



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

January 13, 2016

**MICHIGAN COURT FORMS COMMITTEE
General Civil and Miscellaneous Committee
AMENDED Minutes of March 12, 2015 Meeting**

Present: Hon. Annette Berry, 3rd Circuit Court
Hilary Arthur (on behalf of Mary Hollinrake), 17th Circuit Court
Kathy Griffin, 45th Circuit Court
Hon. Jon Hulsing, 20th Circuit Court
Cheryl Jarzabkowski, 70th District Court
Julie M Dale, 3rd Circuit Court, Civil Division
Hon. Patricia Jefferson, 36th District Court, Civil Division
Hon. Pamela Lightvoet, 9th Circuit Court
Curtis A. Robertson, Weber & Olcese PLC
Stuart Sandweiss, Sandweiss Law Center PC
Rebecca Smith, Rhoades McKee PC
Angela Tripp, Michigan Poverty Law Program
Colin Boes, State Court Administrative Office (staff)
Bobbi Morrow, State Court Administrative Office (staff)
Stacy Westra, State Court Administrative Office (staff)

Absent: Hon. David Parrott, 34th District Court
Sherri Sayles, 20th Circuit Court
Amy Garoushi, State Court Administrative Office (staff)
Jim Inloes, State Court Administrative Office (staff)
Jonie Mitts, Judicial Information Systems (staff)
Julia Norton, State Court Administrative Office (staff)
Jay Francisco, Judicial Information Systems (staff)

Meeting called to order, 9:35 a.m.

Mr. Michael Leib, representing the Receiverships Forms Committee, presented on the proposed receivership forms and why it would be beneficial to adopt the proposed forms. Mr. Leib indicated that many of the individuals who worked on the proposed forms were involved in the

drafting of the modified receivership rule and that the forms were designed to assist the bench and bar with the new rule and to encourage uniformity in practice. Mr. Leib took several questions relating to the forms. Mr. Leib noted that the committee met several times over a period of several months. Several committee members noted, in response to Mr. Leib's presentation, that it appeared a significant amount of work went into drafting the proposed forms and that they were impressed with the end result.

1. **Forfeitures – Changes Made by 2014 PA 333**

The committee discussed 2014 PA 333 and determined a number of changes needed to be made to the forms dealing with forfeiture under 600.4701 *et seq.*

A. DC 40, Notice of Seizure of Personal Property Subject to Forfeiture without Process and Order

The committee noted that MCL 600.4703(2), which is the citation at the foot of this form, was modified to now include, in the personal property subject to forfeiture, "the substituted proceeds of a crime." Therefore, in item 5.a., the phrase "the substituted proceeds of a crime" was added after "the proceeds of a crime" to make it consistent with the language in MCL 600.4703(2). Additionally, the same change in language was made to item 5.e.

The form was approved as revised.

Staff note: Item 1 was realigned to have the checkboxes options horizontal instead of vertical for purposes of spacing.

B. DC 41, Motion and Order to Seize Personal Property Subject to Forfeiture

The committee discussed whether any changes were needed to this form. After reviewing it, the committee determined no changes were necessary at this time.

C. DC 42, Application and Ex Parte Order to File Lien on Real Property Subject to Forfeiture

The committee discussed whether any changes were needed on this form and concluded that under item 2 a new subpart c. should be added which would say, "c. the property is the instrumentality of a crime." It was noted that MCL 600.4703(3) allows for an application for an ex parte order for any property subject to forfeiture under the Act, which could include property that is the instrumentality of a crime, as now provided by MCL 600.4702(1)(b).

The change was made and the form was approved as revised.

Staff note: Item 1 was realigned to have the checkboxes options horizontal instead of vertical for purposes of spacing.

Due to the addition of subpart c., a reference to “instrumentality of a crime” was added to item 3.

D. DC 43, Notice of Seizure and Intent to Forfeit and Dispose of Property

The committee agreed that the note on the second page of the form indicating when the notice must be served should be changed from 7 days to 28 days, consistent with the change made to MCL 600.4704(1).

The change was made and the form was approved as revised.

E. DC 44, Order for Return of Property or Discharge of Lien in Forfeiture Proceedings

The committee agreed that item 1 needed to be modified to reflect that the time frame is now 28 days for both references, not 7 days, consistent with the changes made to MCL 600.4706(1)(a).

The change was made and the form was approved as revised.

F. DC 45, Notice of Intent to Forfeit and Dispose of Property

The committee noted that the timeframe referenced in item 2 should now be 28 days, not 7 days, pursuant to modifications made to MCL 600.4707(1). The committee reviewed this form and noted that the time frame in item 5 must be changed from 21 days to 28 days.

The committee also looked at MCL 600.4707 and noted that subsection (3) now only allows the automatic forfeiture after notice of personal property, not real property. In light of this conclusion, the committee believed the form should be modified to only reference personal property. Changes were made to the title of the form, the note, and items 1 and 4.

The changes were made and the form was approved as revised.

Staff Note: While it is true that MCL 600.4707(3) was modified to only allow an automatic forfeiture after 28 days of personal property, it appears this notice must still be used for any property subject to forfeiture under this Act with a value of less than \$100,000, pursuant to MCL 600.4707(1). While the procedure for effectuating a forfeiture changed under MCL 600.4707(3) to exclude real property from that method of forfeiture, the notice still must go out regarding any case under the Act, it appears. Therefore, the changes proposed above to make this form specific to real property

will not be made.

G. DC 46, Order Following Forfeiture Proceedings

The committee discussed that MCL 600.4707 was modified to restructure what the plaintiff must prove. The committee agreed that what is currently a. and b. under item 2 on the form must now be combined as the amended statute combines the references to real and personal property in MCL 600.4707(6)(a) to require a showing “that the property is the proceeds of a crime, the substituted proceeds of a crime, or an instrumentality of a crime.” In order to accomplish this, item 2.b. was deleted. Item 2.c. was renumbered based on this change. Item 2.a. was modified so that the reference is simply to “property” instead of specifically to “personal property.”

Additionally, the committee noted that another option must be added under item 2, to cover circumstances under MCL 600.4707(6)(c), which provides: “If a person, other than the person convicted of the crime, claims an ownership or security interest in the property under section 4703(7), that the transfer occurred subsequent to the criminal conduct that gave rise to forfeiture.” The committee discussed that MCL 600.4703(7) provides that title to property subject to forfeiture vests with plaintiff upon commission of the conduct giving rise to forfeiture. Subsequent property transfers are void unless the transferee can establish that: (a) the transferee has an interest of record in the property; (b) the transferee purchased the property in good faith and for fair value; and (c) the property interest was acquired without notice of the forfeiture proceeding or the facts that gave rise to the proceeding. The committee determined that the new option c. under item 2 should largely track the language of MCL 600.4707(6)(c) and it was changed to state: “a person, other than the person convicted of the crime, claimed ownership or a security interest in the property under MCL 600.4703(7), but the transfer occurred subsequent to the criminal conduct that gave rise to forfeiture.”

The committee also noted that item 5 can sometimes be confusing, relating to what the “7 days” runs from. The committee noted that MCL 600.4707 was modified to address this very issue by adding to the end of what is now MCL 600.4707(8) that “the property shall be returned to the owner within 7 days after the court issues a dispositive order.” (New language underlined). The committee modified item 5, adding to the end that it is within 7 days “from the date of this order.”

The form was approved as revised.

H. DC 47, Order of Distribution in Forfeiture Proceedings

A new section (3) was added to MCL 600.4708 that provides:

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.

After discussing this provision at some length, the committee determined nothing on the order of distribution in forfeiture proceedings should be changed. There was some discussion regarding whether something should be added to the DC 46, Order Following Forfeiture Proceedings, in light of this language that would allow a court to order the forfeiture of other reachable property. However, committee members noted that the language of MCL 600.4708(3) contemplates that an order of forfeiture would first be entered for the property that was the subject of the forfeiture proceedings. Only after such an order is entered and the conditions described in MCL 600.4708(3) are met would another order of forfeiture enter for other reachable property up to the value of the property that is unreachable.

The committee discussed that in the circumstances where the court would order reachable property seized pursuant to MCL 600.4708, the court would want to enter a separate order. This separate order would be entered after the order following forfeiture proceedings was entered. The committee concluded that a new form should be created, similar to DC 46, Order Following Forfeiture Proceedings, but incorporating the language of MCL 600.4708. This form will include a reference to an order of forfeiture being entered, explain why the property is unreachable, and indicate what reachable property would be seized. SCAO staff will draft a proposed order to be considered at next year's meeting.

No change was made to DC 47. The new proposed form was recommended for development.

2. **CC 20a, Order Regarding Suspension of Prisoner Fees/Costs**

The committee considered three questions with respect to this form:

- A. The committee considered whether this form should be an "MC" form instead of the circuit court specific "CC" form because MCL 600.2963 is applicable to all trial courts. In considering this issue, the committee discussed the fact that this form was intentionally created for use in circuit court only at the time it was designed. After some discussion, the committee concluded that it would be helpful to make this form

an “MC” form and added a reference to district and probate in the upper left portion of the form. The form will be retitled MC 20a.

- B. The committee considered a suggestion that the form should be modified to be more consistent with the statutory language found in MCL 600.2963. The committee discussed item 6, which allows the court to order a specific amount to be paid monthly if only a partial payment has been made. However, MCL 600.2963(5) provides that where only a partial payment has been made, “the court shall order the prisoner to make monthly payments in an amount equal to 50% of the deposits made to the account.” The committee discussed whether the form should be modified so that the order specifies the prisoner should pay 50% of deposits made to the account, not a specific dollar amount that does not relate to the future deposits. The committee agreed this was consistent with the statutory language.
- C. The committee considered a suggestion that this form should indicate that no further filings may be made until the obligations outlined in the order are satisfied. The committee discussed the language of MCL 600.2963(8), which provides, “[a] prisoner who has failed to pay outstanding fees and costs as required under this section shall not commence a new civil action or appeal until the outstanding fees and costs have been paid.” However, it was noted that there are at least some circumstances where the Michigan Supreme Court has determined this provision did not apply where it otherwise would have prohibited a filing for constitutional reasons. See *Palmer v Oakland Circuit Judge*, 463 Mich 958; 621 NW2d 221 (2001). The committee determined this provision should be included on the form to put the prisoner on notice of the legal prohibition against filing if they have failed to pay other outstanding fees and costs as required for a previous filing as follows: “If the prisoner fails to pay any fees and costs required by this order, the prisoner shall not commence a new civil action or appeal until the outstanding fees and costs have been paid. “

The form was approved as revised.

3. **CC 79, Claim of Appeal on Application for Concealed Weapon License and Request for Certified Record**

The committee discussed concerns with the language in the instructions relating to the time frame to appeal on this form. On page 2 of the form it currently says, “Complete this form within 21 days after receiving notice that (a) the application was denied or (b) the licensing board failed to issue a timely decision.” However, the committee discussed that

the date an appeal runs from is generally the date an order is entered. MCR 7.121(B)(1) specifically addresses the time requirements for filing an appeal as of right from a decision of a concealed weapon licensing board. It states, "Time requirements are governed by MCR 7.104(A)." MCR 7.104(A)(1) provides that an appeal of right must be taken within " 21 days or the time allowed by statute after entry of the judgment, order, or decision appealed . . ." The committee agreed that the language in the instructions in item 1 is not accurate in that it implies the 21 days runs from the date the individual receives notices when it actually runs from the date of the court judgment or order.

The committee also discussed the fact that MCL 28.425d allows for an appeal where the board "fails to issue that license as provided in this act." This appears to be distinct from a denial. This distinction carries over to MCR 7.121, which provides that it governs appeals for a refusal to restore rights, a denial, revocation, suspension, or "failing to issue" a license to carry a concealed pistol. After discussing this issue, the committee agreed that in such cases there is an appeal as of right at any time. This makes sense because if a decision was entered, there would be an appeal period of 21 days.

The committee changed the first sentence in item 1 to read: "Complete this form (a) after the licensing board failed to issue a timely decision or (b) within 21 days after the application being denied."

The form was approved as revised.

4. **MC 11, Subpoena, Order to Appear and/or Produce**

The committee considered a suggestion that the court address and telephone number at the top of the form, which are sometimes overlooked because of their location on the form, should be moved to the left to be more prominent. The committee agreed that applying the standard masthead was appropriate and could help avoid confusion. The committee also pointed out that "Police Report No. (if applicable)" would need to be moved. The committee indicated that this item is not applicable in many cases. After some discussion about an alternative location, the committee recommended that if the "Police Report No." was moved, it could be put on the same line where the civil and criminal checkboxes are, as a checkbox option. If the reference to "Police Report No." needs to be moved, SCAO staff will determine appropriate placement on the form.

The form was approved as revised.

Staff Note: The police report no: line was dropped down below where the court address will be listed. There was sufficient space to leave the police report no. in the heading of the form.

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

The committee considered a suggestion that item 2.d. of the instructions for the defendant may be misleading with respect to when an objection may be filed. Currently it says that the defendant may object if “you have an installment payment order.” However, the committee discussed that an installment payment order would not necessarily foreclose all possible nonperiodic garnishments. Instead, MCL 600.6231 provides: “The garnishment of any money due or to become due for the personal work and labor of the defendant upon a judgment made payable in installments either by the court order or agreement of parties is prohibited, excepting upon the written order of the judge. Any writ of garnishment issued without the order is void. The order may be made following due notice to the defendant if installments are due.”

The committee agreed that the statement could be misleading and needed to either be removed or changed. While some on the committee advocated for modifying it, ultimately the committee concluded it was better to remove it. The committee discussed that the form is not required to include all possible bases for objecting to the garnishment.

The committee also discussed whether the lead in language for item 2, which indicates “You may object to this garnishment if:” is misleading. Committee members expressed concern that some individuals who use the form take this language to be a definitive statement that their objection has validity if listed in item 2. The committee considered a number of possible changes to the language and discussed whether any of the proposed changes would make item 2 clearer. After further discussion, the committee agreed that the lead in language in item 2 is sufficient and should not be changed.

The form was approved as revised.

Staff Note: A note was added to the top of the third page of the form that says, “For further information on garnishments, you may visit www.michiganlegalhelp.org.”

6. **MC 306, Substitution of Attorney**

The committee considered a suggestion by the family law section of the State Bar of Michigan that the form should be modified to require the signature of both attorneys of record and the new attorney, not just the attorney who is withdrawing and the new attorney.

The committee began by discussing some of the relevant court rules. MCR 2.117(C) provides that “[a]n attorney who has entered an appearance may withdraw from the action or be substituted for only on an order of the court.” The concern was that an order signed with only the signature of one party/attorney does not comport with one of the

four ways an order is supposed to be entered under MCR 2.602(B) without something more happening. Further, if this order is to be entered as a stipulated order, MCR 2.119(D)(1) provides: “Before filing a motion, a party may serve on the opposite party a copy of a proposed order and a request to stipulate to the court's entry of the proposed order.” Such stipulations must include the language, “I stipulate to the entry of the above order.” MCR 2.119(D)(2)(a).

The committee had a number of concerns about the proposed changes. Some expressed concern with modifying this form to make it appear that the approval of opposing counsel is always required, which was noted to be an apparent interference with the attorney-client relationship. Others noted there are other ways the order may be entered, though not expressly indicated on the form, such as after a hearing on the record. The committee also noted that the judge, ultimately, must sign the order. It will be up to the judge in any given case to determine whether it is appropriate to enter the order. The committee also discussed the fact that some courts essentially allow these orders to be entered on an ex parte basis.

The committee also discussed that in addition to judges having different methods for dealing with substitution of counsel, individual attorney’s practices vary greatly as to what is filed and how each individual approaches the matter. It was noted this can make it difficult for court staff to keep track who is still active on a particular case.

The committee agreed that it is possible that a stipulated order for substitution could be submitted, but that it would not be this form that would be used or modified. Instead, as it stands right now, there is no SCAO-approved form for such a filing.

The committee was informed that the domestic relations forms work group would also be considering this proposal before any final determinations were made regarding what to do with this form.

The committee ultimately determined that no change should be made to the form at this time because the approach to the use of this form is court and judge specific.

7. **MC 325, Request for a Hearing on a Motion**
MC 327, Order

The committee discussed whether these two forms are still used. It was noted that several district courts commented that the forms were still used in some capacity. Additionally, members of the committee noted that they see these forms used by pro se litigants and

occasionally used by courts for a quick generic order to be completed at the time of a hearing. The committee concluded neither form should be deleted.

In reviewing the forms, it was suggested by several committee members that an option be added to MC 327 to indicate that the order is being entered “for the reasons stated on the record.” In many cases, courts are either writing this in or requiring attorneys to do so and the committee agreed it would be helpful to have this as an option on the form. The committee concluded there should be two lead-in options, the current option of “The above named motion is” and another option indicating, “For the reasons stated on the record, the above named motion is.” The committee also recommended that everything be shifted up if possible, to provide more blank space at the bottom.

The changes were made to MC 327 and the form was approved as revised. No change was made to MC 325.

Staff Note: MC 327 was restructured during typesetting. The box to list the date of the hearing was removed and replaced with a new item 3 that says, “This motion was heard by the Honorable _____ on _____ (date).”

A new item 4 was added to allow a check box item for the court to state the decision was made “for the reasons stated on the record.”

The bolded portion was modified to read, “THE COURT ORDERS.” A new checkbox option was added below this to specifically have space for further orders of the court.

8. **New Proposed Forms For Use in Receiverships under MCR 2.622**

The Receivership Forms Committee of the Debtor/Creditor Rights Committee of the Business Law Section of the State Bar of Michigan drafted proposed forms in response to the adoption of the new receivership court rule, MCR 2.622, to promote uniformity and to assist the bench and bar in addressing requirements imposed by the new rule. The following forms were proposed and considered by the committee:

1. Checklist for Motion For Order Appointing Receiver Under MCR 2.622;
2. Checklist for Order Appointing Receiver;
3. Receiver’s Statement of Disinterestedness Pursuant to MCR 2.622(B)(6);
4. Acceptance of Appointment as Receiver under MCR 2.622(D)(1);
5. Notice of Receivership Under MCR 2.622(D)(2);
6. Accounting of Receiver Pursuant to MCR 2.622(D)(4);
7. Notice of Request for Fees and Expenses By Receiver Under MCR 2.622(F)(4);
8. Final Report and Account Pursuant to MCR 2.622(D)(7); and

9. Order Regarding (I) Discharge of Receiver, (II) Administration of the Receivership Estate, And/Or (III) Termination of the Receivership.

A. Checklist for Motion For Order Appointing Receiver Under MCR 2.622

The committee first considered a proposed checklist relating to an order appointing a receiver under MCR 2.622. Some on the committee raised a concern that this is not generally the type of thing that SCAO-approved forms are created for. Generally, with a few exceptions, checklists that are not mandated in any way and not filed with the court, are not created as SCAO-approved forms. The committee discussed this, but still recommended that this checklist be made into an approved form. Some on the committee noted that they viewed these checklists as similar to the appeals checklists that are SCAO-approved forms.

The committee indicated that if the checklist is not approved as a form, it should be made available in some other way if possible. Some suggested inclusion in a bench book or as a bench card. The committee also reviewed the checklist for substantive changes and did not recommend any additional changes. The committee agreed the checklist was helpful and would assist practitioners and judges in making sure they have covered everything that might need to be covered for the order appointing a receiver.

The committee recommended the adoption of this form or, in the alternative, making the form available or incorporating it in some other way, if possible.

The proposed form, as modified, was approved.

S Staff Note: The SCAO recommends that the checklist be provided to Michigan Judicial Institute for possible inclusion in future materials, such as a bench guide, instead of adopted as a form. Additionally, if subsequently developed, a motion to appoint a receiver could potentially incorporate some of the information.

B. Checklist for Order Appointing Receiver

The committee considered a checklist for the order appointing the receiver. Again, it was noted that a checklist is not generally something created as an SCAO-approved form. The committee made the same recommendation as they

did with the previous checklist, that it be made into an SCAO-approved form and, in the alternative, it be incorporated into materials in some other way, if possible.

Several members on the committee asked about the note at the top of the form that indicates that while the checklist is not required, it may be filed to assist the court in reviewing the proposed order. Some asked why it would be filed where there is no requirement that it be filed. Others indicated that they believed it would be helpful to the court and that individual judges might allow it to be filed if they found it helpful.

The proposed form, as modified, was approved.

Staff Note: The SCAO recommends that the checklist be provided to Michigan Judicial Institute for possible inclusion in future materials, such as a bench guide, instead of adopted as a form. Additionally, if subsequently developed, an order to appoint a receiver could potentially incorporate some of the information.

C. Receiver's Statement of Disinterestedness Pursuant to MCR 2.622(B)(6)

The committee considered this proposed form and reviewed the language of MCR 2.622(B)(6), which provides that “[e]xcept as otherwise provided by law or by subrule (B)(7), a person or entity may not serve as a receiver or in any other professional capacity representing or assisting the receiver, if such person or entity” is one of a number of things.

The committee discussed a concern that the proposed form asked for the receiver's email address. Generally, the forms do not ask for the email address of a party or interested person because the court rules do not require this information. Some on the committee noted the concern is that the inclusion of an email address when not required by the rule might suggest email is an appropriate method of service when, in most cases, it is not. After some discussion, the committee still believed it would be helpful on the form and recommended including it. If it is included, the committee suggested adding (optional) after it to make it clear it is not a required field.

The committee also recommended that additional boxes be added below the box for the plaintiff and defendant to list the plaintiff's attorney and defendant's attorney.

SCAO staff also discussed with the committee that there are certain stylistic changes that would be made to the proposed forms, if approved. Specifically, it was noted that forms generally have the legal basis for the form in the bottom right portion of the form, not in the title. Additionally, instead of a footnote at the bottom of the last page there would be a parenthetical indicating that the individual signing should be the (receiver/authorized agent). It was noted there may be other stylistic changes, but that the committee would have an opportunity to review the modified draft forms before they were finalized.

The committee also discussed whether the structure of the form could be refined further to avoid unnecessary checkboxes. It was noted that if the language in item 2 was modified to make it clear that the individual need only indicate when one of the specified bases applies to that individual. This would allow the “none” checkbox to be eliminated and instead only require a check if the statement does apply to the individual. The language will also be reviewed to ensure it is lifted directly from the court rule. One change noted was that in item 9 on the form, the term used in the court rule is “interest materially adverse” not just “interest adverse.” The committee agreed this should be changed.

Some on the committee also noted that the language at the top of the form, which largely tracks the language allowable for verifications under MCR 2.114(B), might not be appropriate on this form. It was noted that SCAO-approved forms cannot mandate verification where a rule or statute does not require it. The committee agreed that there was no specific basis in court rule or statute requiring the filing of a statement of disinterestedness nor for requiring that statement to be verified or under oath. Some on the committee noted that they wanted the statement to be verified or under oath to help ensure its validity. Others on the committee noted in counties where receivers are not appointed on a regular basis, they would feel better knowing the form was verified and that it was on an SCAO-approved form to provide some accountability. SCAO staff indicated this issue would be addressed again internally, but there remained concerns about creating a process (in this case verification) by form, instead of by rule or statute.

The committee also discussed a concern that the rule, MCR 2.622(B)(6), does not require anything to be filed, nor any kind of affirmative statement as to each ground which would preclude the person from serving as receiver. Instead, the rule merely says that a person or entity who is one of the things listed in MCR

2.622(B)(6)(a)-(j) may not serve as a receiver. A concern was expressed that the creation of the form might imply that filing this form is part of a required process when the rule does not expressly so provide. However, the committee also discussed that while the rule does not expressly require such a form, the receiver cannot be appointed if they are disqualified under MCR 2.622(B) and the court must be informed in some way regarding the receiver's qualifications.

A concern was also expressed with respect to the footnote on the first page defining professionals. It was noted this is not necessarily required, as many forms do not define every term, and the term professional is not specifically defined by MCR 2.622.

The committee determined that the line asking for the name address and telephone number of the person signing be removed, as it was not necessary on the form.

It was also determined that the note regarding who would sign the form would be changed to a parenthetical after the word "Signature," not a footnote at the bottom of the form.

As noted below under D., the committee ultimately determined this form should be merged with the Acceptance of Appointment of Receiver form.

Staff Note: SCAO determined that the statement of disinterestedness, as provided, should not be incorporated into the acceptance of appointment of receiver. Instead, MCR 2.622(B)(6) is incorporated by reference (see D. below).

D. Acceptance of Appointment as Receiver under MCR 2.622(D)(1)

The committee discussed that, if this form were approved, certain stylistic changes would be made to the form so that it follows the same style as most other SCAO-approved forms. This will include moving the citation to the bottom of the form.

The committee added a box for plaintiff's attorney and defendant's attorney to the form. The footnote regarding who may sign (an authorized agent) would also be added as a parenthetical after the word signature.

It was also decided that if an email address is allowed to be included on the form, it would be included on all of the forms. If it is not allowed, it would be removed from the forms.

The committee recommended that the body of the statement of disinterestedness be merged with this form. This would entail the creation of a new item on this form, which would require the individual to indicate whether any of the bases that might disqualify the individual applied. The committee believed this would be an appropriate place to for the receiver to confirm that they are not precluded from serving as receiver for one of the reasons listed in 2.622(B)(6). This would come before what was currently item 1 and 2 on the proposed form, allowing the receiver to make it clear they qualify for appointment and then having the statement regarding acceptance. The committee discussed a concern that the statement of disinterestedness would only be coming after the receiver was appointed, but the committee believed this was still an appropriate place to remind the receiver of what is a legal prohibition that would apply throughout the process, even though they are only explicitly asked about it after appointment, but before acceptance.

The committee also recommended that a proof of service be added to the bottom of the form, indicating that the form had been served as required by court rule.

The committee considered whether it was necessary to have item 1 on the form, which notes that the individual has been appointed receiver. It was noted that this is important because it makes clear the receiver has been appointed, but may or may not accept.

The proposed form, as modified, was approved.

Staff Note: The SCAO redesigned the form for purposes of style and to list the consequence of accepting the appointment (item 2). A statement that the person is not disqualified under MCR 2.622(B)(6) was added to this list.

The SCAO determined that the email address should not be included because the inclusion of such information could imply service by email is appropriate when it generally will not be. This is consistent with the general policy on forms of not including an email address field for this reason.

Also, the definition was removed as SCAO generally does not define terms on forms in this manner and the definition does not stem from any statutory or rule-based definition, but instead appears to have been created for purposes of the form.

E. Notice of Receivership Under MCR 2.622(D)(2)

The committee discussed this proposed form and considered when it would be used. It was noted that the receiver must send this notice within 28 days of accepting the appointment as receiver. The receiver is obligated, in the notice, to provide notice of the entry of the order of appointment to “any person or entity having a recorded interest in all or part of the receivership estate.”

The committee discussed whether it was necessary to have item 1 on the form, which repeats what is found in MCR 2.622(D)(2). Some on the committee noted that it was likely included on the proposed form to avoid confusion as to what the notice was regarding. However, it was agreed that the last sentence of the proposed form, indicating “such notice is hereby provided” should be removed.

The committee also concluded that the title of the form should be changed to “Notice of Entry of the Order of Appointment of Receiver”

The committee determined that the form should not have paragraphs 1 and 2, but instead have one larger paragraph.

The committee determined a proof of service should also be added to the bottom of this form. The committee discussed whether the proof of service should list the individuals served, but determined it was not necessary because it would be the same list of people who have a recorded interest in the property. Further, the committee noted that it would be sufficient to say that the notice had been served on parties as required by MCR 2.622(D)(2).

The committee requested that space be added, as available, to make the description of property box and record interest holder box larger.

The committee discussed that, if this form were approved, certain stylistic changes would be made to the form so that it follows the same style as most other

SCAO-approved forms. This includes moving the citation to the bottom of the form.

The committee recommended adding a box for plaintiff's attorney and defendant's attorney to the form. The footnote regarding who may sign (an authorized agent) would also be added as a parenthetical after the word signature.

It was also noted that if an email address is allowed to be included on the form, it would be included on all of the forms. If it is not allowed, it would be removed from the forms.

The proposed form, as modified, was approved.

Staff Note: The SCAO redesigned the form for purposes of style and clarity.

Also, the SCAO determined that the email address should not be included because the inclusion of such information could imply service by email is appropriate when it generally will not be. This is consistent with the general policy on forms of not including an email address field for this reason.

Also, the definition was removed as SCAO generally does not define terms on forms in this manner.

F. Accounting of Receiver Pursuant to MCR 2.622(D)(4)

The committee discussed the language at the top of the form, which largely tracks the language allowable for verifications under MCR 2.114(B), and discussed that it is not required by statute or court rule. It was noted that SCAO-approved forms cannot mandate verification where a rule or statute does not require it. The committee agreed that there was no specific basis in court rule or statute this form to be verified or under oath. Some on the committee noted that they wanted the statement to be verified or under oath to help ensure its validity. SCAO staff indicated this issue would be addressed again internally, but there remained concerns about creating a process (in this case verification) by form, instead of by rule or statute. The same concern was expressed regarding the statement at the bottom of the form that the individual declares under penalty of perjury that the statement was true.

The committee considered a concern that while the rule requires the receiver to account for all receipts, disbursements, and distributions of money and property, the rule does not say when this must be done or how. Specifically, on the proposed form, item 1 provides blank spaces to indicating the period the accounting covers. Some on the committee expressed concern that this would imply there were specific statutory accounting periods. In other areas where there is a specific accounting period on the forms, it is usually due to a specific court rule or statute that prescribes the period. Others on the committee noted that it would be up to a judge to dictate how often the receiver must account to the court under MCR 2.622(D)(4) and did not believe the blanks would be an issue.

Some on the committee also expressed an opinion that this form may not be necessary. It was noted that many receivers have their own individualized way of accounting to the court and it does not seem that there is any specific requirement that an accounting be filed at any particular time. However, others on the committee indicated that this form would allow those receivers who want to use it a tool for completing an accounting. The committee also discussed that some had never seen an accounting in this much detail and wondered if the form was perhaps being used to drive practice without a specific requirement in the rule.

In light of the discussion regarding when and if the accounting form was specifically required to be filed, the committee noted that the inventory under MCR 2.622(D)(3) is required to be filed with the court and no proposed inventory form was included with the proposed forms. The committee noted that it may be that an inventory may be complicated and individualized and that there would be little utility in a generic inventory form with very little on it. Some on the committee with experience with receivership cases also noted that many receivers have their own accounting and inventory forms already.

The committee agreed that on the first page of the form the reference to “Schedule D” should be “Schedule C” because there is no “D” on the proposed form.

The committee discussed that, if this form were approved, certain stylistic changes would be made to the form so that it follows the same style as most other SCAO-approved forms. This would include moving the citation to the bottom of the form.

The committee determined a box for plaintiff's attorney and defendant's attorney should be added to the form. The footnote regarding who may sign (receiver/authorized agent) was moved to be a parenthetical after the word "signature." Additionally, because forms do not generally have footnotes explaining what a particular phrase is referring to, as the first page on this form does, this footnote was removed.

The committee also agreed that that if an email address is allowed to be included on the form, it would be included on all of the forms. If it is not allowed, it would be removed from the forms.

The proposed form, as modified, was approved.

Staff Note: The SCAO determined that this form should not be developed because it is not filed with the court. Instead, it was combined with the final report and accounting. See H. below.

G. Notice of Request for Fees and Expenses By Receiver Under MCR 2.622(F)(4)

The committee discussed that this form is required to be filed under MCR 2.622(F)(4).

The committee recommended that a proof of service be added to the bottom of the form.

The committee also discussed whether it was necessary to list what number interim request for fees this related to, in the event there was more than one. After some discussion, the committee concluded this was not necessary and the only distinction that was needed was whether it was interim or final, tracking what is found in the court rule.

The committee discussed item 1 under the notice and considered whether it should be reworded so as not to imply an objection must be filed. Instead, the committee agreed it should be rewritten to say, "Any objection to the application must be filed within 7 days after service of this notice." This is consistent with the language in MCR 2.622(F)(4).

The committee also discussed the fact that this form is not the application for payment of fees. Instead, it is the required notice that would be sent out after the application for payment of fees has been filed. In light of this, the committee determined the title of the form should be “Notice of Application for Fees and Expenses by Receiver” instead. The committee also noted that there was no application form that was proposed. Some on the committee noted that this was likely intentional, as the application for fees could take many forms and a standardized form might not be very helpful.

The committee discussed that, if this form were approved, certain stylistic changes would be made to the form so that it follows the same style as most other SCAO-approved forms. This will include moving the citation to the bottom of the form.

The committee determined a box for plaintiff’s attorney and defendant’s attorney should be added to the form. The footnote regarding who may sign (receiver/ authorized agent) would also be added as a parenthetical after the word signature.

The proposed form, as modified, was approved.

Staff Note: The SCAO redesigned the form for purposes of style and clarity.

The SCAO also determined that the email address should not be included because the inclusion of such information could imply service by email is appropriate when it generally will not be. This is consistent with the general policy on forms of not including an email address field for this reason.

Also, the definition was removed as SCAO generally does not define terms on forms in this manner and the definition does not stem from any statutory or rule-based definition, but instead appears to have been created for purposes of the form.

H. Final Report and Account Pursuant to MCR 2.622(D)(7)

The committee discussed the use of this form and that it was required to be filed under MCR 2.622(D)(7), which provides: “The receiver shall file with the court a final written report and final accounting of the administration of the receivership estate.”

Some on the committee noted that the language at the top of the form, which largely tracks the language allowable for verifications under MCR 2.114(B), is not required by statute or court rule. It was noted that SCAO-approved forms cannot mandate verification where a rule or statute does not require it. The committee agreed that there was no specific basis in court rule or statute requiring it be verified or under oath. Some on the committee noted that they wanted the statement to be verified or under oath to help ensure its validity. SCAO staff indicated this issue would be addressed again internally, but there remained concerns about creating a process (in this case verification) by form, instead of by rule or statute. The same concern was expressed regarding the statement at the bottom of the form that the individual declares under penalty of perjury that the statement was true.

The committee determined a proof of service at the bottom of the form. This will replace proposed item 4 which indicated that all parties have been properly served as required by MCR 2.622(D)(7).

The committee discussed that certain stylistic changes would be made to the form so that it follows the same style as most other SCAO-approved forms. This includes moving the citation to the bottom of the form.

Additionally, the committee determined a box for plaintiff's attorney and defendant's attorney should be added to the form.

The committee determined that the footnote regarding who may sign (receiver/authorized agent) should be added as a parenthetical after the word "signature."

The committee also discussed the language in item 3, specifically relating to what to do if there is a surplus. The committee was informed that it was believed this came from a specific statute or court rule and one of the committee members was going to look into the source of the language and provide the authority for the same. It was noted that the note was included on the draft form because it was believed it would be helpful to inform everyone what should occur if there is a surplus. It was noted that if this language does come from a statute or rule, it could be appropriate for inclusion, but if it is not founded on specific authority, it may need to be removed.

Additionally, the committee reworded the first sentence in item 3 to say: “The receiver submits this Final Report and Account pursuant to MCR 2.622(D)(7).”

The committee also recommended a new item 4 that indicates: “I have attached all necessary supporting documentation.”

The proposed form, as modified, was recommended for approval.

Staff Note: The SCAO redesigned the form for purposes of style and clarity, merging parts of the draft Accounting of Receiver (see F. above). The SCAO also determined that the email address should not be included because the inclusion of such information could imply service by email is appropriate when it generally will not be. This is consistent with the general policy on forms of not including an email address field for this reason.

The declaration under the penalties of perjury was removed because there is no legal requirement that the proposed form be signed in such a fashion (verification/under oath/penalty of perjury). The form should not require anything other than a signature.

Also, the definition was removed as SCAO generally does not define terms on forms in this manner and the definition does not stem from any statutory or rule-based definition, but instead appears to have been created for purposes of the form.

I. Order Regarding (I) Discharge of Receiver, (II) Administration of the Receivership Estate, And/Or (III) Termination of the Receivership

The committee discussed whether there was specific authority for this form and for much of the proposed language. While MCR 2.622(E)(4) contemplates the court being involved in removing the receiver, there is nothing specific regarding the discharge of the receiver, what language must be included, or other matters that must always be addressed. A concern was raised that the proposed form was going beyond the rule and attempting to create a procedure that might be ideal or best practice for the receiver, but it not expressly provided for in statute or court rule.

A number of committee members expressed concern with some of the language on the form and indicated that courts may not want all of the language included

preprinted on an SCAO-approved form. It was also noted that the conditions of discharge would depend on the nature of the case. The committee determined a judge would decide what was appropriate in this type of order and an SCAO-approved form should not be created.

Some noted that a simple order of discharge could be created, but others noted it was not needed as there was basically nothing that could be preprinted on the form based on the language of the rule.

The committee did not recommend this form for approval.

Respectfully submitted,

Amy L. Garoushi