



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

March 9, 2007

**MICHIGAN COURT FORMS COMMITTEE  
Minutes of March 8, 2007 Meeting**

Present: Hon. William C. Buhl, 36<sup>th</sup> Circuit Court, Chair  
Jon M. Haskell, (for Mary Cannon)  
Jerome Fekin, 3<sup>rd</sup> Circuit Court  
Hon. John Holmes, 10<sup>th</sup> District Court  
Rose L. Williams, 36<sup>th</sup> District Court  
Sidney McBride, 3<sup>rd</sup> Circuit Court  
Kevin McKay, 66<sup>th</sup> District Court  
Porferia Mellado, 6<sup>th</sup> Circuit Court  
Hon. David M. Parrott, 34<sup>th</sup> District Court  
Stacy L. Westra, Kent County Clerk's Office  
David R. Wiacek, 18<sup>th</sup> District Court  
Amy Byrd, State Court Administrative Office (staff)  
Jill Booth, State Court Administrative Office (staff)  
Dawn Childress, State Court Administrative Office (staff)  
Sandi Hartnell, State Court Administrative Office (staff)  
Marie Hassett, State Court Administrative Office, JIS (staff)

Absent: Keith Beasley, 16<sup>th</sup> Circuit Court

Meeting called to order 9:30 a.m.

Public Comment: Mr. Patrick Clawson presented to the Committee his recommendations regarding several of the agenda items. These recommendations were also provided in writing by Mr. Clawson and included in the agenda materials.

## **District Court Forms**

1. CIA 04, Judgment, Civil Infraction

The Committee agreed that the motion could apply to either an informal or a formal hearing; however, members indicated it was unnecessary to specify the type of hearing. Therefore, reference to “informal” was removed. Members also discussed whether the options in item 2 were even necessary since the defendant will be explaining the reasons anyway. Members concluded that it was useful to have this identified separately from the reasons that are provided. Members noted the citation at the foot of the form should be MCR 4.101(D).

The form was approved as revised.

2. DC 87, Affidavit of Judgment Debtor

Although the Privacy Act permits the collection of the full social security number when it is needed for collection purposes, the members expressed concerns about adding the full social security number on the form because of the increased work it would produce to make the information unavailable to the public. However, members acknowledged the lack of the full social security number would result in more discovery proceedings and that the information is needed by the creditor for collection purposes. Therefore, the Committee recommended reinstatement of the full social security number. Other changes were made to spelling and the MCL citation was added to the foot of the form.

The form was approved as revised.

3. Entry of Default by District Court Clerk Based on Review of Court File

After considerable discussion on a suggestion to develop a new default entry for use by the district court clerk pursuant to MCR 2.603(A)(1), the Committee agreed a form should be made available. However, several members pointed out this would be a good opportunity to redesign the current default entry forms. Currently, there is no clear “request for default judgment” form. Instead, the default judgment is entered when the plaintiff files the default judgment. The court rules clearly set forth three distinct processes: 1) the request for default entry, the entry, and notice of the default entry; 2) the request for default judgment, including any necessary affidavits (such as the military affidavit); and 3) the entry of the default judgment. Members indicated that if MC 07 was changed accordingly, there would not be a need for a separate district court default entry form. Since MC 07 is to be discussed in the joint session, the Committee deferred further discussion of the item until later.

The Committee indicated that the entry of the default does not conflict with the requirements of 50 USC 521 and MCL 32.517 because the law only requires that “the

court, before entering judgment for the plaintiff, shall require the plaintiff to file with the court an affidavit . . .” By redesigning the forms as suggested, the affidavit would be part of the request for default judgment, not the default entry.

4. Demand for Possession, Illegal Drug Use/Possession

The Committee agreed that development of a new form would be useful pursuant to MCL 600.5714(1)(b). Members reviewed the sample form and made several changes. Members discussed the need to specify the statutory basis for a complaint and concluded that it need not be stated specifically in the demand.

Since there is a separate notice for injury to the premises, the second option in item 1 was removed. Item 2 was revised to state that “You must move out within 24 hours from the date this notice was served.” Item 3 was revised to state that “If you do not move out, your landlord/landlady may take you to court to evict you.” The MCL citation was added to the foot of the form. **Staff Note:** Some of the language was reworded to match the design of the other notices.

The form was approved as revised.

DC 100c had been included in the agenda materials in case the Committee chose not to create a separate form. It was noted that the citations in the NOTE: and at the foot of the form were incorrect. They will be revised.

5. Small Claims Appeal of Right

Members agreed that a form for appealing a district court magistrate’s decision should be created pursuant to MCR 4.401(D). The Committee considered the sample from the 46<sup>th</sup> District Court, but members decided to use the current Claim of Appeal (form MC 55), stating it was preferable to creating another form. All that is needed is another option in item 1 for “district court magistrate.” Since bond on appeal is not required and a record is not made, those boxes would be checked accordingly in items 2 and 3. That can be added as an instruction if necessary. **Staff Note:** The masthead and a few other changes in item 1 were necessary for the addition to make sense.

MC 55 was approved as revised.

6. Affidavit and Counterclaim, Small Claims

The Committee discussed the requirement in MCL 600.8423(1) that the State Court Administrative Office create a form for filing a counterclaim in small claims. Members agreed that a form should be created, but since there has never been a request, review of a draft will be placed on next year’s agenda. Since this statute only refers to counterclaims that exceed the jurisdictional limit of the small claims division, this form would be a

transfer. All other counterclaims, which remain in the small claims division are done on DC 84 and no further change is required to that form. Staff will provide a revised draft of form DC 86 (Demand and Order for Removal) that incorporates language regarding the counterclaim. Kevin McKay provided sample language.

Development was tabled until 2008.

7. Complaint and Summons Regarding Dangerous Animal and Order Regarding Dangerous Animal

The Committee approved the complaint and order prepared by the State Court Administrative Office.

8. Advice Concerning Appeal

The Committee discussed whether a form should be created to advise defendants of the right to appeal pursuant to MCR 6.610(F)(3) and to appoint counsel pursuant to MCR 6.625(B). Although it is sufficient to advise defendants on the record of the rights, after considerable discussion about the advantages and disadvantages, members agreed item 11 of DC 213 should be amended to state the following: "An appeal to circuit court may be taken within 21 days from date of sentence. 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, if the request for a lawyer is made within 14 days after sentencing." The Advice of Rights will be given to the defendant at the time of sentencing, whereupon, the defendant will sign the form again, and another copy will be placed in the court file.

It was also recommended that language be added to the judgment of sentence if space is available.

DC 213 was approved as revised.

## **Michigan Court Forms**

1. Old Business

Dave Wiacek and Sidney McBride are still working on a complaint/request for habeas corpus. The item was tabled.

2. Proofs of Service

The Committee considered Mr. Clawson's suggestions to include fields for identifying the name, address, telephone number, and title/capacity of the person making service. Members declined to add fields for the address and telephone number, indicating the

person who hired the process server should provide that information upon request. If necessary the court will hold a hearing to determine the identity of the person, at which point the party would provide the necessary information. The Committee agreed that it would be helpful to include a field for the typed or printed name of the person who served process. All proofs/returns of service will be amended accordingly when any form that contains a proof/return of service is revised for another reason.

3. MC 01a, Summons and Complaint

The Committee remarked that it was unnecessary to change the title of this form or to add boxes for the names and addresses of the parties because MC 01 is the first of several pages, and subsequent pages of a complaint do not usually contain the names of the parties again. The form was unchanged.

4. MC 01c, Summons and Complaint With Affidavit (Account Stated)

The Committee spent considerable time discussing account stated versus assignment and complaint for sum certain. While members agreed that a complaint containing specific facts about assignment of debt would be helpful in weeding out complaints that do not contain the necessary proof that the debt is valid, they remarked the affidavit requirements for an account stated are complicated and need to be researched further before finalizing this form. Also, some members expressed concern about creating a complaint (affidavit) that shall be deemed prima facie evidence of indebtedness without providing a defendant with an answer form with accompanying affidavit. The Committee recommended the form be returned to the 46<sup>th</sup> District Court with a request that language meeting the affidavit requirements be included. In addition, consideration should be given to the difference between an account stated and assignment of debt. This form could be redesigned for use as a complaint for sum certain for use under MCR 2.111(B) by removing reference to the account stated and the affidavit.

Further development was tabled.

5. MC 07, Default Request, Affidavit, and Entry

The Committee agreed with the suggestion that item 2 be revised to require a bill of costs only when the statutory limit is exceeded and to separate from the field for the amount of damages any pre-filing interest that has been charged as specified by contract. The instructions and definitions at the foot of the form were also approved.

Members acknowledged the affidavit should include space for the affiant to state the facts upon which the conclusion regarding the defaulted party's military status is based. Members who were not present for the district court session of the meeting were advised of the suggestion to split the form into a default entry form and a request for default judgment form with affidavit. By doing so, there will be space available for stating such

facts and the confusion in procedure that has been produced by this form and MC 07a over the years, can be reduced. By creating a request for default judgment and affidavit form, it would make it more evident that notice of the request for default judgment, in all cases except those for sum certain, must be served at least 7 days before judgment is entered. Recent Court of Appeals cases have supported the need for this time frame between default entry and default judgment.

In order to avoid confusion, MC 07 will be deleted and new forms created using different numbers. The Default Entry will contain two sections: a request for default entry to be signed when a party is making the request (only item 1 of the existing form is necessary for this) and the notice of default entry. The notice of default entry portion will contain a use note indicating it can be completed by the district court clerk without the request of a party pursuant to MCR 2.603(A)(1). A certificate of mailing will be added to the form.

The new Request for Default Judgment and Affidavit form will contain items 2 through 5 and notary from MC 07, along with a certificate of mailing. A lead-in statement will probably be added indicating when the default entry was entered. This form will be used for all situations stated in MCR 2.603(B)(1). **Staff Note:** Additional changes were made, including the distribution of the form, based on MCR 2.603(B)(3).

Spelling corrections were noted. The two new forms will be typeset and distributed to the Committee for review. If no comments are received, the forms will be distributed in June with the rest of the forms revised at the meeting.

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

The Committee agreed with the suggestion that item 2 be revised to require a bill of costs only when the statutory limit is exceeded and to separate from the field for the amount of damages any pre-filing interest that has been charged as specified by contract. The instructions and definitions at the foot of the form were also approved.

Members acknowledged the affidavit should include space for the affiant to state the facts upon which the conclusion regarding the defaulted party's military status is based. One line will be added in item 4 for this purpose.

The Committee concluded that MCR 2.603(B)(2) does not require that a notice of default entry must be served before default judgment is entered and served, nor does it require a request for default judgment. Therefore MC 07a should be retained.

Spelling corrections were noted, and the form was approved as revised.

7. MC 10, Judgment

The Committee agreed with the recommendation to separately state pre-filing and

postfiling interest. Other minor changes to use of capitalization were approved.

The form was approved as revised.

8. MC 12, Request and Writ for Garnishment (Periodic)

The Committee agreed with the suggested instructions for the plaintiff, and the form was approved as revised.

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

The Committee agreed with the suggested instructions for the plaintiff, and the form was approved as revised. Spelling corrections were noted.

10. MC 20, Affidavit and Order, Suspension of Fees/Costs

The Committee considered recommendations from the probate section of the committee. Members agreed that a field for the number of people living in the household would be useful, but suggested it should refer to the "applicant's" household. Members stated it was unnecessary to add fields for describing the attached pleading or indicating the amount of the required fee.

The form was approved as revised.

11. MC 32, Notice of Case Evaluation and Acceptance or Rejection of Award

The Committee agreed to add item 3 pursuant to MCR 2.403(K)(5) and MCL 600.4915. Members also discussed whether space should be included in item 1 for indicating the amount of the award. After some discussion, it was decided this was unnecessary.

The form was approved as revised.

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

The Committee agreed with the suggested instructions for the plaintiff, and the form was approved as revised.

13. MC 62, Affidavit and Notice of Entry of Foreign Judgment

The Committee acknowledged that these affidavits will be notarized outside Michigan and agreed the notary should not reference Michigan. Members discussed what to do when a notary's seal was required, but concluded the notary law of Michigan applies (even though notarized by someone in another state), for which there is no requirement for a seal. Since the form can be used by someone in a foreign country pursuant to MCL

691.1151 et seq., reference to “or other jurisdiction” was added to the notary. Use of an upper case letter in the affidavit was changed to lower case. **Staff Note:** A few additional changes were made to the notary.

The form was approved as revised.

14. MC 96, Judgment of Contempt

The Committee agreed that an option should be added regarding probation pursuant to MCL 600.1715. A parenthetical statement indicating a separate order of probation is attached was also added. Since the ability to order probation applies only to criminal contempt, it is unnecessary to change DC 243. The following was approved: “4. The contempnor is ordered to probation for criminal contempt. (See separate order.)” The remaining items were renumbered accordingly.

A member pointed out the term “contemptor” was misspelled throughout the form and that attorney was misspelled in item 2. It should be “contempnor.”

A member also suggested adding another option in item 1 for failing to complete the affidavit of judgment debtor. The Committee agreed.

The form was approved as revised.

15. MC 207, Commitment Order, Not Guilty by Reason of Insanity

The Committee agreed with the suggested change in the note to the defendant to make it clearer there are some instances where the fingerprints and arrest card may not be destroyed within 60 days of this order. The following was approved: “TO THE DEFENDANT: Your fingerprints and arrest card will be destroyed by the Michigan State Police within 60 days of the date of this order when permitted by MCL 28.243.”

The form was approved as revised.

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

The Committee discussed the different procedures in statute and court rules and indicated that if the form is changed pursuant to MCL 765.28(1), the courts will have to start serving the surety personally. Members remarked that since this is a procedural matter, the court rules take precedence.

Staff indicated previous discussions took place within the office about the scope of the statute and whether it is considered procedural or substantive. It is believed the right to a show cause hearing is substantive, and therefore, the court rule does not take precedence.

As for service, it was suggested that “left at the surety’s last known business address” could include notice left by the postal service. Members agreed to the addition of the option to provide the surety a day certain to show cause why judgment should not be entered for the full amount of the bail or surety bond pursuant to MCL 765.28(1).

The form was approved as revised.

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

The Committee agreed to the addition of the use note and deletion of item 2 to make it clearer when this form is to be used. The remaining items were renumbered accordingly.

The Committee considered comments from Attorney Bruce Manniko that a recent Court of Appeals case (*Marvin Earl McElroy v Michigan State Police Criminal Justice Information Center*) might require this form to be modified. Members concluded that the opinion did not affect the form.

The form was approved as revised.

18. MC 242, Assignment to Youthful Trainee Status

The Committee agreed with the suggestion to add an item for specifying the fine and minimum state costs, restitution, assessments, reimbursements, attorney fees, and other costs when either item 6a or 6d is checked.

Members also discussed a suggestion to reinstate the fine, costs, and assessments grid that used to appear on the judgment of sentence forms. Marie Hassett of JIS was asked if that would be a programming problem, and she indicated it shouldn’t be. The grid will be placed on this form as well as CC 219b and MC 219. Also, while discussing CC 219b, Sidney McBride asked if an item for probation could be added since a sentence can be probation, with the first several years of that sentence to be served in prison. Staff indicated that it would be added if space permitted.

The forms were approved as revised.

19. MC 245, Motion and Order for Discharge from Probation

The Committee agreed that item 5 should be updated to comply with 2006 PA 443. Members considered combining it in item 3, but decided not to since doing so would imply that the Department of State Police is required to maintain a nonpublic record. Currently, the law only provides that the court shall maintain a nonpublic record.

The form was approved as revised.

20. MC 256, Summons, Criminal

The Committee agreed to the suggestion to add a field for issuing the summons in the name of a local entity rather than the State of Michigan. The same change will be made to the body of the summons.

The form was approved as revised.

21. MC 262, Order of Acquittal/Dismissal or Remand

The Committee agreed with the suggested change in the note to the defendant. The following was approved: "TO THE DEFENDANT: Your fingerprints and arrest card will be destroyed by the Michigan State Police within 60 days of the date of this order when permitted by MCL 28.243."

The Committee considered comments from Attorney Bruce Manniko that a recent Court of Appeals case (*Marvin Earl McElroy v Michigan State Police Criminal Justice Information Center*) might require this form to be modified. Members concluded that the opinion did not affect the form.

A spelling error was also corrected in item 7.

The form was approved as revised.

22. MC 263, Motion/Order of Nolle Prosequi

The Committee agreed with the suggested change in the note to the defendant. The following was approved: "TO THE DEFENDANT: Your fingerprints and arrest card will be destroyed by the Michigan State Police within 60 days of the date of this order when permitted by MCL 28.243."

The Committee considered comments from Attorney Bruce Manniko that a recent Court of Appeals case (*Marvin Earl McElroy v Michigan State Police Criminal Justice Information Center*) might require this form to be modified. Members concluded that the opinion did not affect the form.

Punctuation was corrected in item 2 and a spelling error was corrected in item 5.

The form was approved as revised.

23. MC 289, Order for Assignment of Wages

Members were advised that the form was originally created before MCL 769.1k permitted the court to order wage assignment without agreement of the defendant. Based

on MCL 769.1k, the Committee recommended the language regarding the agreement and the signature of the employee be deleted. Other recommended change were approved as provided. Members agreed that the note about limitations to the amount of wages that could be taken should be kept on the form, along with the sentence about using the calculation sheet from form MC 14. Reference to the wage assignment being voluntary was removed.

The form was approved as revised.

24. MC 295, Order Delaying Sentence

The Committee agreed that the form would be useful. However, members pointed out that an order delaying sentence means that no sentence is being entered (including probation, which is a type of sentence). Therefore, item 7 should be revised to state that the defendant is placed under supervision as follows: "Defendant is placed under supervision by \_\_\_\_\_." Furthermore, the court doesn't have to place a defendant under supervision, so item 7 should be optional. As discussed previously, item 8 will be revised to contain a grid.

The form was approved as revised. **Staff Note:** The form number is changed to MC 294.

### **Circuit Court Forms**

1. CC 379, Motion to Modify, Extend, or Terminate Personal Protection Order

The Committee indicated it was unnecessary to revise the form. Under the current rule, the court can extend with or without a hearing. The form was unchanged.

2. New Forms for Pro Se Litigants to Obtain Restoration of License

The Committee reviewed the drafts provided and made some changes to the instructions. Representatives from the Driver License Appeal Division (DLAD) of the Secretary of State were present to assist in the discussion.

Other than changes to grammar, punctuation, and design that will be made during typesetting, the Committee recommended some changes to the instructions.

The instructions for the Appeal of Suspension, Revocation, or Denial of Driver's License form will include a statement to not use this form for hardship appeals. References to the Certificate of Service will be changed to Certificate of Mailing.

Staff asked DLAD staff whether CC 217 would be used with the petition for arrests before October 1, 1999, when item 1e is checked. They indicated that either CC 217 or

CC 269 could be used. Since that is the case, staff inquired whether CC 217 should be deleted again, and DLAD staff indicated that it could be. Based on that, item 10 of the instructions was changed to include use of CC 269 when item 1e is checked.

The forms will be typeset for review and if no comments are received, they will be distributed in June.

3. Application for Leave to Appeal

The Committee started reviewing the forms drafted by Judge Buhl to assist pro se litigants to file an application for leave to appeal from the district court to the circuit court, but remarked they should probably be reviewed by the district court members. Staff will typeset the drafts for review next year in the joint session.

4. Forms for Domestic Relations Arbitration

The Committee indicated that no forms should be developed until court rule procedures are in place.

5. Pro Se Divorce Forms

Members were advised about the plans to develop these forms during 2007 and that an attempt will be made to have drafts available for the Committee's review in 2008.

Meeting adjourned, 3:15 p.m.

Respectfully submitted,

Amy L. Byrd