



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

February 24, 2009

TO: Michigan Court Forms Committee (Circuit and District representatives only)

FROM: Traci R. Gentilozzi, Forms and Manuals Analyst

RE: Agenda and Materials for **March 5, 2009 Meeting**

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

Below is the agenda for the March 5 meeting for the Circuit and District Section of the Michigan Court Forms Committee. The meeting starts at 9:30 a.m. and ends at 3:30 p.m. **Luncheon reservations have been made for you; if you cannot attend, please contact me at least two days before the meeting.** Please note that our office is located at 925 West Ottawa. A map and directions are provided.

Although documentation is provided with the agenda, it would be helpful to bring a copy of the Michigan Court Rules and any other resources you believe are necessary.

Notice of Minor Revisions

Forms requiring minor changes, such as spelling, citations, grammar, punctuation, etc., will be corrected by the State Court Administrative Office and provided with the agenda materials, but do not require discussion or approval by the committee. Any of these forms will be discussed if members raise substantive issues or if also included in the agenda for other purposes. These forms will be corrected and distributed in June 2009: CC 219b, CC 257, MC 12, MC 13 (listed below for discussion on another issue), MC 206, MC 254, MC 270, MC 271, MC 274, MC 281b, and MC 321b.

District Session – 9:45 a.m. – 11:30 a.m.

1. Verified Pleadings and Declaration Language

Last year the committee asked the SCAO to research the need to include the standard

declaration language on various pleadings. Pursuant to MCR 2.114, only “verified” pleadings require an oath or, in the alternative, the declaration language. Therefore, the SCAO recommends the declaration language be removed from the following forms because there is no requirement that they be verified: CIA 04, DC 102a, DC102b, DC 102c, DC 102d, DC 103, and DC 107.

2. CIA 02, Judgment, Civil Infraction

The SCAO believes this form does not accurately reflect the differences between traffic civil infractions and nontraffic state and municipal civil infractions. It is suggested the note to the defendant be revised to say: “TO DEFENDANT: If you fail to pay this judgment, the Secretary of State may be authorized to take action against your driving privileges. ...” A draft is provided.

3. CIA 03, 14-Day Notice, Civil Infraction

The SCAO believes this form does not accurately reflect the differences between traffic civil infractions and nontraffic state and municipal civil infractions. It is suggested that items 1 and 4 be revised to reflect that the action is optional, due to the fact that the action may be inappropriate in state and municipal civil infractions. It is suggested that item 1 be changed to say: “the Secretary of State will immediately suspend your driving privileges for most driving offenses.” It is also suggested that item 4 be changed to better reflect the statute, MCL 257.321a(7) and (8). It is suggested that item 4 say: “your operator’s license will not be issued or renewed if this notice is for multiple parking violations or a nontraffic state civil infraction.” Because the statute speaks in terms of two or more parking violations if the violation involves handicap parking and six or more for other parking violations, but also speaks about either one or less than six violations, the use of “multiple parking violations” is the appropriate language to cover all situations. A draft is provided.

4. CIA 06, Order to Show Cause, Civil Infraction

Last year the committee discussed whether this form meets the minimum requirements of MCR 3.606. While MCL 257.908 specifies the procedures for noncompliance with a judgment, MCR 3.606 may supersede these provisions pursuant to MCR 1.104. The committee discussed how often this form is used and suggested that MC 230, Motion and Order to Show Cause, be used instead because it complies with MCR 3.606 and MCR 2.107(B)(1)(b), which requires personal service in contempt proceedings unless the court orders otherwise. The committee tabled any further discussion and suggested an inquiry be republished in 2009 regarding whether MC 230 should be used instead of CIA 06.

5. DC 40, Notice of Seizure of Personal Property Subject to Forfeiture without Process and Order
DC 41, Motion and Order to Seize Personal Property Subject to Forfeiture
DC 42, Application and Ex Parte Order to File Lien on Real Property Subject to Forfeiture
DC 43, Notice of Seizure and Intent to Forfeit and Dispose of Property
DC 44, Order for Return of Property or Discharge of Lien in Forfeiture Proceedings
DC 45, Notice of Intent to Forfeit and Dispose of Property
DC 46, Order Following Forfeiture Proceedings
DC 47, Order of Distribution in Forfeiture Proceedings

The case title on these forms was designed for criminal cases, but there is a question whether this is appropriate because the matter is not the State of Michigan against the defendant, or even the plaintiff against the defendant. Rather, the matter is in regard to the forfeited property. It is suggested that the current case title be replaced with “In re _____” or “In the matter of _____.”

6. DC 84, Affidavit and Claim, Small Claims

Effective July 1, 2009, the maximum amount for small claims cases is as follows: (1) beginning July 1, 2009 – \$4,000; (2) beginning July 1, 2010 – \$4,500; (3) beginning July 1, 2011 – \$5,000. The form should be revised to reflect the new amounts. A draft is provided. **NOTE:** Senate Bill 786, which would have increased the maximum dollar amount for small claims cases, was pocket vetoed on January 21, 2009, and did not become law. Therefore, this discussion item has been removed from the District Court Session of the agenda.

A request has been made that item 11 be changed to, “I believe the defendant is is not mentally competent” (rather than incompetent). It is asserted that plaintiffs are improperly marking this item.

See also comment made during publication.

7. DC 102d, Complaint, Termination of Tenancy, Mobile Home Park-Mobile Home Owner, Just-Cause Termination
DC 105a, Judgment, Termination of Tenancy, Mobile Home Park-Mobile Home Owner, Just-Cause Termination

It has been suggested that these forms apply to persons who rent mobile homes, and not just to persons who own mobile homes. See the attached e-mail. The committee is asked to determine the scope of these forms in light of MCL 600.5779, MCL 600.5775(2)(f), and the original legislative analysis. The history of these forms is attached. See also comment made during publication.

8. DC 104, Summons, Landlord-Tenant/Land Contract

The accuracy of the Proof of Service has been questioned. Based on the fact that personal jurisdiction over the defendant must be acquired for money judgments, substituted service and service by attachment, without court order, are permissible only for possession judgments. The SCAO suggests a use note be added to the Proof of Service as follows: "TO PROCESS SERVER: You are to serve the summons and complaint and attachments as instructed. You must make and file your proof of service with the court clerk. If you are unable to complete service, you must return this original and all copies to the court clerk. NOTE: Substituted service and service by attachment are only permissible for possession judgments. Use MC 303, MC 304, and MC 307 for alternate service when a money judgment has been requested." A draft is provided. See also comment made during publication.

9. DC 107, Order of Eviction

The Michigan Court Officer, Deputy Sheriff and Process Servers Association has asserted the Order should indicate that personal property be removed in addition to the person(s). The association has suggested the Order be revised to say: "You are ordered to remove the above named defendant(s) and their personal property from the premises described and to restore peaceful possession to the plaintiff." The committee should note there is no statutory obligation in MCL 600.5744 to remove personal property or possessions from the premises. Included are comments made during publication.

10. DC 118, Complaint and Summons Regarding Dangerous Animal

It has been reported that plaintiffs are not attaching facts in support of their claims, as directed on the form. A request has been made that the statement, "Facts in support of the above claim(s) are stated in the attached document" be highlighted or set off from the remainder of the form. It has also been suggested that space be included for the complainant's telephone number. A draft is provided.

11. DC 225, Complaint, Misdemeanor

A district court has indicated that it is being asked to accept a criminal Complaint and a Warrant on one page to save paper. The judge has inquired whether this is appropriate. These are two separate documents that serve different legal purposes and were designed in a single packet to facilitate completion by the complainant. Is it appropriate to merge these particular documents into one?

The committee should also consider whether the form meets the minimum requirements of MCL 764.1b. The Warrant does not include the following information, as prescribed by statute: (1) "command the peace officer to take the person, without unnecessary delay, before a magistrate of the judicial district in which the offense is charged to have been committed, to be dealt with according to law," and (2) "direct that the warrant, with a proper return noted on the warrant, be delivered to the magistrate before whom the

arrested person is to be taken.” In addition, the statute indicates the Warrant may also require the peace officer to summon the witnesses named in the Warrant. Should the language on the Warrant be revised accordingly?

12. New Form, Affidavit and Counterclaim, Small Claims

The committee reviewed a draft of this form last year. The members suggested a case number field be added to item 1 and approved the draft with that minor change. Members also asked that an Order transferring the case be added to the form for review in 2009. A modified draft is attached. The addition of the Order requires additional copies for the distribution, so this issue should also be discussed.

Other questions include: (1) Should the distribution at the top of the form say, “Original – Transferring court” or “Original – District court”? (2) Is “true copy” necessary in item 3, the NOTE, and the Certificate of Mailing? While MCL 600.8423 says a “true copy of the complaint” shall be attached to the affidavit, *Michigan Trial Court Case File Management Standards* indicate that only MCR 3.211(H)(1) requires the actual use of these words. (3) In the Order, is it sufficient to say, “This action is transferred to _____ ...”? Or should the language be more specific and say, “The action in the small claims division of the district court is transferred to _____ ...”? See also comment made during publication.

Joint Session - Circuit and District - 11:30 a.m. – Noon

1. Proof of Service Fees

The Michigan Court Officer, Deputy Sheriff and Process Servers Association has requested the box for designating the Proof of Service fees be expanded to list the different types of fees or, in the alternative, somehow be updated to reflect the provisions in MCL 600.2559. Does the fee box need revised? Do the courts need a detailed list of fees? A draft of a proposed fee box is provided. See also the attached e-mail.

2. Verified Pleadings and Declaration Language

Last year the committee asked the SCAO to research the need to include the standard declaration language on various pleadings. Pursuant to MCR 2.114, only “verified” pleadings require an oath or, in the alternative, the declaration language. Accordingly, the SCAO recommends the declaration language be removed from the following forms because there is no requirement that they be verified: MC 01b, MC 35, MC 72, MC 221, MC 222, MC 258, MC 321b, MC 501, and MC 503.

3. Clerk of the Court, Deputy Clerk of the Court, and Court Clerk

Last year the committee discussed the inconsistent use of “clerk of the court,” “deputy clerk of the court,” “deputy clerk,” and “court clerk” beneath the signature lines on court

forms, and considered whether a single standard could be applied. The committee recommended the SCAO identify and create a list of forms for the committee's consideration that contain a "clerk of the court" signature line. Due to the large number of recently revised forms, the fact that this would also affect a large number of forms with no significant benefit, and the fact that some of these differences are intentional, the SCAO recommends this item be removed from the agenda.

Lunch - Noon - 12:30 p.m.

Joint Session continued – 12:30 p.m. - 2:30 p.m.

4. E-mail Addresses

A request has been made by the Michigan Court Officer, Deputy Sheriff and Process Servers Association that a field for the plaintiff's e-mail address be included in the case title of forms that require Proof of Service. It is asserted this would allow more timely notification to the plaintiff once the document is served. The committee should note that no statute or court rule requires an e-mail address in the caption, and the SCAO-Approved forms typically do not include fields that have not been mandated by statute or court rule. By including this field in the caption, it implies it is mandated. Should this field be added to certain forms and, if so, which ones and where? See the attached e-mail. Included are comments made during publication.

5. MC 02, Appearance

A request has been made that a field for the attorney's e-mail address be included for assistance in sending notices. It is asserted some attorneys stipulate that court notices can be sent to them electronically. Should the e-mail address be on this form instead of in the stipulation? See also comment made during publication.

6. MC 06, Notice to Appear

A request has been made to develop a Notice to Appear that is geared more toward civil cases or, in the alternative, to modify the current Notice to Appear to allow for civil matters. It is claimed that it would be beneficial to have certain proceedings on the same Notice to Appear. The following proceedings are currently listed on the form: Pretrial Conference (civil), Preliminary Examination, Jury Selection (civil), Jury Trial (civil), Nonjury Trial (civil), Sentencing, Motion (civil), Arraignment, Informal Hearing, Formal Hearing, and Blank (civil). Some of these proceedings relate to traffic/criminal proceedings only. Should the existing form be revised, or should a new form be developed?

7. MC 07, Default Request, Affidavit, and Entry
MC 07a, Default Request, Affidavit, Entry and Judgment (Sum Certain)

The Michigan Creditors Bar Association has requested that item 4 on MC 07 and item 5 on MC 07a be removed. Currently, items 4 and 5 both state: “The claim is is not based on a note or other written evidence of indebtedness.” The MCBA asserts there is no need to include this provision because MCR 2.603, as amended September 1, 2008, no longer requires written instruments to be filed with the court. The SCAO left this provision on the form as a statement of fact from the plaintiff to the defendant, and it is not intended to require anything for the court’s consideration. Is this a training issue for the courts? Or is this statement incorrect or simply unnecessary?

8. MC 13, Request and Writ for Garnishment (NonPeriodic)
MC 52, Request and Writ for Garnishment (Income Tax Refund/Credit)

It has been suggested that these forms may not adhere to the applicable court rules because there is one line for “Plaintiff/Agent/Attorney signature” in the Request section. Accordingly, the committee needs to discuss the following: (1) Does a writ of garnishment filed by a corporation need to be signed by an attorney? (2) Is it required that the writ only be signed by someone with knowledge of the facts? (3) Are both signatures (attorney and someone with knowledge of facts) required?

MCR 3.101(D) says that “the clerk shall issue a writ of garnishment if the plaintiff, or someone on the plaintiff’s behalf, makes and files a statement verified in the manner provided in MCR 2.114” MCR 2.114(C) says that “every document of a party represented by an attorney shall be signed by at least one attorney of record.” The more specific rule in MCR 3.101 supersedes the more general rule in MCR 2.114, but is there an exception because MCR 3.101 refers to MCR 2.114? Or does this reference to MCR 2.114 only refer to the making and filing of a statement verified as required by MCR 2.114?

MC 13 also has an error on page three under “Examples of Income Exempt from Garnishment.” The citation in the first bullet, Individual Retirement Account, should be changed to MCL 600. 6023(1)(k).

Included are comments made during publication.

9. MC 14, Garnishee Disclosure

A request has been made that item 5b include the directive “Enter 0 if negative” at the end. If the form is manually completed, it is asserted that line 5b could result in a negative number, which could be “mistakenly” withheld. If this happens, it is argued the plaintiff may not know the garnishment is contrary to law and the plaintiff would therefore be receiving a benefit when it should be receiving nothing. Should the directive be added?

10. MC 17, Certificate of Satisfied Judgment

An attorney has requested this form be expanded to include other orders, including discharge of lien and lis pendens. This would require changing the title of the form to “Certificate of Satisfied Order,” or something similar.

A court clerk has requested that this form be modified for releasing garnishments because many garnishments are released due to a judgment being satisfied, and it would save time if the garnishment could be released simultaneous with the satisfaction of judgment. There is already a separate Garnishment Release form, MC 50. The problem with combining these is that the plaintiff in the garnishment proceeding may not be the plaintiff in the underlying civil case. Should these remain separate forms?

It has also been suggested that the statement, “The judgment has been paid in full to the court on _____” should be changed to “The judgment has been paid in full.” It is asserted that judgments are paid to the plaintiff, and not the court. Is this a correct interpretation of MCR 2.620(2)?

See also comment made during publication.

11. MC 19, Request and Order to Seize Property

The Michigan Court Officer, Deputy Sheriff and Process Servers Association has requested that the checkbox in item 4 be deleted and the language changed to: “Deposit proceeds of sale with the plaintiff after deducting statutory fees and statutory expenses, unless ordered by the court to deposit proceeds with the court.” The association asserts this change is necessary because (1) plaintiffs mark the box not understanding its purpose, (2) the courts often refuse to take money for deposit, and (3) the SCAO accounting policies for the trial courts direct the courts to avoid accepting money. However, the SCAO notes there is no accounting policy that directs trial courts not to accept money/proceeds from the sale of seized property. Section 6-05 of the *Michigan Court Administration Reference Guide* states, “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.” Court rule requires the money be deposited with the court. The court should receipt the money as a trust payment, deposit the money into the trust account, and disburse the money to the plaintiff from the trust account. Is there a way to make clear that the Order is to be completed by the court and not the plaintiff?

The association has also suggested that the language in item 6 be changed to: “Unless earlier satisfied in full or in part, you must return this order not less than 20 days, nor more than 90 days, from the effective date.” It is argued that the current language prohibits the return before 20 days, even if satisfaction has occurred. According to the association, the 20-day minimum is based on “old law” (MCL 600.6002).

Also, does MCR 2.621 generally apply to this form? If not, is there a requirement elsewhere that the request be verified?

See also comment made during publication.

12. MC 39, Judgment, Claim and Delivery

When the form was revised in 2008, the line for “costs” was inadvertently deleted and should be added back to the form. A draft is provided.

13. MC 50, Garnishment Release

A question has arisen regarding who should serve this document. Must the court sign the Certificate of Mailing and send the copies to the garnishee, the defendant, and the plaintiff? Or may the court leave it blank and return all copies to the plaintiff for service? The SCAO has researched the form’s history and concluded it was originally intended as a document prepared by the court based on some action by the plaintiff or the court itself. Therefore, the SCAO believes the clerk should serve the document. This eliminates any doubt that the garnishee has been served.

It has been suggested the “as of” language on this form be changed to: “Any amounts withheld on or after _____ shall be returned to the defendant and any further
Date
withholdings shall be discontinued.” It is asserted the “as of” language is unclear as to what happens with funds that have been withheld as of the release date and that any money withheld before the release date and not yet sent to the plaintiff must be given to the defendant.

A garnishee defendant has requested that the form be redesigned so the defendant’s social security number is not near the address, for those courts that use window envelopes for mailings.

Included are comments made during publication.

14. MC 203, Writ of Habeas Corpus

Last year, when reviewing this form for possible application of standards of service, the committee questioned the purpose of the Notice to Prosecuting Attorney and discussed how the form is actually used. The committee tabled any further discussion and requested the SCAO research the form’s development. In its research, the SCAO found the Notice to Prosecuting Attorney (“notice”) has been on the form since it was first developed in 1981. The SCAO-Approved form was developed based on a local court form and the validity of the notice was not discussed by previous forms committees. On the 12/84 version of the form, a checkbox option was removed before the statement “When required” and the language “by MCR 3.303(L)(2)” was added to the notice. MCR 3.303 was amended, effective March 1, 1985, and the form was revised

accordingly to require notice to the prosecuting attorney in certain instances. MCR 3.303(L)(2) provides that the prisoner may not be discharged “until sufficient notice of the time and place of the hearing is given to the prosecuting attorney of the county within which the prisoner is detained”

Last year it was suggested the form might need to be redesigned. Is this still a necessary consideration?

15. MC 218, Order Revoking Release and Forfeiting Bond, Notice of Intent to Enter Judgment

A request has been made that language in the Order section be changed. The following is suggested: “The surety or other depositor shall appear before the court on _____ to show cause why judgment should not enter against him/her

Date and time

for the full amount of bail/surety bond.” It is claimed the form is potentially confusing because it distinguishes between defendant, parent, surety, and other depositor in the Notice section, but the show-cause language in the Order section only refers to the surety. It is asserted that MCL 765.6(2) and MCL 765.28 distinguish between a surety bond executed by a surety approved by the court (bail bond company) and a bond executed by an unlicensed surety (other depositor). It is questioned whether a show-cause date has to be set for a situation other than a 10% bond posted by a surety. The SCAO believes that MCL 765.28 is applicable to anyone who is posting bond on behalf of a defendant and that a third party is considered a surety. Does the current language inaccurately indicate that only a surety approved by the court has to attend the show-cause hearing, even though notice must be provided to any depositor? Should the language on the Order section be revised to clarify that any person who posted bond is considered a surety? See also comment made during publication.

16. MC 219, Judgment of Sentence

The SCAO suggests that the word “Licensing” be deleted from item 4 because the citation to MCL 257.625(20)(b) on page two refers to 257.625n and 257.904d, which involve vehicle sanctions and not licensing sanctions. The SCAO also suggests the language on page two of the form be revised to say: “Sanctions are reportable to the State Police pursuant to:

- MCL 333.7408a(11) and MCL 333.7408a(12)(b), including sentences for imprisonment under 90 days
- MCL 257.625(21)(b).”

A draft is provided (added language underlined).

17. MC 222, Petition and Order for Court Appointed Attorney

A request has been made to add a field for obtaining a financial background report on a defendant who is requesting court-appointed counsel. It is asserted this would be helpful

in determining whether counsel should be appointed and, if appointed, whether contribution or reimbursement is appropriate. The proposed language is: “8. FINANCIAL REPORT AUTHORIZATION I authorize the court, the court’s funding unit, and their employees or agents to obtain a consumer credit report and other financial information about me from a consumer credit reporting agency or any other entity.” A draft is provided. Is this appropriate?

18. MC 227, Application to Set Aside Conviction

The Attorney General’s Office and the Michigan State Police have requested that personal service be removed from the Proof of Service. Therefore, the language “or by leaving it at his/her office” and “or by leaving them at the department” should be deleted. The standard language “addressed to the last-known address” should also be added. On the Instructions page, the language “or deliver” should be deleted from items 7 and 9, and “mailed or delivered” in item 10 should be replaced with “served.”

The Michigan State Police address has changed and item 10 should be revised accordingly: Michigan State Police, Criminal Records Division, 106 W. Allegan, Lansing, Michigan 48933.

A draft is provided.

19. MC 230, Motion and Order to Show Cause

An attorney has claimed the affidavit on this form does not comply with MCR 3.606(A) and MCR 2.119(B) because language regarding “personal knowledge” and “competent to testify” is not included. The attorney has proposed the affidavit be revised to say: “I am an individual who is a legal adult and, if sworn, is competent to testify and has personal knowledge of the matters stated herein.” To better reflect the court rules, the SCAO has proposed the affidavit say: “This affidavit is made on my personal knowledge and, if I am sworn as a witness, I can testify competently to the facts in this motion and affidavit.” This will mean all affidavits in motions must be revised accordingly. The SCAO will designate the forms that might be affected for review by the committee in 2010.

In light of this proposed change, the SCAO suggests that item 2 be revised to better reflect MCR 2.119(B)(1)(b) by adding a parenthetical instruction: “... (state with particularity admissible facts establishing or denying this motion)” or something similar.

A draft is provided.

20. MC 235, Motion and Order for Destruction of Fingerprints and Arrest Card

Last year the committee reconsidered the effect of *McElroy v Michigan State Police* on this form and concluded the form was unaffected by the opinion. The committee was asked to reconsider the issue because an attorney claimed the *McElroy* opinion clearly

indicates that using this form is inappropriate for any dismissal of any nature. This is based on a view that the court must make a finding of not guilty in order for fingerprints to be destroyed. The attorney argued that because dismissals are not necessarily the result of a finding of not guilty, the second option in item 1 should be deleted from the form.

However, this was not the only interpretation the committee considered. The committee noted that MCL 28.243(12)(h) could allow for dismissal of a case because a person should not have been charged in the first place and there is no basis for the case. In this instance, if the Michigan State Police has not already destroyed the fingerprints, the court could order them destroyed by using MC 235.

The SCAO continued to research the issue after last year's committee meeting. In July 2008, the SCAO received a memorandum setting forth the Michigan State Police's position on MC 235 and *McElroy*. The memo is attached. After receiving this memo, the SCAO met with representatives from the Michigan State Police. A summary of that meeting is attached.

As a result of meeting with the Michigan State Police, the SCAO concluded the following revisions should be made: (1) delete the second checkbox in item 1, (2) incorporate the exceptions of MCL 28.243(9)(a)-(f) in item 2, and (3) include a note that this form is not to be used in conjunction with an application to set aside an adjudication or conviction (MCL 780.621, MCL 712A.18e).

A draft is provided. See also comment made during publication.

21. MC 238, Judgment after Bond Forfeiture

A request has been made that the language "One quarter of the full bail amount is to be paid by the surety when a 10% cash bond ..." be revised because it only applies to sureties able to post bond pursuant to MCL 765.6(1) – e.g., bail bond companies and a surety who is actually a "depositor." However, no substitute language was proposed. Therefore, the SCAO has suggested the following language be used: "If a 10% bond is allowed by the court and a surety bond for one quarter of the full bail amount has been posted by a surety pursuant to MCL 765.6(2), judgment against the surety is limited to that one quarter. The remaining three quarters of the full bail amount plus costs are the responsibility of the defendant/parent, less the amount of cash deposited." A draft is provided. See the attached e-mail.

22. MC 241, Bond

A request has been made that the "Terms and Conditions" section be modified to allow a third party to post bond as though the defendant posted it, so the court may use the bond toward payment pursuant to MCR 6.106(I)(3). Is this a proper reading of the court rule? A draft is provided.

Another request has been made that the form be revised to comply with a September 2007 amendment to MCR 6.106, which provides that, if a defendant violates a condition of bond, other than appearance, the court may enter a judgment against the defendant. It is asserted that the current language is misleading and that courts are entering judgments against bail agents instead of defendants when defendants are found to have violated a condition of their bond aside from appearance. It is also claimed that some courts are dictating that bail agents either sign MC 241 as it is, or not post bonds in the county. It has been suggested that the entire "Terms and Conditions" section be deleted and replaced with new language. Instead, the SCAO proposes the following alternative language: "I understand and agree if all the terms and conditions on the face and on the back of this bond are not met by the defendant, or in the case of a surety bond if the defendant does not appear in court as required, the full amount of this bond may be forfeited and a judgment entered for the entire amount of the bond." However, in light of the interpretation regarding who is a surety, as discussed in agenda item 15 of the Joint Session, perhaps this language applies to all depositors other than the defendant.

23. MC 246, Motion, Affidavit and Summons Regarding Probation Violation

In 1995, the committee agreed that MC 229 (Petition, Affidavit, and Bench Warrant) and MC 230 (Motion, Affidavit, and Order to Show Cause) would be more effectively used for probation violations and DCY 246 was deleted accordingly. In 2003, DCY 246 was reinstated as MC 246 for use in place of MC 229 and MC 230, primarily because of a Court of Appeals case (*Scherf*), which made it clear that a bench warrant for probation violation must be supported by affidavit and that MCR 3.606 applied to probation violations for that purpose. Because many probation officers did not like MC 229, they were creating their own petitions and orders and were not complying with MCR 3.606. By reinstating the use of MC 246, probation officers were more likely to comply with the rule. Then in 2004, because of the processing problems with the combined summons and bench warrant, the committee decided MC 229 should be used for issuance of the bench warrant, while MC 246 should be used solely for issuing a summons.

When this change was made, the committee did not discuss whether issuance of a summons is regulated by MCR 3.606, so the notary was left on the form. It has been suggested that MCR 3.606 does not apply to probation violations with regard to show cause because it is the probation officer's responsibility to prove to the court that a violation occurred. Therefore, MCR 3.606 is not the appropriate rule for issuance of a summons after a finding of probable cause. Based on statute and case law, MCR 3.606 does apply to the issuance of a bench warrant in probation violation proceedings, so MC 229 will continue to be used. However, because MCR 3.606 does not apply to the issuance of a summons, the court rule citation should be removed from the foot of the form and the jurat removed. There is no need for the declaration in MCR 2.114 either because the probation officer's motion does not need to be verified.

24. MC 273, Personal Service on Prisoner and Affidavit

Issues have arisen regarding service on prisoners because, in some facilities, prisoners are

being charged for each notarized signature, which may result in prisoners refusing to sign.

MCR 2.103(C) says: “If personal service of process is to be made on a person in a governmental institution, hospital, or home, service must be made by the person in charge of the institution or by someone designated by that person.” First, it is suggested the court rule is being interpreted to mean that service isn’t accepted by the warden on behalf of the prisoner, but that the warden must personally serve the prisoner and, therefore, the prisoner should sign and the signature should be notarized. The SCAO believes that MCR 2.104 does not require an affidavit if the prisoner is willing to sign. The warden can show proof of personal service on the prisoner by completing the affidavit stating the facts of service – this is why the form includes an affidavit of service. But if the prisoner acknowledges service, the affidavit does not need to be completed. To make this clearer, the SCAO suggests adding instructions to the form that state the affidavit of service is prepared only when the prisoner does not acknowledge service.

Second, the Department of Corrections has inquired whether a motion needs to be filed to effectuate service, or whether a request (verbal or written) to the court clerk is sufficient. The SCAO has taken the position that the prisoner does not have to sign the acknowledgment of service; the warden/administrator is under oath that he or she served it on the prisoner and this is sufficient. A motion does not need to be filed and no “order” is issued. MC 273 is simply a “request” to the warden/administrator to serve court documents on the prisoner because a process server cannot do so. An attorney can ask a court clerk to complete the request and, if the court doesn’t want to pay for the cost of mailing it to the warden, the clerk can return it to the attorney, who can mail it to the warden.

A draft is provided (new language underlined).

25. MC 283, Order for DNA Sample

The Michigan State Police has indicated it is experiencing problems with this form. Specifically, it is having trouble matching samples with cases in those instances where a sample is not required because it has already been taken. A draft that addresses the MSP’s concerns is provided.

26. MC 284, Binding Arbitration Award

The committee is being asked to consider whether to modify the field for judgment interest in the same manner as MC 10, Judgment.

27. MC 287, Financial Statement

A request has been made to add a field for the defendant’s e-mail address. It is asserted that debt collectors are now using e-mail and text messaging, in addition to telephone

contact. A draft is provided.

28. MC 304, Order Regarding Alternate Service

A request has been made to expand the use of this form pursuant to MCR 2.107(B)(1)(b). A draft is provided.

29. MC 307, Order for Service by Publication/Posting and Notice of Action

It has been questioned whether the word “attached” should be deleted from the first line on the Affidavit of Mailing. The SCAO maintains the language is accurate pursuant to MCR 2.105(I) because the defendant needs to have the original Summons and Complaint along with the Order. Based on agenda item 28 above, it may be necessary to add references to Summons and Complaint or other paper being served in items 1 through 3 of the Order and also in the Affidavits.

30. New Form, Renewal of Civil Judgment

A request has been made to develop this form pursuant to MCL 600.5809. A proposed Affidavit Regarding Enforcement of Judgment is provided. A memorandum from the SCAO regarding renewal of judgment states that a plaintiff can seek a renewal by: (1) filing an ex parte motion and paying the motion fee, or (2) filing a summons and complaint and paying the applicable filing fee. Therefore, the SCAO believes an Affidavit is inappropriate. See the attached memorandum and other materials. Because a judgment can be renewed by ex parte application pursuant to *Van Reken v. Darden, Neef & Heitsch*, and successful collection actions toll the limitation period, the SCAO suggests that an Ex Parte Motion and Order be developed. Included are comments made during publication.

31. New Form, Order Allowing Alternate Court Officer to Seize Property

The Michigan Court Officer, Deputy Sheriff and Process Servers Association has suggested it would be beneficial to have an ex parte order to temporarily appoint court officers who are seizing property in a county other than the one to which he/she is officially appointed. Is this necessary? See also comment made during publication.

32. New Form, Answer, Landlord-Tenant Proceedings

A request has been made to develop an Answer in landlord-tenant for proceedings involving rental property (except land contracts). See the attached letter and draft. Included are comments made during publication.

33. New Form, Order Cancelling Wage Assignment

A request has been made to develop a standard Order to notify employers that a debt has

been satisfied and/or voluntary payments are being made. A draft is provided.

Circuit Session - 2:30 p.m. - 3:30 p.m.

1. Verified Pleadings and Declaration Language

Last year the committee asked the SCAO to research the need to include the standard declaration language on various pleadings. Pursuant to MCR 2.114, only “verified” pleadings require an oath or, in the alternative, the declaration language. Accordingly, the SCAO recommends the declaration be removed from the following forms because there is no requirement that they be verified: CC 375, CC 375M, CC 377, CC 377M, CC 378, and CC 379. Standard language must also be applied to the Proofs of Service on these forms.

2. CC 265, Notice of Right to Appellate Review and Request for Appointment of Attorney

The issue before the committee is whether to revise the language on the form to better track MCR 6.425(F)(4), which states: “When imposing sentence in a case in which sentencing guidelines enacted in 1998 PA 317, MCL 777.1 *et seq.*, are applicable, if the court imposes a minimum sentence that is longer or more severe than the range provided by the sentencing guidelines, the court must advise the defendant on the record and in writing that the defendant may seek appellate review of the sentence, by right if the conviction followed trial or by application if the conviction entered by plea, on the ground that it is longer or more severe than the range provided by the sentencing guidelines.” (Emphasis added.)

It has been suggested by the Appellate Defender Commission that the language in the “Notice of Right to Appellate Review” does not advise the defendant exactly as provided in the court rule. Should the form be modified accordingly?

3. CC 376, Personal Protection Order (Domestic Relationship)

The on-line version of this form has been revised to include a use note that says: “NOTE: The information in item D is about the respondent, not the petitioner.” Does the committee want the same note on the paper version of the form? Or should a note be included on the form’s Instruction page instead? Included are comments made during publication.

4. CC 381, Notice of Hearing on Petition for Personal Protection Order

The language that follows “TO THE PETITIONER” should be revised to comply with MCR 3.705(B)(1). When the language was modified in 1999 to accommodate proceedings involving minors pursuant to MCL 712A.2(h), subchapter 3.700 did not apply to minors. Instead, the language was designed to comply with the requirements of subchapter 3.900. MCR 3.705(B)(1) became applicable to minors in 2002, and the form

should have been revised at that time.

5. CC 387, Order Vacating Conviction and Entering New Disposition

Development of this form is required by MCL 769.16a, as amended by 2008 PA 508, effective January 13, 2009. Use of the form is related to procedures outlined in MCL 770.16, as amended by 2008 PA 410, effective January 6, 2009. A draft is provided.

6. New Form, Order for Admission to State Bar of Michigan

The State Bar of Michigan has asked the SCAO to adopt a standard Order for circuit courts to use when admitting attorneys to the bar. It is believed this standard Order will help reduce the incidents of newly-admitted attorneys practicing law in Michigan before they are formally admitted to the State Bar (i.e., before they register with the State Bar and pay their dues). See the attached e-mail.

The language of the proposed Order would track Rule 15(3) of the Rules Concerning the State Bar of Michigan as follows: "Pursuant to Rules Concerning the State Bar of Michigan 15, section 3, a person may not lawfully practice law in the State of Michigan without first having become a member of the State Bar of Michigan." A draft is provided.

Also, should this be a standard Oath of Office rather than an Order?

Attachments

cc: Steve Capps
Amy Byrd
Anne Boomer
Sally LaCross
Jim Inloes
Jill Booth
Leslie Sauerbrey
JIS
Regional Administrators



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

February 24, 2009

Hon. William C. Buhl
Chair, Michigan Court Forms Committee
36th Circuit Court
Courthouse
Paw Paw, MI 49079

Dear Judge Buhl:

Enclosed is the agenda and all materials for the March 5, 2009 Michigan Court Forms Committee. As in previous years, you will be presiding over the meeting as chairperson. Thank you for continuing in this position.

If you have any questions, please call me at 517-373-2217.

Sincerely,

Traci R. Gentilozzi
Forms and Manuals Analyst
Trial Court Services

Enclosures

CIRCUIT SESSION

DISTRICT SESSION

JOINT SESSION