



Michigan Supreme Court

State Court Administrative Office

Trial Court Services Division

Michigan Hall of Justice

P.O. Box 30048

Lansing, Michigan 48909

Phone (517) 373-4835

Jennifer Warner
Director

March 3, 2016

TO: Michigan Court Forms Committee, Civil Work Group

FROM: Matthew Walker, Forms and Manuals Analyst

RE: Agenda and Materials for **March 10, 2016 Meeting**

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

Below is the agenda for the March 10, 2016 meeting of the Michigan Court Forms Committee, Civil Work Group. The meeting starts at 9:30 a.m. and ends at approximately 3:30 p.m. The meeting is broken up into three sections: district court issues, joint issues, and circuit court issues. The district court section will begin at 9:30am and end at approximately 12:00pm. Circuit court members are suggested to arrive at 11:30am in case the district court section concludes early.

Lunch 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 W. Ottawa in Lansing. A map and directions are provided.

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

District Court Session 9:30am-12:00pm **(Circuit Court Members should arrive at 11:30am)**

1. Minor Changes

DCH 110 Order to Release Escrow

DCH 110 will be updated to revise the citation in the footer of the form to MCR 4.201(N)

and to correct a typographical error in the body of the form.

CIA 07 Default Judgment Civil Infraction

CIA 07 will be revised to move the calculation side of the post card up one line to accommodate computer generated notices.

DC 100a, 100b, 100d, 100e

DC 100a, 100b, 100d, and 100e will be revised to remove nonfunctioning website links.

2. CIA 03 14 Day Notice, Civil Infraction

- A. It has been suggested that the old language for the certificate of mailing be reinstated to accommodate courts that send post cards of this form at regular mail rates. Currently the form states, “I certify on this date I served a copy of this notice on the parties by first-class mail addressed to their last-known addresses as defined by MCR 2.107(C)(3)” The old language stated “I certify on this date that copies of this notice were served upon the parties by mail to their last-known addresses.”
- B. It has been suggested that the language stating, “If you fail to comply with the judgment and pay the amount due on or before _____” be revised to “If you fail to complete the judgment rendered in this case within 14 days.”

Should the language be revised?

Comment from James Gibbs, 18th District Court:

I support the change in language as it helps keep the costs down on mailing.

Comment from Nadezda Stojcevska, 16th District Court:

I support that the old language remain regarding the post cards being sent via regular mail. Our funding unit doesn't not send the post card type notices by first-class mail.

Secondly, I support the revision of the language that the defendant be advised to take action within 14 days instead a date being entered since our JIS system does generate the date on the card especially to the back of the notice.

Comment from Gary Dodge, 44th District Court:

I fully support returning the 14-day notice to its former self. The form was originally designed to run in large batches and the post card size was used to reduce costs. The recent changes require unnecessary manual information entry and first class postage is a terrible waste of scarce resources.

3. New Form: DC 46a Order of Forfeiture of Other Reachable Property

Last year, the committee considered a suggestion to modify DC 46 to accommodate a new section of forfeiture law under MCL 600.4708(3). The committee decided a new form should be created and that SCAO staff would draft a form for consideration at the 2016 meeting. The draft form is attached.

Should the form be adopted?

4. DC 53 Appeal Worksheet for Application for Leave to Appeal; DC 54 Appeal Worksheet for Claim of Right of Appeal

It has been suggested that DC 53 and DC 54 be revised to include a parenthetical in item 4d that the \$25 appeal fee is for civil cases only. This will ensure that clerks do not collect an appeal fee for criminal cases.

Should this suggestion be adopted?

5. DC 84 Affidavit and Claim (Small Claims)

It has been suggested that the language “See instructions on the back of the plaintiff and defendant copies” be moved to allow more space for the court address and information.

Should this suggestion be adopted?

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

A. It has been suggested that a field be added in the case number box field to include the new GC case number when the case is removed to district court.

Should the suggestion be adopted?

B. It has been suggested that an instruction be added in the order section that an attorney must represent a party who is a corporation or LLC when the case removed

to district court. See *Detroit Bar Ass'n v Union Guardian Trust Co.*, 282 Mich 707; 281 NW 432 (1938)(attached).

Should the language be incorporated into the form?

Comment from Linda Powell, 52-3 District Court:

Agree, but can we also add that a default /default judgment may be entered after where it explains that the defendant is to file a written answer and serve it within 14 days from the date of this order as provided in court rule?

7. DC 100a, 100b, 100c, 100d, 100e Demand for Possession

It has been suggested that these forms be revised to include electronic service as an option as provided in MCL 600.5718.

Should this suggestion be adopted?

8. DC 103 Complaint for Possession After Land Contract Forfeiture

It has been suggested that the field for “Last payment _____” be removed from item 3a because there is no statute or court rule requiring that the last payment date be provided.

Should the item be removed?

9. DC 104 Summons Landlord/Tenant

Currently, item 3 states that a defendant has a right to a jury trial. It has been suggested that this item be revised to clarify that trial is contingent on a judicial finding that a triable issue exists. See MCR 4.201(J)(2).

Should this item be modified? If so, what should the modified language state?

10. DC 105 Judgment, Landlord-Tenant

Last year, the committee revised this form after considering a request from Attorney Marc Landau. Specifically, on DC 105, item 2a states “Rent to retain possession.” It has been suggested that the language of item 2a should be changed to “Rent,” for purposes of clarification that the defendant would not necessarily retain possession if the amount was paid. Mr. Landau believes the committee misunderstood his concerns and requests another review.

Comment from Bonnie Hewer, 91st District Court Clerk:

However the state chooses to produce the form, it should come with explicit instructions as to how the form should be filled out, because some in Pro Per Landlords and some Attorneys have difficulty after the hearing .

Comment from Hon. Julie H. Reincke on behalf of the Michigan District Judges Association:

Michigan District Judges Association objects to the proposed amendment to this form. It is our position that judges should retain all discretion provided in the statutes to interpret the lease and the appropriate sum to be paid to avoid issuance of a writ.

11. DC 106 Judgment of Possession After Land Contract Forfeiture

It has been suggested that item 6 be revised (for clarification) because the current language appears to require courts to enter total amounts owed by the defendant in three places. The suggested language is attached.

12. DC 107 Application and Order of Eviction Landlord Tenant

It has been suggested that a case number box be added to page 2 as a cross-reference to the form.

Should this suggestion be adopted?

Lunch 12:00pm-12:30pm

Joint Session 12:30pm

13. Minor Changes

MC 305 Order for Security for Costs

MC 305 will be revised to include a citation to MCR 2.109 in the footer.

Service Member's Civil Relief Act Citation

Several forms contain a citation in the footer to the Service Member's Civil Relief Act. The affected forms will be revised to update the citation. However, the revision will take place over time as the forms are reviewed for substantive changes.

14. MC 10, Judgment Civil

It has been suggested that MC 10 be modified to include a line for statutory costs permitted under MCL 600.2441. There is currently no spot to include these costs and the existing fields are inappropriate.

Should this suggestion be adopted?

15. MC 49 Objection to Garnishment

It has been suggested that item a of MC 49 be modified to require the objecting party to state under which law they are objecting. Currently, the form states “the funds or property are exempt (protected) from garnishment by law.” The current form language stems directly from MCR 3.101(K)(2)(a).

Should this suggestion be adopted?

Comment from Linda Powell, 52-3 District Court:

I think that those that are not represented by an attorney are not going to know what laws their objections pertain to.

16. MC 229 Motion, Affidavit, and Bench Warrant

Since 1984, MC 229 has only required the name, address, date of birth, race, sex, and driver’s license number of a respondent for a bench warrant.

MDOC started using this form in 2013 for parolees and has suggested that the bench warrant information fields be revised to include the height, weight, hair color, and eye color of a respondent, if known.

Is there a reason that the additional information should not be added? See FOC 14 and CC 376 as samples.

17. MC 286 Order Requesting Prisoner Be Allowed to Participate in Court Proceedings

In 2015, MCR 2.004 was amended to allow prisoners to participate in court proceedings by videoconference. It has been suggested that reference to videoconferencing be added to MC 286 in light of the amendment.

Should this suggestion be adopted?

18. MC 304 Order for Alternative Service

It has been suggested that tacking be removed as an option from MC 304 because tacking may not give actual notice of the proceedings because the defendant has moved. This option is on the form because MCR 2.105(I) states that the court may order service of process in any manner reasonably calculated to give the defendant actual notice of the proceedings and an opportunity to be heard.

Should the tacking option be removed?

Comment from Robert Tulloch, Jackson Area Landlords Association:

No. If one cannot facilitate service by any means, how could a party in summary proceedings recover possession? This would be acceptable if there was a statute allowing recovery of abandoned rental units with a very liberal definition of abandoned and a very liberal allowance for disposal of property. Post a notice on the door that owner will take possession in 10 days and dispose of all items in the unit with no liability.

Comment from Deanna Swisher, Foster, Swift, Collins, and Smith, PC:

See attached.

19. MC 390 Ex Parte and Order to Renew Civil Judgment

It has been suggested that item 3 of MC 390 be modified to state “the last voluntary payment” instead of “A payment in the amount of _____ ...” This has been suggested because it is believed that only voluntary payments automatically extend a judgment.

Should this suggestion be adopted?

Comment from Robert W. Warner, President, Michigan Creditors Bar Association

(See attached.)

20. New Form Request: Referral to chief judge after disqualification under MCR 2.003

It has been suggested that a form be created to allow a judge to refer a motion for disqualification to the chief judge or SCAO for de novo review under MCR 2.003(D)(3).

Should the form be created?

21. New Form Request: Garnishee Default Form

It has been suggested that a new form be created for defaulting a garnishee in garnishment proceedings. See MCL 600.4012(6)-(10), attached.

Should the form be created?

Comment from Linda Powell, 52-3 District Court:

Agree, this would really help the court clerks when there are several judgments and parties on a case.

Circuit Court Session

22. Minor Changes

CC 375 Petition for PPO

Item 1 will be changed to state “spouses” instead of “husband and wife”.

**23. CC 79 Claim of Appeal on Application for Concealed Weapon License;
CC 80 Order Following Appeal on Application for Concealed Weapon License**

A. It has been suggested that CC 79 be revised by removing item 1d because suspension and revocation of a concealed pistol license are not directly appealable issues. MCL 28.428(5) states that a suspended or revoked license can be renewed by applying for a renewal license. If the renewal license is denied, that denial can be appealed under MCL 28.425d.

B. It has been suggested that CC 79 and CC 80 be revised by changing the “County Clerk” box to state “Appellee” on both forms. This suggestion is made because MCL 28.425d implies that entities other than the county clerk can be appealed.

Should this suggestion be adopted?

Comment from Ann Marie Main, Presque Isle County Clerk:

Agree on both suggestions.

Comment from Jennifer Howden, Chief Deputy County Clerk:

It is my understanding that both CC79 – Claim of Appeal on Application for Concealed Weapon License and CC80 – Order Following Appeal on Application for Concealed Weapon License are under review. It is my recommendation that we wait before making any changes to these forms. The statutes took effect 12/1/15 and county clerk offices have 45 days to issue new applications, 30 days for renewals. I do not believe there has been enough time to decipher if any changes are warranted. Also, there may be some ‘clean up’ legislation coming sometime this year for concealed licenses and it may be in everyone’s best interest to defer any changes for a while.

24. New Form Request: Motion to Restore Gun Rights under MCL 28.424; Order to Restore Gun Rights under MCL 28.424.

It has been suggested that new forms be created for use under MCL 28.424. The State Court Administrative Office has received several inquiries for these forms.

Should the forms be created?

Comment from Ann Marie Main, Presque Isle County Clerk:

AGREE...while we as a small county have not had a request. I foresee it in the future and believe it will make every court more uniform on what documents are necessary and required.

Comment from Hilary Arthur, Kent County Chief Deputy Clerk:

Agree. We have had numerous requests from members of the public for a form motion to restore gun rights. We request that the instructions or a cover page to the motion form include language similar to that used by the State of Michigan Department of State Police. The MSP letter formerly sent to successful applicants to the gun board for restoration of firearm rights stated in part: “[A] State of Michigan restoration of rights does not restore rights federally to purchase or possess a firearm. Therefore, you could still be subject to arrest and prosecution if you are found in possession of a firearm” after restoration of state firearm rights.

(See attached letter.)

25. CC 375 Petition for Personal Protection Order; CC 376 Personal Protection Order

It has been suggested that fields for attorney information be added to the caption of these forms.

Should this suggestion be adopted?

26. New Form Request: Ex Parte Motion and Order to Extend PPO

It has been suggested that a new form be created containing a combined ex parte motion to extend a personal protection order and order granting or denying an extension. Currently, there are two separate forms for this, CC 379 Motion to Modify, Extend, or Terminate Personal Protection Order and CC 385 Order on Motion to Modify, Extend, or Terminate Personal Protection Order.

Should the form be created?

Comment from Ann Marie Main, Presque Isle County Clerk:

While I agree there is some changes that need to occur, I don't believe combining the form will be the right call. There are already instances that a motion is filed one day and the order is another. That then makes it necessary to make a copy of the motion and treat it as the one document dated for one date. Then use the copy as the order and file date it another.

27. New Form Request: Appeal Form for PPO Criminal Contempt

It has been suggested that a new form be created for appeals of criminal contempt findings in personal protection orders. Currently, CC 265 Notice of Right to Appellate Review and Request for Appointment of Attorney does not provide any options for personal protection order cases. It would make CC 265 unnecessarily complicated to accommodate language for personal protection cases.

Should the form be created?

Comment from Ann Marie Main, Presque Isle County Clerk:

Agree with creation of the new form.

Tab Page:
Driving Directions

MICHIGAN HALL OF JUSTICE

Driving Directions, Visitor Parking Information, and Maps

The Michigan Hall of Justice is located at 925 West Ottawa Street in Lansing—between Ottawa Street on the north, Allegan Street on the south, and Martin Luther King, Jr. Boulevard on the west. It is on the opposite end of the mall from the Capitol Building.

All visitors to the Hall of Justice will enter through the front doors (facing the Capitol Building) and must pass through a security check. No weapons are permitted in the Hall of Justice.

The conference center is located directly across from the main entrance on the first floor.

From the North (Mackinac Island, Traverse City)

- Take I-75 South to US-27 South (Lansing).
- Take I-69 (Flint)/US-127 (Lansing).
- Continue on US-127 South to I-496 West (DOWNTOWN LANSING) to Martin Luther King, Jr. (MLK) Boulevard North, Exit 5.
- Take MLK Boulevard north to Allegan Street and turn right. The Hall of Justice will be the large building on your left.

From the Northeast (Flint, Saginaw, Bay City)

- Take I-69 West to US-127 South to I-496 West (DOWNTOWN LANSING) to Martin Luther King, Jr. (MLK) Boulevard North, Exit 5.
- Take MLK Boulevard north to Allegan Street and turn right. The Hall of Justice will be the large building on your left.

From Detroit

- Take I-96 West to US-127 North.
- Take US-127 North to I-496 West (DOWNTOWN LANSING) to Martin Luther King, Jr. (MLK) Boulevard North, Exit 5.
- Take MLK Boulevard north to Allegan Street and turn right.
- The Hall of Justice will be the large building on your left.

From the Southeast (Ann Arbor)

- Take 23 North to I-96.
- Take I-96 West to US-127 North.
- Take US-127 North to I-496 West (DOWNTOWN LANSING) to Martin Luther King, Jr. (MLK) Boulevard North, Exit 5.
- Take MLK Boulevard north to Allegan Street and turn right. The Hall of Justice will be the large building on your left.

From the Southwest (Kalamazoo, Battle Creek)

- Take I-94 East to I-69 North.
- Follow I-69 North to I-496 East (DOWNTOWN LANSING) to Martin Luther King, Jr. (MLK) Boulevard North, Exit 5.
- Take MLK Boulevard north to Allegan Street and turn right. The Hall of Justice will be the large building on your left.

From the West (Grand Rapids, Muskegon)

- Take I-96 East to I-496 East (DOWNTOWN LANSING) to Martin Luther King, Jr. (MLK) Boulevard North, Exit 5.
- Take MLK Boulevard north to Allegan Street and turn right. The Hall of Justice will be the large building on your left.

Visitor Parking

Parking for people visiting the Hall of Justice is located on Allegan Street (across from the north side of the Michigan Library and Historical Center (MLHC), southeast of the Hall of Justice, and east of the Veteran's Memorial Park). When entering the lot, turn left into the unattended lot where pushing a button will produce a parking entry ticket. Once the ticket is in hand, proceed and park in any available spot.

Paying for Parking

- When leaving, visitors may make payment (the rate is \$1.00/hour, with a daily maximum of \$8.00) from their vehicles at the pay-in-lane machine as they exit the HOJ visitor lot or in person at the south entrance to the MLHC. Insert the entry ticket into the machine and your parking fee will be calculated.
- The machines cannot calculate a parking fee without an entry ticket. Customers that lose their entry ticket will be charged \$8.00 at the machine. To avoid the full charge, customers can go to the DMB Customer Service Center in the Hannah Building (first building east of the parking lot) on the first floor and they will be charged as if they arrived at 7:00 a.m.

Pay-in-Lane Accepts Only Credit Card Payments (No Cash!)

The visitor parking lot pay-in-lane machines have been converted to credit card payment only. Visa, MasterCard and Discover will be accepted (and pre-purchased vouchers).

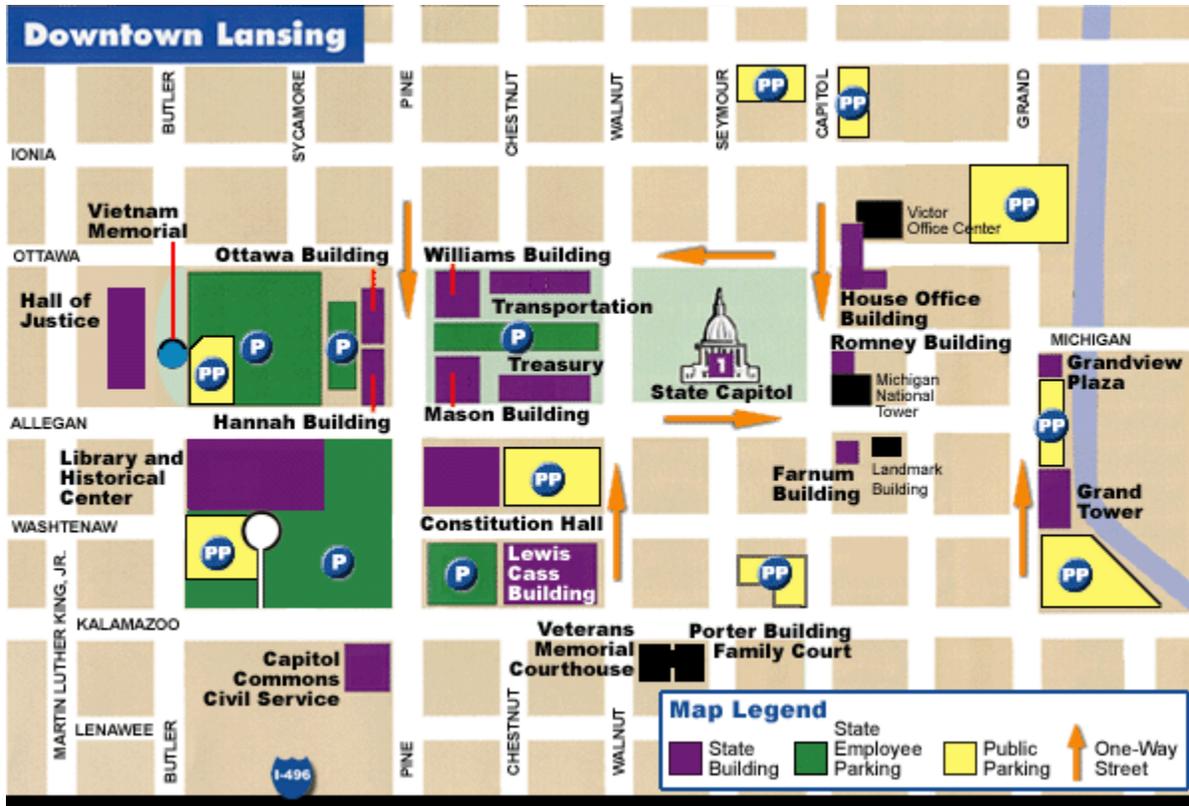
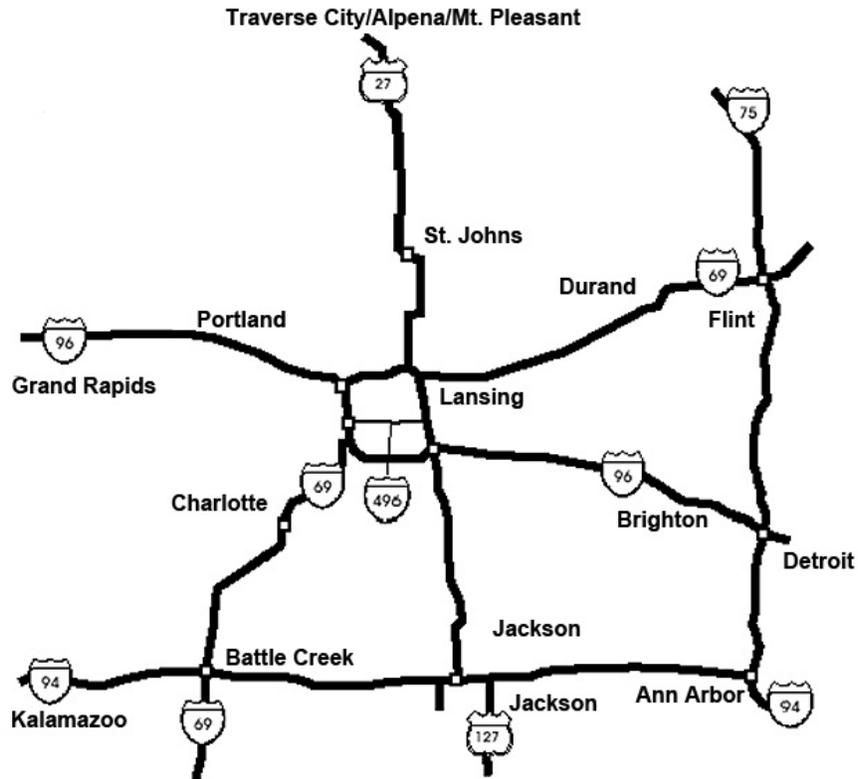
For Cash Payments

The Automated Pay Station inside the south entrance to the Michigan Library and Historical Center will accept cash and credit card payments. Also, the DTMB Parking office on the first floor of the Hannah building will accept cash, check and credit card payments Monday thru Friday from 7am to 5pm.

If Visitor Parking Is Full

In the unlikely event that the lot is full, continue east on Allegan to Pine Street. Turn right on Pine and take it one block to Kalamazoo Street. Turn right on Kalamazoo, go to the next street (Butler) and turn right, and then enter the parking lot behind the Michigan Library and Historical Center.

Maps



Tab Page:
Item 1

**STATE OF MICHIGAN
JUDICIAL DISTRICT**

**ORDER TO RELEASE ESCROW
Landlord-Tenant / Land Contract**

CASE NO.

Court address

Court telephone no.

Plaintiff name, address, and telephone no.

Defendant name, address, and telephone no.

v

Plaintiff's attorney, bar no., address, and telephone no.

Defendant's attorney, bar no., address, and telephone no.

1. On _____ an order for escrow was entered in this case.
Date

2. The conditions stated in the order for escrow have been met.

IT IS ORDERED:

3. The escrow established by this court's order dated _____ is released.

4. The escrow is disbursed as follows:

_____ Date

_____ Judge

_____ Bar no.

**CONTINUOUS CONSTRUCTION
POSTCARD**
Computer or typewriter generated

Approved, SCAO	Original - Court	Copy - Defendant
STATE OF MICHIGAN JUDICIAL DISTRICT	DEFAULT JUDGMENT Civil Infraction	Court Telephone No.
<p>The <input type="checkbox"/> State <input type="checkbox"/> Twp. <input type="checkbox"/> City <input type="checkbox"/> Village of: _____ v Defendant (name and address printed on other side) DEFAULT ENTRY I certify that the</p> <ol style="list-style-type: none"> 1. defendant has not made a scheduled appearance or answered a citation within time allowed by statute. 2. defendant is not in the military service, or is in the military service but received notice and adequate time and opportunity to appear and defend. 3. default is entered against the defendant. <p>DEFAULT JUDGMENT is entered in the amount stated on the other side. Return this notice with payment in the amount of the judgment stated on the other side of this form. Fines, costs, and other financial obligations imposed by the court must be paid at the time of assessment. If you fail to pay within 28 days of the default judgment date, the court may notify the Secretary of State to take action against your driving privileges. In addition, fines, costs, and fees not paid within 56 days of the default judgment date are subject to a 20% late penalty on the amount owed.</p> <p>CERTIFICATE OF SERVICE I certify that on this date I served a copy of this judgment on the defendant by first-class mail addressed to his/her last-known address as defined by MCR 2.107(C)(3). Date of Default/Judgment* _____ Date of entry and mailing _____ Clerk/Deputy clerk/Magistrate _____</p> <p>NOTICE: You may have the right to set aside a default by requesting a hearing within 14 days of the mailing date. You must post a bond equal to the total fines and costs noted when requesting a hearing to set aside a default.</p> <p>CIA 07-JIS (3/15) DEFAULT JUDGMENT, Civil Infraction MCR 1.110, MCR 4.101(B)</p>		

DEFAULT JUDGMENT Civil Infraction	TO	
Case Number		
Infraction Date		
Civil Infraction		
Vehicle Plate No.		
Appearance Date		Default/Judgment Date*
AMOUNT OF JUDGMENT		
Fines		\$
Costs		\$
State Costs		\$
		\$
Total		\$
Bond Forfeited		\$
Balance Due		

Form DC 100a

DEMAND FOR POSSESSION NONPAYMENT OF RENT

Use this form to give notice to a tenant when you want to start eviction proceedings against a tenant who has not paid rent.

NOTICE CHECKLIST

Use the following checklist to make sure you have done all the steps that are needed.

DID YOU . . .

1. Read all the information in the Self-Help Center at http://courts.michigan.gov/scao/selfhelp/landlord/evictnp_help.htm? YES
2. Complete the notice form? YES
3. Sign the notice form? YES
4. Deliver the "Tenant's copy" of the notice to the tenant? YES
5. Keep the "Court copy" of the notice for yourself? YES

If you cannot answer "yes" to all the above steps, you may have problems in your court case if you file a complaint with the court to evict a tenant.

If you have questions about any step in the process, refer to page 3 of this booklet for details and review the information in the Self-Help Center at http://courts.michigan.gov/scao/selfhelp/landlord/evictnp_help.htm.

**INSTRUCTIONS FOR USING FORM DC 100a
COMPLETING AND DELIVERING A DEMAND FOR POSSESSION**

»» DEFINITION

Demand for Possession, Nonpayment of Rent

A demand for possession for nonpayment of rent is used when a tenant has not paid the rent and the landlord wants the tenant to either pay the rent or move out or vacate the premises.

»» PREPARING THE NOTICE

Complete the form using the instructions on page 4.

»» GETTING NOTICE TO THE TENANT

1. Serving (Delivering) the Notice

You must "serve" the "Tenant's copy" of the demand for possession on the tenant. This can be done in one of three ways.

- delivering it personally to the tenant,
- delivering it on the premises to a member of the tenant's family or household, or an employee of the tenant, who is capable of understanding your instruction to deliver it to the tenant, with a request that it be delivered to the tenant, or
- sending it first-class mail addressed to the tenant at his or her last known address.

Some examples of improper service are slipping the demand under the tenant's door, leaving the demand outside the tenant's door, attaching the demand to the property, or mailing the demand by methods that require a signature.

2. Complete the Certificate of Service

Complete the Certificate of Service on the "Court copy" of the demand for possession using the instructions on page 4. This copy is for your records. Keep it in a safe place because you may need it later if you have to file a complaint for eviction with the court.

INSTRUCTIONS FOR COMPLETING "DEMAND FOR POSSESSION, NONPAYMENT OF RENT"

Please print neatly. After filling in the form, you will need to print both copies of the form.

Items A through E must be completed before delivering your notice to the tenant. Please read the instruction for each item. Then fill in the correct information for that item on the form.

- A** Write in the name of the tenant and the address where you will be delivering the notice. This address may be where the tenant lives or does business and it may be different than the address of the rental property.
- B** Write your name in the line that says "Name (type or print)."
- C** Write in the amount of the rent owed.
- D** Write in the box the complete address or a complete description of the rental property if different than the mailing address in **A** above. If this address is the same as the mailing address, write in the box "Same as mailing address."
- E** Write in the date, sign your name, and write in your address and telephone number.

Deliver the Tenant's copy to the tenant.

Read page 3 of this packet for details on delivering this notice to the tenant.

- F** On the date you deliver the notice, write in the date. Write in the name of the person to whom you delivered the notice. Check the box in front of the statement that best describes how you delivered the notice. Sign your name.

You should read this booklet and the information on the Self-Help Center at http://courts.michigan.gov/scao/selfhelp/landlord/evictnp_help.htm for directions on the legal process.

Form DC 100b

DEMAND FOR POSSESSION DAMAGE/HEALTH HAZARD TO PROPERTY

Use this form to give notice to a tenant when you want to start eviction proceedings against a tenant who has caused:

- **extensive and continuing damage to the rental property, or**
- **a serious and continuing health hazard to the rental property.**

NOTICE CHECKLIST

Use the following checklist to make sure you have done all the steps that are needed.

DID YOU . . .

1. Read all the information in the Self-Help Center at http://courts.michigan.gov/scao/selfhelp/landlord/evictdp_help.htm? YES
2. Make sure that 90 days has not passed since you discovered the health hazard or damage to the property? YES
3. Complete the notice form? YES
4. Sign the notice form? YES
5. Deliver the "Tenant's copy" of the notice to the tenant? YES
6. Keep the "Court copy" of the notice for yourself? YES

If you cannot answer "yes" to all the above steps, you may have problems in your court case if you file a complaint with the court to evict the tenant.

If you have questions about any step in the process, refer to page 3 of this booklet for details and review the information in the Self-Help Center at http://courts.michigan.gov/scao/selfhelp/landlord/evictdp_help.htm.

**INSTRUCTIONS FOR USING FORM DC 100b
COMPLETING AND DELIVERING A DEMAND FOR POSSESSION**

»» DEFINITION

Demand for Possession, Damage/Health Hazard to Property

A "notice to quit" is a notice given to a tenant to do some required act or to surrender and vacate the rental property by a certain date. This particular "notice to quit" is a demand for possession that is used when the tenant has caused extensive and continuing damage or a serious and continuing health hazard to the rental property and the landlord wants the tenant to either remove the health hazard, repair the damage, or move out. This notice must be given within 90 days of discovering the damage or health hazard.

»» PREPARING THE NOTICE

Complete the form using the instructions on page 4.

»» GETTING NOTICE TO THE TENANT

1. Serving (Delivering) the Notice

You must "serve" the "Tenant's copy" of the demand for possession on the tenant. This can be done in one of three ways.

- delivering it personally to the tenant,
- delivering it on the premises to a member of the tenant's family or household, or an employee of the tenant, who is capable of understanding your instruction to deliver it to the tenant, with a request that it be delivered to the tenant, or
- sending it first-class mail addressed to the tenant at his or her last known address.

Some examples of improper service are slipping the demand under the tenant's door, leaving the demand outside the tenant's door, attaching the demand to the property, or mailing the demand by methods that require a signature.

2. Complete the Certificate of Service

Complete the Certificate of Service on the "Court copy" of the demand for possession using the instructions on page 4. This copy is for your records. Keep it in a safe place because you may need it later if you have to file a complaint for eviction with the court.

INSTRUCTIONS FOR COMPLETING "DEMAND FOR POSSESSION, DAMAGE/HEALTH HAZARD TO PROPERTY"

Please print neatly. After filling in the form, you will need to print both copies of the form.

Items A through E must be completed before delivering your notice to the tenant. Please read the instruction for each item. Then fill in the correct information for that item on the form.

- A** Write in the name of the tenant and the address where you will be delivering the notice. This address may be where the tenant lives or does business and it may be different than the address of the rental property.
- B** Write your name in the line that says "Name (type or print)."
- C** Check the box that best describes the reason for giving the tenant a demand for possession, and then write in the box the complete address or a complete description of the rental property if different than the mailing address in **A** above. If this address is the same as the mailing address, write in the box "Same as mailing address."
- D** Explain in detail the serious and continuing health hazard or the extensive and ongoing damage to the rental property in the lines provided.
- E** Write in the date, sign your name, and write in your address and telephone number.

Deliver the Tenant's copy to the tenant.

Read page 3 of this packet for details on delivering this notice to the tenant.

- F** On the date you deliver the notice, write in the date. Write in the name of the person to whom you delivered the notice. Check the box in front of the statement that best describes how you delivered the notice. Sign your name.

You should read this booklet and the information on the Self-Help Center at http://courts.michigan.gov/scao/selfhelp/landlord/evictdp_help.htm for directions on the legal process.

STATE OF MICHIGAN	DEMAND FOR POSSESSION DAMAGE/HEALTH HAZARD TO PROPERTY Landlord-Tenant	
--------------------------	---	--

(A)

TO:

(B)

1. Your landlord/landlady, _____, says you have willfully or negligently caused
Name (type or print)

- (C)** extensive and continuing damage to the property at:
 a serious and continuing health hazard to exist at:

Address or description of premises rented (if different from mailing address):

(D) Explanation: _____

2. You must do one of the following within 7 days from the date this notice was served.
- a. Repair the damage and/or remove the health hazard.
 - b. Move out.
- If you do not do one of the above, your landlord/landlady may take you to court to evict you from the property.
3. If you believe you are not at fault, you can have a lawyer advise you. Call him or her soon.

(E)

Date

Signature of owner of premises or agent

Address

City, state, zip

Telephone no.

CERTIFICATE OF SERVICE

(F)

I certify that on _____ I served this notice on _____
Date Name

- by delivering it personally to the person in possession of the property.
 delivering it on the premises to a member of his/her family or household or an employee of suitable age and discretion with a request that it be delivered to the person in possession of the property.
 first-class mail addressed to the person in possession of the property.

Signature

STATE OF MICHIGAN	DEMAND FOR POSSESSION DAMAGE/HEALTH HAZARD TO PROPERTY Landlord-Tenant	
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TO:

1. Your landlord/landlady, _____, says you have willfully or negligently caused
Name (type or print)

- extensive and continuing damage to the property at:
- a serious and continuing health hazard to exist at:

Address or description of premises rented (if different from mailing address):

Explanation: _____

- 2. You must do one of the following within 7 days from the date this notice was served.
 - a. Repair the damage and/or remove the health hazard.
 - b. Move out.
 If you do not do one of the above, your landlord/landlady may take you to court to evict you.
- 3. If you believe you are not at fault, you can have a lawyer advise you. Call him or her soon.

Date

Signature of owner of premises or agent

Address

City, state, zip

Telephone no.

HOW TO GET LEGAL HELP

- 1. Call your own lawyer.
- 2. If you do not have an attorney but have money to retain one, you may locate an attorney through the State Bar of Michigan Lawyer Referral Service at 1-800-968-0738 or through a local lawyer referral service. Lawyer referral services should be listed in the yellow pages of your telephone directory or you can find a local lawyer referral service at www.michbar.org.
- 3. If you do not have an attorney and cannot pay for legal help, you may qualify for assistance through a local legal aid office. Legal aid offices should be listed in the yellow pages of your telephone directory or you can find a local legal aid office at www.michiganlegalaid.org. If you do not have Internet access at home, you can access the Internet at your local library.

Form DC 100d

DEMAND FOR POSSESSION TERMINATION OF TENANCY Mobile Home Park-Mobile Home Owner (Just-Cause Termination)

Use this form to give notice to a tenant when you want to start eviction proceedings against a mobile home owner when terminating tenancy in a mobile home park.

NOTICE CHECKLIST

Use the following checklist to make sure you have done all the steps that are needed.

DID YOU . . .

1. Read all the information in the Self-Help Center at http://courts.michigan.gov/scao/selfhelp/landlord/evictmh_help.htm? YES
2. Complete the notice form? YES
3. Sign the notice form? YES
4. Deliver the "Tenant's copy" of the notice to the tenant? YES
5. Keep the "Court copy" of the notice for yourself? YES

If you cannot answer "yes" to all the above steps, you may have problems in your court case if you file a complaint with the court to evict the tenant.

If you have questions about any step in the process, refer to page 3 of this booklet for details and review the information in the Self-Help Center at http://courts.michigan.gov/scao/selfhelp/landlord/evictmh_help.htm.

**INSTRUCTIONS FOR USING FORM DC 100d
COMPLETING AND DELIVERING A DEMAND FOR POSSESSION**

»» DEFINITION

Demand for Possession, Termination of Tenancy, Mobile Home Park-Mobile Home Owner, Just-Cause

A "notice to quit" is a notice given to a tenant to do some required act or to surrender and vacate the rental property by a certain date. This particular notice to quit is a demand for possession that is used when the landlord wants to terminate the tenancy of a mobile home owner in a mobile home park and wants the tenant to move.

»» PREPARING THE NOTICE

Complete the form using the instructions on page 4.

»» GETTING NOTICE TO THE TENANT

1. Serving (Delivering) the Notice

You must "serve" the "Tenant's copy" of the demand for possession on the tenant. This can be done in one of three ways.

- delivering it personally to the tenant,
- delivering it on the premises to a member of the tenant's family or household, or an employee of the tenant, who is capable of understanding your instruction to deliver it to the tenant, with a request that it be delivered to the tenant, or
- sending it first-class mail addressed to the tenant at his or her last known address.

Some examples of improper service are slipping the demand under the tenant's door, leaving the demand outside the tenant's door, attaching the demand to the property, or mailing the demand by methods that require a signature.

2. Complete the Certificate of Service

Complete the Certificate of Service on the "Court copy" of the demand for possession using the instructions on page 4. This copy is for your records. Keep it in a safe place because you may need it later if you have to file a complaint for eviction with the court.

**INSTRUCTIONS FOR COMPLETING "DEMAND FOR POSSESSION, TERMINATION OF TENANCY,
MOBILE HOME PARK-MOBILE HOME OWNER (Just-Cause Termination)"**

Please print neatly. After filling in the form, you will need to print both copies of the form.

Items A through F must be completed before delivering your notice to the tenant. Please read the instruction for each item. Then fill in the correct information for that item on the form.

- A** Write in the name of the tenant and the address where you will be delivering the notice. This address may be where the tenant lives or does business and it may be different than the address of the rental property.
- B** Write your name in the line that says "Name (type or print)."
- C** Write in the box the complete address or a complete description of the rental property if different than the mailing address in **A** above. If this address is the same as the mailing address, write in the box "Same as mailing address."
- D** Explain the reason for wanting to evict the tenant.
- E** Write in the date the tenant must move by.
- F** Write in the date, sign your name, and write in your address and telephone number.

Deliver the Tenant's copy to the tenant.

Read page 3 of this packet for details on delivering this notice to the tenant.

- G** On the date you deliver the notice, write in the date. Write in the name of the person to whom you delivered the notice. Check the box in front of the statement that best describes how you delivered the notice. Sign your name.

**You should read this booklet and the information on the Self-Help Center
at http://courts.michigan.gov/scao/selfhelp/landlord/evictmh_help.htm
for directions on the legal process.**

STATE OF MICHIGAN	DEMAND FOR POSSESSION TERMINATION OF TENANCY Mobile Home Park-Mobile Home Owner Just-Cause Termination	
--------------------------	---	--

A

TO:

B

1. The owner/operator, _____, of your mobile home park is terminating your tenancy for just cause as stated below and wants to evict you from

C

Address or description of premises rented (if different from mailing address):

D

(State reason[s] for terminating tenancy for just cause. See reverse side for acceptable reasons.)

E

2. You must move by _____ or the owner/operator may take you to court to evict you.
Date (*see note)

3. If the owner/operator takes you to court to evict you, you will have the opportunity to present reasons why you believe you should not be evicted. You also have 10 days from the date of this notice to request, by certified or registered mail to the owner/operator, an in-person conference with the owner/operator. You may have a lawyer with you at this conference. You are required by law to continue paying rent and other charges.

4. If you believe you have a good reason why you should not be evicted, you may have a lawyer advise you. Call him or her soon.

F

Date

Signature of owner/operator

Address

City, state, zip Telephone no.

*NOTE: If the lease agreement does not state otherwise, the owner/operator must give notice equal in time to at least one rental period.

CERTIFICATE OF SERVICE

G

I certify that on _____ I served this notice on _____
Date Name

- by
- delivering it personally to the person in possession.
 - delivering it on the premises to a member of his/her family or household or an employee of suitable age and discretion with a request that it be delivered to the person in possession.
 - first-class mail addressed to the person in possession.

Signature

Court copy (to be copied, if necessary, to attach to the complaint)

STATE OF MICHIGAN	DEMAND FOR POSSESSION TERMINATION OF TENANCY Mobile Home Park-Mobile Home Owner Just-Cause Termination	
--------------------------	---	--

TO:

1. The owner/operator, _____, of your mobile home park is terminating your
Name (type or print)
 tenancy for just cause as stated below and wants to evict you from

Address or description of premises rented (if different from mailing address):

(State reason[s] for terminating tenancy for just cause. See reverse side for acceptable reasons.)

2. You must move by _____ or the owner/operator may take you to court to evict you.
Date (*see note)
3. If the owner/operator takes you to court to evict you, you will have the opportunity to present reasons why you believe you should not be evicted. You also have 10 days from the date of this notice to request, by certified or registered mail to the owner/operator, an in-person conference with the owner/operator. You may have a lawyer with you at this conference. You are required by law to continue paying rent and other charges.
4. If you believe you have a good reason why you should not be evicted, you may have a lawyer advise you. Call him or her soon.

Date

Signature of owner/operator

Address

City, state, zip

Telephone no.

*NOTE: If the lease agreement does not state otherwise, the owner/operator must give notice equal in time to at least one rental period.

HOW TO GET LEGAL HELP

1. Call your own lawyer.
2. If you do not have an attorney but have money to retain one, you may locate an attorney through the State Bar of Michigan Lawyer Referral Service at 1-800-968-0738 or through a local lawyer referral service. Lawyer referral services should be listed in the yellow pages of your telephone directory or you can find a local lawyer referral service at www.michbar.org.
3. If you do not have an attorney and cannot pay for legal help, you may qualify for assistance through a local legal aid office. Legal aid offices should be listed in the yellow pages of your telephone directory or you can find a local legal aid office at www.michiganlegalaid.org. If you do not have Internet access at home, you can access the Internet at your local library.

Mobile home owner's copy

**EXPLANATION OF JUST-CAUSE TERMINATIONS
FOR MOBILE HOME OWNERS RENTING LAND IN MOBILE HOME PARKS**

MCL 600.5775(2)

- (a) Use of site for unlawful purpose.
- (b) Failure by the tenant to comply with a lease or agreement of the park or with a rule or regulation of the mobile home park adopted under the lease or agreement, which rule or regulation is reasonably related to
 - (i) the health, safety, or welfare of the park, its employees, or tenants.
 - (ii) the quiet enjoyment of the other tenants of the mobile home park.
 - (iii) maintaining the physical condition or appearance of the mobile home park or the mobile homes on site.
- (c) A violation by the tenant of rules of the Michigan Department of Community Health (MDCH).
- (d) Intentional physical injury by the tenant to the personnel or other tenants of the mobile home park, or intentional physical damage by the tenant to the property of the mobile home park or of its other tenants.
- (e) Failure of the tenant to comply with a local ordinance, state law, or governmental rule or regulation relating to mobile homes.
- (f) Failure of the tenant to pay rent or other charges under the lease or rental agreement on time on three or more occasions during any 12-month period, for which the owner or operator has served a written demand for possession for nonpayment of rent and the tenant has failed or refused to pay the rent or other charges within the time period stated in the written demand for possession.
- (g) Conduct by the tenant upon the mobile home park premises, which is a substantial annoyance to other tenants or to the mobile home park, after notice and an opportunity to cure.
- (h) Failure of the tenant to maintain the mobile home or mobile home site in a reasonable condition consistent with aesthetics appropriate to the park.
- (i) Condemnation of the mobile home park.
- (j) Changes in the use or substantive nature of the mobile home park.
- (k) Public health and safety violations by the tenant.

Form DC 100e

DEMAND FOR POSSESSION TERMINATION OF TENANCY DUE TO UNLAWFUL DRUG ACTIVITY ON PREMISES

Use this form to give notice to a tenant when you want to start eviction proceedings against a tenant for unlawful drug activity on premises.

NOTICE CHECKLIST

Use the following checklist to make sure you have done all the steps that are needed.

DID YOU . . .

1. Read all the information in the Self-Help Center at http://courts.michigan.gov/scao/selfhelp/landlord/evictda_help.htm? YES
2. Make sure your lease contains a clause providing for termination of tenancy for illegal drug activity on the premises? If it does not, you cannot evict for unlawful drug activity on the premises. YES
3. Make sure a police report was filed alleging that the tenant or some other person under the tenant's control has unlawfully manufactured, delivered, or possessed illegal drugs on the leased premises? If not, you cannot evict for unlawful drug activity on the premises. YES
4. Complete the notice form? YES
5. Sign the notice form? YES
6. Deliver the "Tenant's copy" of the notice to the tenant? YES
7. Keep the "Court copy" of the notice for yourself? YES

If you cannot answer "yes" to all the above steps, you may have problems in your court case if you file a complaint with the court to evict the tenant.

If you have questions about any step in the process, refer to page 3 of this booklet for details and review the information in the Self-Help Center at http://courts.michigan.gov/scao/selfhelp/landlord/evictda_help.htm.

**INSTRUCTIONS FOR USING FORM DC 100e
COMPLETING AND DELIVERING A DEMAND FOR POSSESSION**

»» DEFINITION

Demand for Possession, Termination of Tenancy Due to Unlawful Drug Activity on Premises

This particular demand for possession is used when the landlord has terminated the tenancy and wants the tenant to move out or vacate the premises because of unlawful drug activity on the rental property. This form can only be used if a formal police report has been filed alleging unlawful drug activity on the leased premises.

»» PREPARING THE NOTICE

Complete the form using the instructions on page 4.

»» GETTING NOTICE TO THE TENANT

1. Serving (Delivering) the Notice

You must "serve" the "Tenant's copy" of the demand for possession on the tenant. This can be done in one of three ways.

- delivering it personally to the tenant,
- delivering it on the premises to a member of the tenant's family or household, or an employee of the tenant, who is capable of understanding your instruction to deliver it to the tenant, with a request that it be delivered to the tenant, or
- sending it first-class mail addressed to the tenant at his or her last known address.

Some examples of improper service are slipping the demand under the tenant's door, leaving the demand outside the tenant's door, attaching the demand to the property, or mailing the demand by methods that require a signature.

2. Complete the Certificate of Service

Complete the Certificate of Service on the "Court copy" of the demand for possession using the instructions on page 4. This copy is for your records. Keep it in a safe place because you may need it later if you have to file a complaint for eviction with the court.

INSTRUCTIONS FOR COMPLETING "DEMAND FOR POSSESSION, TERMINATION OF TENANCY DUE TO UNLAWFUL DRUG ACTIVITY ON PREMISES"

Please print neatly. After filling in the form, you will need to print both copies of the form.

Items A through E must be completed before delivering your demand to the tenant. Please read the instruction for each item. Then fill in the correct information for that item on the form.

- A** Write in the name of the tenant and the address where you will be delivering the demand. This address may be where the tenant lives or does business and it may be different than the address of the rental property.
- B** Write your name in the line that says "Name (type or print)."
- C** Write in the box the complete address or a complete description of the rental property if different than the mailing address in **A** above. If this address is the same as the mailing address, write in the box "Same as mailing address."
- D** Write in the date, sign your name, and write in your address and telephone number.

Deliver the Tenant's copy to the tenant.

Read page 3 of this packet for details on delivering this notice to the tenant.

- E** On the date you deliver the demand, write in the date. Write in the name of the person to whom you delivered the demand. Check the box in front of the statement that best describes how you delivered the demand. Sign your name.

You should read this booklet and the information on the Self-Help Center at http://courts.michigan.gov/scao/selfhelp/landlord/evictda_help.htm for directions on the legal process.

STATE OF MICHIGAN

DEMAND FOR POSSESSION
TERMINATION OF TENANCY DUE TO
UNLAWFUL DRUG ACTIVITY ON PREMISES
Landlord-Tenant

(A)

TO:

(B)

1. Your landlord/landlady, _____, is terminating your tenancy and wants to
Name (type or print)
evict you from:

(C)

Address or description of premises rented (if different from mailing address):

because you have willfully or negligently caused unlawful drug activity at the leased premises.

- 2. You must move within 24 hours from the date this notice was served or your landlord/landlady may take you to court to evict you.
- 3. If your landlord/landlady takes you to court to evict you, you will have the opportunity to present reasons why you believe you should not be evicted.
- 4. If you believe you have a good reason why you should not be evicted, you may have a lawyer advise you. Call him or her soon.

(D)

Date

Signature of owner of premises or agent

Address

City, state, zip Telephone no.

CERTIFICATE OF SERVICE

(E)

I certify that on _____ I served this notice on _____
Date Name

- by delivering it personally to the person in possession.
- delivering it on the premises to a member of his/her family or household or an employee of suitable age and discretion with a request that it be delivered to the person in possession.
- first-class mail addressed to the person in possession.

Signature

Court copy (to be copied, if necessary, to attach to the complaint)

STATE OF MICHIGAN	DEMAND FOR POSSESSION TERMINATION OF TENANCY DUE TO UNLAWFUL DRUG ACTIVITY ON PREMISES Landlord-Tenant	
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TO:

1. Your landlord/landlady, _____, is terminating your tenancy and wants to
Name (type or print)

evict you from:

Address or description of premises rented (if different from mailing address):

because you have willfully or negligently caused unlawful drug activity at the leased premises.

2. You must move within 24 hours from the date this notice was served or your landlord/landlady may take you to court to evict you.
3. If your landlord/landlady takes you to court to evict you, you will have the opportunity to present reasons why you believe you should not be evicted.
4. If you believe you have a good reason why you should not be evicted, you may have a lawyer advise you. Call him or her soon.

Date

Signature of owner of premises or agent

Address

City, state, zip Telephone no.

HOW TO GET LEGAL HELP

1. Call your own lawyer.
2. If you do not have an attorney but have money to retain one, you may locate an attorney through the State Bar of Michigan Lawyer Referral Service at 1-800-968-0738 or through a local lawyer referral service. Lawyer referral services should be listed in the yellow pages of your telephone directory or you can find a local lawyer referral service at www.michbar.org.
3. If you do not have an attorney and cannot pay for legal help, you may qualify for assistance through a local legal aid office. Legal aid offices should be listed in the yellow pages of your telephone directory or you can find a local legal aid office at www.michiganlegalaid.org. If you do not have Internet access at home, you can access the Internet at your local library.

Tenant's copy

Tab Page:
Item 2

**STATE OF MICHIGAN
JUDICIAL DISTRICT**

**14-DAY NOTICE
Civil Infraction**

CASE NO.

Court address

Court telephone no.

Civil infraction: _____ Infraction date: _____

The State Twp. City Village of: _____ Statute Ordinance

v _____
Defendant name, address, and telephone no.

**NOTICE OF FAILURE TO
COMPLY WITH JUDGMENT**
Amount due: \$ _____

If you fail to comply with the judgment and pay the amount due on or before _____,

1. the Secretary of State will immediately suspend your driving privileges for most driving offenses.
2. a bench warrant may be issued for your arrest.
3. the cost to compel appearance may be added to the amount of your judgment.
4. your operator's license will not be issued or renewed if this notice is for multiple parking violations or a nontraffic state civil infraction.

I certify that on this date I served a copy of this notice on the parties by first-class mail addressed to their last-known addresses as defined by MCR 2.107(C)(3).

Date

Judge/Magistrate/Deputy court clerk

Michigan Compiled Laws Annotated
Michigan Court Rules of 1985
Chapter 4. District Court
Subchapter 4.100. Civil Infraction Actions

MI Rules MCR 4.101

RULE 4.101 CIVIL INFRACTION ACTIONS

Currentness

(A) Citation; Complaint; Summons; Warrant.

(1) Except as otherwise provided by court rule or statute, a civil infraction action may be initiated by a law enforcement officer serving a written citation on the alleged violator, and filing the citation in the district court.

(a) If the infraction is a parking violation, the action may be initiated by an authorized person placing a citation securely on the vehicle or mailing a citation to the registered owner of the vehicle. In either event, the citation must be filed in the district court.

(b) If the infraction is a municipal civil infraction, the action may be initiated by an authorized local official serving a written citation on the alleged violator. If the infraction involves the use or occupancy of land or a building or other structure, service may be accomplished by posting the citation at the site and sending a copy to the owner by first-class mail.

The citation serves as the complaint in a civil infraction action, and may be filed either on paper or electronically.

(2) A violation alleged on a citation may not be amended except by the prosecuting official or a police officer for the plaintiff.

(3) The citation serves as a summons to command

(a) the initial appearance of the defendant; and

(b) a response from the defendant as to his or her responsibility for the alleged violation.

(4) A warrant may not be issued for a civil infraction unless permitted by statute.

(B) Appearances; Failure to Appear; Default Judgment.

(1) Depending on the nature of the violation and on the procedure appropriate to the violation, a defendant may appear in person, by representation, or by mail.

(2) A defendant may not appear by making a telephone call to the court, but a defendant may telephone the court to obtain a date to appear.

(3) A clerk of the court may enter a default after certifying, on a form to be furnished by the court, that the defendant has not made a scheduled appearance, or has not answered a citation within the time allowed by statute.

(4) If a defendant fails to appear or otherwise to respond to any matter pending relative to a civil infraction action, the court:

(a) must enter a default against the defendant;

(b) must make a determination of responsibility, if the complaint is sufficient;

(c) must impose a sanction by entering a default judgment;

(d) must send the defendant a notice of the entry of the default judgment and the sanctions imposed; and

(e) may retain the driver's license of a nonresident as permitted by statute, if the court has received that license pursuant to statute. The court need not retain the license past its expiration date.

(5) If a defendant fails to appear or otherwise to respond to any matter pending relative to a traffic civil infraction, the court

(a) must notify the secretary of state of the entry of the default judgment, as required by [MCL 257.732](#), and

(b) must initiate the procedures required by [MCL 257.321a](#).

(6) If a defendant fails to appear or otherwise to respond to any matter pending relative to a state civil infraction, the court must initiate the procedures required by [MCL 257.321a](#).

(C) Appearance by Police Officer at Informal Hearing.

(1) If a defendant requests an informal hearing, the court shall schedule an informal hearing and notify the police officer who issued the citation to appear at the informal hearing.

(2) The attendance of the officer at the hearing may not be waived.

Except when the court is notified before the commencement of a hearing of an emergency preventing an on-duty officer from appearing, failure of the police officer to appear as required by this rule shall result in a dismissal of the case without prejudice.

(D) Motion to Set Aside Default Judgment.

(1) A defendant may move to set aside a default judgment within 14 days after the court sends notice of the judgment to the defendant. The motion

(a) may be informal,

(b) may be either written or presented to the court in person,

(c) must explain the reason for the nonappearance of the defendant,

(d) must state that the defendant wants to offer a defense to or an explanation of the complaint, and

(e) must be accompanied by a cash bond equal to the fine and costs due at the time the motion is filed.

(2) For good cause, the court may

(a) set aside the default and direct that a hearing on the complaint take place, or

(b) schedule a hearing on the motion to set aside the default judgment.

(3) A defendant who does not file this motion on time may use the procedure set forth in [MCR 2.603\(D\)](#).

(E) Response.

(1) Except as provided in subrule (4), an admission without explanation may be offered to and accepted by

(a) a district judge;

(b) a district court magistrate as authorized by the chief judge, the presiding judge, or the only judge of the district; or

(c) other district court personnel, as authorized by a judge of the district.

(2) Except as provided in subrule (4), an admission with explanation may be written or offered orally to a judge or district court magistrate, as authorized by the district judge.

(3) Except as provided in subrule (4), a denial of responsibility must be made by the defendant appearing at a time set either by the citation or as the result of a communication with the court.

(4) If the violation is a railway municipal civil infraction, and there has been damage to property or a vehicle has been impounded, the defendant's response must be made at a formal hearing.

(F) Contested Actions; Notice; Defaults.

(1) A contested action may not be heard until a citation is filed with the court. If the citation is filed electronically, the court may decline to hear the matter until the citation is signed by the officer or official who issued it, and is filed on paper. A citation that is not signed and filed on paper, when required by the court, may be dismissed with prejudice.

(2) An informal hearing will be held unless

(a) a party expressly requests a formal hearing, or

(b) the violation is a railway municipal civil infraction which requires a formal hearing pursuant to [MCL 600.8717\(4\)](#).

(3) The provisions of [MCR 2.501\(C\)](#) regarding the length of notice of trial assignment do not apply in civil infraction actions.

(4) A defendant who obtains a hearing date other than the date specified in the citation, but who does not appear to explain or contest responsibility, is in default, and the procedures established by subrules (B)(4)-(6) apply.

(G) Post-determination Orders; Sanctions, Fines, and Costs; Schedules.

(1) A court may not increase a scheduled civil fine because the defendant has requested a hearing.

(2) Upon a finding of responsibility in a traffic civil infraction action, the court:

(a) must inform the secretary of state of the finding, as required by [MCL 257.732](#); and

(b) must initiate the procedures required by [MCL 257.321a](#), if the defendant fails to pay a fine or to comply with an order or judgment of the court.

(3) Upon a finding of responsibility in a state civil infraction action, the court must initiate the procedures required by [MCL 257.321a\(1\)](#), if the defendant fails to pay a fine or to comply with an order or judgment of the court.

(4) The court may waive fines, costs and fees, pursuant to statute or court rule, or to correct clerical error.

(H) Appeal; Bond.

(1) An appeal following a formal hearing is a matter of right. Except as otherwise provided in this rule, the appeal is governed by subchapter 7.100.

(a) A defendant who appeals must post with the district court, at the time the appeal is taken, a bond equal to the fine and costs imposed. A defendant who has paid the fine and costs is not required to post a bond.

(b) If a defendant who has posted a bond fails to comply with the requirements of [MCR 7.104\(D\)](#), the appeal may be considered abandoned, and the district court may dismiss the appeal on 14 days' notice to the parties pursuant to [MCR 7.113](#). The court clerk must promptly notify the circuit court of a dismissal and the circuit court shall dismiss the claim of appeal. If the appeal is dismissed or the judgment is affirmed, the district court may apply the bond to the fine and costs.

(c) A plaintiff's appeal must be asserted by the prosecuting authority of the political unit that provided the plaintiff's attorney for the formal hearing. A bond is not required.

(2) An appeal following an informal hearing is a matter of right, and must be asserted in writing, within 7 days after the decision, on a form to be provided by the court. The appeal will result in a de novo formal hearing.

(a) A defendant who appeals must post a bond as provided in subrule (1)(a). If a defendant who has posted a bond defaults by failing to appear at the formal hearing, or if the appeal is dismissed or the judgment is affirmed, the bond may be applied to the fine and costs.

(b) A plaintiff's appeal must be asserted by the prosecuting authority of the political unit that is responsible for providing the plaintiff's attorney for the formal hearing. A bond is not required.

(3) There is no appeal of right from an admission of responsibility. However, within 14 days after the admission, a defendant may file with the district court a written request to withdraw the admission, and must post a bond as provided in subrule (1)(a). If the court grants the request, the case will be scheduled for either a formal hearing or an informal hearing, as ordered by the court. If the court denies the request, the bond may be applied to the fine and costs.

Credits

[Effective March 1, 1985; amended March 23, 1989, effective June 1, 1989, 432 Mich; April 27, 1989, effective July 1, 1989, 432 Mich; April 24, 1997, effective September 2, 1997, 454 Mich; October 18, 2005, effective January 1, 2006, 474 Mich; December 13, 2005, effective January 1, 2006, 474 Mich; August 24, 2012, effective immediately, 492 Mich.]

Editors' Notes

COMMENTS

1985 Staff Comment

MCR 4.101 is based on DCR 2011. There is some reorganization and several slight modifications.

In subrule (A)(4), the prohibition on issuing a warrant for a civil infraction is qualified where issuance of a warrant is permitted by statute.

Under DCR 2011.3(A)(3), in order to enter a default, the clerk was required to certify that the defendant had not answered the citation. Subrule (B)(3)(b) adds the words “within the time allowed by statute”.

In subrule (E)(1) the reference to a “sworn” complaint is removed. Under [MCL 257.727c\(3\)](#), the citation is treated as sworn to if it includes the declaration provided by that statute.

The [March 1, 1985] amendment of MCR 4.101(E) excepts civil infraction actions from the requirement of [MCR 2.501\(C\)](#) that the parties be given at least 28 days' notice of trial.

Subrule (G)(2) provides that if a defendant who has posted a bond in order to appeal fails to appear at the formal hearing, the bond may be applied to the fine and costs imposed.

Staff Comment to June, 1989 Amendment

The March 23, 1989 [amendment to MCR 4.101, effective June 1, 1989, makes] several changes in the procedures for appealing to the circuit court.

MCR 4.101(G)(4) is amended to clarify the bond requirement when a defendant appeals to circuit court in a civil infraction action.

Staff Comment to July, 1989 Amendment

The May 3, 1989 amendments to MCR 4.101(B) and (F), [4.102\(B\)](#) and [8.105\(G\)](#) [effective July 1, 1989], suggested by the Task Force on Reporting Traffic-Related Offenses, are intended to implement recent statutory changes.

Staff Comment to 1997 Amendment

The September 1997 amendments of MCR 4.101, [4.401](#), and [6.615](#), and the addition of [MCR 8.125](#), [effective September 2, 1997] were adopted at the request of the Michigan District Judges Association because of recent statutory changes that created new categories of civil infractions, and the availability of electronic filing. In addition, the amendment of [MCR 4.401\(G\)](#) was made to clarify the procedure for challenging a civil infraction judgment.

Staff Comment to October, 2005 Amendment

The amendment of MCR 4.101(A)(2) limits amendment of a violation on a citation filed with the court to the prosecuting official. The deletion of former subsection (A)(3) conforms to a change in [MCR 6.615\(A\)\(3\)](#), which takes effect January 1, 2006. The new subsection (C) requires the court to schedule an informal hearing when requested by the defendant, and notify the officer who issued the citation to appear, prohibits waiver of the presence of the officer at an informal hearing, and establishes procedures if the police officer fails to appear for a hearing. The amendment of relettered (F)(1) makes this section consistent with changes of [MCR 6.615\(D\)\(1\)](#), which take effect January 1, 2006.

CORRIGAN, J. (*dissenting*). I would not adopt MCR 4.101 as it was released to the public for notice and comment. Nor would I prohibit all waivers on a statewide basis as the current modified rule provides. Instead, I would authorize limited pilot projects in those districts willing to participate, such as are currently occurring in the 8th District Court and the 16th District Court, to

test the practicality of allowing waivers of police officers' testimony at informal civil infraction hearings. Contrary to the policy judgment that the new prohibition reflects, I do not share the belief that a police officer's absence at such hearings is universally detrimental to a civil defendant; in some circumstances, a citizen may see some strategic benefit in authorizing the written testimony of a police officer. I would allow experimentation, to be followed by a report regarding the merits of the pilot program.

Staff Comment to December, 2005 Amendment

The amendment of MCR 4.101(A)(2) clarifies that those who may amend the violation on a citation are the prosecuting attorney or attorney for the political subdivision, the officer who issued the citation, or another police officer for the plaintiff.

Staff Comment to 2012 Amendment

These amendments reflect changes to correct minor technical errors that have occurred in drafting or to respond to recent adopted rule revisions, which occasionally inadvertently create incorrect cross-references in other rules.

MI Rules MCR 4.101, MI R DIST CT MCR 4.101
Current with amendments received through 1/1/16

End of Document

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Tab Page:
Item 3

**STATE OF MICHIGAN
JUDICIAL DISTRICT**

**ORDER OF FORFEITURE OF
OTHER REACHABLE PROPERTY**

CASE NO.

Court address

Court telephone no.

The People of the State of Michigan

The People of _____

In the matter of _____

v

Defendant name, address, and telephone no.

THE COURT FINDS:

1. An order of forfeiture was entered in this matter on _____ .
Date
2. Property in the order of forfeiture cannot be located, has been sold to a bona fide purchaser for value, placed beyond the jurisdiction of the court, substantially diminished in value by the conduct of the defendant, or commingled with other property that cannot be divided without difficult or undue injury to innocent persons.
3. The value of the unreachable property is \$ _____ .

IT IS ORDERED:

4. The following reachable property(s) of equal value is/are forfeited to _____
in place of the unreachable property: Unit of government

5. The property(s) described above may be disposed of according law.

_____ Date

_____ Judge

_____ Bar no.

Michigan Compiled Laws Annotated

Chapter 600. Revised Judicature Act of 1961 (Refs & Annos)

Revised Judicature Act of 1961 (Refs & Annos)

Chapter 47. Forfeiture or Seizure of Certain Property (Refs & Annos)

M.C.L.A. 600.4708

600.4708. Sale of property; disposition of proceeds; priority; appointment of receiver to dispose of real property; compensation and authority; unreachable property; order for forfeiture of other reachable property

Effective: January 14, 2015

[Currentness](#)

Sec. 4708. (1) When property is forfeited under this chapter, the unit of government that seized or filed a lien against the property may sell the property that is not required to be destroyed by law and that is not harmful to the public and may dispose of the proceeds and any money, including any interest earned on money deposited in a financial institution as described in section 4703(6),¹ negotiable instrument, security, or other thing of value that is forfeited under this chapter in the following order of priority:

(a) Pay any outstanding security interest of a secured party who did not have prior knowledge of, or consent to the commission of, the crime, or did not acquire his or her interest as the result of a transfer that is void under section 4703(7).

(b) Satisfy any order of restitution in the prosecution for the crime.

(c) Pay the claim of each person who shows that he or she is a victim of the crime to the extent that the claim is not covered by an order of restitution.

(d) Pay any outstanding lien against the property that has been imposed by a governmental unit.

(e) Pay the proper expenses of the proceedings for forfeiture and sale, including, but not limited to, expenses incurred during the seizure process and expenses for maintaining custody of the property, advertising, as well as reasonable prosecution and court costs.

(f) The balance remaining after the payment of restitution, the claims of victims, outstanding liens, and expenses shall be distributed by the court having jurisdiction over the forfeiture proceedings to the unit or units of government substantially involved in effecting the forfeiture. Seventy-five percent of the money received by a unit of government under this subdivision shall be used to enhance enforcement of the criminal laws and 25% of the money shall be used to implement the William Van Regenmorter crime victim's rights act, 1985 PA 87, [MCL 780.751 to 780.834](#). A unit of government receiving money under this subdivision shall report annually to the department of management and budget the amount of money received under this subdivision that was used to enhance enforcement of the criminal laws and the amount that was used to implement the William Van Regenmorter crime victim's rights act, 1985 PA 87, [MCL 780.751 to 780.834](#).

(2) In the course of selling real property under subsection (1), the court that enters an order of forfeiture, on motion of the unit of government to whom the property is forfeited, may appoint a receiver to dispose of the real property forfeited. The receiver is entitled to reasonable compensation. The receiver has authority to do all of the following:

- (a) List the forfeited real property for sale.
- (b) Make whatever arrangements are necessary for the maintenance and preservation of the forfeited real property.
- (c) Accept offers to purchase the forfeited real property.
- (d) Execute instruments transferring title to the forfeited real property.

(3) If any property included in the order of forfeiture under this chapter cannot be located or has been sold to a bona fide purchaser for value, placed beyond the jurisdiction of the court, substantially diminished in value by the conduct of the defendant, or commingled with other property that cannot be divided without difficulty or undue injury to innocent persons, the court may order forfeiture of any other reachable property of the owner up to the value of the property that is unreachable as described in this subsection. This subsection only applies against an owner that is also the person convicted of the crime underlying the forfeiture action.

Credits

P.A.1961, No. 236, § 4708, added by [P.A.1988, No. 104, § 1, Eff. June 1, 1988](#). Amended by [P.A.2006, No. 128, Imd. Eff. May 5, 2006](#); [P.A.2014, No. 333, Eff. Jan. 14, 2015](#).

Footnotes

[1](#) [M.C.L.A. § 600.4703](#).

M. C. L. A. 600.4708, MI ST 600.4708

The statutes are current through P.A.2016, No. 15 of the 2016 Regular Session, 98th Legislature.

Tab Page:

Item 4

STATE OF MICHIGAN JUDICIAL DISTRICT	APPEAL WORKSHEET FOR APPLICATION FOR LEAVE TO APPEAL	CASE NO. CIRCUIT COURT DISTRICT COURT
--	---	--

Date of judgment/order: _____ **LAST DATE FOR FILING** **DATE ACTUALLY FILED**

1. a. File signed application for appeal in circuit court _____
- b. Pay fee in circuit court _____
- c. File/order transcript _____
 Transcript unavailable - settled statement of facts filed along
with certifying order _____
2. Serve appellee copies of:
 - a. Application for appeal _____
 - b. Order on application for appeal _____
 - c. Statement re: payment of fees _____
 - d. Recorder's/reporter's certificate _____
3. File proof of service in circuit court _____

If leave to appeal is granted, then do the following:

4. a. Set/file bond in district court (if applicable) _____
- b. File copy of bond in circuit court (if applicable) _____
- c. File proof that money, property, or documents were
delivered/deposited (if applicable) _____
- d. Pay district court:
 - Taxable costs _____
 - \$25 appeal fee _____
5. a. **Applies to appellee only:** file appearance with circuit court and
identify individual appellate attorneys _____
- b. File cross-appeal _____
6. Serve appellee copies of:
 - a. Entire record on appeal _____
 - b. Bond or waiver (if applicable) _____
7. File proof of service in circuit court _____
8. File proof of service in district court _____
9. Transcript filed by recorder/reporter _____
10. Order settling and transmitting record on appeal _____
11. Record transmitted, including transcript and docket entries _____

CHECKLIST FOR APPEALS FROM DISTRICT COURT TO CIRCUIT COURT

NOTE: This checklist should not be used for appeals from an administrative agency to the circuit court.

1. Within 21 days or the time allowed by statute after entry of judgment, order, or decision appealed,* appellant must file:
 - a. a signed application for leave to appeal in circuit court. The application must:
 - i) include the date and nature of the judgment, order, or decision appealed.
 - ii) concisely set forth appellant's allegations of error and relief sought.
 - iii) set forth a concise argument supporting appellant's position on each issue that conforms with MCR 7.212(C).
 - iv) if the order appealed is interlocutory, set forth facts showing how appellant would suffer substantial harm by awaiting final judgment before appealing.
 - b. a copy of the judgment, order, or decision appealed and the opinion or findings of the district court.
 - c. a copy of the register of actions.
 - d. unless waived by stipulation of the parties or trial court order, a copy of certain transcripts as follows:
 - i) in an appeal related to an evidentiary hearing in a civil or criminal case, the transcript of the evidentiary hearing, including the opinion or findings of the court that conducted the hearing.
 - ii) in an appeal challenging jury instructions, the transcript of the entire charge to the jury.
 - iii) in an appeal from a criminal judgment entered pursuant to a guilty or nolo contendere plea, the transcripts of the plea and sentence.
 - iv) in an appeal from an order granting or denying a new trial, the portion of the transcript permitting the circuit court to determine whether the district court's decision was for a legally-recognized reason based on arguable support in the record.
 - v) in an appeal raising a sentencing issue, the transcript of the sentencing proceeding and the transcript of any hearing on a motion related to the sentencing.
 - vi) in an appeal raising any other issue, the portion of the transcript substantiating the existence of the issue, objections or lack thereof, arguments of counsel, and any comment or ruling of the district court judge.
 - vii) if the transcript is not yet available, appellant must file a copy of the certificate of the court reporter/recorder or a statement that a transcript has been ordered, in which case the certificate must be filed within 7 days after the transcript is ordered by a party or the court. If nothing is to be transcribed, appellant must file a statement to this effect within 7 days after the transcript is ordered.
 - e. proof that a copy of the application was served on all other parties and that a notice of the filing of the application was filed with the district court. If service cannot reasonably be accomplished, appellant may ask the circuit court to prescribe service under MCR 2.107(E).
 - f. the circuit court's appeal fee, ** unless appellant is indigent.
2. If appellant is a criminal defendant who has pled guilty or nolo contendere and requests appointment of an attorney within 21 days after entry of the judgment or sentence, application for leave to appeal must be filed within 21 days after entry of an order appointing or denying the appointment of an attorney or denying a timely-filed motion under MCR 7.105(A)(2).
3. Within 7 days after a transcript is ordered by a party or the court, the court reporter/recorder must provide a certificate that the transcript has been ordered, payment has been made or secured, and that it will be filed as soon as possible or has been filed.
4. Within 21 days of service of the application, any party in the case may file a signed answer that conforms with MCR 7.212(D), along with proof that a copy was served on all parties.
5. Absent good cause, the circuit court must decide the application within 35 days of the filing date. There is no oral argument unless directed by the court. If a decision is required on an application in fewer than 35 days, appellant must file a motion for immediate consideration concisely stating why an immediate decision is required.
6. The circuit court may grant or deny leave to appeal or grant other relief, and must promptly serve a copy of its order on the parties and the district court. Unless otherwise ordered, an appeal is limited to the issues raised in the application.

CHECKLIST FOR APPEALS FROM DISTRICT COURT TO CIRCUIT COURT

7. If the application is granted, MCR 7.104 governs further proceedings, except that the filing of a claim of appeal is not required and appellant must complete the acts required by MCR 7.104(D) and (E) **within 7 days** after entry of the order granting leave. MCR 7.104(D) and (E) require appellant to:
 - a. file a copy of the judgment, order, or decision appealed.
 - b. file a copy of the certificate of the court reporter/recorder or a statement that the transcript has been ordered under MCR 7.109(B)(3)(a). If nothing is to be transcribed, a statement must be filed to this effect. A district judge may order excerpts of the transcript or no transcript, but only on appellant's motion with notice to appellee. When a transcript is unavailable, appellant must file with the district court a settled statement of facts and certifying order under MCR 7.210(B)(2).
 - c. file a copy of the bond, if applicable.
 - d. file proof that money, property, or documents have been delivered or deposited as required by law.
 - e. file a copy of the register of actions, if any.
 - f. file proof that the circuit court appeal fee** has been paid.
 - g. file anything else required by law.
 - h. file proof that a copy of the claim of appeal and other documents required by court rule were served on all parties, the district court, and any other person or officer entitled by law to notice of the appeal.
 - i. if applicable, get bond on appeal set (or denied), approved, and posted in district court.
 - j. pay taxable costs of prevailing party together with \$25 *** to clerk of district court.
 - k. serve on the district court:
 - i) any fee required by law.
 - ii) any bond required by law as a condition for taking the appeal.
 - iii) unless there is nothing to be transcribed, a certificate of the court reporter/recorder or a statement that the transcript was ordered and payment was made or secured. If a statement is filed, the certificate must be filed within 7 days after the transcript is ordered by a party or the court.
8. Within 14 days of being served the order granting leave, appellee must file an appearance in the circuit court identifying the individual appellate attorneys. **An appellee who does not file an appearance is not entitled to notice of further proceedings.** Appellee may file a cross-claim within this 14-day time period. If a cross-claim is filed, the cross-appellant must also file transcript certificates or statements that there is nothing to transcribe within 14 days of an order dismissing the initial appeal if the cross-claim will still be pursued.
9. The court reporter/recorder must file the transcript in the district court within:
 - a. 14 days after the transcript is ordered from an order granting or denying a motion to suppress evidence in a criminal case.
 - b. 28 days after the transcript is ordered in an appeal of a criminal conviction based on a plea of guilty, guilty but mentally ill, or nolo contendere, or an appeal from the dismissal or reduction of a felony charge following a preliminary examination.
 - c. 56 days after the transcript is ordered in all other cases.

The circuit court may extend or shorten these time frames on a motion filed by the court reporter/recorder or a party.
10. Immediately after the transcript is filed in the district court, the court reporter/recorder must notify the circuit court and all parties that it has been filed. The court reporter/recorder must file in the circuit court an affidavit of mailing of notice to the parties.
11. Within 14 days after the transcript has been filed in the district court, appellant must serve a copy of the entire record on each appellee. This includes any transcripts or exhibits in his or her possession (note: offering parties must maintain exhibits in their possession). The record must include the substance of any excluded evidence or the transcript of proceedings in the district court excluding it. Appellant must promptly file proof with the district court and circuit court that the record was served. If the filing of a transcript was excused by MCR 7.109(B), the record must be served within 14 days after the filing of the transcript substitute.

CHECKLIST FOR APPEALS FROM DISTRICT COURT TO CIRCUIT COURT

12. Within 14 days after the complete transcript has been filed or a certified copy of the record has been requested, the district court must promptly send the record to the circuit court, except for those things omitted by written stipulation of the parties. The district court may order removal of exhibits, if any, from the record. Weapons, drugs, or money are not to be sent unless requested by the circuit court. The district court must include a certificate identifying the name of the case, listing the papers with reasonable definiteness, and indicating that the required fees have been paid and any required bond has been filed. The record must include:
- a. the register of actions in the case.
 - b. any exhibits on file.
 - c. all documents and papers from the court file.
 - d. all transcripts.
 - e. all opinions, findings, and orders of the district court.
 - f. the order or judgment appealed.
13. When the record has been filed in the circuit court, the circuit court must immediately send written notice to the parties.

- * Judgment (sentence) or denial of timely-filed motion for new trial, a motion for rehearing or reconsideration, or a timely-filed motion for other relief from the judgment, order, or decision
- ** \$150 beginning October 1, 2003
- *** Compare MCL 600.6536 with MCL 600.2528 and MCL 600.2529

STATE OF MICHIGAN JUDICIAL DISTRICT	APPEAL WORKSHEET FOR CLAIM OF APPEAL OF RIGHT	CASE NO. CIRCUIT COURT DISTRICT COURT
--	--	--

	LAST DATE FOR FILING	DATE ACTUALLY FILED
Date of judgment/order: _____		
1. a. File appeal in circuit court	_____	_____
b. File copy of claim of appeal in district court	_____	_____
c. Pay filing fee in circuit court (MCL 600.2529)	_____	_____
d. Set/file bond in district court (if applicable)	_____	_____
e. File copy of bond in circuit court (if applicable)	_____	_____
f. File proof that money, property, or documents delivered/deposited (if applicable)	_____	_____
g. File/order transcript	_____	_____
<input type="checkbox"/> Transcript unavailable - settled statement of facts filed along with certifying order	_____	_____
h. Pay district court:		
Taxable costs	_____	_____
\$25 fee (MCL 600.6536)	_____	_____
2. Serve appellee copies of:		
a. Entire record on appeal, including transcripts and exhibits in appellant's possession	_____	_____
b. Copy of bond or waiver (if applicable)	_____	_____
c. Statement re: payment of fees	_____	_____
d. Recorder's/reporter's certificate	_____	_____
3. File proof of service in circuit court	_____	_____
4. File proof of service in district court	_____	_____
5. a. Applies to appellee only: file appearance with circuit court and identify individual appellate attorneys	_____	_____
b. <input type="checkbox"/> File cross appeal	_____	_____
6. Transcript filed by recorder/reporter	_____	_____
7. Certificate of records transmitted on appeal	_____	_____
8. Record transmitted, including transcript and docket entries	_____	_____

CHECKLIST FOR APPEALS FROM DISTRICT COURT TO CIRCUIT COURT

NOTE: This checklist should not be used for appeals from an administrative agency to the circuit court.

1. Within 21 days (or within 10 days in landlord-tenant possessory actions) or time allowed by statute after entry of judgment, order, or decision appealed, judgment (sentence) or denial of timely-filed motion for new trial, a motion for rehearing or reconsideration, or a timely-filed motion for other relief from the judgment, order, or decision, appellant must:
 - a. file a claim of appeal (form MC 55 pursuant to MCR 7.104[B] and [C]) in circuit court. The following documents must be filed with the claim of appeal:
 - i) a copy of the judgment, order, or decision appealed.
 - ii) a copy of the certificate of the court reporter/recorder or a statement that the transcript has been ordered pursuant to MCR 7.109(B)(3)(a). If nothing is to be transcribed, a statement must be filed to this effect. A district judge may order excerpts of transcript or no transcript, but only on appellant's motion with notice to appellee. If a transcript is unavailable, appellant must file with the district court a settled statement of facts and certifying order pursuant to MCR 7.210(B)(2).
 - iii) if appellant has filed a bond, a copy of the bond.
 - iv) proof that money, property, or documents have been delivered or deposited as required by law.
 - v) a copy of the register of actions, if any.
 - vi) proof that the appeal fee has been paid.
 - vii) anything else required by law to be filed.
 - vii) proof that a copy of the claim of appeal and other required documents were served on all parties, the district court, and any other person or officer entitled by law to notice of the appeal.
 - b. pay appeal fee to circuit court clerk.
 - c. if applicable, get bond on appeal set (or denied), approved, and posted in district court.
 - d. pay taxable costs of prevailing party together with \$25 to clerk of district court.
2. Within the time for taking the appeal, appellant must serve on the district court:
 - a. a copy of claim of appeal (showing **circuit court** file number).
 - b. any fee required by law.
 - c. any bond required by law as a condition for taking appeal.
 - d. unless there is nothing to be transcribed, a certificate of the court reporter/recorder or a statement that the transcript has been ordered and payment has been made or secured. If a statement is filed, the certificate must be filed within 7 days after the transcript is ordered by a party or the court.
3. Within 7 days after a transcript is ordered, the court reporter/recorder must provide a certificate that the transcript has been ordered and payment made or secured, and that it will be filed as soon as possible or has already been filed.
4. The court reporter/recorder must file the transcript with the district court within 28 days after the transcript is ordered for an appeal from the dismissal or reduction of a felony charge following a preliminary examination. In all other cases, the court reporter/recorder must file the transcript within 56 days after the transcript is ordered. Immediately after the transcript is filed, the court reporter/recorder must notify the circuit court and all parties that the transcript has been filed and must file in the circuit court an affidavit of mailing of notice to the parties.
5. Within 14 days after the transcript has been filed, appellant must serve a copy of the entire record on appeal, including transcripts and exhibits in his or her possession, on each appellee. Proof that the record was served must be promptly filed with the district court and circuit court.
6. Within 14 days after being served the claim of appeal, appellee must file an appearance in the circuit court identifying the individual appellate attorneys. **An appellee who does not file an appearance is not entitled to notice of further proceedings.** Appellee may also file a cross claim within this 14-day period. If a cross claim is filed, the cross appellant must also file transcript certificates or statements that there is nothing to transcribe within 14 days of an order dismissing the initial appeal if the cross claim will still be pursued.
7. Within 14 days after the transcript has been filed or a certified copy of the record has been requested, the district court must send the record to the circuit court. The circuit court must immediately send written notice to the parties when the record is filed.

Tab Page: Item 5

HOW TO GET A MONEY JUDGMENT IN SMALL CLAIMS COURT

Form DC 84

AFFIDAVIT AND CLAIM, SMALL CLAIMS

Use this form if you want to bring a lawsuit against someone who owes you money or who has caused damage to your property or possessions and you cannot resolve the dispute through mediation or other means. If your damage is the result of an intentional wrongdoing, such as fraud, libel, slander, malicious destruction of property, or assault and battery, you cannot bring your action in the small claims division of the district court unless the wrongdoing is for a dishonored check, consumer protection violation, or recreational trespass.

You cannot use the small claims division of the district court if:

- 1) your case is against the State of Michigan or a state agency,
- 2) your case is against a local governmental unit that involves issues of governmental immunity,
- 3) you are an assignee or third-party beneficiary of the obligation, or
- 4) you have filed more than five small claims cases in the same week.

The maximum you can collect through a judgment in the small claims division of the district court is \$5,500. If your claim is for more than \$5,500, you can still use the small claims division but your judgment award cannot exceed \$5,500 and you permanently waive the right to collect the rest of your claim.

CLAIM CHECKLIST

Use the following checklist to make sure you have done all the steps that are needed.

DID YOU . . .

1. Fill out all requested information on the form? YES
2. Make all necessary copies of the form? YES
3. File the form and filing fee with the clerk of the court? YES
4. Have the form served on the defendant? YES
5. Keep one copy of the form for yourself? YES

If you cannot answer "yes" to all the above steps, a trial on your claim may be delayed or your claim may be dismissed.

By using this form packet you are representing yourself or an employer, a business, or other organization in a small claims court action. In order to receive the action you seek, you must follow the instructions in this packet. If you fail to do even one of the required steps, the court may not be able to give you the result you want.

If you have questions about any step in the process, refer to pages 3 through 5 of this booklet for details and review the information in the Self-Help Center at <http://courts.mi.gov/self-help/center/casetype/pages/smallclaimssh.aspx>

INSTRUCTIONS FOR USING FORM DC 84 FILING AND SERVING A CLAIM

»» WHO CAN FILE A CLAIM

An affidavit and claim can be signed and filed by someone other than the plaintiff. The plaintiff can be yourself if you are suing as an individual or a sole proprietor (sole owner of a business). **If you are not the plaintiff, but you are filing the claim** for a sole proprietorship (a business owned by one person), corporation, or other organization, you must meet the following conditions:

- If you are filing for an individual and you are not that individual, you must be the individual's guardian, conservator, or next friend.
- If you are filing for a sole proprietor (sole owner of a business) and you are not the owner, you must be a full-time salaried employee of the sole proprietor and you must have knowledge of the facts in the claim.
- If you are filing for a partnership, you must be one of the partners or you must be a full-time salaried employee of the partnership and you must have knowledge of the facts in the claim.
- If you are filing for a corporation, you must be a full-time salaried employee of the corporation and you must have knowledge of the facts in the claim.
- If you are filing for a county, city, village, township, or local or intermediate school district, you must be an elected or appointed officer or employee of the county, city, village, township, or local or intermediate school district who has knowledge of the facts surrounding the claim and who is authorized by the governing body of the county, city, village, township, or local or intermediate school district to file the claim.

»» FILING A CLAIM

1. Can I have an attorney?

If you decide to file a claim in the small claims division of the district court, an attorney cannot represent you. However, if the defendant wants an attorney, the defendant can demand that the claim be removed to the general civil division of the district court.

2. What does it cost?

The fee for filing a claim in the small claims division of the district court is:

- \$25 for damage claims up to \$600
- \$45 for damage claims from \$600 to \$1,750
- \$65 for damage claims over \$1,750 to \$5,500

The plaintiff is responsible for paying the filing fee and other fees. If the judge rules in favor of the plaintiff, these fees may be added to the judgment amount against the defendant.

3. Signing the affidavit and claim under oath.

The affidavit and claim form must be signed under oath in front of a notary public (you can find one at a bank) or the clerk of the court. The person signing the form must show photo identification to the notary public or clerk of the court before signing the affidavit and claim. The form can only be signed by the person who can file a claim, as stated above, under **Who Can File a Claim**.

Before you complete the form, you should decide whether you want to sign the affidavit and claim in front of a notary public or in front of the clerk of the court. If you decide to sign the affidavit and claim in front of a notary public, you only need to print out one copy of the form after completing it.

You can make three additional copies afterward. If you go to the court in person, print all four copies of the form after completing it.

4. Fill out the affidavit and claim form.

Fill out form DC 84 (Affidavit and Claim, Small Claims) on the website or get a paper copy of the form from the court to fill out. Follow the instructions on page 6. After completing form DC 84, print out the number of copies you need (see Step 3 on pages 3 and 4).

5. File the affidavit and claim with the court and make arrangements for service.

You can file the affidavit and claim with the court in person or by mail. You must pay the filing fees at the same time you file the affidavit and claim. If you can't afford to pay the filing fee, ask the clerk of the court for an Affidavit and Order, Suspension of Fees/Costs (form MC 20, which is not included in this packet) to fill out. Service fees can cost as little as \$5 for certified mail or as much as \$21 plus mileage for personal service for each defendant.

When the filing is received, the clerk will record the filing of the claim, assign a case number, and write the name of the district court judge or district court attorney magistrate assigned to the case on all copies of the affidavit and claim form. The clerk will complete the notice of hearing.

The clerk will keep the original of the affidavit and claim for the court file, and will make arrangements to serve one copy on each defendant as you have instructed and paid, either by personal delivery or by certified mail, return receipt requested and deliverable to the addressee only. After serving the claim, the clerk will return the remaining copy of the form to you.

To file with the court in person, take all four copies of the form that you made in Step 4 to the clerk of the court in the proper district court (see MCL 600.8415 for details). Bring your photo identification and your payment for the filing fee with you. Sign the affidavit and claim in front of the clerk of the court.

To file with the court by mail, you need to decide how you want to have the affidavit and claim served on each defendant because you will need to include payment for service when you mail your claim to the court. Contact the court to find out what it will cost. Place all four copies of the signed and notarized affidavit and claim form, payment for the filing fee, payment for service, and one self-addressed postage-paid envelope in an envelope addressed to the proper district court (see MCL 600.8415 for details). Have the post office mail the package to the court.

6. Filing proof of service with the court.

After the affidavit and claim is served on the defendant by the process server, the process server will complete the proof of service and file it with the court. If the court serves the affidavit and claim by certified mail, the clerk of the court will complete the proof of service.

If the process server is unable to serve the affidavit and claim on a defendant by personal service, the process server may serve the form by one of the other methods stated in Michigan Court Rule 2.105. It may be necessary for the court to reschedule the appearance date if it appears a defendant will not receive notice at least 7 days before the appearance date. See MCR 4.303(C) and MCL 600.8406.

7. Prepare for the trial.

To prepare for the trial, gather the evidence you need to prove your case. A letter or affidavit from a witness will be accepted as evidence by the court without the witness being physically present at the trial, but it is better if you have the witness come to court. If a witness is unwilling to appear, you can ask the clerk of the court to issue an order to appear (subpoena), requiring the witness to appear at the trial. The order to appear must be served on the witness (along with any witness fee) no later than two days before the trial. You can pay the clerk of the court to make arrangements for service of this order.

»» INFORMATION ABOUT ATTENDING THE HEARING

Bring your copy of the affidavit and claim with you to the hearing. Also, bring with you all the evidence you gathered and witnesses who are willing to testify. If you received a written answer or counterclaim from the defendant, bring that also. The trial will usually take place at the location stated in the notice to appear. It is important for you to arrive at the court on time. If you file a claim and are not in court when your case is called, the case will probably be dismissed.

1. You are expected to conduct yourself in a courteous manner and to follow the court's directions.
2. Make a list of information you think is important for the district court judge or district court attorney magistrate to know. You can use this list as a reminder to bring up the points you think are important.
3. If you need someone to attend this hearing who is unwilling to attend, follow the procedure in Michigan Court Rule 2.506 to get an order to appear (subpoena) or consult an attorney.
4. Go to the courtroom on the scheduled day and time. Dress neatly. Arrive 10 or 15 minutes early. Bring your witnesses with you.
5. Go into the courtroom, take a seat, and wait for your case to be called. Do not interrupt any hearing in progress.
6. The court clerk will call the case and you will appear before the district court judge or district court attorney magistrate to prove your case. Witnesses will be allowed to tell the court about facts that support your evidence.
7. When you are called, go to the front of the courtroom and follow the directions of the district court judge or district court attorney magistrate.
8. After making a decision, the court will prepare an appropriate judgment and the district court judge or district court attorney magistrate will instruct you about what to do next.

»» COLLECTING A MONEY JUDGMENT

If the court enters a money judgment in your favor and it is not paid when ordered, additional papers must be filed with the court to collect on the judgment by having wages or a bank account garnished or property seized. This cannot occur until 21 days after the judgment is entered. The court may ask that information be provided for these collection efforts. See <http://courts.mi.gov/self-help/center/collect/pages/default.aspx> for details.

INSTRUCTIONS FOR COMPLETING "AFFIDAVIT AND CLAIM, SMALL CLAIMS"

Please print neatly.

Items 1 through 12 must be completed before your claim can be filed with the court. Please read the instruction for each item. Then fill in the correct information for that item on the form.

- ① ② Write in the names, addresses, and telephone numbers of the plaintiff and the defendant. The plaintiff is the name of the person suing and may be someone other than you. If the plaintiff is a business, specify both the legal name and any assumed name in which the business is being conducted. The defendant is the person being sued. If you are suing a business, state its legal name if you know it. If you do not know its legal name, state the name the business was using to conduct business. If there is more than one defendant, write the words "et al." after the name of the defendant and write the additional names and addresses on a separate sheet of paper.
- ③ Check the box that is true. If another civil case was filed that involved the plaintiff and defendant regarding the same problem stated in this claim, write the name of the court where the case was filed, the case number, and the name of the judge assigned to hear that case. Check the box whether that case is or is not still pending.
- ④ A person other than the plaintiff can complete and sign this form. Read page 3 and then check the box that best describes your relationship to the plaintiff. If you are the plaintiff, check the box "plaintiff." If you are a partner and you are suing for the partnership, check the box "a partner." If you are a full-time employee of the plaintiff and are suing for the plaintiff, check the box "a full-time employee of the plaintiff."
- ⑤ The plaintiff can be either: 1) an individual, 2) a partnership, 3) a corporation, 4) a sole proprietor (a private business owner without a partner), or (5) an other organization. Check the box that best describes the plaintiff, and if applicable, complete the blank for "other."
- ⑥ The defendant can be either: 1) an individual, 2) a partner in a business partnership, 3) a corporation, 4) a sole proprietor (a private business owner without a partner), or 5) other organization. Check the box that best describes the defendant, and if applicable, complete the blank for "other." If there is more than one defendant, you will need to provide this information for each defendant.
- ⑦ Write in the date that the dispute occurred. For example, if the defendant owed money on a certain date and did not pay on that date, print that date here. Or, if the defendant damaged something that belonged to you, print the date that the damage occurred.
- ⑧ Write in the amount of the money owed or that you believe is owed to cover any damage even if it is more than \$5,500. If the amount is more than \$5,500 and the case is decided in the small claims division of the district court, the plaintiff gives up the right to any amount over \$5,500. The plaintiff cannot file another form to get a judgment for the balance. If the plaintiff wants a judgment for an amount over \$5,500 and the claim is for \$25,000 or less, a lawsuit must be filed in the civil division of the district court.
- ⑨ Briefly explain the reasons for the claim. Include what happened to cause the dispute.
- ⑩ Make sure that you understand and agree with this statement.
- ⑪ Check the boxes that are most accurate.
- ⑫ Check the box that is most accurate.

DO NOT SIGN YOUR NAME until you are standing in front of a notary or the clerk of the court.

DO NOT WRITE IN THE SECTION AFTER ITEM 12. The notary public or clerk of the court will complete this section.

File your affidavit and claim with the court. The clerk of the court will enter the expiration date and complete the notice of hearing. See page 4 of this packet for details.

- Read pages 3 through 5 of this booklet for details on filing and serving this form.

You must read this booklet for directions on the legal process.

Approved, SCAO

STATE OF MICHIGAN JUDICIAL DISTRICT	AFFIDAVIT AND CLAIM Small Claims	CASE NO.
--	---	-----------------

Court address _____ Court telephone no. _____

See instructions on the back of plaintiff and defendant copies.

1. _____
Plaintiff

Address

City, state, zip Telephone no. _____

2. _____
Defendant

Address

City, state, zip Telephone no. _____

NOTICE OF HEARING	
For Court Use Only	
The plaintiff and the defendant must be in court on	
Day _____	Date _____
at _____ at <input type="checkbox"/> the court address above.	
Time _____	
<input type="checkbox"/> _____ .	
Location	
Process server's name _____	Fee paid: \$ _____

3. A civil action between these parties or other parties arising out of the transaction or occurrence alleged in this complaint has been previously filed in _____ Court. The case number, if known, is _____ .
The action remains is no longer pending.

4. I have knowledge or belief about all the facts stated in this affidavit and I am
 the plaintiff or his/her guardian, conservator, or next friend. a partner. a full-time employee of the plaintiff.

5. The plaintiff is an individual. a partnership. a corporation. a sole proprietor. _____
Other

6. The defendant is an individual. a partnership. a corporation. a sole proprietor. _____
Other

7. The date(s) the claim arose is/are _____ .
Attach separate sheets if necessary

8. Amount of money claimed is \$ _____ . (NOTE: Plaintiff's costs are determined by the court and awarded as appropriate. They are not part of the amount claimed.)

9. The reasons for the claim are _____

10. The plaintiff understands and accepts that the claim is limited to \$5,500 by law and that the plaintiff gives up the rights to (a) recover more than this limit, (b) an attorney, (c) a jury trial, and (d) appeal the judge's decision.

11. I believe the defendant is is not mentally competent. I believe the defendant is is not 18 years or older.

12. I do not know whether the defendant is in the military service. The defendant is not in the military service.
 The defendant is in the military service.

Signature

Subscribed and sworn to before me on _____, _____ County, Michigan.

My commission expires: _____ Date Signature: _____
Deputy clerk/Notary public

Notary public, State of Michigan, County of _____

The defendant(s) must be served by _____ .
Expiration date

PROOF OF SERVICE

**AFFIDAVIT AND CLAIM
Small Claims**
Case No. _____

TO PROCESS SERVER: You are to serve this affidavit and claim no later than 7 days before the hearing date. You must make and file your return with the court clerk. If you are unable to complete service, you must return this original and all copies to the court clerk.

CERTIFICATE / AFFIDAVIT OF SERVICE / NONSERVICE

<input type="checkbox"/> OFFICER CERTIFICATE I certify that I am a sheriff, deputy sheriff, bailiff, or appointed court officer (MCR 2.104[A][2]), and that: (notarization not required)	OR	<input type="checkbox"/> AFFIDAVIT OF PROCESS SERVER Being first duly sworn, I state that I am a legally competent adult who is not a party or an officer of a corporate party, and that: (notarization required)
--	-----------	---

- I served personally a copy of the affidavit and claim,
- I served by registered or certified mail (copy of return receipt attached) a copy of the affidavit and claim,
- together with _____, on the defendant(s):
Attachment _____

Defendant name	Complete address of service	Day, date, time
Defendant name	Complete address of service	Day, date, time
Defendant name	Complete address of service	Day, date, time

- I have personally attempted to serve the affidavit and claim, together with any attachments on the following defendant(s) and have been unable to complete service.

Defendant name	Complete address of service	Day, date, time
Defendant name	Complete address of service	Day, date, time
Defendant name	Complete address of service	Day, date, time

I declare that that statements above are true to the best of my information, knowledge, and belief.

Service fee	Miles traveled	Fee	
\$		\$	
Incorrect address fee	Miles traveled	Fee	TOTAL FEE
\$		\$	\$

Signature _____

Name (type or print) _____

Title _____

Subscribed and sworn to before me on _____, _____ County, Michigan.
Date

My commission expires: _____ Signature: _____
Date Deputy court clerk/Notary public

Notary public, State of Michigan, County of _____

ACKNOWLEDGMENT OF SERVICE

I acknowledge that I have received service of the affidavit and claim, together with _____
Attachment

_____ on _____
Day, date, time

_____ on behalf of _____
Signature

ADDITIONAL NOTICE AND INSTRUCTIONS

TO BOTH THE PLAINTIFF AND THE DEFENDANT:

- You must bring to the hearing all witnesses, books, papers, and other physical evidence needed to prove or disprove this claim.
- Before the trial (hearing) starts, you have the right to
 1. **remove the case to the general civil division of the district court, or**
 2. have the case heard by a district court judge (if the hearing is scheduled before an attorney magistrate). If the case is heard by an attorney magistrate, you may appeal to the district judge within 7 days after the trial.
- If the case is tried in the small claims division, you give up the right to an attorney, to a jury trial, and to appeal the judge's decision.

If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

TO THE DEFENDANT:

- The affidavit and claim you have just received means you are being sued in the small claims division of the district court.
- The court is being asked to decide a matter that the plaintiff says is your obligation and responsibility.
- If you wish to deny this claim or arrange terms of payment, you must make your request by appearing at the date, time, and place stated in the notice of hearing on the front of this form.
- If you do not appear at the date, time, and place stated, a default judgment may be entered against you for the amount stated in item 8, including the costs of this action.
- If the dispute is settled before or at the hearing, you may have to pay the plaintiff's costs.
- In case a judgment is entered against you at the hearing, you should be prepared to pay the amount stated in item 8, including the costs of this action, or to make arrangements for installment payments.

Tab Page: Item 6

**STATE OF MICHIGAN
JUDICIAL DISTRICT**

**DEMAND AND ORDER FOR REMOVAL
Small Claims**

CASE NO.

Court address

Court telephone no.

Plaintiff's name, address, and telephone no.

v Personal service

Defendant's name, address, and telephone no.

Personal service

This demand is made by plaintiff. plaintiff's attorney. defendant. defendant's attorney.

DEMAND

I demand that this case be removed from the small claims division to the general civil division of the court.

Date

Attorney's name, address, and telephone no. (party demanding removal)

Signature of party demanding removal

Name (type or print)

Address

City, state, zip Telephone no.

ORDER

IT IS ORDERED: This case is removed to the general civil division of the court for further proceedings. **The defendant shall file a written answer and serve it within 14 days from the date of this order as provided in court rule.**

Date

Judge/Attorney magistrate Bar no.

CERTIFICATE OF MAILING

I certify that on this date I served a copy of this demand and order on the parties or their attorneys by first-class mail addressed to their last-known addresses as defined in MCR 2.107(C)(3).

Date

Court clerk

282 Mich. 707
Supreme Court of Michigan.

DETROIT BAR ASS'N et al.
v.
UNION GUARDIAN TRUST CO.

No. 5.
|
Oct. 3, 1938.

On motion for reconsideration of denial of motion for rehearing.

Motion for rehearing denied.

For former opinion, see [282 Mich. 216](#), [276 N.W. 365](#).

West Headnotes (4)

[1] **Attorney and Client**

🔑 [Wills, trusts, and estates; trust companies](#)

Lay employees of a corporate fiduciary can draft petitions, orders, and other papers to be filed in probate court, although such papers must be filed under the name of and by an attorney, who thereupon becomes responsible for such papers in the same manner as if he had drafted them in person.

[4 Cases that cite this headnote](#)

[2] **Attorney and Client**

🔑 [Representation of organizations and corporations in general](#)

A corporation can appear in a judicial proceeding only by an attorney, regardless of whether the corporation is interested in its own corporate capacity or in a fiduciary capacity.

[9 Cases that cite this headnote](#)

[3] **Attorney and Client**

🔑 [Wills, trusts, and estates; trust companies](#)

A lay employee of a corporate fiduciary can informally consult with the probate judge as to the administrative phase of matters pending in the probate court.

[8 Cases that cite this headnote](#)

[4] **Constitutional Law**

🔑 [Practice of law](#)

Legislative regulation of the practice of law is unconstitutional only when it tends to impair the proper administration of judicial functions.

[2 Cases that cite this headnote](#)

****432 *709** Appeal from Circuit Court, Wayne County, in Chancery; Allan Campbell, judge.

Argued before the Entire Bench.

Attorneys and Law Firms

George E. Brand, Ben O. Shepherd, and Ezra H. Frye, all of Detroit, for plaintiffs.

Shaeffer & Dahling, Butzel, Eaman, Long, Gust & Bills, Harold B. Desenberg, and Clayton C. Purdy, all of Detroit, for defendants.

Opinion

PER CURIAM.

Plaintiffs and appellants have petitioned for reconsideration of denial of their motion for rehearing. The attorneys for the respective parties have filed briefs and have made oral arguments before the court. After due consideration, we adhere to our former denial of a rehearing; however, in this connection we have again given consideration to certain phases of the appeal because, as appellants point out, the first question hereinafter considered was not covered in our original opinion ([282 Mich. 216](#), [276 N.W. 365](#)); and also because of appellants' contention that unless it is clarified our former opinion may be misconstrued.

First. Appellants complain that our original opinion does not determine the right of a corporate fiduciary to have its lay employees 'draft probate papers and conduct probate court proceedings.' We might well decline to give consideration to

the *710 above for the reason that this specific question is not embodied in the issues presented by appellants' original brief. Instead the right of the corporate fiduciary's employees to render service of the character above noted was presented to this court without discrimination as to whether such employees were layman or licensed attorneys. Further this specific question is not covered by the prayer for relief in the bill of complaint, it is not mentioned in the decree entered in the circuit court, nor is it in any of the three issues (quoted in original opinion) which counsel for the respective parties stipulated were the issues presented to the trial court for adjudication. On appeal from such a decree and under such a record it is scarcely to be expected that this court would undertake to adjudicate the issue now urged. Notwithstanding the noted condition of the record on this appeal, in part because the question was embodied in appellants' original application for rehearing and in part because it is a matter of public concern, we now make disposition of this additional issue. As above noted appellants seek decision of whether a lay employee of a corporate fiduciary may (1) 'draft probate papers' and/or (2) 'conduct probate court proceedings.'

By stipulation of the attorneys for the respective parties the decree entered in the trial court and affirmed in this court expressly provided that the defendant trust company was enjoined from 'drafting, or having drafted for others by its attorneys or attorney or others selected or paid by it therefor, any [will] * * * or proposed form or outline thereof intended for individual use.' **433 282 Mich. 223, 276 N.W. 369. It cannot be more definitely adjudicated that the corporate fiduciary may not through its lay or lawyer employees draft wills.

*711 [1] [2] [3] Now we have the question whether such lay employees may draft 'probate papers,' obviously meaning petitions, orders, etc., to be filed in probate court. So far as the mere mechanical drafting of such instruments or the diction used therein is concerned, we know of no reason justified in law in consequence of which it should be held that a lawyer in his office may employ a law clerk or a stenographer who, having the ability, is entrusted with the drafting of papers of this character; and on the other hand holding that a trust company empowered by statute to act as a fiduciary is barred from so using such employees. But when such papers are filed in or presented to the probate court or other court of record by a corporate fiduciary, they must be under the name and by the authority of one licensed to practice law. Thereupon the attorney becomes responsible for such papers in the same manner as if he had drafted them in person. He makes the draftsmanship his own. It seems unnecessary to add that in any judicial proceeding with which the corporate fiduciary is

concerned, in the probate court or any other court of record, it must be represented by a duly licensed attorney. This is conceded by appellee. While an individual may appear in proper person, a corporation, because of the very fact of its being a corporation, can appear only by attorney, regardless of whether it is interested in its own corporate capacity or in a fiduciary capacity. [Bennie v. Triangle Ranch Co.](#), 73 Colo. 586, 216 P. 718; [New Jersey Photo Engraving Co. v. Carl Schonert & Sons, Inc.](#), 95 N.J.Eq. 12, 122 A. 307. A layman is not authorized to practice law merely because he is an employee of a corporate fiduciary. However, it does not follow that a lay employee of such corporate fiduciary may not informally consult with the probate judge as to the administrative *712 phase of matters pending in the probate court. In so doing the corporate fiduciary acting through a lay employee would not be practicing law any more than would the clerk or other lay employee of a lawyer in rendering service of this character for the attorney employing him.

Second. Appellants urge a rehearing to enable them 'to point out the harmful implications of the quotation of the Cannon Case.' The reference is to our comment on and quotation from [In re Cannon](#), 206 Wis. 374, 240 N.W. 441, found in our opinion, 282 Mich. 226, 276 N.W. 368. As clearly appears, we were there considering whether the legislature might pass any regulations as to the practice of law without exceeding its constitutional powers. This was pertinent because appellants were asserting that regulation of the practice of law is a judicial function and solely within the inherent power of the courts. We did not then agree with that contention, nor do we now. To correctly apply the quotation from the Cannon Case, it must be read in connection with the remaining portion of this court's opinion as well as with the remaining portion of the opinion in the Cannon Case itself. In this latter case the Wisconsin court said [page 450]:

'While the Legislature may legislate with respect to the qualifications of attorneys, its power in that respect does not rest upon any power possessed by it to deal exclusively with the subject of the qualifications of attorneys, but is incidental merely to its general and unquestioned power to protect the public interest. When it does legislate fixing a standard of qualifications required of attorneys at law in order that public interests may be protected, such qualifications constitute only a minimum standard and limit the class from which the court must make *713 its selection. Such legislative qualifications do not constitute the ultimate qualifications beyond which the court cannot go in fixing additional qualifications deemed necessary by the courts for the proper administration of

judicial functions.' [In re Cannon](#), 206 Wis. 374, 397, 240 N.W. 441, 450.

In our original opinion we quoted with approval from an opinion of the Supreme Court of Missouri wherein it is said: 'So far as is necessary to their self-protection the right of the courts is paramount or exclusive; but beyond that point the legislative department also has constitutional rights in the exercise of the police power.' [Clark v. Austin](#), 340 Mo. 467, 496, 101 S.W.2d 977, 994.

[4] Our constitution has vested the courts with inherent power to regulate the practice of law to the extent that is reasonably ****434** necessary for their proper functioning. Legislative regulation is unconstitutional when, and only

when, it tends to impair the proper administration of judicial functions. [In re Bruen](#), 102 Wash. 472, 172 P. 1152; [Brydonjack v. State Bar of California](#), 208 Cal. 439, 281 P. 1018, 66 A.L.R. 1507.

The purport of our former opinion was in full accord with the foregoing, and we know of no reason for departing therefrom. For this reason plaintiffs' application for a rehearing is denied, but without costs.

All Citations

282 Mich. 707, 281 N.W. 432

Tab Page: Item 7

Form DC 100a

DEMAND FOR POSSESSION NONPAYMENT OF RENT

Use this form to give notice to a tenant when you want to start eviction proceedings against a tenant who has not paid rent.

NOTICE CHECKLIST

Use the following checklist to make sure you have done all the steps that are needed.

DID YOU . . .

1. Read all the information in the Self-Help Center at http://courts.michigan.gov/scao/selfhelp/landlord/evictnp_help.htm? YES
2. Complete the notice form? YES
3. Sign the notice form? YES
4. Deliver the "Tenant's copy" of the notice to the tenant? YES
5. Keep the "Court copy" of the notice for yourself? YES

If you cannot answer "yes" to all the above steps, you may have problems in your court case if you file a complaint with the court to evict a tenant.

If you have questions about any step in the process, refer to page 3 of this booklet for details and review the information in the Self-Help Center at http://courts.michigan.gov/scao/selfhelp/landlord/evictnp_help.htm.

**INSTRUCTIONS FOR USING FORM DC 100a
COMPLETING AND DELIVERING A DEMAND FOR POSSESSION**

»» DEFINITION

Demand for Possession, Nonpayment of Rent

A demand for possession for nonpayment of rent is used when a tenant has not paid the rent and the landlord wants the tenant to either pay the rent or move out or vacate the premises.

»» PREPARING THE NOTICE

Complete the form using the instructions on page 4.

»» GETTING NOTICE TO THE TENANT

1. Serving (Delivering) the Notice

You must "serve" the "Tenant's copy" of the demand for possession on the tenant. This can be done in one of three ways.

- delivering it personally to the tenant,
- delivering it on the premises to a member of the tenant's family or household, or an employee of the tenant, who is capable of understanding your instruction to deliver it to the tenant, with a request that it be delivered to the tenant, or
- sending it first-class mail addressed to the tenant at his or her last known address.

Some examples of improper service are slipping the demand under the tenant's door, leaving the demand outside the tenant's door, attaching the demand to the property, or mailing the demand by methods that require a signature.

2. Complete the Certificate of Service

Complete the Certificate of Service on the "Court copy" of the demand for possession using the instructions on page 4. This copy is for your records. Keep it in a safe place because you may need it later if you have to file a complaint for eviction with the court.

INSTRUCTIONS FOR COMPLETING "DEMAND FOR POSSESSION, NONPAYMENT OF RENT"

Please print neatly. After filling in the form, you will need to print both copies of the form.

Items A through E must be completed before delivering your notice to the tenant. Please read the instruction for each item. Then fill in the correct information for that item on the form.

- A** Write in the name of the tenant and the address where you will be delivering the notice. This address may be where the tenant lives or does business and it may be different than the address of the rental property.
- B** Write your name in the line that says "Name (type or print)."
- C** Write in the amount of the rent owed.
- D** Write in the box the complete address or a complete description of the rental property if different than the mailing address in **A** above. If this address is the same as the mailing address, write in the box "Same as mailing address."
- E** Write in the date, sign your name, and write in your address and telephone number.

Deliver the Tenant's copy to the tenant.

Read page 3 of this packet for details on delivering this notice to the tenant.

- F** On the date you deliver the notice, write in the date. Write in the name of the person to whom you delivered the notice. Check the box in front of the statement that best describes how you delivered the notice. Sign your name.

You should read this booklet and the information on the Self-Help Center at http://courts.michigan.gov/scao/selfhelp/landlord/evictnp_help.htm for directions on the legal process.

Form DC 100b

DEMAND FOR POSSESSION DAMAGE/HEALTH HAZARD TO PROPERTY

Use this form to give notice to a tenant when you want to start eviction proceedings against a tenant who has caused:

- **extensive and continuing damage to the rental property, or**
- **a serious and continuing health hazard to the rental property.**

NOTICE CHECKLIST

Use the following checklist to make sure you have done all the steps that are needed.

DID YOU . . .

1. Read all the information in the Self-Help Center at http://courts.michigan.gov/scao/selfhelp/landlord/evictdp_help.htm? YES
2. Make sure that 90 days has not passed since you discovered the health hazard or damage to the property? YES
3. Complete the notice form? YES
4. Sign the notice form? YES
5. Deliver the "Tenant's copy" of the notice to the tenant? YES
6. Keep the "Court copy" of the notice for yourself? YES

If you cannot answer "yes" to all the above steps, you may have problems in your court case if you file a complaint with the court to evict the tenant.

If you have questions about any step in the process, refer to page 3 of this booklet for details and review the information in the Self-Help Center at http://courts.michigan.gov/scao/selfhelp/landlord/evictdp_help.htm.

**INSTRUCTIONS FOR USING FORM DC 100b
COMPLETING AND DELIVERING A DEMAND FOR POSSESSION**

»» DEFINITION

Demand for Possession, Damage/Health Hazard to Property

A "notice to quit" is a notice given to a tenant to do some required act or to surrender and vacate the rental property by a certain date. This particular "notice to quit" is a demand for possession that is used when the tenant has caused extensive and continuing damage or a serious and continuing health hazard to the rental property and the landlord wants the tenant to either remove the health hazard, repair the damage, or move out. This notice must be given within 90 days of discovering the damage or health hazard.

»» PREPARING THE NOTICE

Complete the form using the instructions on page 4.

»» GETTING NOTICE TO THE TENANT

1. Serving (Delivering) the Notice

You must "serve" the "Tenant's copy" of the demand for possession on the tenant. This can be done in one of three ways.

- delivering it personally to the tenant,
- delivering it on the premises to a member of the tenant's family or household, or an employee of the tenant, who is capable of understanding your instruction to deliver it to the tenant, with a request that it be delivered to the tenant, or
- sending it first-class mail addressed to the tenant at his or her last known address.

Some examples of improper service are slipping the demand under the tenant's door, leaving the demand outside the tenant's door, attaching the demand to the property, or mailing the demand by methods that require a signature.

2. Complete the Certificate of Service

Complete the Certificate of Service on the "Court copy" of the demand for possession using the instructions on page 4. This copy is for your records. Keep it in a safe place because you may need it later if you have to file a complaint for eviction with the court.

INSTRUCTIONS FOR COMPLETING "DEMAND FOR POSSESSION, DAMAGE/HEALTH HAZARD TO PROPERTY"

Please print neatly. After filling in the form, you will need to print both copies of the form.

Items A through E must be completed before delivering your notice to the tenant. Please read the instruction for each item. Then fill in the correct information for that item on the form.

- A** Write in the name of the tenant and the address where you will be delivering the notice. This address may be where the tenant lives or does business and it may be different than the address of the rental property.
- B** Write your name in the line that says "Name (type or print)."
- C** Check the box that best describes the reason for giving the tenant a demand for possession, and then write in the box the complete address or a complete description of the rental property if different than the mailing address in **A** above. If this address is the same as the mailing address, write in the box "Same as mailing address."
- D** Explain in detail the serious and continuing health hazard or the extensive and ongoing damage to the rental property in the lines provided.
- E** Write in the date, sign your name, and write in your address and telephone number.

Deliver the Tenant's copy to the tenant.

Read page 3 of this packet for details on delivering this notice to the tenant.

- F** On the date you deliver the notice, write in the date. Write in the name of the person to whom you delivered the notice. Check the box in front of the statement that best describes how you delivered the notice. Sign your name.

You should read this booklet and the information on the Self-Help Center at http://courts.michigan.gov/scao/selfhelp/landlord/evictdp_help.htm for directions on the legal process.

STATE OF MICHIGAN	DEMAND FOR POSSESSION DAMAGE/HEALTH HAZARD TO PROPERTY Landlord-Tenant	
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(A)

TO: _____

(B)

1. Your landlord/landlady, _____, says you have willfully or negligently caused
Name (type or print)

(C)

- extensive and continuing damage to the property at:
- a serious and continuing health hazard to exist at:

Address or description of premises rented (if different from mailing address):

(D)

Explanation: _____

2. You must do one of the following within 7 days from the date this notice was served.

- a. Repair the damage and/or remove the health hazard.
- b. Move out.

If you do not do one of the above, your landlord/landlady may take you to court to evict you from the property.

3. If you believe you are not at fault, you can have a lawyer advise you. Call him or her soon.

(E)

Date

Signature of owner of premises or agent

Address

_____ Telephone no.

City, state, zip

(F)

CERTIFICATE OF SERVICE

I certify that on _____ I served this notice on _____

Date Name

- by
- delivering it personally to the person in possession of the property.
 - delivering it on the premises to a member of his/her family or household or an employee of suitable age and discretion with a request that it be delivered to the person in possession of the property.
 - first-class mail addressed to the person in possession of the property.

Signature

STATE OF MICHIGAN	DEMAND FOR POSSESSION DAMAGE/HEALTH HAZARD TO PROPERTY Landlord-Tenant	
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TO:

1. Your landlord/landlady, _____, says you have willfully or negligently caused
Name (type or print)

- extensive and continuing damage to the property at:
- a serious and continuing health hazard to exist at:

Address or description of premises rented (if different from mailing address):

Explanation: _____

2. You must do one of the following within 7 days from the date this notice was served.
- a. Repair the damage and/or remove the health hazard.
 - b. Move out.
- If you do not do one of the above, your landlord/landlady may take you to court to evict you.
3. If you believe you are not at fault, you can have a lawyer advise you. Call him or her soon.

Date

Signature of owner of premises or agent

Address

City, state, zip

Telephone no.

HOW TO GET LEGAL HELP

1. Call your own lawyer.
2. If you do not have an attorney but have money to retain one, you may locate an attorney through the State Bar of Michigan Lawyer Referral Service at 1-800-968-0738 or through a local lawyer referral service. Lawyer referral services should be listed in the yellow pages of your telephone directory or you can find a local lawyer referral service at www.michbar.org.
3. If you do not have an attorney and cannot pay for legal help, you may qualify for assistance through a local legal aid office. Legal aid offices should be listed in the yellow pages of your telephone directory or you can find a local legal aid office at www.michiganlegalaid.org. If you do not have Internet access at home, you can access the Internet at your local library.

Form DC 100c

NOTICE TO QUIT TO RECOVER POSSESSION OF PROPERTY

Use this form to give notice to a tenant when you want to start eviction proceedings against a tenant to recover possession of real property. If terminating tenancy of a mobile home owner in a mobile home park, use form DC 100d. If terminating tenancy for unlawful drug activity on the rental property, use form DC 100e.

NOTICE CHECKLIST

Use the following checklist to make sure you have done all the steps that are needed.

DID YOU . . .

- | | |
|---|------------------------------|
| 1. Complete the notice form? | YES <input type="checkbox"/> |
| 2. Sign the notice form? | YES <input type="checkbox"/> |
| 3. Deliver the "Tenant's copy" of the notice to the tenant? | YES <input type="checkbox"/> |
| 4. Keep the "Court copy" of the notice for yourself? | YES <input type="checkbox"/> |

If you cannot answer "yes" to all the above steps, you may have problems in your court case if you file a complaint with the court to evict the tenant.

If you have questions about any step in the process, refer to page 3 of this booklet for details and review the information at www.michiganlegalhelp.org.

INSTRUCTIONS FOR USING FORM DC 100c COMPLETING AND DELIVERING A NOTICE TO QUIT

»» DEFINITION

Notice to Quit to Recover Possession of Property

A “notice to quit” is a notice given to a tenant to do some required act or to surrender and vacate the rental property by a certain date. This particular notice to quit is used when the landlord wants to recover possession of real property.

»» PREPARING THE NOTICE

Complete the form using the instructions on page 4.

»» GETTING NOTICE TO THE TENANT

1. Serving (Delivering) the Notice

You must “serve” the “Tenant’s copy” of the notice to quit on the tenant. This can be done in one of three ways.

- delivering it personally to the tenant,
- delivering it on the premises to a member of the tenant’s family or household, or an employee of the tenant, who is capable of understanding your instruction to deliver it to the tenant, with a request that it be delivered to the tenant, or
- sending it first-class mail addressed to the tenant at his or her last known address.

Some examples of improper service are slipping the notice under the tenant’s door, leaving the notice outside the tenant’s door, attaching the notice to the property, or mailing the notice by methods that require a signature.

2. Complete the Certificate of Service

Complete the Certificate of Service on the “Court copy” of the notice to quit using the instructions on page 4. This copy is for your records. Keep it in a safe place because you may need it later if you have to file a complaint to recover possession with the court.

INSTRUCTIONS FOR COMPLETING “NOTICE TO QUIT TO RECOVER POSSESSION OF PROPERTY”

Please print neatly. After filling in the form, you will need to print both copies of the form.

Items A through F must be completed before delivering your notice to the tenant. Please read the instruction for each item. Then fill in the correct information for that item on the form.

- A** Write in the name of the tenant and the address where you will be delivering the notice. This address may be where the tenant lives or does business and it may be different than the address of the rental property.
- B** Write your name in the line that says “Name (type or print).”
- C** Check the appropriate box in item 1. If the “other” box is checked, explain the reason for wanting to recover possession of the property.
- D** Write in the box the complete address or a complete description of the rental property if different than the mailing address in **A** above. If this address is the same as the mailing address, write in the box “Same as mailing address.”
- E** Write in the date the tenant must move by.
- F** Write in the date, sign your name, and write in your address and telephone number.

Deliver the Tenant’s copy to the tenant.

Read page 3 of this packet for details on delivering this notice to the tenant.

- G** On the date you deliver the notice, write in the date. Write in the name of the person to whom you delivered the notice. Check the box in front of the statement that best describes how you delivered the notice. Sign your name.

You should read this booklet and the information at www.michiganlegalhelp.org for information on the legal process.

STATE OF MICHIGAN	NOTICE TO QUIT TO RECOVER POSSESSION OF PROPERTY Landlord-Tenant	
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(A)

TO: _____

(B)

1. Your landlord/landlady, _____, is seeking to recover possession of property pursuant to
Name (type or print)

(C) MCL 554.134(1) or (3) (see other side) other: _____ and wants to evict you from:

(D)

Address or description of premises rented (if different from mailing address):

(E) 2. You must move by _____ or your landlord/landlady may take you to court to evict you.
Date (*see note)

3. If your landlord/landlady takes you to court to evict you, you will have the opportunity to present reasons why you believe you should not be evicted.

4. If you believe you have a good reason why you should not be evicted, you may have a lawyer advise you. Call him or her soon.

(F) _____
Date

Signature of owner of premises or agent

Address

City, state, zip Telephone no.

*NOTE: Unless otherwise allowed by law, the landlord/landlady must give notice equal in time to at least one rental period.

CERTIFICATE OF SERVICE

(G)

I certify that on _____ I served this notice on _____
Date Name

- by delivering it personally to the person in possession.
- delivering it on the premises to a member of his/her family or household or an employee of suitable age and discretion with a request that it be delivered to the person in possession.
- first-class mail addressed to the person in possession.

Signature

Court copy (to be copied, if necessary, to attach to the complaint)

STATE OF MICHIGAN	NOTICE TO QUIT TO RECOVER POSSESSION OF PROPERTY Landlord-Tenant	
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TO: _____

1. Your landlord/landlady, _____, is seeking to recover possession of property pursuant to
Name (type or print)

MCL 554.134(1) or (3) (see other side) other: _____ and wants to evict you from:

Address or description of premises rented (if different from mailing address):

2. You must move by _____ or your landlord/landlady may take you to court to evict you.
Date (*see note)

3. If your landlord/landlady takes you to court to evict you, you will have the opportunity to present reasons why you believe you should not be evicted.

4. If you believe you have a good reason why you should not be evicted, you may have a lawyer advise you. Call him or her soon.

Date

Signature of owner of premises or agent

Address

City, state, zip Telephone no.

*NOTE: Unless otherwise allowed by law, the landlord/landlady must give notice equal in time to at least one rental period.

HOW TO GET LEGAL HELP

1. Call your own lawyer.
2. If you do not have an attorney but have money to retain one, you may locate an attorney through the State Bar of Michigan Lawyer Referral Service at 1-800-968-0738 or through a local lawyer referral service. Lawyer referral services should be listed in the yellow pages of your telephone directory or you can find a local lawyer referral service at www.michbar.org.
3. If you do not have an attorney and cannot pay for legal help, you may qualify for assistance through a local legal aid office. Legal aid offices should be listed in the yellow pages of your telephone directory or you can find a local legal aid office at www.michiganlegalhelp.org. If you do not have Internet access at home, you can access the Internet at your local library.

554.134 Termination of estate at will or by sufferance or tenancy from year to year.

(1) Except as provided otherwise in this section, an estate at will or by sufferance may be terminated by either party by giving 1 month's notice to the other party. If the rent reserved in a lease is payable at periods of less than 3 months, the time of notice is sufficient if it is equal to the interval between the times of payment. Notice is not void because it states a day for the termination of the tenancy that does not correspond to the conclusion or commencement of a rental period. The notice terminates the tenancy at the end of a period equal in length to the interval between times of payment.

(3) A tenancy from year to year may be terminated by either party by a notice to quit, given at any time to the other party. The notice shall terminate the lease at the expiration of 1 year from the time of the service of the notice.

Form DC 100d

DEMAND FOR POSSESSION TERMINATION OF TENANCY Mobile Home Park-Mobile Home Owner (Just-Cause Termination)

Use this form to give notice to a tenant when you want to start eviction proceedings against a mobile home owner when terminating tenancy in a mobile home park.

NOTICE CHECKLIST

Use the following checklist to make sure you have done all the steps that are needed.

DID YOU . . .

1. Read all the information in the Self-Help Center at http://courts.michigan.gov/scao/selfhelp/landlord/evictmh_help.htm? YES
2. Complete the notice form? YES
3. Sign the notice form? YES
4. Deliver the "Tenant's copy" of the notice to the tenant? YES
5. Keep the "Court copy" of the notice for yourself? YES

If you cannot answer "yes" to all the above steps, you may have problems in your court case if you file a complaint with the court to evict the tenant.

If you have questions about any step in the process, refer to page 3 of this booklet for details and review the information in the Self-Help Center at http://courts.michigan.gov/scao/selfhelp/landlord/evictmh_help.htm.

**INSTRUCTIONS FOR USING FORM DC 100d
COMPLETING AND DELIVERING A DEMAND FOR POSSESSION**

»» DEFINITION

Demand for Possession, Termination of Tenancy, Mobile Home Park-Mobile Home Owner, Just-Cause

A "notice to quit" is a notice given to a tenant to do some required act or to surrender and vacate the rental property by a certain date. This particular notice to quit is a demand for possession that is used when the landlord wants to terminate the tenancy of a mobile home owner in a mobile home park and wants the tenant to move.

»» PREPARING THE NOTICE

Complete the form using the instructions on page 4.

»» GETTING NOTICE TO THE TENANT

1. Serving (Delivering) the Notice

You must "serve" the "Tenant's copy" of the demand for possession on the tenant. This can be done in one of three ways.

- delivering it personally to the tenant,
- delivering it on the premises to a member of the tenant's family or household, or an employee of the tenant, who is capable of understanding your instruction to deliver it to the tenant, with a request that it be delivered to the tenant, or
- sending it first-class mail addressed to the tenant at his or her last known address.

Some examples of improper service are slipping the demand under the tenant's door, leaving the demand outside the tenant's door, attaching the demand to the property, or mailing the demand by methods that require a signature.

2. Complete the Certificate of Service

Complete the Certificate of Service on the "Court copy" of the demand for possession using the instructions on page 4. This copy is for your records. Keep it in a safe place because you may need it later if you have to file a complaint for eviction with the court.

**INSTRUCTIONS FOR COMPLETING "DEMAND FOR POSSESSION, TERMINATION OF TENANCY,
MOBILE HOME PARK-MOBILE HOME OWNER (Just-Cause Termination)"**

Please print neatly. After filling in the form, you will need to print both copies of the form.

Items A through F must be completed before delivering your notice to the tenant. Please read the instruction for each item. Then fill in the correct information for that item on the form.

- A** Write in the name of the tenant and the address where you will be delivering the notice. This address may be where the tenant lives or does business and it may be different than the address of the rental property.
- B** Write your name in the line that says "Name (type or print)."
- C** Write in the box the complete address or a complete description of the rental property if different than the mailing address in **A** above. If this address is the same as the mailing address, write in the box "Same as mailing address."
- D** Explain the reason for wanting to evict the tenant.
- E** Write in the date the tenant must move by.
- F** Write in the date, sign your name, and write in your address and telephone number.

Deliver the Tenant's copy to the tenant.

Read page 3 of this packet for details on delivering this notice to the tenant.

- G** On the date you deliver the notice, write in the date. Write in the name of the person to whom you delivered the notice. Check the box in front of the statement that best describes how you delivered the notice. Sign your name.

**You should read this booklet and the information on the Self-Help Center
at http://courts.michigan.gov/scao/selfhelp/landlord/evictmh_help.htm
for directions on the legal process.**

STATE OF MICHIGAN	DEMAND FOR POSSESSION TERMINATION OF TENANCY Mobile Home Park-Mobile Home Owner Just-Cause Termination	
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TO:

1. The owner/operator, _____, of your mobile home park is terminating your tenancy for just cause as stated below and wants to evict you from

Name (type or print)

Address or description of premises rented (if different from mailing address):

(State reason[s] for terminating tenancy for just cause. See reverse side for acceptable reasons.)

2. You must move by _____ or the owner/operator may take you to court to evict you.
Date (*see note)
3. If the owner/operator takes you to court to evict you, you will have the opportunity to present reasons why you believe you should not be evicted. You also have 10 days from the date of this notice to request, by certified or registered mail to the owner/operator, an in-person conference with the owner/operator. You may have a lawyer with you at this conference. You are required by law to continue paying rent and other charges.
4. If you believe you have a good reason why you should not be evicted, you may have a lawyer advise you. Call him or her soon.

Date

Signature of owner/operator

Address

City, state, zip

Telephone no.

*NOTE: If the lease agreement does not state otherwise, the owner/operator must give notice equal in time to at least one rental period.

HOW TO GET LEGAL HELP

1. Call your own lawyer.
2. If you do not have an attorney but have money to retain one, you may locate an attorney through the State Bar of Michigan Lawyer Referral Service at 1-800-968-0738 or through a local lawyer referral service. Lawyer referral services should be listed in the yellow pages of your telephone directory or you can find a local lawyer referral service at www.michbar.org.
3. If you do not have an attorney and cannot pay for legal help, you may qualify for assistance through a local legal aid office. Legal aid offices should be listed in the yellow pages of your telephone directory or you can find a local legal aid office at www.michiganlegalaid.org. If you do not have Internet access at home, you can access the Internet at your local library.

Mobile home owner's copy

**EXPLANATION OF JUST-CAUSE TERMINATIONS
FOR MOBILE HOME OWNERS RENTING LAND IN MOBILE HOME PARKS**

MCL 600.5775(2)

- (a) Use of site for unlawful purpose.
- (b) Failure by the tenant to comply with a lease or agreement of the park or with a rule or regulation of the mobile home park adopted under the lease or agreement, which rule or regulation is reasonably related to
 - (i) the health, safety, or welfare of the park, its employees, or tenants.
 - (ii) the quiet enjoyment of the other tenants of the mobile home park.
 - (iii) maintaining the physical condition or appearance of the mobile home park or the mobile homes on site.
- (c) A violation by the tenant of rules of the Michigan Department of Community Health (MDCH).
- (d) Intentional physical injury by the tenant to the personnel or other tenants of the mobile home park, or intentional physical damage by the tenant to the property of the mobile home park or of its other tenants.
- (e) Failure of the tenant to comply with a local ordinance, state law, or governmental rule or regulation relating to mobile homes.
- (f) Failure of the tenant to pay rent or other charges under the lease or rental agreement on time on three or more occasions during any 12-month period, for which the owner or operator has served a written demand for possession for nonpayment of rent and the tenant has failed or refused to pay the rent or other charges within the time period stated in the written demand for possession.
- (g) Conduct by the tenant upon the mobile home park premises, which is a substantial annoyance to other tenants or to the mobile home park, after notice and an opportunity to cure.
- (h) Failure of the tenant to maintain the mobile home or mobile home site in a reasonable condition consistent with aesthetics appropriate to the park.
- (i) Condemnation of the mobile home park.
- (j) Changes in the use or substantive nature of the mobile home park.
- (k) Public health and safety violations by the tenant.

Form DC 100e

DEMAND FOR POSSESSION TERMINATION OF TENANCY DUE TO UNLAWFUL DRUG ACTIVITY ON PREMISES

Use this form to give notice to a tenant when you want to start eviction proceedings against a tenant for unlawful drug activity on premises.

NOTICE CHECKLIST

Use the following checklist to make sure you have done all the steps that are needed.

DID YOU . . .

1. Read all the information in the Self-Help Center at http://courts.michigan.gov/scao/selfhelp/landlord/evictda_help.htm? YES
2. Make sure your lease contains a clause providing for termination of tenancy for illegal drug activity on the premises? If it does not, you cannot evict for unlawful drug activity on the premises. YES
3. Make sure a police report was filed alleging that the tenant or some other person under the tenant's control has unlawfully manufactured, delivered, or possessed illegal drugs on the leased premises? If not, you cannot evict for unlawful drug activity on the premises. YES
4. Complete the notice form? YES
5. Sign the notice form? YES
6. Deliver the "Tenant's copy" of the notice to the tenant? YES
7. Keep the "Court copy" of the notice for yourself? YES

If you cannot answer "yes" to all the above steps, you may have problems in your court case if you file a complaint with the court to evict the tenant.

If you have questions about any step in the process, refer to page 3 of this booklet for details and review the information in the Self-Help Center at http://courts.michigan.gov/scao/selfhelp/landlord/evictda_help.htm.

**INSTRUCTIONS FOR USING FORM DC 100e
COMPLETING AND DELIVERING A DEMAND FOR POSSESSION**

»» DEFINITION

Demand for Possession, Termination of Tenancy Due to Unlawful Drug Activity on Premises

This particular demand for possession is used when the landlord has terminated the tenancy and wants the tenant to move out or vacate the premises because of unlawful drug activity on the rental property. This form can only be used if a formal police report has been filed alleging unlawful drug activity on the leased premises.

»» PREPARING THE NOTICE

Complete the form using the instructions on page 4.

»» GETTING NOTICE TO THE TENANT

1. Serving (Delivering) the Notice

You must "serve" the "Tenant's copy" of the demand for possession on the tenant. This can be done in one of three ways.

- delivering it personally to the tenant,
- delivering it on the premises to a member of the tenant's family or household, or an employee of the tenant, who is capable of understanding your instruction to deliver it to the tenant, with a request that it be delivered to the tenant, or
- sending it first-class mail addressed to the tenant at his or her last known address.

Some examples of improper service are slipping the demand under the tenant's door, leaving the demand outside the tenant's door, attaching the demand to the property, or mailing the demand by methods that require a signature.

2. Complete the Certificate of Service

Complete the Certificate of Service on the "Court copy" of the demand for possession using the instructions on page 4. This copy is for your records. Keep it in a safe place because you may need it later if you have to file a complaint for eviction with the court.

INSTRUCTIONS FOR COMPLETING "DEMAND FOR POSSESSION, TERMINATION OF TENANCY DUE TO UNLAWFUL DRUG ACTIVITY ON PREMISES"

Please print neatly. After filling in the form, you will need to print both copies of the form.

Items A through E must be completed before delivering your demand to the tenant. Please read the instruction for each item. Then fill in the correct information for that item on the form.

- A** Write in the name of the tenant and the address where you will be delivering the demand. This address may be where the tenant lives or does business and it may be different than the address of the rental property.
- B** Write your name in the line that says "Name (type or print)."
- C** Write in the box the complete address or a complete description of the rental property if different than the mailing address in **A** above. If this address is the same as the mailing address, write in the box "Same as mailing address."
- D** Write in the date, sign your name, and write in your address and telephone number.

Deliver the Tenant's copy to the tenant.

Read page 3 of this packet for details on delivering this notice to the tenant.

- E** On the date you deliver the demand, write in the date. Write in the name of the person to whom you delivered the demand. Check the box in front of the statement that best describes how you delivered the demand. Sign your name.

You should read this booklet and the information on the Self-Help Center at http://courts.michigan.gov/scao/selfhelp/landlord/evictda_help.htm for directions on the legal process.

STATE OF MICHIGAN

DEMAND FOR POSSESSION
TERMINATION OF TENANCY DUE TO
UNLAWFUL DRUG ACTIVITY ON PREMISES
Landlord-Tenant

(A)

TO:

(B)

1. Your landlord/landlady, _____, is terminating your tenancy and wants to
Name (type or print)
evict you from:

(C)

Address or description of premises rented (if different from mailing address):

because you have willfully or negligently caused unlawful drug activity at the leased premises.

- 2. You must move within 24 hours from the date this notice was served or your landlord/landlady may take you to court to evict you.
- 3. If your landlord/landlady takes you to court to evict you, you will have the opportunity to present reasons why you believe you should not be evicted.
- 4. If you believe you have a good reason why you should not be evicted, you may have a lawyer advise you. Call him or her soon.

(D)

Date

Signature of owner of premises or agent

Address

City, state, zip Telephone no.

CERTIFICATE OF SERVICE

(E)

I certify that on _____ I served this notice on _____
Date Name

- by delivering it personally to the person in possession.
- delivering it on the premises to a member of his/her family or household or an employee of suitable age and discretion with a request that it be delivered to the person in possession.
- first-class mail addressed to the person in possession.

Signature

Court copy (to be copied, if necessary, to attach to the complaint)

STATE OF MICHIGAN	DEMAND FOR POSSESSION TERMINATION OF TENANCY DUE TO UNLAWFUL DRUG ACTIVITY ON PREMISES Landlord-Tenant	
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TO:

1. Your landlord/landlady, _____, is terminating your tenancy and wants to evict you from:

Name (type or print)

Address or description of premises rented (if different from mailing address):

because you have willfully or negligently caused unlawful drug activity at the leased premises.

2. You must move within 24 hours from the date this notice was served or your landlord/landlady may take you to court to evict you.
3. If your landlord/landlady takes you to court to evict you, you will have the opportunity to present reasons why you believe you should not be evicted.
4. If you believe you have a good reason why you should not be evicted, you may have a lawyer advise you. Call him or her soon.

Signature of owner of premises or agent

City, state, zip Telephone no.

HOW TO GET LEGAL HELP

1. Call your own lawyer.
2. If you do not have an attorney but have money to retain one, you may locate an attorney through the State Bar of Michigan Lawyer Referral Service at 1-800-968-0738 or through a local lawyer referral service. Lawyer referral services should be listed in the yellow pages of your telephone directory or you can find a local lawyer referral service at www.michbar.org.
3. If you do not have an attorney and cannot pay for legal help, you may qualify for assistance through a local legal aid office. Legal aid offices should be listed in the yellow pages of your telephone directory or you can find a local legal aid office at www.michiganlegalaid.org. If you do not have Internet access at home, you can access the Internet at your local library.

Tenant's copy

Michigan Compiled Laws Annotated

Chapter 600. Revised Judicature Act of 1961 (Refs & Annos)

Revised Judicature Act of 1961 (Refs & Annos)

Chapter 57. Summary Proceedings to Recover Possession of Premises (Refs & Annos)

M.C.L.A. 600.5718

600.5718. Service of demand; means; consent to electronic service

Effective: August 19, 2015

[Currentness](#)

Sec. 5718. (1) The demand provided for in section 5716¹ may be served by any of the following means:

(a) Personal delivery to the person in possession.

(b) Personal delivery on the premises to a member of the family or household or an employee of the person in possession, who is of suitable age and discretion, with a request that it be delivered to the person in possession.

(c) First-class mail addressed to the person in possession. If the demand is mailed, the date of service for purposes of this chapter is the next regular day for delivery of mail after the day when it was mailed.

(d) Subject to subsection (2), by electronic service, if the person in possession has in writing specifically consented to electronic service of the demand and if the consent or confirmation of the consent has been sent by 1 party and affirmatively replied to, by electronic transmission, by the other party.

(2) The electronic service address used by a party in the process under subsection (1)(d) shall be considered to remain that party's correct, functioning electronic service address, unless the process under subsection (1)(d) is repeated using a different electronic service address for that party or unless that party notifies the other in writing that that party no longer has an electronic service address. A landlord shall not refuse to enter a lease because the prospective tenant declines to consent to electronic service under this section.

(3) As used in this section:

(a) "Document" means a digital image of a record originally produced on paper or originally created by an electronic means, the output of which is readable by sight and can be printed to paper.

(b) "Electronic notification" means the notification to a person that a document is served by sending an electronic message to the electronic service address at or through which the person has authorized electronic service, specifying the exact name of the document served or providing a hyperlink at which the served document can be viewed and downloaded, or both.

(c) “Electronic service” means service of a document on a person by either electronic transmission or electronic notification.

(d) “Electronic service address” of a person means the electronic address at or through which the person has authorized electronic service.

(e) “Electronic transmission” means the transmission of a document by electronic means to the electronic service address at or through which a person has authorized electronic service.

Credits

Amended by [P.A.2015, No. 36, Eff. Aug. 19, 2015](#).

Footnotes

¹ [M.C.L.A. § 600.5716](#).

M. C. L. A. 600.5718, MI ST 600.5718

The statutes are current through P.A.2016, No. 15 of the 2016 Regular Session, 98th Legislature.

Tab Page: Item 8

STATE OF MICHIGAN JUDICIAL DISTRICT	COMPLAINT FOR POSSESSION AFTER LAND CONTRACT FORFEITURE	CASE NO.
--	--	-----------------

Court address Court telephone no.

Plaintiff name(s), address(es), and telephone no(s).
Plaintiff's attorney, bar no., address, and telephone no.

v

Defendant name(s) and address(es)

The plaintiff states:

- Attached to this complaint is a copy of the land contract and a copy of the forfeiture notice showing when and how it was served.
- The plaintiff is the seller and the defendant is the purchaser in a certain land contract described in the attached forfeiture notice and is in possession of the land described in the notice.
 assignee of the seller assignee of the purchaser

- The plaintiff has a right to recover possession of the property for
 a. **nonpayment of money** required to be paid under the contract:

Original selling price	\$ _____	Last payment _____	
		Date	
Principal balance due	\$ _____	Interest at _____%	paid to _____
			Date
Total amount in arrears	\$ _____		

- b. **material breach of contract** in violation of the terms of the contract as follows:
Explain. (If a money award is being sought for damages, complete the supplemental complaint below.)

- The land contract was forfeited in accordance with the terms of the land contract.
- The plaintiff asks for a judgment of possession and costs and asks the court to issue an eviction order according to law.
6. There is no other pending or resolved civil action arising out of the same transaction or occurrence alleged in this complaint.
7. A civil action between these parties or other parties arising out of the transaction or occurrence alleged in this complaint has been previously filed in _____ Court. The docket number and assigned judge are:

The action remains is no longer pending.

SUPPLEMENTAL COMPLAINT

8. (If applicable.) Complaint is made and judgment is sought for money damages against the defendant as follows: (Specify damages pursuant to MCL 600.5739.)

Date

Plaintiff/Attorney signature

Tab Page: Item 9

Approved, SCAO

**STATE OF MICHIGAN
JUDICIAL DISTRICT**

**SUMMONS
Landlord-Tenant / Land Contract**

CASE NO.

Court address

Court telephone no.

Plaintiff's name, address, and telephone no.

Plaintiff's attorney, bar no., address, and telephone no.

v

Defendant's name, address, and telephone no.

If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

Rental unit eviction

Land contract forfeiture

NOTICE TO THE DEFENDANT: In the name of the people of the State of Michigan you are notified:

1. The plaintiff has filed a complaint against you and wants

- to recover possession, after land contract forfeiture, of
- a money judgment for
- to evict you from

Address or description of premises

2. You are summoned to be in the district court on _____ at _____
Day and date Time

at the address above, _____, courtroom _____.
Location

3. You have the right to a jury trial. If you do not demand a jury trial and pay the required jury fee in your first defense response, you will lose this right.

4. If you are in district court on time, you will have an opportunity to give the reasons why you feel you should not be evicted. Bring witnesses, receipts, and other necessary papers with you.

5. If you are not in district court on time, you may be evicted without a trial and a money judgment may be entered against you.

Date issued

Court clerk

***The certificate of mailing applies to landlord-tenant cases only.**

This document must be sealed by the seal of the court.

CERTIFICATE OF MAILING BY COURT*

I certify that on this date I served a copy of this summons and the complaint and required attachments on the defendants by first-class mail addressed to their last-known addresses as defined in MCR 2.107(C)(3).

Date

Court clerk/officer

CERTIFICATE OF MAILING BY PLAINTIFF*

I certify that on this date I served a copy of this summons and the complaint and required attachments on the defendants by first-class mail addressed to their last-known addresses as defined in MCR 2.107(C)(3). I have attached a receipt of mailing from the post office.

Date

Plaintiff signature

**STATE OF MICHIGAN
JUDICIAL DISTRICT**

**SUMMONS
Landlord-Tenant / Land Contract**

CASE NO.

Court address

Court telephone no.

Plaintiff's name, address, and telephone no.

Plaintiff's attorney, bar no., address, and telephone no.

v

Defendant's name, address, and telephone no.

If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

Rental unit eviction

Land contract forfeiture

NOTICE TO THE DEFENDANT: In the name of the people of the State of Michigan you are notified:

1. The plaintiff has filed a complaint against you and wants

- to recover possession, after land contract forfeiture, of
- a money judgment for
- to evict you from

Address or description of premises

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Day and date Time

at the address above, _____, courtroom _____.
Location

- 3. You have the right to a jury trial. If you do not demand a jury trial and pay the required jury fee in your first defense response, you will lose this right.
- 4. If you are in district court on time, you will have an opportunity to give the reasons why you feel you should not be evicted. Bring witnesses, receipts, and other necessary papers with you.
- 5. If you are not in district court on time, you may be evicted without a trial and a money judgment may be entered against you.

Date issued

Court clerk

This document must be sealed by the seal of the court.

HOW TO GET LEGAL HELP

- 1. You have the right to an attorney to assist you in answering the complaint filed in this case and in preparing defenses.
- 2. If you do not have an attorney but have money to retain one, you may locate an attorney through the State Bar of Michigan Lawyer Referral Service at 1-800-968-0738 or through a local lawyer referral service. Lawyer referral services should be listed in the yellow pages of your telephone directory or you can find a local lawyer referral service at www.michbar.org.
- 3. If you do not have an attorney and cannot pay for legal help, you may qualify for assistance through a local legal aid office. Legal aid offices should be listed in the yellow pages of your telephone directory or you can find a local legal aid office at www.michiganlegalaid.org. If you do not have Internet access at home, you can access the Internet at your local library.
- 4. If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

Tenant's copy

SUMMONS
Landlord-Tenant / Land Contract
Case No. _____

PROOF OF SERVICE

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.

CERTIFICATE / AFFIDAVIT OF SERVICE / NONSERVICE

<input type="checkbox"/> OFFICER CERTIFICATE I certify that I am a sheriff, deputy sheriff, bailiff, appointed court officer, or attorney for a party (MCR 2.104[A][2]), and that: (notarization not required)	OR	<input type="checkbox"/> AFFIDAVIT OF PROCESS SERVER Being first duly sworn, I state that I am a legally competent adult who is not a party or an officer of a corporate party, and that: (notarization required)
--	-----------	---

PERSONAL SERVICE I have personally served a copy of the summons, complaint, and attachments on the defendant(s):

Defendant's name	Complete address of service	Day, date, time
Defendant's name	Complete address of service	Day, date, time

SUBSTITUTED SERVICE (As to residential premises only.) Not being able to find the following named defendant(s), _____ ,
Name(s) _____
on _____ at _____ at _____
Date Time Place of service
_____, I left the summons, complaint, and attachments at the current residence of defendant(s) with _____ , the _____ of defendant(s), who is of suitable age. I explained the contents and requested delivery of the pleadings to the defendant(s).

NONSERVICE RETURN After diligent search and inquiry, I have been unable to find and serve the defendant(s). I have made the following efforts at personal /substituted service: _____

SERVICE BY ATTACHMENT (Landlord-Tenant cases only.) I attached the pleadings on _____ Date _____ to the main entrance of the tenant's dwelling unit in a secure manner.

I declare that the statements above are true to the best of my information, knowledge, and belief.

Service fee	Miles traveled	Fee	
\$		\$	
Incorrect address fee	Miles traveled	Fee	TOTAL FEE
\$		\$	\$

Signature

Name (type or print)

Title

Subscribed and sworn to before me on _____ , _____ County, Michigan.
Date
My commission expires: _____ Date _____ Signature: _____
Deputy clerk/Notary public
Notary public, State of Michigan, County of _____

ACKNOWLEDGMENT OF SERVICE

I acknowledge that I have received service of the summons, complaint, and attachment on _____ .
Date
Signature: _____ On behalf of: _____

Michigan Compiled Laws Annotated
Michigan Court Rules of 1985
Chapter 4. District Court
Subchapter 4.200. Landlord-Tenant Proceedings; Land Contract Forfeiture

MI Rules MCR 4.201

RULE 4.201 SUMMARY PROCEEDINGS TO RECOVER POSSESSION OF PREMISES

Currentness

(A) Applicable Rules; Forms. Except as provided by this rule and [MCL 600.5701 et seq.](#), a summary proceeding to recover possession of premises from a person in possession as described in [MCL 600.5714](#) is governed by the Michigan Court Rules. Forms available for public distribution at the court clerk's office may be used in the proceeding.

(B) Complaint.

(1) *In General.* The complaint must

- (a) comply with the general pleading requirements;
- (b) have attached to it a copy of any written instrument on which occupancy was or is based;
- (c) have attached to it copies of any notice to quit and any demand for possession (the copies must show when and how they were served);
- (d) describe the premises or the defendant's holding if it is less than the entire premises;
- (e) show the plaintiff's right to possession and indicate why the defendant's possession is improper or unauthorized; and
- (f) demand a jury trial, if the plaintiff wishes one. The jury trial fee must be paid when the demand is made.

(2) *Specific Requirements.*

- (a) If rent or other money is due and unpaid, the complaint must show
 - (i) the rental period and rate;
 - (ii) the amount due and unpaid when the complaint was filed; and

(iii) the date or dates the payments became due.

(b) If the tenancy involves housing operated by or under the rules of a governmental unit, the complaint must contain specific reference to the rules or law establishing the basis for ending the tenancy.

(c) If the tenancy is of residential premises, the complaint must allege that the lessor or licensor has performed his or her covenants to keep the premises fit for the use intended and in reasonable repair during the term of the lease or license, unless the parties to the lease or license have modified those obligations.

(d) If possession is claimed for a serious and continuing health hazard or for extensive and continuing physical injury to the premises pursuant to [MCL 600.5714\(1\)\(d\)](#), the complaint must

(i) describe the nature and the seriousness or extent of the condition on which the complaint is based, and

(ii) state the period of time for which the property owner has been aware of the condition.

(e) If possession is sought for trespass pursuant to [MCL 600.5714\(1\)\(f\)](#), the complaint must describe, when known by the plaintiff, the conditions under which possession was unlawfully taken or is unlawfully held and allege that no lawful tenancy of the premises has existed between the parties since defendant took possession.

(C) Summons.

(1) The summons must comply with [MCR 2.102](#), except that it must command the defendant to appear for trial in accord with [MCL 600.5735\(2\)](#), unless by local court rule the provisions of [MCL 600.5735\(4\)](#) have been made applicable.

(2) The summons must also include the following advice to the defendant:

(a) The defendant has the right to employ an attorney to assist in answering the complaint and in preparing defenses.

(b) If the defendant does not have an attorney but does have money to retain one, he or she might locate an attorney through the State Bar of Michigan or a local lawyer referral service.

(c) If the defendant does not have an attorney and cannot pay for legal help, he or she might qualify for assistance through a local legal aid office.

(d) The defendant has a right to a jury trial which will be lost unless it is demanded in the first defense response, written or oral. The jury trial fee must be paid when the demand is made, unless payment of fees is waived or suspended under [MCR 2.002](#).

(D) Service of Process. A copy of the summons and complaint and all attachments must be served on the defendant by mail. Unless the court does the mailing and keeps a record, the plaintiff must perfect the mail service by attaching a postal receipt to the proof of service. In addition to mailing, the defendant must be served in one of the following ways:

(1) By a method provided in [MCR 2.105](#);

(2) By delivering the papers at the premises to a member of the defendant's household who is

(a) of suitable age,

(b) informed of the contents, and

(c) asked to deliver the papers to the defendant; or

(3) After diligent attempts at personal service have been made, by securely attaching the papers to the main entrance of the tenant's dwelling unit. A return of service made under subrule (D)(3) must list the attempts at personal service. Service under subrule (D)(3) is effective only if a return of service is filed showing that, after diligent attempts, personal service could not be made. An officer who files proof that service was made under subrule (D)(3) is entitled to the regular personal service fee.

(E) Recording. All landlord-tenant summary proceedings conducted in open court must be recorded by stenographic or mechanical means, and only a reporter or recorder certified under [MCR 8.108\(G\)](#) may file a transcript of the record in a Michigan court.

(F) Appearance and Answer; Default.

(1) *Appearance and Answer.* The defendant or the defendant's attorney must appear and answer the complaint by the date on the summons. Appearance and answer may be made as follows:

(a) By filing a written answer or a motion under [MCR 2.115](#) or [2.116](#) and serving a copy on the plaintiff or the plaintiff's attorney. If proof of the service is not filed before the hearing, the defendant or the defendant's attorney may attest to service on the record.

(b) By orally answering each allegation in the complaint at the hearing. The answers must be recorded or noted on the complaint.

(2) *Right to an Attorney.* If either party appears in person without an attorney, the court must inform that party of the right to retain an attorney. The court must also inform the party about legal aid assistance when it is available.

(3) *Jury Demand*. If the defendant wants a jury trial, he or she must demand it in the first response, written or oral. The jury trial fee must be paid when the demand is made.

(4) *Default*.

(a) If the defendant fails to appear, the court, on the plaintiff's motion, may enter a default and may hear the plaintiff's proofs in support of judgment. If satisfied that the complaint is accurate, the court must enter a default judgment under [MCL 600.5741](#), and in accord with subrule (K). The default judgment must be mailed to the defendant by the court clerk and must inform the defendant that (if applicable)

(i) he or she may be evicted from the premises;

(ii) he or she may be liable for a money judgment.

(b) If the plaintiff fails to appear, a default judgment as to costs under [MCL 600.5747](#) may be entered.

(c) If a party fails to appear, the court may adjourn the hearing for up to 7 days. If the hearing is adjourned, the court must mail notice of the new date to the party who failed to appear.

(G) Claims and Counterclaims.

(1) *Joinder*.

(a) A party may join:

(i) A money claim or counterclaim described by [MCL 600.5739](#). A money claim must be separately stated in the complaint. A money counterclaim must be labeled and separately stated in a written answer.

(ii) A claim or counterclaim for equitable relief.

(b) Unless service of process under [MCR 2.105](#) was made on the defendant, a money claim must be

(i) dismissed without prejudice, or

(ii) adjourned until service of process is complete

if the defendant does not appear or file an answer to the complaint.

(c) A court with a territorial jurisdiction which has a population of more than 1,000,000 may provide, by local rule, that a money claim or counterclaim must be tried separately from a claim for possession unless joinder is allowed by leave of the court pursuant to subrule (G)(1)(e).

(d) If trial of a money claim or counterclaim

(i) might substantially delay trial of the possession claim, or

(ii) requires that the premises be returned before damages can be determined.

The court must adjourn the trial of the money claim or counterclaim to a date no later than 28 days after the time expires for issuing an order of eviction. A party may file and serve supplemental pleadings no later than 7 days before trial, except by leave of the court.

(e) If adjudication of a money counterclaim will affect the amount the defendant must pay to prevent issuance of an order of eviction, that counterclaim must be tried at the same time as the claim for possession, subrules (G)(1)(c) and (d) notwithstanding, unless it appears to the court that the counterclaim is without merit.

(2) *Removal.*

(a) A summary proceedings action need not be removed from the court in which it is filed because an equitable defense or counterclaim is interposed.

(b) If a money claim or counterclaim exceeding the court's jurisdiction is introduced, the court, on motion of either party or on its own initiative, shall order removal of that portion of the action to the circuit court, if the money claim or counterclaim is sufficiently shown to exceed the court's jurisdictional limit.

(H) Interim Orders. On motion of either party, or by stipulation, for good cause, a court may issue such interim orders as are necessary, including, but not limited to the following:

(1) *Injunctions.* The interim order may award injunctive relief

(a) to prevent the person in possession from damaging the property; or

(b) to prevent the person seeking possession from rendering the premises untenable or from suffering the premises to remain untenable.

(2) *Escrow Orders.*

(a) If trial is adjourned more than 7 days and the plaintiff shows a clear need for protection, the court may order the defendant to pay a reasonable rent for the premises from the date the escrow order is entered, including a pro rata amount per day between the date of the order and the next date rent ordinarily would be due. In determining a reasonable rent, the court should consider evidence offered concerning the condition of the premises or other relevant factors. The order must provide that:

(i) payments be made to the court clerk within 7 days of the date of entry of the order, and thereafter within 7 days of the date or dates each month when rent would ordinarily be due, until the right to possession is determined;

(ii) the plaintiff must not interfere with the obligation of the defendant to comply with the escrow order; and

(iii) if the defendant does not comply with the order, the defendant waives the right to a jury trial only as to the possession issue, and the plaintiff is entitled to an immediate trial within 14 days which may be by jury if a party requests it and if, in the court's discretion, the court's schedule permits it. The 14-day limit need not be rigidly adhered to if the plaintiff is responsible for a delay.

(b) Only the court may order the disbursement of money collected under an escrow order. The court must consider the defendant's defenses. If trial was postponed to permit the premises to be repaired, the court may condition disbursement by requiring that the repairs be completed by a certain time. Otherwise, the court may condition disbursement as justice requires.

(I) Consent Judgment When Party Is Not Represented. The following procedures apply to consent judgments and orders entered when either party is not represented by an attorney.

(1) The judgment or order may not be enforced until 3 regular court business days have elapsed after the judgment or order was entered. The judge shall review, in court, a proposed consent judgment or order with the parties, and shall notify them of the delay required by this subrule at the time the terms of the consent judgment or order are placed on the record.

(2) A party who was not represented by an attorney at the time of the consent proceedings may move to set aside the consent judgment or order within the 3-day period. Such a motion stays the judgment or order until the court decides the motion or dismisses it after notice to the moving party.

(3) The court shall set aside a consent judgment or order on a satisfactory showing that the moving party misunderstood the basis for, or the rights which were being relinquished in, the judgment or order.

(J) Trial.

(1) *Time.* When the defendant appears, the court may try the action, or, if good cause is shown, may adjourn trial up to 56 days. If the court adjourns trial for more than 7 days, an escrow order may be entered pursuant to subrule (H)(2). The parties may adjourn trial by stipulation in writing or on the record, subject to the approval of the court.

(2) *Pretrial Action.* At trial, the court must first decide pretrial motions and determine if there is a triable issue. If there is no triable issue, the court must enter judgment.

(3) *Government Reports*. If the defendant claims that the plaintiff failed to comply with an ordinance or statute, the court may admit an authenticated copy of any relevant government employee's report filed with a government agency. Objections to the report affect the weight given it, not its admissibility.

(4) *Payment or Acceptance of Money*. The payment or the acceptance of money by a party before trial does not necessarily prevent or delay the proceedings.

(K) Judgment.

(1) *Requirements*. A judgment for the plaintiff must

- (a) comply with [MCL 600.5741](#);
- (b) state when, and under what conditions, if any, an order of eviction will issue;
- (c) separately state possession and money awards; and
- (d) advise the defendant of the right to appeal or file a postjudgment motion within 10 days.

If the judgment is in favor of the defendant, it must comply with [MCL 600.5747](#).

(2) *Injunctions*. The judgment may award injunctive relief

- (a) to prevent the person in possession from damaging the property; or
- (b) to prevent the person seeking possession from rendering the premises untenable, or from suffering the premises to remain untenable.

(3) *Partial Payment*. The judgment may provide that acceptance of partial payment of an amount due under the judgment will not prevent issuance of an order of eviction.

(4) *Costs*. Only those costs permitted by [MCL 600.5759](#) may be awarded.

(5) *Notice*. The court must mail or deliver a copy of the judgment to the parties. The time period for applying for the order of eviction does not begin to run until the judgment is mailed or delivered.

(L) Order of Eviction.

(1) *Request.* When the time stated in the judgment expires, a party awarded possession may apply for an order of eviction. The application must:

- (a) be written;
- (b) be verified by a person having knowledge of the facts stated;
- (c) if any money has been paid after entry of the judgment, show the conditions under which it was accepted; and
- (d) state whether the party awarded judgment has complied with its terms.

(2) *Issuance of Order of Eviction and Delivery of Order.* Subject to the provisions of subrule (L)(4), the order of eviction shall be delivered to the person serving the order for service within 7 days after the order is filed.

(3) *Issuance Immediately on Judgment.* The court may issue an order immediately on entering judgment if

- (a) the court is convinced the statutory requirements are satisfied, and
- (b) the defendant was given notice, before the judgment, of a request for immediate issuance of the order.

The court may condition the order to protect the defendant's interest.

(4) *Limitations on Time for Issuance and Execution.* Unless a hearing is held after the defendant has been given notice and an opportunity to appear, an order of eviction may not

- (a) be issued later than 56 days after judgment is entered,
- (b) be executed later than 56 days after it is issued.

(5) *Acceptance of Partial Payment.* An order of eviction may not be issued if any part of the amount due under the judgment has been paid, unless

- (a) a hearing is held after the defendant has been given notice and an opportunity to appear, or
- (b) the judgment provides that acceptance of partial payment of the amount due under the judgment will not prevent issuance of an order of eviction.

(M) Postjudgment Motions. Except as provided in [MCR 2.612](#), any postjudgment motion must be filed no later than 10 days after judgment enters.

(1) If the motion challenges a judgment for possession, the court may not grant a stay unless

(a) the motion is accompanied by an escrow deposit of 1 month's rent, or

(b) the court is satisfied that there are grounds for relief under [MCR 2.612\(C\)](#), and issues an order that waives payment of the escrow; such an order may be ex parte.

If a stay is granted, a hearing shall be held within 14 days after it is issued.

(2) If the judgment does not include an award of possession, the filing of the motion stays proceedings, but the plaintiff may move for an order requiring a bond to secure the stay. If the initial escrow deposit is believed inadequate, the plaintiff may apply for continuing adequate escrow payments in accord with subrule (H)(2). The filing of a postjudgment motion together with a bond, bond order, or escrow deposit stays all proceedings, including an order of eviction issued but not executed.

(3) If a motion is filed to set aside a default money judgment, except when grounded on lack of jurisdiction over the defendant, the court may not grant the motion unless

(a) the motion is accompanied by an affidavit of facts showing a meritorious defense, and

(b) good cause is shown.

(N) Appeals From Possessory Judgments.

(1) *Rules Applicable.* Except as provided by this rule, appeals must comply with [MCR 7.101](#) through [7.115](#).

(2) *Time.* An appeal of right must be filed within 10 days after the entry of judgment.

(3) *Stay of Order of Eviction.*

(a) Unless a stay is ordered by the trial court, an order of eviction must issue as provided in subrule (L).

(b) The filing of a claim of appeal together with a bond or escrow order of the court stays all proceedings, including an order of eviction issued but not executed.

(4) *Appeal Bond; Escrow.*

(a) A plaintiff who appeals must file a bond providing that if the plaintiff loses he or she will pay the appeal costs.

(b) A defendant who appeals must file a bond providing that if the defendant loses, he or she will pay

(i) the appeal costs,

(ii) the amount due stated in the judgment, and

(iii) damages from the time of forcible entry, the detainer, the notice to quit, or the demand for possession.

The court may waive the bond requirement of subrule (N)(4)(b)(i) on the grounds stated in [MCR 2.002\(C\)](#) or [\(D\)](#).

(c) If the plaintiff won a possession judgment, the court shall enter an escrow order under subrule (H)(2) and require the defendant to make payments while the appeal is pending. This escrow order may not be retroactive as to arrearages preceding the date of the post-trial escrow order unless there was a pretrial escrow order entered under subrule (H)(2), in which case the total escrow amount may include the amount accrued between the time of the original escrow order and the filing of the appeal.

(d) If it is established that an appellant cannot obtain sureties or make a sufficient cash deposit, the court must permit the appellant to comply with an escrow order.

(O) Objections to Fees Covered by Statute for Orders of Eviction. Objections shall be by motion. The fee to be paid shall be reasonable in light of all the circumstances. In determining the reasonableness of a fee, the court shall consider all issues bearing on reasonableness, including but not limited to

(1) the time of travel to the premises,

(2) the time necessary to execute the order,

(3) the amount and weight of the personal property removed from the premises,

(4) who removed the personal property from the premises,

(5) the distance that the personal property was moved from the premises, and

(6) the actual expenses incurred in executing the order of eviction.

Credits

[Effective March 1, 1985; amended September 12, 2001, effective May 1, 2002, 465 Mich; February 23, 2006, effective May 1, 2006, 474 Mich; January 20, 2009, effective May 1, 2009, 483 Mich; August 24, 2012, effective immediately, 492 Mich; September 5, 2013, effective immediately, 495 Mich; February 4, 2015, effective May 1, 2015, 497 Mich.]

Editors' Notes

COMMENTS

1985 Staff Comment

MCR 4.201 is based on DCR 754. There are several minor changes.

DCR 754.2(8) required that the complaint include certain additional information when the housing involved is operated by a local governmental unit. Subrule (B)(2)(b) deletes the limitation to local units, and also covers housing operated under the rules of a governmental unit as well as housing operated by the governmental unit.

In subrule (C)(2)(d), regarding payment of the jury fee, a cross-reference is added to [MCR 2.002](#), governing waiver or suspension of fees for indigent persons.

Subrule (K)(5) permits the court to deliver a copy of the judgment to the parties rather than to mail it. Compare DCR 754.11(e).

Subrule (L)(4) modifies the language of DCR 754.12(c)(3) by adding an exception to the requirement that there must be a hearing before issuance of a writ of restitution when there has been partial payment of the amount due under the judgment. A hearing is not required if the judgment includes the provision permitted by subrule (K)(3)--that partial payment does not prevent the issuance of a writ of restitution.

Staff Comment to 2002 Amendment

The September 12, 2001 addition of [MCR 3.106](#), effective May 1, 2002, was recommended by an ad hoc committee of judges, court administrators, court clerks, attorneys, and court officers. The rule incorporated existing practice while protecting against abuses. The September 12, 2001 amendments of MCR 4.201 and [4.202](#), effective May 1, 2002, made changes consistent with new [MCR 3.106](#).

Staff Comment to 2006 Amendment

The amendments of [MCR 2.507\(G\)](#), 4.201(F)(5), and [4.202\(H\)\(3\)](#) reflect amendments of [MCL 600.2529](#) and [600.5756](#) by 1993 PA 189.

Staff Comment to 2009 Amendment

The amendment of MCR 4.201(G)(1)(b) clarifies that service of process for purposes of a money claim is sufficient if completed pursuant to [MCR 2.105](#); otherwise, if the defendant does not appear or file an answer to the complaint, a money claim must be dismissed without prejudice, or adjourned until service of process is complete.

Concurring Statement of Justice Corrigan to 2009 Amendment

I support the proposed amendment of MCR 4.201. I write separately to suggest that the Property Management Association of Michigan (PMAM) first present to the Legislature its proposed changes to the existing statutes that govern service of process. I

appreciate PMAM's sensible desire to reduce unnecessary and redundant court appearances by property managers. Nevertheless, PMAM should direct its efforts to consolidate existing service of process provisions to the Legislature before seeking a remedy in this Court.

Currently, service of process for possession of rented premises must be personal. [MCL 600.5718](#). The Legislature also allows a party to bring a separate claim or counterclaim for a money judgment. [MCL 600.5739](#). No statutory authority, however, permits service for a money judgment in the same manner as is allowed for possession of rented premises. Stated slightly differently, while statutory authority permits a landlord to file a claim for possession and a claim for a money judgment, no statutory authority allows service for possession of rented premises to be considered as service for a money judgment. Therefore, despite PMAM's proposed amendment of MCR 4.201, no existing statute states that service for possession is sufficient for purposes of service for a money judgment. Instead, our statutes require personal service for possession of rented premises, and PMAM's proposed amendment to simplify the existing requirements governing service for a money judgment would create inconsistency between current statutes and court rules.

Because of this inconsistency, I suggest that PMAM seek relief from the Legislature to amend the service provisions in our existing statutes.

Staff Comment to 2009 Amendment

These amendments reflect changes to correct minor technical errors that have occurred in drafting or to respond to recent adopted rule revisions, which occasionally inadvertently create incorrect cross-references in other rules.

Staff Comment to 2012 Amendment

These amendments reflect changes to correct minor technical errors that have occurred in drafting or to respond to recent adopted rule revisions, which occasionally inadvertently create incorrect cross-references in other rules.

Staff Comment to 2013 Amendment

These amendments reflect changes that correct minor technical errors that have occurred in drafting or the changes respond to recent adopted rule revisions, which occasionally inadvertently create incorrect cross-references in other rules.

Staff Comment to 2015 Amendment

This amendment of MCR 4.201 clarifies that a motion to set aside a default money judgment in a landlord/tenant case must be accompanied by an affidavit of facts showing a meritorious defense, and good cause must be shown. This is the standard for setting aside a default judgment under [MCR 2.603\(D\)\(1\)](#).

MI Rules MCR 4.201, MI R DIST CT MCR 4.201
Current with amendments received through 1/1/16

Tab Page: Item 10

Approved, SCAO

STATE OF MICHIGAN JUDICIAL DISTRICT	JUDGMENT LANDLORD-TENANT	CASE NO.
--	-------------------------------------	-----------------

Court address _____ Court telephone no. _____

Plaintiff _____

v

Defendant _____

Plaintiff/Attorney

Personal service

Defendant/Attorney

Personal service

THE COURT FINDS:

by hearing default* consent**

*For a defendant on active military duty, default judgment shall not be entered except as provided by the Servicemembers Civil Relief Act.

POSSESSION JUDGMENT

- 1. The plaintiff has a right to recover possession of the property.
- 2. There is now due to plaintiff for nonpayment of rent and other money due under the lease:
 - a. Rent to retain possession \$ _____
 - b. Other money due..... \$ _____
 - c. Costs \$ _____
 - d. Total \$ _____
- 3. The defendant has a right to retain possession.

IT IS ORDERED:

- 4. a. The plaintiff can apply for an order evicting the defendant if the defendant does not pay the plaintiff or the court the amount due in item 2d above or does not move out on or before _____ Date
- b. The plaintiff can apply for an order evicting the defendant if the defendant does not move out on or before _____ Date
- c. An immediate order of eviction shall be entered pursuant to MCL 600.5744(2).
- 5. The defendant may be liable for money damages after moving if additional rent is owed or if there is damage to the property.
- 6. Acceptance of partial payment of the total amount due in item 2d above will will not prevent the court from issuing an order evicting the defendant.
- 7. No money judgment is entered at this time.

MONEY JUDGMENT

- 8. A possession judgment was previously entered.
- 9. A money judgment, which will earn interest at statutory rates, is entered as follows:

Damages	\$	_____
Costs	\$	_____
Total	\$	_____

10. THE COURT FURTHER ORDERS: _____

Date Judge Bar no.

YOU ARE ADVISED that you may file a motion for a new trial, a motion to set aside a default judgment, or an appeal and appeal bond, which must comply with all court rules and must be filed in court by _____ Date. You may want legal help.

MCR 4.201(I) was explained to the parties.

CERTIFICATE OF MAILING: I certify that on this date I served a copy of this judgment on the parties or their attorneys by first-class mail addressed to their last-known addresses as defined in MCR 2.107(C)(3).

Date Deputy clerk

****Approved:**

Date Plaintiff/Attorney

Date Defendant/Attorney

Matthew Walker

From: marcdlandau@gmail.com on behalf of Marc Landau <marc@landlord.com>
Sent: Monday, February 1, 2016 1:29 PM
To: Matthew Walker
Subject: Re: DC 105

Hi Matt

Yes, that would be GREAT. I think the form as it is now written is confusing to everyone involved in processing them -- eviction attorneys, landlords, judges and court clerks. I can tell you that almost all of my colleagues and I have, in the past, told our clients to include a lease provision that says something to the effect of "All additional sums due under this lease shall be deemed additional rent." With that provision, my colleagues and I have told our clients to simply keep paragraph 2b of DC105 blank anyway.

Another problem with the language currently used is that paragraph 2a is not technically correct. The tenant does not get to retain possession merely by paying the amount in paragraph 2a, but must pay the amount in paragraph 2c in order to retain possession. For instance, if the tenant owes:

- a. Rent -- \$1000
- b. Costs -- \$150
- c. Total -- \$1150

and the tenant only pays \$1000, he could still be evicted. See also, DC105 paragraph 6

It is far better, and more in compliance with the statutory and court rule language to do as I suggested originally, which was: (1) remove paragraph 2b, (2) make the introductory clause of paragraph 2 read: "There is now due to plaintiff to retain possession:", and (3) revise paragraph 2a to read "Rent and other charges due under the lease". Thus:

- 2. There is now due to plaintiff to retain possession:
 - a. Rent and other charges due under the lease \$ _____
 - b. Costs \$ _____
 - c. Total \$ _____

Another alternative that I find acceptable and in compliance with statute/court rule would be:

- 2. There is now due to plaintiff:
 - a. Rent and other charges due under the lease \$ _____
 - b. Costs \$ _____
 - c. Total to retain possession..... \$ _____

It would be acceptable in this alternative to keep the introductory language to paragraph 2 as it is currently -- "There is now due to plaintiff for nonpayment of rent"

I hope this helps. Please feel free to email or call if you have any further questions or concerns.

Thank you
Marc

Marc D. Landau
marc@landlord.com

Court Forms Info - Re: Proposed Revision to DC105

From: Court Forms Info
To: Marc Landau
Date: 7/1/2015 2:12 PM
Subject: Re: Proposed Revision to DC105

Mr. Landau:

Colin has left employment with our office. Until the position is filled, I am responding to inquiries. I will look into your concerns and get back to you in the next 30 days.

Regards,

Amy Garoushi

>>> Marc Landau <marc@landlord.com> 6/9/2015 5:52 PM >>>
Hi Colin

I went on the SCAO website and saw that DC105 was revised in line with the rationale that I had expressed in my email to you requesting such revision. For that I am grateful. Thank you and the committee for your consideration in that regard.

However, the language that was adopted was not anything close to what I had proposed. The language that was adopted concerns me urgently, as set forth below. Paragraph 2 needed to be tweaked to get the few jurisdictions/judges who didn't allow other sums to be included in judgments to fall in line with the rest of the state. Adding in a new item to paragraph 2 will open up a whole new can of worms.

My primary question is: Is there a way for the revision to the form to be suspended until further consideration is given to my below concerns? Or better yet, is there a way for the committee to reconsider and adopt different language (hopefully along the lines of what I had proposed)?

Please consider the following:

My suggested language in paragraph 2 was:
2. There is now due to plaintiff for nonpayment:
a. Rent and other sums due under tenancy:
b. Costs
c. Total

The committee adopted:

2. There is now due to plaintiff for nonpayment of rent and other money due under the lease:
 - a. Rent to retain possession
 - b. Other money due
 - c. Costs
 - d. Total
-

My primary concern is #1 below. The other two are secondary, but also important enough to merit consideration.

1. Many landlords (including the majority of my clients) have a "rent incorporation" clause in their leases, such as "All other sums which become due under this lease are deemed rent." With my proposed language for paragraph 2a, that isn't an issue because rent is combined with other money due into one subtotal amount. With the language on the approved revision, the question arises: When the lease has a "rent incorporation" clause, do we consider such other sums "Rent", or "Other money due"? Is it our choice? Is it up to each individual court to figure it out for themselves whether such ?

I fear that every court and every judge will handle this differently, and that makes it a disaster trying to prepare our judgments for court.

This differentiation is especially problematic in commercial leases, where tenants are often expected to pay a monthly "base rent", but also an additional monthly charge for common area maintenance (CAM) charges, or triple-net lease agreements (insurance, maintenance and property taxes). And whether residential or commercial, "Other money due" may abound -- late fee, NSF check fee, lost key fee, innumerable amenity fees (pet/laundry/carport/swimming pool/etc.), damage, and many many others.

I urgently hope the committee would consider revising this language to what I have proposed.

2. The new form paragraph 2a (mirroring the old form) says: "Rent to retain possession". This suggests that as long as the tenant pays the portion in paragraph 2a, the tenant cannot be evicted. This is obviously not the case though. In fact, the opposite is true, as paragraph 6 indicates that a partial payment of the total amount due in item 2d will/will not prevent the court from issuing an order evicting the defendant.

My proposal was to use "Rent and other sums due under tenancy". If "Other money due" is retained, then that portion of my suggested language would be removed here, leaving just "Rent due under tenancy" or simply just "Rent" or "Rent due" would suffice. This more

accurately reflects that rent is not the only thing necessary to be paid to retain possession.

If anything, paragraph 2d should state: Total to retain possession.

3. The new form paragraph 2 (mirroring the old form) says in part: "under the lease". This should be changed to "under the tenancy". Some tenancies are oral. "Under the tenancy" is also in compliance with MCL 600.5741

My proposal did not contain "under the...." in paragraph 2, as it is superfluous language therein. But in paragraph 2a it is meaningful, as it mirrors the language of the statute: "2a. Rent and other sums due under tenancy:"

Please let me know what can be done about this.

Thank you for your consideration.

Marc

Marc D. Landau
marc@landlord.com
www.landlord.com
W [248-660-0180](tel:248-660-0180)
F [248-566-1279](tel:248-566-1279)
C [248-613-7459](tel:248-613-7459)
30100 Telegraph, Suite 324
Bingham Farms, MI 48025

On Tue, Mar 3, 2015 at 11:50 AM, Court Forms Info <CourtFormsInfo@courts.mi.gov> wrote:

Your comment has been posted here:

<http://courts.mi.gov/administration/scao/forms/proposals/pages/default.aspx>

I omitted the pages of the printed PDF other than the first two, which encompass your current comments.

Colin

>>> Marc Landau <marc@landlord.com> 3/2/2015 6:34 PM >>>

Hi Colin -- Thanks for the clarification. 3 things:

1. I reviewed the proposals relevant to DC105. I think para 2a wording would be best served if consistent with the statutes (MCL 600.5716, 600.5741) and court rule [MCR 4.201 (B)(2)(a)]. Specifically, I think the wording in 5716 is clearest -- "**Rent and other sums due under the lease**". It was not my suggestion to change the wording to "**Lease charges due**". While I do not think "Lease charges due" is inaccurate, I think it would leave litigants, attorneys, clerks and judges, all scratching their heads about what that means exactly.

Tab Page: Item 11

STATE OF MICHIGAN JUDICIAL DISTRICT	JUDGMENT OF POSSESSION AFTER LAND CONTRACT FORFEITURE	CASE NO.
--	--	-----------------

Court address _____ Court telephone no. _____

Plaintiff _____

v

Defendant _____

Plaintiff/Attorney Personal service

Defendant/Attorney Personal service

THE COURT FINDS:

by hearing default* consent**

*For a defendant on active military duty, default judgment shall not be entered except as provided by the Servicemembers Civil Relief Act.

- 1. The land contract has been forfeited.
- 2. The plaintiff has a right to possession.
- 3. There is now due to plaintiff:

Amount	\$ _____
Other damages	\$ _____
Costs	\$ _____
Total	\$ _____

- 4. There is no cause for action.

TO THE DEFENDANT, IT IS ORDERED:

5. A judgment of possession for breach of a land contract is entered in this case for the following described property:

6. To retain possession, defendant must

- a. pay plaintiff \$ _____ by _____ or an order of eviction may be issued.

Date

Defendant owes \$ _____, including interest paid to _____. Defendant has _____ days from the date of delivery/ mailing of this judgment to pay.

Date

- b. cure the breach by _____.

Date

If the defendant does not pay the amount owed and/or cure the breach by the date stated, an order of eviction may be issued.

- 7. A money judgment for damages pursuant to MCL 600.5739 is awarded in the amount of \$ _____.

8. FURTHER ORDERS:

9. **YOU ARE ADVISED** that you may file a motion for a new trial, a motion to set aside a default judgment, or an appeal and appeal bond within 10 days of judgment. This must comply with all court rules and must be filed in court by _____. You may want legal help.

Date

Date

Judge

Bar no.

Payment in the full amount may be made to the plaintiff or to the court by certified check or money order.

CERTIFICATE OF MAILING: I certify that on this date I served a copy of this judgment on the parties or their attorneys by first-class mail addressed to their last-known addresses as defined by MCR 2.107(C)(3).

Date

Deputy clerk

**Approved:

Date

Plaintiff/Attorney

Date

Defendant/Attorney

Proposed Amendment
DC 106, Judgment of Possession After Land Contract Forfeiture

I. If deemed beneficial¹, add under “THE COURT FINDS:”

- 5. Less than 50% of the purchase price has been paid
- 6. 50% or more of the purchase price has been paid

II. Restate under “~~TO THE DEFENDANT~~^[2], IT IS ORDERED^[3]:

- 7. [formerly 5.] unchanged
- 8. [formerly 6.] An order of eviction may be issued upon expiration of 90 days
 6 months^[4] after entry of this judgment if the defendant does not:
 - pay the total amount due in item 3 above
 - cure the following breach: _____

~~If the defendant does not pay the amount owed and/or cure the breach by the date stated, an order of eviction may be issued.~~

III. The balance of the form would remain unchanged (except to renumber items 7, 8 , and 9, if suggested items 5 and 6 above are adopted).

¹ I am not necessarily advocating adding new items 5 and 6. A finding of how much of the purchase price has been paid is implicit in the court’s determination of the appropriate redemption period. On the other hand, expressing the finding on the face of the judgment overtly justifies the court’s selection of the appropriate redemption period.

² “To the Defendant” seems unnecessary and, perhaps, misleading: i.e. item 9 of the current form describes post-judgment rights (which may be exercised by plaintiff or defendant, depending on circumstances), but by commencing with “**You** Are Advised”, item 9 may be interpreted to relate back to and limited by the opening phrase “To The Defendant”.

³ **Note:** recognizing that eviction orders following land contract judgments assist vendors to clear title (e.g. if the land contract or a memorandum of land contract has been recorded), regardless of a vendee’s continuing occupancy, this proposal purposely does not include phrases such as “*To retain possession, defendant must . . .*”, or “*. . . if the defendant does not pay or move out*”.

⁴ Alternatively, if a specific date is preferred, consider substituting the phrase, “An order of eviction may be issued on or after _____, if the defendant does not:”; although the proposed, generic, “90 days” and “6 months” on the face of the judgment is favored because it defers the arithmetic exercise (because 90 days does not necessarily equate to 3 months) for those few cases when the vendor actually applies for an eviction order (and the court has the luxury of time to accurately calculate 90 days forward, rather than when the judgment is being generated under pressure during the a hectic summary proceeding call).

Tab Page: Item 12

Approved, SCAO

Original - Officer return
1st copy - Court
2nd copy - Defendant
3rd copy - Plaintiff

STATE OF MICHIGAN JUDICIAL DISTRICT	APPLICATION AND ORDER OF EVICTION Landlord-Tenant / Land Contract	CASE NO.
--	--	-----------------

Court address	Court telephone no.
---------------	---------------------

Plaintiff name, address, and telephone no.
Plaintiff's attorney, bar no., address, and telephone no.

v

Defendant name(s) and address(es)

NOTE: An application may be required even though a request for an order of eviction is granted in the judgment.

APPLICATION

1. On _____ judgment was entered against the defendant(s) and the plaintiff was awarded
Date possession of the following described property: _____

2. No payment has been made on the judgment or no rent has been received since the date of judgment, except the sum of
\$ _____ received under the following conditions: _____

- 3. The plaintiff has complied with the terms of the judgment.
- 4. The time stated in the judgment before an order of eviction can be issued has elapsed.

I declare that the statements above are true to the best of my information, knowledge, and belief.

Date

Plaintiff/Attorney signature

ORDER OF EVICTION

IN THE NAME OF THE PEOPLE OF THE STATE OF MICHIGAN:

To the Court Officer: You are ordered to restore the plaintiff to, and put the plaintiff in, full possession of the premises.

Date issued	SEAL	Judge	Bar no.
-------------	------	-------	---------

NOTE: In tenancy cases, this order must be executed within 56 days of the issuance date.

RETURN

I certify and return that on _____ I executed the order of eviction on the reverse side of this form
Date

by evicting _____
Name(s)

from the property, and I have restored the plaintiff to peaceful possession as ordered.

Date

(Deputy) sheriff/Court officer/Bailiff

Service fee \$	Miles traveled	Fee \$	
Incorrect address fee \$	Miles traveled	Fee \$	TOTAL FEE \$

Tab Page:
Item 13

**STATE OF MICHIGAN
JUDICIAL DISTRICT
JUDICIAL CIRCUIT**

**ORDER FOR
SECURITY FOR COSTS**

CASE NO.

Court address

Court telephone no.

Plaintiff(s)

Defendant(s)

v

ORDER

1. _____ has moved to require _____
to furnish security for costs.

IT IS ORDERED:

2. _____ shall file with the clerk of the court a surety bond approved by
the court in the amount of \$_____.

3. Bond shall be filed on or before _____ .
Date

Date

Judge

Bar no.

APPROVAL OF SURETY(IES)

The court has reviewed the surety bond filed to secure costs. The surety(ies) are approved.

Date

Judge

Bar no.

Tab Page: Item 14

STATE OF MICHIGAN JUDICIAL DISTRICT JUDICIAL CIRCUIT	JUDGMENT Civil	CASE NO.
---	---------------------------------	-----------------

Court address _____ Court telephone no. _____

Plaintiff(s)

Defendant(s)

v

Plaintiff's/Plaintiff's attorney name, address, and telephone no.

Defendant's/Defendant's attorney name, address, and telephone no.

JUDGMENT

For: _____

Against: _____

- Trial Consent
- Summary Disposition Default*

DISMISSAL

- Without prejudice With prejudice
- No cause of action

*For a defendant on active military duty, default judgment shall not be entered except as provided by the Servicemembers Civil Relief Act.

ORDER OF JUDGMENT NOT INCLUDING STATUTORY INTEREST

Damages: _____ \$ _____

Costs (fees): filing \$ _____ jury \$ _____ motion \$ _____ service \$ _____ \$ _____

Attorney fee: statutory other (specify) _____ \$ _____

Total judgment amount (This judgment will earn interest at statutory rates, computed from the filing date of the complaint.): \$ _____

The defendant shall pay the judgment in installment payments of \$ _____ each _____ starting _____ until the judgment is paid in full. The plaintiff shall not issue a periodic garnishment as long as payment is made.

Other conditions, if any:

Approved as to form, notice of entry waived.

IT IS ORDERED that this judgment is granted.

This judgment resolves the last pending claim and closes the case unless checked here.

Judgment date _____ Judge/Court clerk _____ Bar no. _____

Plaintiff/Attorney _____ Defendant/Attorney _____

Judgment has been entered and will be final unless within 21 days of judgment date a motion for new trial or an appeal is filed.

STATUTORY INTEREST

The judgment interest accrued from the filing of the complaint to judgment is \$ _____ and is based on:

(If additional rates apply, attach a separate sheet.)

- the statutory rate of _____ % from _____ to _____ .
- the statutory 6-month rate(s) of _____ % from _____ to _____ and _____ % from _____ to _____ .

CERTIFICATE OF MAILING I certify that on this date I served a copy of this judgment on the parties or their attorneys by first-class mail addressed to their last-known addresses as defined in MCR 2.107(C)(3).

Date _____ Signature _____

Michigan Compiled Laws Annotated
Chapter 600. Revised Judicature Act of 1961 (Refs & Annos)
Revised Judicature Act of 1961 (Refs & Annos)
Chapter 24. Costs (Refs & Annos)

M.C.L.A. 600.2441

600.2441. Sundry costs addition in civil actions

Currentness

Sec. 2441. (1) In all civil actions or special proceedings in the supreme court, whether heard as an original proceeding or on appeal, the following amounts shall be allowed as costs in addition to other costs unless the court otherwise directs:

- (a) On motions, \$20.00.
- (b) On calendar causes and those given an early hearing, \$50.00.

(2) In all civil actions or special proceedings in the circuit court, whether heard as an original proceeding or on appeal, the following amounts shall be allowed as costs in addition to other costs unless the court otherwise directs:

- (a) For the proceedings before trial, \$20.00.
- (b) For motions that result in dismissal or judgment, \$20.00.
- (c) For the trial of the action or proceeding, \$150.00.
- (d) In actions in which a confession of judgment is entered, \$15.00.
- (e) In actions in which a default judgment or consent judgment is entered, \$75.00.

Credits

Amended by [P.A.1999, No. 226, Eff. April 1, 2000](#).

[Notes of Decisions \(3\)](#)

M. C. L. A. 600.2441, MI ST 600.2441

The statutes are current through P.A.2016, No. 15 of the 2016 Regular Session, 98th Legislature.

Tab Page: Item 15

STATE OF MICHIGAN JUDICIAL DISTRICT JUDICIAL CIRCUIT	OBJECTIONS TO GARNISHMENT AND NOTICE OF HEARING	CASE NO.
---	--	-----------------

Court address

Court telephone no.

Plaintiff's name, address, and telephone no. (judgment creditor)
Plaintiff's attorney, bar no., address, and telephone no.

v

Defendant's name, address, and telephone no. (judgment debtor)
Garnishee's name and address

OBJECTIONS TO GARNISHMENT

I object to the writ of garnishment issued on _____ and request a hearing because
Date

- a. the funds or property are exempt (protected) from garnishment by law.
- b. of bankruptcy proceedings. Case No: _____
- c. I have an installment payment order, issued on _____ . Court: _____ Case No: _____
- d. the maximum amount permitted by law is already being withheld by another court order.
- e. the judgment has been paid.
- f. the writ was not properly issued or is otherwise invalid because _____

I was served with a copy of a writ of garnishment on _____ .
Date

Date

Signature of defendant

To be completed by the court.

NOTICE OF HEARING ON OBJECTIONS

1. A hearing will be held on _____ at _____ at _____
Date Time Location
_____ before Hon. _____ .

- 2. The defendant and plaintiff are required to appear.
- 3. The garnishee is is not required to appear.
- 4. a. Objections were filed within 14 days of the defendant being served with the writ of garnishment. The garnishee shall continue to withhold funds but shall **not** release withheld funds until further order of the court.
- b. Objections were filed 14 days or more after the defendant was served with the writ of garnishment. The garnishee shall continue to withhold and release funds unless otherwise ordered by the court.

Date

Deputy court clerk

If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

CERTIFICATE OF MAILING

I certify that on this date I served a copy of this objection and notice on the parties or their attorneys by first-class mail addressed to their last-known addresses as defined in MCR 2.107(C)(3).

Date

Defendant's signature/District court clerk

Instructions for Filing and Serving an Objection to Garnishment (Form MC 49)

- If you received a writ of garnishment (form MC 12, MC 13, or MC 52), you can object to that garnishment only if:
- your money is exempt (protected) from garnishment by law (see the list of exempt funds on the back of your writ of garnishment form),
 - you filed for bankruptcy and those proceedings are pending or the debt has been discharged,
 - you have an installment payment order signed by a judge (form MC 15a),
 - the maximum amount of money that can be garnished by law is already being withheld by another court order,
 - you already paid the judgment in full,
 - the garnishment was not properly issued (for example, it was issued on false information) or the garnishment is invalid (for example, the writ was served on the garnishee after the service deadline, the interest, costs, or judgment amount are inaccurate).

You cannot use this form to challenge the judgment or because you are unable to pay the judgment.

1. How do I file an Objection?

You file an objection by completing the form and filing it with the same court that signed the writ of garnishment. There is no cost.

2. Fill out the Objection form.

Write in the court number, case number, the court address and telephone number, and the names, addresses, and telephone numbers of the plaintiff and the defendant exactly as they are on the writ of garnishment.

Write in the date the garnishment was issued (see the lower left-hand corner of the writ of garnishment). Check the box that states the reason you are objecting to the garnishment. If there is more than one reason, check all that apply. Write in the date that you were served (the date you received) a copy of the writ garnishment.

Write in the date you complete the form and sign your name.

3. Make four copies of the completed objection form.

4. File the Objection with the court.

File all four copies of your objection with the court in person or by first-class mail. If you mail the objection, include a postage-paid and self-addressed envelope so that the court can return to you three copies with the Notice of Hearing completed.

5. Serve the Objection.

If your case is in the district court, the court will serve the objection and will return one copy to you.

If your case is in the circuit court, when you get the three remaining copies of the objection with the Notice of Hearing completed, serve a copy on the plaintiff and a copy on the garnishee by first-class mail. If the plaintiff has an attorney, serve the objection on the attorney instead of the plaintiff. Complete the Certificate of Mailing on the bottom of your copy of the form. Make a copy of this and file it with the court. You can do this either in person or by first-class mail. Keep your copy for yourself.

Bring all documents to the hearing to support the objections that you checked on the objection form.

For more information on objections or preparing for a hearing generally, see MichiganLegalHelp.org or scan the code to the right with your smartphone.



Michigan Compiled Laws Annotated
Michigan Court Rules of 1985
Chapter 3. Special Proceedings and Actions
Subchapter 3.100. Debtor-Creditor

MI Rules MCR 3.101

RULE 3.101 GARNISHMENT AFTER JUDGMENT

Currentness

(A) Definitions. In this rule,

(1) “plaintiff” refers to any judgment creditor,

(2) “defendant” refers to any judgment debtor,

(3) “garnishee” refers to the garnishee defendant,

(4) “periodic payments” includes but is not limited to, wages, salary, commissions, bonuses, and other income paid to the defendant during the period of the writ; land contract payments; rent; and other periodic debt or contract payments. Interest payments and other payments listed in [MCL 600.4012\(4\)\(a\)-\(d\)](#) are not periodic payments.

(B) Postjudgment Garnishments.

(1) Periodic garnishments are garnishments of periodic payments, as provided in this rule.

(a) Unless otherwise ordered by the court, a writ of periodic garnishment served on a garnishee who is obligated to make periodic payments to the defendant is effective until the first to occur of the following events:

(i) the amount withheld pursuant to the writ equals the amount of the unpaid judgment, interest, and costs stated in the verified statement in support of the writ or

(ii) the plaintiff files and serves on the defendant and the garnishee a notice that the amount withheld exceeds the remaining unpaid judgment, interest, and costs, or that the judgment has otherwise been satisfied.

(b) The plaintiff may not obtain the issuance of a second writ of garnishment on a garnishee who is obligated to make periodic payments to the defendant while a prior writ served on that garnishee remains in effect relating to the same judgment.

(c) If a writ of periodic garnishment is served on a garnishee who is obligated to make periodic payments to the defendant while another order that has priority under [MCL 600.4012\(2\)](#) is in effect, or if a writ or order with higher priority is served on the garnishee while another writ is in effect, the garnishee is not obligated to withhold payments pursuant to the lower priority writ until the expiration of the higher priority one. However, in the case of garnishment of earnings, the garnishee shall withhold pursuant to the lower priority writ to the extent that the amount being withheld pursuant to the higher priority order is less than the maximum that could be withheld by law pursuant to the lower priority writ (see, e.g., [15 USC 1673](#)). Upon the expiration of the higher priority writ, the lower priority one becomes effective until it would otherwise have expired under subrule (B)(1)(a). The garnishee shall notify the plaintiff of receipt of any higher priority writ or order and provide the information required by subrule (H)(2)(c).

(2) Nonperiodic garnishments are garnishments of property or obligations other than periodic payments.

(C) Forms. The state court administrator shall publish approved forms for use in garnishment proceedings. Separate forms shall be used for periodic and nonperiodic garnishments. The verified statement, writ, and disclosure filed in garnishment proceedings must be substantially in the form approved by the state court administrator.

(D) Request for and Issuance of Writ. The clerk of the court that entered the judgment shall review the request. The clerk shall issue a writ of garnishment if the writ appears to be correct, complies with these rules and the Michigan statutes, and if the plaintiff, or someone on the plaintiff's behalf, makes and files a statement verified in the manner provided in [MCR 2.114\(A\)](#) stating:

(1) that a judgment has been entered against the defendant and remains unsatisfied;

(2) the amount of the judgment; the total amount of the postjudgment interest accrued to date; the total amount of the postjudgment costs accrued to date; the total amount of the postjudgment payments made to date, and the amount of the unsatisfied judgment now due (including interest and costs);

(3) that the person signing the verified statement knows or has good reason to believe that

(a) a named person has control of property belonging to the defendant,

(b) a named person is indebted to the defendant, or

(c) a named person is obligated to make periodic payments to the defendant.

(E) Writ of Garnishment.

(1) The writ of garnishment must have attached or must include a copy of the verified statement requesting issuance of the writ, and must include information that will permit the garnishee to identify the defendant, such as the defendant's address, social security number, employee identification number, federal tax identification number, employer number, or account number, if known.

(2) Upon issuance of the writ, it shall be served upon the garnishee as provided in subrule (F)(1). The writ shall include the date on which it was issued and the last day by which it must be served to be valid, which is 182 days after it was issued.

(3) The writ shall direct the garnishee to:

(a) serve a copy of the writ on the defendant as provided in subrule (F)(2);

(b) within 14 days after the service of the writ, file with the court clerk a verified disclosure indicating the garnishee's liability (as specified in subrule [G][1]) to the defendant and mail or deliver a copy to the plaintiff and the defendant;

(c) deliver no tangible or intangible property to the defendant, unless allowed by statute or court rule;

(d) pay no obligation to the defendant, unless allowed by statute or court rule; and

(e) in the discretion of the court and in accordance with subrule (J), order the garnishee either to

(i) make all payments directly to the plaintiff or

(ii) send the funds to the court in the manner specified in the writ.

(4) The writ shall direct the defendant to refrain from disposing of

(a) any negotiable instrument representing a debt of the garnishee (except the earnings of the defendant), or

(b) any negotiable instrument of title representing property in which the defendant claims an interest held in the possession or control of the garnishee.

(5) The writ shall inform the defendant that unless the defendant files objections within 14 days after the service of the writ on the defendant or as otherwise provided under [MCL 600.4012](#),

(a) without further notice the property or debt held pursuant to the garnishment may be applied to the satisfaction of the plaintiff's judgment, and

(b) periodic payments due to the defendant may be withheld until the judgment is satisfied and in the discretion of the court paid directly to the plaintiff.

(6) The writ shall direct the plaintiff to serve the garnishee as provided in subrule (F)(1), and to file a proof of service.

(F) Service of Writ.

(1) The plaintiff shall serve the writ of garnishment, a copy of the writ for the defendant, the disclosure form, and any applicable fees, on the garnishee within 182 days after the date the writ was issued in the manner provided for the service of a summons and complaint in [MCR 2.105](#).

(2) The garnishee shall within 7 days after being served with the writ deliver a copy of the writ to the defendant or mail a copy to the defendant at the defendant's last known address by first class mail.

(G) Liability of Garnishee.

(1) Subject to the provisions of the garnishment statute and any setoff permitted by law or these rules, the garnishee is liable for

(a) all tangible or intangible property belonging to the defendant in the garnishee's possession or control when the writ is served on the garnishee, unless the property is represented by a negotiable document of title held by a bona fide purchaser for value other than the defendant;

(b) all negotiable documents of title and all goods represented by negotiable documents of title belonging to the defendant if the documents of title are in the garnishee's possession when the writ is served on the garnishee;

(c) all corporate share certificates belonging to the defendant in the garnishee's possession or control when the writ is served on the garnishee;

(d) all debts, whether or not due, owing by the garnishee to the defendant when the writ is served on the garnishee, except for debts evidenced by negotiable instruments or representing the earnings of the defendant;

(e) all debts owing by the garnishee evidenced by negotiable instruments held or owned by the defendant when the writ of garnishment is served on the defendant, as long as the instruments are brought before the court before their negotiation to a bona fide purchaser for value;

(f) the portion of the defendant's earnings that are not protected from garnishment by law (see, e.g., [15 USC 1673](#)) as provided in subrule (B);

(g) all judgments in favor of the defendant against the garnishee in force when the writ is served on the garnishee;

(h) all tangible or intangible property of the defendant that, when the writ is served on the garnishee, the garnishee holds by conveyance, transfer, or title that is void as to creditors of the defendant, whether or not the defendant could maintain an action against the garnishee to recover the property; and

(i) the value of all tangible or intangible property of the defendant that, before the writ is served on the garnishee, the garnishee received or held by conveyance, transfer, or title that was void as to creditors of the defendant, but that the garnishee no longer held at the time the writ was served, whether or not the defendant could maintain an action against the garnishee for the value of the property.

(2) The garnishee is liable for no more than the amount of the unpaid judgment, interest, and costs as stated in the verified statement requesting the writ of garnishment. Property or debts exceeding that amount may be delivered or paid to the defendant notwithstanding the garnishment.

(H) Disclosure. The garnishee shall mail or deliver to the court, the plaintiff, and the defendant, a verified disclosure within 14 days after being served with the writ.

(1) *Nonperiodic Garnishments.*

(a) If indebted to the defendant, the garnishee shall file a disclosure revealing the garnishee's liability to the defendant as specified in subrule (G)(1) and claiming any setoff that the garnishee would have against the defendant, except for claims for unliquidated damages for wrongs or injuries.

(b) If not indebted to the defendant, the garnishee shall file a disclosure so indicating.

(c) If the garnishee is indebted to the defendant, but claims that withholding is exempt under MCR 3.101(I)(6), the garnishee shall indicate on the disclosure the specific exemption. If the garnishee is indebted, but claims that withholding is exempt for some reason other than those set forth in MCR 3.101(I)(6), the garnishee shall indicate on the disclosure the basis for its claim of exemption and cite the legal authority for the exemption.

(2) *Periodic Garnishments.*

(a) If not obligated to make periodic payments to the defendant, the disclosure shall so indicate, and the garnishment shall be considered to have expired.

(b) If obligated to make periodic payments to the defendant, the disclosure shall indicate the nature and frequency of the garnishee's obligation. The information must be disclosed even if money is not owing at the time of the service of the writ.

(c) If a writ or order with a higher priority is in effect, in the disclosure the garnishee shall specify the court that issued the writ or order, the file number of the case in which it was issued, the date it was issued, and the date it was served.

(I) Withholding. This subrule applies only if the garnishee is indebted to or obligated to make periodic payments to the defendant.

(1) Except as otherwise provided in this subrule, the writ shall be effective as to obligations owed and property held by the garnishee as of the time the writ is served on the garnishee.

(2) In the case of periodic earnings, withholding shall commence according to the following provisions:

(a) For garnishees with weekly, biweekly, or semimonthly pay periods, withholding shall commence with the first full pay period after the writ was served.

(b) For garnishees with monthly pay periods, if the writ is served on the garnishee within the first 14 days of the pay period, withholding shall commence on the date the writ is served. If the writ is served on the garnishee on or after the 15th day of the pay period, withholding shall commence the first full pay period after the writ was served.

(3) In the case of periodic earnings, withholding shall cease according to the following provisions:

(a) For garnishees with weekly, biweekly, or semimonthly pay periods, withholding shall cease upon the end of the last full pay period prior to the expiration of the writ.

(b) For garnishees with monthly pay periods, withholding shall continue until the writ expires.

(4) At the time that a periodic payment is withheld, the garnishee shall provide the following information to the plaintiff and defendant:

(a) the name of the parties;

(b) the case number;

(c) the date and amount withheld;

(d) the balance due on the writ.

The information shall also be provided to the court if funds are sent to the court.

(5) If funds have not been withheld because a higher priority writ or order was in effect, and the higher priority writ ceases to be effective before expiration of the lower priority one, the garnishee shall begin withholding pursuant to the lower priority writ as of the date of the expiration of the higher priority writ.

(6) A bank or other financial institution, as garnishee, shall not withhold exempt funds of the debtor from an account into which only exempt funds are directly deposited and where such funds are clearly identifiable upon deposit as exempt Social Security

benefits, Supplemental Security Income benefits, Railroad Retirement benefits, Black Lung benefits, or Veterans Assistance benefits.

(J) Payment.

(1) After 28 days from the date of the service of the writ on the garnishee, the garnishee shall transmit all withheld funds to the plaintiff or the court as directed by the court pursuant to subrule (E)(3)(e) unless notified that objections have been filed.

(2) For periodic garnishments, all future payments shall be paid as they become due as directed by the court pursuant to subrule (E)(3)(e) until expiration of the garnishment.

(3) Upon receipt of proceeds from the writ, the court shall forward such proceeds to the plaintiff.

(4) Payment to the plaintiff may not exceed the amount of the unpaid judgment, interest, and costs stated in the verified statement requesting the writ of garnishment. If the plaintiff claims to be entitled to a larger amount, the plaintiff must proceed by motion with notice to the defendant.

(5) In the case of earnings, the garnishee shall maintain a record of all payment calculations and shall make such information available for review by the plaintiff, the defendant, or the court, upon request.

(6) For periodic garnishments, within 14 days after the expiration of the writ or after the garnishee is no longer obligated to make periodic payments, the garnishee shall file with the court and mail or deliver to the plaintiff and the defendant, a final statement of the total amount paid on the writ. If the garnishee is the defendant's employer, the statement is to be filed within 14 days after the expiration of the writ, regardless of changes in employment status during the time that the writ was in effect. The statement shall include the following information:

(a) the names of the parties and the court in which the case is pending;

(b) the case number;

(c) the date of the statement;

(d) the total amount withheld;

(e) the difference between the amount stated in the verified statement requesting the writ and the amount withheld.

(7) If the disclosure states that the garnishee holds property other than money belonging to the defendant, the plaintiff must proceed by motion (with notice to the defendant and the garnishee) to seek an appropriate order regarding application of the property to satisfaction of the judgment. If there are no pending objections to the garnishment, and the plaintiff has not filed

such a motion within 56 days after the filing of the disclosure, the garnishment is dissolved and the garnishee may release the property to the defendant.

(K) Objections.

(1) Objections shall be filed with the court within 14 days of the date of service of the writ on the defendant. Objections may be filed after the time provided in this subrule but do not suspend payment pursuant to subrule (J) unless ordered by the court. Objections may only be based on defects in or the invalidity of the garnishment proceeding itself, and may not be used to challenge the validity of the judgment previously entered.

(2) Objections shall be based on one or more of the following:

(a) the funds or property are exempt from garnishment by law;

(b) garnishment is precluded by the pendency of bankruptcy proceedings;

(c) garnishment is barred by an installment payment order;

(d) garnishment is precluded because the maximum amount permitted by law is being withheld pursuant to a higher priority garnishment or order;

(e) the judgment has been paid;

(f) the garnishment was not properly issued or is otherwise invalid.

(3) Within 7 days of the filing of objections, notice of the date of hearing on the objections shall be sent to the plaintiff, the defendant, and the garnishee. The hearing date shall be within 21 days of the date the objections are filed. In district court, notice shall be sent by the court. In circuit and probate court, notice shall be sent by the objecting party.

(4) The court shall notify the plaintiff, the defendant, and the garnishee of the court's decision.

(L) Steps After Disclosure; Third Parties; Interpleader; Discovery.

(1) Within 14 days after service of the disclosure, the plaintiff may serve the garnishee with written interrogatories or notice the deposition of the garnishee. The answers to the interrogatories or the deposition testimony becomes part of the disclosure.

(2) If the garnishee's disclosure declares that a named person other than the defendant and the plaintiff claims all or part of the disclosed indebtedness or property, the court may order that the claimant be added as a defendant in the garnishment action

under [MCR 2.207](#). The garnishee may proceed under [MCR 3.603](#) as in interpleader actions, and other claimants may move to intervene under [MCR 2.209](#).

(3) The discovery rules apply to garnishment proceedings.

(4) The filing of a disclosure, the filing of answers to interrogatories, or the personal appearance by or on behalf of the garnishee at a deposition does not waive the garnishee's right to question the court's jurisdiction, the validity of the proceeding, or the plaintiff's right to judgment.

(M) Determination of Garnishee's Liability.

(1) If there is a dispute regarding the garnishee's liability or if another person claims an interest in the garnishee's property or obligation, the issue shall be tried in the same manner as other civil actions.

(2) The verified statement acts as the plaintiff's complaint against the garnishee, and the disclosure serves as the answer. The facts stated in the disclosure must be accepted as true unless the plaintiff has served interrogatories or noticed a deposition within the time allowed by subrule (L)(1) or another party has filed a pleading or motion denying the accuracy of the disclosure. Except as the facts stated in the verified statement are admitted by the disclosure, they are denied. Admissions have the effect of admissions in responsive pleadings. The defendant and other claimants added under subrule (L)(2) may plead their claims and defenses as in other civil actions. The garnishee's liability to the plaintiff shall be tried on the issues thus framed.

(3) Even if the amount of the garnishee's liability is disputed, the plaintiff may move for judgment against the garnishee to the extent of the admissions in the disclosure. The general motion practice rules govern notice (including notice to the garnishee and the defendant) and hearing on the motion.

(4) The issues between the plaintiff and the garnishee will be tried by the court unless a party files a demand for a jury trial within 7 days after the filing of the disclosure, answers to interrogatories, or deposition transcript, whichever is filed last. The defendant or a third party waives any right to a jury trial unless a demand for a jury is filed with the pleading stating the claim.

(5) On the trial of the garnishee's liability, the plaintiff may offer the record of the garnishment proceeding and other evidence. The garnishee may offer evidence not controverting the disclosure, or in the discretion of the court, may show error or mistakes in the disclosure.

(6) If the court determines that the garnishee is indebted to the defendant, but the time for payment has not arrived, a judgment may not be entered until after the time of maturity stated in the verdict or finding.

(N) Orders for Installment Payments.

(1) An order for installment payments under [MCL 600.6201 et seq.](#), suspends the effectiveness of a writ of garnishment of periodic payments for work and labor performed by the defendant from the time the order is served on the garnishee. An order

for installment payments does not suspend the effectiveness of a writ of garnishment of nonperiodic payments or of an income tax refund or credit.

(2) If an order terminating the installment payment order is entered and served on the garnishee, the writ again becomes effective and retains its priority and remains in force as if the installment payment order had never been entered.

(O) Judgment and Execution.

(1) Judgment may be entered against the garnishee for the payment of money or the delivery of specific property as the facts warrant. A money judgment against the garnishee may not be entered in an amount greater than the amount of the unpaid judgment, interest, and costs as stated in the verified statement requesting the writ of garnishment. Judgment for specific property may be enforced only to the extent necessary to satisfy the judgment against the defendant.

(2) The judgment against the garnishee discharges the garnishee from all demands by the defendant for the money paid or property delivered in satisfaction of the judgment. If the garnishee is sued by the defendant for anything done under the provisions of these garnishment rules, the garnishee may introduce as evidence the judgment and the satisfaction.

(3) If the garnishee is chargeable for specific property that the garnishee holds for or is bound to deliver to the defendant, judgment may be entered and execution issued against the interest of the defendant in the property for no more than is necessary to satisfy the judgment against the defendant. The garnishee must deliver the property to the officer serving the execution, who shall sell, apply, and account as in other executions.

(4) If the garnishee is found to be under contract for the delivery of specific property to the defendant, judgment may be entered and execution issued against the interest of the defendant in the property for no more than is necessary to satisfy the judgment against the defendant. The garnishee must deliver the property to the officer serving the execution according to the terms of the contract. The officer shall sell, apply, and account as in ordinary execution.

(5) If the garnishee is chargeable for specific property and refuses to expose it so that execution may be levied on it, the court may order the garnishee to show cause why general execution should not issue against the garnishee. Unless sufficient cause is shown to the contrary, the court may order that an execution be issued against the garnishee in an amount not to exceed twice the value of the specifically chargeable property.

(6) The court may issue execution against the defendant for the full amount due the plaintiff on the judgment against the defendant. Execution against the garnishee may not be ordered by separate writ, but must always be ordered by endorsement on or by incorporation within the writ of execution against the defendant. The court may order additional execution to satisfy the plaintiff's judgment as justice requires.

(7) Satisfaction of all or part of the judgment against the garnishee constitutes satisfaction of a judgment to the same extent against the defendant.

(P) Appeals. A judgment or order in a garnishment proceeding may be set aside or appealed in the same manner and with the same effect as judgments or orders in other civil actions.

(Q) Receivership.

(1) If on disclosure or trial of a garnishee's liability, it appears that when the writ was served the garnishee possessed,

(a) a written promise for the payment of money or the delivery of property belonging to the defendant, or

(b) personal property belonging to the defendant,

the court may order the garnishee to deliver it to a person appointed as receiver.

(2) The receiver must

(a) collect the written promise for payment of money or for the delivery of property and apply the proceeds on any judgment in favor of the plaintiff against the garnishee and pay any surplus to the garnishee, and

(b) dispose of the property in an amount greater than any encumbrance on it can be obtained, and after paying the amount of the encumbrance, apply the balance to the plaintiff's judgment against the garnishee and pay any surplus to the garnishee.

(3) If the garnishee refuses to comply with the delivery order, the garnishee is liable for the amount of the written promise for the payment of money, the value of the promise for the delivery of property, or the value of the defendant's interest in the encumbered personal property. The facts of the refusal and the valuation must be included in the receiver's report to the court.

(4) The receiver shall report all actions pertaining to the promise or property to the court. The report must include a description and valuation of any property, with the valuation to be ascertained by appraisal on oath or in a manner the court may direct.

(R) Costs and Fees.

(1) Costs and fees are as provided by law or these rules.

(2) If the garnishee is not indebted to the defendant, does not hold any property subject to garnishment, and is not the defendant's employer, the plaintiff is not entitled to recover the costs of that garnishment.

(S) Failure to Disclose or to Do Other Acts; Default; Contempt.

(1) For garnishments filed under MCR 3.101(B)(2) (nonperiodic):

(a) If the garnishee fails to disclose or do a required act within the time limit imposed, a default may be taken as in other civil actions. A default judgment against a garnishee may not exceed the amount of the garnishee's liability as provided in subrule (G)(2).

(b) If the garnishee fails to comply with the court order, the garnishee may be adjudged in contempt of court.

(2) For garnishments filed under MCR 3.101(B)(1) (periodic):

[MCL 600.4012\(6\)-\(10\)](#) governs default, default judgments, and motions to set aside default judgments for periodic garnishments.

(3) The court may impose costs on a garnishee whose default or contempt results in expense to other parties. Costs imposed shall include reasonable attorney fees and shall not be less than \$100.

(4) This rule shall not apply to nonperiodic garnishments filed for an income tax refund or credit.

(T) Judicial Discretion. On motion the court may by order extend the time for:

(1) the garnishee's disclosure;

(2) the plaintiff's filing of written interrogatories;

(3) the plaintiff's filing of a demand for oral examination of the garnishee;

(4) the garnishee's answer to written interrogatories;

(5) the garnishee's appearance for oral examination; and

(6) the demand for jury trial.

The order must be filed with the court and served on the other parties.

Credits

[Effective March 1, 1985; amended October 26, 1993, effective April 1, 1994, 444 Mich; May 14, 1997, effective September 1, 1997, 454 Mich; May 19, 2009, effective September 1, 2009, 483 Mich; September 9, 2009, effective January 1, 2010, 485 Mich; October 24, 2012, effective immediately pending public comment, 493 Mich; June 5, 2013, effective immediately, 494 Mich; September 23, 2015, effective October 1, 2015, 498 Mich.]

Editors' Notes

COMMENTS

Staff Comment to 1994 Amendment

The October 26, 1993, amendment of MCR 3.101, effective April 1, 1994, makes a number of changes in the rule governing garnishment after judgment. In addition to changes in terminology and reorganization, the amendment makes significant adjustments in garnishment procedure, particularly regarding garnishments of periodic payments under 1991 PA 67.

The statute recognizes several levels of priority among garnishments and similar orders. Under subrule (B)(1)(c), the amendment clarifies that even if a higher priority writ or order is in effect, the lower priority one may nonetheless be given effect if the amount being withheld pursuant to the higher priority writ or order is less than the maximum that could be withheld by law.

As under the former rule, the State Court Administrator is to publish forms for use in garnishment proceedings. Under subrule (C) as amended, separate forms are to be used for periodic and nonperiodic garnishments.

Under the former rule, it was implicit that a writ of periodic garnishment had to be served within 91 days after it was issued, since that was the latest date that it could expire. The rule contained no provision for expiration of a nonperiodic writ. The amendment sets the same 91 days for nonperiodic garnishments, corresponding to the 91-day life of a summons. [MCR 2.102\(D\)](#). The writ form is to include the last day by which it must be served to be valid. See subrule (E)(2).

The amendment adjusts the time limits within which various actions must be taken. The garnishee is to serve a copy of the writ on the defendant within 7 days after the garnishee was served. Subrule (F)(2). The garnishee's disclosure must be filed and served within 14 days after the garnishee was served with the writ. Subrule (H). The defendant has 14 days after being served to file objections. Subrule (K)(1). Subrule (K) lists the grounds on which objections may be made, and provides that the objections may not be used as a challenge to the validity of the previously entered judgment. If objections are filed, within 7 days the court is to send notice of a date of hearing on the objections, with the hearing to be scheduled within 21 days of the date the objections were filed. Subrule (K)(3).

The amendment significantly modifies the former rule regarding the withholding of periodic payment of earnings, and as to payment by the garnishee to the court or the plaintiff. Under subrule (I)(2), withholding of earnings commences with the first full pay period after the writ was served as to garnishees with weekly, biweekly, or semimonthly pay periods. As to garnishees with monthly pay periods, if the writ is served within the first 14 days of a pay period, withholding commences on the date the writ is served. If service is after the 14th day of the pay period, withholding commences with the first full pay period after service. There are corresponding provisions regarding cessation of withholding in subrule (I)(3). As to weekly, biweekly, and semimonthly pay periods, withholding ceases at the end of the last full pay period before the expiration of the writ. As to monthly pay periods, withholding ceases at the expiration of the writ. Thus, the only circumstances in which a garnishee must compute the amount to be withheld for less than a full pay period is in the case of monthly pay periods.

Subrule (J) covers payment by the garnishee. Under the former rule, the garnishee had the option of sending withheld funds to the court or retaining them until receiving an order to pay. The amended rule requires the garnishee to hold the funds and, if not notified of objections to the garnishment within 28 days, to send the withheld amount to either the court or the plaintiff (or plaintiff's attorney) as specified in the writ. Under subrule (E)(3)(e), in issuing the writ, the court will include a direction as to whom payment is to be made. As to periodic garnishments, as successive payments become due, the garnishee is to make payment as directed by the writ. The garnishee would not be required to file an additional disclosure, but only to provide a statement with each payment including the information specified in subrule (I)(4), which is to be sent to the plaintiff and the defendant, and, if the funds are sent to the court, to the court as well. Within 14 days after the expiration of the writ, the garnishee is to file a final statement containing the information specified in subrule (J)(6).

In situations where the garnishee holds property belonging to the defendant, the garnishee is not to transfer the property until the court enters an order on motion by the plaintiff. If the plaintiff does not seek such an order within 56 days after filing of the disclosure, the garnishment is dissolved, and the garnishee may release the property. Subrule (J)(7).

Former MCR 3.101(S), regarding the procedure when the state is garnishee, is deleted by the amendment.

Staff Comment to 1997 Amendment

May 14, 1997, amendments [effective September 1, 1997] of the rules governing garnishment and installment payment orders are based on suggestions received from several sources following the major revisions of the garnishment rule effective April 1, 1994.

The amendment of MCR 3.101(A)(4) [effective September 1, 1997] modifies the definition of “periodic payments” in light of uncertainties caused by the current rule and the amendment of [MCL 600.4012\(4\)](#).

The amendment of MCR 3.101(K)(3) [effective September 1, 1997] requires the moving party, rather than the court, to send the notice of hearing on objections to garnishment in circuit and probate court actions.

The change in MCR 3.101(N) relates to installment payment orders under [MCL 600.6201 et seq.](#)

The remaining amendments to MCR 3.101 are technical corrections in terminology and cross references.

Staff Comment to May, 2009 Amendment

The amendments of MCR 3.101 add language to protect exempt funds from garnishment and require financial institutions to provide authority stating why certain funds are exempt.

Staff Comment to September, 2009 Amendment

The amendments of [MCR 2.112](#) impose specific pleading requirements for a case that is a consumer debt action under the Michigan collection practices act, which will provide defendants with relevant information regarding the alleged debt. The amendments of MCR 3.101 require those who seek a garnishment to provide specific information regarding the interest and costs related to the judgment.

Staff Comment to 2012 Amendment

The amendments of MCR 3.101 are adopted to reflect recent statutory changes enacted in [MCL 600.4012\(1\)](#) in which the effective period for a periodic garnishment of wages, salary, and other earnings was extended from 91 days to 182 days. The amendments of MCR 3.101(B) and (E) change the effective period for *all* periodic garnishments to 182 days. (The amendments do not limit the 182-day effective period to periodic garnishments that only involve wages, salary, and other earnings.)

Staff Comment to 2013 Amendment

The Court retains the amendment of MCR 3.101, which extended the effective period for a writ of garnishment. This order further adopts a similar conforming amendment of MCR 3.101(F).

Staff Comment to 2015 Amendment

The amendments of MCR 3.101 eliminate subrule (B)(1)(a)(ii) and make other coordinating changes to reflect statutory revisions in 2015 PA 14 and 15.

MI Rules MCR 3.101, MI R SPEC P MCR 3.101
Current with amendments received through 1/1/16

End of Document

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Tab Page: Item 16

STATE OF MICHIGAN JUDICIAL DISTRICT JUDICIAL CIRCUIT COUNTY PROBATE	MOTION, AFFIDAVIT, AND BENCH WARRANT	CASE NO.
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ORI MI- _____ Court address _____ Court telephone no. _____
 Police Report No. _____

Plaintiff <input type="checkbox"/> The People of the State of Michigan <input type="checkbox"/> _____ <input type="checkbox"/> Civil <input type="checkbox"/> Criminal Current Charge _____	v	Defendant(s)/Probationer _____ <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;">CTN</td> <td style="width:33%;">SID</td> <td style="width:33%;">DOB</td> </tr> <tr> <td>TCN</td> <td></td> <td></td> </tr> </table>	CTN	SID	DOB	TCN		
CTN	SID	DOB						
TCN								
<input type="checkbox"/> Probate <input type="checkbox"/> Juvenile In the matter of _____								

A motion and affidavit is not required when the bench warrant is issued on the judge's own motion.

MOTION AND AFFIDAVIT

I request that a bench warrant be issued and _____
 be arrested and _____ Name of respondent

held in contempt for failure to appear. held in contempt for the following reasons: (specify in the space below)
 brought to court for arraignment on the following alleged probation violation: (specify in the space below)

This affidavit is made on my personal knowledge and, if sworn as a witness, I can testify competently to the facts in this affidavit.

Signature

Subscribed and sworn to before me on _____, _____ County, Michigan.
 Date

My commission expires: _____ Date Signature: _____
 Notary public/Deputy clerk

Notary public, State of Michigan, County of _____

BENCH WARRANT

Respondent failed to comply with an order of this court.
 TO ANY PEACE OFFICER OR COURT OFFICER AUTHORIZED TO MAKE ARREST, I order you to arrest:

Name and address of respondent	Race	Sex
	DLN	

Bring the respondent before the court immediately, or respondent may be released when a cash or surety bond in the amount of \$ _____ is posted for personal appearance before the court at its next session.

Date

Judge

Bar no.

RETURN

I have, on _____, taken respondent into custody as ordered by this warrant.
 Date

Date

Peace officer

STATE OF MICHIGAN JUDICIAL DISTRICT JUDICIAL CIRCUIT COUNTY PROBATE	MOTION, AFFIDAVIT, AND BENCH WARRANT	CASE NO.
---	---	-----------------

ORI MI- _____ Court address _____ Court telephone no. _____
 Police Report No. _____

Plaintiff <input type="checkbox"/> The People of the State of Michigan <input type="checkbox"/> _____ <input type="checkbox"/> Civil <input type="checkbox"/> Criminal _____ Current Charge _____	v	Defendant(s)/Probationer _____ <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;">CTN</td> <td style="width:33%;">SID</td> <td style="width:33%;">DOB</td> </tr> <tr> <td>TCN</td> <td></td> <td></td> </tr> </table>	CTN	SID	DOB	TCN		
CTN	SID	DOB						
TCN								
<input type="checkbox"/> Probate <input type="checkbox"/> Juvenile In the matter of _____								

A motion and affidavit is not required when the bench warrant is issued on the judge's own motion.

MOTION AND AFFIDAVIT

I request that a bench warrant be issued and _____
 be arrested and _____ Name of respondent

held in contempt for failure to appear. held in contempt for the following reasons: (specify in the space below)
 brought to court for arraignment on the following alleged probation violation: (specify in the space below)

This affidavit is made on my personal knowledge and, if sworn as a witness, I can testify competently to the facts in this affidavit.

Signature

Subscribed and sworn to before me on _____, _____ County, Michigan.
 Date

My commission expires: _____ Date Signature: _____
 Notary public/Deputy clerk

Notary public, State of Michigan, County of _____

BENCH WARRANT

Respondent failed to comply with an order of this court. A bench warrant to arrest the respondent has issued on this date. Respondent was described as follows:

Name and address of respondent	Race	Sex
	DLN	

Bring the respondent before the court immediately, or respondent may be released when a cash or surety bond in the amount of \$ _____ is posted for personal appearance before the court at its next session.

Date

Judge

Bar no.

MEMORANDUM COPY - NOT TO BE USED FOR ARREST

TO THE COURT CLERK: When the original charge in a criminal case is more than a 92-day misdemeanor or felony and the defendant has not been sentenced or discharged, advise the Michigan State Police Criminal Justice Information Center of this Motion and Bench Warrant Memorandum as required under MCL 769.16a.

Form CC 376

PERSONAL PROTECTION ORDER (DOMESTIC RELATIONSHIP)

Use this form if you filled out form CC 375, Petition for Personal Protection Order.

INSTRUCTIONS FOR COMPLETING "PERSONAL PROTECTION ORDER"

Please print neatly. Press firmly because you are printing on six copies.

Items A through D must be completed before you give this form to the court clerk. Please read the instruction for each item. Then fill in the correct information for that item on the form.

- A** If you checked box **G** on form CC 375, check the box for "Ex Parte."
- B** Fill in the "Case No." from form CC 375.
- C** Fill in the "petitioner" and "respondent" the same way you did on form CC 375. **If you want your address and telephone number to be kept from the respondent, do not write your address here. Put in the address of a relative or friend or a post office box where the court can contact you.**
- D** Write in the respondent's name and as much of the other information as you know. This information will help the police to identify the respondent if he or she disobeys the restraining order. Be sure to identify the respondent accurately. **The race, sex, and date of birth are required for law enforcement to enter an order on the Law Enforcement Information Network (LEIN).**

The court will complete the rest of this form.

You must read the booklet "Instructions for Personal Protection Orders" for directions on the legal process.

- If you asked for an ex parte order (order without a hearing), read pages 3 and 4 of the booklet.
- If you did not ask for an ex parte order or the judge refuses to sign an ex parte order, read pages 5 and 6 of the booklet.

Important:

If the respondent violates this personal protection order and is arrested, the court will set a date, time, and place for a hearing on the charges against the respondent to be held within 72 hours after arrest. The court or prosecutor is responsible for giving you notice of this hearing. If you are not notified within 24 hours of the arrest, contact the judge who signed this order. If a hearing is not held within 72 hours, the respondent may be released from jail after posting bond pending the hearing.

If the respondent violates this personal protection order and there is no arrest, use form CC 382, Motion and Order to Show Cause for Violating Personal Protection Order. This form is available from the circuit court clerk.

STATE OF MICHIGAN
JUDICIAL CIRCUIT
COUNTY

(A)

PERSONAL PROTECTION ORDER
 EX PARTE
(DOMESTIC RELATIONSHIP)

(B)

CASE NO.

Court address
ORI
MI-

Court telephone no.

(C)

Petitioner's name	v	Respondent's name, address, telephone no., and DLN
Address and telephone no. where court can reach petitioner		

(D)

Height	Weight	Race *	Sex *	Date of birth or age*	Hair color	Eye color	Other identifying information
--------	--------	--------	-------	-----------------------	------------	-----------	-------------------------------

*These items **must** be filled in for the police/sheriff to enter on LEIN; the other items are not required but are helpful. **Needed for NCIC entry.

Date: _____ Judge: _____ no hearing. **after hearing.

- 1. A petition requested respondent be prohibited from entry onto the premises, and either the parties are married, petitioner has property interest in the premises, or respondent does not have a property interest in the premises.
- 2. Petitioner requested an ex parte order, which should be entered without notice because irreparable injury, loss, or damage will result from the delay required to give notice or notice itself will precipitate adverse action before the order can be issued.
- ** 3. Respondent poses a credible threat to the physical safety of the petitioner and/or a child of the petitioner.
- 4. Respondent **is the spouse or former spouse of the petitioner, had a child in common with the petitioner, or is residing or had resided in the same household as the petitioner. has or had a dating relationship with the petitioner.

IT IS ORDERED:

5. _____ is prohibited from:
- a. entering onto property where petitioner lives.
 - b. entering onto property at _____.
 - ** c. assaulting, attacking, beating, molesting, or wounding _____.
 - d. removing minor children from petitioner who has **legal** custody, except as allowed by custody or parenting-time order provided removal of the children does not violate other conditions of this order. An existing custody order is dated _____ . An existing parenting-time order is dated _____.
 - ** e. stalking as defined under MCL 750.411h and MCL 750.411i that includes but is not limited to:
 - following petitioner or appearing within his/her sight. appearing at petitioner's workplace or residence.
 - sending mail or other communications to petitioner. contacting petitioner by telephone.
 - approaching or confronting petitioner in a public place or on private property.
 - entering onto or remaining on property owned, leased, or occupied by petitioner.
 - placing an object on or delivering an object to property owned, leased, or occupied by petitioner.
 - f. interfering with petitioner's efforts to remove his/her children/personal property from premises solely owned/leased by respondent.
 - ** g. threatening to kill or physically injure _____.
 - h. interfering with petitioner at his/her place of employment or education or engaging in conduct that impairs his/her employment or educational relationship or environment.
 - i. having access to information in records concerning a minor child of petitioner and respondent that will reveal petitioner's address, telephone number, or employment address or that will reveal the child's address or telephone number.
 - ** j. purchasing or possessing a firearm.
 - k. other: _____
6. As a result of this order, federal and/or state law may prohibit you from possessing or purchasing ammunition or a firearm.
7. Violation of this order subjects respondent to immediate arrest and to the civil and criminal contempt powers of the court. If found guilty, respondent shall be imprisoned for not more than 93 days and may be fined not more than \$500.00.
8. **This order is effective when signed, enforceable immediately, and remains in effect until _____.**
This order is enforceable anywhere in this state by any law enforcement agency when signed by a judge, and upon service, may also be enforced by another state, an Indian tribe, or a territory of the United States. If respondent violates this order in a jurisdiction other than this state, respondent is subject to enforcement and penalties of the state, Indian tribe, or United States territory under whose jurisdiction the violation occurred.
9. The court clerk shall file this order with _____ who will enter it into the LEIN.
10. Respondent may file a motion to modify or terminate this order. For ex parte orders, the motion must be filed within 14 days after being served with or receiving actual notice of the order. Forms and instructions are available from the clerk of court.
11. A motion to extend the order must be filed 3 days before the expiration date in item 8 or a new petition must be filed.

Personal Protection Order

PROOF OF SERVICE

Case No. _____

TO PROCESS SERVER: You must serve the personal protection order and file 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.

CERTIFICATE / AFFIDAVIT OF SERVICE / NONSERVICE

OFFICER CERTIFICATE

I certify that I am a sheriff, deputy sheriff, bailiff, appointed court officer, or attorney for a party [MCR 2.104(A)(2)], and that: (notarization not required)

OR

AFFIDAVIT OF PROCESS SERVER

Being first duly sworn, I state that I am a legally competent adult who is **not** a party or an officer of a corporate party, and that: (notarization required)

I served a copy of the personal protection order by:

personal service registered mail, delivery restricted to the respondent (return receipt attached)

on:

Name of respondent	Complete address of service	Day, date, time
Law enforcement agency	Complete address of service	Day, date, time

I have personally attempted to serve a copy of the personal protection order on the following respondent and have been unable to complete service.

Respondent name	Complete address of service
-----------------	-----------------------------

I declare that the statements above are true to the best of my information, knowledge, and belief.

Service fee	Miles traveled	Fee	
\$		\$	
Incorrect address fee	Miles traveled	Fee	TOTAL FEE
\$		\$	\$

Name (type or print)

Signature

Title

Subscribed and sworn to before me on _____, _____ County, Michigan.
Date

My commission expires: _____ Date Signature: _____
Deputy court clerk/Notary public

Notary public, State of Michigan, County of _____

ACKNOWLEDGMENT OF SERVICE

I acknowledge that I have received a copy of the personal protection order on _____.
Day, date, time

Signature of respondent

STATE OF MICHIGAN JUDICIAL CIRCUIT COUNTY	BENCH WARRANT	CASE NO.
--	----------------------	-----------------

Court address Court telephone no.

Police Report No.

Plaintiff

v

Defendant

IN THE NAME OF THE PEOPLE OF THE STATE OF MICHIGAN:

TO ANY PEACE OFFICER OR COURT OFFICER AUTHORIZED TO MAKE ARREST:

The person named below failed to appear before this court, as ordered, to show cause why s/he should not be held in contempt.

Therefore, I order you to arrest:

Full name (type or print)						Date of birth
Address				City	State	Zip
Sex	Eye color	Hair color	Height	Weight	Race	Scars, tattoos, etc.

Bring him/her before the court immediately or s/he may be released when a cash-performance bond is posted in the amount of \$ _____ for personal appearance before the court at its next session.

Date

Judge Bar no.

RETURN

By virtue of this warrant, I have taken the person named above into custody as ordered.

Date

Peace officer

**STATE OF MICHIGAN
JUDICIAL CIRCUIT
COUNTY**

MEMORANDUM OF BENCH WARRANT

CASE NO.

Court address

Court telephone no.

Police Report No.

Plaintiff

v

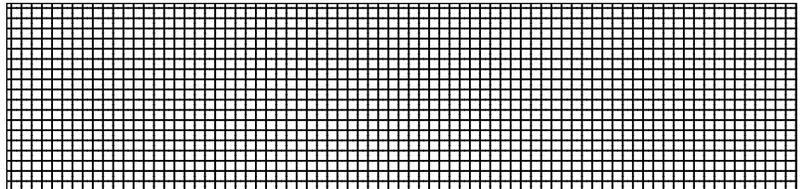
Defendant

IN THE NAME OF THE PEOPLE OF THE STATE OF MICHIGAN:

A bench warrant has been issued to arrest:

Full name (type or print)					Date of birth	
Address			City		State	Zip
Sex	Eye color	Hair color	Height	Weight	Race	Scars, tattoos, etc.

He or she is to be brought before the court immediately or released when a cash-performance bond is posted in the amount of \$_____ for personal appearance before the court at its next session.



Tab Page:
Item 17

STATE OF MICHIGAN JUDICIAL CIRCUIT COUNTY PROBATE	ORDER REQUESTING PRISONER BE ALLOWED TO PARTICIPATE IN COURT PROCEEDINGS	CASE NO.
--	---	-----------------

Court address _____ Court telephone no. _____

Plaintiff's/Petitioner's name, address, and telephone no.	v	Defendant's/Respondent's/Minor's name, address, and telephone no.
---	----------	---

Probate
 Juvenile In the matter of _____

Plaintiff's/Petitioner's attorney, bar no., address, and telephone no.	Defendant's/Respondent's attorney, bar no., address, and telephone no.
--	--

TO: The warden or supervisor of the facility where the prisoner is presently located.

1. The Department of Corrections is requested to allow _____, Prisoner name
offender number _____, to take a noncollect and unmonitored telephone call from this court at _____ Time
on _____ Date to discuss his/her participation in _____,
a proceeding in which he/she is a party.
2. If the prisoner wants to participate in the court proceeding stated in item 1, the Department of Corrections shall allow the prisoner to participate.

Date Judge Bar no.

CERTIFICATE OF MAILING

I certify that on this date I served a copy of this order on the parties or their attorneys by first-class mail addressed to their last-known addresses as defined in MCR 2.107(C)(3).

Date Signature

Michigan Compiled Laws Annotated
Michigan Court Rules of 1985
Chapter 2. Civil Procedure
Subchapter 2.000. General Provisions

MI Rules MCR 2.004

RULE 2.004 INCARCERATED PARTIES

Currentness

(A) This rule applies to

(1) domestic relations actions involving minor children, and

(2) other actions involving the custody, guardianship, neglect, or foster-care placement of minor children, or the termination of parental rights,

in which a party is incarcerated under the jurisdiction of the Department of Corrections.

(B) The party seeking an order regarding a minor child shall

(1) contact the department to confirm the incarceration and the incarcerated party's prison number and location;

(2) serve the incarcerated person with the petition or motion seeking an order regarding the minor child, and file proof with the court that the papers were served; and

(3) file with the court the petition or motion seeking an order regarding the minor child, stating that a party is incarcerated and providing the party's prison number and location; the caption of the petition or motion shall state that a telephonic or video hearing is required by this rule.

(C) When all the requirements of subrule (B) have been accomplished to the court's satisfaction, the court shall issue an order requesting the department, or the facility where the party is located if it is not a department facility, to allow that party to participate with the court or its designee by way of a noncollect and unmonitored telephone call or by video conference in a hearing or conference, including a friend of the court adjudicative hearing or meeting. The order shall include the date and time for the hearing, and the prisoner's name and prison identification number, and shall be served by the court upon the parties and the warden or supervisor of the facility where the incarcerated party resides.

(D) All court documents or correspondence mailed to the incarcerated party concerning any matter covered by this rule shall include the name and the prison number of the incarcerated party on the envelope.

(E) The purpose of the telephone call or video conference described in this subrule is to determine

(1) whether the incarcerated party has received adequate notice of the proceedings and has had an opportunity to respond and to participate,

(2) whether counsel is necessary in matters allowing for the appointment of counsel to assure that the incarcerated party's access to the court is protected,

(3) whether the incarcerated party is capable of self-representation, if that is the party's choice,

(4) how the incarcerated party can communicate with the court or the friend of the court during the pendency of the action, and whether the party needs special assistance for such communication, including participation in additional telephone calls or video conferences, and

(5) the scheduling and nature of future proceedings, to the extent practicable, and the manner in which the incarcerated party may participate.

(F) A court may not grant the relief requested by the moving party concerning the minor child if the incarcerated party has not been offered the opportunity to participate in the proceedings, as described in this rule. This provision shall not apply if the incarcerated party actually does participate in a telephone call or video conference, or if the court determines that immediate action is necessary on a temporary basis to protect the minor child.

(G) The court may impose sanctions if it finds that an attempt was made to keep information about the case from an incarcerated party in order to deny that party access to the courts.

Credits

[Formerly Rule 3.220, adopted November 1, 2002, effective January 1, 2003, 467 Mich. Renumbered Rule 2.004 and amended November 1, 2002, effective January 1, 2003, 469 Mich.; October 1, 2014, effective January 1, 2015, 497 Mich.]

Editors' Notes

COMMENTS

Staff Comment to 2003 Adoption

The November 1, 2002, enactment of [MCR 3.220](#), effective January 1, 2003, is based on a proposal made in conjunction with the settlement agreement in the Court of Claims of that portion of *Cain v Dep't of Corrections*, 88-61119-AZ, 93-15000-CM, and 96-16341-CM, that pertains to women prisoners.

Staff Comment to 2002 Renumber and Amendment

MCR 2.004, effective January 1, 2003, is based on a proposal made in conjunction with the settlement agreement in the Court of Claims of that portion of *Cain v Dep't of Corrections*, 88-61119-AZ, 93-15000-CM, and 96-16341-CM, that pertains to women

prisoners. The rule initially was adopted in November 2002 as [MCR 3.220](#), but was amended and renumbered as Rule 2.004 in December 2002 to clarify the scope of the rule and to eliminate other potential confusion.

Staff Comment to 2015 Amendment

The amendments of MCR 2.004 allow an inmate's participation by video or videoconferencing.

MI Rules MCR 2.004, MI R RCP MCR 2.004
Current with amendments received through 1/1/16

End of Document

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Tab Page:
Item 18

STATE OF MICHIGAN JUDICIAL DISTRICT JUDICIAL CIRCUIT COUNTY PROBATE	ORDER REGARDING ALTERNATE SERVICE	CASE NO.
--	--	-----------------

Court address _____ Court telephone no. _____

Plaintiff name(s), address(es), and telephone no(s).
Plaintiff's attorney, bar no., address, and telephone no.

v

Defendant name(s), address(es), and telephone no(s).
--

THE COURT FINDS:

1. Service of process upon the defendant, _____, cannot reasonably be made as provided in MCR 2.105 MCR 2.107(B)(1)(b) and service of process may be made in a manner that is reasonably calculated to give the defendant actual notice of the proceedings and an opportunity to be heard.

IT IS ORDERED:

2. Service of the summons and complaint other: _____ and a copy of this order shall be made by the following method(s).

a. First-class mail to _____ .

b. Tacking or firmly affixing to the door at _____ .

c. Delivering at _____ to a member of the defendant's household who is of suitable age and discretion to receive process, with instructions to deliver it promptly to the defendant.

d. Other: _____

For each method used, proof of service must be filed promptly with the court.

3. The motion for alternate service is denied.

Date

Judge _____
Bar no.

Lansing

313 S. Washington Square
Lansing MI 48933

Detroit

333 W. Fort Street – Suite 1400
Detroit MI 48226

Walter S. Foster
1878-1961
Richard B. Foster
1908-1996
Theodore W. Swift
1928-2000
John L. Collins
1926-2001

Webb A. Smith
Allan J. Claypool
Gary J. McRay
Stephen I. Jurmu
Scott A. Storey
Charles A. Janssen
Charles E. Barbieri
James B. Jensen, Jr.
Scott L. Mandel

Michael D. Sanders
Brent A. Titus
Stephen J. Lowney
Jean G. Schitokal
Brian G. Goodenough
Matt G. Hrebec
Melissa J. Jackson
Nancy L. Kahn
Deanna Swisher
Thomas R. Meagher
Doug A. Mielock
Scott A. Chernich
Paul J. Millenbach
Dirk H. Beckwith
Brian J. Renaud
Bruce A. Vande Vusse
Lynwood P. VandenBosch
Lawrence Korolewicz

James B. Doezema
Anne M. Seuryneck
Richard L. Hillman
Steven L. Owen
John P. Nicolucci
Michael D. Homier
David M. Lick
Scott H. Hogan
Richard C. Kraus
Benjamin J. Price
Frank T. Mamat
Michael R. Blum
Norman E. Richards
Jonathan J. David
Frank H. Reynolds
Pamela C. Dausman
Andrew C. Vredenburg
John M. Kamins

Jack A. Siebers
Julie I. Fershtman
Todd W. Hoppe
Jennifer B. Van Regenmorter
Thomas R. TerMaat
Samuel J. Frederick
Frederick D. Dilley
Alexander A. Ayar
David R. Russell
Zachary W. Behler
Joshua K. Richardson
Joel C. Farrar
Seth A. Drucker
Laura J. Genovich
Liza C. Moore
Karl W. Butterer, Jr.
Lisa J. Hamameh
Mindi M. Johnson

Ray H. Littleton, II
Frank J. DeFrancesco
Scott A. Dienes
Glen A. Schmiege
Gilbert M. Frimet
Mark J. Colon
Paul D. Yared
Ryan E. Lamb
Barbra E. Homier
Stephen W. Smith
Anna K. Gibson
Nichole J. Derks
Patricia J. Scott
Lindsey E. Bosch
Nicholas M. Oertel
Nicole E. Stratton
Lauren B. Dunn
Alicia W. Birach

Grand Rapids

1700 E. Beltline NE – Suite 200
Grand Rapids MI 49525

St. Joseph

728 Pleasant Street – Suite 204
St. Joseph MI 49085

Joseph J. Viviano
John W. Mashni
Adam A. Fadly
Allison M. Collins
Leslie A. Dickinson
Julie L. Hamlet
Emory D. Moore
Michael C. Zahrt
Taylor A. Gast
Rachel N. Gizicki
Tyler J. Olney
Mark J. DeLuca

Writer's Direct Phone: 517.371.8136

Fax: 517.367.7136

Reply To: Lansing

E-Mail: DSwisher@fosterswift.com

February 26, 2016

Via E-Mail Only

SCAO Forms Committee
State Court Administrators Office
courtformsinfo@courts.mi.gov

Dear Sir/Madam:

Re: MC 304 and MC 01

I am General Counsel to the Michigan Court Officers and Deputy Sheriffs Association (“MCODSA”), and in that capacity I provide this comment with regard to the suggestion that “tacking” be removed as an option for alternative service from MC 304. Additionally, I have addressed below our concern regarding MC 01 and propose modest change to that form.

We understand the proposal to remove tacking was motivated by the concern that tacking may not give actual notice, as is the goal of MCR 2.105(I)(1), where a defendant has moved. However, it is also possible that a defendant will not receive actual notice if alternative service is made by first-class mail or delivery to what has become the defendant’s prior address. Tacking is commonly used and, where a defendant has not moved, or where any person who knows the defendant is coming and going from the premises, Tacking provides obvious notice. Further, to remove tacking while leaving mailing and other options in MC 304 could give the misimpression that tacking is no longer an acceptable option. For these reasons, MCODSA respectfully requests that tacking remain on MC 304.

In the event that the proposed revision is motivated by concern that MC 304, as presently worded, does not clearly direct determination of the manner of service most likely to result in actual notice, MCODSA proposes that MC 304 be revised to move the language of MCR 2.105(I)(1) to the “order” portion, stating that “Service shall be made in the following manner(s), which have been determined to be reasonably calculated to give the defendant actual notice of the proceeding and opportunity to be heard:

SCAO Forms Committee

February 26, 2016

Page 2

...” Additionally, to consistently employ the language of MCR 2.105(I)(1), we propose replacing “method(s)” and “method” which appear at ¶ 2 of MC 304, with “manner(s)” and “manner,” respectively.

We acknowledge that MC 01 is not on the Civil Proceedings’ agenda for March 10, 2016, however we wish to bring the following matter to the Committee’s attention and request that a proposed revision be added to a future agenda.

MC 01 provides two, alternative means for making proof of service. The first, the “Officer Certificate” section, is not notarized. The second, the “Affidavit of Process Server” section, must be notarized. The function of the notary, anticipated by the language of MC 01 and by MCR 2.113(A), is that of a witness to a sworn affirmation, made by the process server, as they sign the proof in the presence of a notary. However, rarely does a notary administer an “oath” or require any verbal affirmation. Instead, most notaries make an effort to verify the identity of the person that is preparing to sign a document, and, by signing as a notary, confirm the identity of the person who appeared before them and signed the document.

For anyone who hopes to make a living as a court officer, they often serve process. They are rarely in an office during regular business hours and find it challenging to appear before a notary to sign proofs. In light of these realities, we address the following matters and propose change of MC 01.

Members of MCODSA, who are appointed court officers, are commonly required to use the notarized Affidavit of Process Server section when they are serving process outside the county where they were appointed. We are of the opinion that an appointed court officer may, statewide, serve process and use the Officer Certificate section for the reason that MCR 2.104(A) provides, in pertinent part, that proof of service may be made by:

- (2) a certificate stating the facts of service, including the manner, time, date, and place of service, if service is made within the State of Michigan by
 - (a) a sheriff,
 - (b) a deputy sheriff or bailiff, if that officer holds office in the county in which the court issuing the process is held,
 - (c) an appointed court officer,
 - (d) an attorney for a party; or
- (3) an affidavit stating the facts of service, including the manner, time, date, and place of service, and indicating the process server's official capacity, if any.

Notably, subsection (A)(2)(b) addresses a “deputy sheriff or bailiff, *if that officer holds office in the county in which the court issuing the process is held,*” while subsection (2)(c) addresses “an appointed court officer” without reference to the county or court where the court officer is appointed. MCR 2.104

SCAO Forms Committee

February 26, 2016

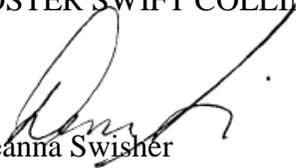
Page 3

(emphasis added). Accordingly, the rule permits an appointed court officer, without regard to the county or court where the officer is appointed, to make proof of service in accord with subsection (A)(2).

Where there is no basis for requiring an appointed court officer to use the notarized proof of service provisions of (A)(3), we turned to MC 01 to consider whether the language of the form may be motivating courts to impose the unnecessary burden of appearing before a notary. The Officer Certificate section currently states: “I certify that I am a sheriff, deputy sheriff, bailiff, appointed court officer, or attorney for a party...” To comport with the distinction made at subsection (A)(2)(b), it should instead read “ I certify that I am an appointed court officer, a sheriff, a deputy sheriff or bailiff in the county where process issued, or attorney for a party ...” We propose this revision to MC 01, upon the expectation that that notice of why the revision was made would prompt courts to accept Officer Certificate proofs from appointed court officers, statewide.

Sincerely,

FOSTER SWIFT COLLINS & SMITH PC



Deanna Swisher

DS:jrp

PROOF OF SERVICE

ORDER REGARDING ALTERNATE SERVICE

Case No. _____

TO PROCESS SERVER: You must serve the copies of the order regarding alternate service and file 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.

CERTIFICATE / AFFIDAVIT OF SERVICE / NONSERVICE

OFFICER CERTIFICATE

OR

AFFIDAVIT OF PROCESS SERVER

I certify that I am a sheriff, deputy sheriff, bailiff, appointed court officer, or attorney for a party (MCR 2.104[A][2]), and that: (notarization not required)

Being first duly sworn, I state that I am a legally competent adult who is not a party or an officer of a corporate party, and that: (notarization required)

I served a copy of the summons and complaint other: _____

and a copy of the order for alternate service upon _____ by

1. First-class mail to _____, on _____ Date

2. Tacking or firmly affixing to the door at _____, on _____ Date

3. Delivering at _____, on _____ Date

to a member of the defendant's household who is of suitable age and discretion to receive process, with instructions to deliver it promptly to the defendant.

4. Other: _____, on _____ Date
specify

I declare that the statements above are true to the best of my information, knowledge, and belief.

Service fee	Miles traveled	Fee	
\$		\$	
Incorrect address fee	Miles traveled	Fee	TOTAL FEE
\$		\$	\$

Signature

Name (type or print)

Title

Subscribed and sworn to before me on _____, _____ County, Michigan.
Date

My commission expires: _____ Signature: _____
Date Deputy court clerk/Notary public

Notary public, State of Michigan, County of _____

Michigan Compiled Laws Annotated
Michigan Court Rules of 1985
Chapter 2. Civil Procedure
Subchapter 2.100. Commencement of Action; Service of Process; Pleadings; Motions

MI Rules MCR 2.105

RULE 2.105 PROCESS; MANNER OF SERVICE

Currentness

(A) Individuals. Process may be served on a resident or nonresident individual by

(1) delivering a summons and a copy of the complaint to the defendant personally; or

(2) sending a summons and a copy of the complaint by registered or certified mail, return receipt requested, and delivery restricted to the addressee. Service is made when the defendant acknowledges receipt of the mail. A copy of the return receipt signed by the defendant must be attached to proof showing service under subrule (A)(2).

(B) Individuals; Substituted Service. Service of process may be made

(1) on a nonresident individual, by

(a) serving a summons and a copy of the complaint in Michigan on an agent, employee, representative, sales representative, or servant of the defendant, and

(b) sending a summons and a copy of the complaint by registered mail addressed to the defendant at his or her last known address;

(2) on a minor, by serving a summons and a copy of the complaint on a person having care and control of the minor and with whom he or she resides;

(3) on a defendant for whom a guardian or conservator has been appointed and is acting, by serving a summons and a copy of the complaint on the guardian or conservator;

(4) on an individual doing business under an assumed name, by

(a) serving a summons and copy of the complaint on the person in charge of an office or business establishment of the individual, and

(b) sending a summons and a copy of the complaint by registered mail addressed to the individual at his or her usual residence or last known address.

(C) Partnerships; Limited Partnerships. Service of process on a partnership or limited partnership may be made by

(1) serving a summons and a copy of the complaint on any general partner; or

(2) serving a summons and a copy of the complaint on the person in charge of a partnership office or business establishment and sending a summons and a copy of the complaint by registered mail, addressed to a general partner at his or her usual residence or last known address.

(D) Private Corporations, Domestic and Foreign. Service of process on a domestic or foreign corporation may be made by

(1) serving a summons and a copy of the complaint on an officer or the resident agent;

(2) serving a summons and a copy of the complaint on a director, trustee, or person in charge of an office or business establishment of the corporation and sending a summons and a copy of the complaint by registered mail, addressed to the principal office of the corporation;

(3) serving a summons and a copy of the complaint on the last presiding officer, president, cashier, secretary, or treasurer of a corporation that has ceased to do business by failing to keep up its organization by the appointment of officers or otherwise, or whose term of existence has expired;

(4) sending a summons and a copy of the complaint by registered mail to the corporation or an appropriate corporation officer and to the Michigan Bureau of Commercial Services, Corporation Division if

(a) the corporation has failed to appoint and maintain a resident agent or to file a certificate of that appointment as required by law;

(b) the corporation has failed to keep up its organization by the appointment of officers or otherwise; or

(c) the corporation's term of existence has expired.

(E) Partnership Associations; Unincorporated Voluntary Associations. Service of process on a partnership association or an unincorporated voluntary association may be made by

(1) serving a summons and a copy of the complaint on an officer, director, trustee, agent, or person in charge of an office or business establishment of the association, and

(2) sending a summons and a copy of the complaint by registered mail, addressed to an office of the association. If an office cannot be located, a summons and a copy of the complaint may be sent by registered mail to a member of the association other than the person on whom the summons and complaint was served.

(F) Service on Insurer. To the extent that it is permitted by statute, service on an insurer may be satisfied by providing two summonses and a copy of the complaint to the Commissioner of the Office of Financial and Insurance Regulation via delivery or registered mail.

(G) Public Corporations. Service of process on a public, municipal, quasi-municipal, or governmental corporation, unincorporated board, or public body may be made by serving a summons and a copy of the complaint on:

(1) the chairperson of the board of commissioners or the county clerk of a county;

(2) the mayor, the city clerk, or the city attorney of a city;

(3) the president, the clerk, or a trustee of a village;

(4) the supervisor or the township clerk of a township;

(5) the president, the secretary, or the treasurer of a school district;

(6) the president or the secretary of the Michigan State Board of Education;

(7) the president, the secretary, or other member of the governing body of a corporate body or an unincorporated board having control of a state institution;

(8) the president, the chairperson, the secretary, the manager, or the clerk of any other public body organized or existing under the constitution or laws of Michigan, when no other method of service is specially provided by statute.

The service of process may be made on an officer having substantially the same duties as those named or described above, irrespective of title. In any case, service may be made by serving a summons and a copy of the complaint on a person in charge of the office of an officer on whom service may be made and sending a summons and a copy of the complaint by registered mail addressed to the officer at his or her office.

(H) Agent Authorized by Appointment or by Law.

(1) Service of process on a defendant may be made by serving a summons and a copy of the complaint on an agent authorized by written appointment or by law to receive service of process.

(2) Whenever, pursuant to statute or court rule, service of process is to be made on a nongovernmental defendant by service on a public officer, service on the public officer may be made by registered mail addressed to his or her office.

(I) Discretion of the Court.

(1) On a showing that service of process cannot reasonably be made as provided by this rule, the court may by order permit service of process to be made in any other manner reasonably calculated to give the defendant actual notice of the proceedings and an opportunity to be heard.

(2) A request for an order under the rule must be made in a verified motion dated not more than 14 days before it is filed. The motion must set forth sufficient facts to show that process cannot be served under this rule and must state the defendant's address or last known address, or that no address of the defendant is known. If the name or present address of the defendant is unknown, the moving party must set forth facts showing diligent inquiry to ascertain it. A hearing on the motion is not required unless the court so directs.

(3) Service of process may not be made under this subrule before entry of the court's order permitting it.

(J) Jurisdiction; Range of Service; Effect of Improper Service.

(1) Provisions for service of process contained in these rules are intended to satisfy the due process requirement that a defendant be informed of an action by the best means available under the circumstances. These rules are not intended to limit or expand the jurisdiction given the Michigan courts over a defendant. The jurisdiction of a court over a defendant is governed by the United States Constitution and the constitution and laws of the State of Michigan. See [MCL 600.701 et seq.](#)

(2) There is no territorial limitation on the range of process issued by a Michigan court.

(3) An action shall not be dismissed for improper service of process unless the service failed to inform the defendant of the action within the time provided in these rules for service.

(K) Registered and Certified Mail.

(1) If a rule uses the term “registered mail”, that term includes the term “certified mail”, and the term “registered mail, return receipt requested” includes the term “certified mail, return receipt requested”. However, if certified mail is used, the receipt of mailing must be postmarked by the post office.

(2) If a rule uses the term “certified mail”, a postmarked receipt of mailing is not required. Registered mail may be used when a rule requires certified mail.

Credits

[Effective March 1, 1985; amended September 28, 2011, 490 Mich.]

Editors' Notes

COMMENTS

1985 Staff Comment

MCR 2.105 is based on GCR 1963, 105, and includes some provisions from GCR 1963, 106.1.

Subrule (A)(2) provides that service on an individual may be made by registered or certified mail with delivery restricted to the addressee. A copy of the return receipt signed by the defendant must be attached to the proof of service.

There are corresponding changes in subrules (C)-(E) that would permit service by mail on persons who are served as representatives of organizations. The prior rule spoke of “leaving” the summons and a copy of the complaint with these persons. GCR 1963, 105.3-105.6.

In subrule (B), regarding substituted service on individuals, a person's conservator is added as a representative on whom service may be made.

The provisions of GCR 1963, 105.4 regarding service on insurers are moved from the section dealing with private corporations to a new subrule (F) in recognition that insurance companies need not be corporations. [MCL 500.106](#). The reference to service on a “resident agent” is deleted. The statute from which that term was drawn (CL 1970, 500.1404) has been repealed.

Additional detail has been added in subrule (I) regarding court orders for service where service under the rule cannot reasonably be made. Some of the procedural provisions are taken from GCR 1963, 106.1. The authority to order such other methods of service on the ground that the defendant resides outside of Michigan is deleted.

In subrule (J)(1), regarding the limits on jurisdiction of the courts, a reference to the United States Constitution is added.

Subrule (J)(3) is a new provision regarding the remedy when service is found to have been improper. Dismissal is required only if the attempt to serve did not give the defendant notice of the action within the time provided for service by the rules.

Subrule (K) clarifies the use of the terms “registered mail” and “certified mail”.

The forms contained in GCR 1963, 105.10-105.15 are deleted. The function of approving forms had been delegated to the state court administrator.

Staff Comment to 2011 Amendment

The above noted changes are minor revisions of the rules that have been recommended to the Court to correct cross references and to reflect other technical changes.

MI Rules MCR 2.105, MI R RCP MCR 2.105

Current with amendments received through 1/1/16

Tab Page: Item 19



BOARD OF DIRECTORS

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Robert Warner
rwarn@rwarnerc.com

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jdillow@weltman.com

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aenright@shermeta.com

Sarah Grincewicz
sarah@markofflaw.com

Joe M. Jammal
joej@stengerlaw.com

Elizabeth Smith
esmith@assetacceptance.com

Executive Director

Maryellen Jansen
michigancreditorsbar@gmail.com

416 South Cedar St., Ste. C
Lansing, MI 48912
Phone #517-319-0342
Fax #866-298-2115
www.mcbaonline.com

MC 390 Ex Parte and Order to Renew Civil Judgment

The Michigan Creditors Bar Association (MCBA) would respectfully oppose the suggested change to MC 390 and request that it not be adopted. MCBA would submit that established case law indicates that payments renew judgments for ten (10) years from the date of the payment. *Yeiter v Knights of St. Casimir Aid Society*, 461 Mich 493 (2000.)

Second, additional case law supports that even *involuntary* payments from successful actions to collect on a judgment, such as garnishments and attachments, renew judgments for another ten (10) years from the date of the payments. See, *Wayne Co Social Services Director v Yates*, 261 Mich App 152, 156 (2004); *Moorehead v Hoffdal*, 1998 Mich App LEXIS 539 (1998); and *Arkin Distributing Co v Jones*, 288 Mich App 185 (2010).

Third, there does not appear to be any legal basis or support for adding the word “voluntary” to the MC 390 form.

Lastly, with the recent amendment to MCL 600.4012, in which writs for periodic garnishment are to remain in effect until the judgment is satisfied, scenarios could arise wherein the funds from the garnishment will not pay the judgment off within ten (10) years. The proposed change would illogically allow a judgment to expire despite an ongoing periodic garnishment. As such, MCBA submits that the suggested amendment to the MC 390 form would be contrary to the intent of this and other statutes.

Respectfully submitted by
The MCBA Board of Directors,

By Robert W. Warner
President, MCBA
February 24, 2016

Thank You Sustaining Members:

Buckles & Buckles PLC, Mary Jane M. Elliott PC, Portfolio Recovery Associates LLC, PC, Stenger & Stenger PC,
& Weber Olcese, PLC

STATE OF MICHIGAN JUDICIAL DISTRICT JUDICIAL CIRCUIT	EX PARTE MOTION AND ORDER TO RENEW CIVIL JUDGMENT	CASE NO.
---	--	-----------------

Court address _____ Court telephone no. _____

Plaintiff name(s), address(es), and telephone no(s).

v

Defendant name(s), address(es), and telephone no(s).

Plaintiff's attorney, bar no., address, and telephone no.

Defendant's attorney, bar no., address, and telephone no.

Judgment for: _____

EX PARTE MOTION

1. The moving party is _____
Name (type or print) (i.e., assignee) Address City State Zip
2. A money judgment was entered in this action on _____ in the amount of \$ _____.
3. A payment in the amount of \$ _____ was received by the plaintiff on _____, which was the last payment received.
- No payments have been received on this judgment.
4. **I REQUEST** that the judgment be renewed.

Date

Signature

ORDER

IT IS ORDERED:

5. The motion is granted. denied.

Date

Judge Bar no.

CERTIFICATE OF MAILING

I certify that on this date a copy of this ex parte motion and order was served on the parties or their attorneys by first-class mail addressed to their last-known addresses as defined by MCR 2.107(C)(3).

Date

Signature

Michigan Compiled Laws Annotated

Chapter 600. Revised Judicature Act of 1961 (Refs & Annos)

Revised Judicature Act of 1961 (Refs & Annos)

Chapter 58. Limitation of Actions (Refs & Annos)

M.C.L.A. 600.5809

600.5809. Noncontractual money obligations; period of limitations

Currentness

Sec. 5809. (1) A person shall not bring or maintain an action to enforce a noncontractual money obligation unless, after the claim first accrued to the person or to someone through whom he or she claims, the person commences the action within the applicable period of time prescribed by this section.

(2) The period of limitations is 2 years for an action for the recovery of a penalty or forfeiture based on a penal statute brought in the name of the people of this state.

(3) Except as provided in subsection (4), the period of limitations is 10 years for an action founded upon a judgment or decree rendered in a court of record of this state, or in a court of record of the United States or of another state of the United States, from the time of the rendition of the judgment or decree. The period of limitations is 6 years for an action founded upon a judgment or decree rendered in a court not of record of this state, or of another state, from the time of the rendition of the judgment or decree. A judgment entered in the district court of this state before May 25, 1973, is a judgment of a court not of record. A judgment entered in the district court of this state on or after May 25, 1973, except a judgment entered in the small claims division of the district court, is a judgment of a court of record. Within the applicable period of limitations prescribed by this subsection, an action may be brought upon the judgment or decree for a new judgment or decree. The new judgment or decree is subject to this subsection.

(4) For an action to enforce a support order that is enforceable under the support and parenting time enforcement act, Act No. 295 of the Public Acts of 1982, being [sections 552.601 to 552.650 of the Michigan Compiled Laws](#), the period of limitations is 10 years from the date that the last support payment is due under the support order regardless of whether or not the last payment is made.

Credits

Amended by [P.A.1996, No. 275, § 1, Eff. Jan. 1, 1997](#).

[Notes of Decisions \(48\)](#)

M. C. L. A. 600.5809, MI ST 600.5809

The statutes are current through P.A.2016, No. 15 of the 2016 Regular Session, 98th Legislature.



KeyCite Yellow Flag - Negative Treatment

Distinguished by [Murray v. Murray](#), Mich.App., April 20, 2010

261 Mich.App. 152

Court of Appeals of Michigan.

WAYNE COUNTY SOCIAL SERVICES
DIRECTOR, on behalf of David Allen Yates,
Jr., and Tracie Lynn Yates, Plaintiff-Appellee,

v.

David Allen YATES, Defendant-Appellant,

and

Brenda J. Yates, Defendant.

Docket No. 244191.

|
Submitted Feb. 11, 2004, at Detroit.

|
Decided March 9, 2004, at 9:10 a.m.

|
Released for Publication May 26, 2004.

Synopsis

Background: Former husband filed motion to extinguish child support arrearage, claiming that the statute of limitations had expired. The Wayne Circuit Court, [Maria L. Oxholm, J.](#), denied motion. Former husband appealed.

[Holding:] The Court of Appeals, [Neff, P.J.](#), held that payments that were made pursuant to income withholding order after younger child reached age of 18 but before expiration of limitations period amounted to renewals of full child support obligation and thus served to extend ten-year limitations period.

Affirmed.

West Headnotes (3)

[1] Appeal and Error

🔑 Cases Triable in Appellate Court

Where no factual dispute exists, whether a claim is barred by the statute of limitations is a question of law that Court of Appeals reviews de novo.

3 Cases that cite this headnote

[2] Limitation of Actions

🔑 Accrual of Right of Action and Limitations

Child support payments that were made pursuant to income withholding order after younger child reached age of 18 but before expiration of limitations period amounted to renewals of full child support obligation and thus served to extend ten-year limitations period on child support enforcement actions. [M.C.L.A. § 600.5809\(3\)](#).

5 Cases that cite this headnote

[3] Limitation of Actions

🔑 Operation as to Rights or Remedies in General

Right to interpose a statute-of-limitations defense is not a vested right.

2 Cases that cite this headnote

Attorneys and Law Firms

****6 *153** Weisman, Young, Schloss & Ruemenapp, P.C. (by [John A. Ruemenapp](#)), Bingham Farms, for David A. Yates.

Before: [NEFF, P.J.](#), and [WILDER](#) and [KELLY, JJ.](#)

Opinion

[NEFF, P.J.](#)

Defendant David Allen Yates appeals by leave granted from a trial court order denying his motion to extinguish child support arrearage on the asserted ground that the period of limitations had run. We affirm.

I

The essential facts are not in dispute.¹ David and Brenda Yates were divorced in 1977. There were two minor children of the marriage, but the divorce judgment did not contain

a provision for child support. Because Brenda Yates, the custodial parent, was a recipient of Aid to Dependent Children payments, the Wayne County Social Services Director filed a complaint for support on behalf of the children, and an order was entered in 1978 requiring David Yates to pay \$60 a week in child support.

Mr. Yates was anything but diligent in meeting his support obligations. In 1981, the matter was referred to the Tax Intercept Program. Modest payments were received in 1979 and 1988. After David Yates relocated to Florida where he was self-employed, the Wayne *154 County friend of the court filed an action under the Revised Uniform Reciprocal Enforcement of Support Act, *MCL 780.151 et seq.*, which resulted in the entry of an order of support in the Circuit Court for Lee County, Florida. The order entered on February 16, 1990, required Yates to pay \$72.10 a week on current support and arrearages. There was income withholding in 1990, 1996, 1997, and 1998; the amounts ranged from \$246 to \$2,447.50. By April 2002, the arrearage totaled \$40,678.94.

The younger of the two children reached the age of eighteen in 1990. On April 23, 2002, David Yates filed a motion to extinguish the child support arrearage on the basis that the period of limitations had expired. The motion was denied and David Yates appealed.

II

[1] Where no factual dispute exists, as in this case, whether a claim is barred by **7 the statute of limitations is a question of law that we review de novo. *Pitsch v. ESE Michigan, Inc.*, 233 Mich.App. 578, 600, 593 N.W.2d 565 (1999).

III

[2] There is no question that the applicable statute of limitations is *MCL 600.5809(3)*,² which provides for a ten-year period of limitations in child support enforcement actions. See *155 *Alpena Friend of the Court ex rel. Paul v. Durecki*, 195 Mich.App. 635, 637, 491 N.W.2d 864 (1992); *Ewing v. Bolden*, 194 Mich.App. 95, 99, 486 N.W.2d 96 (1992). Because the younger of the two children turned eighteen in 1990, the period of limitations would have expired in 2000, before David Yates filed his motion to extinguish the child support arrearage, *unless* the running of the period was *extended*. Yates's income withholding payments in 1990,

1994, 1996, 1997, and 1998, were made *after* the children turned eighteen but *before* the limitations period expired.

The sole question in this case is whether the period of limitations was *extended* by payments made *before* the limitations period ran.³ That is, can partial payment within the period of limitations—the income withholding payments made during the 1990s—operate to extend it?⁴ We hold that it can.

IV

Defendant argues that because he made no payment, voluntary or otherwise, *after* the period of limitations expired, there is no authority to support an extension of the limitations period. We disagree.

In *Yeiter v. Knights of St. Casimir Aid Society*, 461 Mich. 493, 494, 607 N.W.2d 68 (2000), the Supreme Court held that partial payments on a debt, “some of which were within the limitation period,” constituted a renewal of the promise to pay the amount owed. In *Yeiter*, *156 the debt was a series of loans that the defendant partially repaid. However, when the plaintiff sued for the remainder, the defendant claimed that the statute of limitations barred recovery. In rejecting the defendant's statute of limitations argument, the Court pointed out that some of the payments were made less than six years before the filing of the complaint,⁵ but were unaccompanied by any declaration or circumstance that would rebut the presumption that they were “an acknowledgment of the full obligation.” *Id.* at 500, 607 N.W.2d 68. In discussing the effect of partial payments on the statute of limitations issue, the Court cited *Miner v. Lorman*, 56 Mich. 212, 216, 22 N.W. 265 (1885), for the proposition that such payment implies a renewal as of the date of the payment of the **8 promise to pay. More specifically, the Court held:

[A] partial payment restarts the running of the limitation period unless it is accompanied by a declaration or circumstance that rebuts the implication that the debtor by partial payment admits the full obligation. [*Yeiter, supra* at 497, 607 N.W.2d 68.]

Although *Yeiter* did not involve a child support arrearage, the holding is clear that any payment on a debt, whether before or after the running of the period of limitations, acts to extend the limitations period. The child support

obligation in this case was a debt, and payments were made pursuant to the income withholdings.

Plaintiff argues, in essence, that his payments were involuntary because they were made pursuant to an income withholding order. The logical thrust of the argument is that the payments could not represent a renewed promise to pay under these circumstances. This Court's holding in *Durecki, supra*, rejects that very *157 argument. In *Durecki*, the defendant argued that his payments were involuntary because they were made to avoid being held in contempt of court. This Court held that the claim of duress and therefore involuntariness was without record and legal support, citing both *Miner, supra*, and *Neilands v. Wright*, 134 Mich. 77, 95 N.W. 997 (1903). See also *Morehead v. Hoffdal*, unpublished memorandum opinion of the Court of Appeals, issued September 25, 1998, (Docket No. 201019), where a panel of this Court held that successful actions to collect

a child support judgment by income tax refund intercepts within the limitations period waived the statute of limitations defense without regard to the consent of the paying party.

[3] Accordingly, we hold that the income withholding payments in the 1990s amounted to renewals of the full child support obligation and thereby served to extend the period of limitations.⁶ We further hold that the nature of the payments did not render them involuntary.

The order denying defendant's motion to extinguish child support arrearage is affirmed.

All Citations

261 Mich.App. 152, 681 N.W.2d 5

Footnotes

- 1 Plaintiff has not filed a brief on appeal.
- 2 This statute was amended by 1996 PA 275, effective January 1, 1997. However, this Court has held that the amendment does not apply retroactively and that the pertinent section of the statute that applies is determined by the date the youngest child turned eighteen, in this case 1990, before the statute was amended. *Rzadkowski v. Pefley*, 237 Mich.App. 405, 411, 603 N.W.2d 646 (1999).
- 3 Partial payment of a child support obligation made *after* the expiration of the period of limitations is an acknowledgment of the debt and a waiver of the defense. *Durecki, supra* at 638, 491 N.W.2d 864.
- 4 The lower court record contains no indication of whether any order of surcharge for late support payments was entered pursuant to MCL 552.603a. Whether any such order was entered and, if so, what the effect might be on the running of the period of limitations is not considered here.
- 5 The applicable statute of limitations was MCL 600.5807(8), which relates to contract actions.
- 6 The right to interpose a statute of limitations defense is not a vested right. *Bessmertnaja v. Schwager*, 191 Mich.App. 151, 154, 477 N.W.2d 126 (1991).



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Distinguished by [McLaughlin v. Okumura](#), Alaska, December 11, 2009208 Mich.App. 376
Court of Appeals of Michigan.

Johann SCHMIDT, Plaintiff-Appellant,

v.

Edward BRETZLAFF and C & J Contracting
Company, Inc., Defendants-Appellees.

Docket No. 158140.

Submitted Nov. 2, 1994, at Detroit.

Decided Jan. 17, 1995, at 9:55 a.m.

Released for Publication March 21, 1995.

Judgment debtor moved for temporary restraining order and order to show cause why relief should not be granted from writ of execution. The Circuit Court, Wayne County, [William J. Giovan, J.](#), quashed writ of execution on basis of promissory estoppel. Judgment creditor appealed. The Court of Appeals, [Fitzgerald, P.J.](#), held that judgment debtor's subjective belief that judgment creditor would not execute on judgment was insufficient to constitute promise that would support promissory estoppel defense to writ of execution.

Reversed.

West Headnotes (10)

[1] Estoppel [Future events; promissory estoppel](#)**Execution** [Grounds](#)

Judgment debtor's subjective belief that judgment creditor would not execute on judgment was insufficient to constitute promise that would support promissory estoppel defense, justifying quashing of writ of execution, where there was no dispute that judgment creditor never explicitly made such assurances.

[2 Cases that cite this headnote](#)**[2] Execution** [Quashing or Vacating Writ](#)

Michigan has not decided issue of trial court's ability to quash writ of execution.

[Cases that cite this headnote](#)**[3] Execution** [Proceedings and determination](#)

Generally, quashing of execution rests largely in discretion of court.

[1 Cases that cite this headnote](#)**[4] Appeal and Error** [Execution and judicial sales](#)

Trial court's order quashing execution will not be disturbed on appeal absent abuse of discretion.

[Cases that cite this headnote](#)**[5] Execution** [Quashing or Vacating Writ](#)

Court entering writ of execution has power to quash or vacate such writ; such power of court arises from its complete control of its own process and is inherent.

[Cases that cite this headnote](#)**[6] Execution** [Grounds](#)

Writ of execution will be quashed if it would be illegal or inequitable to permit its further use or enforcement.

[1 Cases that cite this headnote](#)**[7] Execution** [Grounds](#)

Courts are particularly inclined to vacate execution where there is some element of fraud, unfairness, injustice, or oppressiveness involved.

[Cases that cite this headnote](#)

[8] Estoppel

🔑 [Future events; promissory estoppel](#)

Elements of promissory estoppel are: promise; that promisor should reasonably have expected to induce action of definite and substantial character on part of promisee; which in fact produced reliance or forbearance of that nature; and in circumstances such that promise must be enforced if injustice is to be avoided.

[24 Cases that cite this headnote](#)

[9] Estoppel

🔑 [Future events; promissory estoppel](#)

To support claim of estoppel, promise must be definite and clear.

[12 Cases that cite this headnote](#)

[10] Estoppel

🔑 [Future events; promissory estoppel](#)

“Promise,” for estoppel purposes, is manifestation of intention to act or refrain from acting in specified manner, made in way that would justify promisee in understanding that commitment had been made.

[11 Cases that cite this headnote](#)

Attorneys and Law Firms

****761 *376** Winegarden, Shedd, Haley, Lindholm & Robertson by [Damion Frasier](#) and Peter D. Mooney, Fling, for plaintiff.

Jeffery D. Meek & Associates by [Jeffery D. Meek](#) and [Kelly K. Hunt](#), Livonia, for defendants.

***377** Before [FITZGERALD](#), P.J., and [MICHAEL J. KELLY](#) and POST, * JJ.

Opinion

[FITZGERALD](#), Presiding Justice.

Plaintiff Johann Schmidt appeals as of right a circuit court order quashing his writ of execution and ordering the release and return of defendants' equipment in this contract action. We reverse.

On February 12, 1991, plaintiff filed a contract action against defendants Edward Bretzlaff and C & J Contracting Company, Inc., a family business owned by Bretzlaff. On November 21, 1991, a consent judgment was entered against defendants in the amount of \$66,200.

On August 28, 1992, plaintiff obtained a writ of execution, and, on September 8, 1992, began seizing defendants' equipment. On September 22, 1992, defendants moved for a temporary restraining order and an order to show cause why relief should not be granted from the writ of execution. On that same date, the trial court entered an order directing plaintiff to show cause why a preliminary injunction enjoining plaintiff from selling, conveying, transferring, encumbering, disposing of, or damaging any of the equipment seized by plaintiff should not be entered. The order also temporarily restrained plaintiff from taking all of the above-stated actions.

A motion hearing was held on October 2, 1992, at which time plaintiff filed a response to defendants' motion. At the conclusion of ****762** the hearing, the trial court quashed the writ of execution on the basis of promissory estoppel and ordered payment on the judgment to be made by defendants in monthly installments of \$1,500.

[1] On appeal, plaintiff argues that the trial court ***378** abused its discretion in quashing the writ of execution on the basis of promissory estoppel. We agree.

[2] Our research has unveiled no Michigan law regarding a trial court's ability to quash a writ of execution. Therefore, we turn to other jurisdictions for guidance.

[3] [4] Generally, the quashing of an execution rests largely in the discretion of the court. *Oklahoma Salvage & Supply Co. v. First Nat'l Bank of Okmulgee*, 122 Okla. 128, 251 P. 1006 (1926); *Sautbine v. United States Cities Corp.*, 114 Okla. 110, 243 P. 499 (1926); *Barnett v. Bohannon*, 27 Okla. 368, 112 P. 987 (1910). The trial court's order quashing execution will not be disturbed on appeal absent an abuse of that discretion. *Id.*

[5] [6] [7] A court entering a writ of execution has the power to quash or vacate such writ. 30 AmJur2d (Rev), Executions and Enforcement of Judgments, § 409, pp 273-274. *Campau v. Godfrey*, 18 Mich. 27, 43 (1869). Such power of the court arises from its complete control of its own process and is inherent. *Id.* A writ of execution will be quashed if it would be illegal or inequitable to permit its further use or enforcement. *Sandburg v. Papineau*, 81 Ill. 446 (1876); *Commercial Nat'l Bank v. Stoddard*, 70 Ill.App. 79 (1897); *Creditors' Adjustment Co v. Newman*, 185 Cal. 509, 197 P. 334 (1921). The courts are particularly inclined to vacate an execution where there is some element of fraud, unfairness, injustice, or oppressiveness involved. 30 AmJur2d (Rev), Executions and Enforcement of Judgments, § 415, p 276.

[8] The trial court relied on the doctrine of promissory estoppel in quashing the writ of execution. The elements of promissory estoppel are: (1) a promise, (2) that the promisor should reasonably have expected to induce action of a definite and substantial character on the part of the promisee, *379 (3) which in fact produced reliance or forbearance of that nature, and (4) in circumstances such that the promise must be enforced if injustice is to be avoided. *Mt. Carmel Mercy Hosp. v. Allstate Ins. Co.*, 194 Mich.App. 580, 589, 487 N.W.2d 849 (1992).

[9] [10] To support a claim of estoppel, a promise must be definite and clear. *State Bank of Standish v. Curry*, 442 Mich.

76, 85, 500 N.W.2d 104 (1993). A promise is a manifestation of intention to act or refrain from acting in a specified manner, made in a way that would justify a promisee in understanding that a commitment had been made. *Id.*

In this case, defendants assert that plaintiff's acts of showing defendant Bretzlaff a large sum of money and stating that he would not do anything "to hurt defendants," together with defendants' plan to run the concrete-crushing plant with plaintiff, are tantamount to a promise to refrain from enforcing the judgment. We disagree. If defendants were told that the judgment would not be enforced, then the first element of promissory estoppel would be satisfied. However, there is no dispute that plaintiff never explicitly made such an assurance. Defendant Bretzlaff's subjective belief that plaintiff would not execute on the judgment is insufficient to constitute a promise that would support an estoppel defense. Hence, the trial court abused its discretion in quashing the writ of execution under these circumstances.

Given our resolution of this case, we need not address the remainder of the issues raised by plaintiff.

Reversed.

All Citations

208 Mich.App. 376, 528 N.W.2d 760

Footnotes

- * Edward R. Post, 20th Judicial Circuit Judge, sitting on Court of Appeals by assignment pursuant to [Const.1963, Art. 6, Sec. 23](#), as amended 1968.

Tab Page: Item 20

Michigan Compiled Laws Annotated
Michigan Court Rules of 1985
Chapter 2. Civil Procedure
Subchapter 2.000. General Provisions

MI Rules MCR 2.003

RULE 2.003 DISQUALIFICATION OF JUDGE

Currentness

(A) Applicability. This rule applies to all judges, including justices of the Michigan Supreme Court, unless a specific provision is stated to apply only to judges of a certain court. The word “judge” includes a justice of the Michigan Supreme Court.

(B) Who May Raise. A party may raise the issue of a judge's disqualification by motion or the judge may raise it.

(C) Grounds.

(1) Disqualification of a judge is warranted for reasons that include, but are not limited to, the following:

(a) The judge is biased or prejudiced for or against a party or attorney.

(b) The judge, based on objective and reasonable perceptions, has either (i) a serious risk of actual bias impacting the due process rights of a party as enunciated in *Caperton v Massey*, 556 U.S. 868; 129 S Ct 2252; 173 L Ed 2d 1208 (2009), or (ii) has failed to adhere to the appearance of impropriety standard set forth in [Canon 2 of the Michigan Code of Judicial Conduct](#).

(c) The judge has personal knowledge of disputed evidentiary facts concerning the proceeding.

(d) The judge has been consulted or employed as an attorney in the matter in controversy.

(e) The judge was a partner of a party, attorney for a party, or a member of a law firm representing a party within the preceding two years.

(f) The judge knows that he or she, individually or as a fiduciary, or the judge's spouse, parent, or child wherever residing, or any other member of the judge's family residing in the judge's household, has more than a de minimis economic interest in the subject matter in controversy that could be substantially impacted by the proceeding.

(g) The judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) is acting as a lawyer in the proceeding;

(iii) is known by the judge to have a more than de minimis interest that could be substantially affected by the proceeding; or

(iv) is to the judge's knowledge likely to be a material witness in the proceeding.

(2) *Disqualification not warranted.*

(a) A judge is not disqualified merely because the judge's former law clerk is an attorney of record for a party in an action that is before the judge or is associated with a law firm representing a party in an action that is before the judge.

(b) A judge is not disqualified based solely upon campaign speech protected by *Republican Party of Minn v White, 536 US 765 (2002)*, so long as such speech does not demonstrate bias or prejudice or an appearance of bias or prejudice for or against a party or an attorney involved in the action.

(D) Procedure.

(1)(a) *Time for Filing in the Trial Courts.* To avoid delaying trial and inconveniencing the witnesses, all motions for disqualification must be filed within 14 days of the discovery of the grounds for disqualification. If the discovery is made within 14 days of the trial date, the motion must be made forthwith.

(b) *Time for Filing in the Court of Appeals.* All motions for disqualification must be filed within 14 days of disclosure of the judges' assignment to the case or within 14 days of the discovery of the grounds for disqualification. If a party discovers the grounds for disqualification within 14 days of a scheduled oral argument or argument on the application for leave to appeal, the motion must be made forthwith.

(c) *Time for Filing in the Supreme Court.* If an appellant is aware of grounds for disqualification of a justice, the appellant must file a motion to disqualify with the application for leave to appeal. All other motions must be filed within 28 days after the filing of the application for leave to appeal or within 28 days of the discovery of the grounds for disqualification. If a party discovers the grounds for disqualification within 28 days of a scheduled oral argument or argument on the application for leave to appeal, the motion must be made forthwith.

All requests for review by the entire Court pursuant to subsection (3)(b) must be made within 14 days of the entry of the decision by the individual justice.

(d) *Untimely Motions.* Untimely motions in the trial court, the Court of Appeals, and the Supreme Court may be granted for good cause shown. If a motion is not timely filed in the trial court, the Court of Appeals, or the Supreme Court, untimeliness is a factor in deciding whether the motion should be granted.

(2) *All Grounds to Be Included; Affidavit.* In any motion under this rule, the moving party must include all grounds for disqualification that are known at the time the motion is filed. An affidavit must accompany the motion.

(3) *Ruling.*

(a) For courts other than the Supreme Court, the challenged judge shall decide the motion. If the challenged judge denies the motion,

(i) in a court having two or more judges, on the request of a party, the challenged judge shall refer the motion to the chief judge, who shall decide the motion de novo;

(ii) in a single-judge court, or if the challenged judge is the chief judge, on the request of a party, the challenged judge shall refer the motion to the state court administrator for assignment to another judge, who shall decide the motion de novo.

(b) In the Supreme Court, if a justice's participation in a case is challenged by a written motion or if the issue of participation is raised by the justice himself or herself, the challenged justice shall decide the issue and publish his or her reasons about whether to participate.

If the challenged justice denies the motion for disqualification, a party may move for the motion to be decided by the entire Court. The entire Court shall then decide the motion for disqualification de novo. The Court's decision shall include the reasons for its grant or denial of the motion for disqualification. The Court shall issue a written order containing a statement of reasons for its grant or denial of the motion for disqualification. Any concurring or dissenting statements shall be in writing.

(4) *If Disqualification Motion is Granted.*

(a) For courts other than the Supreme Court, when a judge is disqualified, the action must be assigned to another judge of the same court, or, if one is not available, the state court administrator shall assign another judge.

(b) In the Supreme Court, when a justice is disqualified, the underlying action will be decided by the remaining justices of the Court.

(E) Waiver of Disqualification. Parties to the proceeding may waive disqualification even where it appears that there may be grounds for disqualification of the judge. Such waiver may occur whether the grounds for disqualification were raised by a party or by the judge, so long as the judge is willing to participate. Any agreement to waive the disqualification must be made by all parties to the litigation and shall be in writing or placed on the record.

[Statements by Kelly, Cavanagh, Weaver, Corrigan, Young, and Markman, JJ., appear in 485 Mich.]

Credits

[Effective March 1, 1985; amended July 10, 1995, effective September 1, 1995, 449 Mich; November 25, 2009, 485 Mich; March 16, 2010, 485 Mich.]

Editors' Notes

COMMENTS

1985 Staff Comment

MCR 2.003 is based on GCR 1963, 912.

Under subrule (B)(3) a judge is disqualified not only as to a proceeding in which the judge was consulted or employed as counsel (see GCR 1963, 912.2[a][3]), but also when the judge was consulted or employed as counsel in the matter in controversy, even before it reached the litigation stage.

Subrule (C)(1) changes the time when the motion must be filed. A party must file a motion within 14 days after learning of the ground for disqualification, rather than 10 days after the case is assigned to a judge or 10 days before trial. However, if the discovery is made within 14 days of trial, the motion must be made forthwith. This would cover situations in which the assignment of the judge is not made until shortly before the trial date.

Subrule (C)(2) removes the language limiting a party to one motion to disqualify per judge. Additional grounds for disqualification might be discovered later. However, the party must include all grounds that are known at the time the motion is filed.

Staff Comment to 1995 Amendment

The July 10, 1995 amendments of MCR 2.003, and Rules 3A, 3D, 6C, and 7B of the Michigan Code of Judicial Conduct, and new [MCR 9.227](#) and Rule 7D of the Michigan Code of Judicial Conduct, are based on the proposed revision of the Michigan Code of Judicial Conduct submitted by the State Bar Representative Assembly. See 442 Mich 1216 (1993). They are effective September 1, 1995.

Staff Comment to 2009 Amendment

The amendments adopted by the Court in this order explicitly apply the judicial disqualification rule to all state judges, including Supreme Court Justices. In addition, the amendments revise disqualification standards and establish procedures for the disqualification process.

Staff Comment to 2010 Amendment

The amendment of MCR 2.003(D) establishes time requirements for filing motions for disqualification in the trial courts, Court of Appeals, and the Supreme Court.

MI Rules MCR 2.003, MI R RCP MCR 2.003

Current with amendments received through 1/1/16

Tab Page:

Item 21

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Michigan Compiled Laws Annotated
Chapter 600. Revised Judicature Act of 1961 (Refs & Annos)
Revised Judicature Act of 1961 (Refs & Annos)
Chapter 40. Attachment and Garnishment (Refs & Annos)

M.C.L.A. 600.4012

600.4012. Garnishment of periodic payments; duration; priority; service; statements; release of garnishment; request for entry of default against garnishee; conditions and requirements; opportunity to cure; request for default judgment; reducing or setting aside default judgment; liability of garnishee; fee; applicability; “periodic payments” defined

Effective: April 14, 2015

[Currentness](#)

Sec. 4012. (1) A garnishment of periodic payments remains in effect until the balance of the judgment is satisfied.

(2) A garnishee is not liable for a garnishment of periodic payments under subsection (1) to the extent that the garnishee is required to satisfy another garnishment against the same defendant having a higher priority or having the same priority but received at an earlier date. For purposes of this subsection, garnishments have priority in the order in which they are received. Both of the following have priority over a garnishment, regardless of the order in which they are received:

(a) An order of income withholding as that term is defined in section 2 of the support and parenting time enforcement act, 1982 PA 295, [MCL 552.602](#).

(b) A levy of this state or a governmental unit of this state to satisfy a tax liability.

(3) If a garnishment of periodic payments is suspended pursuant to an order under sections 6201 to 6251¹ and the order is subsequently set aside, the garnishment retains its priority.

(4) A garnishment of periodic payments or a notice of failure is not valid or enforceable unless the garnishment is served on the garnishee in accordance with the Michigan court rules.

(5) While a garnishment of periodic payments is in effect, the plaintiff shall do both of the following:

(a) At least once every 6 months after the plaintiff receives the first payment under the garnishment, provide to the garnishee and defendant a statement setting forth the balance remaining on the judgment, including interest and costs. A failure to send a timely statement under this subdivision does not affect the garnishment or any obligation of the garnishee under the garnishment.

(b) Within 21 days after the balance of the judgment has been paid in full, including all interest and costs, provide to the garnishee and defendant a release of garnishment.

(6) A plaintiff shall not request that a default be entered against a garnishee under a garnishment of periodic payments unless both of the following apply:

(a) If the garnishee fails to file a disclosure within 14 days after service of the garnishment or fails to perform any other required act, the plaintiff has served on the garnishee a notice of failure setting forth the required act or acts that the garnishee has failed to perform.

(b) The garnishee has failed, within 28 days after the date of service of the notice of failure under subdivision (a), to cure the identified failure by mailing to the plaintiff and defendant a disclosure certifying that the garnishee will immediately begin withholding any available funds pursuant to the garnishment as provided by statute or court rule, or has commenced performing any other required act.

(7) The plaintiff shall attach to a request for entry of a default as allowed under subsection (6) proof of serving the notice of failure. The plaintiff shall send a copy of the request for entry of a default by certified mail to the garnishee at the garnishee's principal place of business or registered agent.

(8) After entry of a default under subsection (6) and before entry of a default judgment, the garnishee may cure the identified failure by mailing to the court, plaintiff, and defendant a disclosure certifying that the garnishee will immediately begin withholding any available funds pursuant to the garnishment as provided by statute or court rule or that it has commenced performing any other required act.

(9) After a default has been entered under subsection (6), the plaintiff may file with the court a request for default judgment for an amount that does not exceed the full amount of the unpaid judgment, interest, and costs, as stated in the request and garnishment. The plaintiff shall send a copy of the request for default judgment by certified mail to the garnishee at the garnishee's principal place of business or resident agent.

(10) On motion of the garnishee filed within 21 days after entry of a default judgment under subsection (9), the court shall do 1 or more of the following, as applicable:

(a) If the garnishee certifies by affidavit that its failure to comply with the garnishment was inadvertent or caused by an administrative error, mistake, or other oversight and it will immediately begin withholding any available funds or immediately begin performing any other required act pursuant to the garnishment as provided by statute or court rule, reduce the default judgment to not more than the amount that would have been withheld if the garnishment had been in effect for 56 days.

(b) If any of the following circumstances exist, set aside the default judgment:

(i) The garnishee was not liable to the defendant for any periodic payments after service of the garnishment.

(ii) The garnishment, notice of failure, request for entry of a default, or request for default judgment was not properly served or sent as required by this section.

(iii) The notice of failure was materially inaccurate or incomplete.

(11) A garnishee may recover an amount for which the garnishee is liable because of the entry of a default judgment under subsection (9) or (10) from future periodic payments to the defendant as provided in section 7 of 1978 PA 390, [MCL 408.477](#).

(12) Except as otherwise provided by statute, a plaintiff shall pay a fee of \$35.00 to the garnishee at the time a garnishment of periodic payments is served on the garnishee.

(13) This section does not apply to any of the following:

(a) An order of income withholding as that term is defined in section 2 of the support and parenting time enforcement act, 1982 PA 295, [MCL 552.602](#).

(b) A levy for tax liability.

(c) A levy under section 15(m) of the Michigan employment security act, 1936 (Ex Sess) PA 1, [MCL 421.15](#).

(14) As used in this section and section 8410a,² “periodic payments” means wages, salary, commissions, and other earnings, land contract payments, rent, and other periodic debt or contract payments that are or become payable during the effective period of the garnishment. Periodic payments do not mean any of the following:

(a) Payments by a financial institution of interest on a deposit account.

(b) Charges made by a financial institution automatically against an account that are applied to a debt under an automatic payment authorization executed by the account owner.

(c) Payments made by a financial institution to honor a check or draft or to comply with an account holder's order of withdrawal of funds from an account.

(d) Interest earned on a certificate of deposit that is paid into a deposit account.

Credits

P.A.1961, No. 236, § 4012, added by P.A.1991, No. 67, § 1, Eff. Dec. 31, 1991. Amended by P.A.1994, No. 175, § 1, Imd. Eff. June 20, 1994; P.A.1994, No. 346, § 1, Eff. March 1, 1995; P.A.1996, No. 10, § 1, Eff. June 1, 1996; P.A.2012, No. 304, Imd. Eff. Sept. 25, 2012; P.A.2015, No. 14, Imd. Eff. April 14, 2015.

Editors' Notes

APPLICATION

<P.A.2015, No. 14, § 1, provides that the amendatory act applies to a writ of garnishment issued after September 30, 2015.>

Footnotes

1 [M.C.L.A. §§ 600.6201 to 600.6251.](#)

2 [M.C.L.A. § 600.8410a.](#)

M. C. L. A. 600.4012, MI ST 600.4012

The statutes are current through P.A.2016, No. 15 of the 2016 Regular Session, 98th Legislature.

End of Document

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Tab Page: Item 22

Form CC 375

PETITION FOR PERSONAL PROTECTION ORDER (DOMESTIC RELATIONSHIP)

Use this form if the person you want restrained is 18 years of age or older and:

1) if you are married to the person you want restrained;

or

2) if you are not married to the person you want restrained but you live with or have lived with him or her and he or she is not your unemancipated minor child;

or

3) if you and the person you want restrained have a child in common even if you were never married to one another or never lived together;

or

4) if you and the person you want restrained have or had a dating relationship.

INSTRUCTIONS FOR COMPLETING "PETITION FOR PERSONAL PROTECTION ORDER"

Please print neatly. Press firmly because you are printing on five copies.

By filling in this form, you are asking for a personal protection order that tells the respondent not to do certain things you don't want him or her to do. **If you are in immediate danger**, you should ask the judge for an "ex parte" order, which can be issued without waiting for a hearing.

Items A through I must be completed before your petition can be filed with the court. Please read the instruction for each item. Then fill in the correct information for that item on the form.

- A** Write **your** name, address, and telephone number in the "Petitioner" box. If you are under 18 years of age, write in your age. Write the name, address, and telephone number of the person you want restrained in the "Respondent" box; if he or she is under 18 years of age, write in his/her age. **If you want your address and telephone number to be kept from the other party, do not write your address here. Put in the address of a relative or friend or a post office box where the court can contact you.**
- B** Check the boxes that best describe your relationship with the respondent.
- C** Check the box if the respondent is required to carry a firearm while at work. If you aren't sure, check the box "unknown."
- D** Check whether there is a pending case between you and the respondent. Examples of a case are: divorce, separate maintenance, support, paternity, child support, other personal protection actions, etc. If there is a pending case, fill in the case number, the name of the court, the county, and the state or province where the action was filed, and the name of the judge.
- Check whether there are any court orders or judgments between you and the respondent. Examples of orders are divorce judgments, parenting time (visitation) orders, custody orders, other personal protection orders, etc. If there are other court orders or judgments, fill in the case number, the name of the court, the county, and the state or province where the order or judgment was entered, and the name of the judge that signed the order.
- E** **Explain in as much detail** as possible why you are asking for a personal protection order. Describe what has happened or what has been threatened so the judge has enough facts to decide if a personal protection order should be signed. Include dates and places. Write on a separate sheet of paper and attach it to this form.
- F** **Check only those boxes** you need because you must be able to convince the judge you need all the protection you are requesting. On the lines after each item you check, fill in the requested information such as names, addresses, or specific types of activity you do not want allowed. Check item "5.b" only if you want to keep the other party from entering onto property other than your home (for example, school, work, etc.). Check item "e." only if there have been two or more acts of harassment. If you want the court to order that any records that exist which contain information about yourself or your minor children be kept confidential, state that in box "k." Examples of such records are school reports which the respondent would normally have access to.
- G** An "ex parte order" means you do not have to let the respondent know in advance that you are asking the court for an order and you do not have to wait for a court hearing to get the order. Check the box for an "ex parte order" if you believe the other party might hurt you or threaten you if he or she found out you were getting a personal protection order.
- If you do not need to check the "ex parte" box, you must have a court hearing. Fill out form CC 381.
- H** If you are under 18 years old, you may need an adult (called a "next friend") to petition for you. Check this box if you have a next friend helping you file this form, and have the next friend sign the petition.
- I** Write in today's date and sign the form. Hand the form to the county clerk. The clerk will fill in the rest of the information and will give you your copies.

You must read the booklet "Instructions for Personal Protection Orders" for directions on the legal process.

**STATE OF MICHIGAN
JUDICIAL CIRCUIT
COUNTY**

**PETITION FOR
PERSONAL PROTECTION ORDER
(DOMESTIC RELATIONSHIP)**

CASE NO.

Court address

Court telephone no.

A

Petitioner's name	Age
Address and telephone no. where court can reach petitioner	

v

Respondent's name, address, and telephone no.	Age
---	-----

- B** 1. The petitioner and respondent: are husband and wife. were husband and wife. have a child in common.
 have or had a dating relationship. reside or resided in the same household.

- C** 2. The respondent is required to carry a firearm in the course of his/her employment. Unknown.

- D** 3. a. There are are not other pending actions in this or any other court regarding the parties.

Case number	Name of court, county, and state or province	Name of judge
-------------	--	---------------

- b. There are are not orders/judgments entered by this or any other court regarding the parties.

Case number	Name of court, county, and state or province	Name of judge
-------------	--	---------------

- E** 4. I need a personal protection order because: Explain what has happened (attach additional sheets).

- F** 5. I ask the court to grant a personal protection order prohibiting the respondent from:

a. entering onto the property where I live. I state that either I have a property interest in the premises, I am married to the respondent, or the respondent has no property interest in the premises.

b. entering onto the property at _____
Address

c. assaulting, attacking, beating, molesting, or wounding _____
Name(s)

d. removing the minor children from the petitioner who has **legal** custody, except as allowed by a custody or parenting time order as long as removal of the children does not violate other conditions of the personal protection order.

e. stalking as defined under MCL 750.411h and MCL 750.411i, which includes but is not limited to:

- following me or appearing within my sight. appearing at my workplace or residence.
 sending mail or other communications to me. contacting me by telephone.
 approaching or confronting me in a public place or on private property.
 entering onto or remaining on property owned, leased, or occupied by me.
 placing an object on or delivering an object to property owned, leased, or occupied by me.

f. interfering with efforts to remove my children/personal property from premises solely owned/leased by the respondent.

g. threatening to kill or physically injure _____

h. interfering with me at my place of employment or education or engaging in conduct that impairs my employment or educational relationship or environment.

i. having access to information in records concerning a minor child of mine and the respondent that will reveal my address, telephone number, or employment address or that will reveal the child's address or telephone number.

j. purchasing or possessing a firearm.

k. other: _____

- G** 6. I make this petition under the authority of MCL 600.2950/MCL 600.2950a and ask the court to grant a personal protection order.

I request an ex parte order because immediate and irreparable injury, loss, or damage will occur between now and a hearing or because notice itself will cause irreparable injury, loss, or damage before the order can be entered.

- H** 7. I have a next friend petitioning for me. I certify that the next friend is not disqualified by statute and is an adult.

I _____
Date

Petitioner's/Next friend's signature

PROOF OF SERVICE

**Petition for
Personal Protection Order**
Case No. _____

TO PROCESS SERVER: You must serve the copies of the petition for personal protection order and file 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.

CERTIFICATE / AFFIDAVIT OF SERVICE / NONSERVICE

OFFICER CERTIFICATE

I certify that I am a sheriff, deputy sheriff, bailiff, appointed court officer, or attorney for a party [MCR 2.104(A)(2)], and that: (notarization not required)

OR

AFFIDAVIT OF PROCESS SERVER

Being first duly sworn, I state that I am a legally competent adult who is **not** a party or an officer of a corporate party, and that: (notarization required)

I served a copy of the petition for personal protection order by:

personal service registered mail, delivery restricted to the respondent (return receipt attached) on:

Respondent name	Complete address of service	Day, date, time
-----------------	-----------------------------	-----------------

I have personally attempted to serve a copy of the petition for personal protection order on the following respondent and have been unable to complete service.

Respondent name	Complete address of service
-----------------	-----------------------------

I declare that the statements above are true to the best of my information, knowledge, and belief.

Service fee	Miles traveled	Fee	
\$		\$	
Incorrect address fee	Miles traveled	Fee	TOTAL FEE
\$		\$	\$

Signature _____

Name (type or print) _____

Title _____

Subscribed and sworn to before me on _____, _____ County, Michigan.
Date

My commission expires: _____ Signature: _____
Date Deputy court clerk/Notary public

Notary public, State of Michigan, County of _____

ACKNOWLEDGMENT OF SERVICE

I acknowledge that I have received a copy of the petition for personal protection order on _____.
Day, date, time

Signature of respondent _____

Tab Page: Item 23

STATE OF MICHIGAN JUDICIAL CIRCUIT COUNTY	CLAIM OF APPEAL ON APPLICATION FOR CONCEALED WEAPON LICENSE	CASE NO.
--	--	-----------------

Court address

Court telephone no.

Appellant's name, address, and telephone no.

County clerk's name, address, and telephone no.

v

Appellant's attorney, bar no., address, and telephone no.

CLAIM OF APPEAL

1. I appeal the

a. statement of statutory disqualification as provided by the county clerk under MCL 28.425b(11) because:
(Specify reasons on separate sheet. Attach supporting documentation.)

b. failure to provide a receipt under

MCL 28.425b(1) by the county clerk.

MCL 28.425b(9) by _____
Name of entity alleged to have failed to provide receipt

MCL 28.425l(3) by the Michigan State Police. county clerk.

c. failure of the county clerk to issue a license to a carry a concealed pistol. The application filed on _____
Date complied with MCL 28.425b(1), (5), and (9).

d. suspension/revocation of my license to carry a concealed pistol under MCL 28.428 because:
(Specify reasons on separate sheet. Attach supporting documentation.)

2. I am filing this appeal in the circuit court of the county in which I reside.

Date

Appellant/Attorney signature

REQUEST FOR CERTIFIED RECORD

I request that the county clerk send a certified copy of the record to the _____ Circuit Court.
Circuit court number or name of county

CERTIFICATE OF MAILING

I certify that on this date I served a copy of this claim of appeal on all parties by first-class mail addressed to their last-known addresses as defined in MCR 2.107(C)(3).

Date

Signature

STATE OF MICHIGAN JUDICIAL CIRCUIT COUNTY	ORDER FOLLOWING APPEAL ON APPLICATION FOR CONCEALED WEAPON LICENSE	CASE NO.
--	---	-----------------

Court address

Court telephone no.

Appellant's name, address, and telephone no.

County clerk's name, address, and telephone no.

v

Appellant's attorney, bar no., address, and telephone no.

THE COURT FINDS:

1. The notice of statutory disqualification
 - a. was was not arbitrary and capricious
 - b. was was not clearly erroneous.

2. The failure to provide a receipt under MCL 28.425b(1) MCL 28.425b(9) MCL 28.425l(3)
 - a. was was not arbitrary and capricious
 - b. was was not clearly erroneous.

3. The failure to issue a license
 - a. was was not arbitrary and capricious
 - b. was was not clearly erroneous.

4. The appeal is frivolous.

IT IS ORDERED:

5. The appeal is denied.

6. The _____ county clerk shall issue a license receipt as required by
 County name
 the Firearms Act.
 - a. The _____ shall refund \$ _____ to the appellant
 Entity name
 for filing fees the appellant incurred in filing this appeal.
 - b. The appellant's actual costs and attorney fees of \$ _____ shall be paid as follows, according to the degree of responsibility.

_____ County Clerk shall pay _____ % of the costs and fees.
County name

_____ shall pay _____ % of the costs and fees.
Entity taking fingerprints

The State of Michigan shall pay _____ % of the costs and fees.

(continued on other side)

7. The appeal is dismissed. The appellant shall pay the following actual costs and attorney fees to the

- a. _____ County Clerk in the amount of \$ _____ .
County name
- b. _____ in the amount of \$ _____ .
Entity taking fingerprints
- c. The State of Michigan in the amount of \$ _____ .

8. Other:

Date

Judge

Bar no.

CERTIFICATE OF MAILING

I certify that on this date I served a copy of this order on the parties or their attorneys by first-class mail addressed to their last-known addresses as defined in MCR 2.107(C)(3).

Date

Court clerk

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Michigan Compiled Laws Annotated
Chapter 28. Michigan State Police
Firearms (Refs & Annos)

M.C.L.A. 28.425d

28.425d. Appeal of notice of statutory disqualification, failure to provide receipt, or failure to issue license; standard of review; orders

Effective: December 1, 2015

[Currentness](#)

Sec. 5d. (1) If the county clerk issues a notice of statutory disqualification, fails to provide a receipt that complies with section 5b(1) or 5l(3),¹ or fails to issue a license to carry a concealed pistol as provided in this act, the department of state police fails to provide a receipt that complies with section 5l(3), or the county clerk, department of state police, county sheriff, local police agency, or other entity fails to provide a receipt that complies with section 5b(9), the applicant may appeal the notice of statutory disqualification, the failure to provide a receipt, or the failure to issue the license to the circuit court in the judicial circuit in which he or she resides. The appeal of the notice of statutory disqualification, failure to provide a receipt, or failure to issue a license shall be determined by a review of the record for error.

(2) If the court determines that the notice of statutory disqualification, failure to provide a receipt that complies with section 5b(1) or (9) or 5l(3), or failure to issue a license was clearly erroneous or was arbitrary and capricious, the court shall order the county clerk to issue a license or receipt as required by this act. For applications submitted after November 30, 2015, if the court determines that the notice of statutory disqualification, failure to provide a receipt that complies with section 5b(1) or (9) or 5l(3), or failure to issue a license was clearly erroneous, the court may order an entity to refund any filing fees the applicant incurred in filing the appeal, according to the degree of responsibility of that entity.

(3) For applications submitted before December 1, 2015, if the court determines that the decision of the concealed weapon licensing board to deny issuance of a license to an applicant was arbitrary and capricious, the court shall order this state to pay # and the county in which the concealed weapon licensing board is located to pay $\frac{2}{3}$ of the actual costs and actual attorney fees of the applicant in appealing the denial. For applications submitted on or after December 1, 2015, if the court under subsection (2) determines that the notice of statutory disqualification, failure to provide a receipt that complies with section 5b(1) or (9) or 5l(3), or failure to issue a license to an applicant was arbitrary and capricious, the court shall order the county clerk, the entity taking the fingerprints, or the state to pay the actual costs and actual attorney fees of the applicant in appealing the notice of statutory disqualification, failure to provide a receipt that complies with section 5b(1) or (9) or 5l(3), or failure to issue a license, according to the degree of responsibility of the county clerk, the entity taking the fingerprints, or the state.

(4) If the court determines that an applicant's appeal was frivolous, the court shall order the applicant to pay the actual costs and actual attorney fees of the county clerk, entity taking the fingerprints, or the state in responding to the appeal.

Credits

P.A.1927, No. 372, § 5d, added by [P.A.2000, No. 381, Eff. July 1, 2001](#). Amended by [P.A.2002, No. 719, Eff. July 1, 2003](#); [P.A.2015, No. 3, Eff. Dec. 1, 2015](#).

[Notes of Decisions \(6\)](#)

Footnotes

1 [M.C.L.A. § 28.425b or 28.425l](#).

M. C. L. A. 28.425d, MI ST 28.425d

The statutes are current through P.A.2016, No. 15 of the 2016 Regular Session, 98th Legislature.

End of Document

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Michigan Compiled Laws Annotated
Chapter 28. Michigan State Police
Firearms (Refs & Annos)

M.C.L.A. 28.428

28.428. Suspension or revocation of licenses; procedure; requirements;
failure to surrender license; penalties; renewal and reinstatement

Effective: December 1, 2015

[Currentness](#)

Sec. 8. (1) The county clerk in the county in which a license was issued to an individual to carry a concealed pistol shall suspend, revoke, or reinstate a license as required under this act if ordered by a court or if the county clerk is notified of a change in the licensee's eligibility to carry a concealed pistol under this act.

(2) If a county clerk is notified by a law enforcement agency, prosecuting official, or court that an individual licensed to carry a concealed pistol is charged with a felony or misdemeanor as defined in this act, the county clerk shall immediately suspend the individual's license until there is a final disposition of the charge for that offense. The county clerk shall send notice by first-class mail in a sealed envelope of that suspension to the individual's last known address as indicated in the records of the county clerk. The notice shall include the statutory reason for the suspension, the source of the record supporting that suspension, the length of the suspension, and whom to contact for reinstating the license on expiration of the suspension, correcting errors in the record, or appealing the suspension. If a county clerk suspended a license under this subsection and the individual is acquitted of the charge or the charge is dismissed, the individual shall notify the county clerk who shall automatically reinstate the license if the license is not expired and the individual is otherwise qualified to receive a license to carry a concealed pistol, as verified by the department of state police. A county clerk shall not charge a fee for the reinstatement of a license under this subsection.

(3) The department of state police shall notify the county clerk in the county in which a license was issued to an individual to carry a concealed pistol if the department of state police determines that there has been a change in the individual's eligibility under this act to receive a license to carry a concealed pistol. The county clerk shall suspend, revoke, or reinstate the license as required under this act and immediately send notice of the suspension, revocation, or reinstatement under this subsection by first-class mail in a sealed envelope to the individual's last known address as indicated on the records of the county clerk. The notice shall include the statutory reason for the suspension, revocation, or reinstatement, the source of the record supporting the suspension, revocation, or reinstatement, the length of the suspension or revocation, and whom to contact for correcting errors in the record, appealing the suspension or revocation, and reapplying for that individual's license. The department of state police shall immediately enter that suspension, revocation, or reinstatement into the law enforcement information network.

(4) If a suspension is imposed under this section, the suspension shall be for a period stated in years, months, or days, or until the final disposition of the charge, and shall state the date the suspension will end, if applicable. The licensee shall promptly surrender his or her license to the county clerk after being notified that his or her license has been revoked or suspended. An individual who fails to surrender a license as required under this subsection after he or she was notified that his or her license was suspended or revoked is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00, or both.

(5) Except as otherwise provided in subsections (2) and (6), if a license is suspended under this section and that license was surrendered by the licensee, upon expiration of the suspension period, the applicant may apply for a renewal license in the same manner as provided under section 5l. ¹ The county clerk or department of state police, as applicable, shall issue the applicant a receipt for his or her application at the time the application is submitted. The receipt shall contain all of the following:

(a) The name of the applicant.

(b) The date and time the receipt is issued.

(c) The amount paid.

(d) The applicant's state-issued driver license or personal identification card number.

(e) The statement, "This receipt was issued for the purpose of applying for a renewal of a concealed pistol license following a period of suspension or revocation. This receipt does not authorize an individual to carry a concealed pistol in this state."

(f) The name of the county in which the receipt is issued, if applicable.

(g) An impression of the county seal, if applicable.

(6) If a license is suspended because of an order under section 5b(7)(d)(iii) ² and that license was surrendered by the licensee, upon expiration of the order and notification to the county clerk, the county clerk shall automatically reinstate the license if the license is not expired and the department of state police has completed the verification required under section 5b(6). The county clerk shall not charge a fee for the reinstatement of a license under this subsection.

(7) If the court orders a county clerk to suspend, revoke, or reinstate a license under this section or amends a suspension, revocation, or reinstatement order, the county clerk shall immediately notify the department of state police in a manner prescribed by the department of state police. The department of state police shall enter the order or amended order into the law enforcement information network.

(8) A suspension or revocation order or amended order issued under this section is immediately effective. However, an individual is not criminally liable for violating the order or amended order unless he or she has received notice of the order or amended order.

(9) If an individual is carrying a pistol in violation of a suspension or revocation order or amended order issued under this section but has not previously received notice of the order or amended order, the individual shall be informed of the order or amended order and be given an opportunity to properly store the pistol or otherwise comply with the order or amended order before an arrest is made for carrying the pistol in violation of this act.

(10) If a law enforcement agency or officer notifies an individual of a suspension or revocation order or amended order issued under this section who has not previously received notice of the order or amended order, the law enforcement agency or officer shall enter a statement into the law enforcement information network that the individual has received notice of the order or amended order under this section.

Credits

Amended by [P.A.2000, No. 381, Eff. July 1, 2001](#); [P.A.2008, No. 406, Imd. Eff. Jan. 6, 2009](#); [P.A.2015, No. 3, Eff. Dec. 1, 2015](#); [P.A.2015, No. 207, Eff. Dec. 1, 2015](#).

[Notes of Decisions \(4\)](#)

Footnotes

1 [M.C.L.A. § 28.425l](#).

2 [M.C.L.A. § 28.425b](#).

M. C. L. A. 28.428, MI ST 28.428

The statutes are current through P.A.2016, No. 15 of the 2016 Regular Session, 98th Legislature.

Michigan Compiled Laws Annotated
Chapter 28. Michigan State Police
Firearms (Refs & Annos)

M.C.L.A. 28.424

28.424. Restoration of rights to possess, use, transport, sell, carry, ship,
or distribute firearms or ammunition; application; fee; determination

Effective: December 1, 2015

[Currentness](#)

Sec. 4. (1) A person who is prohibited from possessing, using, transporting, selling, purchasing, carrying, shipping, receiving, or distributing a firearm under section 224f(2) of the Michigan penal code, 1931 PA 328, [MCL 750.224f](#), may apply to the circuit court in the county in which he or she resides for restoration of those rights.

(2) A person who is prohibited from possessing, using, transporting, selling, carrying, shipping, or distributing ammunition under section 224f(4) of the Michigan penal code, 1931 PA 328, [MCL 750.224f](#), may apply to the circuit court in the county in which he or she resides for restoration of those rights.

(3) Not more than 1 application may be submitted under subsection (1) or (2) in any calendar year. The circuit court shall charge a fee as provided in section 2529 of the revised judicature act of 1961, 1961 PA 236, [MCL 600.2529](#), unless the court waives that fee.

(4) The circuit court shall, by written order, restore the rights of a person to possess, use, transport, sell, purchase, carry, ship, receive, or distribute a firearm or to possess, use, transport, sell, carry, ship, or distribute ammunition if the circuit court determines, by clear and convincing evidence, that all of the following circumstances exist:

(a) The person properly submitted an application for restoration of those rights as provided under this section.

(b) The expiration of 5 years after all of the following circumstances:

(i) The person has paid all fines imposed for the violation resulting in the prohibition.

(ii) The person has served all terms of imprisonment imposed for the violation resulting in the prohibition.

(iii) The person has successfully completed all conditions of probation or parole imposed for the violation resulting in the prohibition.

(c) The person's record and reputation are such that the person is not likely to act in a manner dangerous to the safety of other persons.

Credits

P.A.1927, No. 372, § 4, added by [P.A.1992, No. 219, § 1, Imd. Eff. Oct. 13, 1992](#). Amended by [P.A.2014, No. 6, Eff. May 12, 2014](#); [P.A.2015, No. 3, Eff. Dec. 1, 2015](#).

[Notes of Decisions \(2\)](#)

M. C. L. A. 28.424, MI ST 28.424

The statutes are current through P.A.2016, No. 15 of the 2016 Regular Session, 98th Legislature.

End of Document

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STATE OF MICHIGAN
DEPARTMENT OF STATE POLICE
LANSING

RICK SNYDER
GOVERNOR

COL. KRISTE KIBBEY ETUE
DIRECTOR

June 23, 2015

On June 4, 2015, the Kent County Gun Board voted to approve your restoration of firearms rights. The purpose of this correspondence is to advise you that a State of Michigan restoration of rights does not restore your rights federally to purchase or possess a firearm. Therefore, you could still be subject to arrest and prosecution if you are found in possession of a firearm.

If you have any firearms in your possession, the Federal Bureau of Alcohol, Tobacco and Firearms (ATF) has advised the Michigan Department of State Police by open letter that you must dispose of your firearm(s) within 30 days of receipt of this letter. There are three ways in which you may dispose of your firearm(s):

1. Transfer ownership to someone who is not prohibited to possess a firearm.
2. Transfer to a federally licensed dealer for resale.
3. Abandon your firearm(s) to the ATF or a local law enforcement agency.

However, since the approval by the Gun Board restored your rights within the State of Michigan, you have gained the privilege of possessing weapons that are not defined as firearms under federal law, but are defined as firearms under Michigan law. A pellet gun, muzzle loader, and a black powder gun that does not take a modern cartridge are not considered firearms per federal law. Therefore, this restoration will allow you to possess these types of firearms only.

If you are eligible, a Michigan conviction set-aside fully restores both your federal and Michigan rights. For more information on set-aside convictions, you can contact your local court or visit <http://courts.michigan.gov/scao>, and choose Conviction Set Aside in the Topic Index link.

If you have any questions, please contact the ATF Detroit office at (313) 202-3400, or the MSP, Criminal Justice Information Center, Firearms Unit at (517) 241-1917.

Sincerely,

Karen Johnson, Manager
Firearms Records Unit
Criminal Justice Information Center

cc: ✓ Mr. Wallace Duffin, Board Member, Kent County Gun Board
Lt. Ron Gates, Kent County Sheriff's Office
F/Lt. Chris McIntire, Michigan State Police, Rockford Post

Tab Page: Item 25

Form CC 375

PETITION FOR PERSONAL PROTECTION ORDER (DOMESTIC RELATIONSHIP)

Use this form if the person you want restrained is 18 years of age or older and:

1) if you are married to the person you want restrained;

or

2) if you are not married to the person you want restrained but you live with or have lived with him or her and he or she is not your unemancipated minor child;

or

3) if you and the person you want restrained have a child in common even if you were never married to one another or never lived together;

or

4) if you and the person you want restrained have or had a dating relationship.

INSTRUCTIONS FOR COMPLETING "PETITION FOR PERSONAL PROTECTION ORDER"

Please print neatly. Press firmly because you are printing on five copies.

By filling in this form, you are asking for a personal protection order that tells the respondent not to do certain things you don't want him or her to do. **If you are in immediate danger**, you should ask the judge for an "ex parte" order, which can be issued without waiting for a hearing.

Items A through I must be completed before your petition can be filed with the court. Please read the instruction for each item. Then fill in the correct information for that item on the form.

- A** Write **your** name, address, and telephone number in the "Petitioner" box. If you are under 18 years of age, write in your age. Write the name, address, and telephone number of the person you want restrained in the "Respondent" box; if he or she is under 18 years of age, write in his/her age. **If you want your address and telephone number to be kept from the other party, do not write your address here. Put in the address of a relative or friend or a post office box where the court can contact you.**
- B** Check the boxes that best describe your relationship with the respondent.
- C** Check the box if the respondent is required to carry a firearm while at work. If you aren't sure, check the box "unknown."
- D** Check whether there is a pending case between you and the respondent. Examples of a case are: divorce, separate maintenance, support, paternity, child support, other personal protection actions, etc. If there is a pending case, fill in the case number, the name of the court, the county, and the state or province where the action was filed, and the name of the judge.
- Check whether there are any court orders or judgments between you and the respondent. Examples of orders are divorce judgments, parenting time (visitation) orders, custody orders, other personal protection orders, etc. If there are other court orders or judgments, fill in the case number, the name of the court, the county, and the state or province where the order or judgment was entered, and the name of the judge that signed the order.
- E** **Explain in as much detail** as possible why you are asking for a personal protection order. Describe what has happened or what has been threatened so the judge has enough facts to decide if a personal protection order should be signed. Include dates and places. Write on a separate sheet of paper and attach it to this form.
- F** **Check only those boxes** you need because you must be able to convince the judge you need all the protection you are requesting. On the lines after each item you check, fill in the requested information such as names, addresses, or specific types of activity you do not want allowed. Check item "5.b" only if you want to keep the other party from entering onto property other than your home (for example, school, work, etc.). Check item "e." only if there have been two or more acts of harassment. If you want the court to order that any records that exist which contain information about yourself or your minor children be kept confidential, state that in box "k." Examples of such records are school reports which the respondent would normally have access to.
- G** An "ex parte order" means you do not have to let the respondent know in advance that you are asking the court for an order and you do not have to wait for a court hearing to get the order. Check the box for an "ex parte order" if you believe the other party might hurt you or threaten you if he or she found out you were getting a personal protection order.
- If you do not need to check the "ex parte" box, you must have a court hearing. Fill out form CC 381.
- H** If you are under 18 years old, you may need an adult (called a "next friend") to petition for you. Check this box if you have a next friend helping you file this form, and have the next friend sign the petition.
- I** Write in today's date and sign the form. Hand the form to the county clerk. The clerk will fill in the rest of the information and will give you your copies.

You must read the booklet "Instructions for Personal Protection Orders" for directions on the legal process.

**STATE OF MICHIGAN
JUDICIAL CIRCUIT
COUNTY**

**PETITION FOR
PERSONAL PROTECTION ORDER
(DOMESTIC RELATIONSHIP)**

CASE NO.

Court address

Court telephone no.

A

Petitioner's name	Age
Address and telephone no. where court can reach petitioner	

v

Respondent's name, address, and telephone no.	Age
---	-----

- B** 1. The petitioner and respondent: are husband and wife. were husband and wife. have a child in common.
 have or had a dating relationship. reside or resided in the same household.

- C** 2. The respondent is required to carry a firearm in the course of his/her employment. Unknown.

- D** 3. a. There are are not other pending actions in this or any other court regarding the parties.

Case number	Name of court, county, and state or province	Name of judge
-------------	--	---------------

- b. There are are not orders/judgments entered by this or any other court regarding the parties.

Case number	Name of court, county, and state or province	Name of judge
-------------	--	---------------

- E** 4. I need a personal protection order because: Explain what has happened (attach additional sheets).

- F** 5. I ask the court to grant a personal protection order prohibiting the respondent from:

- a. entering onto the property where I live. I state that either I have a property interest in the premises, I am married to the respondent, or the respondent has no property interest in the premises.
- b. entering onto the property at _____
Address
- c. assaulting, attacking, beating, molesting, or wounding _____
Name(s)
- d. removing the minor children from the petitioner who has **legal** custody, except as allowed by a custody or parenting time order as long as removal of the children does not violate other conditions of the personal protection order.
- e. stalking as defined under MCL 750.411h and MCL 750.411i, which includes but is not limited to:
 - following me or appearing within my sight. appearing at my workplace or residence.
 - sending mail or other communications to me. contacting me by telephone.
 - approaching or confronting me in a public place or on private property.
 - entering onto or remaining on property owned, leased, or occupied by me.
 - placing an object on or delivering an object to property owned, leased, or occupied by me.
- f. interfering with efforts to remove my children/personal property from premises solely owned/leased by the respondent.
- g. threatening to kill or physically injure _____
- h. interfering with me at my place of employment or education or engaging in conduct that impairs my employment or educational relationship or environment.
- i. having access to information in records concerning a minor child of mine and the respondent that will reveal my address, telephone number, or employment address or that will reveal the child's address or telephone number.
- j. purchasing or possessing a firearm.
- k. other: _____

- G** 6. I make this petition under the authority of MCL 600.2950/MCL 600.2950a and ask the court to grant a personal protection order.

- I request an ex parte order because immediate and irreparable injury, loss, or damage will occur between now and a hearing or because notice itself will cause irreparable injury, loss, or damage before the order can be entered.

- H** 7. I have a next friend petitioning for me. I certify that the next friend is not disqualified by statute and is an adult.

I _____
Date

Petitioner's/Next friend's signature

PROOF OF SERVICE

**Petition for
Personal Protection Order**
Case No. _____

TO PROCESS SERVER: You must serve the copies of the petition for personal protection order and file 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.

CERTIFICATE / AFFIDAVIT OF SERVICE / NONSERVICE

OFFICER CERTIFICATE

I certify that I am a sheriff, deputy sheriff, bailiff, appointed court officer, or attorney for a party [MCR 2.104(A)(2)], and that: (notarization not required)

OR

AFFIDAVIT OF PROCESS SERVER

Being first duly sworn, I state that I am a legally competent adult who is **not** a party or an officer of a corporate party, and that: (notarization required)

I served a copy of the petition for personal protection order by:

personal service registered mail, delivery restricted to the respondent (return receipt attached) on:

Respondent name	Complete address of service	Day, date, time
-----------------	-----------------------------	-----------------

I have personally attempted to serve a copy of the petition for personal protection order on the following respondent and have been unable to complete service.

Respondent name	Complete address of service
-----------------	-----------------------------

I declare that the statements above are true to the best of my information, knowledge, and belief.

Service fee	Miles traveled	Fee	
\$		\$	
Incorrect address fee	Miles traveled	Fee	TOTAL FEE
\$		\$	\$

Signature _____

Name (type or print) _____

Title _____

Subscribed and sworn to before me on _____, _____ County, Michigan.
Date

My commission expires: _____ Signature: _____
Date Deputy court clerk/Notary public

Notary public, State of Michigan, County of _____

ACKNOWLEDGMENT OF SERVICE

I acknowledge that I have received a copy of the petition for personal protection order on _____.
Day, date, time

Signature of respondent

Form CC 376

PERSONAL PROTECTION ORDER (DOMESTIC RELATIONSHIP)

Use this form if you filled out form CC 375, Petition for Personal Protection Order.

INSTRUCTIONS FOR COMPLETING "PERSONAL PROTECTION ORDER"

Please print neatly. Press firmly because you are printing on six copies.

Items A through D must be completed before you give this form to the court clerk. Please read the instruction for each item. Then fill in the correct information for that item on the form.

- A** If you checked box **G** on form CC 375, check the box for "Ex Parte."
- B** Fill in the "Case No." from form CC 375.
- C** Fill in the "petitioner" and "respondent" the same way you did on form CC 375. **If you want your address and telephone number to be kept from the respondent, do not write your address here. Put in the address of a relative or friend or a post office box where the court can contact you.**
- D** Write in the respondent's name and as much of the other information as you know. This information will help the police to identify the respondent if he or she disobeys the restraining order. Be sure to identify the respondent accurately. **The race, sex, and date of birth are required for law enforcement to enter an order on the Law Enforcement Information Network (LEIN).**

The court will complete the rest of this form.

You must read the booklet "Instructions for Personal Protection Orders" for directions on the legal process.

- If you asked for an ex parte order (order without a hearing), read pages 3 and 4 of the booklet.
- If you did not ask for an ex parte order or the judge refuses to sign an ex parte order, read pages 5 and 6 of the booklet.

Important:

If the respondent violates this personal protection order and is arrested, the court will set a date, time, and place for a hearing on the charges against the respondent to be held within 72 hours after arrest. The court or prosecutor is responsible for giving you notice of this hearing. If you are not notified within 24 hours of the arrest, contact the judge who signed this order. If a hearing is not held within 72 hours, the respondent may be released from jail after posting bond pending the hearing.

If the respondent violates this personal protection order and there is no arrest, use form CC 382, Motion and Order to Show Cause for Violating Personal Protection Order. This form is available from the circuit court clerk.

STATE OF MICHIGAN
JUDICIAL CIRCUIT
COUNTY

(A)

PERSONAL PROTECTION ORDER
 EX PARTE
(DOMESTIC RELATIONSHIP)

(B)

CASE NO.

Court address
ORI
MI-

Court telephone no.

(C)

Petitioner's name	v	Respondent's name, address, telephone no., and DLN
Address and telephone no. where court can reach petitioner		

(D)

Height	Weight	Race *	Sex *	Date of birth or age*	Hair color	Eye color	Other identifying information
--------	--------	--------	-------	-----------------------	------------	-----------	-------------------------------

*These items **must** be filled in for the police/sheriff to enter on LEIN; the other items are not required but are helpful. **Needed for NCIC entry.

Date: _____ Judge: _____ no hearing. **after hearing.

- 1. A petition requested respondent be prohibited from entry onto the premises, and either the parties are married, petitioner has property interest in the premises, or respondent does not have a property interest in the premises.
- 2. Petitioner requested an ex parte order, which should be entered without notice because irreparable injury, loss, or damage will result from the delay required to give notice or notice itself will precipitate adverse action before the order can be issued.
- ** 3. Respondent poses a credible threat to the physical safety of the petitioner and/or a child of the petitioner.
- 4. Respondent **is the spouse or former spouse of the petitioner, had a child in common with the petitioner, or is residing or had resided in the same household as the petitioner. has or had a dating relationship with the petitioner.

IT IS ORDERED:

5. _____ is prohibited from:
- a. entering onto property where petitioner lives.
 - b. entering onto property at _____.
 - ** c. assaulting, attacking, beating, molesting, or wounding _____.
 - d. removing minor children from petitioner who has **legal** custody, except as allowed by custody or parenting-time order provided removal of the children does not violate other conditions of this order. An existing custody order is dated _____ . An existing parenting-time order is dated _____.
 - ** e. stalking as defined under MCL 750.411h and MCL 750.411i that includes but is not limited to:
 - following petitioner or appearing within his/her sight. appearing at petitioner's workplace or residence.
 - sending mail or other communications to petitioner. contacting petitioner by telephone.
 - approaching or confronting petitioner in a public place or on private property.
 - entering onto or remaining on property owned, leased, or occupied by petitioner.
 - placing an object on or delivering an object to property owned, leased, or occupied by petitioner.
 - f. interfering with petitioner's efforts to remove his/her children/personal property from premises solely owned/leased by respondent.
 - ** g. threatening to kill or physically injure _____.
 - h. interfering with petitioner at his/her place of employment or education or engaging in conduct that impairs his/her employment or educational relationship or environment.
 - i. having access to information in records concerning a minor child of petitioner and respondent that will reveal petitioner's address, telephone number, or employment address or that will reveal the child's address or telephone number.
 - ** j. purchasing or possessing a firearm.
 - k. other: _____
6. As a result of this order, federal and/or state law may prohibit you from possessing or purchasing ammunition or a firearm.
7. Violation of this order subjects respondent to immediate arrest and to the civil and criminal contempt powers of the court. If found guilty, respondent shall be imprisoned for not more than 93 days and may be fined not more than \$500.00.
8. **This order is effective when signed, enforceable immediately, and remains in effect until _____.**
This order is enforceable anywhere in this state by any law enforcement agency when signed by a judge, and upon service, may also be enforced by another state, an Indian tribe, or a territory of the United States. If respondent violates this order in a jurisdiction other than this state, respondent is subject to enforcement and penalties of the state, Indian tribe, or United States territory under whose jurisdiction the violation occurred.
9. The court clerk shall file this order with _____ who will enter it into the LEIN.
10. Respondent may file a motion to modify or terminate this order. For ex parte orders, the motion must be filed within 14 days after being served with or receiving actual notice of the order. Forms and instructions are available from the clerk of court.
11. A motion to extend the order must be filed 3 days before the expiration date in item 8 or a new petition must be filed.

Personal Protection Order

PROOF OF SERVICE

Case No. _____

TO PROCESS SERVER: You must serve the personal protection order and file 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.

CERTIFICATE / AFFIDAVIT OF SERVICE / NONSERVICE

OFFICER CERTIFICATE

I certify that I am a sheriff, deputy sheriff, bailiff, appointed court officer, or attorney for a party [MCR 2.104(A)(2)], and that: (notarization not required)

OR

AFFIDAVIT OF PROCESS SERVER

Being first duly sworn, I state that I am a legally competent adult who is **not** a party or an officer of a corporate party, and that: (notarization required)

I served a copy of the personal protection order by:

personal service registered mail, delivery restricted to the respondent (return receipt attached)

on:

Name of respondent	Complete address of service	Day, date, time
Law enforcement agency	Complete address of service	Day, date, time

I have personally attempted to serve a copy of the personal protection order on the following respondent and have been unable to complete service.

Respondent name	Complete address of service
-----------------	-----------------------------

I declare that the statements above are true to the best of my information, knowledge, and belief.

Service fee	Miles traveled	Fee	
\$		\$	
Incorrect address fee	Miles traveled	Fee	TOTAL FEE
\$		\$	\$

Name (type or print)

Signature

Title

Subscribed and sworn to before me on _____, _____ County, Michigan.
Date

My commission expires: _____ Date Signature: _____
Deputy court clerk/Notary public

Notary public, State of Michigan, County of _____

ACKNOWLEDGMENT OF SERVICE

I acknowledge that I have received a copy of the personal protection order on _____.
Day, date, time

Signature of respondent

STATE OF MICHIGAN JUDICIAL CIRCUIT COUNTY	MOTION TO MODIFY, EXTEND, OR TERMINATE PERSONAL PROTECTION ORDER	(A) CASE NO.
--	---	---------------------

Court address _____ Court telephone no. _____

(B) Petitioner's name _____ Age _____ Address and telephone no. where court can reach petitioner _____	v	Respondent's name, address, and telephone no. _____ Age _____
--	----------	---

MOTION

(C) 1. On _____ a personal protection order was entered by this court.
Date

(D) 2. a. I am the respondent. I ask the court to conduct a hearing to modify terminate the order.
 b. I am the petitioner. I ask the court to conduct a hearing to modify the order.
 c. I am the petitioner. I ask the court to extend terminate the order.

Explain why you want the order modified, extended, or terminated. If box a. is checked, the respondent must show good cause if the order was issued after a full hearing or if more than 14 days have passed since the order was issued ex parte (without a hearing).

(E) 3. I have a next friend motioning for me. I certify that the next friend is not disqualified by statute and is an adult.

(F) _____
Date Signature of moving party

Complete this Notice of Hearing only if you checked box 2.a. or 2.b. above.

NOTICE OF HEARING

(G) You are notified that a hearing has been scheduled to modify, extend, or terminate the personal protection order issued in this case.

Judge: _____

Date: _____

Time: _____

Location: _____

If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

The court can modify, extend, or terminate the order even if you do not attend the hearing. It is important for you to attend.

(H) _____
Date Signature of moving party

PROOF OF SERVICE

TO PROCESS SERVER: You must serve the copies of the motion to modify, extend, or terminate personal protection order and file 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.

CERTIFICATE / AFFIDAVIT OF SERVICE / NONSERVICE

<input type="checkbox"/> OFFICER CERTIFICATE I certify that I am a sheriff, deputy sheriff, bailiff, appointed court officer, or attorney for a party [MCR 2.104(A)(2)], and that: (notarization not required)	OR	<input type="checkbox"/> AFFIDAVIT OF PROCESS SERVER Being first duly sworn, I state that I am a legally competent adult who is not a party or an officer of a corporate party, and that: (notarization required)
--	-----------	--

I served a copy of the motion to modify, extend, or terminate personal protection order by:
 personal service registered mail, delivery restricted to the nonmoving party (return receipt attached) on:

Nonmoving party name	Complete address of service	Day, date, time
----------------------	-----------------------------	-----------------

I have personally attempted to serve a copy of the motion to modify, extend, or terminate personal protection order on the following party and have been unable to complete service.

Nonmoving party name	Complete address of service
----------------------	-----------------------------

I declare that the statements above are true to the best of my information, knowledge, and belief.

Service fee	Miles traveled	Fee	
\$		\$	
Incorrect address fee	Miles traveled	Fee	TOTAL FEE
\$		\$	\$

Signature _____

Name (type or print) _____

Title _____

Subscribed and sworn to before me on _____, _____ County, Michigan.
Date

My commission expires: _____ Signature: _____
Date Deputy court clerk/Notary public

Notary public, State of Michigan, County of _____

ACKNOWLEDGMENT OF SERVICE

I acknowledge that I have received a copy of the motion to modify, extend, or terminate personal protection order on

 Day, date, time

 Signature of nonmoving party

Tab Page: 26

Form CC 379

MOTION TO MODIFY, EXTEND, OR TERMINATE PERSONAL PROTECTION ORDER

Use this form if you want the court to modify, extend, or terminate the personal protection order.

INSTRUCTIONS FOR COMPLETING "MOTION TO MODIFY, EXTEND, OR TERMINATE PERSONAL PROTECTION ORDER"

Please print neatly. Press firmly because you are printing on five copies.

By filling in this form, you are asking the court to modify, extend, or terminate a personal protection order.

Items A through E must be completed before your motion can be filed with the court. Please read the instruction for each item. Then fill in the correct information for that item on the form.

- A** Fill in the "Case No." the same way it appears on form CC 376 or CC 380.
- B** Fill in the "petitioner" and "respondent" and addresses the same way they appear on form CC 376 or CC 380, including the ages of the "petitioner" and "respondent" if either of you are under the age of 18.
- C** Write in the same date that form CC 376 or CC 380 was signed by the judge. That date is in the lower left hand corner of form CC 376 or CC 380.
- D** If you are the person the protection order is against, check item 2.a. Also check either the box "modify" if you want the court to change something in the order or check the box "terminate" if you want the court to terminate the entire order. Then explain why you want the order changed or terminated. If the order was issued without a hearing (ex parte), you may file a motion and request a hearing within 14 days after being served with, or receiving actual notice of, the order. If the order was issued ex parte and more than 14 days have passed, you must show good cause for the motion. If the order was issued after a full hearing, you must show good cause for the motion. See MCR 3.707(A)(1)(b).

If you are the person who is protected by the order, you can check either item 2.b. or item 2.c. Check item 2.b. if you want the court to change something in the order. Check item 2.c. if you want the court to extend the expiration date of the order or terminate the entire order. Then explain why you want the order extended or terminated. To extend the expiration date of the order, you must file this motion no later than 3 days before the order expires.

- E** If you are under 18 years old, you may need an adult (called a "next friend") to petition for you. Check this box if you have a next friend helping you file this form.
- F** Write in today's date and sign the form.
- G** If you checked box 2.a. or box 2.b. in **D** you must get a hearing date. Ask the clerk to schedule a hearing. The clerk will give you the information you need to fill out this part of the form. If you checked box 2.c. and the judge terminates the order without a hearing, skip the instructions below in **H**. If you checked box 2.c. and the judge will not terminate the order without a hearing, follow the instructions below in **H**.
- H** Write in today's date and sign the form. Hand the form to the county clerk. The clerk will keep two copies and return the blue, pink, and yellow copies to you.

You must serve the other party with a copy of this form. If there is a hearing scheduled, you must serve this form at least 7 days before the hearing date unless the respondent is a law enforcement officer. If the respondent is a law enforcement officer, you must serve this form at least 5 days before the hearing date. For details about serving the form, read page 7 of the booklet "Instructions for Personal Protection Orders."

If a hearing was scheduled, make sure you attend the hearing. Take a blank copy of form CC 376 or CC 380 with you to the hearing. If a hearing was not scheduled, the court will notify the law enforcement agency to make changes to LEIN as stated in the order.

- For details about the hearing, read page 8 of the booklet "Instructions for Personal Protection Orders."
- If you asked for a modified order and it is granted by the judge, you will need to fill out form CC 376 or CC 380, get it signed, and serve it on the other party. For details on how to do this, read pages 5 and 6 of the booklet "Instructions for Personal Protection Orders."

Approved, SCAO

**STATE OF MICHIGAN
JUDICIAL CIRCUIT
COUNTY**

**ORDER ON MOTION TO
MODIFY, EXTEND, OR TERMINATE
PERSONAL PROTECTION ORDER**

CASE NO.

Court address

Court telephone no.

Petitioner's name
Address and telephone no. where court can reach petitioner

v

Respondent's name, address, and telephone no.

Date: _____ Judge: _____ Bar no. _____

1. This order is entered after hearing.

THE COURT FINDS:

2. A motion was filed to
- a. modify the personal protection order dated _____ .
 - b. extend the expiration date of the personal protection order dated _____ .
 - c. terminate the personal protection order dated _____ .
3. a. Circumstances continue to exist that would require extension/modification of the order.
 b. Circumstances do not exist that would require extension/modification of the order.
 c. Circumstances do not exist that would require continuation of the term of the order.

IT IS ORDERED:

4. The motion to modify the personal protection order is granted in full. part. An amended personal protection order shall be issued.
5. The personal protection order is extended from _____ to _____ .
Current expiration date New expiration date
 The court clerk shall file this order with _____
Name of law enforcement agency
 who shall enter the new expiration date in the LEIN system. The conditions of the existing personal protection order are continued except as to the new expiration date.
6. The motion to terminate the personal protection order is granted. The court clerk shall complete and file the Removal of Entry from LEIN (form MC 239) with the law enforcement agency named in the last order.
7. The motion to modify, extend, or terminate the personal protection order is denied and the existing personal protection order will expire on the date of that order.
8. This order is effective when signed.

Date Judge

CERTIFICATE OF MAILING

Instruction to moving party: You must mail this order to the other party, date and sign below, and file a copy of this certificate of mailing with the court clerk as soon as possible.

I certify that on this date I served a copy of this order on the parties or their attorneys by first-class mail addressed to their last-known addresses as defined in MCR 2.107(C)(3).

Date Moving party

Tab Page: Item 27

STATE OF MICHIGAN JUDICIAL CIRCUIT COUNTY	NOTICE OF RIGHT TO APPELLATE REVIEW AND REQUEST FOR APPOINTMENT OF ATTORNEY	CASE NO. Judge:
--	--	--------------------------------------

Court address

Court telephone no.

THE PEOPLE OF THE STATE OF MICHIGAN

v

Defendant's/Juvenile's name, address, and telephone no.

NOTICE OF RIGHT TO APPELLATE REVIEW Note to court: This notice must be given to the defendant/juvenile at sentencing.

1. You are entitled to appellate review of your conviction and sentence. This is done by filing a claim of appeal by right, or when you are not entitled to file a claim of appeal by right, an application for leave to appeal. If you pled guilty or nolo contendere, an appeal must be done by filing an application for leave to appeal.
2. Whether you appeal by right or apply for leave to appeal, if you cannot afford to hire an attorney to represent you on appeal and you request an attorney, the court will appoint an attorney and furnish the attorney with the portions of the transcript and record that the attorney needs.
3. A request for the appointment of an attorney must be made in writing and sent directly to the court at the address noted above within 42 days. The financial schedule on the back of this form must be completed.

RECEIPT OF NOTICE OF APPEAL RIGHTS

On this day I received this form and financial schedule. I understand that I must return the completed Request for Appointment of Attorney to the court within 42 days if I want an attorney appointed for my appeal.

Date

Signature of defendant/juvenile

REQUEST FOR APPOINTMENT OF ATTORNEY AND AFFIDAVIT OF INDIGENCY

I request appointment of an attorney to appeal my conviction. If applicable, conditions for my request are on the back of this form. The affidavit of indigency and financial schedule on the back of this form is submitted to show my financial condition.

Date

Signature of defendant/juvenile

NOTE TO DEFENDANT/JUVENILE: After completing the request for appointment of attorney and the affidavit of indigency and financial schedule, keep one copy for yourself and return the other copy to the court.

NOTE: To properly start an appeal and request counsel, you must fill out the Receipt of Notice of Appeal Rights and the Request for Appointment of Attorney, above, as well as the Affidavit on the back. This form must be received by the court within 42 days of entry of the judgment of sentence.

AFFIDAVIT OF INDIGENCY AND FINANCIAL SCHEDULE

I request a court-appointed attorney and submit the following information:

1. RESIDENCE <input type="checkbox"/> Rent <input type="checkbox"/> Own <input type="checkbox"/> Live with parents <input type="checkbox"/> Room/Board <input type="checkbox"/> Prison _____ Number	
2. MARITAL STATUS <input type="checkbox"/> Single <input type="checkbox"/> Married <input type="checkbox"/> Divorced <input type="checkbox"/> Separated <input type="checkbox"/> Dependents: _____ Number	
3. INCOME a. Employer name and address	b. Length of employment
	c. Average pay <input type="checkbox"/> weekly <input type="checkbox"/> monthly <input type="checkbox"/> every two weeks Gross: \$ _____ Net: \$ _____
d. Other income (state monthly amount and source [DHS, VA, rent, pensions, spouse, unemployment, etc.]) If no income, state NONE.	
4. ASSETS State value of car, home, bank deposits, inmate accounts, bonds, stocks, etc. If no assets, state NONE. Attach an account statement and certification for assets in prison accounts.	
5. OBLIGATIONS Itemize monthly rent, installment payments, mortgage payments, child support, etc.	

Signature

Name (type or print)

Address

City, state, zip

Subscribed and sworn to before me on _____, _____ County, Michigan
Date

My commission expires: _____ Date Signature: _____
Notary public

Notary public, State of Michigan, County of _____