

Miscellaneous Administrative Duties

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Miscellaneous Administrative Duties

15-01 APPOINTMENTS

A. Probate Judge

1. Vacancies in Elective County Offices

a. County Office

If a vacancy is in any county office, either elective or appointive, other than county clerk or prosecuting attorney, the presiding or senior judge of probate, the county clerk, and the prosecuting attorney shall appoint some suitable person to fill such vacancy. See Sections 4-11 and 15-01. (MCL 168.209, MCL 201.35)

b. Register of Deeds

In the event of vacancy in the office of register of deeds, or absence or inability to perform the duties of office, and in the absence of the deputy register, the probate judge may appoint some suitable person to perform the duties of the register of deeds for the time being. (MCL 53.93)

c. County Drain Commissioner

When a county drain commissioner is disqualified because of conflict of interest or otherwise, the probate judge shall appoint a disinterested commissioner of an adjoining or nearby county to make the apportionment of benefits on said drain. (MCL 280.382)

2. Other Appointments

a. Appointment to State Boundary Commission

The presiding probate judge in each county shall appoint two persons and two alternates for those persons residing in that county to serve on the State Boundary Commission during such time as the commission shall have under consideration municipal boundary adjustments for territory lying within his or her county. (MCL 123.1005)

b. Reorganization of School Districts

The probate judge appoints five members to the intermediate district committee for the reorganization of school districts. (MCL 388.685)

c. Soldiers' Relief Commission

The judge of probate in each county shall appoint three honorably-discharged veterans to be known as the "Soldiers' Relief Commission." The judge shall have the authority to remove any such member for cause. (MCL 35.22) "In any county in which the board of supervisors adopts the provisions of this act (by creating a county department of veterans' affairs), section 2 of the act creating the soldiers' relief commission created under the provisions of Act No. 214 of the Public Acts of 1899, as amended, being section 35.22 of the Compiled Laws of 1948, is hereby declared to be inoperative and the powers and duties of commissions are hereby transferred to the county department of veterans' affairs created under the provisions of this act" (MCL 35.622)

d. County Tax Allocation Board

The probate judge shall select one of the members of the County Tax Allocation Board according to the provisions of MCL 211.205(d). This does not apply in counties where a majority of the registered and qualified electors have adopted separate tax limitations. (MCL 211.205[j])

B. Circuit Judge**1. Vacancies in Elective Offices****a. Prosecuting Attorney or County Clerk**

If there becomes a vacancy in the office of county clerk or prosecuting attorney, it shall be filled by appointment by the judge or judges of that judicial circuit. An appointee holds office for the remainder of the unexpired term and until a successor has been elected and qualified. However, if the general election is more than 182 days after the vacancy occurs, the appointee only holds until either the appointee or another successor is elected and qualifies at the general election. See also Section 4-02. (Const 1963, art 6, § 14, MCL 168.209[1],[3], MCL 201.35)

If a temporary vacancy exists in the office of county clerk or prosecuting attorney, the judge or judges of the circuit court may make a temporary appointment. If there is more than one judge in the county where there is a vacancy, the chief judge shall promptly call a meeting of all of the judges in the county to make the appointment to vacant office. In counties where there is

more than one judge, a majority vote of the circuit judges makes the appointment. (MCL 201.15, MCL 201.35)

b. Special Prosecutor

If the prosecuting attorney of a county is disqualified by reason of conflict of interest or is otherwise unable to attend to the duties of the office, the circuit court for that county may appoint an attorney at law as a special prosecuting attorney. This is a statutorily-created process requiring findings of fact and certain limitations if an assistant prosecuting attorney has been or can be appointed by the prosecuting attorney. See also Section 15-01. (MCL 49.160)

2. Other Appointments

a. County Jail Monitor

Case law has recognized the right of a circuit court judge to appoint a jail monitor. A circuit court judge can appoint a monitor to help effect relief given in a lawsuit brought to determine whether a statutory duty to provide a suitable and sufficient county jail has been established. See also Section 15-06. (*Wayne County Jail Inmates v Wayne County Sheriff*, 391 Mich 359, 216 NW2d 910 [1974])

3. Approval of Others' Appointments

a. Deputy County Clerks

The statutes that govern county clerks include MCL 50.63, MCL 600.571(c), and MCL 600.579. See also Section 4-02.

b. Assistant Prosecuting Attorneys

- 1) The prosecuting attorney of any county is authorized and empowered to appoint an assistant prosecuting attorney, by and with the consent of the circuit judge of the judicial circuit in which the county is situated, which appointment shall be in writing and filed with the county clerk. (MCL 49.41)
- 2) The prosecuting attorney of any county in this state having a population of over 60,000 inhabitants and less than 350,000 inhabitants is authorized and empowered to appoint a second assistant prosecuting attorney, by and with the consent of the circuit judge of the judicial circuit in which the county is situated, which appointment shall be in writing and filed with the county clerk. (MCL 49.51)

15-02 APPOINTMENT OF COUNSEL/REPRESENTATIVES IN CIRCUIT COURT

A. Introduction

Any consideration to appoint counsel in circuit court must be divided into two classes: (1) trial court, and (2) appellate court. For trial court appointments, the type of cases, the method used, and the manner of payment vary in the circuit courts. Appointment of appellate counsel by circuit courts and the manner of practice by appointed appellate attorneys is controlled by state law, regulations, and an administrative order of the Michigan Supreme Court. Chief judges should review their court's practices in appointing counsel and selecting guardians ad litem and next friends to assure that those appointed reflect the racial, ethnic, and gender composition of the community being served. Appointment of counsel generally is regulated by MCR 8.123.

B. Appointment of Counsel in Criminal Cases

1. Applicable Law for Appointment in Felony Cases

The majority of appointments made at the trial court level by circuit courts relate to appointing counsel for indigents in felony cases.

a. Michigan Court Rule

1) Advice of Right

At the arraignment on the warrant or complaint, the court must advise the defendant of entitlement to a lawyer's assistance at all subsequent court proceedings, and that the court will appoint a lawyer at public expense if the defendant wants one and is financially unable to retain one. The court must question the defendant to determine whether the defendant wants a lawyer and, if so, whether the defendant is financially unable to retain one. (MCR 6.005[A])

2) Appointment of a Lawyer

If the defendant wants a lawyer and if the court determines that the defendant is financially unable to retain a lawyer, the court must promptly appoint a lawyer and promptly notify the lawyer of the appointment. (MCR 6.005[D])

See also MCR 6.905(A),(B) and Section 15-03.

3) Advice at Subsequent Proceedings

If a defendant has waived the assistance of a lawyer, the record of each subsequent proceeding need show only that the court advised the defendant of the continuing right to a lawyer's assistance (at public expense if the defendant is indigent) and that the defendant waived that right. (MCR 6.005[E])

4) Multiple Representation

When two or more indigent defendants are jointly charged with an offense or offenses or their cases are otherwise joined, the court must appoint separate lawyers unassociated in the practice of law for each defendant except under certain conditions as specified in court rule. (MCR 6.005[F])

b. Case Law

The trial court has the right to determine or deny fees to appointed counsel. (*In the Matter of Attorney Fees of Burgess*, 69 Mich App 689, 245 NW2d 348 [1976])

The Legislature has authorized the trial judge to exercise discretion in determining reasonable compensation for the services performed. (*In the Matter of the Attorney Fees of Ruth Ritter and Raymond E. Willis*, 63 Mich App 24, 233 NW2d 876 [1975], *rev'd on other grounds* 399 Mich 563 [1977], *In the Matter of Attorney Fees of Burgess, supra*, 692)

The trial judge has wide discretion to determine the value of services rendered by appointed counsel. (*In the Matter of Attorney Fees of William J. Hayes*, 55 Mich App 30, 222 NW2d 20 [1974], *lv den* 394 Mich 794 [1975])

Ordering a fee grossly below scheduled fees or consistently refusing to award fees even approximating those in an established fee schedule might lead to the conclusion that there was not the proper exercise of discretion. (*In the Matter of Attorney Fees of Ruth Ritter and Raymond E. Willis, supra*, 28)

A court may remove appointed counsel for gross incompetence, physical incapacity or contumacious conduct. (*People v Fox*, 97 Mich App 324, 293 NW2d 814 [1980], *rev'd on other grounds* 410 Mich 871 [1980])

c. Statutes

The chief judges of the circuit courts have the responsibility for appointment in felony cases or they may direct the magistrate, as defined in MCL 761.1(f), to appoint counsel in felony cases. (MCL 775.16)

An attorney appointed to represent an indigent is not required to follow the case into another county or into the Supreme Court, but if the attorney does so, compensation may be increased as fixed by the court. (MCL 775.17)

2. Reimbursement of Court-Appointed Attorney Fees

Court costs, including costs of providing legal assistance, may only be imposed pursuant to statutes cited or a specific penal statute under which a defendant is convicted. Costs may be authorized as a condition of probation but are limited by the defendant's ability to pay. For details, see Volume 1, *Michigan Circuit Court Benchbook*, p. 278, at <http://courts.michigan.gov/mji/resources/circuit-court/circuit-court-bb.htm>. For more information, see also SCAO-Approved form CC 402, Order Regarding Appointment of Appellate Counsel and Transcript, at <http://courts.michigan.gov/scao/courtforms/appeals/cc402.pdf>. (MCL 769.3, MCL 771.3[4])

A person does not have to be completely without financial means in order to be considered "indigent" for purposes of determining ability to pay for competent defense counsel. (*People v Bohm*, 393 Mich 129 [1974])

If a defendant (in a criminal felony case) is able to pay part of the cost of a lawyer, the court may require contribution to the cost of providing a lawyer and may establish a plan for collecting the contribution. (MCR 6.005[C])

See also MCR 6.905(D), MCL 769.1(8) and Sections 6-13 and 15-03.

C. Appointment of Counsel for Postappeal Relief in Criminal Cases

The appointment of counsel for indigents seeking postappeal relief pursuant to MCR subchapter 6.500 is controlled by MCR 6.505. If the defendant has requested appointment of counsel and the court has determined that the defendant is indigent, the court may appoint counsel for the defendant at any time during the proceedings pursuant to MCR subchapter 6.500. Counsel must be appointed if the court directs that oral argument or an evidentiary hearing be held. (MCR 6.505[A])

D. Appointment of Counsel at Appellate Level in Criminal Cases

1. Applicable Law

The appointment of appellate counsel for indigents in criminal cases is controlled by MCR 6.425(F) and (G), the Appellate Defender Act (MCL 780.711 *et seq.*), the Michigan Appellate Assigned Counsel System Regulations (MAACS Regulations) effective November 15, 1985, amended January 28, 1988, July 10, 2002 and January 1, 2005, and the Minimum Standards for Indigent Criminal Appellate Defense Services set forth in Supreme Court Administrative Order 2004-6 and Supreme Court

Administrative Order 1989-3 (*In re the Appointment of Appellate Assigned Counsel*).

2. Procedure for Appointment of Appellate Counsel

The Appellate Defender Commission was created by the Appellate Defender Act. The commission is responsible for compiling and keeping current a statewide roster of attorneys eligible to accept criminal appellate defense counsel appointments for indigents. (MCL 780.711 *et seq.*)

a. Appellate Assigned Counsel System

Section 1 of the Michigan Appellate Assigned Counsel System Regulations requires the Appellate Defender Commission to establish an Appellate Assigned Counsel System to compile and maintain a statewide roster of attorneys eligible and willing to accept criminal appellate defense appointments. It is called the Michigan Appellate Assigned Counsel System (MAACS). Supreme Court Administrative Order 1989-3 requires the judges of each circuit court to comply with Section 3 of the MAACS Regulations.

1) Selection of Counsel

The MAACS administrator is required to provide each circuit court a list of local attorneys eligible and willing to accept appellate appointments from each court's jurisdiction under Section 2(2) of the MAACS Regulations.

Pursuant to Section 3(1) of the MAACS Regulations, the judges of each circuit court must appoint a local designating authority who may be responsible for the selection of assigned appellate counsel from the local list provided by the MAACS administrator. Section 3(1) also makes the local designating authority responsible for such other tasks in connection with the operation of the list as may be necessary at the trial court level.

Pursuant to Section 3(4), in each circuit court, the chief judge shall determine whether appellate counsel are to be selected by the chief judge or the local designating authority. If a chief judge decides to retain the discretion to select counsel, the discretion must be personally exercised and not delegated.

The rules for selecting appellate assigned counsel for both the chief judge and the local designating authority are set forth in Section 3(5), (6), and (7) of the MAACS Regulations. As a general rule, each circuit court will appoint the State Appellate Defenders Office in every third, fourth, or fifth case, depending upon a formula adopted by the commission. Most other appointments will be made by systematically rating the local list. However, there are some exceptions set forth in the MAACS Regulations.

2) Determining Eligibility

MAACS has also developed a classification of common criminal offenses by which the local designating authority can determine which of three levels of attorneys are eligible to handle an appeal.

3) Record of Appointments

The local designating authority is also responsible for keeping a record of appointments made and for providing certain information to MAACS on a regular basis.

4) Fee Schedule

Although the fee schedule is set by circuit court, it is good management practice to consult with the funding unit.

Operation directions for the local designated authority and copies of MAACS Regulations can be obtained from MAACS, 1375 South Washington, Suite 300, Lansing, MI 48913, telephone 517-334-1200.

E. Appointment of Counsel in Child-Support Contempt Proceedings

In child-support enforcement matters, circuit courts are required to provide legal counsel at public expense to any indigent person who is cited for civil contempt if the court is considering incarceration. Courts should take the necessary steps to ensure that counsel is available in these cases. (*Mead v Batchlor*, 435 Mich 480 [1990])

F. Appointment of Counsel in Personal-Protection Contempt Proceedings

In personal-protection violation hearings, circuit courts are required to provide legal counsel at public expense to any indigent person who is cited for criminal contempt because the penalty if found guilty is incarceration. Courts should take the necessary steps to ensure that counsel is available in these cases. (*Mead v Batchlor*, 435 Mich 480 [1990], MCR 3.708[D])

G. Authority for Appointment of Attorneys, Reimbursement, Discharge, Juveniles (Family Division)

1. Delinquency Proceedings (MCL 712A.4[6], MCR 3.915[A])

- a. The court must advise the juvenile of the right to an attorney at each stage of the proceedings on the formal calendar.
- b. The court shall appoint an attorney for a juvenile if:

- 1) the parent refuses or fails to appear and participate in the proceedings,
 - 2) the parent is the complainant or victim,
 - 3) the juvenile and those responsible for the support of the juvenile are found financially unable to retain an attorney and the juvenile does not waive an attorney,
 - 4) those responsible for the juvenile refuse or neglect to retain an attorney for the juvenile and the juvenile does not waive an attorney, or
 - 5) the court determines that the best interest of the juvenile or the public require appointment.
- c. The juvenile may voluntarily and understandingly waive an appointed attorney under (1) through (4) above if no objection to the waiver is made by the juvenile's parent or guardian ad litem.

2. Child-Protective Proceedings (MCL 722.630, MCR 3.915[B])

a. Respondent

- 1) A respondent in a child-protective proceeding shall be advised of right to counsel at the first court appearance.
- 2) A respondent financially unable to retain counsel may request a court-appointed attorney at the first court appearance or at any later stage of the proceedings. The court shall appoint an attorney to represent a respondent who is financially unable to retain an attorney.
- 3) A respondent may waive right to counsel. The court may not accept a waiver by a respondent who is a minor when a parent or guardian ad litem objects to the waiver.

b. Child

- 1) The court must appoint an attorney to represent the child at every hearing.
- 2) The child's right to an attorney may not be waived.

3. Indian Child Welfare Act (25 USC 1912b)

In any case where the court determines indigence, the parent or Indian custodian shall have the right to court-appointed counsel in any removal, placement, or termination proceeding. The court may, in its discretion, appoint counsel for the child upon finding that such an appointment is in the best interest of the child.

4. Reimbursement of Court-Appointed Attorney Fees

Court-appointed attorney fees are chargeable against the party for whom the attorney was appointed or against those persons responsible for support of the individual for whom the attorney was appointed. Enforcement of an order for reimbursement of attorney fees is enforceable through contempt proceedings. For additional information, see Volume 1, *Michigan Circuit Court Benchbook*, p. 278, at <http://courts.michigan.gov/mji/resources/circuit-court/circuit-court-bb.htm>. See also SCAO-Approved form JC 38, Order for Reimbursement, at <http://courts.michigan.gov/scao/courtforms/juvenile/jc38.pdf>. (MCR 3.915[E], MCL 712A.4[6])

5. Discharge of Counsel

Court-appointed attorneys serve the clients whom they represent until they are discharged by the court. (MCR 3.915[D])

H. Authority for Appointment of Attorneys, Adoption Proceedings (Family Division)

1. Step-Parent Adoptions (*Matter of Sanchez*, 422 Mich 758 [1985])

In cases that may result in nonconsensual termination of parental rights of the noncustodial parent, under the step-parent adoption provisions of the Adoption Code, the probate court has discretionary authority to appoint counsel to assist the indigent noncustodial parent in contesting termination.

I. Appointment of Attorneys in Emancipation Proceedings (MCL 722.4b)

After a petition for emancipation is filed, the court may appoint legal counsel for the minor. The court may also appoint legal counsel for the minor's parents or guardian if they are indigent and oppose the petition.

J. Appointment of Attorneys and Guardians Ad Litem for Ancillary Proceedings in Family Division

See Section 15-04 for information on probate court proceedings over which the circuit court has ancillary jurisdiction.

K. Appointment of Attorneys in Infectious Disease Proceedings (MCL 333.5205)

An individual who is the subject of a petition filed pursuant to this section or an affidavit filed pursuant to MCL 333.5207 shall have the right to counsel at all stages of the proceedings. If the individual is unable to pay the cost of counsel, the circuit court shall appoint counsel for the individual.

L. Appointment of Guardians Ad Litem and Next Friends**1. Civil Procedures, Generally**

If a minor or incompetent person does not have a conservator, the court shall appoint either a next friend to appear on the person's behalf as a plaintiff or a guardian ad litem if the person is named as a defendant. (MCR 2.201[E])

2. Divorce, Separate Maintenance, or Annulment

Although not required by court rule or statute, the court may order the appointment of a next friend or guardian ad litem for a legally married minor who is permitted to prosecute or defend an action for divorce, separate maintenance, or annulment in his or her name.

If it is alleged in any such action that the marriage was not lawful, then appointment of a next friend or guardian ad litem is required. In addition, if an action is brought by or against an incompetent person, the appointment of a guardian ad litem is required.

(MCL 551.251, MCR 2.201[E], MCR 3.204)

3. Personal-Protection Proceedings

If the petitioner in a personal-protection action is a minor or a legally incapacitated person, the petitioner must proceed through a next friend. The petitioner shall certify that the next friend is not disqualified by statute and that the next friend is an adult. Unless the court determines appointment is necessary, the next friend may act on behalf of the minor or legally incapacitated person without appointment. However, the court shall appoint a next friend if the minor is less than 14 years of age. The next friend is not responsible for the costs of the action. (MCR 3.703[F])

4. Child Custody Act

If a child-custody dispute has been submitted to the circuit court as an original action under the Child Custody Act or has arisen from another action in the circuit court, or as a result of an order or judgment of the circuit court, the court may appoint a guardian ad litem or counsel for the child. (MCL 722.27[1][d])

5. Paternity Act

Although not required to do so, the circuit judge may appoint a next friend or guardian ad litem for the minor child. (MCL 722.714[9])

6. Family Division Juvenile and Adoption Proceedings

The court may appoint a guardian ad litem for a party if the welfare of the party requires it. (MCR 3.916)

7. Disinterment of War Veterans

The court shall appoint a guardian ad litem, upon petition of any party in interest, for minors who are surviving children or next of kin of a war veteran. The procedure for appointment of the guardian is governed by MCR 2.201(E). (MCL 35.842)

8. Taxation of Inheritances

A proceeding to enforce a lien under the Michigan Estate Tax Act is brought in the circuit court. The act provides if an insane, infant, or mentally incompetent person has an interest in the property upon which a lien exists, the court may appoint a guardian ad litem for the person upon motion of the attorney general or upon the request of the infant or at the request of the insane or otherwise incompetent person's general guardian. (MCL 205.203[12])

9. Michigan Community Property Act

While this act was generally repealed effective May 10, 1948, its provisions may still apply under certain circumstances as more fully set forth in the repealing act found at MCL 557.252 *et seq.* In an action brought under this act, the court must appoint a guardian ad litem for any spouse who is noncompos mentis and has no guardian. (MCL 557.211[b])

10. Unborn Persons

In any action or proceeding where it appears an unborn person may become entitled to a property interest, real or personal, legal or equitable, involved in or affected by the action, the court may, at its own motion, or motion of any party, appoint a guardian ad litem of the unborn person. (MCL 600.2045)

11. Land of Infants and Incompetents; Court Order Sale, Lease, or Exchange

The court may appoint a guardian ad litem to represent any infant or incompetent person governed by this provision of law. The process for appointing the guardian is as provided in MCR 2.201(E). (MCL 600.2928)

M. Reimbursement of Court-Appointed Attorney Fees

Court costs, including costs of providing legal assistance, may only be imposed pursuant to statutes cited or a specific penal statute under which a defendant is convicted. Costs may be authorized as a condition of probation but are limited by the defendant's ability to pay. See SCAO-Approved form CC 402, Order Regarding Appointment of Appellate Counsel and Transcript, at <http://courts.michigan.gov/scao/courtforms/appeals/cc402.pdf>. (MCL 769.3, MCL 771.3[4])

A person does not have to be completely without financial means in order to be considered "indigent" for purposes of determining ability to pay for competent defense counsel. (*People v Bohm*, 393 Mich 129 [1974])

If a defendant (in a criminal felony case) is able to pay part of the cost of a lawyer, the court may require contribution to the cost of providing a lawyer and may establish a plan for collecting the contribution. (MCR 6.005[C])

See also MCR 6.905(D) and MCL 769.1(8). See also Sections 6-13 and 15-03.

N. Procedure for Appointment of Trial Counsel for Indigents

Appointment of trial counsel for indigents varies greatly among the courts with respect to method used, qualifications for appointment, standards of practice, manner of appointment, payment, types of cases for which appointments are made, and types of record systems.

Each trial court must adopt a local administrative order that describes the court's procedures for selecting, appointing, and compensating counsel who represent indigent parties in that court. The trial court must submit the local administrative order to the state court administrator for review pursuant to MCR 8.112(B)(3). The state court administrator shall approve a plan if its provisions will protect the integrity of the judiciary. (MCR 8.123[B], [C])

1. Elements of an Adequate Appointment System

An adequate system should establish training requirements, qualification and/or experience requirements, standards of practice, a fair selection system, a payments schedule, and a record keeping system.

2. Methods

Three methods for appointing trial counsel are used in Michigan.

a. Appointment of Counsel from the Bar

An appointment of counsel system operates where private attorneys either solicit appointments from judges or are placed upon a list from which appointments are made. The manner of appointment varies among the circuits with some courts relying upon appointment by the judge and others using rotating lists.

b. Defender System

A defender system is a public or private nonprofit organization with full-time or part-time salary staff handling a percentage of the assigned cases. The percentage of cases handled by the defender varies among the courts. It is not possible for a defender office to handle all assigned cases because of possible conflicts of interest.

c. Contract System

A contract system is one in which an attorney, law firm, or a bar association agrees to provide particular services for a specified dollar amount.

Some counties use a variation of one or more of the systems.

3. Payment

There are almost as many methods of payment as there are circuits in Michigan. Fee schedules include, but are not limited to, hourly rates, daily rates, and types of cases. Normally, the fee schedule is established by circuit court with the approval of the funding unit. Although the court has the right to set the fee schedule, it is good management practice to consult with the funding unit. See also Section 15-02.

4. Types of Cases

The types of cases handled also vary among the courts. They include felonies, misdemeanors, juvenile offenses, civil commitments, line-ups, probation violations, diversion review hearings, extraditions, paternity, and for witnesses that may be giving self-incriminating testimony. It appears that indigents may be entitled to appointment of counsel in show-cause hearings relating to the failure to pay child support. (See *McKinstry v Genesee County Circuit Court*, 669 F Supp 801 [ED Mich, 1987])

O. Record Keeping and Reporting

1. Required Records

Pursuant to MCR 8.123(D), at the end of each calendar year, a trial court must compile an annual electronic report of the total public funds paid to each attorney for appointments by that court.

This court rule applies to appointments of attorneys in any capacity, regardless of the indigency status of the represented party. Trial courts that contract for services to be provided by an affiliated group of attorneys may treat the group as a single entity when compiling the required records.

The records required by this court rule must be retained for the period specified by the State Court Administrative Office's General Schedule 16. See the schedule on the SCAO website at http://courts.michigan.gov/scao/resources/standards/cf_schd.pdf. (MCR 8.123[D])

A trial court must submit its annual electronic report to the state court administrator in the form specified by the state court administrator. When requested by the state court administrator, a trial court must cooperate in providing additional data on an individual attorney, judge, or attorney group for a period specified by the request, including the number of appointments by each judge, the number of appointments received by an individual attorney or attorney group, and the public funds paid for appointments by each judge. (MCR 8.123[F])

2. Public Access to Records

The records must be available at the trial court for inspection by the public, without charge. The court may adopt reasonable access rules, and may charge a reasonable fee for providing copies of the records. (MCR 8.123[E])

15-03 APPOINTMENT OF COUNSEL IN DISTRICT/ MUNICIPAL COURT

A. Constitutional Authority

The right to assistance of counsel to any person charged with a crime is a fundamental right made applicable to state court proceedings by the 14th Amendment of the United States Constitution. (*Gideon v Wainwright*, 335 US 355, 9 L Ed 2d 799)

Absent a knowing and intelligent waiver, no person may be imprisoned for any offense, whether classified as petty, misdemeanor, or felony, unless represented by counsel at trial. (*Argersinger v Hamlin*, 407 US 25, 32 LEd 2d 530; *People v Studaker*, 387 Mich 698, 199 NW2d 177 [1972])

B. Michigan Court Rules and Statutes Regarding Felony Cases

1. Advice of Right

At the arraignment on the warrant or complaint, the court must advise the defendant of entitlement to a lawyer's assistance at all subsequent court proceedings, and that the court will appoint a lawyer at public expense if the defendant wants one and is financially unable to retain one. The court must question the defendant to determine whether the defendant wants a lawyer and, if so, whether the defendant is financially unable to retain one. (MCR 6.005[A])

2. Appointment of a Lawyer

If the defendant wants a lawyer and if the court determines that the defendant is financially unable to retain a lawyer, it must promptly appoint a lawyer and promptly notify the lawyer of the appointment. (MCR 6.005[D])

3. Advice at Subsequent Proceedings

If a defendant has waived the assistance of a lawyer, the record of each subsequent proceeding need show only that the court advised the defendant of the continuing right to a lawyer's assistance (at public expense if the defendant is indigent) and that the defendant waived that right. (MCR 6.005[E])

4. Appointment by Magistrate

The chief judge of the circuit court may direct the magistrate, as defined in MCL 761.1(f), to appoint counsel in felony cases. (MCL 775.16)

Note: Pursuant to MCL 761.1(f), a "magistrate" is a district court judge or a municipal court judge, and does not include a district court magistrate. A district court magistrate may only exercise the powers, jurisdiction, and duties explicitly

provided by law. MCL 600.8513 allows that a district court magistrate, when authorized by the chief judge of the district, may "approve and grant petitions for the appointment of an attorney to represent an indigent defendant accused of any misdemeanor punishable for not more than 1 year or ordinance violation punishable by imprisonment." (Emphasis added.)

C. Michigan Court Rules and Statutes Regarding Misdemeanor Cases Cognizable by the District Court

1. An indigent defendant has a right to an appointed attorney whenever the offense charged requires on conviction a minimum term in jail, or the court determines it might sentence to a term of incarceration, even if suspended. (MCR 6.610[D][2], [E][2])

When this circumstance exists, the court must inform the defendant of the right to have an attorney appointed at public expense if the defendant is indigent:

- 1) whenever a defendant is arraigned on an offense over which the district court has jurisdiction. (MCR 6.610[D][1])
- 2) before accepting a plea of guilty or no contest on a misdemeanor within the district court's jurisdiction. (MCR 6.610[E][2])

The right to assistance of an attorney appointed by the court is not waived unless the defendant has been informed of the right and has waived it in a writing that is made part of a file or orally on the record. See SCAO-Approved form DC 213, Advice of Rights, at <http://courts.michigan.gov/scao/courtforms/misdcriminal/dc213.pdf>. (MCR 6.610[D][3])

If an indigent defendant is without an attorney and has not waived the right to an appointed attorney, the court may not sentence the defendant to jail or to a suspended jail sentence. (MCR 6.610[D][2])

2. Immediately after imposing a sentence or incarceration, even if suspended, the court must advise the defendant, on the record or in writing, that (a) if the defendant wishes to file an appeal and is financially unable to retain a lawyer, the court will appoint a lawyer to represent the defendant on appeal, and (b) the request for a lawyer must be made within 14 days after sentencing. (MCR 6.610[F][3])
3. At the arraignment on an alleged probation violation, the court must advise the probationer that the probationer is entitled to a lawyer's assistance at the hearing and at all subsequent court proceedings, and that the court will appoint a lawyer at public expense if the probationer wants one and is financially unable to retain one. (MCR 6.445[B][2])

If a probationer has waived the assistance of a lawyer, the record of each subsequent proceeding need show only that the court advised the probationer of the continuing right to a lawyer's assistance (at public expense if the probationer is indigent) and that the probationer waived that right. (MCR 6.445[D], MCR 6.005[E], MCR 6.445[F][1], MCR 6.445[B][2][b])

4. District court magistrates, when authorized by the chief district judge, may appoint counsel to represent indigent defendants accused of misdemeanors punishable by imprisonment for not more than one year or ordinance violations punishable by imprisonment. (MCL 600.8513)

D. Michigan Court Rules Regarding Juvenile Cases

A juvenile charged with a life offense subject to the jurisdiction of the district court and the circuit court has the right to an appointed attorney pursuant to MCR 6.905. See also Sections 6-13 and 15-02.

1. Advice of Right

If the juvenile is not represented by an attorney, the magistrate or court shall advise the juvenile at each stage of the criminal proceedings of the right to the assistance of an attorney. If the juvenile has waived the right to an attorney, the court at later proceedings must reaffirm that the juvenile continues to not want an attorney. (MCR 6.905[A])

2. Court-Appointed Attorney

Unless the juvenile has a retained attorney, or has waived the right to an attorney, the magistrate or the court must appoint an attorney to represent the juvenile. (MCR 6.905[B])

E. Miscellaneous References

1. Compensation of Court-Appointed Attorneys (MCL 775.16, MCR 8.202).
2. Petition and Order for Court-Appointed Attorney (SCAO-Approved form MC 222 at <http://courts.michigan.gov/scao/courtforms/generalcriminal/mc222.pdf>).
3. Statement of Service and Order for Payment of Court-Appointed Representative (SCAO-Approved form MC 221, which can be accessed on-line at <http://courts.michigan.gov/scao/courtforms/general/mc221.pdf>).

F. Procedures, Record Keeping, and Reporting for Appointment of Trial Counsel

The procedures for appointment of counsel and record keeping and reporting requirements

are the same as specified for the circuit court. See Section 15-02. In addition, chief judges should review their court's practices in the assignment of counsel to ensure that those appointed reflect the racial, ethnic and gender composition of the community being served. (MCR 8.123)

G. Reimbursement of Court-Appointed Attorney Fees

1. Cases Not Involving Juveniles

Court costs, including costs of providing legal assistance, may only be imposed pursuant to statutes cited or a specific penal statute pursuant to which a defendant is convicted. Costs may be authorized as a condition of probation but are limited by the defendant's ability to pay. See *People v Bohm*, 393 Mich 129 (1974). (MCL 769.3, MCL 771.3[5])

2. Cases Involving Juveniles

The court may assess cost of legal representation, or part thereof, against the juvenile or against a person responsible for the support of the juvenile, or both. The order assessing cost shall not be binding on a person responsible for the support of the juvenile unless an opportunity for a hearing has been given and until a copy of the order is served on the person, personally or by first-class mail, to the person's last-known address. (MCR 6.905[D])

See also Sections 6-13 and 15-02, and MCL 769.1(8).

15-04 APPOINTMENT OF REPRESENTATIVES IN PROBATE COURT

A. Introduction

Court-appointed representatives in probate court include attorneys, guardians ad litem, and visitors. Chief judges should review their court's practices in the assignment of counsel, selection of guardians ad litem, and visitors to ensure that those appointed reflect the racial, ethnic, and gender composition of the community being served. See MCR 8.123.

B. Procedures, Record Keeping, and Reporting for Court-Appointed Attorneys

The procedures for appointment of counsel (see Section 15-02, Appointment of Counsel/Representatives in Circuit Court) and record keeping and reporting requirements are the same as specified for the circuit court, except that the Supreme Court may, by court rule, establish compensation to be paid for counsel of indigents and may require that counsel be appointed from a system or organization established for the purpose of providing representation in proceedings under the Mental Health Code. (MCL 330.1454, MCL 330.1615, MCR 5.732, MCR 8.123)

There is no statute or court rule applicable to appointment of appellate counsel. In cases where a party qualified for an attorney at the initial hearing, case law indicates that person, assuming no change in financial circumstances, is entitled to appointment of appellate counsel on appeal. (*Matter of Sanchez*, 422 Mich 758 [1985])

Chief judges should review their court's practices in the assignment of counsel to ensure that those appointed reflect the racial, ethnic, and gender composition of the community being served.

C. Authority for Appointment of Attorneys (applies to circuit court ancillary proceedings)

1. Conservator, Protective Order - Minor

The court may appoint an attorney for an unrepresented minor in a proceeding for appointment or removal of a conservator or for a protective order if the court determines that the minor's interest may be inadequately represented. An attorney appointed by the court to represent a minor has the powers and duties of a guardian ad litem. The court must give preference to the wishes of a minor age 14 and older. (MCL 700.5213[4], MCL 700.5219[4], MCL 700.5406, MCL 700.5431)

2. Guardian - Adult

An alleged incapacitated individual is entitled to be represented by legal counsel. If the alleged incapacitated individual has legal counsel appointed, the appointment of a guardian ad litem terminates. (MCL 700.5303, MCL 700.5305, MCL 700.5310)

If a petition for modification or written request for modification comes from the legally incapacitated individual who does not have an attorney, the court shall immediately appoint an attorney. If the incapacitated individual contests the relief requested in a petition for appointment, modification, or removal of a guardian, the court shall immediately appoint an attorney. (MCR 5.408[B][1]-[2], MCL 700.5306)

3. Mental Health Rules (MCR 5.732[A],[C])

- a. The attorney of record represents the subject of the petition in all probate court proceedings pursuant to the Mental Health Code until discharge by the court or until another attorney has filed an appearance on respondent's behalf.
- b. A respondent may voluntarily and understandingly waive right to an attorney in open court after consultation with an attorney.

4. Mental Health Code

a. Civil Admission as Mentally Ill (MCL 330.1454)

- 1) Every person subject to a petition for civil admission as mentally ill is entitled to be represented by legal counsel. Counsel for the subject of the petition must be appointed within 24 hours of hospitalization or within 48 hours after receipt of a petition by the court. The court shall replace appointed counsel with counsel of respondent's preference.
- 2) The subject of the petition may waive the right to counsel in writing after consultation with counsel.
- 3) Court-appointed counsel is compensated from court funds if the subject of the petition is indigent. The court determines the amount that is reasonable based on time and expenses.

b. Judicial Admission of Developmentally-Disabled Persons (MCL 330.1517[3])

The individual asserted to meet the criteria for judicial admission is entitled to be represented by legal counsel in the same manner as counsel provided pursuant to MCL 330.1454. See also MCR 5.732.

c. Guardianship of Developmentally-Disabled Persons (MCL 330.1615)

- 1) A respondent is entitled to be represented by legal counsel. Within 48 hours of receipt of a petition, the court shall appoint counsel to represent the respondent. The court shall replace appointed counsel with counsel preferred by respondent.

- 2) If the respondent is indigent, court-appointed counsel shall be compensated from court funds in an amount which is reasonable based upon time and expenses. See also MCR 5.732.

D. Appointment of Guardians Ad Litem and Visitors (applies to circuit court ancillary proceedings)

1. Temporary Guardian – Adult (MCR 5.121[A][1], MCR 5.403[C])

For the purpose of an emergency hearing for appointment of a temporary guardian of an alleged legally incapacitated person, the court shall appoint a guardian ad litem unless such appointment would cause delay and the alleged legally incapacitated person would likely suffer serious harm if immediate action is not taken.

2. Guardian – Adult (MCL 700.5303[3], MCL 700.5310[4], MCR 5.121[A][1], MCR 5.408[B])

Upon filing a petition for appointment or removal of a guardian, the court shall appoint a guardian ad litem to represent the person who is the subject of the petition unless the alleged legally incapacitated person has legal counsel of his or her own choice. Before removing a guardian, appointing a successor guardian, modifying the guardianship's terms or terminating a guardianship, and following the same procedures to safeguard the ward's rights as apply to a petition for a guardian's appointment, the court may send a visitor to the present guardian's residence and to the place where the ward resides or is detained to observe conditions and report in writing to the court.

3. Guardian – Minor (MCL 700.5213[4],[6])

If, at any time in the proceeding, the court determines that the minor's interests are or may be inadequately represented, the court may appoint a lawyer-guardian ad litem to represent the minor, giving a consideration to the preference of the minor if the minor is 14 years of age or older.

The court may appoint a guardian ad litem to assist the court in determining a child's best interest in a guardianship proceeding.

4. Conservator, Protective Order – Adult (MCL 700.5406[2], MCL 700.5431, MCR 5.121)

The court shall appoint a guardian ad litem to represent the subject of the petition where no private counsel has filed an appearance or the subject of the petition is mentally competent, but aged and physically infirm. The same rights and procedures in an original proceeding apply in termination proceedings. The court may appoint a visitor to interview the individual to be protected. The visitor may be a guardian ad

litem or a court officer or employee.

5. Conservator, Protective Order – Minor (MCL 700.5406[1], MCR 5.121)

The court may appoint an attorney to represent the minor if the court determines the minor's interest may be inadequately represented. The court must give consideration to the minor's choice if the minor is 14 years of age or older. An attorney appointed by the court to represent a minor has the same responsibilities as a guardian ad litem.

6. Substance Abuse Treatment and Rehabilitation Programs – Minor (MCL 333.6124-.6126)

The court shall appoint a guardian ad litem to represent the minor for purposes of hearing on petition to determine necessity of treatment and rehabilitation, periodic program review, and hearing on objection to minor's treatment plan.

7. Other Proceedings (MCL 700.1403[d], MCR 5.121)

The court may appoint a guardian ad litem to represent the interest of a minor, an incapacitated individual, an unborn or unascertained person, or a person whose identity or address is unknown or to represent any other person in a proceeding if the court determines the representation of the interest would otherwise be inadequate.

8. Kidney Donation by Minor (MCL 700.5105)

If the prospective donor does not have a guardian, the court shall appoint a guardian ad litem to protect the prospective donor's interests.

9. Mental Health Rules (MCR 5.121[A][1], MCR 5.732[C])

The court may appoint a guardian ad litem if the subject of a petition or respondent has waived the right to an attorney.

10. Mental Health Code (MCL 330.1616, MCR 5.121)

The court shall appoint a guardian ad litem for an alleged developmentally-disabled person where the court determines that respondent requires a person to represent his or her best interest and to assist legal counsel.

15-05 BAIL BOND

A. Authority

A person charged with a crime, except as provided in Const 1963, art 1, § 15, is entitled to release on his or her own recognizance, conditional release, or release on money bail (surety, 10 percent, or cash). Michigan law further provides that a person charged with treason or murder shall not be admitted to bail under certain conditions (MCL 765.5) and a person charged with a crime alleged to have occurred while on bail pursuant to a bond personally executed by him or her, or a person who has been twice convicted of a felony within the preceding five years, shall be required to post a cash bond or a surety other than that applicant. (MCL 765.6a) The court may also release a defendant subject to conditions reasonably necessary for the protection of one or more named persons. (MCL 765.6b) No attorney may post a bond on behalf of a criminal defendant. (MCL 765.8) Bonds are not subject to garnishment or attachment. (MCL 765.16)

B. Types of Bond/Release

The following statutes and court rules provide more specific information regarding bail/bond and release of persons charged with crimes/offenses.

1. Michigan Motor Vehicle Code (MCL 257.728).
2. Support and Parenting Time Enforcement Act (civil contempt) (MCL 552.632).
3. Civil Arrest (MCL 600.6076).
4. Nonresident Traffic Offenses and Misdemeanors (MCL 600.8311, MCL 600.8511).
5. Code of Criminal Procedure - Bail (MCL 765.1 *et seq.*).
6. Extradition - Bail (MCL 780.14).
7. Bail for Traffic Offenses or Misdemeanors (MCL 780.61).
8. Release of Misdemeanor, Municipal Ordinance and Traffic Offense Prisoners (MCL 780.581).
9. Release of Defendant Subject to Protective Conditions (MCL 765.6b).

10. Arrest without Warrant; Defendant Violating Conditional Release (MCL 764.15e).
11. Nonresident may post a driver's license in lieu of bond on traffic violations or misdemeanors with a penalty under one year (MCL 257.749, MCL 780.64[4]).
12. Security for cost may be required when a citizen files a criminal complaint (MCR 6.101[C], MCL 764.1).
13. Habeas Corpus Proceedings (MCR 3.303).
14. Bonds (MCR 3.604).
15. Forfeited Recognizance (MCR 3.605).
16. Contempt (MCR 3.606).
17. Juvenile Proceedings (MCR 3.935).
18. Release of Minors in Protective Proceedings (MCR 3.972).
19. Pretrial Release - Criminal Procedure (MCL 765.6b, MCR 6.106, MCR 6.610, MCR 6.909).
20. Probation Violations - Criminal Procedures (MCR 6.445[B][4]).

C. Alternative Bond Documents

1. Driver's License

Law enforcement or the court may require a person to surrender a driver's license as security for the defendant's appearance in court. Upon conclusion of the trial or imposition of sentence, as applicable, the court shall return the license to the defendant unless other disposition of the license is authorized by law. (MCL 780.64, MCL 257.729, MCR 6.106[D][2][f])

2. Guaranteed Appearance Certificate

In lieu of a driver's license, a person may leave a guaranteed appearance certificate with the law enforcement officer or the court. The certificate must contain a printed statement that a surety company authorized to do business in Michigan guarantees the appearance of the person whose signature appears on the card or certificate, and that if the defendant fails to appear in court, the company will pay any fine, costs, or bond forfeiture imposed on the person not to exceed \$200. Upon conclusion of the trial or imposition of sentence, as applicable, the court shall return the certificate to the defendant. (MCL 257.749)

3. Passport

As a condition of bond, the court may require surrender of a passport. A person without a passport might surrender a Refugee Travel Document, which can serve in lieu of a national passport. It may be useful to acquire the signature of the owner of the passport or travel document upon return as a receipt. Send expired passports or travel documents and notification of conviction to US Immigration, Investigations Bureau, 333 Mt. Elliott Street, Detroit, MI 48207-4381. For further information, contact US Immigration at 313-568-6036. (MCR 6.106[D][2][f])

D. Forfeiture

If a defendant or juvenile fails to comply with the conditions of the bail bond, the court can order the bail bond forfeited and subsequently render judgment for the state or local unit of government against the accused. For entry of an order to forfeit bail bond, see SCAO-Approved form MC 218, Order Revoking Release and Forfeiting Bond, Notice of Intent to Enter Judgment, at <http://courts.michigan.gov/scao/courtforms/generalcriminal/mc218.pdf>. For entry of judgment, see SCAO-Approved form MC 238, Judgment after Bond Forfeiture, at <http://courts.michigan.gov/scao/courtforms/generalcriminal/mc238.pdf>. (MCL 765.15, MCR 3.935[F][5], MCR 6.106[I][2])

If a defendant is in the military and the commanding officer refuses to surrender the defendant to the court, the bond may not be forfeited. (OAG No 1737 [January 18, 1944])

E. Return of Bond

If a defendant or juvenile has performed the conditions of a 10 percent bail bond and is discharged from all obligations in the case, the court is required to return 90 percent of the deposited sum and retain as costs the remaining 10 percent. If a cash or surety bond was deposited, the court must return the full amount. For further information on return of 10 percent bail, see MCL 780.66(6). (MCR 3.935[F][4][b], MCR 6.106[I][1])

F. Application of Bail Money to Payments of Fines and Costs

If a convicted defendant deposited bail money, prior to returning the money, any deposited sum must first be applied to fines and costs and the balance, if any, returned. However, in the case of a 10 percent bond, the 10 percent retention provided for at MCR 6.106(I)(1) is retained prior to determining the balance for further distribution. (MCR 6.106[I][3])

In juvenile proceedings, if disposition of a case imposes reimbursement of costs, bail money posted by a parent must first be applied to the amount of reimbursement and costs, and the balance, if any, returned. (MCR 3.935[F][4][a])

In *People v Wesley*, 148 Mich App 758 (1985), the Court of Appeals stated that a trial court

may order the cash bond of a convicted criminal defendant be retained and applied to the payment of defendant's court-appointed attorney fees, as well as to fines and costs.

In support cases, the court must use information from the show-cause hearing to determine how much of the money is to be paid to a recipient of support. The balance of the bond is to be returned to the support payer. (MCL 552.632)

G. Bond/Bail Pending Appeal/Sentencing

Unless otherwise provided by law, the court may continue, terminate, or require bail on appeal or while the defendant is awaiting sentencing. If an appeal is taken on behalf of the people, the defendant may post a personal recognizance pending the outcome of the appeal unless the court determines that bail is required. (MCL 765.7)

H. Bail Bondsman

The circuit judge is required to annually compile a list of persons authorized to act as bail bonds persons in the county. The list must be sent to jail and the place of custodial detention within the county. Several courts have adopted administrative orders which establish local policies to assist in compiling the list. The State Court Administrative Office will provide any court with further information on this subject. (MCL 750.167b)

MCR 3.604 applies to bonds given under the Michigan Court Rules and the Revised Judicature Act, unless a rule or statute clearly indicates that a different procedure is to be followed. See the court rule for details.

A surety's obligation regarding the defendant is terminated at sentence. (*People v Brow*, 253 Mich 140 [1931]) The court's right to refuse a surety bond without the power of attorney requirement being met is discussed in Attorney General Opinion 3139 (7/12/58). A judge or magistrate may require a surety to pledge real estate owned by the surety and located in the county in which the court sits. (MCL 765.20-765.24)

I. Third-Party Bonds

A third party may post a cash bond on behalf of a defendant. The third party may surrender the defendant to the court in lieu of continuing the bond, or prior to bond forfeiture. (MCL 765.18, MCL 765.26) Bonds posted by a third party are to be returned after sentencing. (*People v Brow*, 253 Mich 140 [1931])

J. Interest Bearing Account

If bond is placed in an interest-bearing account, the interest accrued follows the disposition of the bond (for example, interest on an individual bond is returned or forfeited, whatever the disposition of the bond is). (MCL 765.17)

K. SCAO-Approved Forms

The following forms have been approved by the state court administrator for use in bail bond and related activities.

1. Order Revoking Release and Forfeiting Bond, Notice of Intent to Enter Judgment – MC 218 (<http://courts.michigan.gov/scao/courtforms/generalcriminal/mc218.pdf>)
2. Order and Receipt for Driver's License Held as Security – MC 224 (<http://courts.michigan.gov/scao/courtforms/generalcriminal/mc224.pdf>)
3. Judgment After Bond Forfeiture – MC 238 (<http://courts.michigan.gov/scao/courtforms/generalcriminal/mc238.pdf>)
4. Removal of Entry from LEIN – MC 239 (<http://courts.michigan.gov/scao/courtforms/general/mc239.pdf>)
5. Order for Pretrial Release/Custody – MC 240 (<http://courts.michigan.gov/scao/courtforms/generalcriminal/mc240.pdf>)
6. Bond – MC 241 (<http://courts.michigan.gov/scao/courtforms/generalcriminal/mc241.pdf>)
7. Cash Performance Bond (Civil) – FOC 4 (<http://courts.michigan.gov/scao/courtforms/domesticrelations/focgeneral/foc4.pdf>)
8. Bond for Appearance – JC 08 (<http://courts.michigan.gov/scao/courtforms/juvenile/jc08.pdf>)
9. Authorization for Return of Bond – JC 31 (<http://courts.michigan.gov/scao/courtforms/juvenile/jc31.pdf>)

15-06 JAIL OVERCROWDING ACT

A. Authority

The chief judge has statutory responsibility relating to rules and regulations and jail overcrowding for the county jail. Case law has also recognized the right of a circuit court judge to appoint a jail monitor.

B. Rules and Regulations

Any rules and regulations in the county jail relating to the conduct or guidance of prisoners or inmates must be submitted to and approved by the chief judge of circuit court. (MCL 51.281, MCL 8.41, 1979 AC R 791.644)

C. Jail Overcrowding

After a county sheriff has declared a jail overcrowding state of emergency and attempted to reduce the jail population and this proves insufficient, the chief judge of circuit court must classify prisoners in two categories: (1) those whose release would present a high risk to the public safety, and (2) those whose release would not present such a risk. The sheriff is then directed to reduce the sentences of the low risk prisoners by an equal percentage, set by the chief circuit judge, until the overcrowding is alleviated. (MCL 801.56, *Kent County Prosecutor v Kent County Sheriff [On Rehearing]*, 428 Mich 314, 409 NW2d 202 [1987])

D. Jail Monitor

A circuit court judge can appoint a monitor to help effect relief given in a lawsuit brought to determine whether a statutory duty to provide a suitable and sufficient county jail has been established. See also Section 15-01. (*Wayne County Jail Inmates v Wayne County Sheriff*, 391 Mich 359, 216 NW2d 910 [1974])

15-07 OTHER MISCELLANEOUS DUTIES

A. Marriage Assignments

1. Circuit Court

If a judge without marriage jurisdiction (circuit court, Court of Appeals, Supreme Court) wishes to perform a marriage, an assignment for that purpose will be made by the State Court Administrative Office. See also Section 7-06.

2. District and Probate Court

If a judge with marriage jurisdiction (district or probate) wishes to perform a marriage outside the territorial jurisdiction of the court, an assignment for that purpose will be made by the State Court Administrative Office.

B. Recovery of Costs Where Venue Change for Convenience of Parties and Witnesses

When venue has been changed for the convenience of parties and witnesses, the transferee court may recover from the transferor court all expenses of the trial which would be chargeable to the county in which the action originated as determined by the circuit judge of the transferee court. (MCL 600.1655) See also MCR 5.128 and MCR 3.926.

C. Deaf Persons' Interpreter Act

In any action before a court or a grand jury where a deaf person is a participant in the action, either as a plaintiff, defendant, or witness, the court shall appoint a qualified interpreter to interpret the proceedings to the deaf person, to interpret the deaf person's testimony or statements, and to assist in preparing the action with the deaf person's counsel.

The Michigan Department of Labor and Economic Growth, Division on Deaf and Hard of Hearing, has available the *Michigan Interpreter Directory*. For questions or a copy of the directory, contact:

Michigan Department of Labor and Economic Growth
Division on Deaf and Hard of Hearing
201 N. Washington Square, Suite 150
Lansing, MI 48913
877-499-6232 (voice or TTY)

For more information on qualified interpreters, go to www.mcddc-dodhh.org.

D. Miscellaneous Duties Specific to Probate Court

1. Disposition of Unclaimed Assets

The probate court shall order a fiduciary to deposit with the county treasurer the monies or personal property that belong to (1) an heir, devisee, trust beneficiary, or claimant whose whereabouts, after diligent inquiry, cannot be ascertained, (2) an heir, devisee, trust beneficiary, or claimant who declined to accept the funds awarded, or (3) a person when the right of the person is the subject of appeal from the orders of the court. (MCL 700.3916)

2. Deposit of Wills

The probate court shall receive and safely keep a will and give a certificate of the deposit of the will. (MCL 700.2515[1])

3. County Election Commissions

The chief judge of probate, with the county clerk and county treasurer, constitute a board of county election commissioners, two of whom shall be a quorum for the transmission of business. The judge of probate shall be chairperson. (MCL 168.23)

4. Petitions for Recall

The board of county election commissioners shall determine whether or not the reasons for recall stated in the petition for recall are of sufficient clarity to enable the officer whose recall is sought and the electors to identify the course of conduct claimed to be the basis for the recall. (MCL 168.952)

5. Delivery of Election Results on Election Night

Election returns are to be delivered to the probate judge on election night. The probate judge shall deliver the returns received by him/her to the board of canvassers when it meets to canvass the returns. (MCL 168.809)