Code. MCL 330.1404.

2. Providing and Selling Forms

The chief judge may, by administrative order, direct the clerk of the court to provide litigants and attorneys with copies of forms approved by the state court administrator. The administrative order may allow the clerk to provide the forms at a cost of reproduction to the clerk. MCR 8.110(C)(7).

Unless specifically required by statute or court rule (including local court rule), the court may not mandate the use of a specific form, whether SCAO-approved or locally developed. There are many statutes and court rules that require the state court administrator to approve forms for use in specific proceedings, but there are very few that mandate the use of SCAO-approved forms. See the list.

B. Process for Developing and Revising SCAO-Approved Forms

1. Formal Request

Any interested person may initiate development of a new form or revision of an existing form by directing a written request to SCAO-approved Court Forms, P.O. Box 30048, Lansing, MI 48909; telephoning 517-373-2217; or sending an e-mail to courtformsinfo@courts.mi.gov. The process for development and revision is summarized online as well.

Initial contact regarding forms is made to the forms unit and may include:

a. a request for a form revision or a new form.

b. a question about the use of a form.

c. an inquiry into the background or history of a form.

d. other concerns regarding a form.

2. Documentation and Follow Up

The forms unit reviews and responds to all inquiries. If further action is taken, the individual who made the inquiry is kept informed of the status of the inquiry until it is resolved.

3. Publication for Comment

New and revised forms that will be reviewed by the Michigan Court Forms Committee are published for a 30-day public comment period.

Publication consists of posting the proposal (narrative, draft form, or concept) to the Publication Schedules and Proposed Agendas webpage and sending notice of the publication to all trial court association presidents, the State Bar of Michigan, *Michigan Lawyers Weekly*, and the trial courts. Comments received on proposals are posted daily for the duration of the comment period. Proposals and any comments received are then considered by the Michigan Court Forms Committee for final resolution.

4. Meetings

The Michigan Court Forms Committee is comprised of eight work groups, which consist of representatives from the judiciary, state government, and the legal profession. The work groups meet to discuss issues referred to them following publication and comment on proposed agendas.

The primary focus of the committee is substantive and procedural content analysis. However, the State Court Administrative Office may ask for input regarding design as it relates to effective use of forms.

Minutes of Michigan Court Forms Committee meetings are distributed to members and, upon request, to any other interested person. Contact courtformsinfo@courts.mi.gov. The meeting minutes are also posted online.

a. Schedule

The committee meets at certain times throughout the year, typically as follows:

- Adoption Work Group – last Thursday in February.
- Criminal Work Group – first Thursday in March.
- General Miscellaneous and Civil Work Group – second Thursday in March.
- Domestic Relations Work Group (including Friend of the Court) – third Thursday in March.
- Estates and Protected Individuals Code Work Group – first Thursday in September.
- Mental Health/Commitment Work Group – second Thursday in September.
- Child Protective Proceedings and Juvenile Guardianship Work Group – third Thursday in September.
- Delinquency, Designated, Minor Personal Protection, and Traffic/Ordinance – fourth Thursday in September.

b. Appointment to the Committee

Members are appointed by the state court administrator for three-year terms. As positions become vacant, trial court association presidents and others are asked to nominate individuals for appointment. The state court administrator will consider nominees with input from Trial Court Services.

C. Approval and Distribution

1. State Court Administrator Approval

After new and revised forms have been prepared, the proposed forms are presented to Supreme Court counsel for review. After approved by Supreme Court counsel, the proposed forms are forwarded to the state court administrator for final approval.

2. Distribution of Forms, Instructions, Other Information

Trial courts, printers, publishers, software companies, case management system providers, and relevant state government entities are notified of the release of SCAO-approved forms and of their availability online. Notice of new or revised forms is sent to the State Bar of Michigan for publication in the *Michigan Bar Journal*. An explanation of the changes is provided, along with instructions about use of previous versions of the forms. The forms can be accessed and printed by anyone who has Adobe Acrobat Reader, which is available for free from Adobe.

When a form is revised or developed without publication for comment or discussion by the Michigan Court Forms Committee (i.e., an immediate change is necessitated by a court rule or statutory amendment or a court opinion), the forms are released for use before any effective date or as soon as possible thereafter. When a form is revised and developed through the committee process, it occurs in conjunction with other forms presented to the committee. These forms are released as a group in June (circuit, district, adoption, and friend of the court forms) and December (probate and family division forms) of each year.

3. Forms Contact Person

Each court has one designated forms contact person who is the primary contact for the forms analyst. This individual is the court administrator or, in probate courts, the probate register. The forms contact person also receives notice from the State Court Administrative Office of the release of new and revised forms and other correspondence regarding forms.

D. Modifying SCAO-Approved Forms

The following revisions may be made to SCAO-approved forms by anyone.

1. Printing of names, titles, addresses, telephone numbers, or other court specific information in blank space on the form.

2. Printing of special instructions in unused space on the form.

3. Adding or deleting plys or multiple parts as needed for minimum distribution.

4. Having forms padded, using carbonless paper, or using carbon interleaves.

5. Printing in continuous feed for use with word processors or computer printers.

When forms are modified other than as described above, “Approved, SCAO” and the form number must be removed from the modified form before it is printed or used.

E. Standard Specifications and Design Criteria

In 1984, the Michigan Court Forms Committees adopted the SCAO standard specifications and design criteria, with minor revisions in 1990. These specifications may be helpful to courts in developing local forms. The specifications are as follows.

1. Standard Specifications for Printing of Forms

a. Five-eighths inch allowance at top for binding and minimum of one-eighth inch allowance on each side.

b. Approval of state court administrator, at top left within one-half inch allowance "Approved, SCAO."

c. Standard header across top of form will include:

- "State of Michigan" and court identification in two-and-one-quarter-inch box at top left.
- Form title in three-inch box at top center.
- Case number in two-and-one-quarter-inch box at top right.

d. Form number, revision date, and title, respectively, starting at bottom left.

e. Applicable court rules or statutes at bottom, directly following the title.

f. Distribution printed at top right. In addition, commercial publishing houses should print copy designation on each form at bottom center as applicable. Distribution is not applicable for most probate court forms.

g. JIS code printed at top right on all probate and juvenile court forms.

h. Tumble printing for reverse side of forms.

i. Color-coding to be determined by type of case (noted on printing specifications in forms handbook).

j. Recommended print size of 8 point for caption, 10 point for narrative, and 10 point bold for titles.

k. Spacing for typewriter entry of data.

l. Fold marks printed on specific forms designed for use in standard window envelopes so appropriate address appears in window (optional).

2. Technical Design Criteria

a. Paper no larger than eight-and-one-half inches by eleven inches, as required by MCR 1.109.

b. Double typewriter spacing for all handwritten entries.

c. Number style for date.

d. Suggested maximum of five tab stops for typed entries to be designated across top (optional).

e. Standard information after header placed in same location wherever possible.

f. Number of each item as applicable.

g. One-and-one-quarter to two-inch space at bottom of probate court forms for endorsement with date filed, title of form, and signature line for deputy probate register.

h. Minimum use of capital letters, underlining, and italics.

3. Substantive Design Criteria

a. Use of nontechnical English language wherever possible.

b. Forms to be self-explanatory where possible. When extra instructions are necessary, the reverse side or a separate cover sheet will be included.

c. Use of a declaration when a jurat is not specifically required by statute or court rule. The following language may be used by the circuit and district courts: "I declare that the statements above are true to the best of my information, knowledge, and belief." The following language may be used by the probate court (probate and juvenile divisions): "I declare under the penalties of perjury that this _____ has been examined by me and that its contents are true to the best of my information, knowledge, and belief." MCR 5.114.

d. Compliance with statutes and court rules.

e. Design to achieve maximum efficiency and clarity in processing.

f. Conformance with the approved printing and design criteria.

2-03 Other Resources for Technical Assistance, Training, and Information

A. Institute for Court Management

1. Purpose

The Institute for Court Management's mission is to "educate, inform, and support current and next generation management and leadership of the state courts."

National Center for State Courts
Institute for Court Management
300 Newport Avenue
Williamsburg, VA 23185
800-616-6160
FAX 757-564-2100
E-mail: icm@ncsc.dni.us
http://www.ncsc.org/education-and-careers.aspx

2. Services Provided

The Institute for Court Management (ICM) provides: a) Education for Court Managers and Staff; and b) Creative Learning Services. Education for Court Managers and Staff consists of certified court manager courses (CCM) and certified court executive courses (CCE). There are six courses in each level and they are available in several formats. The Fellows Program is the final and highest level of ICM certification. Creative Learning Services (CLS) consists of the development and delivery of education and communication resources, including: online courses for ICM, state and local courts, and other customers; and production services, web page development, marketing, and other communications services for ICM and other NCSC divisions and external customers. ICM's course catalog and annual report is published annually and is available at http://www.ncsc.org/Education-and-Careers/ICM-Catalog.aspx.

3. Associated Organizations

The Institute for Court Management is the educational arm of the National Center for State Courts, which has headquarters in Williamsburg, Virginia.

4. Costs

There is a tuition charge for most educational programs. There is no charge to be added to the mailing list for announcement of educational programs.

B. Michigan Child Welfare Training Clearinghouse

The Michigan Child Welfare Training Clearinghouse is designed to provide a central location for child welfare training opportunities across the State of Michigan from the primary training providers. The training providers include: Children's Trust Fund, DHHS Office of Workforce Development and Training, DHHS University In-Service, Michigan Federation for Children and Families, Prosecuting Attorneys Association of Michigan Child Abuse Training Services, and State Court Administrative Office.

C. Institute of Judicial Administration

1. Purpose

The primary purposes of the Institute of Judicial Administration are to develop high-quality continuing education programs for the judiciary; to promote understanding among the various parts of the legal profession – the academy, the practicing bar, and the judiciary; and to foster research and discussion on important public issues affecting the administration of justice in our courts.

Institute of Judicial Administration
New York University School of Law
Wilf Hall
139 MacDougal Street, Room 409
New York, NY 10012
212-998-6149
FAX 212-995-4657
http://www.law.nyu.edu/centers/judicial/index.htm

2. Services Provided

The New York University School of Law is the preeminent center for integrating new developments in legal theory with the practical training of lawyers. The Institute of Judicial Administration's programs for judges are similarly based on this model of legal education – one that combines intellectual challenge with "learning by doing."

Each year, in cooperation with the Federal Judicial Center, the Institute of Judicial Administration offers an intensive workshop for new federal and state appellate judges taught by a resident faculty of jurists and academics. Since 1998, it has developed specialized programs for federal trial and appellate judges as well.

The Institute of Judicial Administration sponsors the William J. Brennan, Jr. Lecture Series on State Courts and Social Justice, an address given each year by a leading member of the state judiciary. The Brennan Lecture Series seeks to give

recognition to the important role that the state courts play in our constitutional order.

The Institute of Judicial Administration also sponsors research conferences for the purpose of commissioning papers that make an important contribution to the literature on topics affecting the administration of justice.

D. National Association for Court Management

1. Purpose

The National Association for Court Management (NACM) is a nonprofit organization dedicated to improving the quality of judicial administration at all levels of courts nationwide.

National Association for Court Management
300 Newport Avenue
Williamsburg, VA 23185
800-616-6165
FAX 757-259-1520
E-mail: nacm@ncsc.org
http://www.nacmnet.org

2. Services Provided

In carrying out its purpose, the National Association for Court Management strives to provide its members professional education and to encourage the exchange of useful information among them; encourages the application of modern management techniques to courts; and, through the work of its committees, supports research and development in the field of court management, the independence of the judicial branch and the impartial administration of the courts.

Members are kept abreast of developments in the field through NACM's official quarterly publication, *Court Manager* (journal) and its biweekly newsletter, *Court Express*. Surveys are conducted on a periodic basis to monitor trends in the profession and reports are disseminated to members. An annual conference is held, usually in the summer, and includes full educational and social programs in addition to business meetings and the election of officers. A midyear conference is held in February or March and offers national education programs without the cost of extensive travel.

3. Membership

Regular membership in the National Association for Court Management is open to anyone serving in any court management, consulting, educational, or research capacity. Additional membership classes include associate, student, honorary, retired, and sustaining members.

4. Costs

Annual dues for regular members are $125.

E. National Center for Juvenile Justice

1. Purpose

The National Center for Juvenile Justice is a private, nonprofit organization dedicated to improving the quality of justice for children and families. This mission is pursued by conducting research and providing objective, factual information that is utilized to increase the juvenile and family justice system's effectiveness.

National Center for Juvenile Justice
3700 South Water Street, Suite 200
Pittsburgh, PA 15203
412-227-6950
FAX 412-227-6955
E-mail: ncjj@ncjj.org
http://www.ncjj.org

2. Services Provided

The National Center for Juvenile Justice provides technical assistance, conducts research, assesses juvenile justice services, designs programs and facilities, and provides consultation on automated information and reporting systems. Various publications are available at http://www.ncjj.org.

3. Associated Organizations

The National Center for Juvenile Justice is the research division of the National Council of Juvenile and Family Court Judges in Reno, Nevada.

F. National Center for State Courts

1. Purpose

To accomplish its primary purpose – helping state courts better serve both litigants and the public – the National Center for State Courts is active in four general areas: research on subjects relevant to courts; in-service educational programs for judicial and administrative court personnel; expert assistance to individual courts and state court systems; and the exchange of information about and among courts.

National Center for State Courts
300 Newport Avenue
Williamsburg, VA 23185
800-616-6164
FAX 757-220-0449
E-mail: pchauvin@ncsc.org
http://www.ncsc.org/

Court Consulting Services
National Center for State Courts
707 17th Street, #2900
Denver, CO 80202-3429

NCSC International
2425 Wilson Boulevard, #350
Arlington, VA 22201
http://www.ncscinternational.org/

Government Relations
111 2nd Street NE
Washington, DC 20002

2. Services Provided

The National Center for State Courts assists the state courts to fairly and efficiently administer justice in an increasingly complex society.

The research and consulting activities of the multi-disciplinary staff cover the gamut of court operations. The studies range from trial and appellate calendar management and delay reduction to sentencing policies and civil commitment procedures, from assessing and collecting child support to courthouse security, jury selection, and management, and automated management systems.

The National Center's Knowledge Management Office provides a unique resource of information on all aspects of state court structure, administration, and operation, as well as useful answers to the varied questions of those involved in court improvement. Its Association Services provides staff support for 10 national court organizations, including the Conference of Chief Justices.

The Institute for Court Management (ICM), the educational arm of the National Center for State Courts, carries on a diverse in-service training program for court personnel, concentrating on management courses for those in key administrative positions. ICM also provides e-learning courses in all areas of court management.

G. National Conference of State Trial Judges

1. Purpose

The National Conference of State Trial Judges (NCSTJ) is an organization by and for the nation's state court general jurisdiction judges. It is the oldest organization of general jurisdiction state trial judges in continuous existence in the nation. Currently there are over 1,300 members nationwide. NCSTJ is made of several working committees that address such issues as judicial immunity, compensation, retirement and benefits, performance evaluation, jury standards, literacy, victims' rights, and funding for the court system. The NCSTJ is the only nationwide network of state court judges of general jurisdiction through membership. Judges can speak out through this one association and be heard nationally.

NCSTJ seeks to improve the administration of justice; promote judicial independence; increase public understanding of the judicial system; provide a national forum to exchange information on common issues; and represent the interest of the nation's general jurisdiction trial judges in building a stronger, more effective system to resolve disputes.

National Conference of State Trial Judges
American Bar Association
321 North Clark Street, 19th Floor
Chicago, IL 60654
312-988-5723
E-mail: denise.jimenez@americanbar.org
http://www.americanbar.org/groups/judicial/conferences/state_trial_judges.html

2. Services Provided

The National Conference of State Trial Judges contributes to national periodicals (including the *Judges' Journal*), produces publications and conducts educational programs and meetings. It supports judicial education, promotes court improvement projects, and provides for participation in numerous committees.

3. Associated Organizations

The NCSTJ founded the National Judicial College, which is an affiliated organization of the American Bar Association. The NCSTJ is part of the ABA's Judicial Division. The division includes five other national conferences: Federal Trial Judges, Appellate Judges, Special Court Judges, Administrative Law Judges and the Lawyers Conference. The organization of the division allows all members a voice in their area of organization and their area of special concern, and enables the ABA to respond to the individual and diverse interests of its membership.

H. National Council of Juvenile and Family Court Judges

1. Purpose

The National Council of Juvenile and Family Court Judges (NCJFCJ) is organized for charitable and educational purposes including: (1) to improve the standards, practices, and effectiveness of the juvenile courts and other courts exercising jurisdiction over families and children; (2) to inform or otherwise assist persons and agencies, including governmental agencies, which deal with or affect juvenile courts and other courts exercising jurisdiction over families and children; (3) to educate persons serving in or otherwise connected with juvenile courts and other courts exercising jurisdiction over families and children and other interested members of the public in developments and approved principles relating to such courts; and (4) to engage in educational and research activities to aid the council's objectives.

National Council of Juvenile and Family Court Judges
University of Nevada, Reno
P.O. Box 8970
Reno, NV 89507
775-784-6012
FAX 775-784-6628
E-mail: contactus@ncjfcj.org
http://www.ncjfcj.org

2. Services Provided

NCJFCJ provides continuing education programs to judges and a multitude of others on the juvenile justice continuum, including, but not limited to, prosecutors, defense counsel, police, probation, corrections officers, aftercare workers, child-protection workers, legislators, educators, and others.

NCJFCJ also publishes a quarterly journal, Juvenile and Family Court Journal, and selected publications, guidelines, tools, monographs, articles and briefs on a host of topics.

The NCJFCJ provides technical assistance through telephone, written, and on-site services in virtually every area related to juvenile courts, juvenile justice, domestic violence and family law matters.

Research is also a major activity of NCJFCJ through its research office in Pittsburgh, Pennsylvania, The National Center for Juvenile Justice.

NCJFCJ operates selected projects in such areas as family violence, child abuse and neglect, juvenile delinquency, substance abuse, human trafficking, victims, foster care, etc.

3. Associated Organizations

NCJFCJ serves as the secretariat for the National Juvenile Court Services Association.

4. Costs

Active judge membership (voting) is $195 per year. Associate membership (nonvoting) is $145 per year. NCJFCJ/NJCSA joint membership is $175 per year (nonvoting). Members receive a variety of publications, including the quarterly *Juvenile and Family Court Journal*, the monthly *Juvenile and Family Law Digest* and the quarterly *Juvenile and Family Justice Today* magazine.

I. National Institute of Corrections Information Center

1. Services Provided

The National Institute of Corrections Information Center provides up-to-date information to practitioners and policymakers in the field of corrections. Information Center resources specialize in unpublished, unique materials needed by this clientele. Clients work directly with expert corrections specialists to discuss information needs and to identify appropriate resources targeted to clients' interests. Specialists provide information via computerized searches, document delivery, and networking with experts in the field. To access the online library and other information please visit http://nicic.gov. The physical library is available to training participants or official visitors.

National Institute of Corrections Information Center
11900 East Cornell Avenue, Unit C
Aurora, CO 80011
800-877-1461
E-mail: help@nicic.gov
http://www.nicic.org

2. Associated Organizations

The National Institute of Corrections, which operates the Information Center, is part of the U.S. Department of Justice.

3. Costs

There are no costs for professionals involved in the corrections field, including court officials.

4. Comments

The National Institute of Corrections Information Center seeks publications and documents developed by agencies documenting corrections projects.

J. National Institute of Justice/National Criminal Justice Reference Service

1. Purpose

The National Institute of Justice/National Criminal Justice Reference Service (NIJ/NCJRS) is an international clearinghouse of information about criminal justice, providing practitioners and policymakers with information about current research and activities of other practitioners. NIJ/NCJRS fosters the exchange of information among professionals in police, courts, corrections, crime prevention, and victim/witness services.

National Institute of Justice/
National Criminal Justice Reference Service
P.O. Box 6000
Rockville, MD 20849-6000
800-851-3420
FAX 301-519-5212
https://www.ncjrs.gov/

2. Services Provided

The clearinghouse offers a customer service telephone line answered by information specialists knowledgeable in various criminal justice subject areas. Interlibrary loans, audiovisual loans and data base searches are offered. The NIJ/NCJRS database is available on DIALOG, and NIJ/NCJRS offers access to all DIALOG and certain other databases.

3. User Restrictions

Use is unrestricted. Products and services range from free to cost-recovery; some cost-recovery items are free to criminal justice agencies. Court organizations may be placed on a mailing list for National Institute of Justice reports without cost. A publications list is available.

For a fee, NIJ/NCJRS will provide literature searches on criminal justice/justice topics on its bibliographic data base of over 220,000 citations.

K. The National Judicial College

1. Purpose

The National Judicial College is a nonprofit organization dedicated to providing The *NJC Experience* to improve productivity, challenge current perceptions of justice and inspire judges to achieve judicial excellence. State trial judges, administrative law judges, military, appellate, and tribal judges, both law trained and non-law trained, attend courses at the University of Nevada, Reno campus and other locations across the country.

A Master of Judicial Studies degree program is jointly sponsored by The National Judicial College and the University of Nevada, Reno.

The College also offers a certificate in Judicial Development in several areas: (1) general jurisdiction trial skills; (2) special court trial skills; (3) administrative law adjudication skills; (4) appellate judicial skills; (5) dispute resolution skills; and (6) tribal judicial skills. In addition, special courses are designed for international delegations visiting the United States.

The NJC has also conducted grant funded projects in Russia, Eastern Europe and other places outside North America.

The National Judicial College
Judicial College Building/MS 358
Reno, NV 89557
800-25-JUDGE or 775-784-6747
FAX 775-784-1253
E-mail: info@judges.org
http://www.judges.org

2. Services Provided

The National Judicial College offers courses for general jurisdiction, special jurisdiction, administrative law, appellate, and tribal court judges. The curriculum

includes overview courses for new judges and substantive law, skills training, court management, and enrichment courses for more experienced judges. The NJC also conducts extension courses upon request for states and government agencies. In addition, numerous foreign judges visit to learn about NJC's work and to take courses.

3. Associated Organizations

The National Judicial College is affiliated with the American Bar Association.

4. Membership Requirements and Fees

There are no membership fees. However, tuition and conference fees are charged for both on-campus courses and those held at select locations across the nation. Please contact the NJC registrar for current tuition and fee information.

L. National Juvenile Court Services Association

1. Purpose

The purpose of the National Juvenile Court Services Association (NJCSA) is to train and educate personnel in matters of improving juvenile justice systems through administration, management and service delivery techniques; to plan and coordinate educational programs with the National Council of Juvenile and Family Court Judges that are targeted at improving juvenile justice services and administration; to raise the level of professional competency in the juvenile justice system; to increase community understanding of the philosophy and activity of the juvenile justice system, and seek greater community support of treatment programs; and to offer technical assistance to juvenile and family courts on a broad spectrum of juvenile justice issues.

National Juvenile Court Services Association
P.O. Box 8970
Reno, NV 89507
775-784-6895
FAX 775-784-6628
http://www.njcsa.org/

2. Services Provided

The National Juvenile Court Services Association provides the opportunity to attend and become involved in conferences, seminars and training in all phases of juvenile justice.

Members of NJCSA are entitled to receive the following publications:

- The quarterly NJCSA newsletter, *RAPPORT*, and the *RAPPORT Bulletin*, which keep members abreast of the latest training programs, new programs as they become available, certification requirements, legislation, employment opportunities, regional activities, and articles of interest.
- The *NJCSA Directory*, which lists all members' names, addresses, and telephone numbers.

Members of NJCSA who are associate members of the National Council of Juvenile and Family Court Judges will also receive the following publications:

- The monthly Juvenile and Family Law Digest, which reports and provides commentary on recent relevant state supreme court decisions.
- The quarterly Juvenile and Family Court Journal, which presents articles on topics related to the field of juvenile justice.
- The Juvenile and Family Court Today magazine, which updates members on organizational news and major events in the field of juvenile and family law.

One of NJCSA's stated purposes is to improve the professional competency of personnel in the juvenile justice system. A major function of that goal is professional certification. NJCSA has taken a leadership role by establishing criteria, determining curriculum, and providing management institutes for professional certification. Establishing the criteria and determining the curriculum as well as certifying candidate review are functions of the Certification Committee of NJCSA.

3. Associated Organizations

The National Juvenile Court Services Association affiliated with the National Council of Juvenile and Family Court Judges, for which the National Council serves as secretariat.

4. Costs

NJCSA/NCJFCJ joint membership is $115. NJCSA only membership is $45.

M. Other

1. Bureau of Justice Assistance

The Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice, supports law enforcement, courts, corrections, treatment, victim services, technology, and prevention initiatives that strengthen the nation's criminal justice system.

BJA provides leadership, services, and funding to America's communities by emphasizing local control; building relationships in the field; providing training and technical assistance in support of efforts to prevent crime, drug abuse, and violence at the national, state, and local levels; developing collaborations and partnerships; promoting capacity building through planning; streamlining the administration of grants; increasing training and technical assistance; creating accountability of projects; encouraging innovation; and ultimately communicating the value of justice efforts to decision makers at every level.

Bureau of Justice Assistance, U.S. Department of Justice
810 Seventh Street, NW, Fourth Floor
Washington, DC 20531
202-616-6500
FAX 202-305-1367
http://www.ojp.usdoj.gov/BJA

2. Drug Court Clearinghouse Project/National Technical Assistance and Training Project

The Drug Court Clearinghouse Project and the National Technical Assistance and Training Project are sponsored by the Drug Court Program Office of the Office of Justice Programs and operated by American University.

The Drug Court Clearinghouse Project compiles and continually updates information on national drug court activity and emerging issues, and maintains an extensive reference collection of drug court materials.

The National Technical Assistance and Training Project offers a wide range of technical services, free of charge, to the criminal justice community.

Drug Court Clearinghouse Project/Technical Assistance Project
American University, Justice Programs Office
4400 Massachusetts Avenue, NW
Brandywine Building, Suite 100
Washington, DC 20016-8159
202-885-2875
FAX 202-885-2885
E-mail: justice@american.edu
http://www.american.edu/spa/

3. Substance Abuse Program

The Substance Abuse Program is in the Office of Justice Programs. Among other things, it administers the Drug Court Discretionary Grant Program, which offers

grants to jurisdictions to plan, implement, or enhance drug courts. It also provides technical and training assistance.

Bureau of Justice Assistance
Substance Abuse Program
810 Seventh Street, NW, Fourth Floor
Washington, DC 20531
202-616-5001
FAX 202-514-6452
https://www.bja.gov/Topic.aspx?Topic_ID=8

4. National Association of Drug Court Professionals (NADCP)

The National Association of Drug Court Professionals is involved in the development, implementation, and operation of treatment-oriented drug courts.

National Association of Drug Court Professionals
1029 North Royal Street, Suite 201
Alexandria, VA 22314
703-575-9400
http://www.nadcp.org

5. National Drug Court Institute

The National Drug Court Institute is an affiliate of the NADCP and provides comprehensive training to practitioners, supports investigative projects aimed at developing effective drug court policies and procedures, and disseminates information on research, evaluations, and commentary on drug court issues.

National Drug Court Institute
1029 North Royal Street, Suite 201
Alexandria, VA 22314
703-575-9400
http://www.ndci.org

6. Office of Juvenile Justice and Delinquency Prevention

The Office of Juvenile Justice and Delinquency Prevention a component of the Office of Justice Programs, U.S. Department of Justice, accomplishes its mission by supporting states, local communities, and tribal jurisdictions in their efforts to develop and implement effective programs for juveniles.

The Office strives to strengthen the juvenile justice system's efforts to protect public safety, hold offenders accountable, and provide services that address the needs of youth and their families.

Administrative and Educational Resources

Through its components, OJJDP sponsors research, program, and training initiatives; develops priorities and goals and sets policies to guide federal juvenile justice issues; disseminates information about juvenile justice issues; and awards funds to states to support local programming.

Office of Juvenile Justice and Delinquency Prevention
Office of Justice Programs
810 Seventh Street, NW
Washington, DC 20531
202-307-5911
FAX 202-307-2093
E-mail: askjj@usdoj.gov

Case Management

3-01 Introduction

Case management includes management of the following core elements: 1) caseflow, 2) case assignment, 3) alternative dispute resolution, 4) appointment of counsel and other representatives, 5) jury utilization, and 6) case information. A coordinated approach to each of these aspects of case management is essential for a trial court to effectively fulfill its central purpose. Policies, standards, guidelines, and other tools relative to each of these aspects have been established by the State Court Administrative Office to assist courts in this regard.

A. Caseflow Management

Caseflow management is central to the court's mission. It is the management of the processes and resources necessary to move a case from the point of initiation through disposition and into post-disposition activity. To be effective, it requires the active attention by the court to the progress of each case once it has been filed with the court.

In 1991 the Michigan Supreme Court, through Administrative Order 1991-4, explicitly recognized that ". . . the management of the flow of cases is properly the responsibility of the judiciary." The court reaffirmed its commitment in 2003 and again in 2011 through Michigan Supreme Court Administrative Order 2011-3. Further revisions were made pursuant to Michigan Supreme Court Administrative Order 2013-12.

A guide to caseflow management was developed in response to the Court's mandate and revised to incorporate changes produced by subsequent Supreme Court Administrative Orders. The *Caseflow Management Guide* provides judges and practitioners with guidance in developing and improving caseflow systems and following court management principles.

1. Caseflow management is the supervision or management of the time and events necessary to move a case from initiation to disposition or adjudication.

2. Court supervision of case progress, including adjournments, is necessary for an effective and efficient case management system.

3. Judicial support and leadership and the involvement of the bar and justice agencies are critical to the development and maintenance of a caseflow management system.

4. Management information, whether from an automated or manual system, is needed to determine if the court is meeting its caseflow management goals and objectives, assess the effectiveness of case management procedures and practices, and determine the need for change.

The Advisory Committee that assisted in developing the original guide consisted of judges and administrators with extensive case management experience. A revision workgroup

assisted in rewriting the guide to reflect current information and practice. See the website for a compilation of other resources pertaining to caseflow management.

B. Case Assignment

In order for a case management system to be effective, the court must assume responsibility for case progress at filing. This includes case assignment, which provides the court the means to intervene early in the case through case screening. Under MCR 8.111, all trial courts must have case assignment and reassignment systems. For further details on case assignment systems, see Section 3-02.

C. Alternative Dispute Resolution

While alternative dispute resolution programs are designed to resolve disputes outside the adjudication process, many techniques can be integrated into the caseflow management process. They include early neutral evaluation, community dispute resolution, arbitration, domestic relations client orientation program, mediation, summary jury trials, and prejudgment conciliation conferences.

The two goals of alternative dispute resolution are to reduce cost and to expedite disposition. These goals can only be achieved in a case management system that promotes timely referral of cases to ADR and that screens cases for appropriate intervention. The most appropriate points in the process to integrate ADR are the stages from case screening to pretrial conference.

For information on types of alternative dispute resolution programs, see Section 3-03.

D. Appointment of Counsel and Other Representatives

Managing the appointment of counsel and other representatives is crucial to case management. Attorneys and other representatives, whether appointed or not, should participate in developing a case management plan. The preparation of a case management plan, or scheduling plan/order, is a useful tool to set forth the key events and deadlines for a case. The SCAO's model local administrative order (LAO) for use in preparing a caseflow management plan suggests that orders be prepared at an early scheduling conference. See Model LAO 22.

For details on appointment of counsel and other representatives, see Section 3-04.

E. Jury Utilization and Management

Centralized and effective management of the jury system should be implemented as part of an overall case management system. There should be full-time administration of the

jury system at the top managerial level of the court, with delegation of day-to-day operating responsibilities to a clerical or administrative staff member.

A well-managed jury system will result in conserving juror time, savings in juror and court costs, and increasing willingness of citizens to serve as jurors. The chief judge has the responsibility to manage the jury system and should promulgate administrative policies for effective management of the system in consultation with court staff, the bar, and other interested agencies.

See Section 3-05 for more details on jury management. See the website for a compilation of jury-related resources. See also *Jury System Management* published by the National Center for State Courts.

F. Case Management Information

In addition to management of cases, an effective caseflow management system is an information system. It must be organized to record, use, and manage the information necessary to move cases to disposition in a timely and efficient manner. Therefore, it must provide the means to monitor both individual case progress and the success in meeting disposition standards. At a minimum, the case management system should provide the capability to: 1) monitor case progress; 2) generate various reports for measuring inventory, delay, activity, and scheduling practices, and 3) generate reports showing compliance with time guidelines.

See Section 3-08 for more details on case management information reporting. See the website for a compilation of other case management information resources.

G. Business Courts

Business courts can be established to provide a case management structure that facilitates more timely, effective, and predictable resolution of complex business cases. 2012 PA 333, effective October 17, 2012, requires circuit courts with three or more judges to create a specialized business court docket.

H. Other Case Management Tools

1. Elimination of Circuit Court Arraignments

Under MCR 6.113, a circuit court may, through issuance of a local administrative order, eliminate the circuit court arraignment of criminal cases cognizable in the circuit court. See Model LAO 26.

2. Multiple District Plan for Magistrate

MCL 600.8320 allows two or more district courts within a county or two adjoining districts of the first class to establish a multiple district plan in which a district court magistrate is authorized to conduct arraignments, set bail or recognizance, provide for the appointment of counsel, or make determinations of probable cause and issue warrants for all of the participating districts within the multiple district area. For districts consisting of more than one county, the chief or only judge may authorize a magistrate appointed in one county to serve in another county within the district. Courts choosing to establish a multiple district plan must submit to the State Court Administrator a local administrative order signed by the chief or only judges of all participating districts. MCL 600.8320. See Model LAO 7.

3. Referrals to Domestic Relations Referee

Under MCR 3.215(B), the chief judge may issue an administrative order to refer all motions of a particular kind to a referee. Judges are free to assign other motions to a referee to the extent allowed by law. MCR 3.215(B).

4. Use of Videoconferencing Technology

Trial courts are authorized to use videoconferencing under MCR 2.407, MCR 3.210(A)(4), MCR 3.215(D)(3), MCR 3.904, MCR 5.738a, and MCR 6.066. A list of authorized uses for videoconferencing is available in Section 2, Appendix A of the Michigan Trial Court Standards for Courtroom Technology. The standards were established by the State Court Administrative Office in accordance with Michigan Supreme Court Administrative Order 2014-25.

5. Waiver of Jurisdiction Over Civil Infractions Committed by Juveniles

Under MCL 712A.2e and MCL 600.8379(1), the circuit court may enter into an agreement with the district court to waive jurisdiction over all or specifically named civil infractions alleged to have been committed by juveniles within the geographic jurisdiction of the district court. Courts making such an agreement must submit a joint local administrative order to the State Court Administrator. MCL 712A.2e, MCL 600.8379(1). See Model LAO 12.

3-02 Case Assignment System

A. Authority

The chief judge has the authority and the responsibility to direct the apportionment and assignment of the business of the court, subject to the provisions of MCR 8.111. MCR 8.110(C)(3)(b).

B. Case Assignment and Reassignment Systems

All trial courts must have a case assignment system and a case reassignment system. Generally, cases are initially assigned randomly and equally among the judges of the court in a method determined by the chief judge. If a judge cannot undertake an assigned case, the chief judge may reassign the case to another judge. When establishing a case assignment and case reassignment system, the provisions of MCR 8.111 must be carefully considered. The State Court Administrative Office's regional administrator can provide technical assistance to trial courts in creating and documenting the court's case assignment system. All cases must be assigned by lot unless a different system has been adopted by local court administrative order under the provisions of subrule MCR 8.112.

For more details on case assignment systems, see the *Caseflow Management Guide*.

C. Visiting Judges

1. Authority

Assignments of sitting and former judges are made under the Michigan Supreme Court's superintending control authority. Const 1963, Art 6, §4. The chief judge has authority and responsibility to request assignments of visiting judges and to direct the assignment of matters to visiting judges. MCR 8.110(C)(3)(g).

2. Assignment of Visiting Judges

When all the judges of a trial court are unable to undertake a case, or when a trial court needs assistance with its docket, the state court administrator is authorized to assign a visiting judge from another court. See procedures on assignment. The Request for Assignment (form SCAO 1) is also available online, or assignments can be requested through the Michigan Court Application Portal (MCAP).

3. Temporary Assignment to Court of Appeals

The Supreme Court may transfer judges from certain trial courts to the Court of Appeals to act as temporary judges. MCL 600.306.

3-03 Alternative Dispute Resolution (ADR)

Michigan, by legislation and by court rule, has several alternative dispute resolution mechanisms. The purpose of these mechanisms is to assist parties in resolving their disputes without formal adjudication in the trial court. The following is a brief explanation of the major programs. For current information on alternative dispute resolution, please contact the Office of Dispute Resolution, State Court Administrative Office.

A. Court-Related Alternative Dispute Resolution

1. Alternative Dispute Resolution Generally

MCR 2.410 provides that civil matters may be referred to a nonbinding ADR process by stipulation of the parties or on order of the court. Parties are encouraged to select their own ADR process but, if they do not, the court may select the ADR process and the neutral service provider. Courts must have an approved local administrative order identifying the court's local ADR plan prior to using the authority to order persons to an ADR process. See the guidelines for completing the local ADR plan.

2. Mediation

MCR 2.411 outlines key provisions of courts' use of the mediation process, including identifying matters for mediation, mediator qualifications, and fee provisions. Additional resources governing mediation practice include the following:

- Mediator Standards of Conduct
- Mediator Training Standards and Procedures

Courts may adopt referral relationships with Community Dispute Resolution Program centers. Confidentiality of the mediation process is governed by MCR 2.412.

3. Community Dispute Resolution Program

The Community Dispute Resolution Program (CDRP) was legislatively created to provide conciliation, mediation, or other forms and techniques of voluntary dispute resolution as an alternative to the judicial process. The program is funded by the Community Dispute Resolution Fund and administered by the state court administrator.

Referrals by courts comprise more than 80 percent of referrals to the network of CDRP centers. Types of cases mediated include those in district court (small

claims, landlord/tenant, and general civil), probate court (contested guardianship and conservatorship matters), and circuit court (personal protection matters, general civil involving pro se litigants, family division matters such as truancy, divorce (involving unrepresented litigants, postjudgment custody and parenting-time disputes, juvenile victim/offender matters, and child welfare mediation in child protective proceedings).

The Office of Dispute Resolution frequently initiates pilot projects to test and evaluate new applications of mediation in court cases.

A list of all current Community Dispute Resolution Program centers, plus other information about the programs, can be obtained online or by contacting the State Court Administrative Office at 517-373-4839.

4. Case Evaluation in Civil Cases

Michigan Court Rules and statutes have created a pretrial case evaluation program for civil cases filed in the circuit, district, and probate courts. All cases involving health care provider malpractice and all other tort cases in which damages are claimed to exceed $10,000 must receive a case evaluation. MCL 600.4901 *et seq*., MCL 600.4951 *et seq*.; MCR 2.403, MCR 2.404.

Trial courts that submit cases to case evaluation pursuant to MCR 2.403 shall adopt by local administrative order a plan to maintain a list of persons available to serve as case evaluators and to assign case evaluators from the list to panels. See a model plan. The plan must be in writing and available to the public in the ADR clerk's office. See also the Guidelines for Completing the Local Alternative Dispute Resolution Plan.

Individuals may apply to the ADR clerk to be placed on the list of case evaluators. The courts may use SCAO-approved form MC 34, Case Evaluator Application.

5. Mediation in Domestic Relations Cases

Mediation in domestic relations cases is authorized by MCR 3.216. A key goal of having parties participate in mediation early in the litigation is to encourage collaborative problem-solving. In cases involving children, this may reduce the need for postjudgment court involvement.

6. Alternative Dispute Resolution in Child Custody and Parenting Time Disputes

The Friend of the Court Act provides for alternative dispute resolution services in child custody and parenting time disputes through Michigan's friend of the court offices either through use of in-house staff or by contract with outside agencies.

Alternative dispute resolution through friend of the court offices can occur in prejudgment or postjudgment disputes, as well as Paternity Act or Family Support Act matters. The process is voluntary. The statute also provides for confidential communications, domestic relations mediator qualifications, and entry of consent orders. MCL 552.513.

An employee of the friend of the court office who provides alternative dispute resolution in a friend of the court case involving a particular party shall not perform referee functions, investigation and recommendation functions, or enforcement functions as to any domestic relations matter involving that party. MCL 552.515.

B. Noncourt Alternative Dispute Resolution

1. Uniform Arbitration Act

Michigan has adopted the Uniform Arbitration Act, which permits parties to civil actions to submit to arbitration to resolve civil matters. MCL 600.5001 - MCL 600.5035.

2. Medical Malpractice Arbitration Act

Michigan has adopted an act to provide for arbitration in the resolution of malpractice actions if the total amount of damages claimed is $75,000 or less, including interest and costs. MCL 600.2912g, MCL 600.2912h.

3. Domestic Relations Arbitration

As an alternative to the traditional litigation of a domestic relations case, parties may voluntarily elect to pursue arbitration, which is governed by MCL 600.4070 *et seq.* Except in very limited circumstances, appeal is limited to the award provisions involving children.

4. Uniform Collaborative Law Act

Collaborative law is a process in which parties engage attorneys to collaboratively reach a proposed judgment of divorce. The process is almost always used pre-filing, but if a notice of pursuing collaborative law is received by the court post-filing, the notice acts as an application for a stay of proceedings. The process is governed by MCL 691.1331 *et seq.*

C. ADR Information

For current information about the use of ADR in the courts, availability of training, evaluation, and further resources, contact the Office of Dispute Resolution.

3-04 Appointment of Counsel and Representatives

A. Circuit Court

There are two classes of appointed counsel in circuit court: 1) trial court, and 2) appellate court. For trial court appointments, the type of cases, the method used, and the manner of payment vary in the circuit courts. Appointment of appellate counsel by circuit courts and the manner of practice by appointed appellate attorneys is controlled by state law, regulations, and an administrative order of the Michigan Supreme Court. Chief judges should review their court's practices in appointing counsel and selecting guardians ad litem and next friends to assure that those appointed reflect the racial, ethnic, and gender composition of the community being served. Appointment of counsel generally is regulated by MCR 8.123.

1. Appointment of Counsel at Trial Level in Criminal Cases

a. Applicable Law for Appointment in Felony Cases

The majority of appointments made at the trial court level by circuit courts relate to counsel for indigents in felony cases. See also Section 3-04, B, 2.

1) Michigan Court Rule

a) Advice of Right

At the arraignment on the warrant or complaint the court must advise the defendant of entitlement to a lawyer's assistance at all subsequent court proceedings, and that the court will appoint a lawyer at public expense if the defendant wants one and is financially unable to retain one. The court must question the defendant to determine whether the defendant wants a lawyer and, if so, whether the defendant is financially unable to retain one. MCR 6.005(A).

b) Questioning a Defendant about Indigence

If the defendant requests a lawyer and claims financial inability to retain one, the court must determine whether the defendant is indigent. The determination of indigence must be guided by the following factors:

i) present employment, earning capacity, and living expenses.

ii) outstanding debts and liabilities;

iii) whether the defendant has qualified for and is receiving any form of public assistance;

iv) availability and convertibility, without undue financial hardship to the defendant and the defendant's dependents, of any personal or real property owned; and

v) any other circumstances that would impair the ability to pay a lawyer's fee as would ordinarily be required to retain competent counsel.

A person does not have to be completely without financial means in order to be considered "indigent" for purposes of determining ability to pay for competent defense counsel. *People v Bohm*, 393 Mich 129 (1974). The ability to post bond for pretrial release does not make the defendant ineligible for appointment of a lawyer. MCR 6.005(B).

c) Partial Indigence

If a defendant is able to pay part of the cost of a lawyer, the court may require contribution to the cost of providing a lawyer and may establish a plan for collecting the contribution. MCR 6.005(C).

d) Appointment or Waiver of a Lawyer

If the defendant wants a lawyer and if the court determines that the defendant is financially unable to retain a lawyer, the court must promptly appoint a lawyer and promptly notify the lawyer of the appointment. The court may not permit the defendant to make an initial waiver of the right to be represented by a lawyer without first:

i) advising the defendant of the charge, the maximum possible prison sentence for the offense, any mandatory minimum sentence required by law, and the risk involved in self-representation, and

ii) offering the defendant the opportunity to consult with a retained lawyer or, if the defendant is

indigent, the opportunity to consult with an appointed lawyer.

MCR 6.005(D).

e) Advice at Subsequent Proceedings

If a defendant has waived the assistance of a lawyer, the record of each subsequent proceeding need show only that the court advised the defendant of the continuing right to a lawyer's assistance (at public expense if the defendant is indigent) and that the defendant waived that right. MCR 6.005(E).

f) Multiple Representation

When two or more indigent defendants are jointly charged with an offense or offenses or their cases are otherwise joined, the court must appoint separate lawyers unassociated in the practice of law for each defendant except under certain conditions as specified in court rule. MCR 6.005(F).

2) Case Law

The trial court has the right to determine or deny fees to appointed counsel. *In the Matter of Attorney Fees of Burgess*, 69 Mich App 689 (1976).

The Legislature has authorized the trial judge to exercise discretion in determining reasonable compensation for the services performed. *In the Matter of the Attorney Fees of Ruth Ritter and Raymond E. Willis*, 63 Mich App 24 (1975), rev'd on other grounds 399 Mich 563 (1977); *In the Matter of Attorney Fees of Burgess*, supra, 692.

The trial judge has wide discretion to determine the value of services rendered by appointed counsel. *In the Matter of Attorney Fees of William J. Hayes*, 55 Mich App 30 (1974), lv den 394 Mich 794 (1975).

Ordering a fee grossly below scheduled fees or consistently refusing to award fees even approximating those in an established fee schedule might lead to the conclusion that there was not the

proper exercise of discretion. *In the Matter of Attorney Fees of Ruth Ritter and Raymond E. Willis*, supra, 28.

A court may remove appointed counsel for gross incompetence, physical incapacity or contumacious conduct. *People v Fox*, 97 Mich App 324 (1980), rev'd on other grounds 410 Mich 871 (1980).

3) Statutes

The chief judges of the circuit courts have the responsibility for appointment in felony cases or they may direct the magistrate, as defined in MCL 761.1(f), to appoint counsel in felony cases. MCL 775.16.

An attorney appointed to represent an indigent is not required to follow the case into another county or into the Supreme Court, but if the attorney does so, compensation may be increased as fixed by the court. MCL 775.17.

b. Reimbursement of Court-Appointed Attorney Fees

Court costs, including costs of providing legal assistance, may only be imposed pursuant to statutes cited or a specific penal statute under which a defendant is convicted. Costs may be authorized as a condition of probation but are limited by the defendant's ability to pay. MCL 769.3; MCL 771.3(4).

If a defendant enters a plea of guilty or nolo contendere or if the court determines after a hearing or trial that the defendant is guilty, the court may impose the expenses of providing legal assistance to the defendant. MCL 769.1k(1)(b)(iv). A defendant shall not be imprisoned, jailed, or incarcerated for the nonpayment of costs ordered under MCL 769.1k unless the court determines that the defendant has the resources to pay the ordered costs and has not made a good-faith effort to do so. MCL 769.1k(10).

If a defendant is able to pay part of the cost of a lawyer, the court may require contribution to the cost of providing a lawyer and may establish a plan for collecting the contribution. MCR 6.005(C).

See *Criminal Proceedings Benchbook, Volume 2*. See also form CC 402, Order Regarding Appointment of Appellate Counsel and Transcript. See also MCR 6.905(D), MCL 769.1(8) and Sections 3-04, B and 8-08, H.

2. Appointment of Counsel for Postappeal Relief in Criminal Cases

The appointment of counsel for indigents seeking postappeal relief pursuant to MCR subchapter 6.500 is controlled by MCR 6.505. If the defendant has requested appointment of counsel and the court has determined that the defendant is indigent, the court may appoint counsel for the defendant at any time during the proceedings pursuant to MCR subchapter 6.500. Counsel must be appointed if the court directs that oral argument or an evidentiary hearing be held. MCR 6.505(A).

3. Appointment of Counsel at Appellate Level in Criminal Cases

The Appellate Defender Commission was created by the Appellate Defender Act. The commission is responsible for compiling and keeping current a statewide roster of attorneys eligible to accept criminal appellate defense counsel appointments for indigents. MCL 780.711 *et seq*.

The State Appellate Defender Office was established pursuant to MCL 780.711 *et seq*. The office is governed by a seven-member State Appellate Defender Commission, which also oversees the Michigan Appellate Assigned Counsel System (MAACS).

The State Appellate Defender Office provides appellate defense for indigent defendants. In this role, the State Appellate Defender Office provides all defense services, including the appeal of a felony conviction or the conduct of other postconviction remedies and the conduct of the appropriate supportive investigatory functions.

The office also operates the Legal Resources Project, which provides technical support to private criminal law practitioners on appellate defense issues through circulation of the *Criminal Defense Newsletter*, the maintenance of a repository of briefs on appellate defense issues and other publications and services. The office can be reached at:

State Appellate Defender Office, 3300 Penobscot Building, 645 Griswold, Detroit, MI 48226, 313-256-9833, FAX 313-965-0372.
OR
State Appellate Defender Office, 101 North Washington Street, 14th Floor, Lansing, MI 48913, 517-334-6069, FAX 517-334-6987.

E-mail webmaster@sado.org, http://www.sado.org/.

The Michigan Appellate Assigned Counsel System (MAACS) was established by the Appellate Defender Commission under MCL 780.711-780.719 and Supreme Court Administrative Order 1981-7, affirmed by Supreme Court Administrative

Orders 1985-3 and 1989-3. The office is charged with compiling and maintaining a statewide roster of attorneys eligible and willing to accept criminal appellate defense assignments.

MAACS provides training and reference materials to roster members and processes complaints about attorney noncompliance with minimum performance standards approved by the Supreme Court. MAACS also monitors the process trial courts use to select appellate counsel and analyzes data about assigned appeals. Supreme Court Administrative Order 1989-3 requires the judges of each circuit court to comply with Section 3 of the MAACS Regulations.

In Michigan Supreme Court Administrative Order No. 2014-18, State Appellate Defender Office (SADO) and the Michigan Appellate Assigned Counsel System (MAACS) were ordered to merge operations. The Appellate Defender Commission was also ordered "to review operations of the MAACS and submit a proposed administrative order that reflects the consolidation of the two offices and incorporates proposed updates or revisions that the commission recommends."

Upon request of the Appellate Defender Commission, MAACS was authorized to implement a one-year pilot project to assess the feasibility, costs, and benefits associated with structural reforms currently under consideration for permanent statement implementation. These reforms would consolidate the individual "local lists" of roster attorneys, which currently exist in all 57 circuit courts, into a smaller number of regional lists to be maintained and administered by MAACS.

The pilot will assess the extent to which this consolidation results in greater speed and efficiency in the assignment process, by reducing the number of lists to maintain and allowing MAACS to assume the responsibility of prescreening counsel, preparing appointment orders, and sending notification of appointments to defendants and their attorneys.

For details about the pilot and the regulations to be followed by circuit courts participating in the pilot, see Michigan Supreme Court Administrative Order 2015-9.

a. Applicable Law

Except for the 2015 pilot stated above, the appointment of appellate counsel for indigents in criminal cases is controlled by MCR 6.425(F) and (G), the Appellate Defender Act (MCL 780.711 *et seq.*), the Michigan Appellate Assigned Counsel System Regulations (MAACS Regulations) effective November 15, 1985 amended January 28, 1988, July 10, 2002, and January 1, 2005, and the Minimum Standards for Indigent Criminal

Appellate Defense Services set forth in Supreme Court Administrative Order 2004-6 and Supreme Court Administrative Order 1989-3 (*In re the Appointment of Appellate Assigned Counsel*).

b. Procedure for Appointment of Appellate Counsel

1) Selection of Counsel

The MAACS administrator is required to provide each circuit court a list of local attorneys eligible and willing to accept appellate appointments from each court's jurisdiction under Section 2(2) of the MAACS Regulations.

Pursuant to Section 3(1) of the MAACS Regulations, the judges of each circuit court must appoint a local designating authority who may be responsible for the selection of assigned appellate counsel from the local list provided by the MAACS administrator. Section 3(1) also makes the local designating authority responsible for such other tasks in connection with the operation of the list as may be necessary at the trial court level.

Pursuant to Section 3(4), in each circuit court, the chief judge shall determine whether appellate counsel is to be selected by the chief judge or the local designating authority. If a chief judge decides to retain the discretion to select counsel, the discretion must be personally exercised and not delegated.

The rules for selecting appellate assigned counsel by both the chief judge and the local designating authority are set forth in Section 3(5), (6), and (7) of the MAACS Regulations. As a general rule, each circuit court will appoint the State Appellate Defenders Office in every third, fourth, or fifth case, depending upon a formula adopted by the commission. Most other appointments will be made by systematically rating the local list. However, there are some exceptions set forth in the MAACS Regulations.

2) Determining Eligibility

MAACS has also developed a classification of common criminal offenses by which the local designating authority can determine which of three levels of attorneys are eligible to handle an appeal.

3) Record of Appointments

The local designating authority is also responsible for keeping a record of appointments made and for providing certain information to MAACS on a regular basis.

4) Fee Schedule

Although the fee schedule is set by circuit court, it is a good management practice to consult with the funding unit.

Operation directions for the local designated authority and copies of MAACS Regulations can be obtained from MAACS, 1375 South Washington Avenue, Suite 300, Lansing, MI 48913, 517-334-1200, http://www.sado.org/Page/55/Appellate-Defender-Commission-Commission-MAACS.

4. Appointment of Counsel in Child Support Contempt Proceedings

In *Turner v Rogers*, 564 US 431 (2011), the United States Supreme Court ruled an indigent defendant in a civil contempt case for nonpayment of child support is not automatically entitled to court appointed counsel when the following safeguards were available in the case to allow the defendant to prove the ability to comply with the contempt order:

- providing notice to the defendant that his ability to pay is a critical issue in the contempt proceeding;
- using a form (or similar document) to gather relevant financial information about the defendant;
- providing the defendant an opportunity at the hearing to respond to questions about his financial status; and
- an express finding by the court that the defendant has the ability to pay.

The Court did not rule on whether something less than the listed safeguards would require court-appointed counsel. If the court believes that a defendant has access to less than the safeguards listed above in a contempt case before the court, the court should use its discretion in determining whether to appoint counsel or impose other alternative safeguards in the case.

5. Appointment of Counsel in Personal Protection Contempt Proceedings

In personal protection violation hearings, circuit courts are required to provide legal counsel at public expense to any indigent person who is cited for contempt if a possible penalty is incarceration. Courts should take the necessary steps to ensure that counsel is available in these cases. *Turner v* Rogers, 564 US 431 (2011); MCR 3.708(D).

6. Appointment of Attorneys in Juvenile Proceedings

a. Delinquency Proceedings and Designated Cases

1) The court must advise the juvenile of the right to an attorney at each stage of the proceedings on the formal calendar, including trial, plea of admission, and disposition.

2) The court shall appoint an attorney to represent the juvenile if:

a) the parent, guardian, or legal custodian refuses or fails to appear and participate in the proceedings,

b) the parent, guardian, or legal custodian is the complainant or victim,

c) the juvenile and those responsible for the support of the juvenile are found financially unable to retain an attorney, and the juvenile does not waive an attorney,

d) those responsible for the support of the juvenile refuse or neglect to retain an attorney for the juvenile, and the juvenile does not waive an attorney, or

e) the court determines that the best interest of the juvenile or the public require appointment.

3) The juvenile may waive the right to assistance of an attorney except where a parent, guardian, or legal custodian, or guardian ad litem objects or when the appointment is based on MCR 3.915(A)(2)(3). The waiver by a juvenile must be made in open court to the judge or referee, who must find and place on the record that the waiver was voluntarily and understandingly made.

MCL 712A.4(6); MCR 3.915(A), MCR 3.951(B)(2)(b)(i).

b. Child Protective Proceedings

1) Respondent

a) At respondent's first court appearance, the court shall advise the respondent of the right to retain an attorney to represent the respondent at any hearing conducted pursuant to these rules and that

(i) the respondent has the right to a court appointed attorney at any hearing conducted pursuant to these rules, including the preliminary hearing, if the respondent is financially unable to retain an attorney, and,

(ii) if the respondent is not represented by an attorney, the respondent may request a court-appointed attorney at any later hearing.

b) The court shall appoint an attorney to represent the respondent at any hearing, including the preliminary hearing, conducted pursuant to these rules if

(i) the respondent requests appointment of an attorney, and

(ii) it appears to the court, following an examination of the record, through written financial statements, or otherwise, that the respondent is financially unable to retain an attorney.

c) The respondent may waive the right to the assistance of an attorney, except that the court shall not accept the waiver by a respondent who is a minor when a parent, guardian, legal custodian, or guardian ad litem objects to the waiver.

2) Child

a) The court must appoint a lawyer-guardian ad litem to represent the child at every hearing, including the preliminary hearing. The child may not waive the assistance of a lawyer-guardian ad litem.

b) If a conflict arises between the lawyer-guardian ad litem and the child regarding the child's best interests, the court may appoint an attorney to represent the child's stated interests.

MCL 722.630; MCR 3.915(B).

c. Indian Child Welfare Act

In any case where the court determines indigence, the parent or Indian custodian has the right to court-appointed counsel in a removal, placement, or termination proceeding. The court may, in its discretion, appoint counsel for the child upon a finding that the appointment is in the best interest of the child. 25 USC 1912b; MCL 712B.21.

d. Reimbursement of Court-Appointed Attorney Fees

When an attorney is appointed for a party under MCR 3.915, the court may enter an order assessing costs of the representation against the party or against a person responsible for the support of that party, which order may be enforced as provided by law. MCR 3.915(E).

For more information, see *Criminal Proceedings Benchbook, Volume 2*. See also form JC 38, Order for Reimbursement.

MCL 712A.4(6); MCR 3.915(E).

e. Discharge of Attorney

An attorney or lawyer-guardian ad litem appointed by the court to represent a party shall serve until discharged by the court. The court may permit another attorney to temporarily substitute for the child's lawyer-guardian ad litem at a hearing, if that would prevent the hearing from being adjourned, or for other good cause. MCR 3.915(D).

7. Appointment of Attorneys, Step-Parent Adoptions

In cases that may result in nonconsensual termination of parental rights of the noncustodial parent, under the stepparent adoption provisions of the Adoption Code, the probate court has discretionary authority to appoint counsel to assist the indigent noncustodial parent in contesting termination. *Matter of Sanchez*, 422 Mich 758 (1985).

8. Appointment of Attorneys in Emancipation Proceedings

After a petition for emancipation is filed, the court may appoint legal counsel for the minor. The court may also appoint legal counsel for the minor's parents or guardian if they are indigent and oppose the petition. MCL 722.4b.

9. Appointment of Attorneys and Guardians Ad Litem in Ancillary Proceedings

See Section 3-04, C. for information on probate court proceedings over which the circuit court has ancillary jurisdiction.

10. Appointment of Attorneys in Infectious Disease Proceedings

An individual who is the subject of a petition filed pursuant to this section or an affidavit filed pursuant to MCL 333.5207 shall have the right to counsel at all stages of the proceedings. If the individual is unable to pay the cost of counsel, the circuit court shall appoint counsel for the individual. MCL 333.5205(12).

11. Appointment of Guardians Ad Litem and Next Friends

a. Civil Procedures, Generally

If a minor or incompetent person does not have a conservator, the court shall appoint either a next friend to appear on the person's behalf as a plaintiff or a guardian ad litem if the person is named as a defendant. MCR 2.201(E).

b. Divorce, Separate Maintenance, or Annulment

A legally married minor is permitted by law to sue or defend an action for divorce, separate maintenance, or annulment in his or her name unless the circuit judge requires the minor to have a next friend or guardian ad litem appointed for the minor. If it is alleged in any such action that the marriage was not lawful, then appointment of a next friend or guardian ad litem is required. In addition, if an action is brought by or against an incompetent person, the appointment of a guardian ad litem is required. MCL 551.251; MCR 2.201(E).

c. Personal Protection Proceedings

If the petitioner in a personal protection action is a minor or a legally incapacitated person, the petitioner must proceed through a next friend. The petitioner shall certify that the next friend is not disqualified by statute

and that the next friend is an adult. Unless the court determines appointment is necessary, the next friend may act on behalf of the minor or legally incapacitated person without appointment. However, the court shall appoint a next friend if the minor is less than 14 years of age. The next friend is not responsible for the costs of the action. MCR 3.703(F).

d. Child Custody Dispute

If a child custody dispute has been submitted to the circuit court as an original action under the Child Custody Act or has arisen from another action in the circuit court, or as a result of an order or judgment of the circuit court, the court may appoint a guardian ad litem or counsel for the child. MCL 722.27(1)(d).

In a case involving a dispute regarding the custody of a minor child, the court may, on motion of a party or on its own initiative, for good cause shown, appoint a guardian ad litem to represent the child and assess the costs and reasonable fees against the parties involved in full or in part. MCR 3.204(D).

e. Paternity Action

It is unnecessary in any proceedings under the Paternity Act commenced by or against a minor to have a next friend or guardian ad litem appointed for the minor unless required by the circuit judge. A minor may sue or defend any proceedings in the same manner and with the same effect as if he or she were of legal age. MCL 722.714(11).

f. Family Division Juvenile and Adoption Proceedings

The court may appoint a guardian ad litem for a party if the court finds that the welfare of the party requires it. MCR 3.916.

g. Disinterment of War Veterans

The court shall appoint a guardian ad litem, upon petition of any party in interest, for minors who are surviving children or next of kin of a war veteran. The procedure for appointment of the guardian is governed by MCR 2.201(E). MCL 35.842.

h. Taxation of Inheritances

A proceeding to enforce a lien under the Michigan Estate Tax Act is brought in the circuit court. The act provides if an insane, infant, or

mentally incompetent person has an interest in the property upon which a lien exists, the court may appoint a guardian ad litem for the person upon motion of the attorney general or upon the request of the infant or at the request of the insane or otherwise incompetent person's general guardian. MCL 205.203(12).

i. Michigan Community Property Act

While this act was generally repealed effective May 10, 1948, its provisions may still apply under certain circumstances as more fully set forth in the repealing act found at MCL 557.252 *et seq*. In an action brought under this act, the court must appoint a guardian ad litem for any spouse who is noncompos mentis and has no guardian. MCL 557.211(b).

j. Unborn Persons

In any action or proceeding where it appears an unborn person may become entitled to a property interest, real or personal, legal or equitable, involved in or affected by the action, the court may, at its own motion, or motion of any party, appoint a guardian ad litem of the unborn person. MCL 600.2045.

k. Land of Infants and Incompetents; Court Order Sale, Lease, or Exchange

The court may appoint a guardian ad litem to represent any infant or incompetent person governed by this provision of law. The process for appointing the guardian is as provided in MCR 2.201(E). MCL 600.2928.

12. Procedure for Appointment of Trial Counsel for Indigents

Appointment of trial counsel for indigents varies greatly among the courts with respect to method used, qualifications for appointment, standards of practice, manner of appointment, payment, types of cases for which appointments are made, and types of record systems.

Each trial court must adopt a local administrative order that describes the court's procedures for selecting, appointing, and compensating counsel who represent indigent parties in that court. MCR 8.123(B). The trial court must submit the local administrative order to the state court administrator for review pursuant to MCR 8.112(C). The state court administrator shall approve the plan if its provisions will protect the integrity of the judiciary. MCR 8.123(C).

a. Elements of an Adequate Appointment System

An adequate system should establish training requirements, qualification and/or experience requirements, standards of practice, a fair selection system, a payments schedule, and a record keeping system.

b. Methods

Three methods for appointing trial counsel are used in Michigan, and some counties use a variation of one or more of the systems.

1) Appointment of Counsel from the Bar

An appointment of counsel system operates where private attorneys either solicit appointments from judges or are placed upon a list from which appointments are made. The manner of appointment varies among the circuits with some courts relying upon appointment by the judge and others using rotating lists.

2) Defender System

A defender system is a public or private nonprofit organization with full-time or part-time salary staff handling a percentage of the assigned cases. The percentage of cases handled by the defender varies among the courts. It is not possible for a defender office to handle all assigned cases because of possible conflicts of interest.

3) Contract System

A contract system is one in which an attorney, law firm, or a bar association agrees to provide particular services for a specified dollar amount.

c. Payment

There are almost as many methods of payment as there are circuits in Michigan. Fee schedules include, but are not limited to, hourly rates, daily rates, and types of cases. Normally, the fee schedule is established by circuit court with the approval of the funding unit. Although the court has the right to set the fee schedule, it is good management practice to consult with the funding unit.

13. Record Keeping and Reporting

a. Required Records

Pursuant to MCR 8.123(D), at the end of each calendar year, a trial court must compile an annual electronic report of the total public funds paid to each attorney for appointments by that court. This rule applies to appointments of attorneys in any capacity, regardless of the indigence status of the represented party. Trial courts that contract for services to be provided by an affiliated group of attorneys may treat the group as a single entity when compiling the required records.

The records required by this court rule must be retained for the period specified in the trial court record retention and disposal schedule.

A trial court must submit its annual electronic report to the state court administrator in the form specified by the state court administrator. When requested by the state court administrator, a trial court must cooperate in providing additional data on an individual attorney, judge, or attorney group for a period specified by the request, including the number of appointments by each judge, the number of appointments received by an individual attorney or attorney group, and the public funds paid for appointments by each judge. MCR 8.123(F).

b. Public Access to Records

The records must be available at the trial court for inspection by the public, without charge. The court may adopt reasonable access rules, and may charge a reasonable fee for providing copies of the records. MCR 8.123(E). Access may be regulated by the court's local administrative order (LAO) for access, inspection, reproduction, and creation of records pursuant to MCR 8.119(H), but it is not required. MCR 8.119(G). See Access, Inspection, Reproduction, and Creation of Records (Model LAO 8).

B. District Court

1. Constitutional Authority

The right to assistance of counsel to any person charged with a crime is a fundamental right made applicable to state court proceedings by the 14th Amendment of the United States Constitution. *Gideon v Wainwright*, 372 U.S. 355; 9 L Ed 2d 799 (1963).

Absent a knowing and intelligent waiver, no person may be imprisoned for any offense, whether classified as petty, misdemeanor, or felony, unless represented by counsel at trial. *Argersinger v Hamlin*, 407 U.S. 25; 32 LEd 2d 530 (1972); *People v Studaker*, 387 Mich 698 (1972).

2. Michigan Court Rules and Statutes Regarding Felony Cases

The chief judge of the circuit court may direct the judge of the district court or a judge of a municipal court to appoint counsel in felony cases. MCL 775.16.

Note: District court magistrates do not have authority to appoint counsel in felony cases. MCL 600.8513 allows that a district court magistrate, when authorized by the chief judge of the district, may "approve and grant petitions for the appointment of an attorney to represent an indigent defendant ***accused of any misdemeanor punishable for not more than 1 year or ordinance violation punishable by imprisonment***." Emphasis added.

See Section 3-04, A, 1 for details.

3. Michigan Court Rules and Statutes Regarding Misdemeanor Cases Cognizable by the District Court

a. An indigent defendant has a right to an appointed attorney whenever the offense charged requires on conviction a minimum term in jail, or the court determines it might sentence to a term of incarceration, even if suspended. MCR 6.610(D)(2), (E)(2).

When this circumstance exists, the court must inform the defendant of the right to have an attorney appointed at public expense if the defendant is indigent: 1) whenever a defendant is arraigned on an offense over which the district court has jurisdiction, MCR 6.610(D)(1), and 2) before accepting a plea of guilty or no contest on a misdemeanor within the district court's jurisdiction, MCR 6.610(E)(2).

The right to assistance of an attorney appointed by the court is not waived unless the defendant has been informed of the right and has waived it in a writing that is made part of a file or orally on the record. MCR 6.610(D)(3). See form DC 213, Advice of Rights and Plea Information.

If an indigent defendant is without an attorney and has not waived the right to an appointed attorney, the court may not sentence the defendant to jail or to a suspended jail sentence. MCR 6.610(D)(2).

b. Immediately after imposing a sentence or incarceration, even if suspended, the court must advise the defendant, on the record or in writing, that 1) if the defendant wishes to file an appeal and is financially unable to retain a lawyer, the court will appoint a lawyer to represent the defendant on appeal, and 2) the request for a lawyer must be made within 14 days after sentencing. MCR 6.610(F)(3).

c. At the arraignment on an alleged probation violation, the court must advise the probationer that the probationer is entitled to a lawyer's assistance at the hearing and at all subsequent court proceedings, and that the court will appoint a lawyer at public expense if the probationer wants one and is financially unable to retain one. MCR 6.445(B)(2)(b).

Even though a probationer charged with probation violation has waived the assistance of a lawyer, at each subsequent proceeding the court must advise the probationer of the continuing right to a lawyer's assistance (at public expense if the probationer is indigent) and that the probationer waived that right. MCR 6.445(D), MCR 6.005(E).

At the probation violation hearing, before accepting a guilty plea, the court must advise the probationer that by pleading guilty the probationer is giving up the right to a contested hearing and, if the probationer is proceeding without legal representation, the right to a lawyer's assistance as set forth in MCR 6.445(B)(2)(b). MCR 6.445(F)(1).

d. District court magistrates, when authorized by the chief district judge, may appoint counsel to represent indigent defendants accused of misdemeanors punishable by imprisonment for not more than one year or ordinance violations punishable by imprisonment. MCL 600.8513.

4. Michigan Court Rules Regarding Juvenile Cases

A juvenile charged with a life offense subject to the jurisdiction of the district court and the circuit court has the right to an appointed attorney pursuant to MCR 6.905. See also Sections 8-08, I. and 3-04, A.

a. Advice of Rights

If the juvenile is not represented by an attorney, the magistrate or court shall advise the juvenile at each stage of the criminal proceedings of the right to the assistance of an attorney. If the juvenile has waived the right to an attorney, the court at later proceedings must reaffirm that the juvenile continues to not want an attorney. MCR 6.905(A).

b. Appointment of Court-Appointed Attorney Waiver

1) Unless the juvenile has a retained attorney or has waived the right to an attorney, the magistrate or the court must appoint an attorney to represent the juvenile. MCR 6.905(B).

2) The magistrate or court may permit a juvenile to waive representation by an attorney if: (1) an attorney is appointed to give the juvenile advice on the question of waiver; (2) the magistrate or the court finds that the juvenile is literate and is competent to conduct a defense; (3) the magistrate or the court advises the juvenile of the dangers and of the disadvantages of self-representation; (4) the magistrate or the court finds on the record that the waiver is voluntarily and understandingly made; and (5) the court appoints standby counsel to assist the juvenile at trial and at the juvenile sentencing hearing. MCR 6.905(C).

c. Reimbursement

The court may assess cost of legal representation, or part thereof, against the juvenile or against a person responsible for the support of the juvenile, or both. The order assessing cost shall not be binding on a person responsible for the support of the juvenile unless an opportunity for a hearing has been given and until a copy of the order is served on the person, personally or by first-class mail, to the person's last-known address. MCR 6.905(D).

5. Miscellaneous References

a. Compensation of Court-Appointed Attorneys. MCL 775.16; MCR 8.202.

b. Request for Court-Appointed Attorney and Order (form MC 222).

c. Statement of Service and Order for Payment of Court-Appointed Representative (form MC 221).

6. Procedures, Record Keeping, and Reporting for Appointment of Trial Counsel

The procedures for appointment of counsel and record keeping and reporting requirements are the same as specified for the circuit court. See Section 3-04, A, 12 and 13. Each trial court must adopt a local administrative order that describes the court's procedure for selecting, appointing, and compensating counsel who represent indigent parties in that court. MCR 8.123. See Section 3-04, A, 12.

7. Reimbursement of Court-Appointed Attorney Fees

Court costs, including costs of providing legal assistance, may only be imposed pursuant to statutes cited or a specific penal statute under which a defendant is convicted. Costs may be authorized as a condition of probation but are limited by the defendant's ability to pay. MCL 769.3, MCL 771.3(5).

If a defendant enters a plea of guilty or nolo contendere or if the court determines after a hearing or trial that the defendant is guilty, the court may impose the expenses of providing legal assistance to the defendant. MCL 769.1k(1)(b)(iv). A defendant shall not be imprisoned, jailed, or incarcerated for the nonpayment of costs ordered under MCL 769.1k unless the court determines that the defendant has the resources to pay the ordered costs and has not made a good-faith effort to do so. MCL 769.1k(10).

If a defendant is able to pay part of the cost of a lawyer, the court may require contribution to the cost of providing a lawyer and may establish a plan for collecting the contribution. MCR 6.005(C).

See also Sections 3-04, A. and 8-08, H. and MCL 769.1(8).

C. Probate Court

Court-appointed representatives in probate court include attorneys, guardians ad litem, and visitors. See MCR 8.123.

There is no statute or court rule applicable to appointment of appellate counsel. In cases where a party qualified for an attorney at the initial hearing, case law indicates that person, assuming no change in financial circumstances, is entitled to appointment of appellate counsel on appeal. *Matter of Sanchez*, 422 Mich 758 (1985).

1. Procedures, Record Keeping, and Reporting for Court-Appointed Attorneys

The procedures for appointment of counsel (see Section 3-04, A. 12. and 13.) and record keeping and reporting requirements are the same as specified for the circuit court, except that the Supreme Court may, by court rule, establish compensation to be paid for counsel of indigents and may require that counsel be appointed from a system or organization established for the purpose of providing representation in proceedings under the Mental Health Code. MCL 330.1454, MCL 330.1517, MCL 330.1615; MCR 5.732, MCR 8.123.

2. **Authority for Appointment of Attorneys** (applies to circuit court ancillary proceedings)

a. **Conservator, Protective Order – Minor**

The court may appoint an attorney for an unrepresented minor in a proceeding for appointment or removal of a conservator or for a protective order if the court determines that the minor's interest may be inadequately represented. An attorney appointed by the court to represent a minor has the powers and duties of a guardian ad litem. The court must give preference to the wishes of a minor age 14 and older. MCL 700.5213(4), MCL 700.5219(4), MCL 700.5406(1), MCL 700.5431.

b. **Guardian – Legally Incapacitated Individual**

Unless the alleged incapacitated individual has legal counsel of his or her own choice, the court must appoint a guardian ad litem to represent the person in the proceeding. If the alleged incapacitated individual has legal counsel appointed, the appointment of a guardian ad litem terminates. MCL 700.5303(3), MCL 700.5305(3)-(5), MCL 700.5310(4); MCR 5.408(A)(3).

If a petition for modification or written request for modification comes from the legally incapacitated individual and that individual does not have an attorney, the court shall immediately appoint an attorney. MCR 5.408(B)(1). If a petition for modification or written request for modification comes from some other party, the court shall appoint a guardian ad litem. If the guardian ad litem ascertains that the legally incapacitated individual contests the relief requested, the court shall appoint an attorney for the legally incapacitated individual and terminate the appointment of the guardian ad litem. MCR 5.408(B)(2). MCL 700.5306a(1).

c. **Mental Health Rules**

1) The attorney of record must represent the individual in all probate court proceedings under the Mental Health Code until the attorney is discharged by the court or until another attorney has filed an appearance on the individual's behalf. MCR 5.732(A).

2) The individual may waive an attorney only in open court and after consultation with an attorney. The court may not accept the waiver if it appears that the waiver is not voluntarily and understandingly

made. If an attorney is waived, the court may appoint a guardian ad litem for the individual. MCR 5.732(C).

d. Mental Health Code

1) Civil Admission as Mentally Ill

a) Every person who is the subject of a petition for civil admission as mentally ill is entitled to be represented by legal counsel. Counsel for the subject of the petition must be appointed within 24 hours of hospitalization or within 48 hours after receipt of a petition by the court. The court shall replace appointed counsel with counsel of individual's preference. MCL 330.1454(1), (2), (4).

b) The subject of the petition may waive the right to counsel in writing after consultation with counsel. MCL 330.1454(3).

c) Court-appointed counsel is compensated from court funds if the subject of the petition is indigent. The court determines the amount that is reasonable based on time and expenses. MCL 330.1454(5).

2) Judicial Admission of Developmentally-Disabled Persons

The individual asserted to meet the criteria for judicial admission is entitled to be represented by legal counsel in the same manner as counsel provided pursuant to MCL 330.1454. MCL 330.1517(3). See also MCR 5.732.

3) Guardianship of Developmentally-Disabled Persons

A respondent is entitled to be represented by legal counsel. Within 48 hours of receipt of a petition, the court shall appoint counsel to represent the respondent. Upon notification by the respondent or preferred counsel, the court shall replace appointed counsel with counsel preferred by respondent if preferred counsel agrees to accept the appointment. MCL 330.1615(1). If the respondent is indigent, court-appointed counsel shall be compensated from court funds in an amount which is reasonable based upon time and expenses. MCL 330.1615(4). See also MCR 5.732.

3. Appointment of Guardians Ad Litem and Visitors (also applies to circuit court ancillary proceedings)

The court shall appoint a guardian ad litem when required by law. If it deems necessary, the court may appoint a guardian ad litem to appear for and represent the interests of any person in any proceeding. The court shall state the purpose of the appointment in the order of appointment. The order may be entered with or without notice. MCR 5.121(A)(1).

The court may appoint a visitor when authorized by law. MCR 5.121(A)(2).

a. Temporary Guardian – Adult

For the purpose of an emergency hearing for appointment of a temporary guardian of an alleged legally incapacitated person, the court shall appoint a guardian ad litem unless such appointment would cause delay and the alleged legally incapacitated person would likely suffer serious harm if immediate action is not taken. MCR 5.121(A)(1), MCR 5.403(C).

b. Guardian – Adult

Upon filing a petition for appointment or removal of a guardian, the court shall appoint a guardian ad litem to represent the person who is the subject of the petition unless the alleged legally incapacitated person has legal counsel of his or her own choice. Before removing a guardian, appointing a successor guardian, modifying the guardianship's terms or terminating a guardianship, and following the same procedures to safeguard the ward's rights as apply to a petition for a guardian's appointment, the court may send a visitor to the present guardian's residence and to the place where the ward resides or is detained to observe conditions and report in writing to the court. MCL 700.5303(3), MCL 700.5310(4); MCR 5.121(A)(1), MCR 5.408(B).

c. Guardian – Minor

If, at any time in the proceeding, the court determines that the minor's interests are or may be inadequately represented, the court may appoint a lawyer-guardian ad litem to represent the minor, giving a consideration to the preference of the minor if the minor is 14 years of age or older. The court may appoint a guardian ad litem to assist the court in determining a child's best interest in a guardianship proceeding. MCL 700.5213(4),(6).

In a case in which the court determines indigence, the parent or Indian custodian has the right to court-appointed counsel in a removal,

placement, or termination proceeding. The court may, in its discretion, appoint counsel for the child upon a finding that the appointment is in the best interest of the child. If state law makes no provision for appointment of counsel in those proceedings, the court shall promptly notify the secretary upon appointment of counsel. MCL 712B.21(1). If state law does not require the appointment of a lawyer-guardian ad litem for an Indian child, the court may, in its discretion, appoint a lawyer-guardian ad litem for an Indian child upon a finding that the appointment is in the best interest of the child. MCL 712B.21(2).

d. Conservator, Protective Order – Adult

The court shall appoint a guardian ad litem to represent the subject of the petition where no private counsel has filed an appearance or the subject of the petition is mentally competent, but aged and physically infirm. The same rights and procedures in an original proceeding apply in termination proceedings. MCL 700.5406(2), MCL 700.5431.

The court may appoint a visitor to interview the individual to be protected. The visitor may be a guardian ad litem or a court officer or employee. MCL 700.5406(2); MCR 5.121(A)(2).

e. Conservator, Protective Order – Minor

The court may appoint an attorney to represent the minor if the court determines the minor's interest may be inadequately represented. The court must give consideration to the minor's choice if the minor is 14 years of age or older. An attorney appointed by the court to represent a minor has the same responsibilities as a guardian ad litem. MCL 700.5406(1); MCR 5.121.

f. Substance Abuse Treatment and Rehabilitation Programs – Minor

The court shall appoint a guardian ad litem to represent the minor for purposes of hearing on petition to determine necessity of treatment and rehabilitation, periodic program review, and hearing on objection to minor's treatment plan. MCL 330.1266; MCR 5.121.

g. Other Proceedings

At any point in a proceeding, the court may appoint a guardian ad litem to represent the interest of a minor, an incapacitated individual, an unborn or unascertained person, or a person whose identity or address is unknown, if the court determines that representation of the interest otherwise would be

inadequate. The court shall set out the reasons for appointing a guardian ad litem as a part of the record of the proceeding. MCL 700.1403(d).

The court shall appoint a guardian ad litem when required by law. If it deems necessary, the court may appoint a guardian ad litem to appear for and represent the interests of any person in any proceeding. The court shall state the purpose of the appointment in the order of appointment. The order may be entered with or without notice. MCR 5.121(A).

h. Kidney Donation by Minor

If the prospective donor does not have a guardian, the court shall appoint a guardian ad litem to protect the prospective donor's interests. MCL 700.5105.

i. Mental Health Rules

The court may appoint a guardian ad litem if the subject of a petition or respondent has waived the right to an attorney. MCR 5.121(A)(1), MCR 5.732(C).

j. Mental Health Code

The court shall appoint a guardian ad litem for an alleged developmentally-disabled person where the court determines that respondent requires a person to represent his or her best interest and to assist legal counsel. MCL 330.1616; MCR 5.121.

3-05 Jury Management

A. Introduction

Management of the jury system includes every aspect of selecting jurors and using their services. It includes such things as managing the jury board's work, devising accurate techniques for forecasting the number of jurors who will be needed, automating the jury records, and providing for the comfort and convenience of jurors during their term of service.

As with other aspects of court management, the chief judge of each trial court has the responsibility to manage the jury system. The chief judge must be committed to efficient use of court resources, including efficient use of jurors.

The court should promulgate administrative policies for effective management of the jury system. These policies should be formulated through the same consultative process involving court staff, the bar, and other interested agencies – as is used in all court policymaking.

B. Operating Responsibilities

Centralized and effective management of the jury system should be implemented. There should be full-time administration of the jury system at the top managerial level of the court, with delegation of day-to-day operating responsibilities to a clerical or administrative staff member. Operating responsibilities should include the following:

- Supervising all aspects of juror selection.
- Setting up liaison between the jury management system and other court personnel to ensure two-way information flow about anticipated trial activities and the number of jurors available.
- Integrating management of juror selection and use so that the operation of each complements the other.
- Maintaining statistical records on 1) response and qualification rates for persons sent questionnaires or summoned, 2) numbers of jurors used (and not used) daily, and 3) other statistics necessary to determine how many questionnaires to send out, how many jurors to summon, etc., in the future.
- Predicting both on a long-range and day-to-day basis the number of jurors needed at court.
- Managing the activities of jurors while at court.

- Maintaining attendance records.
- Notifying jurors to come to court.
- Preparing panels of jurors to be sent for voir dire.
- Arranging for payment of jurors.
- Planning for better management and recommending improvements when needed.

Excerpted from "Management of the Jury System," ABA Commission on Standards of Judicial Administration, by Maureen Solomon, 1975.

C. Authority

Michigan statutes and court rules governing the jury system include the following.

1. Chapter 13 of the Revised Judicature Act (RJA). MCL 600.1300 *et seq*.

2. Michigan Court Rules – MCR 2.508, MCR 2.509, MCR 2.510, MCR 2.511, MCR 2.512, MCR 2.513, MCR 2.514, MCR 2.515, MCR 2.516, MCR 3.911, MCR 5.151, MCR 5.158, MCR 5.740, MCR 6.401, MCR 6.402, MCR 6.403, MCR 6.410, MCR 6.411, MCR 6.412, MCR 6.414, MCR 6.416, MCR 6.419, MCR 6.420.

3. Code of Criminal Procedure – MCL 768.8, MCL 768.9, MCL 768.10, MCL 768.12, MCL 768.13, MCL 768.14, MCL 768.15, MCL 768.16, MCL 768.17, MCL 768.18.

4. Circuit Court Rules – The judges of each circuit court may establish rules, consistent with and necessary to implement the provisions of Chapter 13 of the RJA. MCL 600.1353.

D. Transfer of Jury Board Duties to Trial Court

1. Authority

Jury management in Michigan has changed significantly in the last 30 years. Many of the functions that had been performed manually by the jury board in each county are now being done electronically, with the assistance of court or county clerk staff under the direction of the chief circuit judge. Although the statutory authority and court practices related to jury management appear to be somewhat inconsistent, most practices by most courts fall within allowable

activities. The court should document its actual practices. In doing so, the following best practices should be considered:

a. Courts should have a policy that identifies the specific duties of the jury board and the court or county clerk staff.

b. The policy should include the method of random selection used by your court in selecting candidates for jury duty.

c. The policy should be signed by the chief circuit judge.

d. The chair of the jury board should sign an acknowledgement of the policy.

2. Specific Duties

MCL 600.1301, 600.1302, 600.1303, 600.1304, and 600.1305 outline the specific duties of the jury board in each county. In practice, however, in many counties, some or all of these duties are performed electronically or by staff of either the court or the clerk of the court. These duties include the following:

a. Mailing qualification questionnaires to individuals on the list supplied by the Secretary of State.

b. Qualifying potential jurors.

c. Summoning jurors.

MCL 600.1353 gives the judges of each circuit court the authority to establish rules necessary to carry out the provisions of this chapter and to ensure proper conduct of the jury board members. While the full extent of the provision has not been interpreted, the State Court Administrative Office recommends it be accomplished either by establishing a policy or, for courts in counties of 250,000 or more people, by developing a plan pursuant to MCL 600.1301b that ascribes these duties to court staff or by electronic process.

3. Selecting Potential Jurors

MCL 600.1311 and 600.1312 provide for the jury board to determine a key number in order to randomly select potential jurors for service. Currently, the Secretary of State already provides the combined driver's license and personal I.D. list in a random format with specific instructions on selecting a list of potential jurors.

MCL 600.1304a authorizes the jury board to use electronic and mechanical devices in carrying out its duties. Because the records are already reported by the Secretary of State in a random format, a court could choose various methods to select specific potential jurors.

E. Scheduling Practices, Use of the Jury Pool, and Panel Size

1. Scheduling Practices

Poor scheduling practices in any court can create judicial calendars filled either with trials that never go or with trials that may be adjourned because more than one case is prepared to go to trial and no judge is available to hear the overflow. In reviewing the number of jury trials a given court conducts, it is very rare that any single judge tries a case every available week. Best practices in this area include:

- Scheduling jury trials as late in the life of a civil case as possible.
- Establishing plea cut off dates in criminal trials.
- Conducting trial management conferences before the date of trial.

2. Use of the Jury Pool

Multiple judge courts can benefit from the use of the jury pool to reduce the number of jurors that must be told to report provided that their court facility has a jury assembly room capable of holding large numbers of jurors. Judges can then schedule jury trials on the same day and use overflow jurors from those not selected in one court for voir dire in another. This practice does require cooperation among the judges.

3. Panel Size

A common error many courts make is to have panel sizes larger than necessary to seat a jury in a criminal or civil case. The National Center for State Courts has a formula in their Jury Managers Toolbox courts can use to determine the appropriate panel size. Below is an example for non-capital felony cases.

Felony Jury Panel Size	
Reason persons needed	Number
Jurors	12
Alternates	2
Jurors removed for cause	6 (roughly)
Jurors removed by peremptory challenge	10
Extras for other reasons not accounted for	3 (roughly)
Total Persons Needed	33

F. Orientation Program

Many orientation programs incorporate professional quality film or slide presentations explaining clearly the nature and responsibility of jury duty. The Michigan Judicial Institute has film and other media available for use by trial courts.

G. Jury Instructions

Jury instructions should be continually monitored to ensure gender neutrality. Some jury instructions should be amended to include specific examples of the types of bias jurors must guard against and the ways in which such bias might influence their decision making. Recommendation VII-4, Gender Bias Task Force.

H. Resources

1. Juror Personal History Questionnaire Form

The state court administrator has approved a Juror Personal History Questionnaire, form MC 321b, for use by all court clerks and jury boards. The purpose of this questionnaire is to provide the judge, lawyers and litigants with information to assist in conducting effective jury selection. MCR 2.510(A). For details on completing, filing, and accessing the questionnaire, see MCR 2.510.

2. Model Local Administrative Order for Access to Questionnaire

The State Court Administrative Office has developed model procedures for providing attorneys and parties reasonable access to juror questionnaires. MCR 2.510(C)(2)(a). See the models.

Each court shall select and implement one of these procedures by local administrative order adopted pursuant to MCR 8.112(B). If the state court administrator determines that, given the circumstances existing in an individual court, the procedure selected does not provide reasonable access, the state court administrator may direct the court to implement one of the other model procedures. MCR 2.510(C)(2)(b).

If the procedure selected allows attorneys or parties to receive copies of juror questionnaires, an attorney or party may not release them to any person who would not be entitled to examine them under the rule. MCR 2.510(C)(2)(c).

3. Other Resources

Michigan resources include:

- Juror Qualification Questionnaire, form MC 321a.
- Model Civil Jury Instructions.
- Model Criminal Jury Instructions.

National resources include:

- Effective Use of Jurors (2011), National Center for State Courts.
- Jury Manager's Manual, Office of the State Courts Administrator, Tallahassee, FL.
- Jury Managers' Toolbox National Center for State Courts and State Justice Institute.
- Jury Trial Innovations, Chapter 2 – Jury Administration and Management, National Center for State Courts.
- Tripping Over Our Own Feet: Two Steps Are One Too Many in Jury Operations Paula L. Hannaford-Agor and Nicole L. Waters.

3-06 Bail Bond and Pretrial Services

A. Authority

A person charged with a crime, except as provided in Const 1963, art 1, § 15, is entitled to release on his or her own recognizance, conditional release, or release on money bail (surety, 10 percent, or cash). Michigan law further provides that a person charged with treason or murder shall not be admitted to bail under certain conditions. MCL 765.5.

Before granting an application for bail, a court shall require a cash bond or a surety other than the applicant if the applicant (1) is charged with a crime alleged to have occurred while on bail pursuant to a bond personally executed by him; or (2) has been twice convicted of a felony within the preceding 5 years. MCL 765.6a.

The court may also release a defendant subject to conditions reasonably necessary for the protection of one or more named persons, persons or, under specific circumstances involving preliminary roadside analyses, for the protection of the public. MCL 765.6b.

No attorney may post a bond on behalf of a criminal defendant. MCL 765.8.

Bonds are not subject to garnishment or attachment. MCL 765.16.

See also Sections 1-05, 8-05, and 8-06.

B. Types of Bond/Release

The following statutes and court rules provide more specific information regarding bail/bond and release of persons charged with crimes/offenses.

- Michigan Motor Vehicle Code. MCL 257.727.
- Support and Parenting Time Enforcement Act (civil contempt). MCL 552.632.
- Civil Arrest. MCL 600.6080.
- Nonresident Traffic Offenses and Misdemeanors; Guaranteed Appearance Certificate. MCL 257.728(5), MCL 257.749.
- Code of Criminal Procedure – Bail. MCL 765.1 *et seq*.
- Extradition – Bail. MCL 780.14, MCL 780.15.
- Bail for Traffic Offenses or Misdemeanors. MCL 780.61.
- Release of Misdemeanor Prisoners. MCL 780.581 *et seq*.
- Release of Defendant Subject to Protective Conditions. MCL 765.6b.
- Violation of Condition of Release; Arrest Without Warrant; Duties of Peace Officer; Release on Interim Bond. MCL 764.15e.
- Posting a Driver's License in Lieu of Bond for Ordinance Violation or a Misdemeanor Punishable by Imprisonment for Not More Than 1 Year or a Fine, or Both. MCL 780.64(4).

- Security for cost may be required when a citizen files a criminal complaint. MCR 6.101(C); MCL 764.1.
- Interim Bail. MCR 6.102(D), (F); MCL 780.581 *et seq.*
- Habeas Corpus Proceedings. MCR 3.303.
- Bonds. MCR 3.604.
- Collection of Penalties, Fines, Forfeitures, and Forfeited Recognizance. MCR 3.605.
- Contempt Outside Immediate Presence of Court. MCR 3.606.
- Proceedings Involving Juveniles; Preliminary Hearing. MCR 3.935, MCR 3.951(A)(2)(c).
- Pretrial Release. MCR 6.106, MCR 6.610, MCR 6.909.
- Probation Violations. MCR 6.445(B)(4).

C. Alternative Bond Documents

1. Driver's License

Law enforcement or the court may require a person to surrender a driver's license as security for the defendant's appearance in court. Upon conclusion of trial or imposition of sentence, as applicable, the court shall return the license to the defendant unless other disposition of the license is authorized by law. MCL 780.64, MCL 257.749, MCL 765.6; MCR 6.106(D)(2), (F).

2. Guaranteed Appearance Certificate

In lieu of a driver's license, a person may leave a guaranteed appearance certificate with the law enforcement officer or the court. The certificate must contain a printed statement that a surety company authorized to do business in Michigan guarantees the appearance of the person whose signature appears on the card or certificate, and that if the defendant fails to appear in court, the company will pay any fine, costs, or bond forfeiture imposed on the person not to exceed $100. MCL 257.728, MCL 257.749.

3. Passport

As a condition of pretrial release, the court may require surrender of a passport. MCR 6.106(D)(2)(f)).

D. Forfeiture

If a defendant or juvenile fails to comply with the conditions of the bail bond, the court can order the bail bond forfeited and subsequently render judgment for the state or local unit of government against the accused. MCL 765.15; MCR 3.935(F)(5), MCR 6.106(I)(2). See SCAO ADM Memo 2017-01 for details of the surety bond process.

See form MC 218, Order Revoking Release and Forfeiting Bond, Notice of Intent to Enter Judgment and form MC 238, Judgment after Bond Forfeiture. See also the Bond Disbursement Procedure.

E. Return of Bond

If a defendant or juvenile has performed the conditions of a 10 percent bail bond and is discharged from all obligations in the case, the court is required to return 90 percent of the deposited sum, except as provided in MCL 780.66(8) and retain as costs the remaining 10 percent. If a cash or surety bond was deposited, the court must return the full amount. For further information on return of 10 percent bail, see MCL 780.66(6). MCR 3.935(F)(4)(b), MCR 6.106(I)(1).

F. Application of Bail Money to Payments of Fines and Costs

If a convicted defendant personally deposited bail money, prior to returning the money, any deposited sum must first be applied to fines and costs and the balance, if any, returned. MCL 765.15(2). However, in the case of a 10 percent bond, the 10 percent retention provided for at MCR 6.106(I)(1) is retained prior to determining the balance for further distribution. MCR 6.106(I)(3).

In juvenile proceedings, if disposition of a case imposes reimbursement of costs, bail money posted by a parent must first be applied to the amount of reimbursement and costs, and the balance, if any, returned. MCR 3.935(F)(4)(a).

In support cases, the court must use information from the show-cause hearing to determine how much of the money is to be paid to a recipient of support. The balance of the bond is to be returned to the support payer. MCL 552.632(4).

G. Bond/Bail Pending Appeal

If an appeal is taken by or on behalf of the people of the state of Michigan, the defendant shall be permitted to post bail on his or her own recognizance, pending the prosecution and determination of the appeal, unless the trial court determines and certifies that the character of the offense, the respondent, and the questions involved in the appeal, render it advisable that bail be required. MCL 765.7.

H. Bail Bondsman

The circuit judge is required to annually compile a list of persons authorized to act as bail bonds persons in the county. The list must be sent to jail and the place of custodial detention within the county. MCL 750.167b(4). Also, if the court has a website, it must post the list on the website as required by the State Court Administrative Office website standards. See also Section 8-03. Several courts have adopted administrative orders that establish local policies to assist in compiling the list. Contact the State Court Administrative Office for further information.

MCR 3.604 applies to bonds given under the Michigan Court Rules and the Revised Judicature Act, unless a rule or statute clearly indicates that a different procedure is to be followed.

A surety's obligation regarding the defendant is terminated at sentence. *People v Brow*, 253 Mich 140 (1931). The court's right to refuse a surety bond without the power of attorney requirement being met is discussed in Attorney General Opinion 3139 (7/12/58). A judge or magistrate may require a surety to pledge real estate owned by the surety and located in the county in which the court sits. MCL 765.20 – MCL 765.24.

I. Third-Party Bonds

A third party may post a cash bond on behalf of a defendant. The third party may surrender the defendant to the court in lieu of continuing the bond, or prior to bond forfeiture. MCL 765.18, MCL 765.26. Bonds posted by a third party are to be returned after sentencing. *People v Brow*, 253 Mich 140 (1931).

J. Interest Bearing Account

If bond is placed in an interest-bearing account, the interest accrued follows the disposition of the bond (for example, interest on an individual bond is returned or forfeited, whatever the disposition of the bond is). MCL 765.17.

K. SCAO-Approved Forms

The following SCAO-approved forms can be used for bail bond related activities.

- Order Revoking Release and Forfeiting Bond, Notice of Intent to Enter Judgment – MC 218
- Order and Receipt for Driver's License Held as Security – MC 224
- Judgment after Bond Forfeiture – MC 238
- Removal of Entry from LEIN – MC 239
- Order for Pretrial Release/Custody – MC 240
- Bond – MC 241

Case Management

- Cash Performance Bond (Civil) – FOC 4
- Bond for Appearance – JC 08
- Authorization for Return of Bond – JC 31

3-07 Case Management Information Reports

A. Introduction

The caseflow management system provides the court with a way to record, use, and manage the information necessary to move its cases to disposition in a timely and efficient manner. As such, the system must provide the means to monitor individual case progress and to monitor the court's success in meeting disposition standards and time guidelines. At a minimum, the case management system should provide the capability to: 1) monitor case progress; 2) generate various reports for measuring inventory, delay, activity, and scheduling practices, and 3) generate reports showing compliance with time guidelines.

There are two basic types of caseflow management reports: 1) individual case progress reports that focus on micro measurements to show whether case managements goals are being met in individual cases, and 2) performance indicator reports that focus on macro measurements to determine, after the fact, whether caseload goals were met. Of these reports, courts are required to provide the State Court Administrative Office with various performance indicator reports. These reports are discussed below. For further details about case management reports, see Chapter 5 of the Caseflow Management Guide.

Of particular importance are the trial court caseload reports. They are a vital source of information for the following purposes.

1. Policy, planning, control, and evaluation of individual caseloads regarding assignment, scheduling, and other case management events and identifying trends.

2. The basis for resource allocation and budget requests, including providing projections for statewide funding and assisting in resolving funding disputes.

3. Making recommendations for judicial resources.

4. Comparing caseload and activities, providing feedback to trial courts, and providing information to the National Center for State Courts for national analysis.

5. Responding to inquiries from legislative/county government, judicial and other interest groups, and providing general information to the public regarding court activities.

6. Compiling the Annual Report of the State Court Administrative Office to the Supreme Court regarding the caseload of the trial courts.

B. Required Reporting to the State Court Administrative Office

The state court administrator, under the Supreme Court's supervision and direction, shall:

1. collect and compile statistical and other data, make reports of the business transacted by the courts, and transmit the reports to the Supreme Court so that the statistics and other data may be used in taking proper action in the administration of justice; and

2. obtain reports from courts, and the judges, clerks, and other officers of the courts, in accordance with rules adopted by the Supreme Court on cases and other judicial business conducted or pending in the courts, and report on them to the Supreme Court.

   MCR 8.103(5),(7).

See references to various SCAO-approved forms in the information that follows. See also Section 1-05 and 1-07 for general information about reporting requirements to the SCAO and Section 3-08 for a list of reports to state agencies. These lists are also available on the website, along with some reporting forms. See the website for caseload reporting materials are also available.

1. Delay in Criminal Proceedings Report

Control of the trial calendar is vested in the trial court. Each judge shall electronically submit a quarterly report of delayed cases through the Delay in Criminal Proceedings (DCP) application on the Michigan Court Application Portal (MCAP). The report will include cases pending at the end of the quarter and cases disposed during the quarter. Cases to report include:

a. felony cases in which there has been a delay of more than 301 days between the order binding the defendant over to circuit court and adjudication. MCR 8.110(C)(5)(a).

b. misdemeanor cases and cases involving local ordinance violations that have criminal penalties in which there has been a delay of more than 126 days between the date of the defendant's first appearance on the warrant and complaint or citation and the adjudication. MCR 8.110(C)(5)(b).

In computing the 126-day and 301-day periods, the court shall exclude periods of delay between the time a preadjudication warrant is issued and a defendant is arraigned; between the time a defendant is referred for evaluation to determine whether the defendant is competent to stand trial and the receipt of the report; during the time a defendant is deemed incompetent to stand trial; and during the time an

order is in effect that stays the disposition or proceedings of the case pending interlocutory appellate review. MCR 8.110(C)(5)(c).

2. Delay in Matters Submitted to Judge

No later than seven days after the first business day of January, April, July, and October of each year, every trial judge shall use the Delay in Matters Submitted (DMS) application on MCAP to report all matters submitted for which a decision on that matter has been delayed or remains undecided for more than 56 days. Both pending and disposed cases shall be reported. **NOTE:** In probate court, matters under advisement must be decided within 30 days per statute. MCL 600.848(2). Decisions regarding termination of parental rights must be made within 28 days after taking final proofs. MCR 3.977(I)(1).

A report is required regardless of whether there is any matter to report. The report shall include matters from another court to which the judge has been assigned and all matters under consideration by referees. Each judge shall provide a copy of the report to the chief judge.

See a list of required judicial reports.

3. Reporting Requirements in Guardianship and Conservatorship Proceedings

Probate courts must report to the SCAO semi-annually on the last business day of January and July of each year all guardianship and conservatorship cases where a deficiency exists for more than 182 days, unless the deficiency was cured or a special or successor fiduciary was appointed. Documents that should be monitored for deficiencies are an inventory, an account, a report, and an annual verification of funds on deposit in a restricted account. As prescribed by MCR 5.409(A), the first day of the deficiency is the day after a document was due.

See details on reporting requirements in guardianship and conservatorship proceedings. See form SCAO 65, Deficiencies in Guardianship/Conservatorship Administration.

4. Trial Court Caseload Collection Reports

a. SCAO 18, District Court Caseload Report
b. SCAO 22, Probate Court Caseload Report
c. SCAO 31, Circuit Court Caseload Report
d. SCAO 66, Permanency Indicators Reports, Family Division Circuit Court

Caseload data from report forms SCAO 18, SCAO 22, and SCAO 31 is collected electronically through a web-based application called the Caseload Reporting System

(CRS) and caseload data from SCAO 66 is collected electronically through a web-based application called the Permanency Indicator Reports (PIR) accessible through the Michigan Court Application Portal (MCAP). These systems have features other than data collection.

3-08 Case Disposition Reports to State and Federal Agencies

In addition to caseload and case monitoring reports submitted to SCAO (Section 3-07), courts are required to submit a number of case disposition reports to state agencies. MCR 8.119.

Report Name	Submitted By	State Agency	Authority
Abstract Certification BDVR 103	Court Clerk	Department of State Abstract Processing Unit 7064 Crowner Drive Lansing, MI 48918 517-322-1598	MCL 257.732
Adjudication and Sentence Information of certain listed offenses	Court Clerk	Department of Education Sup. of Public Instruction P.O. Box 30008 Lansing, MI 48909	MCL 380.1535a
Adoption Records DCH 0854 (10/13)	Court Clerk	MDHHS Vital Records Changes P.O. Box 30721 Lansing, MI 48909 517-335-9265	MCL 333.2829
Complaints, Judgments, Decrees, Orders filed, Consumer Protection Act	Court Clerk	Attorney General Consumer Protection Division P.O. Box 30213 Lansing, MI 48909 517-335-0855	MCL 445.912
Crime Victim Rights Assessment Report CVR 606 (3/16)	Court Clerk	MDHHS Crime Victim Services P.O. Box 30037 Lansing, MI 48909 517-373-7373	MCL 780.905
Criminal and Juvenile Offense Dispositions and Orders on Violations of Personal Protection Orders	Court Clerk	Michigan State Police Crim. Justice Info. Center P.O. Box 30634 Lansing, MI 48909 517-241-0600	MCL 769.16a, MCL 712A.18(11)

Case Management

Report Name	Submitted By	State Agency	Authority
Delayed Registration of Birth Forms DCH-1031 (11/15) DCH-0855 (10/13)	Probate Register	MDHHS Vital Records Changes PO Box 30721 Lansing, MI 48909 517-335-9265	MCL 333.2830, MCL 333.2832,
Divorce Records DCH-0838 (8/15)	Court Clerk	MDHHS Vital Records Registration PO Box 30691 Lansing, MI 48909 517-335-8712	MCL 333.2864
Fee Transmittal for State of Michigan District/Municipal Court Offices, 295 (5/16)	Court Clerk	Dept. of Treasury Office of Financial Services PO Box 30788 Lansing, MI 48922 517-636-5386	1919 PA 71 and other various laws
Fee Transmittal for State of Michigan Probate and Circuit Courts, 57 (5/16)	Court Clerk	Dept. of Treasury Office of Financial Services PO Box 30788 Lansing, MI 48922 517-636-5386	1919 PA 71 and other various laws
Friend of the Court Title IV-D Cooperative Reimbursement Expenditure Report, DHS 286 (4/06)	Friend of Court	MDHHS Office of Child Support 235 South Grand Avenue Lansing, MI 48909 1-866-540-0008	Title IV-D Social Security Act 42 USC 654b
Friend of the Court Title IV-D Medical Support Reimbursement Expenditure Report, FDHS 286a (4/06)	Friend of Court	MDHHS. Office of Child Support 235 South Grand Avenue Lansing, MI 48909 1-866-540-0008	Title IV-D Social Security Act
Friend of the Court Title IV-D Reinvestment Of Incentives Quarterly Report, DHS 192 (4/06)	Friend of Court	MDHHS Office of Child Support 235 South Grand Avenue Lansing, MI 48909 1-866-540-0008	Title IV-D Social Security Act 45 CFR 305.35

Case Management

Report Name	Submitted By	State Agency	Authority
LEIN Reporting PCM 214, PC 631, MC 207	Court Clerk	Michigan State Police (recipient is generally a local contact)	MCL 330.1464a MCL 700.5107 MCL 769.16b
Medical Malpractice Judgments LHI-700 (8/86)	Court Clerk	LARA Allegations Section P.O. Box 30670 Lansing, MI 48909 517-335-7289	MCL 333.16243(2)
Monthly Report on Foster Care DHS 207 (online)	Circuit Judge	Dept. of Health & Human Svcs. (reported through SACWIS)	Child Care fund Administrative Rule R400.2001 *et seq*.
Name Change Orders PC 52	Court Clerk	Michigan State Police	MCL 711.1(3)
Order Granting Custody to Putative Father DCH ? (date?)	Court Clerk	Vital Records Registration Registration Unit P.O. Box 30691 Lansing, MI 48909 517-335-8712	MCL 710.39
Paternity DCH 0738 (3/16) DCH 0740 (6/99)	Court Clerk	MDHHS Vital Records Registration P.O. Box 30691 Lansing, MI 48909 517-335-8712	MCL 722.717
Paternity DCH 0839 (10/13)	Court Clerk	MDHHS Vital Records Changes P.O. Box 30721 Lansing, MI 48909 517-335-9265	
Sex Offender Registration DD-004a	Probation Clerk or Court Clerk	Local arresting agency or Michigan State Police local post	MCL 28.724
Traffic Offense Abstract DS1-22A (7/05) DS1-22B, DSI-62, and BDVR-103	Court Clerk	Department of State Abstract Processing Unit 7064 Crowner Drive Lansing, MI 48918 517-322-1598	MCL 257.321a MCL 257.732

Records Management

4-01 Introduction

A. Records Management Program

1. Role of the Chief Judge and Court Administrator

The court, under the direction of the chief judge, has responsibility for the maintenance of all records necessary to adequately support the business of the court, which is accomplished through the assistance of various staff support, including, but not limited to, court administrators, registers of probate, clerks of the court, and friends of the court. To that end, every court should have a program for managing the creation, maintenance, and disposition of all court records.

2. Function

A records-management program governs the control of records throughout the court for the life cycle of those records, including the creation, distribution, use, retention, storage, retrieval, protection, preservation, and final disposition of each type of record. The primary functions of records management are records retention and scheduling, inactive records storage, records security, document storage and retrieval, and reproduction and preservation systems. Any records management program should also be considered in light of caseflow management practices because the caseflow management system cannot be developed and sustained without an effective record keeping system. For a better understanding of this relationship, see Section 3-07 and the *Caseflow Management Guide*.

3. Role of the Clerk of the Court

The clerk of the court is required to comply with the records standards in MCR 8.119 and as otherwise prescribed by the Michigan Supreme Court and the State Court Administrative Office (SCAO). The clerk must keep records in the form and style that the trial court prescribes, as well as in accordance with SCAO standards. Reference to the "clerk" in the Michigan Court Rules applies to the register. MCR 5.001(B)(1). See Section 4-02 for details.

4. Definition of Record

Court records are defined in MCL 600.1428 and Michigan Court Rules 1.109 and 8.119 and can exist in a wide variety of formats, including paper, photographs, digital images, e-mail messages, databases, etc. As used in MCL 600.1428, "record" means information of any kind that is recorded in any manner and that has been created by a court or filed with a court in accordance with Michigan Court Rules. See Section 4-02 for details.

5. Policies, Standards, and Procedures

a. Local Level

At each stage of activity in the life cycle of a record, someone must be responsible for controlling the record. To produce effective control, a court's records-management program should include local policies, standards, and procedures in addition to the policies and standards established by the state. The type of control a trial court uses depends on the organization of the court and the practical needs of those who use the records. Courts may choose a centralized file system, a decentralized file system, or a decentralized file system with centralized control. There are benefits and advantages to each type of file system, so the decision should be made only after conducting a records inventory and procedural analysis.

b. State Level

The State Court Administrative Office is required to establish and maintain records management policies and procedures for the courts, including a records retention and disposal schedule. MCL 399.5, MCL 600.1428; MCR 8.119(K). These policies, standards, and procedures are established by way of the approved *Records Retention and Disposal Schedule*, the *Michigan Trial Court Case File Management Standards*, the *Michigan Trial Court Guidelines and Standards for Digital Imaging*, and various court rules, most notably MCR 1.109, MCR 3.925, MCR 8.108, and MCR 8.119.

6. Training and Education

Education and training in the area of records management is available through the Institute for Court Management. The Michigan Department of Technology, Management and Budget offers basic records management services information.

The National Center for State Courts (NCSC) has also published *A Guide to Court Records Management*. Contact NCSC for more information on how to order the guide and for information on document management in general.

B. Managing Case Files

Standards for managing trial court case files or records, as defined in MCR 8.119(D) and (E), were established pursuant to Michigan Supreme Court Administrative Order 1999-4. and are published as *Michigan Trial Court Case File Management Standards*. These standards identify both the basic elements for managing case file records within the trial

courts and the basic roles that various staff have with regard to that management. They provide the trial courts with minimum criteria and procedures for achieving systematic control over all of the recorded information relating to case files, from case initiation to permanent retention or destruction of the records.

C. Managing Other Court Records

Other court records, which may or may not be under the responsibility of the clerk of the court, include court recordings as defined in MCR 8.119(F) and administrative and fiscal records or nonrecords as defined in MCR 8.119(G). For the most part, these records are also regulated by the *Michigan Trial Court Case File Management Standards*, but there are some administrative records and nonrecords that would be managed by the court administrator, judges, and others. Examples are personnel files and job applications, fiscal records not related to cases, audit reports, operational records, certain non-case records (i.e., nonpublic search warrants), presentence reports, judges files (nonrecords), and certain reference materials for case files (nonrecords). These records or nonrecords are included in the *General Records Retention and Disposal Schedule*.

D. Managing Forms

Courts with large volumes of paper work will benefit more by managing forms than those with smaller volumes. However, all courts can benefit from procedures that ensure that the proper individuals or divisions are kept up-to-date on forms-related information relating that is pertinent to their daily tasks.

At a minimum, each court must have one designated forms contact person who serves as the primary contact to receive from the State Court Administrative Office the original camera-ready copies of SCAO-approved forms and related correspondence. This person also serves as the telephone contact person to coordinate forms requests, questions, and other forms-related issues between the State Court Administrative Office and the court. See Section 2-02 for details about SCAO-approved forms.

If a court creates local forms, the following suggestions may be of benefit.

1. Maintain updated files on the forms including indexing and inventory records.

2. Establish procedures for ordering, stocking, and maintaining inventory of forms.

3. Establish procedures for distributing forms and related correspondence to proper individuals/divisions within the court.

4. Establish other policies and procedures that aid the court in managing both SCAO-approved forms and internally developed forms.

4-02 Records Kept By Courts

A. Court Records Defined

Court records are defined in MCR 8.119 and MCR 1.109. Court records are recorded information of any kind that has been created by the court or filed with the court in accordance with Michigan Court Rules. Court records may be created using any means and may be maintained in any medium authorized by these court rules provided those records comply with other provisions of law and these court rules. MCR 1.109(A)(1).

Records include, but are not limited to:

a. documents, attachments to documents, exhibits, discovery materials, and other materials filed with the clerk of the court; and

b. documents, recordings, data, and other recorded information created or handled by the court, including all data produced in conjunction with the use of any system for the purpose of transmitting, accessing, reproducing, or maintaining court records.

For purposes of MCR 1.109(A)(1)(a):

a. documents include, but are not limited to, pleadings, orders, and judgments.

b. recordings refer to audio and video recordings (whether analog or digital), stenotapes, log notes, and other related records.

c. data refers to any information entered in the case management system that is not ordinarily reduced to a document, but that is still recorded information.

d. other recorded information includes, but is not limited to, notices, bench warrants, arrest warrants, and other process issued by the court that do not have to be maintained on paper or digital image.

Discovery materials or exhibits not filed with the clerk of the court that are offered into evidence pursuant to MCR 2.518 or MCR 3.930 are not court records even though received and maintained by the court. MCR 1.109(A)(2).

Documents are defined in MCR 1.109(B). A document means a record produced on paper or a digital image of a record originally produced on paper or originally created by an approved electronic means, the output of which is readable by sight and can be printed to paper.

B. Filing

1. Filing Defined

Pleadings and other materials filed with the court as required by these rules must be filed with the clerk of the court in accordance with standards prescribed by MCR 1.109(C), except that the judge to whom the case is assigned may accept materials for filing when circumstances warrant. A judge who does so shall note the filing date on the materials and immediately transmit them to the clerk. It is the responsibility of the party who presented the materials to confirm that they have been filed with the clerk. If the clerk records the receipt of materials on a date other than the filing date, the clerk shall record the filing date on the register of actions. MCR 2.107(G).

2. Filing Standards

All pleadings and other documents prepared for filing in the courts of this state must comply with MCR 8.119(C) and be filed on good quality 8½ by 11 inch paper or transmitted through an approved electronic means or created electronically by the court and maintained in a digital image. The print must be no smaller than 10 characters per inch (nonproportional) or 12-point (proportional), except with regard to forms approved by the State Court Administrative Office. MCR 1.109(C)(1).

All other materials submitted for filing shall be prepared in accordance with this subrule and standards established by the State Court Administrative Office. An attachment or discovery material that is submitted for filing shall be made part of the public case file unless otherwise confidential. MCR 1.109(C)(2).

All original documents filed on paper may be reproduced and maintained by the court as a digital image in place of the paper original in accordance with standards and guidelines established by the State Court Administrative Office. MCR 1.109(C)(3).

A clerk of the court may reject nonconforming documents as prescribed by MCR 8.119. MCR 1.109(C)(4).

3. Filing of Documents and Other Materials

The clerk of the court shall endorse on every document filed with the court the date on which it is filed. Documents and other materials filed with the clerk of the court must comply with Michigan Court Rules and Michigan Supreme Court records standards. The clerk of the court may only reject documents that do not meet the following minimum requirements:

a. standards prescribed by MCR 1.109,

b. legibility and language as prescribed by MCR 2.113(B) and MCR 5.113,

c. captioning prescribed by MCR 2.113(C)(1) and MCR 5.113,

d. signature prescribed by MCR 2.114(C) and MCR 5.114, and

e. the filing fee is not paid at the time of filing, unless waived or suspended by court order.

MCR 8.119(C).

C. Case Records Kept by All Court Clerks

The clerk of the court shall comply with the records standards in MCR 1.109, MCR 8.119, and as otherwise prescribed by the Michigan Supreme Court. MCR 8.119(C). The clerk of the court shall keep the following case records in accordance with the court rules, Michigan Supreme Court records standards, and local court plans. (Note: Reference to the "clerk" in the Michigan Court Rules also applies to the register in probate court proceedings.) MCR 5.001(B)(1).

Documents and other materials made confidential by court rule, statute, or order of the court pursuant to MCR 8.119(I) must be designated as confidential and maintained to allow only authorized access. In the event of transfer or appeal of a case, every rule, statute, or order of the court pursuant to subrule (I) that makes a document or other materials in that case confidential applies uniformly to every court in Michigan, irrespective of the court in which the document or other materials were originally filed.

1. Indexes and Case Files MCR 8.119(D)(1)

The clerk of the court shall keep and maintain records of each case consisting of a numerical index, an alphabetical index, a register of actions, and a case file in such form and style as required by the Michigan Trial Court Case File Management Standards.

Each case shall be assigned a case number on receipt of a complaint, petition or other initiating document. The case number shall comply with MCR 2.113(C)(1)(c) or MCR 5.113(A)(1)(b)(ii) as applicable. In addition to the case number, a separate petition number shall be assigned to each petition filed under the Juvenile Code as required by MCR 5.113(A)(1)(b)(ii). The case number (and petition number if applicable) shall be recorded on the register of actions, file, numerical index, and alphabetical index.

The records shall include the following characteristics.

a. *Numerical Index*. The clerk shall maintain a numerical index as a list of consecutive case numbers on which the date of filing and the names of the parties are recorded. The index may be maintained either as a central index for all cases filed in the court or as separate lists for particular types of cases or particular divisions of the court.

b. *Alphabetical Index*. The clerk shall maintain a central alphabetical index or separate alphabetical indexes for particular types of cases or particular divisions of the court on which the date of filing, names of all parties, and the case number are recorded.

c. *Register of Actions*. The clerk shall keep a case history of each case, known as a register of actions. The register of actions shall contain both pre- and post-judgment information. When a case is commenced, a register of actions shall be created. The case identification information in the alphabetical index shall be entered on the register of actions. In addition, the following shall be noted chronologically on the register of actions as it pertains to the case:

(i) the offense (if one);

(ii) the judge assigned to the case;

(iii) the fees paid;

(iv) the date and title of each filed item;

(v) the date process was issued and returned, as well as the date of service;

(vi) the date of each event and type and result of action;

(vii) the date of scheduled trials, hearings, and all other appearances or reviews, including a notation indicating whether the proceedings were heard on the record and the name and certification number of the court reporter or recorder present;

(viii) the orders, judgments, and verdicts;

(ix) the judge at adjudication and disposition;

(x) the date of adjudication and disposition; and

(xi) the manner of adjudication and disposition.

Each notation shall be brief, but shall show the nature of each item filed, each order or judgment of the court, and the returns showing execution. Each notation shall be dated with not only the date of filing, but with the date of entry and shall indicate the person recording the action.

d. *Case File*. The clerk of the court shall maintain a paper and/or electronic file for each action, bearing the case number assigned to it, in which the clerk shall keep all pleadings, process, written opinions and findings, orders, and judgments filed in the action. Additionally, the clerk shall keep in the file all other materials prescribed by court rule, statute, or as ordered by the court to be filed with the clerk of the court. If other records of a case file are maintained separately from the file, the clerk shall keep them as prescribed by trial court case file management standards.

Each notation shall be brief, but shall show the nature of each item filed, each order or judgment of the court, and the returns showing execution. Each notation shall be dated with not only the date of filing, but with the date of entry and shall indicate the person recording the action.

MCR 8.119(D)(1)(c).

2. Calendars

The clerk may maintain calendars of actions. A calendar is a schedule of cases ready for court action that identifies times and places of activity. MCR 8.119(D)(2).

3. Journals

Except for recording marriages, journals shall not be maintained. MCR 8.119(D)(3)(a).

D. Other Case Records

The clerk or other persons designated by the chief judge of the court shall keep in the manner prescribed by the court rules, other materials filed with or handled by the court for purposes of case processing, including but not limited to wills for safekeeping, case evaluations, exhibit logs, probation files, and friend of the court records. MCR 8.119(E). See also Sections 5-09, 5-12, 5-16, and 5-19.

E. Court Recordings, Log Notes, Jury Seating Charts, and Media

Court recordings, log notes, jury seating charts, and all other records such as tapes, backup tapes, discs, and any other medium used or created in the making of a record of proceedings and kept pursuant to MCR 8.108 are court records and are subject to access in accordance with subrule (H)(2)(b). MCR 8.119(F).

1. Records Kept by Court Reporter/Recorder

All records, as defined in MCR 8.119(F) and regardless of format, that are created and kept by the court reporter or recorder belong to the court, must remain in the physical possession of the court, and are subject to access in accordance with MCR 8.119(H). The court reporter/recorder who takes the testimony on the trial or the hearing of any case shall prefix the record of the testimony of each witness with the full name of the witness and the date and time the testimony was taken. At the conclusion of the trial of the case, the reporter/recorder shall secure all of the records and properly entitle them on the outside, and shall safely keep them in the court according to the *Michigan Trial Court Case File Management Standards*. If the court reporter or recorder needs access to the records for purposes of transcribing off-site, the reporter or recorder may take only a reproduction of the original recording, which must be returned to the court upon filing of the transcript. MCR 8.108(C). See also Section 8-04.

2. Transfer of Records to Clerk of Court

If the court reporter/recorder dies, resigns, is removed from office, or leaves the state, records he or she created and kept in each case pursuant to MCR 8.108(C) must be transferred to the clerk of the court in which the case was tried. The clerk shall safely keep the records in accordance with the *Michigan Trial Court Case File Management Standards* and MCR 8.119(F). On order of the court, a transcript shall be made from the records and filed as a part of the public record in the case. See also Sections 5-09, 5-12, 5-16, 5-19, and 8-04. MCR 8.108(D).

F. Other Court Records

All court records not included in MCR 8.119(D), (E), and (F) are considered administrative and fiscal records or nonrecord materials and are not subject to public access under MCR 8.119(H). These records are defined in the approved records retention and disposal schedule for trial courts. MCR 8.119(G).

4-03 Public Access to Court Case Records

Except as otherwise provided in MCR 8.119(F), only case records as defined in MCR 8.119(D) are public records, subject to access in accordance with these rules. The clerk may not permit any case record to be taken from the court without the order of the court. MCR 8.119(H).

A. Right of Public Inspection

A court may provide access to the public information in a register of actions through a publicly accessible website. However, all other public information in its case records may be provided through electronic means only upon request. For information on nonpublic records, see Section 4-03, B.

The court may provide access to any case record that is not a document, as defined by MCR 1.109(B), if it can reasonably accommodate the request.

Any materials filed with the court pursuant to MCR 1.109(C)(2), in a medium in which the court does not have the means to readily access and reproduce those materials, may be made available for public inspection using court equipment only. The court is not required to provide the means to access or reproduce the contents of those materials if the means is not already available. MCR 8.119(H).

Unless access to a case record or information contained in a record as defined in MCR 8.119(D) is restricted by statute, court rule, or an order entered pursuant to MCR 8.119(I), any person may inspect that record and may obtain copies as provided in MCR 8.119(J). In accordance with MCR 8.119(J), the court may collect a fee for the cost of this service, including the cost of providing the new record in a particular medium. MCR 8.119(H)(1).

Restrictions to access to juvenile case records of the family division of circuit court is defined in MCR 3.903(A)(3), (8), and (25), and MCR 3.925(D). See also MCL 712B.11.

Access to friend of the court records is regulated by MCR 3.218 rather than MCR 8.119. See Model Order for Access to Friend of the Court Records (LAO 1).

1. Access Fees

A court may not charge an access or reproduction fee for a case record that the court is required by law or court rule to provide without charge to a person or other entity, irrespective of the medium in which the case record is retained, the manner in which access to the case record is provided, and the technology used to create, store, retrieve, reproduce, and maintain the case record. MCR 8.119(J)(1).

The court may provide access to its public case records in any medium authorized by the Records Reproduction Act (MCL 24.401 to 24.403). If a court maintains its public records in electronic format only:

a. the court may not charge a fee to access those case records when access is made on-site through a public terminal or when a verbal request for public information is made on-site to the clerk.

b. the court or a contracted entity may charge a fee, **in accordance with Supreme Court order**, to access those case records when the access is made off-site through a document management, imaging, or other electronic records management system.

2. Providing Copies

If a person wishes to obtain copies of documents in a file, the clerk shall provide copies upon receipt of the actual cost of reproduction. MCR 8.119(J)(3)(b).

When providing copies, the clerk shall redact any social security numbers on copies of documents filed on or after March 1, 2006. This does not apply to true or certified copies or copies being used for purposes for which the social security number was intended. See Michigan Supreme Court Administrative Order 2006-2.

a. Authorized Mediums for Copying Records

Reproduction of a case record means the act of producing a copy of that record through any medium authorized by the Records Reproduction Act MCL 24.401 - MCL 24.403. MCR 8.119(J)(3).

b. Copy Fees

A court may charge only for the actual cost of labor and supplies and the actual use of the system, including printing from a public terminal, to reproduce a case record and not the cost associated with the purchase and maintenance of any system or technology used to store, retrieve, and reproduce a case record. MCR 8.119(J)(3)(a).

Except as otherwise directed by statute or court rule, a standard fee may be established, pursuant to MCR 8.119(H)(2), for providing copies of documents on file. MCR 8.119(J)(3)(c).

3. Creating New Records

A court is not required to create a new record out of its existing records. If a court creates a new record, the clerk shall provide access to the new record upon receipt of the actual cost of creating the record. MCR 8.119(J)(4)(c).

a. New Record Defined

A new record means the compilation of information into a format that does not currently exist or that cannot be generated electronically using predefined formats available through a court's case management system. Providing access to documents or furnishing copies of documents in an existing file does not constitute creation of a new record, even when the output appears in a format different than the format of the original record or document because the output is the result of predefined formats. MCR 8.119(J)(4).

b. Confidentiality

A court may create a new record or compilation of records pertaining to case files or case-related information on request, provided that the record created or compiled does not disclose information that would otherwise be confidential or restricted by statute, court rule, or an order entered pursuant to MCR 8.119(I). MCR 8.119(J)(4)(a).

c. Fees

A court may charge only for the actual cost of labor and supplies and the actual use of the system to develop, generate, and validate the accuracy of a new record and not the cost associated with the purchase and maintenance of any system or technology used to store, retrieve, and reproduce the information or documents for creating a new record. MCR 8.119(J)(4)(b).

4. Local Administrative Order Regulating Access

Every court shall adopt an administrative order pursuant to MCR 8.112(B) to:

a. make reasonable regulations necessary to protect its public records and prevent excessive and unreasonable interference with the discharge of its functions;

b. establish a policy for whether to provide access for records defined in MCR 8.119(F) and if access is to be provided, outline the procedure for accessing those records;

c. specify the reasonable cost of reproduction of records provided under MCR 8.119 (J); and

d. specify the process for determining costs under MCR 8.119(J).

See Model LAO 8, Access, Inspection, Reproduction, and Creation of Records.

B. Handling Inquiries Regarding Nonpublic Records

The court's response to inquiries regarding nonpublic records is in the *Michigan Trial Court Case File Management Standards*, Access to Records and Case Folders. See also the Nonpublic and Limited-Access Court Records; Michigan Supreme Court Administrative Order 2006-2, Privacy Policy; and SCAO Administrative Memorandum 2006-04, Privacy Policy and Access to Records.

C. Authority for Restricting Access

Statute, courts rules, and case law restricting public access to case records or portions of records are listed in Component 19 of the *Michigan Trial Court Case File Management Standards*. See also the Nonpublic and Limited-Access Court Records chart and Model Local Administrative Order (LAO) 8, Access, Inspection, Reproduction, and Creation of Records.

D. Freedom of Information Act

Oftentimes, court records are requested by a person citing the Freedom of Information Act. MCL 15.231 *et seq*. Although the judiciary is specifically excluded from the definition of public bodies subject to the act, several Michigan Court Rules cover public access to court files and records. Specifically, MCR 8.119(H) permits any person to inspect pleadings and other papers in the clerk's office and to obtain copies that are not confidential or nonpublic.

E. Providing Indigent Defendants with Case Records (applies to circuit courts only)

1. Appeals of Right

An indigent defendant may file a written request with the sentencing court for specified court documents or transcripts, indicating that they are required to pursue an appeal of right. The court must order the clerk to provide the defendant with copies of documents without cost to the defendant and, unless the transcript has already been ordered as provided in MCR 6.425(G)(2), must order the preparation of the transcript. MCR 6.433(A).

2. Appeals by Leave

An indigent defendant filing an application for leave to appeal may obtain copies of transcripts and other documents as provided in MCR 6.433(B).

a. The defendant must make a written request to the sentencing court for specified documents or transcripts indicating that they are required to prepare an application for leave to appeal.

b. If the requested materials have been filed with the court and not provided previously to the defendant, the court clerk must provide a copy to the defendant. If the requested materials have been provided previously to the defendant, on defendant's showing of good cause to the court, the clerk must provide the defendant with another copy.

c. If the request includes the transcript of a proceeding that has not been transcribed, the court must order the materials transcribed and filed with the court. After the transcript has been prepared, the court clerk must provide a copy to the defendant.

3. Other Postconviction Proceedings

An indigent defendant who is not eligible to file an appeal of right or an application for leave to appeal may obtain records and documents as provided in MCR 6.433(C).

a. The defendant must make a written request to the sentencing court for specific court documents or transcripts indicating that the materials are required to pursue postconviction remedies in a state or federal court and are not otherwise available to the defendant.

b. If the documents or transcripts have been filed with the court and not previously provided to the defendant, the clerk must provide the defendant with copies of such materials without cost to the defendant. If the requested materials have been previously provided to the defendant, on the defendant's showing of good cause to the court, the clerk must provide the defendant with another copy.

c. The court may order the transcription of additional proceedings if it finds that there is good cause for doing so. After such a transcript has been prepared, the clerk must provide a copy to the defendant.

d. Nothing in this rule precludes the court from ordering materials to be supplied to the defendant in a proceeding under subchapter 6.500.

F. Sealed Records

Except as otherwise provided by statute or court rule, a court may not enter an order that seals court records, in whole or in part, in any action or proceeding unless certain factors exist. MCR 8.119(I). A court may not seal a court order or opinion, including an order or opinion that disposes of a motion to seal the record. Whenever a court grants a motion to seal a court record, in whole or in part, the court must forward a copy of the order to the Clerk of the Supreme Court and the State Court Administrative Office pursuant to MCR 8.119(I)(7). Materials that are subject to a motion to seal a record in whole or in part shall be held under seal pending the court's disposition of the motion under MCR 8.119(I)(4).

4-04 Record Retention and Disposal

A. Authority

Records may not be disposed of, mutilated, or destroyed except as allowed by statute or court rule. MCL 399.5, MCL 600.1428, MCL 691.1101; MCR 3.925, MCR 8.119(K).

Subject to the records reproduction act, 1992 PA 116, MCL 24.401 to 24.406, a court may dispose of any record that has been listed in the *General Records Retention and Disposal Schedule*. MCL 600.1428(2).

A court record, regardless of its medium, shall not be disposed of until the record has been in the custody of the court for the retention period established in the *General Records Retention and Disposal Schedule*. MCL 600.1428(3).

B. Record Retention and Disposal Schedule

The State Court Administrative Office establishes and maintains the General Records Retention and Disposal Schedule. As required by MCL 399.5, the schedule is approved by Records Management Services of the Department of Technology, Management, and Budget; the Archives of Michigan; the Attorney General; and the State Administrative Board.

C. Record Reproduction

The Records Reproduction Act (MCL 24.401-.406) regulates the reproduction of public records by public bodies in Michigan. The law requires that standards be promulgated to regulate the use of microfilm and digital imaging technologies. See the standards promulgated by Records Management Services.

1. Michigan Laws, Standards and Best Practices

- Best Practices for Reproducing Public Records
- Records Reproduction Act (MCL 24.401 to MCL 24.406) (effective January 2005)
- Best Practices for the Capture of Digital Images from Paper or Microfilm
- Technical Standards for Capturing Digital Images from Paper or Microfilm (effective August 15, 2005)
- Best Practices for the Microfilming of Paper Records
- Technical Standards for Capturing Microfilm from Paper (effective August 15, 2005)
- Best Practices for the Microfilming of Digitized Records
- Technical Standards for Microfilming Digital Records (effective August 15, 2005)

- Michigan Trial Court Guidelines and Standards for Digital Imaging

2. U.S. Standards

American National Standards Institute (ANSI)
1899 L Street, NW
11th Floor
Washington, DC 20036
202-293-8020
www.ansi.org/

Association for Information and Image Management (AIIM)
1100 Wayne Avenue, Suite 1100
Silver Spring, MD 20910
301-587-8202
www.aiim.org/

3. Vendor Services (State of Michigan master contracts)

Records Management Services administers master contracts with vendors that provide microfilming, digital imaging, and media storage services. Courts may use these competitively-bid contracts. Records Management Services provides consulting services to courts that use these contracts to develop a "Statement of Work" that defines the work that will be done and that establishes quality measures. Questions about these contracts may be addressed to Caryn Wojcik at 517-335-8222 or wojcikc@michigan.gov.

D. E-mail Retention

E-mail is a fast, efficient, and cost-effective means for communicating and sharing information. However, e-mail messages are subject to the same record retention laws as other court records. Records Management Services has published guidelines and information about e-mail retention.

E. Record Storage

When records become inactive, the court may want to consider off-site storage for file maintenance, if there is not adequate storage in the court facility. Records Management Services has published a guide to help select a records storage vendor. It is available at http://michigan.gov/documents/hal_mhc_rms_storage_vendors_171510_7.pdf.

F. Disaster Prevention and Recovery

Records Management Services has published a guide that contains a list of web-based resources that will help government agencies plan for and respond to disasters. See Guide to Disaster Preparedness and Response. See also Section 7-02.

G. Confidential Records Destruction

Some public records contain sensitive or confidential information. These records should not be placed in a regular trash or recycle bin when they are destroyed. It is important that government agencies ensure these records are destroyed in a manner that prevents the inappropriate release of the information. The State of Michigan administers a master contract with a vendor that complies with the state's requirements for confidential destruction of records. Government agencies that are interested in using this contract should contact the vendor at:

Certified Document Destruction
300 West Chestnut Street
Wauseon, OH 43567
800-433-7876
http://cddinc.com/

H. Additional Information

Records Management Services provides expertise and assistance to state and local government agencies with managing records and information in the most effective, cost efficient, and legally compliant manner.

Michigan Department of Technology, Management and Budget
Records Management Services
P.O. Box 30026
3400 North Grand River Avenue
Lansing, MI 48909
517-335-9132
http://www.michigan.gov/dtmb/0,5552,7-150-9141_21738---,00.html

5-01 Chief Judge Responsibilities in Personnel Administration

A. Authority

Michigan case law has established trial courts as the employer of record as it relates to court employees. Examples of Michigan cases include but are not limited to the following: *Judges of the 74th Judicial Dist v Bay Co*, 385 Mich 710 (1971), distinguished by *American Federation of State, County and Municipal Employees, Council 25 v Wayne County*, 292 Mich app 68 (2011); *Seventeenth Dist Probate Court v Gladwin v Gladwin Co Bd of Comm'rs*, 155 Mich App 433 (1986); *Ottawa Co Controller v Ottawa Probate Judge*, 156 Mich App 594 (1986); and *Judicial Attorneys Ass'n v State of Michigan*, 459 Mich 291 (1998).

The relationship of the chief judge with other judges on a multi-judge bench and with court staff is based on the provisions of MCR 8.110. See Section 1-03.

B. Relationship with Judges and Court Staff

1. Judicial Workload and Absences

MCR 8.110(C)(3) imparts to the chief judge accountability for the hours of work, attendance, productivity, and vacations of his or her fellow judges. The chief judge is responsible and has the authority to:

(c) Determine the hours of the court and the judges; coordinate the number of judges required to be present at any one time to perform necessary judicial and administrative work of the court; and require their presence to perform that work.

(e) Coordinate judicial vacations and absences, subject to the provision of subrule (D).

A judge may not be absent from the court without the chief judge's prior approval, except for personal illness. In making the decision on a request to approve vacation or other absences, the chief judge may consider, among other factors, the pending caseload of the judge involved, including the judge's latest report pursuant to MCR 8.107; the number of cases ready for trial and awaiting trial; and the length of time the cases have been pending. The chief judge is required to maintain records of absences to be available at the request of the Supreme Court. MCR 8.110(D)(6). See Section 1-05.

2. Supervising Court Staff

MCR 8.110(C)(3)(d) provides that it is the responsibility of the chief judge to supervise the performance of all court personnel, with authority to hire, discipline, or discharge such personnel, with the exception of a judge's secretary and law clerk, if any. See also Section 1-05 and 1-08.

C. Local Intergovernmental Relations

Michigan Supreme Court Administrative Order 1998-5 addresses several matters related to personnel administration and a court's relationship with its funding unit, such as mediation and legal action in funding disputes, participation in the negotiating process, and collective bargaining. For details, see Section 5-02. See also Section 1-10.

D. Emergency Services Plan

If a court is notified by its funding unit of a reduction of the original appropriation for the court for the current fiscal year, the court shall immediately file a copy of that notice with the State Court Administrative Office in accordance with Michigan Supreme Court Administrative Order 1994-6. The court, among other things, must provide an emergency services plan which outlines what services are essential. Michigan Supreme Court Administrative Order 1994-6, 2.e. See also Sections 5-02, C. and 7-02.

E. Delegation of Authority by Local Administrative Order

1. Probate Register to Perform Judicial Acts

The chief probate judge may, through issuance of an order, grant to a probate register the authority to perform certain judicial acts. MCL 600.834. MCR 8.301(B)(1). See also Section 5-16. See Model LAO 18.

2. District Court Magistrate

The district judge may appoint, by local administrative order, a magistrate to serve at the pleasure of the judge(s) to exercise the jurisdiction and duties only as authorized by the chief judge, presiding judge, or only judge of the district court. Michigan Supreme Court Administrative Order 2009-6; MCL 600.8501, MCL 600.8503. See also Section 5-14. See Model LAO 3a for appointment of a non-attorney magistrate and Model LAO 3b for appointment of an attorney magistrate. The district court magistrate must keep contact information up-to-date on a form provided for that purpose.

3. Domestic Relations Referee

The chief circuit judge may designate, by local administrative order, a referee to exercise the duties set forth in MCL 552.507(1) and MCR 3.215(A). Michigan Supreme Court Administrative Order 2009-6. See Model LAO 31. The referee must keep contact information up-to-date on a form provided for that purpose.

4. Juvenile Attorney/Non-Attorney Referee

The chief circuit judge may designate, by local administrative order, an attorney referee or a non-attorney referee to exercise the duties set forth in MCL 712A.10 and MCR 3.913. Michigan Supreme Court Administrative Order 2009-6. See also Section 5-21. For appointment of a non-attorney referee, see Model LAO 32a and for appointment of an attorney referee, see Model LAO 32b. The referee must keep contact information up-to-date on a form provided for that purpose.

F. Contracting Work

Many courts contract for services with individuals as independent contractors. However, it is important to ensure that individuals engaged as independent contractors are bona fide independent contractors. The Internal Revenue Service provides guidance on whether a person is an employee or an independent contractor in the Employer's Supplemental Tax Guide, publication 15-A.

G. Court-Appointed Officers

1. Authority and Appointment

Only individuals specified in MCR 2.103(B) have authority to seize property and conduct evictions. If evictions or seizure of property are to be performed by a court officer, the court shall appoint the court officer in accordance with procedures developed by the State Court Administrative Office and in accordance with MCR 3.106. MCR 3.106(B), (C)(4).

The chief judge shall appoint a court officer for a term not to exceed 2 years. Two or more chief judges may jointly appoint court officers for their respective courts. MCR 3.106(C)(1). The court must specify the nature of the court officer's employment relationship at the time of appointment and must maintain a copy of each court officer's application, as required by the State Court Administrative Office. MCR 3.106(C)(2),(3).

2. Procedure

The State Court Administrative Office has developed a procedure for the appointment and supervision of court officers, including a model application form. MCR 3.106(C)(4); SCAO ADM Memo 2002-04. See also related Court Officer Appointment and Independent Contractor Procedures.

3. Court Officer Requirements

Appointed court officers must (1) post a surety bond in accordance with MCR 8.204. See Trial Court Performance Bond Requirements. MCR 3.604(D)(1), (2) provide the names and addresses of all financial institutions in which they deposit funds obtained under this rule, and the respective account numbers, and (3) provide the names and addresses of those persons who regularly provide services to them in the seizure of property or evictions.

All persons specified in MCR 2.103(B) must carry and display identification authorized by the court or agency they serve. See sample identification card. MCR 3.106(F)(1).

4. List of Court Officers or Bailiffs

Each court must post, in a public place at the court, a list of those persons who are serving as court officers or bailiffs. The court must provide the State Court Administrative Office with a copy of the list, and must notify the State Court Administrative Office of any changes. MCR 3.106(B)(2). Also, if the court has a website, it must post the list of persons authorized to seize property and conduct evictions on the website as required by standards established by the State Court Administrative Office. See Section 8-03.

H. Contacts

Every court is required to have a person designated to the following positions or responsibilities. Contact information should be updated in the manner indicated.

- ADA Coordinator: Update contact information on ADA Performance Measure Compliance Form and submit new local administrative order.

- ADA Court Contact: Update contact information on ADA Performance Measure Compliance Form.

- AWOLP Contact: Update contact information with Child Welfare Services or Regional Office.

- Court Forms Contact (the court administrator and probate register): Update contact information with the Trial Court Information System Data Coordinator at boernerm@courts.mi.gov.

- Court Security and Emergency Services Coordinator: Update contact information with the Trial Court Information System Data Coordinator at boernerm@courts.mi.gov.

- FICA Contact (circuit, district, probate): Update contact information with the Trial Court Information System Data Coordinator at boernerm@courts.mi.gov.

- Language Access Coordinator: Update LanguageAccess@courts.mi.gov.

- Title IV-E Court Contact: Update contact information with the Trial Court Information System Data Coordinator at boernerm@courts.mi.gov.

Visiting Judge Clerk: Update contact information with Regional Office.

5-02 Personnel Matters Involving the Funding Unit

The following are personnel-related responsibilities of the chief judge that involve the funding unit. For management of funding unit disputes, see Section 6-07. See Michigan Supreme Court Administrative Order (AO) 1998-5 (as amended effective June 4, 2014), Chief Judge Responsibilities; Local Intergovernmental Relations.

A. Mediation and Legal Action in Funding Disputes

If, after the local funding unit has made its appropriations, a court concludes that the funds provided for its operations by its local funding unit are insufficient to enable the court to properly perform its duties and that legal action is necessary, the procedures set forth in AO 1998-5 (as amended effective June 4, 2014) must be followed.

1. "[A]t any time[] before differences escalate to the level of a formal funding dispute[,]" the chief judge or funding unit representative "may request the assistance of the State Court Administrative Office [(SCAO)] to mediate situations involving potential disputes[.]" However, where a funding dispute cannot be resolved, the court must notify the state court administrator that an unresolvable dispute exists and supply all facts relevant to the dispute; the notice must include a written communication indicating that the court's chief judge approves of commencing legal proceedings.

2. The state court administrator must attempt to aid the court and the involved funding unit to resolve the dispute.

3. If the court and funding unit request, the SCAO must appoint a mediator within five business days. If mediation occurs as a result of this request, it is intended to be the mediation referred to in MCL 141.438(6), MCL 141.438(8), and MCL 141.436(9). These statutes are not applicable to third class district courts and municipal courts. In these instances, the court may commence a civil action and the state court administrator can assign a disinterested judge to preside.

4. If, after the procedure mentioned above has been followed, the court concludes that a civil action to compel funding is necessary, the chief judge may commence a civil action, consistent with MCL 141.436 and MCL 141.438, if applicable (see above).

Michigan Supreme Court Administrative Order 1998-5 (as amended effective June 4, 2014), III. Funding Disputes; Mediation and Legal Action. See also Section 6-07.

B. Participation by Funding Unit in Negotiating Process

If a court does not have a local court management council, the chief judge, in establishing personnel policies concerning compensation, fringe benefits, pensions, holidays, or leave, must consult regularly with the local funding unit and must permit a representative of the local funding unit to attend and participate in negotiating sessions with court employees, if desired by the local funding unit.

The chief judge shall inform the funding unit at least 72 hours in advance of any negotiating session. The chief judge may permit the funding unit to act on the chief judge's behalf as negotiating agent.

Michigan Supreme Court Administrative Order 1998-5 (as amended effective June 4, 2014), V. Participation by Funding Unit in Negotiating Process.

C. Consistency with Funding Unit Personnel Policies

To the extent possible, consistent with the effective operation of the court, the chief judge must adopt personnel policies consistent with the written employment policies of the local funding unit. Effective operation of the court to best serve the public in multi-county circuits and districts, and in third-class district courts with multiple funding units, may require a single, uniform personnel policy that does not wholly conform with specific personnel policies of any of the court's funding units.

1. Unscheduled Court Closing Due to Weather Emergency

If a chief judge opts to close a court and dismiss court employees because of a weather emergency, the dismissed court employees must use accumulated leave time or take unpaid leave if the funding unit has employees in the same facility who are not dismissed by the funding unit. If a collective bargaining agreement with court staff does not allow the use of accumulated leave time or unpaid leave in the event of court closure due to weather conditions, the chief judge shall not close the court unless the funding unit also dismisses its employees working at the same facility as the court.

In accordance with AO 1998-5, each court should already have a local administrative order detailing the process for unscheduled court closing in the event of bad weather. It would have been prepared by the chief judge in consultation with the court's funding unit and in accordance with rules for issuing local administrative orders. The policy must be consistent with any collective bargaining agreements in effect for employees working in the court. See Section 7-02 for guidelines.

2. Court Staff Hours

The standard working hours of court staff, including when they begin and end work, shall be consistent with the standard working hours of the funding unit. Any deviation from the standard working hours of the funding unit must be reflected in a local administrative order, as required by the chief judge rule, and submitted for review and comment to the funding unit before it is submitted to the State Court Administrative Office for approval.

Michigan Supreme Court Administrative Order 1998-5 (as amended effective June 4, 2014), VI. Consistency with Funding Unit Personnel Policies. See also Section 5-01, D, Emergency Services Plan.

D. Collective Bargaining

For purposes of collective bargaining under 1947 PA 336, a chief judge or a designee of the chief judge shall bargain and sign contracts with employees of the court. Notwithstanding the primary role of the chief judge concerning court personnel pursuant to MCR 8.110, to the extent that such action is consistent with the effective and efficient operation of the court, a chief judge of a trial court may designate a representative of a local funding unit or a local court management council to act on the court's behalf for purposes of collective bargaining pursuant to 1947 PA 336 only, and as a member of a local court management council, may vote in the affirmative to designate a local court management council to act on the court's behalf for purposes of collective bargaining only.

Michigan Supreme Court Administrative Order 1998-5 (as amended effective June 4, 2014), VIII. Collective Bargaining.

E. Staffing Problem for Multi-Location Courts

Multi-county circuit, district, and probate courts experience unique personnel problems because they have groups of employees at each court location. Usually the employees share a facility with local government employees, and the personnel policies are usually more like the policies of local government employees than the policies for other court employees in single location counties.

Because compensation for the court employees is provided by local funding units, the chief judge must recognize the effect the local political reality has for each group of employees. Often, personnel issues must be carefully negotiated with the local funding unit of each location. The State Court Administrative Office's regional administrators are available to assist chief judges and court administrators with the difficult problems created by multi-location courts. See also Section 6-06.

5-03 Personnel and Labor Relations Law

The Chief Judge Rule, MCR 8.110, may serve as a guide on personnel and labor relations matters. In addition various state and federal laws, as well as case law, impose duties in this area. Some of the more relevant laws are as follows.

A. Equal Opportunity and Nondiscrimination – Federal Statutes

Equal opportunity is a legal right of all persons to be accorded full and equal consideration on the basis of merit regardless of protected class with regard to all terms and conditions of employment (e.g., hiring, promotion, layoff, demotion, termination, access to training, and performance evaluation).

1. Civil Rights Act of 1964, 42 USC 2000e *et seq.*

Title VII of the Civil Rights Act of 1964, as amended, bans discrimination in all terms and conditions of employment on the basis of race, color, religion, national origin, or sex. It also created the Equal Employment Opportunity Commission (EEOC), which enforces Title VII.

2. Civil Rights Act of 1991, 42 USC 1981a

The Civil Rights Act of 1991 amended Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, and the Age Discrimination in Employment Act of 1967. It prohibits impermissible consideration of race, color, national origin, religion, sex, or disability, and allows compensatory and punitive damages – previously available only to racial and ethnic minorities – to be sought by victims of intentional discrimination based on sex, religion, or disability.

A jury trial may be requested by any party to a case in which compensatory or punitive damages are sought. It is enforced by the EEOC.

3. Fair Labor Standards Act of 1938 (FLSA), 29 USC 201 *et seq.*

The Fair Labor Standards Act of 1938 sets minimum wage, equal pay, overtime, recordkeeping, and child labor standards for employees who are covered by the act and are not exempt from specific provisions. Employees who are direct hires of an elected official are not covered by the overtime provisions of the FLSA. See 29 USC 203(e)(2)(c)(*ii*)(II). This may include law clerks and judicial secretaries.

The act is supplemented by numerous regulations issued by the U.S. Department of Labor. See 29 CFR 553 *et seq*. Adopted by Congress in 1938, initially the act

only applied to private employers. In 1974, Congress amended the act to extend its provisions to most state and local governmental employers. In 1976, the U.S. Supreme Court held that the 10th Amendment to the U.S. Constitution rendered the application of the minimum wage and overtime provisions of the FLSA to state and local governments unconstitutional. *National League of Cities v Usery*, 426 US 833 (1976).

From 1976 until 1985, state trial court employees were covered by virtually identical minimum wage and overtime provisions of state law (MCL 408.381 *et seq*.) by virtue of an Attorney General opinion issued in 1976. 9976 OAG 5115. In April 1985, the U.S. Supreme Court overturned *Usery*, placing state trial court employees once more under the jurisdiction of the U.S. Department of Labor for enforcement of the FLSA. *Garcia v San Antonio Metropolitan Transit Authority*, 469 US 528 (1985).

4. Equal Pay Act of 1963, 29 USC 206

The Equal Pay Act of 1963 prohibits sex discrimination in salaries and most fringe benefits. It provides that a man and a woman working for the same employer under similar conditions in jobs requiring substantially equivalent skills, effort, and responsibility must be paid equally, even when job titles and assignments are not identical. This act is enforced by the EEOC.

5. Vietnam-Era Veterans Readjustment Assistance Act of 1974, 38 USC 4212

The Vietnam-Era Veterans Readjustment Assistance Act of 1974 requires employers with federal contracts greater than $100,000 to take affirmative action to employ and promote qualified disabled veterans and Vietnam-Era veterans. It is enforced by the Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor.

6. Age Discrimination in Employment Act of 1967 (ADEA), 29 USC 621 *et seq.*

The Age Discrimination in Employment Act of 1967, as amended in 1978 and again in 1986, prohibits employment discrimination on the basis of age of anyone age 40 and over.

7. Americans with Disabilities Act of 1990 (ADA), 42 UCS 12010 *et seq.*

The Americans with Disabilities Act of 1990, as amended by the ADA Amendments Act of 2008, prohibits discrimination on the basis of disability in access to employment and covers most employers, public entities, and public accommodations. The act requires nondiscrimination, access, and reasonable

accommodation, but does not require affirmative action in hiring. It is enforced by the EEOC and the U.S. Department of Justice. The ADA Amendments Act of 2008 clarified and expanded the definition of disability.

8. The Family and Medical Leave Act of 1993 (FMLA)

The Family and Medical Leave Act of 1993, as amended, provides in part that eligible employees (employees who have worked for the employer for a total of at least 12 months and have worked at least 1,250 hours over the 12 months prior to the leave) are entitled to up to 12 work weeks of unpaid leave for: birth/care of a newborn; adopted or newly placed foster child; care of a spouse, child, or parent with a serious illness; an illness rendering the employee unable to work; any qualifying exigency arising out of the fact that the spouse, son, daughter, or parent of the employee is on active duty or has been notified of an impending call or order to active duty in the Armed Forces, National Guard, or Reserves; or service member family leave that allows an employee who is the spouse, son, daughter, parent, or next of kin of a covered service member up to 26 work weeks of leave during a 12-month period to care for the service member with a serious injury or illness. An employer must maintain the employee's group health insurance coverage and the employee's original or an equivalent position during FMLA leave.

B. Equal Opportunity and Nondiscrimination – Michigan Statutes

1. Elliott-Larsen Civil Rights Act

The Elliott-Larsen Civil Rights Act is a Michigan statute that parallels Title VII of the Civil Rights Act of 1964. In addition to prohibiting discrimination based on the categories listed in Title VII of the Civil Rights Act, Michigan law added familial status, marital status, height, weight, and age as protected categories. There is no age limit specified in the Michigan law. MCL 37.2101 *et seq*.

2. Persons with Disabilities Civil Rights Act

The Persons with Disabilities Civil Rights Act bars Michigan employers from discrimination based on disability and requires employers to make reasonable accommodations for disabled employees. MCL 37.1101 *et seq*.

3. Polygraph Protection Act of 1981

The Polygraph Protection Act of 1981 prohibits Michigan employers from requiring prospective or current employees to submit to a polygraph examination as a condition of employment. MCL 37.202 *et seq*.

4. Youth Employment Standards Act

Employment of minors is governed by the Youth Employment Standards Act. MCL 409.101 *et seq*.

5. Payment of Wages and Fringe Benefits Act

Prompt payment of wages and limitations on involuntary deductions from wages are governed by the provisions of this act. MCL 408.471 *et seq*. Payroll deductions are considered voluntary and include union dues. *Detroit Public Schools v Conn*, 308 Mich App 234 (2014).

C. General Labor Legislation

1. The Michigan Employment Security Act

The Michigan Employment Security Act provides for unemployment benefits for court employees who lose their jobs due to termination or other reasons where good cause is attributable to the employer (with certain exceptions as provided by the act). This act is administered by the Employment Security Act (MCL 421.1 *et seq.*) through the Unemployment Insurance Agency.

2. Michigan Workers' Disability Compensation Act

The Michigan Workers' Disability Compensation Act provides medical care and compensation for court employees or their families if the employee is injured, disabled, or killed during the course of employment. MCL 418.101 *et seq*. This act is administered by the Department of Consumer and Industry Affairs, Bureau of Workers' and Unemployment Compensation.

3. Michigan Occupational Safety and Health Act

The prevention of on-the-job injuries through the elimination of hazardous or unsafe working conditions is under the jurisdiction of the Michigan Department of Labor by virtue of the Michigan Occupational Safety and Health Act. MCL 408.1001 *et seq*.

4. Uniformed Services Employment and Reemployment Rights Act

The Uniformed Services Employment and Reemployment Rights Act (federal law) provides reemployment rights for employees who leave their employment to perform training or other military service in the armed forces. Title 38 USC Part III.

5. Bullard-Plawecki Employee Right to Know Act

Although personnel files are considered property of the employer, the Bullard-Plawecki Employee Right to Know Act gives an employee the right to inspect his/her personnel file and to ask the employer to copy the file. If a correction is requested, the employee and employer must agree to the correction/removal of misinformation or inserting explanatory materials. Reasonable access is granted the employee, with restrictions as to time and place of inspection. The act includes the right to charge a nominal cost for reproduction of materials. MCL 423.501 *et seq*.

6. Immigration Reform and Control Act

The Immigration Reform and Control Act requires all employers to check certain documents when employing any person in order to ensure the employee is legally able to work in the United States. The requirements may be obtained from U.S. Citizenship and Immigration Services.

7. Consolidated Omnibus Budget and Reconciliation Act (COBRA)

The Consolidated Omnibus Budget and Reconciliation Act requires employers having group health plans to offer employees, their spouses, and eligible dependents the opportunity for temporary extension of health-care benefits (medical, dental, and optical) at group rates in certain instances where coverage would otherwise end. 29 USC 1161 *et seq*.

8. Public Employment Relations Act (PERA)

Trial courts are governed by the Public Employment Relations Act. The act is enforced by the Michigan Employment Relations Commission (MERC), which is part of the Michigan Department of Licensing and Regulatory Affairs (LARA). MCL 423.201 *et seq*.

The PERA is the collective bargaining law governing public employers and their employees. While PERA provides for the recognition of an exclusive bargaining agent for employees in appropriate units and prohibits certain acts as unfair labor practices, it also prohibits strikes in the public sector.

Under PERA, if a union is selected to represent court employees in collective bargaining and contract administration, the court and the union are legally obligated to bargain in good faith. While the parties may bargain over any legal subject, MCL 423.215 limits the duty to bargain collectively regarding wages, hours and other terms and conditions of employment. *Detroit Police Officers*

Ass'n v City of Detroit, 391 Mich 44 (1974). A refusal to bargain collectively over mandatory subjects of bargaining is an unfair practice under MCL 423.210(1)(e) if committed by an employer, and MCL 423.210(2)(d) if committed by a union.

The parties may voluntarily bargain over permissive subjects of bargaining (issues that are not wages, hours, and other terms and conditions of employment), but there is no duty to bargain permissive subjects under the law. Employers and unions may not bargain over illegal subjects (closed union shop, conditions of employment contrary to law).

The duty to bargain under PERA provides, in part, that "[e]xcept as otherwise provide in [MCL 423.215], for purposes of this section, to bargain collectively is to perform the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or to negotiate an agreement, or any questing arising under the agreement, and to execute a written contract, ordinance, or resolution incorporating any agreement reached if requested by either party, **but such obligation does not compel either party to agree to a proposal or require the making of a concession**." (Emphasis added.)

When the parties are unable to agree, there are methods in law that provide for dealing with the impasse. A condition precedent to the determination of impasse is that the issue in dispute is a mandatory subject of bargaining. Parties may not go to impasse on non-mandatory subjects of bargaining. The Michigan Employment Relations Commission provides for mediation and fact-finding in situations where the parties cannot reach agreement over mandatory subjects of bargaining.

5-04 Determining Qualifications of Court Staff

A. Source of Qualifications

Establishing minimum job qualifications for court staff positions is the responsibility of the chief judge, except where specific qualifications have been established by Michigan Court Rules or administrative orders, or in statute, as follows.

B. Michigan Court Rules and Supreme Court Administrative Orders

For certification of shorthand reporters and electronic recorders, see MCR 8.108(G)(3). See also the *Manual for Court Reporters and Recorders*.

Regarding various positions in family division of circuit court, see Michigan Supreme Court Administrative Order 1985-5 (amended by Administrative Order 1988-3).

For referee qualifications for the family division of the circuit court, see MCR 3.913.

C. Michigan Statutes

Numerous positions described in Part B of this Section have employment qualifications prescribed by law. These include the following.

• Circuit and district court law clerks. MCL 600.1471(2).

• Circuit court clerk. Const 1963, art 6, §14, MCL 600.571(a).

• District court magistrate. MCL 600.8507, MCL 600.8512.

• Domestic relations mediator. MCL 552.513(4).

• Friend of the court. MCL 552.523(3).

• Friend of the court referee. MCL 552.507(1).

• Judicial assistant. MCL 600.1481(2).

• Juvenile court referee. MCL 712A.10.

D. Equal Employment Opportunity

The Michigan Supreme Court has recommended that the leadership of the trial court work with the funding unit to ensure that equal employment opportunity best practices are used when recruiting applicants to the court by making certain to do the following.

1. Clearly communicate to all persons involved in the hiring process that such process should be designed to promote equal employment opportunity, and should be carried out in a nondiscriminatory manner.

2. Clearly communicate to all persons involved in the hiring process that such process should be designed and carried out in compliance with all applicable equal employment opportunity laws.

3. Ensure that job announcements and postings are disseminated widely and in a manner that reasonably ensures the greatest number of qualified applicants. The State Court Administrative Office will post these to the One Court of Justice website.

4. Ensure that job announcements and postings, in their substance, are nondiscriminatory and designed to promote equal employment opportunity.

5. Clearly communicate in all job announcements and postings that the court is an equal employment opportunity employer, and that it does not discriminate on the basis of factors prohibited by law.

6. Develop and implement a nondiscriminatory performance evaluation system for all employees.

7. Ensure that all employees who believe that they have been subjected to discrimination in the performance evaluation system, or in some other aspect of their employment, know to whom such treatment can be communicated.

8. Clearly communicate to all court employees the commitment of the court to a workplace in which there is no discrimination, and in which there is fair treatment and respect for all employees.

E. Administrative Order 1996-11 – Hiring of Relatives by Courts

In order to ensure that the Michigan judiciary is able to attract and retain the highest quality work force and make most effective use of its personnel, an anti-nepotism policy went into effect December 1, 1996 for all Michigan courts. The policy is set forth in Michigan Supreme Court Administrative Order 1996-11.

1. Purpose

This anti-nepotism policy is adopted to avoid conflicts of interest, the possibility or appearance of favoritism, morale problems, and the potential for emotional interference with job performance.

2. Application

This policy applies to all full-time and part-time non-union employees, temporary employees, contractual employment, including independent contractors, student interns, and personal service contracts. This policy also applies to all applicants for employment regardless of whether the position applied for is union or non-union.

3. Definitions

a. As used in this policy, the term "relative" is defined to include spouse, child, parent, brother, sister, grandparent, grandchild, first cousin, uncle, aunt, niece, nephew, brother-in-law, sister-in-law, daughter-in-law, son-in-law, mother-in-law, and father-in-law, whether natural, adopted, step, or foster.

b. As used in this policy, "state court system" is defined to include all courts and agencies enumerated in Const 1963, art 6, §1 and the Revised Judicature Act of 1961, MCL 600.101 *et seq*.

c. As used in this policy, the term "court administrator" is defined to include the highest level administrator, clerk, or director of the court or agency who functions under the general direction of the chief justice or chief judge, such as state court administrator, agency director, circuit court administrator, friend of the court, probate court administrator, juvenile court administrator, probate register, and district court administrator/clerk.

4. Prohibitions

a. Relatives of justices, judges, or court administrators shall not be employed within the same court or judicial entity. This prohibition does not bar the assignment of judges and retired judges by the Supreme Court to serve in any other court in this state for a limited period or specific assignment, provided those assigned shall not participate in any employment related matters or decisions in the court to which they are assigned.

b. Relatives of employees not employed as justices, judges, or court administrators shall not be employed, whether by hire, appointment, transfer, or promotion, in any court within the state court system (i) where one person has any degree of supervisory authority over the other, whether direct or indirect; (ii) where the employment would create favoritism or a conflict of interest or the appearance of favoritism or a conflict of interest; or (iii) for reasons of confidentiality.

c. Should two employees become relatives by reason of marriage or other legal relationship after employment, if possible, one employee shall be required to transfer to another court within the state court system if the transfer would eliminate the violation. If a transfer is not possible or if the violation cannot be eliminated, one employee shall be required to resign. The decision as to which employee shall transfer or resign may be made by the employees. If the employees fail to decide between themselves within 30 days of becoming relatives, the employee with the least seniority shall be required to transfer or resign. However, if one of the two employees holds an elective office, is a judge, or is covered by a union contract, the other employee shall be required to transfer or resign.

5. Required Submissions

If any person, whether employed by hire, appointment, or election, contemplates the creation of a contractual relationship that may implicate this policy, whether directly or (Revised 3/99) indirectly, the proposed contract shall be submitted to the State Court Administrative Office for review to ensure compliance with this policy.

6. Required Disclosure

All current employees, including persons who are elected or appointed, shall disclose in writing to the State Court Administrative Office the existence of any familial relationship as described in this policy within 30 days of the issuance of this policy or creation of the relationship, whichever is sooner.

7. Affected Employees

This policy shall not apply to any person who is an employee of the state court system on December 1, 1996, except that from December 1, 1996 forward, no person shall be transferred or promoted or enter into a nepotic relationship in violation of this policy.

F. Oath of Office

Pursuant to MCL 15.151, all persons now employed or who may be employed by the state of Michigan or any governmental agency thereof, and all other persons in the service of the state or any governmental agency, shall, as a condition of their employment, take and subscribe to the oath or affirmation required of members of the legislature and other public officers by Const 1963, art XI, §1, which says:

"All officers, legislative, executive and judicial, before entering upon the duties of their respective offices, shall take and subscribe the following oath or affirmation: I do solemnly swear (or affirm) that I will support the Constitution of the United States and the constitution of this state, and that I will faithfully discharge the duties of the office according to the best of my ability. No other oath, affirmation, or any religious test shall be required as a qualification for any office or public trust."

5-05 Ethics

A. Code of Judicial Conduct – Application to Judges and Staff

Judges and court staff should respect and observe the law and should conduct themselves at all times in a manner that promotes public confidence in the integrity and impartiality of the judicial system. They should not allow family, social, or other relationships to influence their conduct or judgment as they carry out official duties. These general principles are based on Canon 2 of the Code of Judicial Conduct. The code can be used as a general guide for ethical conduct.

B. Rules of Professional Conduct

Beyond the provisions of the Code of Judicial Conduct, judges and court staff who are members of the State Bar of Michigan are also subject to the requirements of the Rules of Professional Conduct.

C. Adopting a Code of Conduct

A court may wish to consider adopting a code of conduct that specifies staff conform to ethical standards and avoid conflict of interest or the appearance of conflict of interest. See the Model Code of Conduct for Michigan Trial Court Employees developed by the Michigan Judicial Institute. As with any other personnel rule or contract provision, the trial court should consult with counsel specializing in labor law and the human resources department when developing and applying these rules.

D. Model Code of Conduct for Juvenile Probation Officers

Because of the unique relationship that juvenile probation officers have with their probationers and families, a Model Code of Conduct for Probation Officers has been developed by the State Court Administrative Office. The code of conduct includes guidelines that clarify the canons in the code.

5-06 Absences From the Court

A. Authority

The chief judge has the authority and responsibility to coordinate judicial and staff absences. MCR 8.110(C)(3)(e).

B. Judicial Absences

1. Vacation Standard

A judge is expected to take an annual vacation leave of 20 days with the approval of the chief judge to ensure docket coordination and coverage. A judge may take an additional 10 days of annual vacation leave with the approval of the chief judge. A maximum of 30 days of annual vacation unused due to workload constraints may be carried from one calendar year into the first quarter of the next calendar year and used during that quarter, if approved by the chief judge. Vacation days do not include attendance at Michigan judicial conferences; attendance, with the chief judge's approval, at educational meetings or seminars; attendance, with the chief judge's approval, at meetings of judicial committees or committees substantially related to judicial administration of justice; absence due to illness; or administrative leave with the chief judge's approval. MCR 8.110(D)(3).

2. Judicial Education Leave Standard

A judge is expected to take judicial education leave of 2 weeks every 3 years to participate in continuing legal education and training at Michigan judicial training programs and nationally recognized judicial education programs, including graduate and refresher courses. Judicial education leave does not include judicial conferences for which attendance is required. The use of judicial education leave approved by the chief judge does not affect a judge's annual leave. MCR 8.110(D)(4).

3. Judicial Professional Leave Standard

Judges are encouraged, as part of their regular judicial responsibilities, to take part in professional meetings and conferences that advance the administration of justice or the public's understanding of the judicial system; to serve on commissions and committees of state and national organizations that contribute to the improvement of the law or that advance the interests of the judicial system; and to serve on Supreme Court-appointed or in-house assignments or committees.

Use of judicial professional leave approved by the chief judge does not affect a judge's annual leave or education leave. MCR 8.110(D)(5).

4. Approval of Judicial Absences

A judge may not be absent from the court without the chief judge's prior approval, except for personal illness. In making the decision on a request to approve a vacation or other absence, the chief judge shall consider, among other factors, the pending caseload of the judge involved. The chief judge shall withhold approval of vacation, judicial education, or judicial professional leave that conforms to these standards only if withholding approval is necessary to ensure the orderly conduct of judicial business. The chief judge shall maintain records of absences to be available at the request of the Supreme Court. MCR 8.110(D)(6).

Trial court judges are required to submit their annual judicial absence reports to their chief judge. See the Annual Judicial Absence Report (form SCAO 25a). Completed reports are to be submitted by the chief judge to the respective regional office.

C. Court Holidays

Michigan has a Legal Holidays Act, which designates the holidays to be observed in the holding of court and the continuance of suits. After setting forth the holidays, the act provides: "This act shall not prevent or invalidate the entry, issuance, service, or execution of a writ, summons, or confession of judgment, or other legal process, the holding of court ...." MCL 435.101. Because holidays are a negotiable item between employer and employee and because the Legal Holidays Act allows courts to conduct business on legal holidays, many trial courts have established a holiday schedule that varies from the Legal Holidays Act.

Courts are encouraged to adopt an administrative order, if appropriate, to accommodate or achieve uniformity with the holiday practices of local government units regarding local public employees. The court rule addresses a practical reality: it is easier for the local government unit operating a public building and for the public using government services if a public building is either open or closed for all services provided within the building. MCR 8.110(D)(2)(c).

The chief judge rule provides a list of holidays to be observed by all state courts except those that have adopted a holiday schedule by administrative order. This holiday schedule is consistent with the holiday schedule adopted by the state. MCR 8.110(D)(2). A judge may continue a trial in progress or dispose of judicial matters on any of the listed holidays if he or she finds it necessary. MCR 8.110(D)(2)(d). Any action taken by a court

on February 12, Lincoln's birthday or on the second Monday in October (Columbus Day) shall be valid. MCR 8.110(D)(2)(e).

5-07 Liability Protection for the Court

A. Performance Bond Requirements

The clerk of the court, probate register, district court magistrate, friend of the court, and the district court process servers must post a performance bond as required by statute and court rule. See the Trial Court Performance Bond Requirements chart.

All clerks, deputy clerks, magistrates, and official process servers of the district court must file with the chief judge a bond approved by the chief judge in a penal sum determined by the state court administrator, conditioned that the officer will (1) perform the duties as clerk, deputy clerk, magistrate, or process server of that court; and (2) account for and pay over all money which may be received by the officer to the person or persons lawfully entitled. The bonds must be in favor of the court and the state. MCR 8.204.

As determined by the county board of commissioners, the county clerk either shall be covered by a blanket bond or shall give a bond to the people of the state, in the penal sum of $2,000, to be approved by the circuit judge, for the faithful discharge of the duties of the county clerk's office. MCL 50.61.

The circuit judge in his discretion may require the court clerk to file a bond with the county treasurer conditioned that said clerk shall, in all respects comply with the requirements of law and the court rules in the handling and management of such funds, and to faithfully account for the same. MCL 600.572(b).

The probate register shall give bond to the probate judge or chief judge in the penal sum of $1,000 to be approved by that judge and filed in the office of the county clerk of the county. MCL 600.833(1).

District court magistrates shall file a bond with the treasurer of a district funding unit of that district in an amount determined by the state court administrator. The bond shall also apply to temporary service in another county under subsection (2), (3), or (4), or pursuant to a multiple district plan under subsection (5). MCL 600.8507(1).

Friend of the court surety or performance bond requirements are covered in the Code of Federal Regulations. The Michigan Department of Health and Human Services, Bureau of Individual and Family Services, must use written procedures for compliance with 45 CFR 302.19. These procedures contain regulations requiring that every person who has access to child support collections be covered by a bond against loss resulting from employee dishonesty. This provision applies to state and local IV-D agency employees.

Individual counties can have self-bonding/insuring provisions. See also Section 5-11. 45 CFR 302.19.

B. Legal Representation

Potential claims and liability for judges and court employees is an important consideration of the chief judge and court administrator. In anticipation of potential claims, an investigation should be conducted about obtaining attorney representation and indemnification or insurance coverage for liability protection of judges and court employees. If a claim arises, there are two important considerations: attorney representation and liability coverage by way of insurance or indemnification.

For liability protection associated with and details about the risks involved in using community service or work programs as part of court sanctions, see Section 8-09.

1. Authority

Since October 1, 1984, the Michigan attorney general has been required to defend judges of all state courts in certain situations. This obligation first appeared in the General Government Appropriations Act for Fiscal Year 1984-85. 1984 PA 222, § 27 and continues to appear in the General Government Appropriations Act each fiscal year and provides that the attorney general shall defend judges of all state courts whenever a claim is made or a civil action is commenced for injuries to persons or property caused by the judge through the performance of the judge's duties while acting within the scope of his or her authority as a judge. There are situations in which legal representation of judges, courts, and court personnel may be sought but are outside the scope of the language in these public acts.

2. Who May Represent

Courts and judges may be provided legal representation by the attorney general. If court employees are codefendants in actions against courts or judges, they may receive representation from the attorney general as well, at the request of the state court administrator. Courts, judges, or court employees may also be represented by a prosecuting attorney, an attorney employed by the court's funding unit, or a judicial assistant. OAG 1979-1980, No. 5572, p 421, 423 (October 4, 1979); MCL 49.71-49.73, MCL 49.153, MCL 600.1481, MCL 691.1408.

3. Scope of Representation

The obligation of the attorney general to defend courts and judges of all state courts is administered through the State Court Administrative Office *Guidelines for Securing Attorney General Representation for Courts* (dated September 2011). SCAO ADM Memo 2011-05, Securing Attorney General Representation for Courts.

A judge or court may request and will receive representation by the attorney general in civil actions requesting monetary damages based on actions by the judge in his or her judicial or administrative capacity. Exempted are civil actions brought by a local government agency, mandamus, superintending control actions, and disciplinary proceedings. The mechanics by which requests for representation are made are also set forth in these guidelines.

4. Procedure for Providing Representation

1) Determination of Insurance Coverage or Other Means for Addressing Representation

A determination should be made as to whether there is any insurance coverage for a judge or court employee. If a judge or court employee has obtained insurance, legal representation is generally part of the coverage.

Selection of an attorney is governed by the insurance policy terms. A determination should also be made as to whether there is representation for judges and/or court employees in employee handbooks, collective bargaining agreements, resolutions, or other official action of local funding units.

2) Attorney General

In the event a court or judge is a defendant or respondent in a matter covered by the SCAO *Guidelines for Securing Attorney General Representatio*n, a letter should be sent **immediately** after service of the summons and complaint to the state court administrator asking for attorney general representation. The original copy of the summons and complaint should be included with the request, along with the date of service and how service was made.

C. Insurance Coverage or Indemnification

1. Entitlement to Indemnification

Courts and judges receiving representation pursuant to the SCAO *Guidelines for Securing Attorney General Representation for Courts* are **not** entitled to indemnification from the state. Payment of any settlement or judgment is **not** the responsibility of the state of Michigan or any of its agencies or boards. Payment **is** the responsibility of the court's local funding unit. MCL 600.591(12), MCL 600.837(11), MCL 600.8271(17); *Cameron v Monroe County Probate Court*, 457 Mich 423 (1998).

Cameron v Monroe County Probate Court was called into question by *Dolan v City of Ann Arbor and Fifteenth District Court*, 666 F Supp 2d 754 (2009), which further states that courts should consider the following factors in determining whether an entity is an arm of the state, and thus entitled to sovereign immunity: 1) whether the state would be responsible for a judgment against the entity in question; 2) how state law defines the entity; 3) what degree of control the state maintains over the entity; and 4) the source of the entity's funding. *Id*.

2. Indemnification Through Other Means

A determination should also be made as to whether there is indemnification for judges and/or court employees in employer/employee handbooks, collective bargaining agreements, resolutions, or other official action of local funding units.

3. Representation/Indemnification Authorized; Not Required

State law authorizes, but does not require, a government agency to pay for, engage, or furnish an attorney for an officer or employee sued for injuries to persons or property caused by negligence while acting in the course of employment and scope of authority. The government agency may, but is not required to, indemnify its officers or employees. MCL 691.1408.

4. Liability Insurance

If a court or judge has obtained judicial liability insurance, then the damages, interest, costs, and taxable fees may be payable to the extent of the coverage.

D. Insurance for Community Service or Work Programs

Community service and work programs have liability concerns that are not generally present in the judiciary, including the possibility of injury to a person who is working on

a job site and injuries and damages that person may cause to people or property while engaged in the community service or work program. Courts can reduce their potential exposure by: 1) not determining the agencies for which the person works, 2) monitoring rather than overseeing the person's work, and 3) ensuring that fees cover the cost of the program and do not result in a surplus.

Courts that run a community service or work program should consult with their insurance carriers and should include in their programs only those activities that are approved by their carriers.

For further details, see Section 8-09.

5-08 Trial Court Administrator

A. Authority

Authority for establishing the position of trial court administrator is provided by MCR 8.110(C)(6), which states that a chief judge may delegate administrative duties to a trial court administrator or others.

B. Duties and Functions

The trial court administrator performs administrative duties delegated by the chief judge. The National Association for Court Management has identified ten core competencies in which court managers should have acceptable knowledge, skills, and abilities. They are:

1. Purposes and responsibilities of courts.
2. Caseflow management.
3. Leadership.
4. Visioning and strategic planning.
5. Essential components.
6. Court-community communication.
7. Resources, budget, and finance.
8. Human resources management.
9. Education, training, and development.
10. Information technology management.

A trial court administrator relieves the time demands on the chief judge for administrative matters and brings professional management knowledge and experience to the court. A court administrator should, at the direction of the chief judge, administer all nonjudicial functions of a trial court. These functions include, but are not limited to: human resources, facility management, technology management, case flow management, collections, jury management, budget and finance, trial court performance, court-community liaison, and records management. The trial court administrator also serves as

a liaison between the court and the State Court Administrative Office (SCAO) and various criminal justice agencies. See also Sections 1-06 and 1-07.

5-09 Circuit Court Clerk (County Clerk)

A. Authority

1. The county clerk has the constitutional responsibility to be the clerk of the circuit court in every county organized for judicial purposes except those counties in which a county charter provides otherwise. Const 1963, art 6, § 14.

2. The county clerk of each county shall be the clerk of the circuit court for the county. MCL 600.571(a).

B. Appointment of Deputy Circuit Court Clerk (Deputy County Clerk)

1. Each county clerk shall appoint one or more deputies, to be approved by the circuit judge, one of whom shall be designated in the appointment as the successor of the clerk in the case of vacancy for any cause and may revoke the appointment at his or her pleasure. The appointment and revocation shall be in writing and filed in the office of the county treasurer. The deputy(ies) may perform the duties of the county clerk. MCL 50.63.

2. The county clerk shall appoint, in counties with more than one circuit judge or having more than 100,000 population but less than 1,000,000, a deputy for each judge, approved by the judge, to attend court sessions. MCL 600.571(c).

3. In counties having a population of more than 1,000,000, the county clerk shall appoint a chief deputy. MCL 600.579(1). Other special provisions apply as well. MCL 600.579.

C. Bonding of County Clerk

1. As determined by the county board of commissioners, the county clerk either shall be covered by a blanket bond or shall give a bond to the people of the state, in the penal sum of $2,000, to be approved by the circuit judge, for the faithful discharge of the duties of the county clerk's office. See also Section 5-07. MCL 50.61.

   The substance of an individual bond for the county clerk is specified in MCL 50.62.

2. The circuit judge may, at his or her discretion, require the county clerk to file a bond with the county treasurer conditioned that the clerk shall, in all respects, comply with the requirements of law and the court rules in the handling and

management of funds deposited with the court pursuant to court order. MCL 600.572.

D. Filling Vacancy in County Clerk's Office

The judge of the circuit court may fill a vacancy in the office of county clerk. See also Section 1-12. Const 1963, art 6, § 14, MCL 168.209.

E. Duties and Responsibilities

1. Attend Sessions of Courts MCL 600.571(b).

2. Maintain Office Hours

The office of the circuit court clerk must be open, and the clerk or deputy clerk must be in attendance during business hours and at other times that the court is in session. MCR 8.105(A). The hours of the court are determined by the administrative order issued by the chief judge. MCR 8.110(D)(1).

3. Record Maintenance

In maintaining case files, indexes, and other records and permitting access to records, the clerk of the court shall comply with the records standards prescribed by statute, court rule, and as otherwise prescribed by the Michigan Supreme Court. MCR 8.119; *Michigan Trial Court Case File Management Standards*. See also Section 4-02.

4. Ministerial Duties

"Beyond having the care and custody of the court's records, the circuit court clerk is also to perform noncustodial ministerial duties as directed by the court. The determination of the precise noncustodial ministerial duties that are to be performed by the clerk, including their existence, scope, and form, is a matter of court administration and is therefore reserved exclusively for the judiciary under Const 1963, art 3, § 2, Const 1963, art 61, and Const 1963, art 6, § 5. This judicial authority includes the discretion to create, abrogate, and divide between the clerk and other staff, noncustodial ministerial functions concerning court administration." *Lapeer County Clerk* v *Lapeer Circuit Court*, 469 Mich 146 (2003).). It should be noted that "[t]he Supreme Court typically discerns the common understanding of constitutional text by applying each term's plain meaning at the time of ratification. *National Pride at Work, Inc. v Governor of Michigan and City of Kalamazoo*, 481 Mich 56 (2008).

5. Money Paid into Court

The clerk is responsible to receive, deposit, disburse and keep records of money paid into court. See also Section 6-05. MCL 50.101 *et seq*., MCL 600.572 *et seq*.; MCR 8.106.

6. Maintain Records of Court Reporter/Recorder

All records, as defined in MCR 8.119(F) and regardless of format, that are created and kept by the court reporter or recorder belong to the court, must remain in the physical possession of the court, and are subject to access in accordance with MCR 8.119(H). If the court reporter or recorder needs access to the records for purposes of transcribing off-site, the reporter or recorder may take only a reproduction of the original recording, which must be returned to the court upon filing of the transcript. See also Section 4-02. MCR 8.108(D).

7. Jury System

The county clerk must perform certain duties for the jury system. See also Section 3-05.

8. Preparing Documents

Unless specifically required by statute or court rule, it is recommended that court clerks **not** prepare pleadings, subpoenas, and similar documents for any party. This practice will ensure that the court remains a neutral party. For specific guidance in this area, see Michigan Judicial Institute's webcast on Best Practices for Serving the Self-Represented Seminar.

9. Reports to the SCAO and Local and State Agencies

The county clerk must submit reports about the court's business to the SCAO and to local and state government entities. See the list of reporting requirements. For details, see Sections 3-07, 3-08, and 6-05. MCR 8.119(L).

10. Admission of Person to Bar

The clerk of the Supreme Court and of each circuit court shall, when a person is admitted to the bar by that court, administer to the person the oath prescribed by the Supreme Court for members of the bar, and upon payment of the sum of $25 issue to that person a certificate of admission, and keep a record of the admission in the roll of attorneys and the journal of the court, and transmit promptly to the clerk of the Supreme Court and to the State Bar of Michigan, without charge,

certified copies of the orders of admission. When a member of the bar is suspended or disbarred, or is held in contempt, and when a person is reinstated as a member of the bar, the clerk of the court so doing shall transmit to the clerk of the Supreme Court and to the State Bar of Michigan without charge certified copies of those orders. MCL 600.913.

11. Other

Provide assistance to pro se litigants as required by statute. MCL 600.2950b.

5-10 Circuit Court Probation/Parole

A. Probation

1. Appointment of Officers

The Michigan Department of Corrections, which is administered by the Michigan Corrections Commission of which six members are appointed by the governor, shall appoint, supervise and remove probation officers for the circuit court in a manner provided by the laws of the state of Michigan. MCL 791.201, MCL 791.222.

2. Establishment, Supervision, and Regulation of Bureau

Within the Michigan Department of Corrections a department or bureau of probation is established. This bureau is under the direction and supervision of the assistant director in charge of probation. MCL 791.221. The assistant director in charge of probation shall be the administrative head of the bureau of probation subject to the authority and supervision of the director of the department of corrections, and the commission. MCL 791.223.

The assistant director shall endeavor to unify probation procedures throughout the state and shall regulate the procedure for the administration of probation including investigation, supervision, casework, record keeping, and accounting. MCL 791.223.

3. Duties of Officer

A circuit court probation officer, under the general direction of a supervisor and under the auspices of the circuit court judge or judges, shall conduct investigations and prepare informational reports to assist the court in determining appropriate sentences of individuals brought before the court. A circuit court probation officer shall supervise the probationer during his or her term of probation and may recommend relevant programs for rehabilitation.

4. Facilities

Counties are responsible for rent, contractual services, supplies, materials, and equipment costs supporting probation officers and personnel in the county, including any increases in such costs arising from an increase in probation services staffing. MCL 791.223a; OAG 1987-1988, No 6448 (June 29, 1987).

B. Parole

1. Definition

Parole is the act of releasing or the status of being released from a state penal institution in which a convicted felon has served a part of a maximum sentence, on condition of maintaining good behavior and remaining in the custody of a state agency until a final discharge is granted.

2. Establishment, Supervision, and Regulation of Bureau

There is established within the Michigan Department of Corrections a bureau of field services under the direction and supervision of a deputy director in charge of field services, who shall be appointed by the director and who shall be within the state civil service. The deputy director shall direct and supervise the work of the bureau of field services and shall formulate methods of investigation and supervision and develop various processes in the technique of supervision by the parole staff. The deputy director is responsible for all investigations of persons eligible for release from state penal institutions, and for the general supervision of persons released from penal institutions. MCL 791.231.

3. Duties of Officer

A parole officer, under the general direction of the district supervisor of each parole district, shall supervise the parolee during his or her term of parole. A parole officer may offer guidance and assistance to the offender and may recommend relevant programs for rehabilitation. See also MCL 791.231 - 791.245.

5-11 Friend of the Court Office

A. Function

The friend of the court office is an administrative arm of the circuit court and performs its duties under the direction and supervision of the chief judge. See Section 1-08.

The office is generally responsible for the ongoing review and supervision of orders relating to children involved in domestic relations cases heard by the family division of the circuit court. The office neutrally investigates and furnishes the court with accurate information in reports and recommendations related to custody, parenting time, and support, without advocating for any party, and facilitates the entry and maintenance of appropriate orders. The office also upholds the authority and integrity of the court by impartially assuring compliance with lawful orders and, as permitted by law, objectively enforcing court-ordered custody, parenting time, and support provisions. The office also assists the court in attempting to resolve complaints and disagreements through dispute resolution services.

The office and facilities of the friend of the court shall provide assistance to the family division of circuit court in accordance with the court's jurisdiction. MCL 600.1043.

The friend of the court office also has an obligation to the Michigan Department of Health and Human Services through its Cooperative Reimbursement Program (CRP), an agreement between the two offices to perform federally mandated child support services. Reimbursement for these services is discussed in Section 6-09. MCL 400.233(o), MCL 552.519(3)(n).

B. Authority

The friend of the court office was created by the Legislature in 1919. The enabling statutes were substantially amended by 294, PA 1982. The principal statutes that outline the office's duties are the Friend of the Court Act, MCL 552.501 *et seq*., and the Support and Parenting Time Enforcement Act, MCL 552.601 *et seq*.

Each friend of the court shall take all necessary steps to adopt office procedures to implement the Friend of the Court Act, the Michigan court rules, and the recommendations of the Friend of the Court Bureau. Office of the friend of the court duties shall be performed in accordance with the Elliott-Larsen civil rights act, 1976 PA 453, MCL 37.2101 to 37.2804. MCL 552.503(7)

Other statutes that relate to friend of the court office activities include:

- Child Custody Act of 1970. MCL 722.21 *et seq*.
- Divorce Act. MCL 552.1 *et seq*.
- Family Support Act. MCL 552.451 *et seq*.
- Interstate Income Withholding Act. MCL 552.671 *et seq.*
- Paternity Act. MCL 722.711 *et seq*.
- Payments of Support or Maintenance Collected by Friend of the Court or State Disbursement Unit. MCL 600.2538.
- Revised Uniform Reciprocal Enforcement of Support Act. MCL 780.151 *et seq*.
- Revocation of Paternity Act. MCL 722.1431 *et seq*.
- Status of Minors and Child Support Act. MCL 722.1 *et seq*.
- Uniform Child Custody Jurisdiction and Enforcement Act. MCL 722.1101 *et seq*.
- Uniform Interstate Family Support Act (UIFSA). MCL 552.2101 *et seq*.

C. Legal Assistance for the Friend of the Court Office

Where neither the friend of the court nor any member of the staff is an attorney, the chief judge may appoint an attorney who is a member of the State Bar of Michigan to assist the friend of the court when legal assistance is needed in order to carry out the office's statutory duties. MCL 552.522.

D. Surety or Performance Bond Requirements

The friend of the court surety or performance bond requirements are covered in the Code of Federal Regulations. The Department of Health and Human Services Office of Child Support must have and use written procedures for compliance with 45 CFR 302.19. Within these procedures are regulations requiring that every person who has access to child-support collections is covered by a bond against loss resulting from employee dishonesty. This provision applies to state and local IV-D agency employees. Individual counties can have self-bonding/insuring provisions. See also Section 5-07. 45 CFR 302.19.

The court should work with the local funding unit to determine the risk of loss that the local funding unit is willing to accept, and should maintain staff bonds accordingly. Those staff members who are covered and the applicable amounts should be verified annually to assure that adequate bonds are being maintained for all relevant staff.

E. Duties and Responsibilities of the Friend of the Court Office

The duties and responsibilities of the friend of the court office are detailed in the Friend of the Court Act, MCL 552.501 *et seq*., the Support and Parenting Time Enforcement Act, MCL 552.601 *et seq*., the Michigan Court Rules, and other statutes cited above.

Friend of the court offices must maintain an open case and provide services on domestic relations cases in which the parties have not opted out of friend of the court services. MCL 552.505a(1),(2). Except as otherwise required by federal law on cases that are eligible for funding under title IV-D, the friend of the court is only required to perform activities under the Friend of the Court Act or the Support and Parenting Time Enforcement Act when a party in that case has requested title IV-D services. MCL 552.503(6).

The following are the primary duties and responsibilities for friend of the court cases.

1. Enforcing Orders

The friend of the court must enforce all orders regarding custody, parenting time, and support pursuant to the Friend of the Court Act, the Support and Parenting Time Enforcement Act, and the Michigan Court Rules. The office is responsible for initiating proceedings to enforce an order or judgment for support, parenting time, or custody. MCR 3.208.

The friend of the court office must initiate enforcement when arrearage is an amount equal to support payable for one month under the support order (except for ex parte orders where the office has not received a proof of service), a parent fails to maintain court-ordered health insurance coverage, or someone who is legally responsible incurs uninsured medical expenses. MCL 552.511(1).

The friend of the court must take the necessary steps to enforce child-support orders in accordance with the Uniform Interstate Family Support Act (UIFSA). MCL 552.1101 *et seq*. This may involve assisting with the registration of support orders in other states or assisting in registering and enforcing other states' child-support orders in Michigan.

The office must initiate enforcement upon receipt of a written complaint stating specific facts alleged to constitute a violation of a custody or parenting-time order

if the office determines there is reason to believe a violation has occurred. Within 14 days after receiving such a complaint, the office must send a copy of the complaint to the individual accused of interfering and other parties. If the facts allege a violation that can be addressed by taking action under MCL 552.641, the office shall initiate action. MCL 552.511b.

2. Performing Investigations and Support Reviews

When ordered by the court, the friend of the court must conduct a custody, support, or parenting-time investigation. After the investigation, the friend of the court must provide a written report and recommendation to the court, the parties, and their attorneys. MCL 552.505(1)(g),(h).

The friend of the court may charge parties for conducting a custody or parenting-time investigation if the investigation was requested by a party. Fees charged for the investigation must be pursuant to SCAO standards. MCL 552.505(3). See Model LAO 34.

The friend of the court must review support orders in public assistance cases or medical assistance cases once every 36 months. Additionally, the friend of the court must conduct a support review upon the request of a party, if the office has not conducted a review based on that party's request within the last 36 months, if the office has reasonable grounds to believe the amount of child support should be modified, or if a party presents evidence of a change in financial condition. If any of these types of review determines that support should be modified, the friend of the court must petition the court for the appropriate modification. MCL 552.517.

In cases involving parties in other states or other states' orders, the friend of the court must take the necessary steps to modify child-support cases consistent with the Uniform Interstate Family Support Act. MCL 552.2101 *et seq*. This may involve assisting with the registration of Michigan support orders in other states and assisting in enforcing and reviewing other states' child-support orders registered in Michigan. If Michigan is the initiating state in an interstate friend of the court case involving child support, the office shall determine whether a review of a support order in another state is appropriate in accordance with MCL 552.517 and is appropriate based upon the residence and jurisdiction of the parties. MCL 552.517c.

When recommending an amount of support, the friend of the court must use the Michigan Child Support Formula.

3. Nontraditional Office Hours

The friend of the court office shall be open to the public and shall make available all of the office's services not less than 20 hours each month during nontraditional office hours. MCL 552.503(8).

4. Providing Information to Parties

The friend of the court office must provide certain information to parties. MCL 552.505.

a. Opting Out

Parties must be informed that, unless one of the parties is required to participate in the title IV-D child-support program, they may choose not to have the office of the friend of the court administer and enforce obligations that may be imposed in the domestic relations matter. MCL 552.505(1)(a).

Parties must be informed that, unless one of the parties is required to participate in the title IV-D child-support program, they may direct the office of the friend of the court to close the friend of the court case that was opened in their domestic relations matter. MCL 552.505(1)(b).

b. Informational Pamphlet

An informational pamphlet shall be provided to the parties explaining the role and functions of the office, the duties of the office, the rights and responsibilities of the parties, the availability of and procedures used in domestic relations mediation, the availability of human services in the community, the availability of joint custody, and how to file a grievance regarding the friend of the court office. See also Section 8-03. MCL 552.505(1)(c).

c. Alternative Dispute Resolution Services

The parties shall be informed of the availability of alternative dispute resolution services to assist them in resolving custody and parenting-time disputes. MCL 552.505(1)(e).

d. Joint Custody

The parties shall be informed of the option for joint custody if there is a dispute regarding custody. MCL 552.505(1)(f).

e. Forms

The friend of the court must make available forms for motions, responses, and orders for use by parties without the assistance of legal counsel to request the court to modify child support, custody, or parenting-time orders (including a change of domicile or residence), and to request a payment plan to discharge or abate arrears. MCL 552.505(1)(d).

f. Annual Statement

Upon request, the friend of the court office must provide each party, without charge, an annual statement of account. The office may charge a reasonable fee for additionally requested statements of account. These statements are in addition to statements provided for administrative and judicial hearings. MCL 552.509(3).

5. Providing Alternative Dispute Resolution Services

In a friend of the court case, the office shall provide, either directly or by contract, alternative dispute resolution to assist the parties in settling voluntarily a dispute concerning child custody or parenting time. The alternative dispute resolution shall be provided according to a plan approved by the chief judge and the State Court Administrative Office (SCAO). The plan adopted shall include a screening process for domestic violence, the existence of a protection order between the parties, child abuse or neglect, and other safety concerns, and the plan shall provide a method to address those concerns. The plan shall be consistent with standards established by the SCAO and shall include minimum qualifications and training requirements for alternative dispute resolution and domestic relations mediation providers and a designation of matters that are subject to alternative dispute resolution by various means. A party may be required by court order to meet with a person conducting alternative dispute resolution. MCL 552.513(1).

An employee of the office or other person who provides domestic relations mediation services under a plan approved under MCL 552.513(1) shall have all of the following qualifications: (a) Possess knowledge of the court system of this state and the procedures used in domestic relations matters. (b) Possess knowledge of other resources in the community to which the parties to a domestic relations matter can be referred for assistance. (c) Other qualifications as

prescribed by the state court administrative office under the supervision and direction of the supreme court. (d) Other qualifications as prescribed by the chief judge of the circuit court. MCL 552.513(4). Employees of the office who conduct any other form of alternative dispute resolution shall have the qualifications to conduct a joint meeting as described MCL 552.642a. MCL 552.513(5). See also Section 5-04.

If an agreement is reached by the parties through friend of the court alternative dispute resolution, a consent order incorporating the agreement shall be prepared by an employee of the office or individual approved by the court using a form provided by the SCAO, under the supervision and direction of the supreme court, or approved by the chief judge. The consent order shall be provided to, and shall be entered by, the court.

Each alternative dispute resolution plan prepared according to subsection (1) shall include an option for domestic relations mediation

An employee of the office who provides domestic relations mediation in a friend of the court case involving a particular party shall not perform referee functions, investigation and recommendation functions, or enforcement functions as to any domestic relations matter involving that party. MCL 552.515

If a written objection to an ex parte parenting time order is filed within 14 days of the order, the friend of the court office must attempt to resolve the dispute within 14 days of the objection. If the friend of the court office is unable to resolve the dispute, it must provide the requesting party with form pleadings and written instructions, and must schedule a hearing with the court. MCL 722.27a(12); MCR 3.207(B)(5).

6. Handling Support Payments

The State Disbursement Unit (SDU) or friend of the court shall receive, record, and disburse all payments of support and service fees. MCL 552.509(1),(2). Any support or fee payments received by the friend of the court shall be recorded in the Michigan Child Support Enforcement System (MiCSES) and sent to the SDU for disbursement not less than once each month.

7. Makeup Parenting-Time Policy

Each circuit court shall establish a makeup parenting-time policy pursuant to which a parent who has been wrongfully denied parenting time is able to make up the parenting time at a later date. The policy does not apply until it is approved by the chief circuit judge. MCL 552.642(1).

Courts may refer parenting-time disputes to local community dispute resolution program centers for mediation through local administrative order. Before implementing a local administrative order for this program, contact the community dispute resolution program center. Direct questions can also be referred to the Office of Dispute Resolution. See Model LAO 24.

F. Domestic Relations Referees

The chief judge may name persons to serve as domestic relations referees. The chief judge may designate an employee of the office of the friend of the court who is a member of the State Bar of Michigan to be the referee. If no employee of the office is a lawyer, the chief judge may designate a member of the State Bar of Michigan. MCL 552.507; MCR 3.215(A); Michigan Supreme Court Administrative Order 2009-06. See Model LAO 31 for appointing a domestic relations referee. The referee must keep contact information up-to-date with the SCAO on a form provided for that purpose.

The domestic relations referee shall conduct hearings on those matters referred by the court and recommend an order on those issues. In many instances, the court has designated the types of cases which are automatically referred to the referee. In other courts, referral is made on a case-by-case basis. An employee of the office who provides domestic relations mediation in a friend of the court case involving a particular party shall not perform referee functions as to any domestic relations matter involving that party. MCL 552.515.

As a judicial officer, domestic relations referees are subject to the Michigan Code of Judicial Conduct, including filing financial reports pursuant to Canon 6C and 5C(4)(c). MCR 9.201(B). They are required to annually submit a financial report form (SCAO 17) to the SCAO with a copy to the chief judge of the court in which the magistrate serves. See SCAO memorandum on "Magistrate and Referee Financial Reporting."

G. Annual Review of Friend of the Court Office

The chief judge conducts the annual review of the friend of the court office's performance and submits a report to the State Court Administrative Office using SCAO-approved form FOC 17, Friend of the Court Annual Statutory Review. Notice of the review shall be given to allow for public comment. MCL 552.524.

H. Grievances Against Friend of the Court

1. A party to a friend of the court case may file a written grievance with the friend of the court office. The friend of the court office will investigate grievances and respond within 30 days or issue a statement to the party filing the grievance stating the reason a response is not possible within that time. MCL 552.526(1)(a).

2. A party to a friend of the court case may file a grievance with the chief judge if the party is not satisfied with a friend of the court grievance response. The chief judge will investigate grievances filed with his or her office and respond within 30 days or issue a statement to the party filing the grievance stating the reason a response is not possible within that time. MCL 552.526(1)(b).

3. The chief judge semiannually submits to the State Court Administrative Office a report of the grievances filed and their disposition. See form SCAO 28. MCL 552.526(2).

4. A party to a domestic relations matter may file at any time a grievance concerning friend of the court operations with the appropriate citizen advisory committee, which shall, at its discretion, conduct a review. MCL 552.526(3).

5. If the county has established a citizen advisory committee in accordance with MCL 552.504, the friend of the court shall provide the friend of the court citizen advisory committee grievance information. MCL 552.504b.

5-12 District Court Clerk

A. Authority

In each county within a district of the first class, in each district of the second class, and in each political subdivision where the court sits within a district of the third class, the district judge or judges of the district shall appoint a clerk of the court. In districts of the first class, the judge or judges may appoint the county clerk to act as clerk of the court. MCL 600.8281(1). See Section 1-12, B.

B. Appointment of Deputy Clerks

The clerk of the court shall appoint deputy clerks of the court subject to the approval of the judges. In the 36th District Court, the chief judge of the district shall appoint the clerk of the court and deputy clerks. MCL 600.8281(2),(4).

C. Term of Office

The clerk of the court, including a county clerk to the extent he or she is serving as clerk of the court, shall serve at the pleasure of the district judge or judges of the district. MCL 600.8281(3).

D. Bonding of Clerk

All clerks, deputy clerks, magistrates, and official process servers of the district court must file with the chief judge a bond approved by the chief judge in a penal sum determined by the state court administrator, conditioned that the officer will:

1. perform the duties as clerk, deputy clerk, magistrate, or process server of that court, and

2. account for and pay over all money which may be received by the officer to the person or persons lawfully entitled.

The bond must be in favor of the court and the state. MCR 8.204. See also Section 5-07.

E. Duties and Responsibilities

1. General Duties

a. Maintain Office Hours

The office of the clerk must be open and the clerk or deputy clerk must be in attendance during business hours. MCR 8.105(A). Hours of the court are determined by administrative order issued by the chief judge. MCR 8.110(D)(1).

b. Record Maintenance

In maintaining case files, indexes, and other records and permitting access to records, the clerk of the court shall comply with the standards prescribed by statute, court rule, and as otherwise prescribed by the Michigan Supreme Court. MCR 8.119; *Michigan Trial Court Case File Management Standards*. See also Section 4-02.

c. Money Paid Into Court

The clerk is responsible for handling money paid into court, including deposit of money, recordkeeping, and disbursement. See also Section 6-05. MCR 8.106.

d. Maintaining Records of Court Reporter/Recorder

All records, as defined in MCR 8.119(F) and regardless of format, that are created and kept by the court reporter or recorder belong to the court, must remain in the physical possession of the court, and are subject to access in accordance with MCR 8.119(H). If the court reporter or recorder needs access to the records for purposes of transcribing off-site, the reporter or recorder may take only a reproduction of the original recording, which must be returned to the court upon filing of the transcript. See also Section 4-02. MCR 8.108(D).

e. Jury System

The district court clerk must perform certain duties for the jury system. See also Section 3-05.

f. Preparing Documents

Unless specifically required by statute or court rule, and for assistance completing requests for accommodations under the Americans with Disabilities Act, it is recommended that court clerks **not** prepare pleadings, complaints, subpoenas, or any other document for any plaintiff including the prosecutor. This practice will ensure that the court remains a neutral party.

g. Reports to the SCAO and to Local and State Agencies

The clerk must submit reports about the court's business to the State Court Administrative Office and to local and state government entities. MCR 8.119(L). See the list of reporting requirements. For details, see Sections 3-07, 3-08, and 6-05.

2. Allocation of Costs in Third-Class Districts

In third-class districts, the clerk of the court shall collect data regarding the number of cases and the costs of operating the court, determine the proper share of costs to be borne by each political subdivision, and certify those figures to the treasurers of the political subdivisions. MCR 8.201(A).

5-13 District Court Probation

A. Establishment of Probation Department

In each district of the district court in the state of Michigan, the judge or judges of that district may establish a probation department within a district control unit. The necessary and reasonable expense of a probation department shall be borne by the district control unit. MCL 600.8314.

B. Duties of Officer

A district court probation officer, under the general direction of the chief judge, judge, or court administrator, conducts investigations and prepares informational reports in order to assist the district court judge in determining appropriate sentences of individuals brought before the court. The district court probation officer shall supervise the probationer during his or her term of probation and may recommend relevant programs for rehabilitation.

5-14 District Court Magistrate

A. Authority

The office of district court magistrate was created by the District Court Act, 1968 PA 154, Chapter 85. In a county that elects by itself fewer than two district court judges, the county board of commissioners shall provide for one district court magistrate. In all other counties in districts of the first and second class, the county boards of commissioners shall provide for at least one magistrate when recommended by the judges of the district court. Additional magistrates may be provided by the board upon recommendation of the judges. All appointments shall be subject to approval by the county board of commissioners before the person assumes the office of magistrate. MCL 600.8501(1). See Section 1-12, B.

In each district of the third class, the judge or judges of the district may appoint one or more district court magistrates. See Section 1-12, B. Before a person assumes the office of magistrate in a district of the third class, the appointment of that person shall be subject to approval by the governing body(ies) of the district control unit(s) that, individually or in the aggregate, contain more than 50 percent of the population of the district. This section does not apply to the 36th District Court. MCL 600.8501(2).

The 36th District Court shall have not more than six district court magistrates. The chief judge of the 36th District may appoint one or more magistrates. If a vacancy occurs, the chief judge may appoint a successor. MCL 600.8501(3).

B. Appointment of Magistrate

Before being appointed to the office of magistrate in a first- or second-class district, a person must be a registered elector in the appointed county pursuant to MCL 600.8507(1). A person being appointed to the office of magistrate in a third-class district must be a registered elector in the appointed district pursuant to MCL 600.8501(2). Before assuming office, a person appointed as a magistrate shall take the constitutional oath of office and file a bond with the county treasurer in an amount determined by the state court administrator. MCL 600.8507(1); MCR 8.204. The bond shall also apply to temporary service in another county pursuant to MCL 600.8507(2). See Section 5-07.

Michigan Supreme Court Administrative Order 2009-06 requires each court appointing a district court magistrate to submit a local administrative order (LAO) to the SCAO that identifies the magistrate and includes contact information and the scope of the authority of the magistrate. See Section 5-02. For a non-attorney magistrate, see Model LAO 3a and Model LAO 3b for an attorney magistrate. The district court magistrate must keep contact information up-to-date on a form provided for that purpose.

C. Appointment of Deputy Clerk as Magistrate

Subject to the provisions of MCL 600.8501, judges of the district court within a district of the first or second class may appoint a clerk or deputy clerk as a magistrate to perform the duties and exercise the powers of a magistrate in addition to his or her duties as clerk or deputy clerk of the district court. MCL 600.8503.

D. Term of Office

All magistrates appointed shall serve at the pleasure of the judge(s) of the district court. MCL 600.8507(1).

E. Reporting Requirement

As a judicial officer, district court magistrates are subject to the Michigan Code of Judicial Conduct, including filing financial reports pursuant to Canon 6C and 5C(4)(c). MCR 9.201(B). They are required to annually submit a financial report form (SCAO 17) to the SCAO with a copy to the chief judge of the court in which the magistrate serves. See SCAO memorandum on "Magistrate and Referee Financial Reporting."

F. Duties

Generally, the duties of a magistrate include:

- conducting arraignments. MCL 600.8511, MCL 600.8513.
- issuing arrest and search warrants. MCL 600.8511.
- setting bail. MCL 600.8511, MCL 764.15b; MCR 3.708(C).
- presiding over civil infractions. MCL 600.8512, MCL 600.8512a.
- taking pleas and sentencing for specified misdemeanors and ordinance violations. MCL 600.8511, MCL 600.8512.
- granting petitions for court-appointed attorneys in misdemeanor cases. MCL 600.8513.
- suspending payment of court fees by indigent parties pursuant to MCR 2.002. MCL 600.8513.
- conducting probable cause conferences when authorized by the chief judge. MCL 600.8511(h).
- issuing suppression orders for search warrant affidavits and tabulations. MCL 780.651(9), MCL 780.655(2).
- signing nolle prosequis upon written authorization of the prosecuting official within parameters. MCL 600.8513.
- trying small-claims cases (attorney magistrates only). MCL 600.8427, MCL 600.8514.
- presiding over dangerous animal proceedings. MCL 287.322.

- conducting marriage ceremonies and maintaining a book of marriages performed. MCL 551.7, MCL 551.104.

1. Magistrate Determinations Appealable

Every determination that a magistrate makes regarding responsibility is appealable to the district court judge as a matter of right. MCR 4.401(D). Magistrates do not have the specific authority to hold an individual in contempt including contempt within his or her presence. A magistrate may schedule a show-cause hearing; however, the magistrate does not have the authority to conduct a show-cause hearing or to issue a contempt order. A magistrate does not have the authority to issue a bench warrant.

2. Other Miscellaneous Duties

The magistrate may provide nonlegal advice and assistance to the public and court staff. The magistrate is routinely asked to resolve questions that frequently require discussion with other authorities such as law enforcement, prosecuting officials, and judicial officers. A magistrate may also perform the following duties or activities.

a. Collecting and recording payment for fines and costs. Except as provided in MCL 600.8535(2), district court magistrates shall pay all fines and costs received by them to the clerk of the district court on or before the last day of the month following receipt of those funds, which shall be allocated as provided in MCL 600.8379. MCL 600.8535(1). In the 36th District Court, each district court magistrate shall cause all fines and costs received by the magistrate to be paid immediately to the clerk of the district court for the 36th District. MCL 600.8535(2).

NOTE: While a magistrate may collect and record payment for fines and costs in courts where there are limited human resources, it is highly discouraged if resources are available. If a magistrate is collecting and recording payments, the magistrate must follow the fiscal management guidelines for receipting and depositing money. See Section 6-05.

b. Administering oaths and affirmations. MCL 600.8317.

c. Taking acknowledgments. MCL 600.8317.

For more information, see Chapter 85 of the Revised Judicature Act.

G. Immunity

A district court magistrate, for acts done within his or her jurisdiction as provided by law, shall have judicial immunity to the extent accorded a district court judge. MCL 600.8513(3). See Section 5-07.

For more information, see the Michigan Judicial Institute's *Traffic Benchbook – Fourth Edition*.

5-15 Law Clerks for Circuit and District Court

A. Authority

Each circuit and district court may employ law clerks for the court and each judge of the court. MCL 600.1471(1).

B. Requirement for Employment

A law clerk must be a resident of Michigan and either licensed to practice law in the state or be a graduate or student of a reputable and qualified law school. MCL 600.1471(2).

C. Compensation

The compensation of law clerks is determined by the county board of commissioners or by the governing body of the district control unit. For specific details, see MCL 600.1471(3).

D. Period of Employment and Discharge

The period of employment for a law clerk is one year, subject to renewal for a similar period. The court may discharge a law clerk at any time. MCL 600.1471(4).

E. Function

The function of a law clerk is to conduct legal research, prepare memoranda, and perform other duties prescribed by the court under the direction of the judges of the court and pursuant to the general supervisory control of the chief judge of the court. MCL 600.1471(5).

5-16 Probate Register

References to the "clerk" in the Michigan Court Rules apply to the probate register.

A. Appointment

1. Probate Register

In each county the probate judge of the county or probate court district, or the chief probate judge in a county having two or more probate judges, may appoint a probate register at a reasonable salary fixed by the county board of commissioners. The probate register so appointed shall take and subscribe to the oath of office prescribed by the Michigan Constitution of 1963 and give bond to the probate judge or chief judge in the penal sum of $1,000 to be approved by that judge, which bond and oath shall be filed in the office of the county clerk of the county (see Section 5-07). The probate register shall hold office until the appointment is terminated by the probate or chief judge. See also Section 1-12. C. MCL 600.833(1).

2. Deputy Probate Register

If a county has a probate register, the probate judge or the chief probate judge may appoint one or more deputy probate registers who shall have such compensation as is fixed by the county board of commissioners. The term of office of the deputy probate registers and their powers shall be the same as those prescribed by law for probate registers. They shall take and subscribe to the constitutional oath of office, which shall be filed with the county clerk. MCL 600.833(2).

B. Judicial Responsibility

The judges of probate shall be responsible for the direction and supervision of the registers of probate, deputy registers of probate, probate clerks, and other personnel employed by the court to assist in the work of the court. MCR 8.301(A).

C. Entry of Order Specifying Authority

1. To the extent authorized by the chief judge of a probate court by a general order, the probate register, deputy probate register, the clerks of the probate court, and other employees designated in the order have the authority, until further order of the court, to do all acts required by the probate judge except judicial acts in a contested matter and acts forbidden by law to be performed by the probate register. MCR 8.301(B)(1). See Model Local Administrative Order 18.

2. The order of the chief judge may refer to the power:

   a. to set the time and place for hearings in all matters; take acknowledgements; administer oaths; sign notices to fiduciaries, attorneys and sureties; sign citations and subpoenas; conduct conferences with fiduciaries required to ensure prompt administration of estates; and take testimony as provided by law or court rule; and

   b. to sign or by device indicate the name of a judge to all orders and letters of authority of the court with the same force and effect as though the judge had signed them. In such cases, the register or deputy register must place his or her initials under the name of the judge. See also Section 1-07. MCR 5.162(B), MCR 8.301(B)(2); MCL 600.834.

D. Other Authority

In addition to the powers that may be granted by order of the chief judge, the probate registers and deputy registers have the authority granted by statute and may take acknowledgments to the same extent as a notary public. MCL 600.834; MCR 8.301(C).

E. Duties and Responsibilities

1. General Duties

a. Maintain Office Hours

The office of the clerk must be open and the clerk or deputy clerk must be in attendance during business hours. MCR 8.105(A). The hours of the court are determined by the administrative order issued by the chief judge. MCR 8.110(D)(1).

b. Record Maintenance

In maintaining case files, indexes, and other records and permitting access to records, the clerk of the court shall comply with the records standards prescribed by statute, court rule, and as otherwise prescribed by the Michigan Supreme Court. MCR 8.119; *Michigan Trial Court Case File Management Standards*. See also Section 4-02.

c. Money Paid into Court

The clerk is responsible for handling money paid into court, including the deposit of money, recordkeeping, and disbursement. MCR 8.106. See also Section 6-05.

d. Maintaining Records of Court Reporter/Recorder

All records, as defined in MCR 8.119(F) and regardless of format, that are created and kept by the court reporter or recorder belong to the court, must remain in the physical possession of the court, and are subject to access in accordance with MCR 8.119(H). If the court reporter or recorder needs access to the records for purposes of transcribing off-site, the reporter or recorder may take only a reproduction of the original recording, which must be returned to the court upon filing of the transcript. See also Section 4-02. MCR 8.108(D).

e. Jury System

The court clerk must perform certain duties for the jury system. See also Section 3-05.

f. Preparing Documents

Unless specifically required by statute or court rule, it is recommended that court clerks **not** prepare pleadings, subpoenas, and similar documents for any party. This practice will ensure that the court remains a neutral party. For specific guidance in this area, see Michigan Judicial Institute's webcast on Best Practices for Serving the Self-Represented Seminar.

g. Reports to the SCAO and to Local and State Agencies

The clerk must submit reports about the court's business to the State Court Administrative Office and to local and state government entities. MCR 8.119(L). See the list of reporting requirements. For details, see Sections 3-07, 3-08, and 6-05.

5-17 Public Guardian of Probate Court

A. Authority

No statutes or case law specifically address the position of public guardian. A public guardian is subject to the same standards as any other guardian, conservator, or fiduciary.

B. Funding

The public guardian/conservator position has been funded by a combination of county money and payments from estates which the public guardian/conservator is handling. Payments to a public guardian/conservator are generally made monthly, based on a written contract and/or subject to court approval on a case-by-case basis.

C. Appointment and Function

A public guardian/conservator is a person appointed by the court as guardian/conservator for a ward and/or a ward's estate if the appointment is in the ward's and/or estate's best interest and if there is no other competent, suitable, and willing person to act. The position of public guardian/conservator has been created by certain probate courts in response to the need to have a person available to make personal or financial decisions for someone unable to handle their own affairs. The public guardian/conservator is subject to the provisions in MCL 700.5106.

D. Model Code of Ethics for Guardians

The National Guardianship Association, Inc. has developed A Model Code of Ethics for Guardians.

5-18 Public Administrator

If no other qualified person that has priority for appointment as personal representative is available, the state public administrator or the county public administrator may be appointed as personal representative of a decedent's estate subject to the provisions of MCL 700.3203(1). MCL 700.3203(1)(g).

5-19 Juvenile Register

References to the "clerk" in the Michigan Court Rules apply to the probate register.

A. Authority

The judge of probate may appoint either the probate register, deputy probate register, or clerk of the court to the position of juvenile register. Implementation of family division of the circuit court has resulted in various plans for the position of the juvenile register. MCL 712A.7. See Sections 1-12 and 5-01, E.

B. Duties and Responsibilities

The duties of the juvenile register include preparing petitions for investigation, preparing summonses, writs, or other necessary papers, and performing such duties as required by the probate judge. The juvenile register must be competent to do all acts required of the probate judges except judicial acts. MCL 712A.7.

1. General Duties

a. Maintain Office Hours

The office of the clerk must be open and the clerk or deputy clerk must be in attendance during business hours. MCR 8.105(A). The hours of the court are determined by the administrative order issued by the chief judge. MCR 8.110(D)(1).

b. Record Maintenance

In maintaining case files, indexes, and other records and permitting access to records, the clerk of the court shall comply with the records standards prescribed by statute, court rule, and as otherwise prescribed by the Michigan Supreme Court. MCR 8.119; *Michigan Trial Court Case File Management Standards*. See also Section 4-02.

c. Money Paid into Court

The clerk is responsible for handling money paid into court, including deposit of money, recordkeeping, and disbursement. MCR 8.106. See also Section 6-05.

d. Maintaining Records of Court Reporter/Recorder

All records, as defined in MCR 8.119(F) and regardless of format, that are created and kept by the court reporter or recorder belong to the court, must remain in the physical possession of the court, and are subject to access in accordance with MCR 8.119(H). If the court reporter or recorder needs access to the records for purposes of transcribing off-site, the reporter or recorder may take only a reproduction of the original recording, which must be returned to the court upon filing of the transcript. See also Section 4-02. MCR 8.108(D).

e. Jury System

The court clerk must perform certain duties for the jury system. See also Section 3-05.

f. Preparing Documents

Unless specifically required by statute or court rule, it is recommended that court clerks **not** prepare pleadings, subpoenas, and similar documents for any party. This practice will ensure that the court remains a neutral party. For specific guidance in this area, see Michigan Judicial Institute's webcast on Best Practices for Serving the Self-Represented Seminar.

5-20 Juvenile Probation Officer

A. Authority

The probate judge in each county may appoint one or more suitable persons of good character and qualified training or experience, other than the county agent or assistants, to act as probation officer. Each county shall provide for a minimum of one delinquency probation officer/casework staff person for every 6,000 children under 19 years of age in the county. The judge may also appoint "volunteer" probation officers who receive no compensation. Local implementation of family division of the circuit court has resulted in various plans for the position of juvenile probation. MCL 712A.9. See Sections 1-12 and 5-01, E.

B. Duties

Juvenile probation officers serve at the pleasure of the court and shall report to the court on all cases under their care. MCL 712A.9.

Qualifications for hiring are outlined in Michigan Supreme Court Administrative Order 1985-5, as amended by Michigan Supreme Court Administrative Order 1988-3.

5-21 Juvenile Court Referee

A. Authority

The probate judge may designate a probation officer or county agent (county juvenile officer) to act as a juvenile court referee. Juvenile court referees that are not licensed to practice law in Michigan may only handle limited matters pursuant to MCL 712A.10 and MCR 3.913. Local implementation of family division of the circuit court has resulted in various plans for the position of juvenile court referee. MCL 712A.10. See Sections 1-12 and 5-01, E.

Michigan Supreme Court Administrative Order 2009-06 requires that each court appointing a referee submit a local administrative order (LAO) to the SCAO that identifies the referee, contact information, and the scope of the referee's authority. For appointment of a non-attorney referee, see Model LAO 32a and see Model LAO 32b for appointment of an attorney referee. The referee must keep contact information up-to-date on a form provided for that purpose.

B. Duties

Referees are permitted, through LAO, to take testimony of witnesses, take statements from the parties, hear petitions, administer oaths, make recommendations as to findings and dispositions, and issue interim ex parte orders pending a preliminary hearing in instances of emergency removal. MCL 712A.10(1)(a),(b),(c), MCL 712A.14(2).

As a judicial officer, juvenile court referees are subject to the Michigan Code of Judicial Conduct, including filing financial reports pursuant to Canon 6C and 5C(4)(c). MCR 9.201(B). They are required to annually submit a financial report form (SCAO 17) to the SCAO with a copy to the chief judge of the court in which the magistrate serves. See SCAO memorandum on "Magistrate and Referee Financial Reporting."

C. Additional Qualifications

Statute and court rule require that a referee be an attorney to perform certain functions.

1. Delinquency Proceedings

Except as otherwise provided by MCL 712A.10, only a person licensed to practice law in Michigan may serve as a referee at a delinquency proceeding other than a preliminary inquiry or preliminary hearing, if the juvenile is before the court pursuant to MCL 712A.2(a)(1). MCR 3.913(A)(2)(a).

2. Child Protective Proceedings

Only a person licensed to practice law in Michigan may serve as a referee at a child protective proceeding other than a preliminary inquiry, preliminary hearing, or a progress review pursuant to MCR 3.974(A) or (B), or an emergency removal hearing pursuant to MCR 3.974(C). MCR 3.913(A)(2)(b).

3. Designated Cases

Only a referee licensed to practice law in Michigan may preside at a hearing to designate a case or to amend a petition to designate a case and to make recommended findings and conclusions. MCR 3.913(A)(2)(c).

4. Minor Personal Protection Actions

A nonattorney referee may preside at a preliminary hearing for enforcement of a minor personal protection order. Only a referee licensed to practice law in Michigan may preside at any other hearing for the enforcement of a minor personal protection order and make recommended findings and conclusions. MCR 3.913(A)(2)(d).

5-22 County Juvenile Officer

The probate judge or judges in each county shall appoint a suitable person who shall serve as the county juvenile officer of the county. The county juvenile officer shall not be subject to or governed by civil service law of this state. Each juvenile officer shall hold office at the pleasure of the probate judge or judges of the county and shall perform the various duties required by law. MCL 400.251(2). See also Section 6-11.

The county juvenile officers and assistant county juvenile officers appointed pursuant to MCL 400.251-400.254 shall provide assistance to the family division of circuit court in accordance with that court's jurisdiction. MCL 600.1043.

5-23 County Agent

A. Authority

The county agent is an officer of the court under the general supervision of the judges of the family division of the circuit court and under the general supervision of the judge or judges. MCL 712A.8. See Section 5-01, E.

B. Duties and Responsibilities

The county agent serves at the pleasure of the judge or judges. The county agent shall organize, direct, and develop the juvenile welfare work of the court as authorized by the judge. The agent shall, when requested by the superintendent or director, supervise juveniles when released from public institutions or agencies and may perform other juvenile welfare work as requested and with the approval of the judge, including services to school-age children of the various school districts within the county, after consultation and agreement with the county school commissioner and the superintendents of schools in a county. With the judge's approval, the county agent or his or her assistants shall investigate and report on juveniles or families within the county as requested by the Department of Health and Human Services, the county juvenile agency, or the superintendent of any state institution regarding the welfare of any juvenile. MCL 712A.8.

C. Assistant County Agents

Assistant county agents shall perform duties as assigned to them by the county agent. MCL 712A.8.

5-24 Judicial Assistant

A. Authority

Every state court having at least ten judges, except the Michigan Supreme Court, may appoint an attorney to serve as judicial assistant to the court. MCL 600.1481(1).

B. Requirement for Employment

A judicial assistant must be a licensed attorney in the state of Michigan, in good standing, and capable of practicing law in all courts in the state of Michigan and in the United States Supreme Court. The judicial assistant must also have five years of active practice, including appellate experience, and preferably shall have had government experience in a legal capacity. MCL 600.1481(1).

C. Duties

The judicial assistant conducts research, studies pending legislation, recommends and drafts remedial legislation, acts as a legal advisor to the court, and represents the court when the prosecuting attorney or attorney general must be disqualified. MCL 600.1481(2).

D. Compensation and Term of Office

The judicial assistant's compensation is fixed by the recommending judges within the sum appropriated by the legislative body of the governmental unit, other than the state of Michigan, which pays the compensation of such judges. The term of office for the judicial assistant is concurrent with the term of the recommending judges and is subject to reappointment for like terms. Removal during any term shall be determined by the governor upon recommendation by the judges of the court. MCL 600.1481(3),(4).

5-25 Sheriff's Department

A. Authority

The office of sheriff for each county is created by the Michigan Constitution. The sheriff's duties are prescribed by statute and court rule. Const 1963, art 7, § 4.

B. Duties

The sheriff's court duties relate generally to security matters and execution of process.

1. Attendance at Sessions of Court

A sheriff or his or her deputy is required to attend sessions of the circuit, probate, and district courts when requested by the court. The judge requiring attendance determines and regulates the attendance and duties of the sheriff and/or his or her deputies. MCL 600.581. Practice in the several courts varies as to the frequency of attendance and duties, which generally relate to security of the court, court personnel, public, and jurors.

2. Executing Process

The sheriff and his or her deputies are officers of the court for the purposes of executing process issued by the court. MCL 600.582.

3. Summoning a Jury

The court may direct the sheriff to summon a jury. See also Section 3-05. MCL 600.587 *et seq.*; MCR 2.510(D).

4. Order for Arrest in Civil Matters

Process in civil proceedings that requires the arrest of a person may be served only by a sheriff, deputy sheriff, police officer, or a court officer appointed by the court for the purpose. MCR 2.103(D). See also MCL 600.1811. In issuing an order for arrest in a civil matter, the court should consider matters relating to proper training of personnel who will affect the arrest and liability for any actions which may arise from the arrest.

Authority and duties of the sheriff relating to the courts are more fully set forth in MCL 600.581 *et seq.*, MCL 600.8321, MCR 2.103, MCR 2.104, MCR 2.510(D), MCR 3.103(E), MCR 3.105(F), (G), and (J), and MCR 3.106(B).

5-26 Jury Board

A. Authority

All Michigan trial courts are served by a jury board whose primary duty is to provide a list of qualified citizens to serve as jurors. Michigan's jury system and the jury board's responsibilities are governed by statute. MCL 600.1301 *et seq*.

B. Rules Governing Work of Jury Board

The judges of each circuit may establish rules, not inconsistent with the jury statute, necessary to implement the statute and to ensure the proper conduct of the work of the jury board. MCL 600.1353.

Jury management in Michigan has changed significantly in the last 30 years. Many of the functions that had been performed manually by the jury board in each county are now being done electronically, with the assistance of court or county clerk staff under the direction of the chief circuit judge. Although the statutory authority and court practices related to jury management appear to be somewhat inconsistent, most practices by most courts fall within allowable activities. The court should document its actual practices. For details, see Section 3-05.

5-27 Court Reporter/Recorder

A. Authority

1. Circuit Court

Each circuit court in this state shall have as many court reporters or certified court recorders as it has judges. MCL 600.1101.

2. Probate Court

The probate judge or chief probate judge of any county or probate court district may appoint, and in counties having a population of 50,000 or more shall appoint, one or more official court reporters or certified recorders of the probate court. MCL 600.835(1).

3. District Court

There shall be not less than one district court certified court recorder or court reporter for each judge of the district court. MCL 600.8601. Pursuant to Supreme Court rule, the chief or only judge of the district may appoint additional certified recorders and reporters. MCL 600.8602(2).

For information on managing court reporter and recorder services, see Section 8-04.

B. Appointment

1. Generally

Chief judges, collectively, are the employers of all the official reporters and recorders in this state. The authority and responsibility to "supervise the performance of all court personnel, with authority to hire, discipline, or discharge such personnel, with the exception of a judge's secretary and law clerk, if any" is vested in the chief judge. MCR 8.110(C)(3)(d). See also Section 1-12.

2. District Court

Each judge of the district court shall appoint his or her own reporter or recorder. MCL 600.8602(1). The Court of Appeals has ruled that a district court judge has the right and the responsibility of selecting a court recorder at the beginning of the judge's tenure in office pursuant to MCL 600.8601 *et seq*. The court expressly declined to consider the subsequent removal of the court recorder by the judge

who appointed him or her. *Irons v 61st Judicial District Court Employees*, 139 Mich App 313 (1984).

3. Probate Court

The probate judge or chief probate judge of any county or probate court district appoints official court reporters and certified court recorders of the probate court. MCL 600.835(1).

C. Qualifications

Only reporters or recorders certified pursuant to MCR 8.108 may record or file transcripts of proceedings held in Michigan courts. MCR 8.108(G). See the lists for currently certified and registered reporters and recorders.

D. Oath of Office

1. Circuit Court

Before entering upon the duties of his or her office, the court reporter or recorder shall take and subscribe the constitutional oath of office which shall be filed with the Secretary of State's Office. MCL 600.1104.

2. District Court

Although a district court reporter or recorder is not statutorily required to take and subscribe to a constitutional oath of office, all court reporters or recorders are expected to abide by the Constitution and the laws of the United States and Michigan.

3. Probate Court

Upon appointment, probate court reporters and recorders shall take and subscribe the constitutional oath of office which shall be filed with the county clerk. MCL 600.835(1).

See the *Manual for Court Reporters and Recorders*, Section 1, Chapter 2, Conduct of the Court Reporter/Recorder.

E. Manual for Court Reporters and Recorders

The State Court Administrative Office publishes a *Manual for Court Reporters and Recorders*.

6-01 Fee Schedules

A. Fee Schedules

Limited fee schedules for the trial courts are published by the State Court Administrative Office. Other bulletins are issued regarding mileage rates for service of process, revisions to accounting procedures, child care fund collection fee, and various other matters pertinent to fiscal management.

B. Limitations on Fees

A judge of any court, sheriff, bailiff, district court magistrate, or other officer, or other person except attorneys at law to whom any fees or compensation shall be allowed by law for any service, shall not take or receive any other or greater fee or reward for his or her service, but such as is or shall be allowed by the laws of this state. MCL 600.2513. No fee or compensation allowed by law shall be demanded or received by any officer or person for any service, unless such service was actually rendered by him or her; but this section shall not prevent any officer from demanding any fee allowed for any service of which he or she is entitled by law to require the payment previous to rendering such service. MCL 600.2516.

A violation of MCL 600.2513 or MCL 600.2516 shall be deemed a misdemeanor, and the person guilty thereof shall be liable to the party aggrieved for treble the damages sustained by him or her, and such violation shall be a cause for forfeiture of office. MCL 600.2519.

C. Interest on Civil Judgments

The state treasurer is required to periodically inform the court of any adjustment to the interest rate on civil judgments. For information, contact the Michigan Department of Treasury.

Michigan Department of Treasury
Treasury Building
Lansing, MI 48922
517-373-3200

The State Court Administrative Office electronically sends this information to the courts twice each year and posts Interest Rates for Money Judgments on its website. The original source is from the Department of Treasury.

6-02 Recommended Fines and Costs Schedule – Civil Infractions

The State Court Administrative Office annually publishes and distributes to each district and municipal court a recommended range of civil fines and costs for first-time civil infractions.

This recommendation is not binding upon the courts that have jurisdiction over civil infractions but is intended to act as a normative guide for judges and district court magistrates, and as a basis for public evaluation of disparities in the imposition of civil fines and costs throughout the state. MCL 257.907(8).

Each district and municipal court may establish a schedule of civil fines and costs to be imposed for civil infractions that occur within the respective district or city. If a schedule is established, it must be prominently posted and readily available for public inspection. A schedule need not include all violations that are designated by law or ordinance as civil infractions. A schedule may exclude cases on the basis of a defendant's prior record of civil infractions or traffic offenses, or a combination of civil infractions and traffic offenses. MCL 257.907(7). See also Section 8-03, G.

Civil infractions committed by juveniles are under the jurisdiction of the family division of the circuit court. Unless a circuit court waives jurisdiction over these civil infractions within the geographic jurisdiction of the district court, a circuit court should consider adopting a schedule of civil fines and costs similar to those used by the district courts. MCL 712A.2e.

6-03 Budgeting

Budgeting is controlled by Michigan Supreme Court Administrative Order 1998-5, which states in part:

"If the local funding unit requests that a proposed court budget be submitted in line-item detail, the chief judge must comply with the request. If a court budget has been appropriated in line-item detail, without prior approval of the funding unit, a court may not transfer between line-item accounts to: (a) create new personnel positions or to supplement existing wage scales or benefits, except to implement across the board increases that were granted to employees of the funding unit after the adoption of the court's budget at the same rate, or (b) reclassify an employee to a higher level of an existing category. A chief judge may not enter into a multiple-year commitment concerning any personnel economic issue unless: (1) the funding unit agrees, or (2) the agreement does not exceed the percentage increase or the duration of a multiple-year contract that the funding unit has negotiated for its employees. Courts must notify the funding unit or a local court management council of transfers between lines within ten business days of the transfer. The requirements shall not be construed to restrict implementation of collective bargaining agreements." Michigan Supreme Court Administrative Order 1998-5, Section II, Court Budgeting.

A. The Role of the Funding Unit in the Budgeting Process

Funding unit officials may:

- Request a line item budget (see AO 1998-5);
- Identify a budget process and timetable;
- Assess claims about needs and problems;
- Assess the political implications of budget actions;
- Analyze program and service delivery alternatives;
- Analyze historical spending patterns (review last 3 yrs. line-item spending);
- Examine proposals for new spending;
- Monitor financial and economic trends;
- Update revenue/expenditure estimates;
- Schedule and approve budgets;
- Expect to receive notice from a court of a line-item transfer within 10 business days of the transfer (see AO 1998-5).

B. The Role of the Court in the Budgeting Process

Court officials may:

- Analyze, prepare and submit a line-item budget;
- Receive an opportunity to be heard during the budget and decision making process;
- Request an explanation for a budget decision;
- Develop and analyze spending;

- Monitor and evaluate results;
- Set and report on performance measures;
- Reallocate resources to meet changing fiscal needs;
- Find financing alternatives;
- Analyze costs and benefits;
- Analyze organizational structure and staffing;
- Analyze historical spending patterns (review last 3 years' line-item spending);
- Implement a budget plan.

C. The Budget Process - General Context

The budget process is the arena in which the priorities of the court and the funding unit are articulated, debated and ultimately where important choices are made by elected officials. The budget process is also a balancing act in which separate but equal branches of government struggle with one another based upon checks and balances established in the state constitution. The process of budgeting requires collaboration and interaction among a variety of individuals. Key players in the formulation and execution of a budget may include the funding unit administrator, commissioners, funding unit finance director, chief judge, and court administrator. The budget is the final product of the political interaction among all of these players and reflects the priorities that emerge after consideration of all the interests expressed by the various entities.

D. Budgeting in Times of Fiscal Strain

When resources are insufficient to address the varied needs of the public, two options to cope emerge: increase resources or decrease demands. A middle course is commonly taken that is a combination of enhancing resources and controlling demand. Those involved in the preparation of the budget must change from debating marginal changes against past years' budget to a more in-depth examination of programs within the base to determine whether continuation is warranted.

6-04 Audits

Pursuant to the Uniform Budgeting and Accounting Act of 1968, a local unit of government (counties, cities, villages, and townships) with less than 4,000 population is required to "obtain an audit of its financial records, accounts, and procedures not less frequently than biennially." MCL 141.425(1). Local units of government with 4,000 or more population are required to obtain an annual audit. MCL 141.425(2). The state treasurer prescribes minimum auditing procedures and standards for these audits. Generally, local units of government have retained the services of certified public accountants to perform the required audits.

Current Michigan law, however, is unclear as to the audit requirements for revenues received and disbursed by court operations, including trust and depository accounts maintained and administered by the courts (i.e., friend of the court support account, bond and trust account, depository account used for fines, costs, and fees, etc.). Because most of the annual audits are contracted by the funding unit, the audits performed by certified public accountants in compliance with the Uniform Budgeting and Accounting Act of 1968 generally only include an examination of the operational expenditures of the court at the local funding unit level. An audit of court revenues and expenditures including an examination of trust and depository accounts is generally not included in the scope of these audits.

It is recommended that court revenues, expenditures, and all funds maintained by the court be audited on an annual basis. The auditors within the Supreme Court periodically perform court audits. The auditors also periodically perform one-day internal control and accounting system reviews at trial courts.

It is recommended that the chief judge communicate the need for an annual audit of all the court's revenue and expenditure accounts, including the trust and depository accounts. Funds for performing these audits should be included within the court's operational budget request, and a written request should be sent to the local unit governing body requesting an audit.

If you would like further information regarding a court audit, contact your SCAO regional administrator.

6-05 Trial Court Financial Management Guidelines

A. Introduction

The chief judge has the management responsibility to ensure that an adequate accounting and internal control system is in operation to safeguard all court receipts and disbursements. The court administrator, friend of the court, or county clerk should develop, implement, and administer procedures that will provide for an adequate accounting and internal control system. The following financial management guidelines are to be used for the collection, disbursement, and control of court funds.

B. Accounting System

The receipt and disbursement of all court collections should be properly recorded in an accounting system (automated or manual) that provides for source documentation and records of original and final entry. These receipt and disbursement records should provide an audit trail to the source document and case file records. The accounting system should be maintained on a current basis and balanced to subsidiary records monthly.

C. Automated Accounting and Case Management System Security

1. If an automated accounting or case management system is utilized, access to the system should be restricted as to the functions that employees are able to perform. Proper security should be established within the system that will provide an adequate internal control structure.

2. Employee user classifications and security within the system should be established, monitored, and controlled by court management.

3. The system should provide data or reports that reflect user classifications for each employee, which are periodically reviewed by court management (at least annually).

4. Each employee should have a unique password to access the system that is known only to that employee. At a minimum, passwords should be changed every six months.

5. Employees who are involved in opening mail, receipting payments, balancing accounting records, and performing bank reconciliations should not be able to delete case files, make adjustments to financial records, or modify court orders in the automated system.

6. Employees should be required to enter a reason for deleting a case, adjusting financial records, or modifying court orders in the automated system.

7. The system should provide reports that reflect case files and case file financial data that has been deleted, adjusted, or modified, and the reasons for the deletion, adjustment, or modification. These reports should be reviewed by an employee who is independent of the deletion, adjustment, and modification processes. This review should be documented with the reviewer's initials and the date of the review, and retained for audit.

8. With the exception of checks that are automatically generated based on the receipt entered in the automated system, employees who receipt payments should not be able to generate court checks from the automated system.

9. Cases received by the court should be assigned numbers and logged in through an automated or manual process when received. The court should maintain an automated or manual case file management system that provides for the proper accountability of all cases received.

10. Courts are discouraged from purchasing and distributing citations to local law enforcement agencies, while continuing to work with local agencies to eliminate duplicate numbering systems. If a court purchases and distributes citations, they should be prenumbered and the distribution properly accounted for by the court.

D. Internal Control System

The Committee of Sponsoring Organizations of the Treadway Commission has published "Internal Control-Integrated Framework." Under this framework, internal control is broadly defined as a process, affected by an entity's board of directors, management, and other personnel, designed to provide reasonable assurance regarding the achievement of objectives in the following categories: 1) effectiveness and efficiency of operations, 2) reliability of financial reporting, and 3) compliance with laws and regulations.

1. Duties and responsibilities for handling receipts and disbursements should be arranged and separated so an employee does not perform more than one of the following functions.

    a. Opening mail.

    b. Receipting payments.

    c. Balancing receipts to accounting records.

    d. Performing bank reconciliations.

Court management must realize that a greater risk in safeguarding receipts will exist if duties and responsibilities are not appropriately arranged and separated. In smaller courts, where the number of employees is limited and duties cannot be adequately separated, court management must provide a greater review and supervision of employee functions and procedures.

2. Position descriptions that clearly define the duties and responsibilities of each employee should be developed for employees who are involved in the receipt and disbursement process. Court management should periodically review these duties and responsibilities.

3. All employees involved in the receipt and disbursement process should be bonded. In addition, employees in positions of trust should be required to take annual vacations during which time their duties are performed by other personnel. In larger courts, employees should be periodically rotated between various job duties.

E. Bank Accounts

1. Type of Accounts

A bank account in the name of the court should be established only when the account is necessary for the proper receipt and disbursement of certain funds. Generally, there are four types of court bank accounts.

a. Trust Accounts

1) Friend of the Court Account

An account is established for the receipt and disbursement of certain friend of the court collections.

2) Bond and Trust Account

A bond and trust account is established for the receipt and disbursement of bond and other trust funds, such as restitution, garnishment, and proceeds from the sale of seized property pursuant to MCR 3.106.

3) Court-Ordered Account

An escrow account is established for a specific case as the result of a court order.

b. Depository Account

A depository account in the name of the court is established for the receipt and disbursement of funds received that are transmitted to the local funding unit, state, and/or other governmental agencies.

c. Accounts Reimbursed by the Funding Unit

Some courts administer and control accounts that are funded through the funding unit, such as jury fee and witness fee accounts.

d. Operational Accounts

Courts that operate independently of the funding unit(s) may maintain accounts in support of the operational costs of the court (payroll, travel, contractual services, supplies, rent, equipment, etc.).

2. Authorized Check Signers

a. Check signers should be authorized by the chief judge or designated court supervisor. A copy of the bank signature card or letter authorizing the check signers should be on file at the court.

b. Original signatures should be required on all checks. For larger courts, an electronic signature or rubber stamp may be used, but proper controls must be in place.

3. Check Registers

An automated accounting system must provide a check register that lists check numbers in numerical order to meet fundamental internal control requirements. Standards for check registers have been developed by the State Court Administrative Office.

4. Bank Reconciliations

a. Bank reconciliations for all court bank accounts should be completed monthly and maintained on a current basis. The reconciliation should be completed within ten working days from receipt of the bank statement.

b. Bank reconciliations should be completed by a person who is not involved in opening mail, receipting payments, or balancing receipts to accounting records. The person who performs the bank reconciliation should not be an authorized check signer on the bank accounts being reconciled.

c. Bank statements should be unopened when received by the bank reconciler.

d. The bank reconciliation process should consist of the following.

1) Checks cleared by the bank should be verified to checks cleared by the court. For automated bank reconciliation programs, this process would consist of verifying the total of cleared checks per the bank statement (total debits less debit adjustments) to the total of cleared checks per the court system.

2) Deposits recorded on the bank statement should be verified to deposit records per the court. This should include a review to determine that deposits were made on the date that the deposit should have been transmitted to the bank. All deposits in transit and any overages or shortages should be properly accounted for.

3) All debit and credit memos reflected on the bank statement should be reviewed and properly accounted for in the accounting records and bank reconciliation.

4) The ending bank statement balance should be reconciled to the book balance of the court, including the identification of all reconciling items (deposits in transit, outstanding checks, overages, shortages, unrecovered nonsufficient funds (NSF) checks, bank service charges, checks cleared in error, bank errors, credit memos, debit memos, and other items on the bank statement that are not on the court records, and vice versa). Reconciling items should be brought to the attention of the bank and responsible court staff. The items should be properly disposed of, adjusted, and eliminated prior to completion of the following month's bank reconciliation.

5) If an unreconciled difference between the bank statement balance and the court book balance exists, the following guidelines can be used to locate the differences.

a) Repeat steps 1 through 3 above.

b) If the cleared checks total per court records does not agree with the bank total (number 1 above), review the bank statement for checks that may have been cleared by the bank twice or may have been cleared at an amount different than the amount cleared by the court.

c) Examine voided checks, making sure that checks voided after the bank reconciliation date (usually the bank statement ending date) but dated prior to the bank reconciliation date are reflected as outstanding on the outstanding check list.

d) Make sure that NSF checks have been properly reflected in the bank reconciliation, including those from the prior month that have not been recovered. Trace all NSF debits and credits shown on the bank statement to both the prior bank reconciliation and the current month's listing of unrecovered NSF checks.

e) Go back to the prior month's bank reconciliation, cleared checks report, and outstanding check listing and make sure that all reconciling items and adjustments from the prior month were either cleared or have been properly brought forward to the current month's bank reconciliation.

6) Unreconciled differences between the bank statement balance and the court book balance should be resolved on a timely basis. Should an unreconciled difference exist which cannot be found, the unreconciled difference should be properly adjusted through the local funding unit or court's operational budget on an annual basis.

e. In order to properly monitor the completion of bank reconciliations on a current basis and to be aware of any unreconciled differences, completed bank reconciliations should be reviewed monthly by court management. This review should be documented with the reviewer's initials and the date of the review, and retained for audit.

5. NSF (Nonsufficient Funds) Checks

a. The payer should be immediately contacted when the NSF check notice is received from the bank.

b. A procedure should be established for handling checks deposited that are returned NSF. This procedure should include maintaining a listing of all NSF checks received and the proper accountability and enforcement for the recovery of the NSF checks. Accounting and case file records should be reduced or adjusted by the amount of the NSF check at the time the NSF check notice is received from the bank.

c. Any NSF service fees assessed by the bank should be charged to the payer. The court may assess costs for reasonable expenses incurred for checks returned to the court due to nonsufficient funds. MCR 8.106(E).

d. No personal checks should be accepted from individuals after two checks have been returned NSF.

e. One option for any NSF check not collected after 60 days is referral to the local prosecuting attorney for collection.

6. Counterfeit Money

If the court receives notice of a deposit adjustment and a report of a counterfeit note from its bank, that means the bank has seized suspected counterfeit money. The bank will submit the seized money to the United States Secret Service (USSS) Field Office for verification and will notify the court of the determination of the USSS. If the money is determined to be authentic, the bank will make another deposit adjustment. If the money is determined to be counterfeit and the court cannot track these funds back to the specific payer and case, the court will have to replenish this shortage through its funding unit.

7. Escheating Unclaimed Property

The Uniform Unclaimed Property Act, 1995 PA 29, requires that all property valued at more than $25 unclaimed for one year, with the exception of restitution, be escheated annually to the state of Michigan. Unclaimed property, with the exception of restitution, valued at $25 or less should be remitted to the funding unit as unclaimed property. The court should perform the following tasks when escheating property:

a. With the exception of restitution funds, undeliverable and outstanding checks, unclaimed bond and trust funds, and any funds that exist in an old court bank account that cannot be identified as belonging to a defendant, governmental agency, or other court payee should be reviewed annually.

b. If the property owner is an out-of-state resident, the unclaimed property must be reported and remitted to the state of the owner's last-known address, regardless of the value.

c. The court must send notice of intent to escheat to the owner when the property is $50 or more. Notice must be sent not less than 60 days nor more than 365 days before filing the report. MCL 567.238(5). See SCAO-approved form MC 25, Notice of Intent to Escheat Unclaimed Personal Property.

See Requirements and forms for reporting unclaimed property to the state of Michigan.

If an individual requests a refund of unclaimed property that has been remitted to the funding unit, and the court has verified that the individual is the rightful owner of the unclaimed property, the court must process the refund.

8. Unclaimed Restitution

If a person entitled to receive restitution that the court has collected cannot be located, refuses to claim the restitution within two years of being eligible to do so, or refuses to accept the restitution, the court must remit the unclaimed amount to the Crime Victim's Rights Fund on its monthly transmittal to the state. That person may subsequently claim the restitution by applying to the court that collected and remitted it. The court must notify the Crime Victim Services Commission of the claim and the commission must approve a reduction in the transmittal to the Crime Victim's Rights Fund to pay the victim. Forward to the Crime Victim's Rights Fund any restitution funds that exist in an old court bank account that cannot be identified to a victim. MCL 780.766(1), MCL 780.794(21), MCL 780.826(18).

F. Receipts

1. Centralization of Receipting Function

All payments received by the court should be collected and receipted in one centralized location. The number of employees authorized to receive checks, money orders, and cash should be restricted to a limited number of employees. If possible, one or two employees (or more depending on the size of the office) should be assigned as cashiers and the only employees authorized to collect and receipt both in-office and mail payments. Probation officers and other court employees who are not within the main accounting or cashiering unit should not be allowed to collect any payments.

Any money collected for the payment of fines, costs, restitution, assessments, probation or parole supervision fees, or other payments arising out of the same criminal proceeding or order of disposition must be allocated as provided in statute. MCL 775.22, MCL 712A.29, MCL 780.766a, MCL 780.794a, MCL 780.826a.

2. Receipting Payments to the Accounting System

All payments received by the court should be receipted and recorded in the court's accounting system and deposited into the court or funding unit bank account.

3. Mail Opening Process

a. Employees who open the mail should not be involved with receipting payments, balancing receipts to the accounting records, or performing bank reconciliations.

b. Checks, money orders, and cash received in the mail should be recorded on a mail log prepared by the mail opener or, at a minimum, an adding machine tape should be prepared. This process may not be possible in courts with only a few employees. If a mail log is prepared, it should indicate the date received, payer's name, type of payment (check, money order, or cash), check/money order number, and amount.

c. Checks and money orders should be endorsed for deposit at the time the mail is opened and after they are properly identified as being payable to the court or, at a minimum, if the court validates checks and money orders, when they receipt them into the system.

d. All "cash" received in the mail should be verified at the time the mail is opened by another employee and the mail log should identify the receipt of "cash" and the initials of both employees.

e. Checks and money orders received by the court in error should be noted on the mail log or documented in a separate record. These checks and money orders should be appropriately forwarded to the proper payee or returned to the payer rather than deposited in the bank account.

f. After all checks, money orders, and cash have been recorded and totaled on the mail log or adding machine tape, the log or tape should be initialed by the mail opener. The mail log or adding machine tape should then be forwarded to the employee who balances receipts to the accounting records, while the checks, money orders, and cash should be given to the employee who performs the receipt function. See page 06-05-15, item 7.e.

g. All mail payments should be receipted to the accounting records on the day received or no later than the end of the next business day.

4. Receipt Process

a. Employees who receipt payments should not be involved with opening the mail, balancing receipts to the accounting records, or performing bank reconciliations.

b. If the court has an automated accounting system, each employee should have a separate unique password for receipting payments that is known only to the employee. The system should provide an audit trail tracing each receipt to the employee who entered it in the system.

c. Each employee authorized to receipt in-office payments should be assigned to a separate cash drawer with access to the drawer being restricted to the assigned employee.

d. Receipts should reflect the name of the court and receipt records should indicate the type of payment (check, money order, or cash), date received, amount received, payer, and case number. The check or money order number should also be indicated. If the court is on a manual receipt system, receipts should be prenumbered. Automated systems should provide a receipt or transaction number.

e. If the court is on an automated accounting system, the system should not allow a receipt to be written to a lesser amount, edited, or deleted once the receipt has been accepted in the system.

f. A receipt should be attached to or placed in the case or other permanent file unless an automated financial case management system is in operation that provides receipt information in the automated case file record.

g. A receipt should be provided to the payer for in-office payments.

h. Checks and money orders received for in-office payments should be endorsed for deposit or validated for deposit at the time the payment is receipted.

i. After receipting, undeposited checks, money orders, and cash should be kept in a locked drawer or other locked device during the day.

j. If the court is closed during the noon hour, undeposited checks, money orders, and cash should be kept in a secure location that is not accessible to the public and court employees.

k. Cash-on-hand balances used for making change should be kept at a minimum.

l. Third-party checks should not be accepted.

m. The court may apply any overpayment received on behalf of a defendant to any fine, cost, fee, or assessment that the same defendant owes in any

other case. MCL 769.1k(6). All other overpayments of fines, costs, fees, and restitution should be refunded by check to the payer. A court may establish a policy of not returning overpayments for any amount less than $10.01. However, if the payer requests a refund of the overage, the court must process the refund notwithstanding the court's policy. Any overpayment not refunded must be receipted and transmitted to the funding unit.

n. Any automated system used by the court to issue receipts shall be able to identify receipts by payment type (e.g., cash receipts, check receipts, credit card receipts, etc.). Furthermore, cash receipts shall periodically be compared to cash deposits by someone not involved in the receipting, balancing, and depositing processes. Reasons for differences shall be documented. The person performing the comparison shall report unexplained differences to the chief judge.

o. Canadian and other foreign currency

If possible, the court should only accept U.S. currency. There are some circumstances, however, where Canadian or other foreign currency is received and must be accepted by the court. The following receipt guidelines should be adhered to when foreign currency is accepted.

1) A separate deposit should be prepared for Canadian and other foreign checks, money orders, and cash.

2) Payments should not be receipted to a court's accounting records until after the bank has been contacted and an adjustment to U.S. currency has been made.

3) The court should maintain accounting records that properly control and provide an audit trail for the receipt and disbursement of Canadian and other foreign funds.

4) Any bank charges for Canadian and other foreign deposits should be adjusted and charged to the payer's account or case.

p. If the court suspects a payment received is counterfeit, the court should do the following.

1) Inform the payer of this and seize the suspected bill(s).

Have the payer complete a "Seizure of Suspected Counterfeit Money" form. Give the payer a copy of the completed form.

2) Explain to the payer that the seized money will not be applied to the case, and give the payer a receipt for any payment that is applied to the case.

3) Contact the United States Secret Service Field Office for instructions about the procedure for verifying counterfeit money. See the telephone numbers for the Michigan offices.

4) Notify the payer of the determination of the United States Secret Service. If the money is returned, the court should either: (1) apply the money to the appropriate case if there is a balance remaining, or (2) return the money to the payer, by check, if there is no balance remaining on the case.

q. The court should not assess or collect fees for services ordered by the court or required by statute or court rule when the services are not performed by the court. Examples include fees for service of process, counseling, treatment, or educational programs.

r. If the court accepts credit cards for payment of monies due to the court, proper controls should exist relative to the acceptance of these charges. This includes determining the proper identification of the person paying by credit card, verifying the information with the credit card company, and determining information required for credit card payments made over the telephone, if accepted by the court.

s. Court employees authorized to waive fines, costs, and fees should attach documentation presented by the defendant to tickets or case file records when fines, costs, and fees are waived.

5. Voided Receipts

Proper security and controls should exist regarding the voiding of receipts as follows.

a. The original voided receipt should be retained with balancing records. In addition, voided receipts should be marked "VOID," indicate the reason for the void, and reflect the reissued receipt number where applicable.

b. A review procedure should exist whereby an employee verifies the voided receipt total per the cash register tape or accounting system report to the original voided receipts. This review should ensure that all receipts voided were proper and that the receipts were reentered in the accounting system unless a justified explanation is provided as to why a voided receipt was

not reentered. This review should be documented with the reviewer's initials and the date of the review, and retained for audit.

c. The review procedure in a manual receipt system should consist of verifying that all receipt numbers are accounted for in the receipts journal with the proper accountability of all voided receipts. Receipt numbers that have been voided should be marked "VOID" in the receipts journal.

d. The employee who reviews voided receipt totals and ensures that all voids were proper and justified should be independent of the receipt process. Also, this employee should not be authorized or have the capability to void or edit receipts.

e. The automated system should not omit voided receipts from daily receipt reports. When a receipt is voided, the transaction should be appropriately posted to payment records in the automated case management system.

f. The accounting system and cash register should not allow negative entries to be made without a case-file number also being entered. Otherwise, receipt totals could be reduced while case-file payment records are not changed.

6. Manual Receipts

Proper controls should exist regarding the use of manual receipts. These controls are required whether the court uses a manual or automated accounting system.

a. All manual receipts should be prenumbered, reflect the name of the court, and provide at least two copies.

b. Manual receipt books should be under the control of a supervisor who should maintain a record of all used and unused receipt books.

c. Manual receipts should not be located in any court offices other than the main cashiering unit.

d. Unused manual receipts should be kept in a secure location.

e. Manual receipts should be properly accounted for with verification of the beginning sequence number to the ending sequence number by the employee who balances receipts to the accounting records.

f. The employee who reviews and accounts for manual receipts should not be involved in the receipt process.

g. If the court is on an automated accounting system, manual receipts should only be used when the system is not operational and it becomes necessary to write a receipt.

h. Manual receipts used should reflect the automated receipt number used when the receipt is subsequently entered in the automated accounting system.

i. Manual receipts used should be reviewed by an employee independent of the receipt process to ensure that the receipts were subsequently entered in the automated accounting system. This review may be done on a periodic basis. This review should be documented with the reviewer's initials and the date of the review, and retained for audit.

7. Balancing the Accounting Records

a. Employees who balance receipts to the accounting records should not open the mail, receipt payments, or perform bank reconciliations.

b. If the court has assigned employees as cashiers with separate cash drawers, cashiers should count the cash in their drawer at the end of the day. These employees should sign or initial a report reflecting the checks, money orders, and cash counted. Checks, money orders, and cash should then be forwarded to the employee who balances the accounting records.

c. Checks, money orders, and cash should be counted by the employee who does the balancing and verifies receipts to the total per the accounting records. The process should include verification of total "cash" receipts per the accounting records to actual "cash" counted.

d. Receipt or transaction numbers should be accounted for with verification of the first number of the accounting report or journal following the last number from the previous accounting report or journal to ensure that numbers have not been missed.

e. If a mail log or adding machine tape of checks, money orders, and cash received in the mail is prepared, a subsequent verification to the receipt records should be performed by someone who is independent of the mail opening function. At a minimum, the verification should consist of a sample of the daily mail log. The employee who performs this verification should sign or initial the log or tape. If a portion or all of the payments are not receipted to the accounting records on the same day they were received, an audit trail of the mail or adding machine tape from the date received to the date receipted should exist.

f. The court should not maintain an over/short fund to balance overages and shortages. Overages should be remitted to the local funding unit, while shortages should be replenished through the court's operating budget.

g. Overages and shortages should be reported to court management, with any significant overages and shortages being investigated and reported to the chief judge in writing. Court management is responsible for reviewing and monitoring periodic overages and shortages.

h. Receipt totals should be summarized on an accounting report, cash register tape, or summary cash receipts report with any overages and shortages being identified.

i. The employee who balances receipts should sign or initial the accounting report, cash register tape, or summary cash receipts report as verification that receipts were balanced and that any overages or shortages have been identified.

j. If the back side of checks and money orders is receipt validated through the cash register or automated system, the balancing and deposit preparation process should include a review of the back of all checks and money orders to be deposited to ensure that they were properly validated. This review should provide verification that the checks and money orders were receipted in the cash register or automated system.

k. Checks and money orders to be deposited should be listed on the deposit slip or, at a minimum, there should be an adding machine tape of checks and money orders being deposited that should be retained by the court.

l. Checks, money orders, and cash received for unknown cases or cases not yet received by the court should be deposited within one day from the date of receipt rather than held undeposited.

m. Undeposited checks, money orders, and cash should be kept in a locked safe or other locked secure device at night.

1) Access to the safe or secure device should be restricted to a few court employees.

2) The safe or secure device combination or lock should be periodically changed and changed when someone who knows the combination or has a key to the safe or secure device terminates employment with the court.

n. All courts should utilize secured deposit bags (i.e., locked bags, sealed bags). The bank should be the only entity that has access to the key for the locked bank bags.

o. In no case should employees or other individuals be allowed to cash checks (personal, court, funding unit, etc.) from undeposited cash receipts.

p. Proper security should be utilized for the transmission of the deposit to the bank or funding unit.

q. The employee who transmits the deposit to the bank or funding unit should be required to provide a deposit validation slip from the bank or funding unit to a supervisor. The supervisor should verify that the deposit was actually made on the date transmitted and in the amount reflected on daily balancing records, including verification of total "cash" receipts per the accounting records to actual "cash" deposited.

r. If the court deposits directly with the funding unit, staff at the funding unit should count and verify the deposit amount in the presence of the court employee who transmits the deposit.

s. If the court operates separate suboffices that collect and receipt payments, the money should be deposited with the centralized office at least once a week.

t. If security carriers or law enforcement agencies transmit deposits to the bank or funding unit, a record showing the date, time, amount of deposit, number of bags (should be locked bags), and carrier signature should be maintained by the court.

u. Deposits should be made no less frequently than every two days. In smaller courts, deposits should be made whenever the collection total reaches $1,000 or at least weekly even if the total is less than $1,000.

G. Disbursements

1. All disbursements made by the court should be made through the issuance of a check or voucher. In no case should a disbursement be made in cash or should a check be made payable to "cash." A court's automated accounting system must provide a check register that lists check numbers in numerical order.

2. Checks should not be pre-signed.

3. Blank checks should be stored in a secure area and should not contain any authorized signatures.

4. Any check number missing as the result of an error made by the vendor should be properly documented and accounted for in the court records.

5. The court should provide proper security in the use and control of electronic signatures and/or rubber signature stamps. Electronic signatures and/or signature stamps should only be used after the express review and approval of the document for signature by the person whose signature will be affixed.

6. A replacement check should be reissued to a payee only after the payee has signed an affidavit indicating that the original check was not cashed. Documentation should be maintained by the court in support of replacement checks issued.

7. Collections transmitted to the local funding unit should be reconciled to the bank account and/or accounting records prior to submission of the check or deposit to the funding unit.

8. All transmittals and disbursements due to the local funding unit, state and other governmental agencies should be submitted on a monthly basis, or as otherwise required. See Department of Treasury Transmittal Advice Forms and Instructions.

9. Collections should be transmitted to the local funding unit within ten business days following the end of the month, unless some other agreement has been made between the local funding unit and the court.

10. A receipt from the local funding unit should be obtained and retained with the court copy of the transmittal advice.

H. Bonds, Restitution, and Other Trust Funds

1. A subsidiary ledger should be maintained for bonds, restitution, and other trust funds held by the court. The ledger should reflect receipts, disbursements, and the outstanding balance for each case.

2. The total outstanding balance in the bond, restitution, and trust ledger(s) should be reconciled to the applicable trust bank statement balance or local funding unit trust account balance on a monthly basis. The reconciliations should be retained for audit.

3. Open bonds, restitution, and other trust funds reflected in the subsidiary ledger should be reviewed annually for lack of progress. Open bonds and other trust funds valued at more than $25, with the exception of restitution, should be

escheated as prescribed in treasury regulations to the state of Michigan. If the property owner is an out-of-state resident, the unclaimed bonds or trust funds must be reported and remitted to the state of the owner's last-known address, regardless of the value. Unclaimed bonds should not be forfeited to the funding unit unless the defendant has not complied with the conditions of bail.

Open bonds and other trust funds, with the exception of restitution, valued at $25 or less should be remitted to the funding unit as unclaimed bonds or trust funds. If an individual requests a refund of these unclaimed bonds or trust funds, and the court has verified that the individual is the rightful owner of the unclaimed property, the court must process the refund.

If a person entitled to receive restitution that the court has collected cannot be located, refuses to claim the restitution within two years of being eligible to do so, or refuses to accept the restitution, the court must remit the unclaimed amount to the Crime Victim's Rights Fund on its monthly transmittal to the state. The person may subsequently claim the restitution by applying to the court that collected and remitted it. The court must notify the Crime Victim Services Commission of the claim, and the commission must approve a reduction in the transmittal to the Crime Victim's Rights Fund to pay the victim. MCL 780.766(21), MCL 780.794(21), MCL 780.826(18).

4. All payments received for bonds, restitution, and other trust funds should be receipted and deposited through the accounting system of the court.

5. Receipts should be provided to police agencies at the time bonds are received by the court. If receipts are not issued at the time bonds are received, the employee who receives bonds from police agencies should maintain a record or log that reflects all bond monies received and provides an audit trail to receipt records in the accounting system.

   An employee who is not involved in receiving bonds from police agencies should receipt the bonds to the accounting system or otherwise periodically review bond records and verify that bonds received were appropriately receipted to the accounting system.

6. A copy of the bond receipt and a record of the bond disposition should be filed and recorded in the case file or noted in the automated case management record.

7. When the full amount of an appearance bond is to be applied to fines, costs, fees, and restitution, a voucher or check should be drawn payable to the court and appropriately receipted to the accounting system in accordance with the judgment. If only a portion of the appearance bond is to be applied to fines, costs, fees, and restitution, a voucher or check should be drawn payable to the court for the

amount to be applied and receipted to the accounting system. The balance should be refunded to the defendant or person who posted the bond through the issuance of a voucher or check.

In no case should only one check be issued that is payable to the court for the full bond amount, resulting in a cash refund for the difference.

As an alternative, one daily check may be written payable to the court covering all bonds applied to fines, costs, fees, and restitution. This procedure is allowed provided there is an acceptable process and documentation for applying the bonds. If a bond release form is used that requires the signature of the defendant or person who posted the bond, the form should be prenumbered and properly reviewed and accounted for daily.

All bond checks or supporting documentation for a daily check applied to fines, costs, fees, and restitution should reflect the case number(s).

8. All bond refunds should be made by voucher or check and reflect the case number. Bond refund checks should not be cashed by the court.

9. When a defendant does not comply with the conditions of bail and the bond deposit is ordered forfeited, a voucher or check should be drawn payable to the court and appropriately receipted to the accounting system. Bond forfeitures should be disposed of between 28 and 45 days from the forfeiture order date. Bond forfeiture vouchers or checks should reflect the case number.

10. Restitution should be deposited in a trust account and all disbursements should be made by voucher or check with the case number being properly reflected. Restitution should be disbursed to victims within two weeks from receipt of the restitution payment unless the defendant makes weekly or biweekly payments, in which case monthly disbursements can be made. Restitution disbursements to victims should be made at least once a month.

11. If the court receives garnishment checks, the checks should be deposited in a trust account and all disbursements should be made by check with the case number properly reflected. The court should maintain an accurate record of receipts and disbursements of garnishments.

12. Friend of the court (FOC) credit balances and posting errors. There may be instances where a support payment is misapplied or otherwise sent to a recipient in error. An FOC office may advance money to remedy any FOC misapplication of a case's funds. The process to obtain local reimbursement through the MiSDU is set forth in the Office of Child Support (OCS) IV-D Memorandum 2005-023 (Revised: Use of State Make Whole Funds). If a custodial parent is overpaid, the

FOC may attempt to recover the erroneously disbursed funds from the custodial parent. SCAO Administrative Memorandum 2010-03 provides policies and procedures to help FOC offices correctly process payments when more money has been disbursed than was due under the order.

13. Clerks of state courts must file IRS Form 8300 if a single deposit of $10,000 or more in cash is made toward the bail of one or more individuals charged with certain criminal offenses.

I. Collection of Court-Ordered Financial Obligations

1. For each individual authorized to make time or installment payments of court-ordered financial obligations, records should be maintained that indicate the case number, payer's name and address, date of sentence/disposition, amounts assessed, payment terms, receipt date, receipt number, receipt amount, and balance due.

2. The court must have a collections program in place. For details, refer to Administrative Order 2010-1, Court Collections Program Requirements, Court Collections Program Models, and Court Collections Program Components and Details.

3. The court should have a policy for the priority of payment for application of installment payments received that is in accordance with applicable statutes.

4. All case file balances should be paid in full prior to closing a case where financial obligations have been ordered unless otherwise closed by a court order.

J. Suspected Embezzlement

1. If embezzlement is suspected, or if irregularities appear in court financial records, the chief judge of the court should immediately contact the State Court Administrative Office regional administrator. The regional administrator will contact the appropriate law enforcement agencies (usually the Michigan Attorney General's Office and Michigan State Police) to begin a criminal investigation, if such action is deemed necessary. In addition, the State Court Administrative Office may arrange for an audit (typically conducted by the Supreme Court auditors), if necessary. The law enforcement agencies and auditors will work with local court employees, management, and judicial staff to expeditiously complete the investigation and audit. During the investigation and audit, court staff should not talk to any suspect (if known), any other court staff, or others until given permission by the aforementioned agencies.

2. Complaints alleging embezzlement from citizens, support recipients, and defendants should be reviewed by court management. Special attention should be paid to (1) complaints about payments not being properly credited to case records or (2) complaints that payments made to the court that were payable to another individual or organization were not received by that individual or organization.

6-06 Funding Problems for Multi-Location Courts

Multi-location trial courts experience unique funding problems. In many cases, the chief judge and court administrator must perform budgetary responsibilities with the governing body of the local governmental unit at each court location.

The following statutes allow local governmental units to agree to share court expenses.

A. District Courts

One or more district funding units within any district may agree among themselves to share any or all of the expenses of maintaining, financing, or operating the district court. MCL 600.8104(3).

B. Intergovernmental Transfers of Functions and Responsibilities Act

Pursuant to the Intergovernmental Transfers of Functions and Responsibilities Act, two or more political subdivisions are authorized to enter into a contract with each other providing for the transfer of functions or responsibilities to one another or any combination thereof upon consent of each political subdivision involved. MCL 124.531 *et seq*.

6-07 Funding Unit Disputes

A. Introduction

In the area of fiscal management, disputes between trial courts and their local funding units concerning adequate funding for the operation of the trial court can create a very trying situation for the court and local governmental officials. See also Section 5-04.

1. Obtaining Funding from Local Government

Through Michigan Supreme Court Administrative Order (AO) 1985-6, adopted contemporaneously with issuance of *Second Dist v Hillsdale Co*, 423 Mich 705 (1985), the Michigan Supreme Court established the procedure trial courts must follow to obtain funding from the local governmental unit to properly perform their duties. AO 1998-5 (as amended effective June 4, 2014) replaces AO 1985-6. See also Section 5-02 for information about funding disputes involving personnel.

2. General Procedure Regarding Disagreement on Funding

In the *Hillsdale Co* case, the Michigan Supreme Court generally held that when an agreement cannot be reached between a court and a funding unit, the court may initiate suit and shall bear the burden of proof regarding expenditures in excess of appropriations. Pursuant to the procedure in AO 1998-5, the state court administrator will assign a disinterested judge to preside over the action.

Before initiating legal action, however, the trial court must notify the state court administrator pursuant to AO 1998-5. The state court administrator, through the regional state court administrator, will attempt to aid the court and the local funding unit to resolve the dispute.

B. How to Avoid Funding Disputes

The most effective method of handling funding disputes is to avoid them. However, this is not to suggest that courts should concede to inadequate resources. It does mean that cooperatively establishing appropriate funding levels with the executive and legislative branches is the best guarantee that the court will consistently obtain required resources.

1. Fundamentals in Establishing Favorable Relationships with Funding Authorities

There are two fundamentals in establishing a favorable relationship with funding authorities: (1) realistic requests and (2) continuous, effective communication.

a. Realistic Requests

Whether a request is realistic must be defined on a case-by-case basis and must be assessed in the context of the local fiscal situation. Requesting or demanding substantial budgetary outlays at times when a funding unit is in financial crisis, particularly if the need for the outlays is not well substantiated, may not be realistic.

b. Continuous and Effective Communication

Communication is the key to public understanding of the business of the courts and, therefore, an appreciation of its needs. Too many of the public and those in other branches of government see courts as an agency like any other in the executive branch or department. It is the responsibility of the court to ensure that the public and other branches of government have an understanding of the constitutional independence of courts.

Furthermore, each court must help others understand the critical responsibilities it has to (1) manage records and information, (2) make decisions and (3) enforce its decisions. The court must help the funding unit understand which resources the court must have in order to manage its workload and carry out its constitutional and statutorily mandated responsibilities.

Studies of the budget decision making process in state governments show that the most important factors influencing legislative decision making on budget matters are not demonstrated need or workload statistics, but rather the availability of funds and credibility of the entity requesting funds.

Communication with the funding unit should be ongoing, not just when budgeting, and not just at times when the court is asking for additional resources. Courts have accomplished ongoing communication in a variety of ways, including issuing annual reports (with data regarding workload) and conducting regular meetings with the funding unit or a court advisory body.

c. Court Working Days and Hours

Court working days and hours must be set by the chief judge pursuant to MCR 8.110(D). Any court closure due to a fiscal emergency must be approved by the chief judge and submitted in the form of a local administrative order to the State Court Administrative Office for approval.

C. Early Negotiation

At the earliest sign of disagreement over funding levels for court operations, the chief judge and/or court administrator should attempt negotiations with key executive and legislative officials. It is recommended that both the chief judge and court administrator be closely involved in all such negotiations. The chief judge is, by rule, ultimately responsible for operation of the court and is, therefore, the chief policymaker. Where a court administrator exists, the court administrator should be a policymaker as well and is primarily responsible for policy implementation.

D. Involve Your Regional Administrator

The regional administrator of the State Court Administrative Office should be notified immediately upon the first sign of any difficulty in budget negotiations (if not involved up to that point). The earlier the regional administrator can become involved, the easier it will be for the State Court Administrative Office to provide assistance in budget negotiations. Accordingly, it is advisable to keep the regional administrator informed of all proceedings relating to the budget, even though that office may have no direct involvement in the budget preparation or negotiation process until a later time, or not at all if problems do not develop.

The chief judge or court administrator of a local trial court may request direct assistance or intervention by the SCAO regional administrator at any time during the process. The regional administrator will respond based on the analysis of the specific situation. This could include information meetings, direct mediation, outside mediation, or negotiation.

E. Third-Party Mediation

1. Resources

The State Court Administrative Office and the Michigan Association of Counties have established a network of volunteer judges and county commissioners who, upon request of the State Court Administrative Office and the Michigan Association of Counties, will act as mediators to assist in resolving disputes that cannot be resolved otherwise. This procedure has been employed prior to legal action and upon agreement of the parties after a lawsuit has been commenced and can be started by a request from the chief judge to the regional administrator.

2. Selection, Expenses, and Procedures

a. Selection of Mediators Based on Voluntary Participation

The procedure requires voluntary participation by the trial court and the funding unit. The regional administrator will select a judge-mediator and

the Michigan Association of Counties will select a commissioner-mediator.

b. Expenses

Mediation expenses will be paid by the funding unit.

c. Procedures

Procedures for the mediation will be established on a case-by-case basis by agreement of the parties and the mediators. Any recommendations or decisions by the mediation panel are not intended to be binding unless the parties stipulate otherwise. No procedural rules exist relating to the admissibility of the mediators' findings or recommendations in any subsequent or pending lawsuit. Accordingly, to the extent that those issues are important to the parties, they should be addressed at the beginning of the mediation process. Mediation can be invoked at any time by agreement of the parties involved, and the procedures can be adjusted to fit the circumstances of the dispute under consideration. However, since mediators are volunteers and must take time from their regular duties, third-party mediation should not be overused.

F. Lawsuit as Last Resort

1. Notice to State Court Administrator of Intent to File Lawsuit

If a trial court determines that no other recourse is available, it may choose to file a lawsuit against the funding unit. A letter providing notice should be directed to the state court administrator, with a copy provided to the regional administrator. The letter should indicate what efforts have been made to resolve differences over budget matters and a summary of the substance of the dispute that will be the subject of the lawsuit, as well as any other matters the trial court deems relevant.

2. Intervention

In most cases, the matter will be referred to the appropriate regional administrator for intervention. The regional administrator may employ one of several methods, including an analysis and opinion regarding the budget request and the response from the funding unit, attempts at informal negotiation, and/or mediation, and/or referral to third-party mediation.

G. Case Law

1. *Judges of the 74th Judicial Dist v Bay Co*, 385 Mich 710, 723-724 (1971)

In this case, the Supreme Court held that "[e]mployees of the district court are employees of the judicial district, an administrative unit of the state's one district court, which in turn is a subdivision of Michigan's one court of justice. They are not employees of the county, city or other district control unit, even though they are paid by the district control unit. A collective bargaining agreement, executed by a county board of commissioners, as an employer cannot and does not bind a judicial district." Distinguished by *AFSCME Council 25 v Wayne County*, 292 Mich App 68, (2011), which holds the statute giving county clerk authority to make court clerk assignments does not take precedence over the judicial branch's inherent constitutional powers including the authority to assign/select a particular court clerk to serve in the judge's courtroom.

2. *Livingston Co v Livingston Circuit Judge*, 393 Mich 265, 272 (1975)

In this case regarding labor negotiations, the Supreme Court stated that "the best practice, in general, especially at initial bargaining sessions, is for the local judiciary to invite a representative of the commissioners to appear personally at such sessions. The commissioners' representative cannot actively bargain, of course, but such representative may present relevant data as to other county employees, *e.g.*, wage levels for comparable jobs, provisions in other labor contracts, general county benefits, and county budget information."

3. *Employees and Judge of the Second Dist Ct v Hillsdale Co*, 423 Mich 705, 717-725 (1985)

In this landmark case, the Supreme Court held that a trial court "has the authority to set salaries for court personnel which, if reasonable and 'within appropriations,' must be approved by the control unit[.]"

The Supreme Court also held that a local funding unit "may not refuse to provide adequate funding to fulfill [a] function" of the court where the Legislature has, by statute, granted authority or created a duty for the court.

However, the Supreme Court ruled that: (1) the district control unit had authority to decline to fund salary increases for district court employees who were not alleged or proven to be necessary to maintain statutory function of the court or to provide for overall administration of justice, and (2) the trial court was not authorized to issue administrative orders to compel appropriations for salaries of court employees.

The Supreme Court said that when an agreement cannot be reached between a court and a funding unit regarding a court's budget, the court may initiate suit and must bear the burden of proof that the appropriation sought is necessary in performing its statutorily mandated function.

Previously, AO 1985-6 set forth the requirements for a trial court before it could file suit against its funding unit. It was replaced by AO 1998-5 (as amended effective June 4, 2014).

4. *Seventeenth Dist Probate Ct v Gladwin Co Bd of Comm'rs*, 155 Mich App 433 (1986)

Citing *Hillsdale Co*, 423 Mich at 721-722, this consolidated case states that "all courts possess[] an inherent power to compel expenditures beyond sums appropriated by the county board." The Michigan Supreme Court has articulated the procedure that trial courts must follow in pursuit of their inherent power in *46th Circuit Trial Court v Crawford Co*, 476 Mich 131 (2006), discussed below.

5. *Ottawa Co Controller v Ottawa Probate Judge*, 156 Mich App 594, 603-605 (1986)

In this case, the Court held that, despite statutory language that might be construed as empowering a county board of commissioners to set the salaries of certain probate court employees, the doctrine of the inherent powers of the judiciary provides the probate judge with the authority to set salaries of probate court employees, so long as the court's total budget remains within the total budget appropriation set by the county board.

This case involved a non-union situation where the court had determined the appropriate salary levels it wanted to pay certain employees. In cases likely to result in litigation, consultants are useful in establishing the foundation required to prove that the court's proposed salary levels are reasonable and necessary.

6. *Judicial Attorneys Ass'n v Michigan*, 459 Mich 291, 299-303 (1998)

In this case brought by unions, the Supreme Court held the statutory provisions designating county, or county judicial council, as "employer" of court employees and dividing personnel responsibilities between county and chief judge violated, on their face, the separation of powers doctrine.

The Court said that "the fundamental and ultimate responsibility for all aspects of court administration, including operations and personnel matters within the trial courts, resides within the inherent authority of the judicial branch." Further distinguished by *AFSCME Council 25 v Wayne County*, 292 Mich App 68,

(2011), which supports the previous finding holding that the statute giving county clerk authority to make court clerk assignments **does not** (*emp. added*) take precedence over the judicial branch's inherent constitutional powers including the authority to assign/select a particular court clerk to serve in the judge's courtroom.

7. *Lapeer Co Clerk v Lapeer Circuit Court*, 469 Mich 146, 163 (2003)

In quoting *Allor v Bd of Auditors of Wayne Co*, 43 Mich 76, 97 (1880), the Supreme Court held: "'[n]o court, in the exercise of its functions, can be lawfully subjected to the control or interference of any executive or ministerial authority, or can receive directions for any purpose except from such other courts as are authorized by the Constitution to have "superintending control over inferior courts." No court has a right to allow any other interference or to submit to it.'"

8. *46th Circuit Trial Court v Crawford Co*, 476 Mich 131, 149 (2006)

In this case, the Supreme Court held that in litigation to compel funding by the county, a plaintiff court must prove by clear and convincing evidence that the requested funding is both reasonable and necessary and must demonstrate that the overall operation of the court or a constitutional function is in jeopardy because of the actions taken by the funding unit. The court decided the inherent powers claim must set forth findings of fact identifying specifically those judicial functions that will be in jeopardy if the appropriation sought is denied, and must set forth conclusions of law indicating why such functions implicate the constitutional responsibilities of the judiciary. The justices disagreed on what level of funding can be mandated as necessary to meet constitutional requirements.

Regarding the issue of attorney fees, on remand the Court of Appeals held that the funding unit is responsible for the attorney fees of both sides. See *46th Circuit Trial Court v Crawford Co (On Remand)*, 273 Mich App 342 (2006).

6-08 Alternative Funding Sources – Grants

A. Introduction

The principal funding source for most court operations is a general appropriation from the court's funding authority. However, occasionally there is an opportunity to obtain funds for court operations or projects for research on improvement of court operations from alternative sources. These alternative sources may be another governmental entity or, in some cases, a foundation or charitable institution. Alternative funds will be categorized for purposes of this discussion into entitlements and grants.

B. Entitlement Funds

1. Administration

Entitlement funds are administered by other government units, usually the state or federal government, and are earmarked for the subsidization of specific activities of the local government. Often, a state government agency will administer federal entitlement funds according to specific guidelines set by the federal agency responsible for administration and distribution of funds.

2. Restrictions in Use

Typically, entitlement funds are suitable for reimbursement of governmental activity based on the character and nature of the recipient agency or based on the nature of the activity alone. In either case, use and performance restrictions or guidelines apply. This is because entitlement funds are almost always intended to encourage an activity or activities of a specific nature (e.g., child support enforcement) or to benefit a class of persons or organizations (e.g., local government).

3. Eligibility

Rules relating to eligibility for these funds are promulgated, distributed, and enforced by administering agencies, usually a state agency (with guidance from federal agencies, if federal funds are involved). If the potential recipient fails to meet performance, record keeping or eligibility criteria for any given funding period, funds will be withheld or in some cases must be returned. Rules change frequently, often with each funding period, and recipients should make sure they are aware of the current rules.

4. Contacts

Some of the agencies that may have available entitlement funds are listed below. The list is not exhaustive, and you may wish to contact your State Court Administrative Office (SCAO) regional administrator for further information.

a. Michigan Department of Health and Human Services, Office of Child Support

The Office of Child Support administers federal funds for reimbursement of a percentage of administrative costs associated with the collection of child support. In addition, the office administers funds paid as incentives for efficient collection of child support. See also Section 6-09.

Michigan Department of Health and Human Services
Office of Child Support
P.O. Box 30478
Lansing, MI 48909
517-373-9202

b. Michigan Department of Health and Human Services, Federal Compliance Division

The Federal Compliance Division administers the Child Care Fund, State Ward Board and Care, and Aid to Dependent Children in Foster Care, which are used to reimburse counties for the placement of children in foster care or other residential programs. See also Section 6-10.

Michigan Department of Health and Human Services
Federal Compliance Division
235 South Grand Avenue, Suite 1013
P.O. Box 30037
Lansing, MI 48909
517-335-6151

c. Michigan Department of Corrections, Finance Division

The Michigan Department of Corrections' Finance Division administers a state-mandated program to reimburse circuit courts and prosecutors for costs associated with the prosecution of inmates of state prisons located within the jurisdiction of the court in which the prosecution takes place. See also Section 8-08, H.

Michigan Department of Corrections, Finance Division
P.O. Box 30003
Lansing, MI 48909
517-335-3010

The offices listed above should be contacted for specific guidelines relating to the funds cited.

The SCAO makes periodic announcements regarding the availability of and rules pertaining to funding. If courts would like assistance in determining the existence of entitlement funds, contact the SCAO regional office.

C. Grants

1. Introduction

Grant funding can be an excellent source of funding to supplement local general fund appropriations and entitlement funds. However, general appropriations (and service-related revenues) should always be viewed as the primary source of funding for basic operations. Entitlement funds can usually be viewed in the same manner.

2. Administration

Grant funds are typically awarded for specific activities or projects upon application for limited periods of time, and are often restricted to new or experimental activities. Restrictions on use and application requirements vary widely depending upon program and funding sources. Grant funds available to judicial agencies from the federal government are often administered by state agencies pursuant to annual plans submitted by those state agencies.

3. Eligibility

Most federally supported programs require contributions by grantees of a resource "match" for the grant project, either in the form of the use of existing resources for the project or the use of added local resources. Grant funds available from private foundations, on the other hand, do not universally require matching resources to be contributed by the recipient. The restrictions applicable to private foundation grants vary widely and should be considered carefully prior to application.

4. Restrictions in Use

In almost all cases, grant funds are available for limited periods for individual projects. Many governmental grant programs require periodic legislative renewal and may, therefore, exist for only a few years.

Because of these restrictions, grant funds should never be viewed as a source for funding basic or ongoing operations. Rather, grants are best used as resources for testing new programs, evaluating existing programs or funding research and planning activities. Managers should anticipate that, at the end of a grant period, general appropriation funds must be obtained to continue project activities if it is determined the project is worthwhile and that activities of the project should be maintained over a period of time.

5. Contacts

a. Private Sources

Grant funds are also available from private sources, usually foundations set up specifically to provide resources to worthy programs in specific substantive areas. For example, the Michigan State Bar Foundation awards grants for projects that benefit the legal system, while the Edna McConnell Clark Foundation has funded many projects in the area of juvenile justice. Another resource is *The Michigan Foundation Directory*, which is available through the Council of Michigan Foundations. This guide contains a complete list of all Michigan Foundations and Michigan Corporate Giving Programs.

Most foundations have annual goals for targeting the available funds in that year to certain projects. Some foundations have limits on the amounts available per grant, and some have geographic limitations. Each foundation should be contacted to determine the rules for application for funding. There are numerous directories and guides regarding private foundation funding. One resource is the *Foundation Directory*, available from the Foundation Center in New York.

b. State and Federal Sources

Several state and federal offices offer grant funding of justice system improvement activities. Some of the offices are listed below. Contact each office to obtain current information regarding grant programs.

1) Michigan State Police

The Michigan State Police administers the Michigan Justice Training Fund, which provides grants for the in-service training of criminal justice personnel in law enforcement, prosecution, corrections, defense, and the judicial branch.

Michigan Commission on Law Enforcement Standards
P.O. Box 30633
Lansing, MI 48909
517-322-1417

2) Michigan Department of Health and Human Services, Bureau of Juvenile Justice

The Juvenile Justice Grant Unit administers grant funds from the federal Office of Juvenile Justice and Delinquency Prevention through the Juvenile Justice and Delinquency Prevention Act.

Michigan Department of Health and Human Services
Juvenile Justice Grant Unit
P.O. Box 30037
Lansing, MI 48909

3) Michigan Department of Health and Human Services, Office of Child Support

The Office of Child Support is responsible both for certain entitlement funds for reimbursement of activities relating to child support and is also a conduit for federal grant programs relating to child support activities.

Michigan Department of Health and Human Services
Office of Child Support
P.O. Box 30037
Lansing, MI 48909
517-373-9202

4) Michigan State Police, Office of Highway Safety Planning

The Office of Highway Safety Planning administers federal highway safety fund grants. The office has funded several projects for courts and prosecutors relating to the improved operations of court handling of traffic cases, particularly OUIL cases.

Office of Highway Safety Planning.
P.O. Box 30634
Lansing, MI 48909
517-241-2500

5) State Justice Institute

The State Justice Institute was created by the State Justice Institute Act of 1984, Public Law 98-620, and is authorized to award grants, cooperative agreements and contracts to state and local courts and others to improve the administration and quality of justice in state courts. See 42 USC 10701.

State Justice Institute (Headquarters)
11951 Freedom Drive, Suite 1020
Reston, VA 20190
517-313-8843

6) Michigan State Police, Grants & Community Services Division

This office is responsible for administering Anti-Drug Abuse Act law enforcement grants to provide funds to assist state and local governments to carry out specific programs that offer high probability of improving operation of the criminal justice system and enhancing drug control efforts. Funds are administered under the Edward Byrne Memorial Justice Assistance Grant.

Michigan State Police
Grants & Community Services Division
7150 Harris Drive
P. O. Box 30634
Dimondale, MI 48821
517-373-2960

7) U. S. Department of Justice, Bureau of Justice Assistance

The Bureau of Justice Assistance was created to help state and local governments reduce violence and restore security in neighborhoods and improve the efficiency and effectiveness of the criminal justice system. The bureau provides a variety of grant opportunities related to local crime initiatives and drug issues.

Bureau of Justice Assistance
810 Seventh Street, NW
Washington, DC 20531

202-616-6500
FAX 202-305-1367
E-mail: AskBJA@usdoj.gov

8) Problem Solving Courts

The State Court Administrative Office welcomes Michigan trial courts to apply for the various state and federally funded problem-solving court grants available through its Trial Court Services division. Grants are available to both current and future court programs related to the use of therapeutic jurisprudence dealing with drug-, alcohol-, and mental health-related charges. See Grants and Funding for details.

6-09 Cooperative Reimbursement Program

A. Definition and Purpose

The Cooperative Reimbursement Program (CRP) is a contractual agreement between the Office of Child Support (OCS), the Michigan Department of Health and Human Services, and the county and circuit court for the provision of federally mandated (IV-D) child support services through the friend of the court (FOC) office. In general, IV-D child support services include activities to establish, enforce, account for, and collect child support in cases where a party to a domestic relations case has requested IV-D services. The contract specifies the responsibilities of each party for services, reporting requirements, and financial participation. 45 CFR 302.34; MCL 400.233.

B. General Procedures

Each year the FOC, upon authorization of the county board of commissioners and the circuit court, submits an application to OCS for reimbursement of IV-D related activities. The application sets forth the activities to be performed, the personnel needed, the other IV-D related office activities and a budget which estimates IV-D expenses, along with a breakdown of state and local shares of those expenses. After review and negotiations, if necessary, by OCS and the local signatories, a contract is prepared that outlines services to be provided, expenses to be reimbursed, and the respective parties' shares of those expenses. Upon execution of the contract, the FOC performs the services and submits monthly reports to OCS for reimbursement of expenses, as provided in the contract.

C. Contract Terms and Development

Due to the ever-changing laws in the child support enforcement field, terms of the contract change periodically to reflect those changes. The minimum level of state reimbursement of IV-D expenses is established by federal regulation. That level has gradually reduced since the inception of the program, with present regulations providing for a floor of 66 percent state funding as of 2008.

D. Financial Benefits to County and Court

The CRP assists the local jurisdiction in the funding of friend of the court offices. Reimbursements made pursuant to the contract offset specific friend of the court expenditures. The federal IV-D program also provides incentive payments to child support enforcement agencies. Incentive payments are based on five factors: establishing paternity, establishing support orders, collecting current support due, collecting arrears due, and cost effectiveness. The incentives are passed through to the county based on a formula developed and promulgated by OCS. These incentive payments serve as another friend of the court generated revenue that may be used by the local jurisdiction to offset the local costs of the IV-D program and other FOC mandated services. 45 CFR 303.52.

6-10 Funding Sources and Collections for Court and State Wards

A. Funding Sources

There are currently four funding sources for the care of children and youth. A combination of the child's legal status, family financial circumstances, and placement needs strictly determines which funding source is used to pay for placement and other related services. For further information, see the Department of Health and Human Services' *Children's Foster Care Manual*, FOM 901 *et seq*.

The following are explanations of each fund.

1. County General Fund

The primary source of funds for care of minors who are in court custody is the local county general fund.

a. County Child Care Fund

The county treasurer is the specifically designated custodian of the Child Care Fund and must deposit in it all funds raised by the county (general fund) for the care of children. This includes costs for minors not under the jurisdiction of the court but served by the local DHHS office, and minors who are under the jurisdiction of the court. Money returned to the court for foster care of children by the state or the parent must also be deposited in this fund. MCL 400.117c.

2. State Child Care Fund Account

This account is not used for direct payment of child-care expenses. Its use is limited to reimbursement of county Child Care Fund expenditures after they have been incurred and reported.

a. Reimbursable Expenditures

1) Child Care

Reimbursable Child Care Fund expenditures fall into the following categories.

a) Post-Termination Care

These include foster care costs, not including administrative costs, incurred by the placing agency for up

to 30 days after termination, while the foster parent decides whether he or she will request to adopt the child.

b) County Operated Child-Care Facilities

Reimbursement is limited to the operating cost of the facility. There is no reimbursement for capital expenditures.

c) Out-of-Home Care for Court Wards

Cost for the direct services to court wards placed in foster care, institutional care, or independent living are generally reimbursable. Judicial or court administrative costs are not reimbursable.

d) In-Home Care

Most costs are reimbursable, except judicial costs incurred in reducing out-of-home days of care through an approved program. These costs are limited to services which prevent the need to place a youth out of the home or to facilitate the early return of a youth to his or her home.

b. Basic Grant (for early intervention to treat delinquency and neglect)

Counties having a population of less than 75,000 are eligible for a Basic Grant of $15,000. The Basic Grant Program must be approved annually by the Michigan Department of Health and Human Services (DHHS). The program must be a new or expanded service for youth who are within or likely to come within court jurisdiction. The grant is a state reimbursement for up to $15,000 of county expenditures for approved programs.

c. Cost Share

The cost share for pre-adoptive care and the Basic Grant is 100 percent state. The cost share for certain costs incurred for county-operated child-care facilities, out-of-home care for temporary court wards and in-home care is 50 percent state and 50 percent county. Permanent court wards are paid through State Ward Board and Care, which is 50 percent state and 50 percent county. Expenditures that qualify for state reimbursement of 50 percent are detailed and described in the Child Care Fund Rules (R400.2001-400.2048). For more information, contact your local county DHHS child-welfare funding specialist.

d. Billing/Payment Procedure

In each of the above types of care or service, county funds are used to pay the provider. The county must electronically submit Form DHS 207 for state reimbursement in the ratios stated above.

3. Title IV-E – Federal Funding Source for Children in Foster Care

This federal funding source is administered by the DHHS. Payment is made by the state.

a. Eligibility

For a child's case to be eligible for Title IV-E funding, all of the following criteria must be met.

1) The child must meet specific Title IV-E eligibility criteria as determined by DHHS under former AFDC program eligibility requirements.

2) If the child is a court ward (not committed to the state through Act 150, Act 220, or Act 296, MCL 803.301 *et seq*. or MCL 400.201 *et seq*.), the court order must place the child under the "placement, care and supervision" of DHHS.

3) The court order must state and provide case specific factual support that:

   a) it is contrary to the welfare of the child to remain in the home of the parents (required in first court order removing child from home), and

   b) reasonable efforts have been made to prevent removal or return the child to the home, or that reasonable efforts are not required due to aggravated circumstances (required within 60 days of the child's removal from the home).

4) The child must be placed in a Title IV-E fundable placement. Title IV-E fundable placements are licensed family foster homes (including licensed relative homes), private nonprofit child-caring institutions, and treatment facilities operated by the DHHS.

b. Cost Share

The cost share depends on whether the child is a juvenile justice placement or a neglect and abuse placement, whether the child is committed to the custody, care, and supervision of DHHS, and the child's legal status. For licensed foster homes and private child-caring institutions, the cost share is approximately 50 percent state and 50 percent federal. Locked facilities are not eligible for federal funding.

c. Billing/Payment Procedure

For children in placement eligible for 50 percent federal, 50 percent state funding, the state pays costs and claims federal reimbursement. There are no county costs.

4. State Ward Board and Care (Non-Title IV-E)

This is the primary funding source for state wards. Payment is made by DHHS.

a. Eligibility

This is the fund used for youth committed to the state and accepted through MCL 803.301 *et seq*. for delinquency proceedings (also known as Public Act 150 wards) or MCL 400.201 *et seq*. for child-protection proceedings (also known as Public Act 220 or Public Act 296 wards) when the youth is not eligible for Title IV-E or is not in a Title IV-E fundable placement.

b. Cost Share

The cost share is 50 percent state and 50 percent county.

c. Billing/Payment Procedure

The state incurs the cost of care if it is provided by state staff and pays for the care if it is provided by a family foster home or private agency. The state then charges the county 50 percent of the cost.

B. Collections

1. Collections from Parents, Guardians, and Custodians for Reimbursing Cost of Care

a. Authority

The court has the authority and the responsibility for collecting the cost of care or service for all minors served by the court or placed by the court with the state. MCL 712A.18(2),(3). See Order for Reimbursement, form JC 38.

b. Collection Fee

In most instances, the court may retain 25 percent of the amounts collected as a result of court-ordered reimbursement for Child Care Fund expenditures. A 25 percent administration fee does not apply to collections received from Social Security, veterans' benefits, child support/Title IV-D funds, or other government benefits. MCL 712A.18(2).

c. Collection Share

Money collected by the court for Child Care Fund expenditures must be shared with the state in the same ratio as the cost of care is shared. Money collected by the court for youth funded through the Child Care Fund is retained by the court. A 25 percent administration fee is deducted from the amount collected and the remaining 75 percent is reported as revenue on the monthly reporting form for state reimbursement. DHS 207.

2) State Ward Board and Care

Nongovernmental money collected for youth funded through the State Ward Board and Care account may be either retained by the court and reported to the state, or the court may retain the 25 percent administration fee plus 50 percent of the remaining amount and send the remaining 50 percent to the state.

3) Title IV-E

Money collected by the court for youth funded through Title IV-E may be retained and reported in the same manner as described under State Ward Board and Care. A 25 percent administration fee is retained and the remaining 75 percent is either retained and reported or submitted to the state in the same ratio as costs are shared.

4) Title IV-D

Money collected by the friend of the court on behalf of the circuit court family division will be processed according to the procedure set forth in Section 6-09, Cooperative Reimbursement Program.

6-11 State Grants for County Juvenile Officers

A. Introduction

The powers, duties, and compensation of county juvenile officers of the probate courts are prescribed in MCL 400.251. Under the statute, funding for the employment of county juvenile officers and assistant county juvenile officers is available through: 1) state salary and state fringes, 2) state salary (county fringes), and 3) state grant payments. Each county is allowed one county juvenile officer. The number of assistants is based on county population.

B. Authority

Payment policies and procedures for county and assistant county juvenile officers have been developed by the Michigan Department of Health and Human Services (DHHS). Persons employed as county juvenile officers or assistant county juvenile officers as of October 1, 1980 were required to choose one of the three funding options. Individuals employed after October 1, 1980 can be paid by state grants only. MCL 400.251-400.252.

C. Payment System

The amount of the grants for county and assistant county juvenile officers is set forth in statute and is based on county population. Population is defined as the most recent population projection issued by the Department of Technology, Management, and Budget for the state. Grants are adjusted annually by the same percentage as the annual salary adjustment made for state civil service employees who are excluded from representation under civil service rules. Grant payments constitute full payment of the state obligation for the salary, expense, and fringe benefits of the county juvenile officer or assistant. MCL 400.253.

County juvenile officers employed before October 1, 1980 who initially selected funding under the salary options may change to funding under state grants. However, once funding under state grants has been assigned, funding may not be reverted back to the salary options.

D. Reporting Use of Grant Money

Grant payments are made in advance on a quarterly basis. At the end of each quarter, the county treasurer must submit a certified expenditure report (DHS 56) to the Michigan Department of Health and Human Services, Payment Document Control Division. This form identifies the amount paid and the position(s) or individual(s) under the grant during the quarter. It is used to certify that the full amount of the grant was applied to salaries, expenses, and fringe benefits for only those individuals designated as county juvenile officers or assistants.

If in any quarter the full amount of the grant was not applied to salaries, fringes, and expenses of the designated individuals, appropriate adjustments will be made during the following quarter.

The Michigan Department of Health and Human Services, Bureau of Planning and Fiscal Oversight will supply reporting forms to county treasurers.

See also Section 5-22.

6-12 Friend of the Court Office Funds

The Friend of the Court Act provides that the chief judge shall set the salaries and expenses of the friend of the court and they shall be paid from the County General Fund and the Friend of the Court Fund. MCL 552.527. The Michigan Department of Treasury's uniform chart of accounts categorizes the Friend of the Court Fund as type 215.

Friend of the court offices generate revenue through reimbursement programs and statutory fees that offset a significant share of the office's costs. Monies generated by the office are usually designated to go to either the county general fund or the Friend of the Court 215 Fund.

All circuit courts have a Title IV-D Cooperative Reimbursement Program (CRP) contracts with the state of Michigan and receive federal reimbursement for eligible expenses on activities conducted by friends of the court on Title IV-D cases. Contracts require that certain costs and fees that a court receives must be used to reduce the amount billed for reimbursement. Those amounts received are referred to as "program income."

Because amounts paid to the court as result of IV-D activity may need to be deducted from expenses billed under the CRP contract, to assure proper billing it is important to identify whether revenue received by the court resulted from services associated with a IV-D activity. Amounts collected that reimburse non-IV-D expenditures are not program income under the CRP. See Section 6-09.

A. County General Fund Revenue

The county general fund receives revenue which may be used to offset the expenses of the friend of the court from a number of sources.

1. Cooperative Reimbursement Program (CRP) Payments

The federal government reimburses 66 percent of the net costs of services performed on Title IV-D cases through the CRP program. This is known as "federal financial participation" (FFP). The state returns FFP reimbursement for local expenses to the counties.

2. Statutory Fee

MCL 600.2538 requires a $3.50 per month fee on all cases where a person is required to make payments through the FOC or MiSDU. Of the $3.50 fee, $2.25 is transmitted to the county treasurer (general fund), $.25 is deposited in the state attorney general fund, and $1 is transmitted to the state treasurer for deposit in the state court fund. MCL 600.2538(1) permits the fee to be charged monthly, quarterly, or semi-annually at the discretion of the FOC, but the current system design assesses the fee semi-annually on January 1 and July 1, prospectively. The

fee does not prorate within a month, but if a court case is closed before the six-month period expires, the fee should be charged for any whole or partial month the case remained open.

Amounts transmitted to the county's general fund should be used to fund friend of the court services that are not reimbursable under Title IV-D. If the court uses the funds to reimburse Title IV-D activities, the court will have to claim that portion of these collections which paid for Title IV-D services as Title IV-D program income.

3. Federal Incentives

Federal IV-D incentives are paid to the county based on a formula adopted and revised periodically by the Michigan Department of Health and Human Services. All Title IV-D incentive monies received must be spent on the Title IV-D program and not used to supplant other funding. Federal laws require that incentives supplement funds expended on Title IV-D and cannot be used to supplant other program funding. 42 USC 658A[f]; 45 CFR 305.35. Although incentives are paid to the funding unit, the funding unit must use all these incentives for child support services.

B. Friend of the Court 215 Fund Revenue

The Friend of the Court Fund was created to provide funding for new services and expenses created by the adoption of the Friend of the Court Act in 1982. Each county is required to establish this fund. (MCL 600.2530) As the court's presiding officer, the chief judge has supervision of this fund. Because amounts deposited into this fund have restricted uses, it is important to distinguish Title IV-D funds from non-Title IV-D funds. Revenue for the fund comes from the following sources.

1. General Fund Appropriation

The board of commissioners must appropriate all sums in the Friend of the Court 215 Fund, and must also annually appropriate an amount not less than the total amount appropriated for the office in the 1982 budget. MCL 600.2530(2).

2. Judgment and Order Entry Fees

MCL 600.2529(1)(d) requires a party, who files an action involving minor children, to pay either:,

a. *Actions determining custody or parenting time.* An $80 fee is assessed. The fee must be deposited into the Friend of the Court 215 Fund.

b. *Actions determining or modifying support.* A $40 fee is assessed. The fee must be deposited into the Friend of the Court 215 Fund.

3. Sanctions (includes fines and bench warrant costs)

a. *Custody or Parenting-Time Sanctions* – MCL 552.644(6) permits a court to impose sanctions against a party who has acted in bad faith regarding custody or parenting-time matter ($250 for a first offense; $500 for a second offense; $1,000 for third and subsequent offenses). When collected, these should be designated as non-Title IV-D revenue in the Friend of the Court 215 Fund.

b. *Fines* – When a person is found in contempt of court for custody and parenting-time violations or for nonpayment of support, fines may be imposed. These fines are deposited into the Friend of the Court 215 Fund.

(1) *Custody and parenting time violations* – Upon finding a person in contempt for violating a parenting-time order, the court may assess a $100 fine. This fine, when collected, should be designated as non-Title IV-D revenue. MCL 552.644(1)(d).

(2) *Nonpayment of support* – Upon finding a person in contempt for violating a support order, the court may assess a $100 fine. MCL 552.633(1)(g), MCL 552.635(2)(d).

c. *Bench Warrant Costs* – The court must assess the costs of issuing a bench warrant to the party being brought before the court for failure to appear. MCL 552.631(3). Half the bench warrant costs collected under MCL 552.631, MCL 552.632, and MCL 552.644 are deposited into the Friend of the Court 215 Fund and half is paid to the law enforcement agency that executes the warrant and makes the arrest. MCL 600.2530(1),(4).

If the officer making the arrest is paid from monies in the Friend of the Court Fund, the law enforcement share of the costs should be deposited back into the Friend of the Court 215 Fund to reimburse the expense. If not, the law enforcement agency's share of the costs must be sent to the agency that executed the arrest.

Costs collected as a result of an arrest on a warrant issued pursuant to MCL 552.644 for a parenting-time order violation should be designated as non-Title IV-D revenue and deposited in the Friend of the Court 215 Fund.

Because the law enforcement agency is not known until the arrest, it may be impossible to pay the costs as provided in the statute. A court may enter a local administrative order (LAO) that presumes the agency making the arrest is a particular agency, unless information is presented to the FOC from another agency. When most of the arrests are in-county, money from the bench warrant costs goes to the same funding unit that funds both friend of the court and sheriff activities. Any method of accounting for bench warrant costs should be well documented for future audits.

d. *Driver's License Clearance Fee (FOC)* – When a licensee pays the $45 fee to the court clerk for reinstatement of a driver's license that was suspended for a support or parenting-time violation, $15 must be deposited with the Secretary of State and $30 deposited into the Friend of the Court 215 Fund. MCL 257.321c.

4. FOC Investigation Expenses

When a party requests a custody or parenting-time investigation, the friend of the court may charge the parties an amount for the expense of conducting the investigation pursuant to standards issued by the State Court Administrative Office (SCAO) and amounts established in a local administrative order. MCL 552.505(3). When collected, these amounts must be deposited into the Friend of the Court 215 Fund and should be designated as non-Title IV-D revenue. See SCAO Administrative Memorandum 2010-05 and Model LAO 34.

5. State Incentives

State incentives are paid pursuant to MCL 400.18a. These incentives are determined to be 3 percent of the collections on support assigned to the state under AFDC (now known as TANF) that are made to the friends of the court. Although these payments have not been funded in the state budget in the last several years, the statute providing for the incentives has not been repealed. To the extent the payments are made, they are required to be deposited into the Friend of the Court 215 Fund.

C. Other Revenue

No court may assess a fee or charge for a court or friend of the court service unless it has been authorized by statute or court rule. The prohibition on fee for services does not prevent a court from assessing costs that are otherwise appropriate based on the specific facts of the case. This section does not cover remedies associated with the court's general contempt authority as set forth in the Revised Judicature Act.

When an amount is assessed for a friend of the court activity pursuant to a statute or court rule that does not specify where the amount should be deposited, the court should direct the fee be deposited into the Friend of the Court 215 Fund to increase the funds available for providing friend of the court services. Amounts deposited into the Friend of the Court 215 Fund that are not associated with a Title IV-D activity should be designated as non-Title IV-D revenue.

6-13 Other Funds

A. Court Equity Fund

The Court Equity Fund was established in October 1996 to provide limited funding for trial court operations. The fund is disbursed quarterly within the state fiscal year to county governments, based on a statutory formula that establishes each county's share. The formula includes two factors: the caseload activity of the circuit and probate courts and the number of judgeships in each county. The first factor, caseload, takes into account new cases filed for the most recent three years in the circuit and probate courts in the county and compares the county's proportion of these filings for the three years to the total filings for the state for the three years. The second factor, number of judgeships, compares the number of judgeships within the county to total judgeships for the entire state.

The revenue sources to the Court Equity Fund include state general fund appropriations and multiple sources of restricted revenue that originate from local trial court fees, costs, and assessments. Each payment from the fund within the state fiscal year will reflect the revenue deposits to the Court Equity Fund for the preceding quarter. Therefore, quarterly payments will vary, reflecting fluctuations in court revenues received.

MCL 600.151b.

B. Drug Case Information Management Fund

The Drug Case Information Management Fund was created by statute effective September 1, 1994. The fund was created to provide a source of funding for timely management and new reporting to the Secretary of State (SOS) of specific cases. The case types include an attempt to violate, a conspiracy to violate, or a direct violation of the Public Health Code for drug-related offenses. Offenses can be charged under either state statute or local ordinance.

The fee to reinstate the individual's driver's license is $125, payable to the SOS. Of this amount, $30 of each license suspension fee for a drug-related conviction is deposited by the SOS into the Drug Case Information Management Fund. Revenue deposited in the Drug Case Information Management Fund is dependent upon the number of new drug-related convictions that carry the license suspension, and the payment of the $125 fee to the Secretary of State to remove the license from suspension status.

The State Court Administrative Office is responsible for the annual distribution of the fund to circuit and district courts. Each court receives a proportion of the fund based upon its drug-related caseload and the statewide caseload for each calendar year. The fund is distributed each year for the previous year's fund revenue based on the previous year's trial court caseload.

Examples of the manner in which funds have been allocated locally include: 1) staff positions – clerical support, 2) equipment – computers and technology enhancements, and 3) training – new or existing staff for reporting requirements and electronic systems reporting.

Revenue received from the Drug Case Information Management Fund should be deposited in a revenue account set up within the State Grants Section (539-579) of the local Uniform Chart of Accounts. See Treasury Letter 1998-5, Trial Court Accounts.

MCL 257.323d.

C. Drunk Driving Caseflow Assistance Fund

The Drunk Driving Caseflow Assistance Fund was created by statute effective January 1, 1992. The fund was created to provide a source of funding for implementation of new case processing time guidelines that would promote the timely disposition of cases in which the defendant was charged with a qualifying drunk driving offense. Offenses can be charged under either state statute or local ordinance.

The timeline instituted for these cases is as follows: 1) arraignment to be processed within 14 days of arrest, 2) pretrial to commence within 35 days after arrest, or 42 days in single-judge, multi-location courts, and 3) adjudication of the case within 77 days after arrest. The cases that qualify for this timeline are all OUIL-related offenses (Operating a Vehicle Under the Influence of Liquor) where the vehicle is a motor vehicle, snowmobile, or boat.

At the same time the new case processing times were established, the Driver's License Reinstatement Fee, payable to the Secretary of State, was raised from $60 to $125. Of the new, higher fee, $30 of each license suspension for an OUIL-related offense is deposited by the Secretary of State into the Drunk Driving Caseflow Assistance Fund.

Revenue deposited in the Drunk Driving Caseflow Assistance Fund is dependent upon the number of new OUIL-related offenses filed that carry the license suspension, and payments by the individuals of the $125 fee to the Secretary of State to remove their licenses from suspension status.

Annually, each district and municipal court receives a proportion of the fund based upon its OUIL-related caseload and that of the statewide caseload for each calendar year. The fund is distributed each year for the previous year's fund revenue and the previous year's trial court caseload. Examples of the manner in which funds have been allocated locally include: 1) staff positions – magistrate, clerical support, probation, or alcohol screening officer, 2) equipment – computers and technology enhancements, vehicles for intensive probation, preliminary breath tests (PBTs), alcohol screening and/or assessment materials, and 3) training – substance abuse causes and treatment, probation officers.

Revenue received from the Drunk Driving Caseflow Assistance Fund should be deposited in a revenue account set up within the State Grants Section (539-579) of the local Uniform Chart of Accounts. See Treasury Letter 1998-5, Trial Court Accounts.

MCL 257.625h(5).

D. Juror Compensation Reimbursement Fund

The Juror Compensation Reimbursement Fund was created January 1, 2003, to provide a source of reimbursement funding to trial courts for legislated increases in juror attendance compensation. Beginning October 1, 2003, jurors were compensated at new, higher rates (see MCL 600.1344) and trial court funding units can claim reimbursement biannually from the fund for the increased expense. Claims are requested in the months of April and October each year and are submitted into a web-based application at the Michigan Court Application Portal (MCAP). Disbursements from the fund are made by June 1 and December 1 each year. If total claims exceed the funds available in the Juror Compensation Reimbursement Fund, claims will be prorated.

To file a claim with the Juror Compensation Reimbursement Fund, access the Michigan Court Application Portal (MCAP).

MCL 600.151d; MCL 600.151e.

7-01 Court Facilities

A. Authority for Financial Responsibility of Court Facilities

In Michigan, circuit and probate court facilities are the financial responsibility of county government. MCL 45.16, MCL 46.7. Depending on the class type, district court facilities are the financial responsibility of either the county or the political subdivision(s) where the court sits. MCL 600.8261, MCL 600.8262, MCL 600.8263.

B. Courthouse Design Standards

The Michigan Supreme Court, through Administrative Order 1983-2, endorsed the use of design guidelines from a 1981 Michigan Courthouse Study for all future construction, remodeling, or renovation of court facilities in the state.

A decade later the Michigan Court Facilities Standards Project Advisory Committee was appointed to assist the State Court Administrative Office in the review and revision of the guidelines. The committee consisted of judges and court administrators at all trial court levels as well as representatives of local government, the county clerk, the county sheriff, the Bar Association, academia, and practicing architects. Their work was assisted by the consultants to the project, Carter Goble Associates, Inc. and Court Works. The resulting court facility standards, published in December of 2000, incorporate advancements in building technologies and also address the impact of the rapid changes in information technology that affect efficient trial court operations. See *The Michigan Courthouse: A Planning and Design Guide for Trial Court Facilities*. See also the *American with Disabilities Act Standards for Accessible Design*.

Because local government is the owner of court facilities, the design process is controlled locally, without state approval of final design documents, budgets, or schedules. The Supreme Court, through the State Court Administrative Office (SCAO), however, has a substantial experience base that can be used to help localities that are planning court facilities to avoid costly mistakes. The purpose of the standards is to define a process that assures the involvement of appropriate stakeholders in the decision-making process and to illustrate the critical design issues and guidelines that when carefully applied by professionals should yield a cost-effective courthouse with a lengthy useful life.

C. County Law Libraries

1. Establishment of Law Library

The requirement for maintaining a law library stems from an original mandate to require a library in each township or city in the 1908 Michigan Constitution. The mandate was carried over in the 1963 Michigan Constitution in that support for

"public libraries" shall be funded by fines assessed, collected and applied to the support of public libraries and county law libraries.

The Legislature shall provide by law for the establishment and support of public libraries which shall be available to all residents of the state under regulations adopted by the governing bodies thereof. All fines assessed and collected in the several counties, townships, and cities for any breach of the penal laws shall be exclusively applied to the support of such public libraries and county law libraries as provided by law. Const 1963, art 8, § 9.

The Legislature shall provide by law for the establishment of at least 1 library in each township and city; and all fines assessed and collected in the several counties, cities and townships for any breach of the penal laws shall be exclusively applied to the support of such libraries. Const 1908, art 11, § 14.

The State Court Administrative Office has compiled a list of recommended minimum legal resources that a court should make available. See SCAO ADM Memorandum 2016-01. Alternatives to a traditional law library are discussed below in 7.

2. Purpose of Funds

The Distribution of Penal Funds to Public Libraries (Act 59 of 1964) does not affect county law libraries, according to MCL 397.37, specifically the way funds are distributed to them. It also does not negate the requirement of counties to maintain their own law libraries. The reference for how county law libraries are to be maintained is contained within statute. MCL 600.4851(2) indicates the money credited to the county law library fund must be paid only upon specific order of the court, but only indicates it be used for the "purpose of establishing, operating, and maintaining a law library for the use of the circuit, district, and probate courts in the county, and for officers of the court and persons having business in the courts." There appears to be no definition in case law as to standards for such institutions either.

3. Funding – County Law Library Fund

In each county, the county treasurer shall credit semiannually to a fund to be known as the county law library fund, from the library fund, an amount as follows:

a. In counties having a population of 250,000 or more, but less than 1,000,000 inhabitants, the sum credited shall not exceed for each year $8,500.

b. In counties having a population of 50,000 or more, but less than 250,000 inhabitants, the sum credited shall not exceed for each year $6,500.

c. In counties of 35,000 or more, but less than 50,000 inhabitants, the sum credited shall not exceed for each year $4,500.

d. In counties of 20,000 or more, but less than 35,000 inhabitants, the sum credited shall not exceed for each year $3,500.

e. In counties of 10,000 or more, but less than 20,000 inhabitants, the sum credited shall not exceed for each year $2,500.

f. In counties of less than 10,000 inhabitants, the sum credited shall not exceed for each year $2,000.

MCL 600.4851(1).

There is no other state funding provided and additional funds, if any, must be supplied by appropriations by the county board of commissioners of the individual counties.

4. Funding Source

The funding source for a county law library is fines. The State Court Administrative Office has established a distribution of fines and costs table that clearly lays out the civil infractions and ordinance violations that contribute to "Libraries" and how ordinance violations are split 30 percent and 70 percent between libraries and the political subdivision respectively. MCL 257. 909.

5. Expenditures – Purpose and Approval by Chief Circuit Judge

All money credited to the county law library shall be paid by the county treasurer only upon the order of the circuit judge in multi-county circuits or upon the order of the presiding judge in single county circuits for the purpose of establishing, operating, and maintaining a law library for the use of the circuit, district, and probate court in the county and for the officers of the courts and persons having business in the courts. MCL 600.4851(2).

6. Expenditure Report

The county law librarian, or other person as the circuit or presiding judge shall designate, shall make a detailed report before January 2 of each year of the sums expended for books for the county law library. The annual report shall be filed with the county clerk. MCL 600.4851(3).

7. Alternatives to a Traditional Law Library

Currently available funding for county law libraries precludes most counties from establishing, operating, and maintaining a physical law library. However, courts should still make legal resources available. Electronic resources can be made available online for the public's use at little or no cost; therefore, a court could allocate the library funds for space, maintenance, and the identification of electronic resources. At a minimum, a court should make available federal and state statutes, case law, and court rules.

A court might choose between a partnership with a local legal assistance center or self-help center or an individual model, and either paper or electronic resources. These resources should be reliable, accurate, and helpful. The choice of electronic format will require a periodic review and assessment of the materials to verify their continued availability and functionality. The choice of paper format will require each volume to be appropriately updated and maintained to assure the provision of accurate and timely information.

a. Partnership with Legal Assistance Centers and Self Help Centers

A few communities are fortunate enough to have colleges or universities with significant law library resources with which they can partner and refer people. For those communities who do not, another option is to provide access to a Legal Assistance Center. Whether within the courthouse or housed in a nearby location, it can be a cost effective way to provide a county law library service. Resources are available online to help gather information on the most requested topics. Michigan Legal Help is a helpful resource for the public as well. There are other Legal Assistance Centers in a number of communities willing to provide information on recreating that service in any community.

b. Independent Model

If an independent model is chosen, the space should be large enough to accommodate current demand and the type of resources chosen (paper, electronic or combination). The space should be ADA compliant, well-lit, climate-controlled, and open to the public for a reasonable number of

hours to accommodate demand. Many legal resources are now available online. If electronic resources are provided, this lessens the need for physical space occupied by paper resources. Recommended equipment includes one workstation or table, one chair, Internet access, and printer access or access to e-mail.

D. Closing the Court, Court Hours, and Court Holidays

1. Court Closure

Courts periodically find it necessary to close for brief periods of time for such matters as staff training, conducting pending inventory, and doing records destruction. See Model LAO 16 and a sample notice of court closure.

For guidelines on court closure as a result of weather emergency, see Section 7-02, E. See also Section 6-07.

2. Court Holidays

The court is directed to observe a specific list of holidays, except those courts which have adopted modifying local administrative orders. Furthermore, courts are required to promulgate a modifying administrative order, if appropriate, to accommodate or achieve uniformity with the holiday practices of local governmental units regarding local public employees. A judge may continue a trial in progress, however, or dispose of judicial matters on any of these specifically listed holidays if he or she finds it to be necessary. MCR 8.110(D)(2).

3. Court Hours

The chief judge is required to enter an administrative order establishing the court's hours. MCR 8.110(D)(1).

E. Management and Destruction of Equipment

1. Personal Computers, Laptops, Notebooks, and Tablets

The chief judge or his/her designee should work with the funding unit to develop a replacement schedule for computer hardware and software. The court must identify the responsible individuals for hardware inventory and assessment, procurement and deployment, ongoing management, and replacement, and proper disposal. These are the critical events in the life of all technologies.

2. Office Furniture

The court must continually assess the adequacy of office furniture for their employees. Improper ergonomics can result in physical maladies that reduce productivity and increase absenteeism. Working with the funding unit is important to ensure that all employees have proper office furniture for the tasks they are required to perform.

7-02 Court Security and Emergency Management

A. Introduction

Court security is one of the Michigan Supreme Court's highest priorities. In October 2001, the Supreme Court asked every court to undertake immediate steps to improve security status. Each court was asked to provide emergency contact information, review current security plans, appoint both a court security coordinator and emergency services coordinator, and cooperate with local emergency management officials.

The Michigan Emergency Management Act was amended to include the judiciary in the State Emergency Operations Center. These changes formally integrate the judiciary into the state's emergency management structure for both state and local activities. These proposals were incorporated into the antiterrorism legislation enacted in 2002.

In June 2005, the Supreme Court hired its first trial court security specialist. The position is charged with developing security protocols for Michigan trial courts and advising judges and court staff on matters relating to court security and emergency management. As part of the security-related responsibilities, the position conducts threat and risk assessments, performs research and analysis, and provides training for the judiciary and court staff.

B. Trial Court Security Coordinator

Each court should appoint a court security coordinator and an emergency services coordinator. The court security coordinator is responsible for maintaining the court's security procedures and coordinating training for court staff. The emergency services coordinator serves as a liaison with the local emergency services board. The emergency services coordinator ensures that the court's contingency plan is carried out in any emergency. The same person could serve as court security coordinator and emergency services coordinator. However, it is important to establish a clear line of authority to activate emergency/ security responses, such as evacuation.

In a facility with multiple courts, the courts should, if possible, have one person handle these duties for all the courts. If the court shares the facility with non-judicial agencies, the court should cooperate with the local funding unit and the other agencies to coordinate security and an emergency plan. In any shared facility, the chief judge has ultimate authority and responsibility for the security of areas the court uses.

The name(s) and contact information for court security and emergency services coordinators should be provided to the State Court Administrative Office and appropriate local law enforcement and emergency services personnel.

For additional information, contact Dennis Mac Donell, Court Security Specialist, Michigan Supreme Court at (517) 373-2199 or macdonelld@courts.mi.gov.

C. Reporting Security Incidents

If a trial court has a security incident, the trial court security coordinator must first contact the regional office and, as appropriate, submit a security incident report. For more information, contact the appropriate regional office. See also the *Court Security Standards*.

D. Declaration Regarding Weapons in Court Facilities

Weapons are not permitted in any courtroom, office, or other space used for official court business or by judicial employees unless the chief judge or other person designated by the chief judge has given prior approval consistent with the court written policy. Each court is required to submit its written policy to the state court administrator for approval.

In developing the policy, courts are encouraged to collaborate with other entities in shared facilities and, where appropriate, to work with local funding units. The policy may be part of a general security program or it may be a separate plan. Michigan Supreme Court Administrative Order 2001-1. See Model LAO 15.

E. Emergency Management Policies and Procedures

The State Court Administrative Office (SCAO) published the *Michigan Court Security Manual*, accessible through the secured Trial Court Security website. This manual addresses general emergency planning, emergency evacuation and procedures for closing court facilities, fire emergency plans and procedures, procedures for handling medical emergency, and emergency procedures for threats, escapes, and natural or civil disasters. Included in the manual are various forms, model security policies, resources, and court security guidelines.

1. Court Security Guidelines

The *Court Security Guidelines* address administrative policies and matters, access control, physical facilities, and security features and policies.

2. Disaster Planning Guidelines

Although all counties have emergency management plans in place - and most trial courts have a court security plan - these plans often do not include a “continuity of operations” (COOP) plan for the trial courts. A COOP plan is important because it provides details for how to continue essential court functions when normal operations at the court’s primary facility are disrupted.

The SCAO published the *Michigan Trial Court Guidelines for Court Continuity of Operations Plan* to assist courts to develop a COOP plan and highly recommends that each court develop one. See memo dated November 19, 2015.

If a court chooses not to establish a COOP plan, at a minimum each trial court must establish a kit that will enable it to respond within 12 hours of an emergency/disaster and, if court operations are disrupted, to resume essential operations within 24 hours. Section 3 of the guidelines provides details and a template to assist you with this requirement.

A court should cooperate with its local emergency management coordinator in devising a COOP plan. See also an article from the Michigan Supreme Court's first trial court security specialist on *Disaster Planning: A View from Michigan's Highest Court*.

3. Guideline on Court Closing for Weather Emergency

Michigan Supreme Court Administrative Order 1998-5, section VI, states that "To the extent possible, consistent with the effective operation of the court, the chief judge must adopt personnel policies consistent with the written employment policies of the local funding unit. Effective operation of the court to best serve the public in multi-county circuits and districts may require a single, uniform personnel policy that does not wholly conform with specific policies of any of the court's funding units."

All courts must submit a local administrative order (LAO) governing closure of the court as a result of emergency weather conditions. In facilities containing multiple courts, the courts must adopt and submit a joint LAO. Courts with the same funding unit should also submit a joint LAO, if possible. See Model LAO 17. The policy must provide that certain procedures will apply in the event of a weather emergency as outlined in SCAO ADM Memorandum 1999-02: Guideline For Unscheduled Court Closing Due to Weather Emergency.

4. Special Emergency Judge

MCL 691.971 *et seq*. provides for the designation of special emergency judges to exercise power and discharge duties of an office in the event of attack upon the United States. MCL 691.975. A special emergency judge is authorized to exercise the power and discharge the duties of an office as designated by the governor in accordance with MCL 691.973.

5. Emergency Judicial Assignment Process

This emergency plan sets forth procedures and responsibilities for responding to emergency needs for judicial resources by the Office of the Attorney General. The development of the plan was a joint effort by the State Court Administrative Office (SCAO) and the Office of the Attorney General. Each SCAO region has designated two emergency judges to provide assistance during an emergency situation.

Regional administrators are the primary point of contact in the event judicial resources are needed by the Attorney General. The plan provides guidance in how judicial resources are to be requested and contains business and personal contact information for the emergency judges, regional administrators, and the Attorney Generals' emergency legal team. The plan is maintained by the Michigan Supreme Court Security and Emergency Management Division and copies are distributed to SCAO administration and the Attorney General's Office. The plan is considered CONFIDENTIAL and is not for general or public release.

6. Pandemic Preparedness

In addition to developing disaster planning guidelines (COOP plan), a court may want to consider developing a benchbook to assist in responding to the complex legal questions that a pandemic emergency, such as the potential Ebola epidemic in 2014, might raise. For details, see Preparing for a Pandemic: An Emergency Response Benchbook and Operational Guidebook for State Court Judges and Administrators.

7-03 Communication Systems Policies and Procedures

A. Internal Communication Devices and Systems

Every court should have policies and procedures governing internal court use of all communication devices and systems. Because most of these systems are provided through the court's funding unit, a computer acceptable use policy is most likely already in place for courts. In those situations, courts should establish, in collaboration with the funding unit, rules for controlling and monitoring data generated by systems used by the court. If a court does not have a computer acceptable use policy in place through its funding unit, it can use the policy issued by the State Court Administrative Office, available from Judicial Information Services.

B. Use of Portable Electronic Devices in Court Facilities

Chief judges of trial courts may establish a policy regarding the use of cell phones or other portable electronic communication devices within the court pursuant to Michigan Court Rule 8.115. The key provisions of this rule are:

- No photographs may be taken of any jurors or witnesses.
- No photographs may be taken inside any courtroom without permission of the court.
- The policy regarding the use of cell phones or other portable electronic communications devices must be posted in a conspicuous location outside and inside each courtroom.
- Failure to comply with the rule or with the policy established by the chief judge may result in a fine, including confiscation of the device, incarceration, or both, for contempt of court.

See sample policy.

7-04 Media in the Courtroom

Michigan Supreme Court Administrative Order 1989-1 (AO) governs film or electronic media coverage in all Michigan courts.

AO 1989-1 provides, "Film or electronic media coverage **shall** [emphasis added] be allowed upon request in all court proceedings," subject to certain limitations. Those limitations include the following.

- Media must submit the request in writing to the clerk of the particular court "not less than three business days before the proceeding is scheduled to begin." (Note: The court has discretion to waive the three-day requirement and grant the request on shorter notice.)
- Unless the judge orders otherwise, only two video cameras and two still cameras are allowed in the courtroom.
- Not more than one audio system for radio and/or television recording shall be permitted.
- The court shall provide for notifying the parties of the media request.
- No distractions, such as a flash for still cameras or noise from equipment.
- Shooting video or still photos must take place from a fixed location and be unobtrusive.
- Microphones are not permitted to pick up audio of attorney-client conversations, conversations among counsel or conferences at the judge's bench.
- No film or electronic coverage of the jurors or jury selection process.
- Media must "dress and deport themselves in ways that will not detract from the proceedings."

In addition, the judge has the authority to limit or even exclude cameras and recorders to keep order in the courtroom and to ensure the fair administration of justice.

Requests for film and electronic media coverage can be made with SCAO-approved form MC 27, Request and Notice for Film and Electronic Media Coverage of Court Proceedings.

7-05 Technology Services Available Through Judicial Information Services

The State Court Administrative Office's Judicial Information Services (JIS) provides technical assistance to courts to identify, develop, and maintain automated information systems, irrespective of the hardware and software the court chooses or is required to use. In addition, JIS provides direct data processing support to the Supreme Court and State Court Administrative Office and to trial courts. Direct services to trial courts include application systems and support for circuit, district, and probate courts, and jury management. Services provided by JIS to courts include but are not limited to the following.

1. Support of a judicial network that provides access to centralized systems of the judiciary and executive branch.

2. Developing, implementing, and supporting the Judicial Data Warehouse (JDW), which collects information about pending and closed cases from trial courts. Recent activities have been focused on data sharing and access for executive branch agencies, including the Department of Correction, Department of Health and Human Services, and Michigan State Police.

3. Developing, implementing, and supporting e-commerce applications such as the electronic payment of traffic tickets and filing documents (e-filing).

4. Implementing and supporting the use of videoconference technology in trial courts for the purpose of conducting hearings with local law enforcement, the Michigan Department of Corrections, Michigan State Police, and Michigan Department of Health and Human Services.

5. Evaluating procedures and developing application specifications to assist JIS and non-JIS to deliver improved services through software, coordinated with SCAO's Trial Court Services Division.

6. Developing and supporting software applications for the Michigan Supreme Court, the State Court Administrative Office, and the trial courts for statistical reporting to the Michigan Court Application Portal (MCAP).

7. Supporting the Michigan Supreme Court and Court of Appeals website including the ability to provide a collaborative workspace for groups or projects.

8. Training staff to use the application systems.

9. Evaluating performance and monitoring software.

10. Support for system-related issues, on behalf of the local trial courts with their county, city, or vendor.

11. Assisting in planning and implementing guidelines for automated systems.

12. Support in determining and selecting data processing services, equipment, and software.

7-06 Videoconferencing

A. Establishment of Videoconferencing Standards

The Michigan Supreme Court ordered that the State Court Administrator establish videoconferencing standards to: 1) ensure consistency in videoconferencing practices and procedures throughout the state of Michigan; 2) improve service to the public, other agencies, and the judiciary; and 3) improve the performance and efficiency of videoconferencing in the courts. The appellate and trial courts are required to conform to the standards, and the State Court Administrative Office is required to enforce the standards and assist courts in adopting practices to conform to those standards. Michigan Supreme Court Administrative Order 2014-25. See Section 2 of the *Michigan Trial Court Standards for Courtroom Technology*.

B. Types of Court Proceedings Authorized to Use Videoconferencing

Trial courts are authorized to use videoconferencing technology pursuant to MCR 2.004, MCR 2.407, MCR 3.210(A)(4), MCR 3.215(D)(3), MCR 3.705, MCR 3.708, MCR 3.804, MCR 3.904, MCR 4.101, MCR 4.202, MCR 4.304, MCR 4.401, MCR 5.140, MCR 6.006, and MCR 6.901. For a list of *Authorized Uses for Videoconferencing*, see Section 2, Appendix A of the standards.

1. Civil and Domestic Relations Proceedings

As authorized by MCR 2.407(B)(1) and subject to these standards, trial courts may, at the request of any participant, or sua sponte, allow and determine the manner and extent of the use of videoconferencing technology by any participant in any court-scheduled civil and domestic relations proceeding.

2. Civil Infraction Actions

As authorized by MCR 4.101(F) and subject to MCR 2.407 and these standards, trial courts may use videoconferencing technology to conduct the proceedings outlined in MCR 4.101(F).

3. Consent and Release Hearing under Adoption Code

As authorized and conditioned by MCR 3.804 and subject to MCR 2.407 and these standards, trial courts may use videoconferencing technology to conduct consent and release hearing under the Adoption Code.

4. Criminal Proceedings

As authorized and conditioned by MCR 6.006 and MCR 6.901 and subject to these standards, trial courts may use videoconferencing technology to conduct the proceedings outlined in MCR 6.006 and MCR 6.901.

5. Juvenile Proceedings

As authorized and conditioned by MCR 3.904 and subject to these standards, trial courts may use videoconferencing technology to conduct the proceedings outlined in MCR 3.904.

6. Personal Protection Proceedings

As authorized and conditioned by MCR 3.705(B) and MCR 3.708(D) and (H) and subject to MCR 2.407 and these standards, trial courts may use videoconferencing technology to conduct the proceedings outlined in MCR 3.705(B) and MCR 3.708(D) and (H).

7. Probate Court and Ancillary Circuit Court Proceedings

As authorized and conditioned by MCR 5.140 and subject to MCR 2.407 and these standards, trial courts may use videoconferencing technology to conduct the proceedings outlined in MCR 5.140.

8. Summary Proceedings

As authorized by MCR 4.201(F), MCR 4.202(H), and MCR 4.304(A) and subject to MCR 2.407 and these standards, trial courts may use videoconferencing technology to conduct the proceedings outlined in MCR 4.201(F), MCR 4.202(H), and MCR 4.304(A).

7-07 Digital Audio and Video Recording

A. Establishment of Digital Recording Standards

Standards and guidelines for use of digital recording equipment are established pursuant to MCR 8.109(A) to ensure that courts purchase, maintain, and operate recording systems that are designed to meet the special requirements of courtroom recording. The standards address: 1) governance, 2) equipment and technology, and 3) operating and monitoring the recording of proceedings. Courts should work with vendors to ensure that recording equipment complies with the standards. A checklist is provided within the standards as a tool for courts and vendors to use in assessing a recording system's compliance. See Section 1 of the *Michigan Trial Court Standards for Courtroom Technology*.

B. Operating Equipment and Maintaining Recording Media

Trial courts that use audio or video recording equipment, whether digital or analog, must adhere to the audio and video recording operating standards published by the State Court Administrative Office pursuant to MCR 8.109(B). Only reporters, recorders, voice writers, or operators certified pursuant to MCR 8.108(G)(1) may operate a court's audio recording system. A person operating a court's digital video court recording system need not be certified pursuant to MCR 8.108, but must comply with the recording standards.

Section 3, Chapter 8 and Section 4 of the *Manual for Court Reporters and Recorders* outlines procedures for operating audio recording equipment, logging the proceedings, and marking exhibits. Chapter 3 of these standards outlines procedures for operating video recording equipment, logging the proceedings, and marking exhibits.

Components 23 and 24 of the *Michigan Trial Court Case File Management Standards* must also be adhered to, which includes directions on the control and care of recording media is governed by Component 24.

7-08 Facsimile Communication Equipment

A. Authority for Use of Equipment

1. Generally

Courts may permit the filing of pleadings, motions, affidavits, opinions, orders, or other documents by the use of facsimile communication equipment. Except as provided by MCR 2.002, a clerk shall not permit the filing of any document for which a filing fee is required unless the full amount of the filing fee is paid or deposited in advance with the clerk. MCR 2.406(B).

2. Juvenile Proceedings

Parties may file records, as defined in MCR 3.903(A)(25), by the use of facsimile communication equipment. Filing of records by the use of facsimile communication equipment in juvenile proceedings is governed by MCR 2.406.

3. Mental Health Proceedings

All probate courts are authorized to use facsimile communication equipment to transmit petitions, physician's certificates, and other supporting documents from the state regional psychiatric hospitals or private hospitals for filing in the courts. Participation shall be subject to the discretion of the chief judge of the probate court and with approval by the State Court Administrator.

The State Court Administrative Office shall assist in the implementation of the use of facsimile equipment in mental health proceedings for those courts electing to participate. A local administrative order must be submitted to the State Court Administrative Office for approval. See Section 1-09 and procedural details in Michigan Supreme Court Administrative Order 1992-3.

4. Warrants

Facsimile communication equipment may be used for warrants as provided in MCL 764.1 and MCL 780.651.

5. Oaths, Affidavits, and Affirmations

Facsimile communication equipment may be used for oaths, affidavits, or affirmations as provided in MCL 600.1440 and MCL 600.1432.

6. Signed Orders for Law Enforcement Information Network (LEIN) Entry

Courts may transmit original signed orders to law enforcement for entry into LEIN by facsimile communication equipment. Michigan Trial Court Case File Management Standards, Component 38.

B. Definition

Facsimile communication equipment means a machine that transmits and reproduces graphic matter (as printing or still pictures) by means of signals sent over telephone lines.

C. Standards and Criteria for Filing

Standards regarding paper and print, image quality, filing of originals, and signature, as well as other criteria for filing, are outlined in MCR 2.406 and Component 38 of the *Michigan Trial Court Case File Management Standards*.

D. Fees

Courts may impose fees for facsimile filings in accordance with a schedule established by the State Court Administrative Office. MCR 2.406(D). See SCAO ADM Memorandum 2003-13, Facsimile Transmission of Documents for details.

7-09 E-Filing

A. Michigan's Goal

Michigan's goal for e-filing is a statewide system that can accommodate a variety of local court needs and resources and that provides court users throughout the state with access to a uniform e-filing system no matter where they live or want to file. This is a challenging endeavor in a state with 243 trial courts that have locally funded and locally controlled systems where each jurisdiction has the authority to choose its own computer system. However, the experience of various pilot projects over the past five years has shown that e-filing can be successfully integrated on a large scale.

B. Steps Toward Developing a Uniform E-Filing System

Michigan's locally driven court systems, funded through a complicated arrangement of city and county government appropriations, make the implementation of statewide changes a challenge. To address this, the SCAO worked with the Legislature, courts, and other stakeholders to develop and pass legislation that authorizes the judiciary to design and implement statewide e-filing for the future of Michigan's courts. Part of that legislation provides for the funding necessary to implement e-filing. Beginning March 1, 2016, the clerk of the court is required to collect an electronic filing system (EFS) fee pursuant to 2015 PA 231.

For details regarding the e-filing legislation, the requirement to collect the EFS fee, and the how to record and transmit those fees to the Department of Treasury, see SCAO Memorandum dated February 18, 2016. See also SCAO Memorandum dated February 29, 2016, for an itemized list of the EFS fees to be assessed by case-type code. See also answers to frequently asked questions about the e-filing legislation

Answers to questions regarding the Michigan judiciary's overall statewide e-filing initiative are also available.

7-10 Digital Imaging

A. Authority

The Records Reproduction Act (MCL 24.401 - 24.406) authorizes the reproduction of public records by Michigan government entities.

B. Standards and Guidelines

1. Trial courts that want to destroy original documents and use their digital images or microfilm as the official record must create their images according to the state of Michigan's standards. Pursuant to MCL 600.1428, the State Court Administrative Office has adopted the state government standards and best practices, permitting any paper original document that is reproduced in accordance with the Records Reproduction Act and the state of Michigan's standards to be destroyed at any time after the document is filed with the court.

   Listed below are links to the state of Michigan's standards:

   - Technical Standards for Capturing Digital Images from Paper or Microfilm
   - Technical Standards for Capturing Microfilm Images from Paper
   - Technical Standards for Microfilming Digital Records

   The best practices are found under the following titles:

   - Best Practices for Reproducing Public Records
   - Best Practices for Capture of Digital Images from Paper or Microfilm
   - Best Practices for the Microfilming of Paper Records
   - Best Practices for the Microfilming of Digitized Records

2. Trial courts that choose to maintain records in digital format must also comply with the *Michigan Trial Court Guidelines and Standards for Digital Imaging*. These guidelines and standards are provided to: 1) aid courts in developing digital imaging systems that ensure digitized court records, regardless of format, are authentic, reliable, have integrity, and are useable both during the active phase and throughout the long-term retention period of the records, and 2) provide practical guidance to courts in capturing, storing, retrieving, and retaining digitized court records in such a manner that they are useful within a larger electronic information system.

3. Courts must also comply with *Michigan Trial Court Case File Management Standards* established by the State Court Administrative Office (SCAO) pursuant to AO 1999-4, records standards prescribed by the Supreme Court and Michigan Court Rules 1.109 and 8.119, Michigan Compiled Law 600.1428, and various other statutory requirements for preserving, reproducing, and maintaining records.

See also Section 4, Records Management.

7-11 Administration of Trial Court Websites and Social Media Sites

On April 29, 2015, the Supreme Court entered an order that the State Court Administrative Office (SCAO) establish Michigan Trial Court Standards and Guidelines for Websites and Social Media "to improve trial court service to the public, other agencies, and the judiciary, and to meet the public's growing expectation that courts communicate directly with the public" and that the courts conform to the standards. The SCAO shall enforce the standards and assist courts in adopting practices to conform to those standards. Michigan Supreme Court Administrative Order 2015-3. See SCAO Memo, dated October 15, 2015.

The standards and guidelines presume that a trial court is knowledgeable about websites and the types of social media and the typical uses of this technology and understands the terms and conditions of service in using this technology. If a trial court is considering launching a website or social media site and is not knowledgeable about this technology, it is highly recommended that the court familiarize itself with the details before proceeding. References are provided to assist with this. In establishing website and social media policies and procedures, a trial court shall also collaborate with its information technology (IT) department or relevant staff. Equipment and technology standards and guidelines are not included; thus, a court should consult with its respective IT department about these details before launching a site.

Section 1 sets forth statewide policy and minimum standards and guidelines a trial court must observe in designing and maintaining a trial court website. Section 2 sets forth statewide policy and minimum standards and guidelines a trial court must observe in designing, maintaining, and using a social media site. Section 3 is a guide intended to assist a trial court to develop its own social media use policy and procedures for its trial court employees, and for contractual employees who have signed a computer acceptable use agreement. Section 3 does not necessarily apply to judges, but in the absence of specific statewide standards and guidelines, a trial court may choose to adapt them for that purpose through collaboration with the entire bench.

A trial court must have a code of conduct for its employees before launching a social media website. See the Model Code of Conduct for Michigan Trial Court Employees.

8-01 Americans With Disabilities Act

A. Introduction

Michigan courts have an obligation to take proactive steps to remove barriers to accessibility for people with disabilities. Nearly two million people in Michigan have some kind of disability. The Americans with Disabilities Act of 1990 (ADA) and the ADA Amendments Act of 2008 (ADAAA) identify the responsibilities of courts under Title II to provide access for citizens with disabilities to programs and services offered by public entities, including courts.

The Americans with Disabilities Act (ADA) was passed July 26, 1990 as Public Law 101-336, effective January 26, 1992. 42 USC 12101 *et seq*. The ADA is landmark federal legislation that makes available services and employment opportunities to some 43 million Americans with disabilities. The law was written to strike a balance between the reasonable accommodation of citizens' needs and the capacity of private and public entities to respond. It is not an affirmative action law; rather, it is intended to eliminate illegal discrimination and level the playing field for disabled individuals.

On September 25, 2008, the ADA Amendment Act (ADAAA) was signed into law. It became effective January 1, 2009. The ADA was amended as a result of United States Supreme Court decisions that narrowed the definition of disability in unexpected ways. While the ADA has five separate titles, Title II is the section specifically applicable to "public entities" (state and local governments) and the programs, services, and activities they deliver. The Department of Justice (DOJ), through its Civil Rights Division, is the key agency responsible for enforcing Title II and for coordinating other federal agencies' enforcement activities under Title II.

The DOJ's Title II regulations for state and local governments are found at Title 28, Code of Federal Regulations, Part 35 (abbreviated as 28 CFR pt. 35). The ADA Standards for Accessible Design are located in Appendix A of Title 28, Code of Federal Regulations, Part 36 (abbreviated as 28 CFR pt. 36 app. A). Those regulations, the statute, and many helpful technical assistance documents can be found on the ADA website at http://www.ada.gov and on the ADA technical assistance CD-ROM that is available at no cost. Call the toll-free ADA Information Line at 1-800-514-0301 (voice) and 1-800-514-0383 (TTY) for more information. See additional court resources.

1. Fundamental Goals

The cornerstone of Title II is that no qualified person with a disability may be excluded from participating in, or denied the benefits of, the programs, services, and activities provided by state and local governments because of a disability. 42

USC 12132, 42 USC 12102(2)(B) and (C). For purposes of the ADA, the courts are "services offered by public entities."

A primary goal of the ADA is to provide people with disabilities the opportunity to participate in the mainstream of American society. Commonly known as the "integration mandate," public entities must make their programs, services, and activities accessible to qualified people with disabilities in the most integrated way appropriate to their needs. 28 CFR 35.130(d).

Separate or special activities are permitted under Title II to ensure that people with disabilities receive an equal opportunity to benefit from a government's programs, services, or activities. 28 CFR 35.130(b)(1)(iv). However, even if a separate program is offered to people with disabilities or people with one kind of disability, a public entity cannot deny a person with a disability access to the regular program. Under the ADA, people with disabilities get to decide which program they want to participate in, even if the public entity does not think the individual will benefit from the regular program. 28 CFR 35.130(b)(2).

2. Definition – Who is Covered?

The ADA defines disability as a mental or physical impairment that substantially limits one or more major life activities. 42 USC 12202(2)(A). Protection under the ADA extends not only to individuals who currently have a disability, but also to those with record of a mental or physical impairment that substantially limits one or more major life activities, or who are perceived or regarded as having a mental or physical impairment that substantially limits one or more major life activities. 42 USC 12102(2)(B) and (C).

3. Process for Alleging Discrimination and Potential Remedies

a. Filing an ADA Complaint with the Court

An individual or a specific class of individuals or their representative alleging discrimination on the basis of disability by a court may file a grievance with the ADA Coordinator for that court.

If an individual files a grievance, the chief judge of that court will investigate the allegations of discrimination. Should the chief judge conclude that the court violated Title II of the ADA, he or she will implement measures to remedy the violations. If settlement efforts fail, the grievant may submit a complaint to the State Court Administrator.

b. Filing an ADA Complaint with the Department of Justice

Individuals or a class of individuals may also file an administrative complaint with the DOJ or other appropriate federal agency, or they may file a lawsuit in federal district court.

If an individual files an administrative complaint, the DOJ or other federal agency may investigate the allegations of discrimination. Should the agency conclude that the court violated Title II of the ADA, it will attempt to negotiate a settlement with the court to remedy the violations. If settlement efforts fail, the agency that investigated the complaint may pursue administrative relief or refer the matter to the DOJ. The DOJ will determine whether to file a lawsuit against the judiciary or court.

c. Potential Remedies

Potential remedies (both for negotiated settlements with the DOJ and court-ordered settlements when the DOJ files a lawsuit) include:

- injunctive relief to enforce the ADA (such as requiring that a public entity make modifications so a building is in full compliance with the ADA Standards for Accessible Design or requiring that a public entity modify or make exceptions to a policy),
- compensatory damages for victims, and/or
- back pay in cases of employment discrimination by state or local governments.

In cases where there is federal funding, fund termination is also an enforcement option that federal agencies may pursue.

B. Administrative Requirements of the Trial Court

1. Appointing an ADA Coordinator

The chief judge must name an ADA coordinator for the court. The ADA coordinator is responsible for coordinating the court's efforts to comply with the ADA by:

a. Providing his or her name, office address, and telephone number to interested persons.

b. Posting his or her contact information in a visible place at each court location, and on the court's website.

c. Ensuring that court employees know how to handle requests for accommodation.

d. Working with the SCAO if a complaint is filed alleging that the court has not complied with the ADA.

ADA coordinators are also reported to the SCAO on the ADA Performance Measure Compliance form.

2. Designating an ADA Contact

The chief judge must also designate an ADA contact person for each court location, including any FOC or probation offices (if a district court) that operate in separate facilities.

The ADA contact is responsible for forwarding requests for accommodation to the ADA Coordinator as directed by the chief judge. ADA contacts are also reported to the SCAO on the ADA Performance Measure Compliance form.

3. ADA Training

Every chief judge and ADA coordinator must complete ADA training. The training is available on webcast or DVD from the Michigan Judicial Institute.

Chief judges should use the ADA Compliance Performance Measure form to certify compliance with the training requirement.

4. Providing Public Notice

The court must provide public notice about the ADA. The ADA notice requirement applies to all state and local governments covered by Title II, even localities with fewer than 50 employees.

There are three main considerations for providing notice.

a. Who is the target audience for the ADA notice?

The target audience for public notice includes applicants, beneficiaries, and other people interested in the state or local government's programs, activities, or services. The audience is expansive and includes everyone

who interacts – or would potentially interact – with the state or local government.

b. What information shall the notice include?

The notice is required to include relevant information regarding Title II of the ADA, and how it applies to the programs, services, and activities of the public entity.

The notice should not be overwhelming. An effective notice states the basics of what the ADA requires of the state or local government without being too lengthy, legalistic, or complicated. It should include the name and contact information of the ADA coordinator.

c. Where and how should the notice be provided?

It is the obligation of the person who oversees the public entity to determine the most effective way of providing notice to the public about its rights and about the public entity's responsibilities under the ADA.

Publishing and publicizing the ADA notice is not a one-time requirement. State and local governments should provide the information on an ongoing basis, whenever necessary. If radio, newspaper, television, or mailings are used, the notice should be republished and rebroadcasted periodically.

5. Establishing a Plan/Local Administrative Order

Michigan Supreme Court Administrative Order 2015-5 was entered to enhance compliance with the ADA and the Persons with Disabilities Civil Rights Act, as well as other Michigan statutory authority. Nothing in the order shall be construed to impose limitations or to invalidate the remedies, rights, and procedures accorded to any qualified individuals with disabilities under state or federal law. The order requires each court to adopt and submit a local administrative order (LAO) conforming to the model established by the SCAO to assure that qualified individuals with disabilities have equal and full access to the judicial system.

The LAO shall include the provisions incorporated in Model LAO 35 but may include additional provisions. The order must also describe the procedure to request accommodations related to a disability.

The Request for Reasonable Accommodations and Response (form MC 70) and Review of Request for Reasonable Accommodations and Response (form MC

70a) referenced in the model LAO are SCAO-approved forms that may be used for requesting accommodations and responding to those requests.

For additional details on ADA requirements and compliance with the ADA performance measures, see SCAO memo dated October 15, 2015. For clarification on LAO requirements SCAO memo dated December 3, 2015.

6. Establishing a Grievance Procedure

Trial courts are required to adopt and publish procedures for resolving grievances arising under Title II. Grievance procedures set forth a system for resolving complaints of disability discrimination in a prompt and fair manner.

Neither Title II nor its implementing regulations describe what ADA grievance procedures must include. At a minimum, the grievance procedure should include:

- A description of how and where a complaint under Title II may be filed with the court.
- If a written complaint is required, a statement notifying potential complainants that alternative means of filing will be available to people with disabilities who require such an alternative.
- A description of the time frames and processes to be followed by the complainant and the court.
- Information on how to appeal an adverse decision.
- A statement of how long complaint files will be retained.

After a court establishes a grievance procedure, it must be posted in public spaces of the courthouse and on the court's website. Update the procedure and the contact information as necessary.

The procedure must be available in alternative formats so that it is accessible to all people with disabilities. See sample grievance procedure with Model LAO 35.

7. ADA Compliance Performance Measure

Improving public access to Michigan courts is a key priority of the Michigan Supreme Court. This includes ensuring that persons with disabilities have equal and full access to our court system. To this end, the State Court Administrative Office has provided support to enhance compliance with the ADA, including

model policies, forms to be used to request accommodations, compliance handbooks, FAQs, checklists, and many other resources. Measuring and reporting on public access can help courts recognize successful efforts and also identify ways to improve service to all Michigan residents. The current ADA compliance performance measure requires that: 1) each court have an SCAO-approved ADA local administrative order (LAO), 2) each court have an ADA coordinator, 3) every court location have an ADA contact, and 4) every chief judge and ADA coordinator complete ADA training. For details, see Section 8-01, B above. See SCAO memo dated September 1, 2015.

C. Requests for Accommodation

1. Form and Procedure

The court must describe the procedure to request accommodations related to a disability in its local administrative order (see B.5. above). SCAO-approved forms *Request for Reasonable Accommodations and Response* (form MC 70) and *Review of Request for Reasonable Accommodations and Response* (form MC 70a) may be used for requesting accommodations and responding to those requests.

2. Determining Disability

When determining whether an individual has a disability for purposes of the ADA, three questions should be asked.

Question 1: Does the individual have an impairment?

A *physical* impairment is a physiological disorder or condition, cosmetic disfigurement, or anatomical loss impacting one or more body systems. 28 CFR 35.104(1)(i)(A). Examples of body systems include neurological, musculoskeletal (the system of muscles and bones), respiratory, cardiovascular, digestive, lymphatic, and endocrine. 28 CFR 35.104(1)(i)(A).

A *mental* impairment is a mental or psychological disorder. 28 CFR 35.104(1)(i)(B). Examples include mental retardation, emotional or mental illness, and organic brain syndrome. 28 CFR 35.104(1)(i)(B).

The DOJ's regulations also list other impairments, including contagious and noncontagious diseases; orthopedic, vision, speech and hearing impairments; cerebral palsy; epilepsy; muscular dystrophy; multiple sclerosis; cancer; heart disease; diabetes; specific learning disabilities; HIV disease (with or without symptoms); tuberculosis; drug addiction; and alcoholism. 28 CFR 35.104(1)(ii).

Question 2: Does the impairment limit any major life activities?

An impairment cannot be a disability unless it limits one or more major life activities. A major life activity is an activity that is central to daily life. *Toyota Motor Mfg Kentucky, Inc v Williams*, 534 US 184 (2002). According to the DOJ's regulations, major life activities include walking, seeing, hearing, breathing, caring for yourself, sitting, standing, lifting, learning, thinking, working, and performing manual tasks that are central to daily life. *Bragdon* v *Abbott*, 524 US 624, 638-49 (1999); the Supreme Court questioned whether "working" is a major life activity. However, "working" is identified as a major life activity under the regulation for Title II of the ADA, 28 CFR 35.104, and the regulation for Title I of the ADA. 29 CFR 1630.2(I); *Toyota*, 534 US 184. The Supreme Court has also decided that reproduction is a major life activity. *Bragdon*, 524 US 624 (1988).

This is not a complete list; other activities may also qualify, but they need to be activities that are important to most people's lives.

Question 3: Is the limitation on any major life activity substantial?

Not only must a person have an impairment that limits one or more major life activities, but the limitation of at least one major life activity must be "substantial." An impairment "substantially limits" a major life activity if the person cannot perform a major life activity the way an average person in the general population can, or is significantly restricted in the condition, manner, or duration of doing so. An impairment is "substantially limiting" under the ADA if the limitation is "severe," "significant," "considerable," or "to a large degree." *Toyota*, 534 US 184. The ADA protects people with serious, long-term conditions – it does not protect people with minor, short-term conditions.

The following are some questions to ask when trying to determine whether an impairment is substantially limiting.

- What kind of impairment is involved?
- How severe is it?
- How long will the impairment last, or how long is it expected to last?
- What is the impact of the impairment?
- How do mitigating measures, such as eyeglasses and blood pressure medication, impact the impairment? The Supreme Court has ruled that, if an

impairment does not substantially limit one or more major life activities because of a mitigating measure an individual is using, the impairment may not qualify as a disability. *Sutton*, 527 US 471 (1999). Remember, however, that mitigating measures, such as blood pressure medication, may sometimes impose limitations on major life activities, and must be considered as well.

3. Providing Reasonable Accommodations

a. Essential Eligibility Requirements

Having an impairment that substantially limits a major life activity may mean that a person has a disability, but that alone still does not mean that individual is entitled to protection under the ADA. A person with a disability must also qualify for protection under the ADA.

A "qualified individual with a disability" is someone who meets the essential eligibility requirements for a program, service, or activity with or without 1) reasonable modifications to rules, policies, or procedures; 2) removal of physical and communication barriers; and 3) providing auxiliary aids or services for effective communications. 28 CFR § 35.105.

Essential eligibility requirements can include minimum age limits or height requirements (such as the age at which a person can first legally drive a car or height requirements to ride a particular roller coaster at a fair). Because there are many different situations, it is difficult to define this term other than by examples. In some cases, the only essential eligibility requirement may be the desire to participate in the program, service or activity.

What happens if an individual with a disability does not meet the eligibility requirements? In that case, you will need to look further to determine if the person with the disability is entitled to protection under the ADA. When a person with a disability is not qualified to participate or enjoy a program, service, or activity under Title II, there may be ways to enable the individual to participate, including:

- making a reasonable modification to the rule, policy, or procedure that is preventing the individual from meeting the requirements.
- providing effective communication by providing auxiliary aids or services.
- removing any architectural barriers.

b. Making Reasonable Modifications

Public entities must reasonably modify their rules, policies, and procedures to avoid discriminating against people with disabilities. Requiring a driver's license as proof of identity is a policy that would be discriminatory because there are individuals whose disability makes it impossible for them to obtain a driver's license. In such cases it would be a reasonable modification to accept another type of government-issued identification card as proof of identification.

Some examples of reasonable modifications include the following:

- Granting a zoning variance to allow a ramp to be built inside a setback.
- Permitting a personal attendant to help a person with a disability to use a public restroom designated for the opposite gender.
- Permitting a service animal in a place where animals are typically not allowed, such as a cafeteria or a courtroom.

Are there times when a modification to rules, policies, and procedures would not be required? The answer is yes - when providing the modification would fundamentally alter the nature of the program, service, or activity. 28 CFR § 35.130(b)(7).

A *fundamental alteration* is a change to such a degree that the original program, service, or activity is no longer the same. For example, a city sponsors college-level classes that may be used toward a college degree. To be eligible to enroll, an individual must have either a high school diploma or a General Educational Development certificate (GED). If someone lacks a diploma or GED because of a cognitive disability, would the city have to modify the policy of requiring a high school diploma or GED? Probably not because modifying the rule would change the class from college level to something less than college level and would fundamentally alter the original nature of the class.

c. Providing Means for Effective Communication

People with disabilities cannot participate in government-sponsored programs, services, or activities if they cannot understand what is being communicated. For example, it serves no purpose for a deaf person to attend a court hearing if there is no qualified sign language interpreter or real-time captioning. The same result occurs when a blind patron attempts

to access the Internet on a computer at the court when the computer is not equipped with screen reader or text enlargement software. Providing effective communication means offering auxiliary aids and services to enable someone with a disability to participate in the program, service, or activity.

Persons with disabilities should have the opportunity to request an auxiliary aid, and "primary consideration" should be given to the aid requested. Primary consideration means that the aid requested should be supplied unless: (1) it is demonstrated there is an equally effective way to communicate; or (2) the aid requested would fundamentally alter the nature of the program, service, or activity. For example, a person who became deaf late in life is not fluent in sign language. To participate in her defense of criminal charges, she requests real time computer-aided transcription services. Instead, the court provides a qualified sign language interpreter. This is ineffective because providing a sign language interpreter to someone who does not use sign language is ineffective communication.

1) Interpreter Services for Deaf Persons

a) Requirement for Interpreter

In any action before a court, in which a person with a hearing disability is participating either as a plaintiff, defendant, witness, or spectator, the court shall ensure that the person with the hearing disability can fully participate. This includes appointing a qualified American Sign Language (ASL) interpreter to interpret the proceedings or providing assistive listening devices to the person with the hearing disability.

b) Qualified Interpreter

Under the Michigan's Interpreter Act and Rules, all sign language interpreters who provide interpreter services in the state of Michigan must comply with the Deaf Persons' Interpreter Act and the Qualified Interpreter-General Rules. In addition, to be considered a qualified ASL interpreter in the state of Michigan, an individual must meet the requirements set forth in the Policies and Procedures Guide for Michigan-Certified Interpreters published by the Michigan Department of Civil Rights (MCDR), Division

on Deaf, Deaf-Blind, and Hard of Hearing. The MDCR guide defines the internal policies and procedures relating to the Division's enforcement of the Michigan's Interpreter Act and rules. Effective July 7, 2016, qualified interpreters who work in legal setting must have two endorsements from the Division on Deaf, Deaf-Blind, and Hard of Hearing. For details, see SCAO memo dated March 3, 2016.

Other important resources available from the MDCR include interpreter rules, an online interpreter directory, links of interest, and information on filing complaints against an interpreter. See the Michigan Department of Civil Rights web page for details.

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Web: www.michigan.gov/doddbhh

2) Auxiliary Aids and Services

There are a variety of auxiliary aids and services to assist in providing effective communication. Here are a few examples.

- **For individuals who are deaf or hard of hearing:** qualified sign language and oral interpreters, note takers, computer-aided transcription services, written materials, telephone headset amplifiers, assistive listening systems, telephones compatible with hearing aids, open and closed captioning, videotext displays, and TTYs (teletypewriters).

- **For individuals who are blind or have low vision:** qualified readers, taped texts, braille materials, large print materials, materials in electronic format on compact discs or in e-mails, and audio recordings.

- **For individuals with speech impairments:** TTYs, computer stations, speech synthesizers, and communication boards.

d. Cost of Accommodations

The expense of making a program, service, or activity accessible or providing a reasonable modification or auxiliary aid may not be charged to a person with a disability requesting the accommodation. 28 CFR 35.130(f).

D. Facility Requirements

The ADA treats facilities that were built before January 26, 1992 differently from those built or renovated after that date. 28 CFR 35.151.

1. Facilities before January 26, 1992

Facilities built before January 26, 1992, are referred to as "pre-ADA" facilities. 28 CFR 35.150 – 35.151. If there is an architectural barrier to accessibility in a pre-ADA facility, the barrier may be removed using the ADA Standards for Accessible Design or UFAS as a guide, or the program, service, or activity may be located in the building that is accessible by providing "program access." 28 CFR 35.150.

Program access allows you to move the program to an accessible location, or use some way other than making architectural changes to be sure the program, service, or activity is readily accessible to and usable by individuals with disabilities.

2. Facilities after January 26, 1992

Any facility built or altered after January 26, 1992, must be "readily accessible to and usable by" persons with disabilities. For ADA compliance purposes, any facility where construction commenced after January 26, 1992, is considered "new," "newly constructed," or "post-ADA." "Readily accessible to and usable by" means the new or altered building must be built in strict compliance with either the ADA Standards for Accessible Design or UFAS.

Altering (renovating) a building means making a change in the usability of the altered item. Examples of changes in usability include: changing a low pile carpet to a thick pile carpet, moving walls, installing new toilets, or adding more parking spaces to a parking lot. Any state or local government facility that was altered

after January 26, 1992, was required to be altered in compliance with the ADA Standards or UFAS.

When part of a building has been altered, the alterations must be made in strict compliance with architectural standards, including creating an accessible path of travel to the altered area.

8-02 Limited English Proficiency

A. Introduction

On September 11, 2013, the Michigan Supreme Court adopted several court rules designed to ensure that all people, including those who are Limited English Proficient (LEP), have meaningful access to Michigan courts. MCR 1.111 establishes requirements for all courts to provide court-appointed foreign language interpreters for LEP persons and MCR 8.127 created a board to recommend interpreter certification requirements and to review complaints against interpreters.

These court rules solidify the requirement for appointing an interpreter upon request of party when the court determines such services are necessary to meaningfully participate in the case or court proceeding. The court can also appoint an interpreter if it independently recognizes the need for one. The court may also provide these same services for other interested parties if deemed appropriate. MCR 1.111 (replaces Executive Order 13166). See also SCAO memo dated September 11, 2013.

See additional court resources regarding language access and interpreters.

1. Language Access Program

The Language Access Program was established to ensure that all persons in Michigan, regardless of their proficiency in the English language, have the right to equal access to the courts and to justice, and have the right to access all of the services and programs provided in court facilities. The State Court Administrative Office provides resources to assist the courts in this endeavor, including testing and certification of interpreters, translated forms and other relevant materials, and guidance for the trial courts and interpreters.

2. Definition of Limited English Proficient Person

A "limited English proficient person" means a person who does not speak English as his or her primary language, and who has a limited ability to read, write, speak, or understand English, and by reason of his or her limitations, is not able to understand and meaningfully participate in the court process. Michigan Supreme Court Administrative Order 2013-8.

3. Interpreter Services

Interpreters for court proceedings and related matters can be requested through the courts. Each court has assigned a language access coordinator to facilitate this process.

As the sole testing and certification authority for spoken language court interpreters in Michigan, the State Court Administrative Office maintains a list of interpreters to facilitate access to the courts for limited English proficient (LEP) persons. The objectives of the court interpreter testing and certification program are to identify individuals who possess the required knowledge and skills for court interpretation and to expand the pool of certified and qualified interpreters who are available to assist the courts in the conduct of interpreted proceedings. See details about testing and certification and resources for interpreters. See a current list of certified interpreters.

For the deaf, hard of hearing, and deaf-blind person, see other resources.

4. Translated Forms

One of the key objectives of the State Court Administrative Office is to translate vital documents, including SCAO-approved court forms, for use by persons with limited English proficiency to assist those persons to meaningfully participate in court proceedings. The translated forms are an aid in understanding English court forms, procedures, and other materials. The translated forms cannot be filed with the court as official pleadings or documents pursuant to Michigan Court Rule 2.113(B). As they are developed and translated, the court forms will be made available. In addition, related materials and the court forms are available through Michigan Legal Help.

B. Foreign Language Board of Review

The Foreign Language Board of Review was established to codify the responsibilities of and requirements for certified and qualified interpreters in the State of Michigan. Michigan Supreme Court Administrative Order 2013-8. Board members serve staggered three-year terms. MCR 8.127 (replaces Executive Order 41455).

The Foreign Language Board of Review, staffed by the State Court Administrative Office, establishes criteria for certification of foreign language interpreters and administers tests for certification of court interpreters in accordance with Michigan Court Rule 8.127. The board also makes recommendations to the State Court Administrator regarding an interpreter code of ethics and interpreter certification requirements for individuals and companies and receives allegations of interpreter misconduct in the course of a trial or other court proceeding. MCR 8.127(B).

The State Court Administrative Office provides an executive secretary for the board; is responsible for administering tests, maintaining certification lists, and enforcing sanctions for failure to conform to certification and other rules; and publishes guidelines for foreign language interpreters. MCR 8.127(A)(4).

C. Certification, Registration, and Conduct of Foreign Language Interpreters

1. Certification

The board shall recommend requirements for interpreters to the state court administrator that the state court administrator may adopt in full, in part, or in a modified form concerning the following:

a. requirements for certifying interpreters as defined in MCR 1.111(A)(4). At a minimum, those requirements must include that the applicant is at least 18 years of age and not under sentence for a felony for at least two years and that the interpreter attends an orientation program for new interpreters.

b. requirements for interpreters to be qualified as defined in MCR 1.111(A)(6).

c. requirements under which an interpreter certified in another state or in the federal courts may apply for certification based on the certification already obtained. The certification must be a permanent or regular certification and not a temporary or restricted certification.

d. requirements for interpreters as defined in MCR 1.111(A)(4) to maintain their certification.

e. requirements for entities that provide interpretation services by telecommunications equipment to be qualified as defined in MCR 1.111(A)(6).

MCR 8.127(B)(3). See information about required interpreter skills and education.

2. Registration

Interpreters who meet the requirements of MCR 1.111(A)(4) and MCR 1.111(A)(6)(a) and (b) must register with the State Court Administrative Office and renew their registration before October 1 of each year in order to maintain their status. The fee for registration is $60. The fee for renewal is $30.

The renewal application shall include a statement showing that the applicant has used interpreting skills during the 12 months preceding registration. Renewal applications must be filed or postmarked on or before September 30. Any application filed or postmarked after that date must be accompanied by a late fee

of $100. Any late registration made after December 31 or any application that does not demonstrate efforts to maintain proficiency shall require board approval.

Entities that employ a certified foreign language interpreter as defined in MCR 1.111(A)(4), or a qualified foreign language interpreter as defined in MCR 1.111(A)(6) must also register with the State Court Administrative Office and pay the registration fee and renewal fees.

MCR 8.127(C).

3. Conduct of Foreign Language Interpreters

a. Code of Professional Responsibility

The board shall recommend to the state court administrator a Michigan Code of Professional Responsibility for Court Interpreters, which the state court administrator may adopt in full, in part, or in a modified form. The Code shall govern the conduct of Michigan court interpreters. MCR 8.127(B)(1).

b. Policies and Procedures

To ensure a party's right to meaningfully participate in court proceedings, it is critical to provide competent interpreters knowledgeable in legal proceedings and terminology who can speak English and the target language fluently. An Interpreters in the Judicial System manual has been designed to help interpreters understand their role, the primary legal authority governing their profession, the requirements of the Michigan courts, and best practices in interpretation.

c. Misconduct

An interpreter, trial court judge, or attorney who becomes aware of misconduct on the part of an interpreter committed in the course of a trial or other court proceeding that violates the Michigan Code of Professional Responsibility for Court Interpreters must report details of the misconduct to the State Court Administrative Office. MCR 8.127(D)(1).

The State Court Administrative Office shall maintain a record of all interpreters who are sanctioned for incompetence or misconduct. If the interpreter is certified in Michigan under MCR 1.111(A)(5) because of certification pursuant to another state or federal test, the state court

administrator shall report the findings and any sanctions to the certification authority in the other jurisdiction. MCR 8.127(D)(7).

D. Complaints About Foreign Language Interpreters

1. Procedure for Filing Complaint

Any person may file a complaint in writing on a form provided by the State Court Administrative Office (SCAO). The complaint must be sent to FLBR@courts.mi.gov or the Foreign Language Board of Review, P.O. Box 30048, Lansing, MI 48909.

The complaint shall describe in detail the incident and the alleged incompetence, misconduct, or omission. See the complaint form and instructions.

The SCAO may dismiss the complaint if it is plainly frivolous, insufficiently clear, or alleges conduct that does not violate this rule. If the complaint is not dismissed, the SCAO shall send the complaint to the interpreter by regular mail or electronically at the address on file with the office.

MCR 8.127(D)(2).

2. Response to Complaint

The interpreter shall answer the complaint within 28 days after the date the complaint is sent. The answer shall admit, deny, or further explain each allegation in the complaint. If the interpreter fails to answer, the allegations in the complaint are considered true and correct. MCR 8.127(D)(3).

The SCAO may review records and interview the complainant, the interpreter, and witnesses, or set the matter for a hearing before the Foreign Language Board of Review. Before setting the matter for a hearing, the SCAO may propose a resolution to which the interpreter may stipulate. MCR 8.127(D)(4).

3. Review by Board

If the complaint is not resolved by stipulation, the SCAO shall notify the Foreign Language Board of Review, which shall hold a hearing. The SCAO shall send notice of the date, time, and place of the hearing to the interpreter by regular mail or electronically. The hearing shall be closed to the public. A record of the proceedings shall be maintained but shall not be public. MCR 8.127(D)(5).

The board must review a complaint that the SCAO schedules before it pursuant to MCR 8.127(D). The board must review the complaint and any response and hear from the interpreter and any witnesses at a meeting of the board. The board shall determine what, if any, action it will take, which may include revoking certification, prohibiting the interpreter from obtaining certification, suspending the interpreter from participating in court proceedings, placing the interpreter on probation, imposing on the interpreter any fines authorized by law, and placing any remedial conditions on the interpreter. MCR 8.127(B)(2).

The interpreter may attend all of the hearings except the board's deliberations. The interpreter may be represented by counsel and shall be permitted to make a statement, obtain testimony from the complainant and witnesses, and comment on the claims and evidence. MCR 8.127(D)(6).

E. Administrative Requirements of the Trial Court

1. Appointing a Language Access Coordinator

The chief judge must name a language access coordinator for the court to be a contact person for the public, court staff, and SCAO concerning the courts language access plan (LAP) and implementation of the plan. The language access coordinator may be contacted through the court administrator's office. See a list of language access coordinators for all courts, by county.

The language access coordinator is responsible for coordinating the court's efforts to comply with MCR 1.111 and MCR 8.127 by:

a. Providing his or her name, office address, and telephone number to interested persons.

b. Posting his or her contact information in a visible place at each court location, including on the court's website.

c. Assisting the court in determining what type of language service should be made available, based on the nature and importance of the court service to be provided and resources available.

d. Ensuring the LAP is followed, advising the court on potential updates to the LAP, and coordinating the language access needs for the court.

The court must notify the SCAO regional office of any changes to the language access coordinator's contact information, or if a new language access coordinator is named. To update contact information for a trial court"s language access

coordinator, complete the Language Access Coordinator Contact Information form and return it to the State Court Administrative Regional Office.

2. Designating a Language Access Contact

The chief judge must also designate a language access contact person for each court location, including any FOC or probation offices (if a district court) that operate in separate facilities, to assist the court in enforcing its orders.

3. Training

The court shall be committed to training its judges and court staff, and coordinating with county clerks on providing LEP persons with meaningful access to court services. When a court provides training sessions, it shall include a component addressing LEP policy and procedure and the court's LAP.

The court shall work with the SCAO and MJI to ensure that all employees are trained on LEP policy and procedure. Training should be offered to assist judges and staff to identify and respond to LEP persons, increase awareness of the types of language services available, guide when and how to access those services, and effectively use language services.

4. Establishing a Language Access Plan/Local Administrative Order

In order to ensure that those persons with limited English proficiency have meaningful access to Michigan courts, courts are required to adopt a language access plan. The plan must substantially conform to the model promulgated by the state court administrator and must provide meaningful access to limited English proficient persons who have contacts with the court and its administrative staff. The plan shall be submitted to and approved by the SCAO as a local administrative order under MCR 8.112. Michigan Supreme Court Administrative Order 2013-8. See Model LAO 42.

The plan shall describe how it will provide access to out-of-court services to LEP individuals. Out-of-court services include contacts at the clerk of the court, the friend of the court office, the probation department, and contacts with service providers the court uses to assist in enforcing its orders. See also SCAO Administrative Memorandum 2013-02.

6. Notifying the Public

After the LAP is documented, it is important to notify the public that LEP services are provided. The following are some options to accomplish this notification.

a. Posting signs in LEP languages at entry points.

b. Use international symbols to identify the court's language access coordinator, bathrooms, stairways, exits, fire extinguishers, etc. to improve the LEP person's ability to navigate the courthouse and find services.

c. Statements on outreach documents.

d. Working with stakeholder community centers.

e. Providing an alternate language voice mail prompt in the most common LEP language.

f. Notices in local papers.

g. Announcements on radio stations.

h. Presentations at religious centers or schools.

See I-Speak cards and a customizable language access coordinator sign.

7. Grievance Procedure

A form is provided to trial courts for reporting interpreter grievances to the SCAO and the Foreign Language Board of Review. The result of any grievance will be reported back to the court upon completion of the review process.

F. Request for Interpreter

1. Request Forms and Procedure

A *Request and Order for Interpreter* (form MC 81) and a *Review of Request for Interpreter and Order* (form MC 81a) have been approved for use in requesting a foreign language interpreter. These forms are also available in bi-lingual format in Arabic/English, simplified Chinese/English, Korean/English, Serbo-Croatian/English, Spanish/English, and Vietnamese/English. See also instructions

to the general public about how to request an interpreter, including links to the form.

2. Denial of Request

Any time a court denies a request for the appointment of a foreign language interpreter or orders reimbursement of interpretation costs, it shall do so by written order. MCR 1.111(H)(1).

An LEP individual may immediately request review of the denial of appointment of a foreign language interpreter or an assessment for the reimbursement of interpretation costs. A request for review must be submitted to the court within 56 days after entry of the order. In a court having two or more judges, the chief judge shall decide the request for review de novo. In a single-judge court, or if the denial was issued by a chief judge, the judge shall refer the request for review to the state court administrator for assignment to another judge, who shall decide the request de novo. MCR 1.111(H)(2).

G. Appointing a Foreign Language Interpreter

1. Determining Necessity for Services

The process for appointing a foreign language interpreter is regulated by MCR 1.111. The court must determine whether foreign language interpreter services are necessary for a person to meaningfully participate in a case or court proceeding in accordance with MCR 1.111(B).

For situations where a request for an interpreter has not been made in advance, the following resources for language access procedures in the courtroom are available: See the Voir Dire Questions for Interpreters and a Bench Card for Appointment.

If a *certified* interpreter is not reasonably available, the court must consider the nature and gravity of the proceeding, and whether to postpone the hearing until a certified interpreter is available. The court may then determine to proceed with a qualified interpreter. See MCR 1.111(F)(1). If a *qualified* interpreter is not reasonably available, the court must consider the nature and gravity of the proceeding, and whether to postpone the hearing. The court may determine to proceed with a noncertified and nonqualified interpreter if the court determines through *voir dire* that the individual is capable of conveying the intent and content of the speaker's words sufficiently to allow the court to conduct the proceeding, without prejudice, to the limited English proficient person. See MCR 1.111(F)(2).

2. Waiver of Appointment

A person may waive the right to a foreign language interpreter established under MCR 1.111(B)(1) unless the court determines that the interpreter is required for the protection of the person's rights and the integrity of the case or court proceeding. The court must find on the record that a person's waiver of an interpreter is knowing and voluntary. When accepting the person's waiver, the court may use a foreign language interpreter. For purposes of this waiver, the court is not required to comply with the requirements of MCR 1.111(F) and the foreign language interpreter may participate remotely. MCR 1.111(C).

3. Avoiding Potential Conflicts of Interest

The court should use all reasonable efforts to avoid potential conflicts of interest when appointing a person as a foreign language interpreter and shall state its reasons on the record for appointing the person in accordance with MCR 1.111(E).

4. Appointment

When a court appoints a foreign language interpreter under MCR 1.111(B)(1), the court shall appoint a certified foreign language interpreter whenever practicable. If a certified foreign language interpreter is not reasonably available, and after considering the gravity of the proceedings and whether the matter should be rescheduled, the court may appoint a qualified foreign language interpreter who meets the qualifications in MCR 1.111(A)(6). The court shall make a record of its reasons for using a qualified foreign language interpreter. MCR 1.111(F)(1).

If neither a certified foreign language interpreter nor a qualified foreign language interpreter is reasonably available, and after considering the gravity of the proceeding and whether the matter should be rescheduled, the court may appoint a person whom the court determines through voir dire to be capable of conveying the intent and content of the speaker's words sufficiently to allow the court to conduct the proceeding without prejudice to the limited English proficient person. MCR 1.111(F)(2).

5. Compensation

The court may set reasonable compensation for interpreters who are appointed by the court. Court-appointed interpreter costs are to be paid out of funds provided by law or by the court. MCR 1.111(F)(4).

6. Administration of Oath or Affirmation to Interpreter

The court shall administer an oath or affirmation to a foreign language interpreter substantially conforming to the following: "Do you solemnly swear or affirm that you will truly, accurately, and impartially interpret in the matter now before the court and not divulge confidential communications, so help you God?" MCR 1.111(G).

For other language access resources see a Judge's Quick Guide to Foreign Language Access and Frequently Asked Questions.

H. Reimbursement of Costs

The court is required to pay the costs of an interpreter appointed under the MCR 1.111. The court may order a party to reimburse the costs of the interpreter at the conclusion of the case if the party is financially able to reimburse the court. A person is considered financially able to reimburse the interpreter costs if the person's family or household income is 125 percent of the poverty level or more and if the court determines that assessment of the costs would not unreasonably impede the person's ability to defend or pursue the claims involved in the matter. MCR 1.111(F)(4) and (5). The party has the continuing obligation to inform the court of any change in financial status and, upon request of the court, the party must submit financial information. MCR 1.111(F)(7).

8-03 Public Information Services and Resources

A. Friend of the Court Services and Resources

1. Friend of the Court Informational Handbook

The friend of the court is required to provide an informational pamphlet, in accordance with the model handbook developed by the State Court Administrative Office, Friend of the Court Bureau to each party in a domestic relations matter at or near the commencement of each case.

Upon request, a party shall receive an oral explanation of the informational pamphlet from the office. MCL 552.505(1)(c).

At the time a complaint is filed, or as soon as possible after the filing of a complaint, the prosecuting attorney or plaintiff's attorney is required to provide a copy of the friend of the court informational handbook to the plaintiff and the defendant. MCR 3.203(I).

The handbook is required to explain:

- the procedures of the court and the office,
- the duties of the office,
- the rights and responsibilities of the parties, including notification that each party to the dispute has the right to meet with the individual investigating the dispute before that individual makes a recommendation regarding the dispute,
- the availability of and procedures used in alternative dispute resolution,
- the availability of human services in the community,
- the availability of joint custody, and
- how to file a grievance regarding the office.

See also Section 5-04. See the *Model Friend of the Court Handbook*.

2. Domestic Relations Public Information

Since 1987, the State Court Administrative Office (SCAO) has provided the public with information about domestic relations issues in the form of numerous brochures, manuals, and guidelines. Some of the publications provide the general public with information about topics such as custody, parenting time, child support, and friend of the court operations while other publications, such as the *Custody Guidelines* and *Michigan Child Support Formula Manual*, are designed for court users to assist them with the administration, investigation, and enforcement of domestic relations matters. See the custody guidelines and the

child support formula manual. See other domestic relations manuals, brochures, and pamphlets.

The SCAO also publishes a quarterly newsletter, *The Pundit*, which provides court users the latest news about domestic relations matters.

B. Public Resources on Access

Information is available on access, gender, and racial/ethnic issues in the courts generally and in the Self-Help Center.

C. Resources for the Self-Represented

1. Court Forms

The State Court Administrative Office (SCAO) has developed a number of forms and instructions designed for use by the pro se litigant as required by law in the area of child support, parenting time, and custody. Other related self-help information is available through the Self-Help Center.

2. Self-Help Center and Michigan Legal Help

In 2005, the SCAO launched a Self-Help Center on the One Court of Justice website aimed at helping nonlawyers represent themselves in certain legal matters. Topics include: General Civil Process, Filing and Other Fees, Serving Court Papers, Court Hearings, Responding to a Civil Complaint, Mediation, Types of Courts, Collecting Money from a Judgment, How to Find an Attorney, How to Find Legal Information, and Types of Court Cases. The Self-Help Center also provides links to Michigan laws and rules, court forms, and other resources. For some proceedings, detailed information is provided about how to complete forms and proceed with a case, including service of process, notice requirements, preparing for and attending hearings, and preparing and serving orders.

In 2011, the Michigan Legal Help Program (MLHP) was launched. It was created under the direction of the Solutions on Self-Help Task Force (established in April, 2010, by then Supreme Court Justice Marilyn Kelly) and is funded by the Michigan Supreme Court, the Michigan State Bar Foundation, and through grants funded by the Legal Services Corporation. The MLHP consists of two parts - the Michigan Legal Help website and affiliated Self-Help Centers around the state. The website contains legal information in numerous areas of the law that guide self-represented litigants through specific court processes. The website prompts litigants through online interviews that people can use to produce the forms to

accomplish tasks in court, and detailed instructions outlining the processes involved in starting or completing a case.

The Self-Help Centers, located in libraries and courts around the state, provide computers, internet, and printers to help people use the resources on the Michigan Legal Help; staff navigators can also answer questions from litigants that do not require legal advice. The State Court Administrative Office collaborates with the Michigan Legal Help Program on content and forms development; as new legal information content is added to the Michigan Legal Help website, duplicate content will be removed from SCAO's online Self-Help Center.

D. Domestic Violence Victim Advocate

The family division of the circuit court in each county may provide a domestic violence victim advocate to assist victims of domestic violence in obtaining a personal protection order. The court may use the services of a public or private agency or organization that has a record of service to victims of domestic violence to provide the assistance. A domestic violence victim advocate may provide, but is not limited to providing, all of the following assistance:

- Informing a victim of the availability of, and assisting the victim in obtaining, serving, modifying, or rescinding, a personal protection order.
- Providing an interpreter for a case involving domestic violence including a request for a personal protection order.
- Informing a victim of the availability of shelter, safety plans, counseling, other social services, and generic written materials about Michigan law.

Notwithstanding MCL 600.2950c(1), a domestic violence victim advocate shall not represent or advocate for a domestic violence victim in court. Providing assistance in accordance with MCL 600.2950c does not violate MCL 600.916 (unauthorized practice of law).

MCL 600.2950c.

E. Trial Court Annual Reports

The chief judge should ensure that a comprehensive account of the activities of the Court is prepared on an annual basis. The annual report should serve as a foundation for good relations with the press, taxpayers, and county commissioners. A sense of integrity and accountability can be fostered by a full report on court activities.

1. Format

Format for annual reports may vary but should include: 1) an explanation of court organization and operations, 2) a summary of court activities, 3) an accounting of public funds, and 4) a discussion of court priorities, goals, and objectives.

2. Distribution

County officials, court staff, judges, and the regional administrator of the State Court Administrative Office should receive a copy of the report. For maximum impact, the report could be subsequently released to the local bar president, media (newspaper, radio, television), and county and school libraries. Copies should be available to the public in the court office. The media copies may also be accompanied by a press release highlighting any interesting or significant points.

F. One Court of Justice Website

The State Court Administrative Office website provides many court and public resources.

G. Developing Comprehensive Public Information Programs for Courts

Studies over the years have shown a need for publication information about the role of the judiciary. In conjunction with recent goals to improve court performance and to develop performance measures and standards with regard to public service, the area of educating and informing the public is a fundamental aspect of these goals.

In light of the increased use of technology and social media, trial courts would benefit by developing strategic and useful public information programs.

Although dated, the mini-guide *Developing Comprehensive Public Information Programs for Courts* (1996), developed by the National Association for Court Management's provides useful direction in this regard.

The Michigan Supreme Court supports a number of events that courts can participate in as part of a comprehensive public information/education plan. These events include:

- Law Day (May).
- Juror Appreciation Month (July).
- Constitution Day (September).
- Michigan Adoption Day (November).
- Court Community Connections (twice a year; Supreme Court hears oral arguments at locations outside Lansing).

- Mock Trials (year-round, with state finals in March; judges and attorneys needed to coach local teams and assist in competitions).

For more information, contact the Supreme Court Office of Public Information at 517-373-0129.

H. Required Lists, Schedules, and Other Public Information

The trial courts are required to provide various lists for the general public, and in certain situations, for specific individuals. These includes list of adoption support groups, court officers authorized to seize property and to conduct evictions, approved bondsmen, and schedule of civil fines and costs. Except for the list of adoption support groups, which is given to the parties to the case, these documents are to be posted in a public place in the court facility and additionally on its website if it has one as required by standards established by the State Court Administrative Office.

In addition, it is recommended each court shall provide a means to adequately inform the general public about its local administrative orders and plans and its local court rules.

1. List of Adoption Support Groups

Circuit courts are required to provide parties to an adoption with a copy of a list of adoption support groups in certain circumstances. MCL 710.26(3), MCL 710.68a(2)(b). Each court should develop a list of available adoption support groups in Michigan and update the list at regular intervals. Multiple copies should be available at the court to provide to those individuals specified in the act.

2. List of Court Officers

Each court must post, in a public place at the court, a list of those persons who are serving as court officers or bailiffs. The court must provide the State Court Administrative Office with a copy of the list, and must notify the State Court Administrative Office of any changes. MCR 3.106(B)(2). See also Section 5-01. Also, if the court has a website, it must post the list of persons authorized to seize property and conduct evictions on the website as required by standards established by the State Court Administrative Office.

3. List of Approved Bondsmen

A typewritten or printed list, alphabetically arranged, of all persons engaged in the business of becoming surety upon bonds for compensation in criminal cases within the county shall be posted in a conspicuous place in every place in which persons in custody of the law are detained. The list shall be compiled annually by

the judges of the circuit court of each circuit, and the names of persons engaged in the business of becoming surety upon bonds for compensation shall be added to the list by the judges upon proper application. MCL 750.167b(4). See also Section 3-07. If the court has a website, it must post the list of bondsmen on the website as required by standards established by the State Court Administrative Office.

4. Schedule of Civil Fines and Costs

Each district of the district court and each municipal court may establish a schedule of civil fines, costs, and assessments to be imposed for civil infractions that occur within the respective district or city. If a schedule is established, it shall be prominently posted and readily available for public inspection. A schedule need not include all violations that are designated by law or ordinance as civil infractions. A schedule may exclude cases on the basis of a defendant's prior record of civil infractions or traffic offenses, or a combination of civil infractions and traffic offenses. MCL 257.907(7). See also Section 6-02 for the recommended range of civil fines and costs published by the State Court Administrative Office.

5. Local Administrative Orders, Local Court Rules, Local Language Access Plans, and Local ADA Plans

While it is not required that a court post its local administrative orders, plans, and court rules in the courthouse, it is recommended each court provide a means to adequately inform the general public about the content of these documents. The court is required to provide public notice regarding its local language access and ADA plans. See also Section 1-09. If the court has a website, it must post all local administrative orders, court rules, plans, and other external policies on the website as required by standards established by the State Court Administrative Office.

8-04 Court Reporter/Recorder Services

The chief or only judge of the court is charged with overall administrative responsibility for the employees of the court. This responsibility extends to effective management of the court's shorthand reporters or certified electronic recorders. The court should consider adopting written policies covering the following areas.

A. Transcript Production/Exhibits

1. Responsibility for Supervision of Court Reporters/Recorders

It is primarily the responsibility of every trial judge to make certain that the court reporter/recorder timely prepares and files transcripts and maintains exhibits. Ultimately, it is the responsibility of the chief judge pursuant to MCR 8.110 to make certain that trial judges and court reporters or recorders comply with the requirements for preparing and filing transcripts and maintaining and filing exhibits.

2. Responsibility of Court Reporter/Recorder

The court reporter's/recorder's responsibility for preparing and furnishing the transcript is set forth in MCR 8.108. See also Section 4-02.

3. Priority of Transcript Production/Exhibits

Transcripts should be prepared in the order in which they are ordered. Transcripts should be filed within the time limits prescribed by the Michigan Court Rules. MCR 7.109(B), MCR 7.210(B). In the rare case in which the time limit cannot be met, the reporter or recorder shall file a motion for an extension of time in the appellate court. A copy of any motion for extension of time shall be provided to the chief judge and the court administrator. See Motion to Change Time for Filing Transcript on Appeal, SCAO-approved form MC 503.

4. Order to Show Cause

If a reporter/recorder is ordered by an appellate court to show cause why he or she should not be held in contempt of court for failing to file transcripts on a timely basis, the reporter/recorder shall immediately provide the chief judge and court administrator with a copy of the order.

5. Pending Transcript Report

Reporters and recorders should be required to file a monthly pending transcript report with the chief judge or court administrator. This report should contain at least the following information:

- name of case
- file number
- date ordered
- date reporter's certificate was filed
- due date
- estimated length of transcript
- "type" of case
- estimated completion date
- show-cause date (if applicable)

B. Suppressed Transcripts

There appears to be no statute, court rule, or case law for suppressing transcripts. Procedures for sealing records are prescribed by MCR 8.119. See also Section 4-03 and Component 19 of the *Michigan Trial Court Case File Management Standards*.

C. Videotape Record Transcripts

If an appeal is taken in an action which has been videotaped, a transcript of the proceedings must be prepared in the same manner as in the case of proceedings recorded in other ways. However, a court reporter or recorder need not certify attendance at the proceedings being transcribed from the videotaped record, but need only certify that the transcript represents the complete, true, and correct rendition of the videotape of the proceeding as recorded.

D. Exhibit Maintenance

Exhibit maintenance is regulated by MCR 2.518, MCR 3.930, and Component 20 of the *Michigan Trial Court Case File Management Standards*. As a general rule, exhibits are maintained by the court reporter while court is in session. During recesses and at the conclusion of a trial or hearing where exhibits have been offered into evidence, the parties are responsible for maintaining and removing exhibits, except for drugs, guns, and other contraband. If an appeal is taken, the parties or the court reporter or recorder if the appeal is taken immediately should file the exhibits with the clerk of the court so the clerk can comply with MCR 7.109(C) and MCR 7.210(C).

E. Records Maintenance

The court reporter or recorder shall secure all records and safely keep them in the court according to Components 23 and 24 of the *Michigan Trial Court Case File Management Standards*. MCR 8.108(C). If the court reporter or recorder dies, resigns, is removed from office, or leaves the state, records he or she created and kept in each case pursuant to MCR 8.108 (C) must be transferred to the clerk of the court in which the case was tried. MCR 8.108(D).

F. Equipment and Supplies

Although not required, a court may supply certain basic supplies and equipment to each reporter or recorder. Examples include: transcript paper, stenograph paper, transcript covers, ink, ribbons, exhibit stickers, miscellaneous office supplies, typewriter, dictating machine, and cassettes.

G. Conduct and Complaints

When working in the capacity of an official court reporter or official court recorder, the reporter or recorder is an officer of the court and part of the court staff. He or she is subject to the same high standards of conduct above reproach, fidelity, and diligence that apply to the judge. Code of Judicial Conduct, Canon 3(B)(2). He or she should always recognize that an independent and honorable court is indispensable to justice in our system. The judicial system is for the benefit of the litigant and the public, not the court or its staff. Code of Judicial Conduct, Canon 1. See Section 1 Chapter 2 of the *Manual for Court Reporters and Recorders* for details on the code of conduct, conflict of interest, and guidelines for professional practice and ethics. See also Section 2-01-05.

Violation of the Michigan Court Rules and the requirements set forth in the *Manual for Court Reporters and Recorders* may result in a complaint being filed with the Michigan Court Reporting and Recording Board of Review. Upon a finding of good cause after a hearing before the board, sanctions, up to and including revocation of the court reporter/recorder's certification may be imposed. MCR 8.108(G)(6). Complaints or comments about a specific court reporter or recorder should be made, in writing, to the Michigan Court Reporting and Recording Board of Review, PO Box 30048, Lansing, MI 48909.

8-05 Pretrial Services Programs

A. Authority

There are no statutes that address establishing or operating a pretrial services program.

B. Establishment

Pretrial services programs are a product of the bail reform movement, which is an attempt to eliminate the perceived injustices of the commercial bail system. They have been used to control jail overcrowding because pretrial detainees comprise a significant percentage of county jail populations. Pretrial services programs conduct thorough risk assessments, recommend pretrial dispositions, and perform intensive monitoring of the arrestee during the pretrial phase.

C. Implementation

The delivery of pretrial services varies by court depending on a number of factors. These factors include:

1. the laws that define the circumstances under which some or all defendants may be released pending adjudication,

2. the organizational placement within the community (i.e., court, probation, or jail), and

3. the specific needs of the jurisdiction.

D. Function

1. Information Gathering for Setting Bail

Despite individual differences, the purpose of most pretrial services programs is to provide judicial officers with information about defendants pertinent to the setting of bail. Typically, each program has investigators who interview defendants and immediately verify the information with members of the community by phone. Shortly thereafter, the findings are presented to the judicial officer responsible for setting bail, which often includes a detailed report of the defendant's criminal record (if there is one).

2. Release Recommendations

Additionally, the pretrial services programs will make release recommendations to the judicial officer.

3. Supervision of Defendants on Release

Many programs supervise defendants released on bail or their own recognizance, requiring them to check in on a regular basis, reminding them of future court dates, and monitoring bond conditions imposed by the judicial officer.

4. Expediting Criminal Process

Some programs operate as a tracking unit, following each defendant step-by-step through the system and acting as a liaison between the jail, the courts, the police, and the public. In this capacity, a unit deals with problems such as docket delays, appointment of counsel and other institutional difficulties in processing criminal cases.

5. Electronic Surveillance and Drug Screening

A current trend in pretrial services programs is supervision over tethering (electronic digital surveillance) and drug screening programs.

Overall, pretrial services have increased the options available to the courts in effecting release, while assuring community safety and the integrity of the court process.

See also Sections 1-05, F. and 3-07.

8-06 District Court Probation Departments

A. Management of a District Court Probation Department

In each district of the district court, the judge or judges of the district may establish a probation department within a district control unit. The necessary and reasonable expense of a probation department shall be borne by the district control unit. MCL 600.8314.

A district court probation officer, under the general direction of the chief judge, judge, or court administrator, conducts investigations and prepares information to assist the district court judge in determining appropriate sentences of individuals brought before the court. The district court probation officer shall supervise the probationer during the term of probation and may recommend relevant programs for rehabilitation.

There should be full-time administration of the probation department at the top managerial level of the court, with delegation of day-to-day operating responsibilities to a chief probation officer or other administrative staff member. Operating responsibilities should include the following:

1. Supervision of Probationers
2. Case Management
3. Screening and Assessments
4. Preparation of Presentence Investigation Reports
5. Sentencing Recommendations
6. Bond Recommendations
7. Referral for Services

B. Requirements of District Court Probation Officers

Most courts require probation officers to have graduated from college with a bachelor's degree in one of the following areas: criminal justice, sociology, psychology, social work, counseling, or a related field.

If the court intends for staff to conduct screening and assessments, the court must have a Screening, Assessment, Referral, Follow-up (SARF) license from the Michigan Department of Licensing and Regulatory Affairs (LARA). Although there are currently no minimum credential requirements in statute or administrative rule for court staff to

conduct a screening or assessment, court staff are recommended to have one of the following minimum credentials, or equivalent:

- Certified Criminal Justice Professional (CCJP)
- Certified Alcohol and Drug Counselor (CADC)
- Certified Advanced Alcohol and Drug Counselor (CAADC)
- Certified Co-Occurring Disorder Professional Diplomate (CCDP-D)
- Certified Co-Occurring Disorder Professional (CCDP)

These credentials can be obtained through the Michigan Certification Board for Addiction Professionals (MCBAP) website.

If probation officers will be using the Law Enforcement Information Network (LEIN) to run criminal history or driving records, the Criminal Justice Information Systems (CJIS) Policy Council requires that persons hired after July 1, 1996, must have a background screening using fingerprint identification, participate in LEIN training, and acquire LEIN certification.

If probation officers will be preparing notices or performing other deputy clerk functions, they must be sworn in as deputy court clerks.

C. Types of Probation

There are several types of probation: supervised, unsupervised, and nonreporting. MCL 771.3(1)(c) states that a probationer shall make a truthful report to the probation officer on a monthly basis or as often as the probation officer may require. The report may be either in person or in writing.

Supervised probation generally involves face-to-face contact between the probationer and an assigned probation officer. Verification of other court-ordered activities should be presented by the probationer, and copies should be placed in the case record. Supervision can also be intermediate (slightly-increased level of supervision) or intensive (requiring multiple weekly contacts to closely monitor compliance).

Unsupervised probation requires no personal or written contacts between the probationer and the probation department, except for a final review which verifies the probationer has completed or refrained from certain activities as ordered by the judge.

Nonreporting probation is most effectively conducted through written documents.

D. Transfer of Probation

The vast majority of cases requiring transfer at the district court level will be within Michigan. To transfer a probationer, the sentencing court must contact the court where the probationer is residing to request supervision. Upon receiving an affirmative response accepting the transfer, the sentencing court provides a copy of the presentence report and sentencing order to the transfer court and notifies the probationer of the transfer, the location and phone number of the new probation department, and the name of the person to contact at the supervising office.

Out-of-state transfers are handled by way of the Interstate Compact, which is an agreement between states for cooperative effort and mutual assistance in preventing crime. It describes the legal responsibilities of the sending state and the receiving state. MCL 3.1012. However, only certain offenses may be eligible for Interstate Compact. The revised rules regulating transfer of probation are available on the Interstate Commission for Adult Offender Supervision website. See also Section 8-07, E. for transfers among and between other types of problem-solving courts.

E. Confidentiality of Records

Probation case files are maintained separately from the public case files maintained by the clerk of the court and are nonpublic. MCR 8.119(E), (H). The probation case file serves to document that services are being provided as ordered in a responsible and timely fashion. It also verifies whether the probationer complied with the judge's order.

All records and reports of investigations made by a probation officer and all case histories of probationers shall be privileged or confidential communications not open to public inspection. Judges and probation officers shall have access to records, reports, and case histories. The probation officer, the assistant director of probation, or the assistant director's representative shall permit the attorney general, the auditor general, and law enforcement agencies to have access to the reports, records, and case histories. MCL 791.229. The confidence between the probation officer and the probationer or defendant under investigation shall not be violated. The probation officer must not provide access to other agency's reports that are logged in probation files. MCL 791.229. See also *Howe v Detroit Free Press*, 440 Mich 203 (1992). The statutory privilege pursuant to MCL 791.229 precluding discovery of a probation report may be waived. *Id.*

If a probation officer receives a subpoena for specific information from a probation record, it is appropriate for the officer to attend the court hearing with the record requested and to advise the presiding official that the record is protected pursuant to MCL 791.229 and *Howe*. The court may order any part of the probation record to be released.

F. Ethics

Ethics are the principles of conduct governing an individual or group, especially a professional group. Ethical principles help people make appropriate decisions and respond properly in difficult situations. Following the ethical principles of a profession reduces the risk of job loss, criminal charges, and liability for unsuitable behavior.

As employees of the court, district court probation officers are required to follow the Model Code of Conduct for Michigan Court Employees. See also the Michigan Association of District Court Probation Officers Code of Ethics.

G. Records Retention

Every probation department should have a program for managing the creation, maintenance, and disposition of all relevant court records. Any records management program instituted should consider the handling of a case file from initiation to eventual destruction. MCR 8.119 governs records and entries kept by the district court clerk, as well as by a district court probation department. Records may not be disposed of, mutilated, or destroyed, except as authorized by the General Records Retention and Disposal Schedule #16 – Michigan Trial Courts.

Probation case files may include the following items: probation order, community service referral forms, monthly report forms, relevant reports from substance abuse agencies, psychological or psychiatric reports, sex offender registration forms, and notes relevant to the probationer's standing and progress, among others.

There will be both active and inactive files in most probation departments. An example of an inactive file is when a probationer fails to comply with a judge's order to appear in court and a bench warrant is issued. The case is not discharged from probation, but becomes inactive while waiting for the probationer to be returned to the court on the bench warrant. If the defendant is not returned to the court on a warrant after a period deemed suitable by the court (e.g., seven years), the judge may review the warrant for recall and discharge the probationer at that time.

Probation files must be kept for three years after closure or discharge before being destroyed by approved methods. See the General Records Retention and Disposal Schedule #16 for Michigan Trial Courts.

8-07 Problem-Solving Courts

A. Authority

Problem-solving courts in Michigan are guided by statute and local administrative orders (LAO). MCL 600.1060 *et. seq.* authorizes and guides drug courts, while MCL 600.1090 *et. seq.* applies to mental health courts and MCL 600.1200 *et. seq.* applies to veterans treatment courts. A trial court must submit an LAO to establish a problem-solving court in its jurisdiction in accordance with any of these statutes. Other problem-solving courts, such as teen court or domestic violence court, are governed only by the LAO established by the court.

B. Types of Problem-Solving Courts

1. Drug Court

Drug courts were first established in the late 1980s. Over time, drug courts evolved to treat substance use disorders by providing comprehensive therapeutic interventions, treatment, and other services to participants. A drug court utilizes a team-based, non-adversarial approach. The team usually includes a judge, program coordinator and/or case manager, probation officer(s), treatment provider(s), a defense attorney, and a prosecutor. The ultimate goals of a drug court are to increase participants' periods of abstinence and reduce the rate of relapse, re-arrest, and incarceration. Drug court types include Adult Drug Treatment Court, DWI/Sobriety Court, Juvenile Drug Treatment Court, and Family Dependency Court.

2. Mental Health Court

Mental health court is modeled after drug court and was developed in response to the overrepresentation of people with mental illnesses in the criminal justice system. A mental health court diverts select defendants with mental illness into judicially supervised, community-based treatment. Defendants are invited to participate following a specialized screening and assessment, and they may choose to decline participation. For those who agree to the terms and conditions of community-based supervision, a team of court staff – similar to that in a drug court - and mental health professionals work together to develop treatment plans and supervise participants in the community.

3. Veterans Treatment Court

The veterans treatment court uses a hybrid integration of the drug court and mental health court principles to serve military veterans. These programs promote

sobriety, recovery, and stability through a coordinated response that involves collaboration with the traditional partners found in drug courts and mental health courts, as well as the Department of Veterans Affairs healthcare networks, Veterans Benefits Administration, state Departments of Veterans Affairs, volunteer veteran mentors, and organizations that support veterans and veterans' families.

4. Other Types

A number of other problem-solving court types have evolved from the drug court model. See more information on these programs.

C. Developing and Implementing a Problem-Solving Court

Trial courts that want to implement a problem-solving court should review the corresponding statute as a starting point. In order to establish a problem-solving court, the court must develop a Memorandum of Understanding, pursuant to statute, and submit a LAO and program data to the SCAO. Several model problem-solving court LAOs are available. Model Memoranda of Understanding are available in the appendices of the manuals listed below. Minimum Standard Data Requirements are available at:

- Drug Court
  - http://courts.mi.gov/Administration/admin/op/problem-solving-courts/Documents/MinimumStandardDataReformattedAdult.pdf
  - http://courts.mi.gov/Administration/admin/op/problem-solving-courts/Documents/MinimumStandardDataReformattedJuvenile.pdf
- Mental Health Court
  - http://courts.mi.gov/Administration/SCAO/OfficesPrograms/Documents/SpecialtyCourts/MentalHealthCourtDataStandards.pdf
- Veterans Treatment Court
  - http://courts.mi.gov/Administration/admin/op/problem-solving-courts/Documents/MinimumStandardDataVeterans.pdf

For assistance in learning how to determine need, develop a program, assemble a team, assess community resources, and determine program structure, several manuals are available.

- Developing and Implementing a Drug Treatment Court in Michigan
- Developing and Implementing a Regional DWI Court in Michigan
- Developing and Implementing a Mental Health Court in Michigan

- Developing and Implementing a Veterans Treatment Court in Michigan (provided by the Ingham County Veterans Treatment Court)

Analysts in SCAO's Trial Court Services division can assist courts that are interested in starting a problem-solving court program.

D. Role of Probation

Generally, defendants in a problem-solving court are sentenced into the program under probation. The terms of this probation are relatively intense, requiring frequent drug/alcohol testing, frequent meetings with a probation officer, and regular appearances before the judge for review hearings. Thus, probation officers are usually heavily involved in the problem-solving court team. District court probation officers work in conjunction with the court and court administration, while circuit court probation officers are assigned through the Michigan Department of Corrections.

Overall probation operations are generally not affected by a problem-solving court; instead, the problem-solving court program becomes one of many options within a probation department. Case supervision and workload varies by jurisdiction, but many programs assign one or more probation officers to the problem-solving court team.

E. Transfer

As with regular probation cases, problem-solving court cases can be transferred between jurisdictions for supervision. Sometimes, cases are transferred because the transferring jurisdiction does not have an appropriate program to supervise the offender, while other cases might be transferred for geographic reasons.

Drug court transfers are authorized by MCL 600.1062. Mental health court transfers are authorized by MCL 600.1091. Veterans treatment court transfers are authorized by MCL 600.1201. Transfers among and between other types of problem-solving courts (those without corresponding statutes) are treated as regular probation cases for supervision purposes. The SCAO has published guidelines for handling drug court case transfers. See SCAO Administrative Memorandum 2015-01, Transfers for Problem-Solving Court Program Supervision for details.

F. Case Management Data

Drug courts, mental health courts, and veterans treatment courts must use the Drug Court Case Management Information System (DCCMIS) provided by the SCAO. The system is secure and confidential, and administered by the SCAO at no cost to local trial courts.

Problem-solving court team members - including court staff such as probation - are given access to the system in order to enter and maintain case management data for the entirety of each defendant's participation in the problem-solving court.

A court staff member involved with the problem-solving court should be selected to serve as administrator for DCCMIS. The administrator oversees user accounts and ensures that the court meets various reporting deadlines. The SCAO can provide assistance and training for courts new to using DCCMIS.

G. Confidentiality of Records

Problem-solving court probation files are maintained separately from the public case files maintained by the clerk of the court and are subject to the same confidentiality requirements as regular probation files (see Section 8-06). MCR 8.119(E), (H).

Case files maintained by the clerk of the court are public pursuant to MCR 8.119(H) unless restricted by statute, court rule, or an order entered pursuant to MCR 8.119(I). MCR 8.119(D). Problem-solving court case files subject to a deferred judgment of guilt are nonpublic pursuant to the statute that authorizes deferral. MCL 762.13 (HYTA), MCL 333.7411 (Controlled Substance), MCL 769.4a (Domestic Violence), MCL 436.1703 (Minor in Possession of Alcohol), MCL 600.1076(6) (Drug Treatment Court), MCL 600.1206(1) (Veterans Treatment Court), and MCL 600.1090 et. seq. (Mental Health Court). Problem-solving court case files that do not have a deferred judgment of guilt are public; however, certain records within those public files that pertain to assessment, treatment, or testing in drug court, veterans treatment court, or mental health court are nonpublic. See the Nonpublic and Limited-Access Court Records chart for details.

H. Records Retention

Every court should have a plan for managing the creation, maintenance, and disposition of all relevant court records. MCR 8.119 governs records and entries kept by the district court clerk, as well as by a district court probation department. Records may not be disposed of, mutilated, or destroyed, except as authorized by the General Records Retention and Disposal Schedule #16 – Michigan Trial Courts.

Problem-solving court records are to be retained for the same period as district court probation records; complete probation files must be kept for three years after closure or discharge before being destroyed by approved methods.

I. Problem-Solving Court Grants

Although the operational costs of problem-solving courts are primarily the responsibility of local courts and their funding units, several grants are available to assist in implementing and operating these programs.

The SCAO administers several state-funded grants.

- **Drug and DWI Courts -** Drug and DWI courts may be eligible for the Michigan Drug Court Grant Program, the Byrne-JAG Grant Program, the Office of Highway Safety Planning (OHSP) Grant Program, the Regional DWI Grant Program, or the Urban Drug Court Initiative.

- **Mental Health Courts -** Mental health courts may be eligible for the Michigan Mental Health Court Grant Program or Regional Mental Health Court Grant Program.

- **Veterans Treatment Courts -** Veterans treatment courts may be eligible for the Michigan Veterans Treatment Court Grant Program.

All SCAO grants are reimbursement-based. The court and its administration serve as fiduciary for the grant programs and are reimbursed for expenditures on a quarterly basis. SCAO problem-solving court grants are administered through a web-based management system called WebGrants. See the Grants Management for Programs Operating via WebGrants manual and a user guide to WebGrants.

Several federal grants are also available to assist problem-solving court programs. These include the Bureau of Justice Assistance grant and Substance Abuse and Mental Health Administration grants. More information is available on the grants.gov website. The SCAO can provide letters of support to local courts applying for a federal grant.

J. Associations

Several associations exist to assist local problem-solving courts and to help keep courts abreast of current issues and advancements.

- Justice for Vets

- National Center for DWI Courts

- The Michigan Association of Treatment Court Professionals

- The National Association of Drug Court Professionals

8-08 Trial Court Collection Programs

A. Authority and Program Requirements

Enforcing court orders, including financial sanctions, is a responsibility of the courts that, if done effectively, enhances the courts' integrity and credibility while providing funds to assure victims are made whole and support law enforcement, libraries, the crime victim's rights fund, and local governments. In order to improve the enforcement and collection of court-ordered financial sanctions, it is ordered that the state court administrator establish court collections program requirements and that all circuit courts, circuit court family divisions, district courts, and municipal courts comply with those requirements. The State Court Administrative Office shall enforce the requirements and assist courts in adopting practices in compliance with those requirements. As such Michigan Supreme Court Administrative Order 2010-1 requires that all trial courts comply with court collections program requirements established by the state court administrator. The State Court Administrative Office (SCAO) is required to facilitate compliance with and enforce the requirements and assist courts in adopting practices in compliance with those requirements.

1. Court Collections Program Requirements

Each court must implement or have a collections program in place that conforms to a model developed by the SCAO that is designed to improve collections through application of best practices. See details of the requirements.

2. Court Collections Program Components and Details

In order to be in compliance with the program requirements, a court must adopt a program that includes the required components (1 through 7) provided in the Court Collections Program Components and Details. Each component contains detailed information about the component or concrete examples of ways a court may fulfill the listed requirement; however, a court is not required to implement every detail listed to be in compliance. See the components and details. Components 8 through 10 are optional.

B. Collections Program Goals

A court collections program should be designed with the following five goals in mind:

- to enforce the court's order.
- to hold defendants accountable for their actions.
- to reduce judicial and clerical efforts required to collect court-ordered financial obligations.

- to ensure prompt disbursement of court collections to receiving agencies and individuals.
- to achieve timely case processing.

C. Program Policies, Standards, and Guidelines

1. Trial Court Collections Standards and Guidelines

Trial court collections standards and guidelines have been established by the SCAO to assist judges, court administrators, and staff in designing and implementing successful collections programs. Section 1 sets forth the standards for a collections program while Section 2 provides guidelines for developing a collections plan. See the collections standards and guidelines.

2. Order to Remit Prisoner Funds

The SCAO collaborated with the Department of Corrections (DOC) to develop a process for collecting funds from prisoner accounts to reimburse the court for fines and costs. To assist courts with collecting outstanding financial obligations from criminal defendants sentenced to DOC, the SCAO has approved form MC 288, Order to Remit Prisoner Funds for Fines, Costs, and Assessments, and form MC 290, Satisfaction of Financial Obligation. See SCAO ADM Memo 2004-09 for details on the process.

3. Bond Forfeiture

The SCAO has outlined the elements of the surety bond process with regard to issuing, releasing, and forfeiting. See SCAO ADM Memorandum 2017-01 and Bond Disbursement Procedure.

D. Collections Program Status Performance Measure

Enforcement of court orders, including the financial obligations in those orders, improves a court's credibility and effectiveness. Payment of court-ordered financial obligations helps make victims whole and provides funds to support law enforcement, libraries, the Crime Victim Rights Fund, and local governments.

To improve administration of this critical court function, the Collections Program Status has been adopted as a performance measure. See SCAO memo dated September 1, 2015 for details. To aid courts in meeting this performance measure, collections program best practices from Michigan courts have been compiled in a *Trial Court Collections Best Practices Manual*. This manual will help courts identify successful collections program operations and assist in implementing new techniques to enforce court-ordered financial

obligations. SCAO's Trial Court Services Division is also available to assist courts in improving a court's collection program.

E. Administration

Chief judges, clerks, and administrators should take a leadership role in collections by adopting policies and procedures for judicial officers and staff to follow, providing training to staff involved in the collections process, evaluating collections activities to measure their effectiveness, and coordinating collections efforts with other courts and agencies. For details on administering the program, see the Trial Court Collections Standards and Guidelines.

Administering an effective collections program includes the following provisions:

1. Designated individuals with primary responsibility for administration.

2. Written collections policies.

3. Prompt and accurate data entry of assessment and payment information.

4. Priority of payments in accordance with statute.

5. Applying partial payments to debts most past due, except as otherwise restricted.

6. Written policy identifying the roles and responsibilities.

7. Written authority for designated staff to grant extensions and installment payments and to waive late fees.

8. Collecting financial information (form MC 287, Financial Statement).

9. Verifying litigant's address and financial information every time contact is made.

10. Training programs and written training policy and training manual.

11. Disseminating information on financial sanctions and enforcement to service providers and other agencies having contact with litigants.

12. Applying cash bonds and 10 percent bonds posted by the defendant.

13. Established procedures for declaring debts active, inactive, or discharged. For assistance in this area, see the Model Debt Inactivation Policy.

14. Procedures for periodic review of accounts.

15. Proper recording of discharge from financial obligation, including the reason, and removal of the obligation from the court's accounts.

16. Policy restricting acceptance of payments by employees authorized and trained to perform receipting functions.

17. Simplified and flexible payment process.

18. Acceptance of payment from third parties unless otherwise ordered.

19. Coordinated collections activities with other courts.

20. Evaluation of program and collections rates.

F. Confidentiality of Personal Identifying Information

The court has the authority to collect personal identifying information for purposes of trial court collections. That information must be kept confidential pursuant to the program requirements and SCAO ADM Memorandum 2006-04.

G. Determining Ability to Pay

In the three decades since the United States Supreme Court issued its decision in *Bearden v Georgia*, 461 US 660 (1983), judges have been required to address the issue of ability to pay before incarcerating a person for failure to pay court-ordered financial obligations. Michigan law is also clear that a judge may not incarcerate someone who lacks the ability to pay court-ordered financial obligations.

1. When to Determine Ability to pay

Whenever a court attempts to enforce a court-ordered financial obligation, the obligor must be given an opportunity to contest the enforcement on the basis of indigency and the court must assess the obligor's ability to pay (*People v Jackson*, 483 Mich 271 (2009)). Generally, this means at the time of a show cause hearing, probation violation hearing, or at the time a conditional sentence is enforced. The ultimate determination of the ability to pay rests with the judge. The judge should review the applicable statutes and court rules to determine which factors to consider and place the appropriate findings on the record. Enforcement of court-ordered financial obligations by incarceration should only occur when the court has determined that the obligor has the ability or resources to pay the ordered monetary assessments and has not made a good faith effort to do so.

2. Tools and Guidelines

Tools, best practices, and guidance are available to assist judges and court staff with determining an obligor's ability to pay and establishing payment plans, providing payment alternatives, enforcing court-ordered financial obligations, and identifying uncollectible debts. See the April 20, 2015, Ability to Pay Work Group Report: Tools and Guidance for Determining and Addressing an Obligor's Ability to Pay, which provides:

- tools to assist judges and their staff;
- best practices currently in use by Michigan judges;
- recommendation of continuing education of judges and their staff on how to address the issues related to ability to pay; and
- changes that might be made to statutes and court rules.

See also training materials and other resources related to ability to pay.

H. State Reimbursement for Prison Cases

1. Felonies Committed by State Prisoners

a. Counties Entitled to Reimbursement

In the following cases committed by inmates of state correctional facilities during a period of state incarceration: a) new felony offenses, b) new felonies committed during escape, and c) escape from custody, counties in which a state correctional facility is located are entitled to reimbursement for the reasonable and actual costs incurred by the county for juror fees, witness fees, fees of attorneys appointed by the court for the defendant, transcript fees, and portion of fees for prosecuting attorney. MCL 800.452.

b. Determination of Reasonableness of Expenses

After the Michigan Department of Management and Budget determines the reasonableness of the amount to be paid, payment shall be made in accordance with the accounting laws of the state. This determination of reasonableness shall be conclusive.

c. Requesting Reimbursement

Counties must submit monthly itemized costs to the Michigan Department of Corrections Finance Division, which provides forms and instructions for requesting reimbursement.

Michigan Department of Corrections
Finance Division
P.O. Box 30003
Lansing, MI 48909
517-335-3010
http://www.michigan.gov/corrections

2. Mentally Ill State Prisoners

a. Counties Entitled to Reimbursement

For implementing the jurisdictional duties in the probate court imposed on a county by MCL 330.2001 *et seq*., with respect to proceedings involving allegedly mentally ill state prisoners within a state correctional facility in that county for transfer of the prisoner to the center for forensic psychiatry for treatment, or for treatment of the prisoner within a state correctional facility, the county is entitled to reimbursement for the reasonable and actual expenses incurred by the county for:

1) the expense of legal counsel appointed to represent an indigent prisoner in the proceeding,

2) compensation for each juror who is either summoned for voir dire or impaneled on a jury, if a jury trial is demanded in the proceedings,

3) compensation paid to each witness subpoenaed to the proceeding by the prisoner, and

4) the expense of the preparation of a transcript of the proceeding.

b. Determination of Reasonableness of Expenses

Each county shall submit quarterly its itemized costs for these proceedings to the chief probate judge of the county. After determination by the chief probate judge of the reasonableness of the amount to be paid, payment shall be made in accordance with the accounting laws of the state. The determination of reasonableness by the chief probate judge shall be conclusive. MCL 800.455(2).

I. Reimbursement from Litigants

1. Reimbursement for Cost of Appointed Counsel

a. Criminal Cases

If a defendant in a criminal case is able to pay part of the cost of a lawyer, the court may require contribution to the cost of providing a lawyer and may establish a plan for collecting the contribution. MCR 6.005(C).

If a defendant enters a plea of guilty or nolo contendere or if the court determines after a hearing or trial that the defendant is guilty, at the time of sentencing or at the time entry of judgment of guilt is deferred or sentencing is delayed the court may impose the expenses of providing legal assistance to the defendant. MCL 769.1k(1)(iv).

If a court requires a probationer to pay costs under MCL 771.3(2), the costs shall be limited to expenses specifically incurred in prosecuting the defendant or providing legal assistance to the defendant and supervision of the probationer. MCL 771.3(5).

In criminal actions where juveniles are charged with life offenses subject to the jurisdiction of the district and circuit court, the court may assess cost of legal representation, or part thereof, against a juvenile or against a person responsible for the support of a juvenile, or both. MCR 6.905(D).

b. Juvenile Cases

If the family division of the circuit court appoints an attorney to represent a child, parent, guardian, or custodian, an order of disposition entered pursuant to MCL 712A.18 may require the child, parent, guardian, or custodian to reimburse the court for attorney fees. MCL 712A.18(5).

If an attorney or lawyer-guardian ad litem is appointed for a party under MCL 712A.1 *et seq.*, after a determination of ability to pay the court may enter an order assessing attorney costs against the party or the person responsible for that party's support, or against the money allocated from marriage license fees for family counseling services under MCL 551.103. An order assessing attorney costs may be enforced through contempt proceedings.
When an attorney is appointed for a party pursuant to MCR 3.915, the court may enter an order assessing costs of the representation against the

party or against a person responsible for the support of that party, which order may be enforced through contempt proceedings. MCR 3.915(E).
If the court appoints an attorney to represent a juvenile, an order entered under MCL 769.1 may require the juvenile or person responsible for the juvenile's support, or both, to reimburse the court for attorney fees. MCL 769.1(8).

See also Section 3-04.

2. Reimbursement for Care of a Child

a. Required Reimbursement

The family division of the circuit court is required to include in any order of disposition placing a juvenile in or committing a juvenile to care outside the juvenile's own home and under state or court supervision, a provision for reimbursement to the court by the juvenile, parent, guardian, or custodian for cost of care or service. MCL 712A.18(2). Courts should consider ability to pay in determining the amount.

b. Discretionary Reimbursement

An order of disposition placing a juvenile on probation in the juvenile's own home may contain a provision for the reimbursement by the juvenile, parent, guardian, or custodian to the court for the cost of service. MCL 712A.18(3).

c. Guidelines for Reimbursement

The Michigan Child Support Formula Schedules Supplement of the *Michigan Child Support Formula Manual* was adopted to replace the July 30, 1990, Schedule of Payments in the *Guideline for Court Ordered Reimbursement*. Michigan Supreme Court Administrative Order 2006-05.

d. Collection and Disbursement of Reimbursement

The court shall provide for the collection of all amounts ordered to be reimbursed, and the money collected shall be accounted for and reported to the county board of commissioners. Collections to cover delinquent accounts or to pay the balance due on reimbursement orders may be made after a juvenile is released or discharged from care outside the juvenile's own home and under state, county juvenile agency, or court supervision.

Twenty-five percent of all amounts collected pursuant to an order entered under this subsection shall be credited to the appropriate fund of the county to offset the administrative cost of collections.

The balance of all amounts collected pursuant to an order entered under MCL 712A.18(2) shall be divided in the same ratio in which the county, state, and federal government participate in the cost of care outside the juvenile's own home and under state, county juvenile agency, or court supervision.

The court may also collect benefits paid for the cost of care of a court ward from the government of the United States. Money collected for juveniles placed by the court with or committed to the Michigan Department of Health and Human Services or a county juvenile agency shall be accounted for and reported.

MCL 712A.18(2).

3. Reimbursement for Cost of Court-Appointed Guardian Ad Litem

a. The court may assess the cost of providing a guardian ad litem against the party or a person responsible for support of the party, and may enforce the order of reimbursement through contempt proceedings. MCR 3.916(D).

b. The court may assess, after a determination of ability to pay, all or part of the costs and reasonable fees of a lawyer-guardian ad litem against one or more of the parties involved in a minor guardianship proceeding or against the money allocated from marriage license fees for family counseling services under MCL 551.103. MCL 700.5213(5)(b).

4. Reimbursement from Prisoner Accounts

a. Filing Fees and Costs

1) On a claim of indigence under MCR 2.002, if a prisoner submits for filing a civil action or an appeal in a civil action, the prisoner must include a certified copy of his or her institutional account showing the current balance and a 12-month history of deposits and withdrawals. The Department of Corrections (DOC) certifies the account. The court shall order the payment or partial payment of fees and costs. MCL 600.2963(1). See Order Regarding Suspension of Prisoner Fees/Costs, form CC 20a.

2) The filing shall be suspended by the court until payment, or partial payment, as ordered by the court is received. All documents are to be returned to the prisoner, plus two certified copies of the court order for payment of fees and costs. The court shall also send the DOC facility a copy of the certified order. MCL 600.2963(1).

3) The prisoner has 21 days after the court order to resubmit the documents for filing, the filing fee (or partial filing fee) and one certified copy of the order. If the filing fee is not received within 21 days after the day it was ordered, the court shall not file the action and all documents are to be returned to the prisoner by the court. MCL 600.2963(1).

4) The full filing fee shall be ordered by the court if there are sufficient funds in the account upon filing. MCL 600.2963(2).

5) If the account is less than the full filing fee, the court shall require payment of an initial partial fee in an amount equal to 50 percent of the greater of:

   a) the average monthly deposits for 12 months preceding the date of filing. MCL 600.2963(3).

   b) the average monthly balance in the account for 12 months preceding the date of filing. MCL 600.2963(3).

6) The court shall disregard amounts in the institutional account that are required by law or by another court order to be paid for any other purposes when determining the balance in the account. MCL 600.2963(4).

7) In addition to an initial partial filing fee under subsection (3), the court shall order the prisoner to make monthly payments in an amount equal to 50 percent of the deposits made to the account and shall continue in this manner until the full filing fee is paid. MCL 600.2963(5).

8) Collection and remittal of payments is to be done by the DOC pursuant to MCL 791.268, which calls for DOC to remove the amounts from the account and, when the court-ordered amount is received, submit it to the court. MCL 600.2963(5).

9) If costs are assessed against a prisoner and there are insufficient funds in the account, the court shall order payments in the same manner as provided in this section. MCL 600.2963(5).

10) The total amount collected shall not exceed the full amount of fees and costs required by law. MCL 600.2963(6).

11) The fact of incarceration cannot be the sole basis for determination of indigence. However, this section shall not prohibit a prisoner from starting an action if the prisoner has no assets and no means by which to pay the initial partial filing fee. If payment of fees and costs is waived or suspended, the court shall order the fees and costs paid in the manner provided by this section when the reason for waiver or suspension no longer exists. MCL 600.2963(7).

12) 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. MCL 600.2963(8).

13) If a prisoner is ordered by a court to make monthly payments for the purpose of paying the balance of filing fees or costs pursuant to MCL 600.2963, the agency having custody of the prisoner shall remove those amounts from the institutional account of the prisoner subject to the order and, when an amount equal to the balance of the filing fees or costs due is removed, remit that amount as directed in the order. MCL 600.2963(9).

14) DOC Policy - Director's Office Memorandum 1997-55 (effective 6/1/97)

    a) Court orders supersede policy where the court order is inconsistent with policy.

    b) Priority for payments:
    - Victim restitution.
    - Child support only if by court order.
    - Filing fees or costs.
    - Other court-ordered payments.
    - Fees for medical services.
    - Other institutional debts in chronological order.

c) Once funds ordered to be removed from prisoner's account have been collected in full or when the prisoner transfers to residential and electronic programs, paroles, discharges from DOC jurisdiction, or dies, the funds collected shall be sent to the court that issued the order with an explanation of the circumstances for sending the funds.

b. Victim Restitution

1) If restitution is ordered and the DOC receives a copy of the restitution order from the court, the DOC shall deduct 50 percent of the funds received by the prisoner in a month over $50 for payment of restitution.

The DOC is to forward the money to the crime victim when the amount exceeds $100 or the entire amount if the prisoner is paroled, transferred to community programs or discharged on the maximum sentence.

The DOC is to notify the prisoner in writing of all deductions and payments. This requirement remains in effect until all restitution is paid. MCL 791.220h.

2) The court shall provide a copy of the order of restitution to DOC on form CC 219b, Judgment of Sentence/Commitment, to DOC when the defendant is remanded to the jurisdiction of DOC. MCL 769.1a(16).

c. Fines, Costs, and Assessments

1) If a prisoner has been ordered to pay any fines, costs, and assessments and the DOC receives an order from the court on a form prescribed by the SCAO, the DOC shall deduct 50 percent of the funds received by the prisoner in a month over $50 for payment of fines, costs, and assessments.

The DOC is to forward the money to the court when the amount exceeds $100 or the entire amount if the prisoner is paroled, transferred to community programs, or discharged on the maximum sentence. MCL 769.1*l*.

2) The court should use form MC 288, Order to Remit Prisoner Funds for Fines, Costs, and Assessments, for all financial obligations

ordered by the court, excluding restitution. Because DOC is already required by statute (MCL 791.220h) to collect for restitution, restitution is not to be included on form MC 288.

a) When the court sentences a defendant to prison, a copy of form MC 288 should be provided to the defendant and to DOC's regional business office.

b) When the court issues an order to remit funds on a case for which the prisoner was not sentenced to prison, a copy of form MC 288 should be provided to the prisoner at the facility at which he or she is housed and to DOC's regional business office. If the prisoner owes restitution, a copy of the judgment of sentence or order of restitution should be included with form MC 288.

3) The court should issue and send to DOC form MC 290, Satisfaction of Financial Obligation, when the court-ordered financial obligations, including restitution, are paid in full.

4) Courts can 1) fax forms MC 288 and MC 290 to the DOC's regional business office at 517-780-6039, 2) send copies of forms MC 288 and MC 290 (PDFs) via e-mail to MDOC-CourtOrders@michigan.gov, or 3) mail copies of forms MC 288 and MC 290 to:

Michigan Department of Corrections
Regional Business Office
Court Order Processing
4000 Cooper Street
Jackson, MI 49201

J. Crime Victim Assessment

1. Authority and Purpose

The crime victim assessment is authorized by MCL 780.905 to pay for crime victim rights services under the Michigan Constitution (Const 1963, art 1, § 24) and is collected by the district and circuit courts. Based on a formula determined by the Department of Health and Human Services, Crime Victim Services Commission, courts are compensated for the costs associated with collection of the crime victim assessment. MCL 780.906.

2. Responsibilities of Circuit and District Court

a. Collecting Assessments

Pursuant to MCL 780.905(1), the court shall order each person charged with an offense that is a felony, misdemeanor, or ordinance violation, that is resolved by conviction, by assignment of the defendant to youthful trainee status, by a delayed sentence or deferred entry of judgment of guilt, or in another way that is not an acquittal or unconditional dismissal, to pay an assessment as follows:

1) If the offense is a felony, $130.

2) If the offense is a misdemeanor, $75.

The family division of the circuit court shall order each juvenile for whom the court enters an order of disposition for a juvenile offense to pay an assessment of $25. MCL 780.905(3).

The court shall order a person to pay only one assessment for each case. If the court allows the payment of victim payments and any combination of other fines, costs, assessments, probation supervision fees, or other payments to be paid in installments, the assessment shall be a condition of a probation order.

Fifty percent of all money collected from the person shall be applied to payment of victim payments and the balance shall be applied toward payments of costs, fines, probation supervision fees, or assessments and other payments. MCL 712A.29, MCL 775.22.

The court may not waive payment or offset payment in lieu of jail or prison time served, or community service performed.

b. Transmitting Assessments

The clerk of the court shall, on the last day of each month, do the following:

1) Transmit 90 percent of the assessments collected by MCL 780.905 to the Department of Treasury, Account # 228.37, with the approved transmittal advice form.

2) Transmit a written report to the Department of Community Health, Crime Victim Services Commission on form CVR-606 (Crime Victim Rights Assessment Report and Instructions) containing all the following information for that month:

a) the name of the court,

b) the total number of assessable convictions obtained in that court,

c) the total number of defendants against whom an assessment was imposed by the court,

d) the total amount of assessments imposed by that court,

e) the total amount of assessments collected by that court, and

f) other information required by the Crime Victims Services Commission. MCL 780.905.

Mail the CVR-606 report to:

Crime Victim Services Commission
Crime Victim Rights Assessments
Grand Tower, Suite 1113
PO Box 30037
Lansing, MI 48909
517-373-7373

3. Compensation for Administrative Costs

Pursuant to MCL 780.905, to provide funding for costs incurred under this section and for providing crime victims' rights services, the court may retain 10 percent of the assessments received under this section and transmit that amount to the court's funding unit. Additional funds shall be received by the court if the percentage received does not meet the funding level set by the Department of Health and Human Services. MCL 780.906.

8-09 Community Service and Work Programs

Community service is often used as part of a sentence or probation term for various offenses. Community service may be performed in lieu of payment of discretionary assessments such as fines and costs. Community service may not be used to satisfy certain required assessments such as restitution, crime victim's rights assessment, and minimum state cost.

Work programs involve defendants who perform work in and on behalf of the community as part of a supervised crew. Many courts refer defendants to a work program administered by their funding unit or another agency. However, some courts run their own work program. Courts may order defendants into the work program as an alternative to a jail sentence, as a condition of probation, or when sentencing is delayed.

A. Authority

Where probation is an authorized sentence, in most but not all felonies and misdemeanors, the court may require the probationer to engage in community service as a condition of probation. MCL 771.3(2)(e).

As part of the sentence for a violation of operating a vehicle while intoxicated (OWI), operating while visibly impaired (OWVI), operating with presence of drugs (OWPD), minor in possession of alcohol, transporting or possessing open alcohol in a motor vehicle, and minor transporting or possessing alcohol in a motor vehicle, a court may order a person to perform community service as designated by the court without compensation for a period specified by statute. MCL 257.624a(3), MCL 257.624b(1), MCL 257.625, MCL 436.1703(1).

In juvenile cases, when probation is the disposition of the court, the court may, as a condition of probation, require the juvenile to engage in community service or, with the victim's consent, perform services for the victim. MCL 712A.18(8)(a).

B. Service Recipients

The best practice is to allow the defendant to choose from an inclusive list of governmental and nonprofit entities. However, it is acceptable if service recipients are limited to governmental entities. The court should never order the defendant to perform services for a specific individual or nonprofit entity. Courts should not order defendants to perform services for specific individuals or families even if the individuals are senior citizens or the families are low-income families.

C. Costs

A court may impose as a cost, expenses incurred in providing oversight to the probationer. MCL 771.3(5). If the court assesses costs for participation in a community service or work program, costs must be limited to expenses the court actually incurs in administering the program. If the program is administered by the funding unit or another agency, the defendant should pay the costs directly to the community service or work program provider, and the court should neither assess nor collect those costs.

If the program is administered by the court, the court must have a procedure for waiving costs for participation in cases of indigence.

D. Liability

Courts and other governmental units are generally immune from liability when engaging in discretionary activities that fall within the scope of their core functions. For instance, courts are not liable for the consequences of judicial determinations. By statute, a governmental unit is immune from suit for an activity which is expressly or impliedly mandated or authorized by constitution, statute, local charter or ordinance, or other law. MCL 691.1407; *Ross v Consumers Power Co.*, 420 Mich 567 (1984). Distinguished by *In re Bradley Estate*, 494 Mich 367 (2013), holding that a party filing suit against a governmental agency bears the burden of pleading his/her claims in avoidance of governmental immunity.

As the scope of a governmental unit's activity expands beyond its core functions, its exposure to liability increases. Community service and work programs have liability concerns that are not generally present in the judiciary, including the possibility of injury to a person who is working on a job site and injuries and damages that person may cause to people or property while engaged in the community service or work program. Courts can reduce their potential exposure by: 1) not determining the agencies for whom the person works, 2) monitoring rather than overseeing the person's work, and 3) ensuring that fees cover the cost of the program and do not result in a surplus.

The Attorney General has issued opinions that persons placed in community service programs are not employees of the governmental unit under the Michigan Workers Compensation Disability Act. It appears that participants injured in community service programs would not be entitled to workers compensation benefits. OAG, 1983-1984, No. 6158, P. 129 (June 24, 1983); OAG, 1971-1976, No. 5061, P. 522 (June 28, 1976).

E. Insurance

Any community service or work program should take into consideration the safety of the participants and the public. Since governmental immunity may not provide complete

coverage, the governmental agency running the program should explore the possibility of accident insurance for the participant and liability insurance for the community service or work program. Courts that run a community service or work program should consult with their insurance carriers and should include in their programs only those activities that are approved by their carriers. Insurance premiums may also be recoverable from probationers as expenses specifically incurred in providing oversight to the probationer. MCL 771.3(5). See also Section 5-07, C.

In OWI, OWPD, and OWVI, the statute authorizes reimbursement for the cost of supervision for defendants sentenced to community service. Arguably, the cost of providing insurance for community service or work programs is such an expense. MCL 257.625 (14).

F. Safety Considerations

Any community service or work program should take into consideration the safety of the participant and the public. The program should be tailored to minimize risk. This can be done by incorporating the following suggestions into any community service or work program.

1. The candidates for the program should have a physical to determine the ability to perform anticipated work.

2. Participants should be supplied with safety equipment including, but not necessarily limited to, gloves, goggles, safety helmets, safety shoes, or whatever else may be deemed appropriate.

3. Injured participants should receive immediate attention by a medical doctor and the doctor should make a written report.

4. Incidents resulting in injury or damage to participants, third parties, or property should be the subject of a narrative report.

5. Participants should not be allowed to operate power equipment or vehicles.

6. Participants should not be involved in programs that have contact with the general public.

7. Special care should be used to develop programs that do not require the participants to work on or around dangerous areas.

G. Budget

If the court runs its own program, the best practice is to have the program budget as part of the court's budget. However, it is acceptable to have a separate account/fund within the funding unit with its own budget, as long as expenses are reported to the funding unit, revenue is turned over to the funding unit, and the account/fund is subject to regular audit.

8-10 Court-Operated Child Care Homes and Detention Facilities

A. Child Care/Foster Care Homes

1. Authority and Licensing

Provision may be made by the county board of commissioners in each county or of counties contracting together for the diagnosis, treatment, care, training, and detention of juveniles in a child care home or facility conducted as an agency of the county if the home or facility meets licensing standards established by the state Department of Health and Human Services. The court or a court-approved agency may arrange for the boarding of juveniles in any of the following.

a. Foster Care Homes

1) If a juvenile is within the court's jurisdiction pursuant to MCL 712A.2(a) or MCL 712A.2(h), the court may place a juvenile in a suitable foster care home subject to the court's supervision. MCL 712A.16(2)(a), MCL 712A.18(1)(c).

2) If a juvenile is within the court's jurisdiction pursuant to MCL 712A.2(b), the court shall <u>not</u> place a juvenile in a foster care home subject to the court's supervision. MCL 712A.16(2)(a), MCL 712A.18(1)(c).

b. Child Care Institution or Child-Placing Agency

The court may place juveniles within the court's jurisdiction in a child care institution or child-placing agency licensed by the Department of Consumer and Industry Services. MCL 712A.16(2)(b), MCL 712A.18(1)(d),(e).

c. County Jail for Juveniles Over 17 Years of Age

Juveniles within the court's jurisdiction who are over 17 years of age may be placed in a room or ward, separate and apart from adult criminals, in a county jail. MCL 712A.16(2)(c).

B. Detention Homes

If the court operates a detention home for juveniles within the court's jurisdiction under subdivision (a)(1), authority to place a juvenile within that home pending trial if the juvenile is within the circuit court's jurisdiction under MCL 600.606, and if the circuit

court orders the family division of circuit court in the same county to place the juvenile in that home. The family division of circuit court shall comply with that order. MCL 712A.2(h).

If a detention home or facility is established as an agency of the county, the judge may appoint a superintendent and other necessary employees for the home or facility who shall receive compensation as provided by the county board of commissioners. This section does not alter or diminish the legal responsibility of the state Department of Health and Human Services or a county juvenile agency to receive juveniles committed by the court. MCL 712A.16(3).

C. Costs

If the court arranges for the board of juveniles temporarily detained in private homes or in a child care institution or child-placing agency, a reasonable sum fixed by the court for their board shall be paid by the county treasurer as provided in MCL 712A.25. MCL 712A.16(4).

An order of disposition placing a juvenile in or committing a juvenile to care outside the juvenile's own home and under state, county juvenile agency, or court supervision shall contain a provision for the reimbursement by the juvenile, parent, guardian, or custodian to the court for the cost of care or service. MCL 712A.18(2).

An order of disposition placing a juvenile in the juvenile's own home pursuant to subsection (1)(b) may contain a provision for the reimbursement by the juvenile, parent, guardian, or custodian to the court for the cost of service. MCL 712A.18(3).

D. Michigan Department of Health and Human Services

Further information regarding costs and reimbursement for child/foster care can be obtained from the Michigan Department of Health and Human Services.

Michigan Department of Health and Human Services
Attention: Jenifer Pettibone
235 South Grand Avenue
Suite 407
Lansing, MI 48909
517-335-3919

For questions about licensing, contact Program Manager, Bill Johnson at 517-284-9742 or the licensing consultant for the court-operated facility.

8-11 Delinquency Prevention Programs

A. Establishment

The family division of the circuit court has the authority to establish or assist in the development of a program or programs within the county to prevent delinquency and provide services to act upon reports submitted to the court related to the behavior of children who do not require formal court jurisdiction but otherwise fall within the jurisdiction of the court pursuant to MCL 712A.2(a). These services shall be used only if they are voluntarily accepted by the child and his or her parents, guardian or custodian. MCL 712A.2(e).

B. Funding

Unless the program is approved as an in-home care project or as activity for which basic grant money is used, funding must come from the county general fund or a grant from other public or private resources.

8-12 Circuit Court Family Counseling Services

A. Authority

The circuit court family counseling service was created by the Legislature in 1964. The statutes were substantially amended in 1980. MCL 551.331 *et seq*.

B. Function

The family counseling service is an arm of the circuit court and may either be operated separately or be combined with other court services. The circuit court may enter into contracts with the state or private agencies for all or part of the family counseling services to be provided in the judicial circuit. The court shall give preference to the purchase of services, but may provide direct service delivery if any of the following applies:

1. Quality services are not available from a private source or government agency.

2. The provision of direct service delivery is cost beneficial as determined by an independent audit.

3. The court has a program of direct services on the effective date of this act.

MCL 551.333.

The family counseling services shall provide assistance to the family division of circuit court pursuant to MCL 600.1043.

C. Funding

The act provides that the board of commissioners shall appropriate $15 of each marriage license fee and all income derived from fees for family counseling services. In addition, the board(s) may appropriate additional funds to maintain the service. The circuit court may not spend more than the amount appropriated by the board. MCL 551.332.

D. General Provisions

The circuit court shall prescribe rules and standards of eligibility for counseling. First priority for service shall be given to domestic relations actions in which a complaint or motion has been filed in the circuit court. A family is eligible for counseling by the family counseling service if at least one of the spouses has the residential requirements to file a complaint or a motion in a domestic relations action in the court. MCL 551.336.