



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

March 18, 2015

TO: Michigan Court Forms Committee, Civil Infractions, Other Civil, and Summary Proceedings Work Group

FROM: Colin F. Boes, Forms and Manuals Analyst

RE: Agenda and Materials for **March 26, 2015 Meeting**

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

Below is the agenda for the March 26, 2015 meeting of the Michigan Court Forms Committee, Civil Infractions, Other Civil, and Summary Proceedings Work Group. The meeting starts at 9:30 a.m. and ends at approximately 3:30 p.m. 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.

1. **Corrections**

- A. Various forms retain links to the Michigan Supreme Court's old web address. These links will be updated on forms as they are modified for substantive reasons.
- B. **DC 85, Judgment (Small Claims)**: MC 10, Civil Judgment, was updated a number of years ago to remove, "[a] note or other written evidence of indebtedness has been filed with the clerk for cancellation." The same was not done on this form and should be, as a note or other written evidence of indebtedness is no longer required by MCR 2.603(B)(2), following the 2008 amendment of the rule. See 2008 Staff Comment to MCR 2.603 ("This amendment eliminates the requirement to file for the cancellation

of a note or writing indicating written evidence of indebtedness when applying to the clerk for a default judgment.”).

- C. **DC 111b, Answer Damage/Health Hazard to Property (Landlord-Tenant):** In item 3, the form asks if the person named in item 3 of the complaint is the owner of the property described in the notice to quit. It should be the “demand for possession” instead of “notice to quit.” See MCL 600.5714(1)(d), which covers damage or health hazards on the premises, indicating a demand for possession is what would be used.
- D. **DC 111d, Answer, Termination of Tenancy of Mobile Home Park – Mobile Home Owner (Just-Cause Termination):** Item 3 on this form should say should say “demand for possession” not “notice to quit.” It is a demand for possession that would be filed with a just-cause termination, see MCL 600.5775, MCL 600.5777. This will make item 3 on this form consistent with the phrasing used in item 3 on DC 102d.

2. **CIA 03, 14-day Notice Civil Infraction**

It has been suggested by a district court clerk that the language on this form, pertaining to payment, should be modified. It currently says: “Payment may be made in person or by mail. If you make payment by mail, it must be in the form of a certified check or money order only, and received by this court no later than the due date above.” Similar language appears on CIA 07 and should be considered for modification as well. However, some courts allow payments to be made online and, according to the inquiry, not all courts require payments by mail to be in the form of a certified check or money order. Should the language regarding the method by which payments may be made be modified on this form?

3. **CIA 04, Motion to Set Aside Default Judgment and Order, Civil Infraction**

It has been suggested by a district court magistrate that this form should be modified to make it clear a district court magistrate may sign it. 2014 PA 384 amended MCL 600.8512 to allow a district court magistrate to hear and preside over motions to set aside default or withdraw civil infraction admissions. Should the form be modified as suggested?

4. **DC 53, Appeal Worksheet for Application for Leave to Appeal**

It has been suggested that item 7(k) in the instructions should be clarified. Specifically, it has been suggested that the parenthetical indicating, “(NOTE: Filed with application),” should be removed. Item 7(k) appears to be talking about what is served on the district court, but item 7(k)(iii) appears to be referencing something that should be filed with the circuit court. MCR 7.105(B)(5)(g), which appears to be what this item covers, involves what should be filed with the circuit court. Should item 7(k)(iii) be modified or moved in some way to make it clearer what is required?

5. **DC 84, Affidavit and Claim, Small Claims**

A question has been raised regarding whether the lines for notarization should list Michigan as the default state, or if there should be a blank line for the state of notarization. Regarding the form of the affidavit, the court rules say that the statement of claim must be in an affidavit in “substantially the form approved” by SCAO. MCR 4.302(B) indicates who must sign the affidavit. Similarly, MCL 600.8402 says the form and contents of the affidavit are to be as “prescribed by statute and the state court administrator.” MCL 600.8402(1). Should the form be modified?

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

It has been suggested by a district court clerk that it would be helpful if the form was modified to add a space for attorneys to list their bar number. It was suggested this would help court clerks enter the appearance of the attorney more readily. Should the form be modified?

7. **DC 99b, Motion to Set Aside Default Judgment**

MCR 4.201(M)(3) has been amended, effective May 1, 2015, to clarify the rules for setting aside a default money judgment. The rule now specifies that where a motion is filed to set aside a default money judgment, the motion must be accompanied by an affidavit of facts showing a meritorious defense and good cause must be shown. How should the form be modified to accommodate the change in the court rule?

Additionally, item 2.b. on the form will need to change to reference a time frame for filing the motion of 10 days, consistent with MCR 4.201(M).

8. **DC 100c, Notice to Quit to Record Possession of Property, Landlord-Tenant**

There were three questions relating to this form:

- A. A district court judge has suggested that the note on the form relating to exceptions to when a landlord must give notice equal to at least one rental period should be modified. In 2012, following review by the Solutions on Self-Help Task Force, the note was modified to remove the reference to a 7-day demand for possession under MCL 600.5714(1)(a) for nonpayment of rent and to a 24-hour demand for possession for a drug eviction, pursuant to MCL 600.5714(1)(b). While both of these provisions require a demand for possession, not a notice to quit, is the note misleading regarding other ways in which a landlord may have a tenant removed that would not allow for one rental period? Additionally, a notice to quit may be used in certain circumstances relating to drug evictions under MCL 554.134(4). Should the note be modified or clarified in any way?
- B. A suggestion was received from an individual that the “other” field on the form, following the letter “C” which is for indicating the legal basis for eviction, should be

expanded. Should this field be expanded to allow for more space?

- C. The form currently references a “90-day notice given under the authority of Public Law No. 111-22, Section 702; 123 Stat 1660.” This was a provision of the Protecting Tenants at Foreclosure Act, which after an extension included in the Dodd-Frank Act, expired December 31, 2014. Therefore, this reference will be removed from the form.

9. **DC 105, Judgment, Landlord-Tenant**

Three suggestions have been received regarding this form:

- A. An attorney has suggested that the language “TO THE DEFENDANT” be removed from the middle of the form because not every item is solely for the defendant. Instead, it has been suggested it say, “IT IS ORDERED.” If this change is made, a similar change should be considered for DC 105a.
- B. Two attorneys have suggested that the language in paragraph 2.a. should be modified. Instead of referencing rent, they have suggested it say “lease charges due.” It is suggested that this is necessary pursuant to MCL 600.5741, which allows for a judgment of possession to include “any money due under a tenancy,” not just rent, in their view. It is suggested that this follows from MCL 600.5716, which allows a demand for possession to request money for “nonpayment of rent or other sums due under the lease.” The issue that has arisen is that some courts, relying on the language on the form, only allow for rent as part of the judgment of possession, but not other sums due under the lease. Should the form be modified?
- C. It has been suggested by a civil unit leader of a court that this form should have information indicating that the order of eviction must be issued no later than 56 days from the date of the judgment. This is based on the language in MCR 4.201(L)(4)(a), which states limitations on the time for issuance and execution. Unless a hearing is held after the defendant has been given notice and an opportunity to appear, the order of eviction may not be issued later than 56 days after the judgment is entered. Should this information be added to the form?

See the two attached comments regarding the above proposals.

10. **DC 107, Application and Order of Eviction Landlord-Tenant / Land Contract**

It has been suggested by a civil unit leader of a district court that at the bottom of the form, in the note indicating that the order must be served within 56 days, it should also indicate it must be executed within the same time frame. MCR 4.201(L)(4)(b) provides that, unless a later hearing has been held, the order of eviction must “be executed later than 56 days after it is issued.” Further, MCR 4.201(L)(2) provides, “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.” Should the note at the bottom of the form be clarified regarding when the order must be served and executed?

See attached comment regarding this proposal.

Attachments