



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

May 4, 2015

**MICHIGAN COURT FORMS COMMITTEE
General Civil and Miscellaneous Committee
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 taken within “ 21 days or the time allowed by statute after entry of the judgment, order,

or decision appealed . . .” The committee agreed that the current 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 in the 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. It was noted that 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.michiganlegalthelp.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.

Staff note: The domestic relations committee recommended some clarifying changes to this form. The following changes were made to MC 306:

A new line was added to require the individual filing the form to state the date of the next scheduled hearing. This was added to help judge’s determine whether to allow the withdraw based on the date of the next hearing.

Additionally, the consent heading was removed, as it was causing confusion as to who should sign the form and how it would be used. To further clarify the area formerly under this heading, the first signature line had “client” added in front of

it and the second signature line had “withdrawing.”

Additionally, because the order stemming from the use of this form is generally entered without a hearing, the phrase “ex parte” was added before the word order.

Additionally, the domestic relations committee recommended a new form be developed specifically for use when both parties are stipulating to the entry of the order.

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.

The recommendations made by the committee are still under review by the administration. Once specific decisions are made with respect to the recommendations, a second set of minutes will be posted outlining the committee's discussion and recommendations, as well as any changes resulting from review of the recommendations by the SCAO administration.

Respectfully submitted,

Colin Boes