



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

February 26, 2014 (Amended March 3, 2014)

TO: Michigan Court Forms Committee, Criminal Work Group

FROM: Colin F. Boes, Forms and Manuals Analyst

RE: Agenda and Materials for **March 6, 2014 Meeting**

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

Below is the agenda for the March 6, 2014 meeting of the Michigan Court Forms Committee, Criminal 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.** I can be reached at either 517-373-2217 or boesc@courts.mi.gov. 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. **Minor Corrections**

MC 227: This form contains a web address for the Supreme Court's old website. The link to information regarding how to set aside a conviction on the form will be replaced with a link to the Michigan Legal Help website. The address for the State Police on MC 227 (as well as on JC 66) will also be updated.

MC 294: The reference on this form to the seal will be removed.

DC 243, CC 243a, and MC 245: 2013 PA 274, 275, 276, and 277 provide statutory guidance for mental health courts in Michigan. It is proposed that the listed forms be

modified to include as a checkbox option mental health court when indicating why the judgment of guilt is deferred on DC 243 and CC 243a, and on MC 245, under item 1 and 3.

2. **Should any Changes be made in Light of PA 612 of 2012 Relating to Work/School Release?**

A circuit court employee has suggested that a new form, or changes to existing forms, may be needed in light of the changes made by PA 612 of 2012. Specifically, the Act added MCL 771.3d, 3e, and 3f. These statutes provide for certain conditions in an order releasing an individual from jail for the purpose of work or school. These statutory provisions include a requirement that the court, at the time of sentencing, order the Department of Corrections (DOC) to verify that the individual is currently employed or currently in school. MCL 771.3d(1). However, this requirement does not apply if the verification has already been provided or will be provided by the county sheriff. If required, the DOC is to provide said verification within seven days after the order has been issued. The order of release is required to be made contingent upon the approval of the county sheriff. Additionally, if the court permits the individual convicted of a felony to be released from jail for work or school, the court must order the individual to wear an electronic monitoring device. MCL 771.3e. The cost of the device must be paid by the individual. However, the section of the statute regarding electronic monitoring only applies if the court has a program for electronic monitoring in place. Should any changes be made to current form MC 219 or does a new release form need to be developed?

3. **Issues Relating Probation Officers Signing Petitions/Motions**

Several issues have come up regarding challenges to the ability of a probation officer to sign a petition or motion (for MC 244, Petition and Order for Amendment of Order of Probation; MC 245, Motion and Order for Discharge from Probation; and MC 246, Motion and Summons Regarding Probation Violation). Generally, a nonparty is not authorized to file a motion in a case. See *Latimer v Barmore*, 81 Mich 592, 604; 46 NW 1 (1890); see also *DeGeorge v Warheit*, 276 Mich App 587, 600; 276 Mich App 587 (2007) (suggesting, but not holding, that a motion under MCR 3.606(A)(1) would always be brought by a party to a case). Further, MCR 2.114 indicates all documents, which include motions, must be signed by a party or their attorney. Is it appropriate for probation officers to sign the referenced forms, given that they are neither a party to the case, nor an attorney? Do any changes need to be made to these forms?

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

An attorney from the State Appellate Defender Office (SADO) has indicated that there are frequently issues with this form not being completed in full. Many SADO clients do not realize that they need to fill out both parts of the form, as well as the supporting documents. Due to this failure to complete the form properly, many of their clients inadvertently let the period to appeal by right elapse and are left asking for leave to

appeal. It has been suggested the form be modified in a way similar to that done in Macomb County. Macomb County includes an additional warning on the bottom of the form that states: “Note: To properly start an appeal and request counsel, please fill out the entire form, including the receipt of notice of appeal rights and request for appointment of attorney. This form must be received by the court within 42 days of entry of the judgment of sentence.” Should the form be modified in some way to clarify how to properly complete the form?

5. **MC 227, Application to Set Aside Conviction**

A trial court’s staff has suggested that the form be modified to include a place in the caption, under defendant’s name and address, to list the attorney’s name and address. Trial courts encounter problems where this form is filed and the court does not know until the day of the motion hearing that the defendant is being represented. Should the form be modified to include a place to write the attorney’s name, when a defendant is represented?

6. **MC 241, Bond**

A county court staff, upon review of the form, has inquired whether it should be modified to allow a court to make a no contact provision applicable as soon as the bond order is entered, instead of only effective upon release. MCL 765.6b allows a defendant to be released subject to protective conditions and this form provides for those release conditions. However, it has been suggested that the court may also want to order a no contact provision to be effective while the defendant is in jail, prior to posting a bond. The form does not address this situation. Because there is no explicit language on the form that the defendant shall have no contact with the protected individual, whether or not bond is posted, some jails are allowing a defendant to call the protected individual. It has been suggested that the form be modified to make it clear that its “no contact” provision applies whether the defendant posts bond or not.

Should any change be made to the form to allow the court to restrict the contact the individual has if he or she is still in jail and not released?

7. **MC 262, Order of Acquittal/Dismissal or Remand**

There are two suggestions relating to this form from SCAO staff. (1) Should the reference on the form to remanding to district court be removed? It has been suggested there may not be authority for the circuit court to do this. Are there circumstances under which this form could properly be used to remand a case to district court? (2) The reference to MCR 7.101(M) needs to be removed. After the revamp of the appellate rules, this subrule no longer exists. This subrule previously explained the process for appeals to circuit court and stated, “After the appeal is decided or dismissed, the circuit court clerk shall promptly send to the trial court clerk a copy of the judgment, order, order opinion entered in the circuit court and all documents previously received from the trial court.” There is no rule that exactly tracks this provision, so there may not be any replacement.

However, MCR 7.109(H)(2) does explain how the record should be returned. Should this citation be added to the form?

8. **Should a New Form be Developed for use under MCR 6.433(B) and (C)**

It has been suggested that a new form should be developed for use where a defendant requests court documents or transcripts under MCL 6.433(B) and (C). Is it necessary for a new form to be developed?

9. **Should a New Form be Developed Specifically for use in Misdemeanor Appeals under MCR 6.625(B)?**

Should a new form be developed for use in misdemeanor appeal cases where the individual is entitled to an attorney under MCR 6.625(B)?

10. **Should a New Form be Developed Specifically for use Following a Probation Violation?**

A court administrator has suggested that a form be developed specifically for entering an order following a probation violation hearing. Should a new form be developed for use in this circumstance?

A comment was received from a court administrator indicating that this form would specifically be used when a judge makes a ruling at a probation violation hearing and/or sentences a defendant on a probation violation. Currently, some courts use the judgment of sentence form to type the disposition of a probation violation, but it has been suggested that form does not seem entirely appropriate. Additionally, it was noted that the contempt form does not work for a probation violation, because a probation violation is not the same as contempt of court.

Attachments