

Overview

TABLE OF CONTENTS

1.1	Introduction	
	A. District Court Organization	1
	B. Authority and Appointment.....	4
	C. Term of Office	6
	D. Relationship to Judge and Court Administrator	6
	E. Qualifications.....	6
	F. Surety Bond Requirements	7
	G. Court Administration.....	8
	H. Prohibition on Practice of Law	8
	I. Sources of Michigan Law	8
1.2	Role of Magistrate	
	A. Statutory Jurisdiction and Duties.....	15
	B. Other Duties.....	21
	C. Liability/Immunity.....	21
	D. Conduct and Ethical Considerations.....	22
	E. Ancillary Agencies and Community Coordination	24
	F. Part-Time Magistrates	24
1.3	Rules of Confidentiality	
	A. Confidentiality of Records Generally	25
	B. Confidentiality of Probation Records	25
	C. LEIN Records	29

Overview

TABLE OF CONTENTS (continued)

1.3	Rules of Confidentiality (continued)	
	D. Substance Abuse Assessment and Treatment	29
1.4	Definitions and Terms	31
1.5	Access Issues	
	A. Accommodations	43
	B. Foreign Language Interpreters.....	43
	C. Gender and Racial/Ethnic Issues	45
1.6	Acknowledgments	
	A. Authority and Purpose	49
	B. Definition.....	49
	C. Procedure	49
	D. Forms	50
1.7	Oaths and Affirmations	
	A. Authority and Purpose	53
	B. Procedure	53
1.8	Administrative Issues	
	A. Caseflow Management	55
	B. Records and Information Management	58
	C. Security Management	62
	D. Video Proceedings.....	63

Overview

TABLE OF CONTENTS (continued)

1.9	Michigan Association of District Court Magistrates	
	A. History	65
	B. Purpose	65
	C. Membership	65
	D. Newsletter and Website	65
	E. Annual Conference	65

Appendix

Attorney General Opinions
Michigan Ethics Opinions
SCAO Model Policy: Requests for Accommodations

1.1 Introduction

A. District Court Organization

1. Uniform Court System

The Michigan Constitution of 1963 provides for a uniform state court system headed by the Michigan Supreme Court. The Constitution establishes the following levels of courts: the Michigan Supreme Court, the Michigan Court of Appeals, the circuit courts, the district courts, the municipal courts, and the probate courts. MCR 8.110, MCL 600.8271 and MCL 600.8272 authorize the chief judge of a district court to hire, supervise, and discharge employees of the court.

2. Jurisdiction of District Court

The district court has exclusive jurisdiction over all civil litigation up to \$25,000.00. It also handles garnishment and eviction proceedings. In the criminal area, the district court has jurisdiction over all misdemeanors where punishment does not exceed one year, and arraignment and preliminary examination in felony cases. The district court also sets and accepts bail on felony cases. The district court handles all traffic civil infractions, and all state and municipal nontraffic civil infractions if the defendant is 17 or older. The family division of the circuit court may enter into an agreement with the district or municipal court within the court's geographic jurisdiction to waive jurisdiction over any or all state or municipal nontraffic civil infractions alleged to have been committed by juveniles. The agreement must specify for which civil infractions jurisdiction has been waived. For a civil infraction waived, the district or municipal court has jurisdiction over the juvenile in the same manner as if an adult had committed the civil infraction. (MCL 712A.2, MCL 712A.2[e][1])

3. District Court Classes

District courts are divided into three classes, according to the geographical area of their venue.

a. First-Class District

First-class district courts comprise all the political subdivisions within one or more counties. Each county comprising a multi-county district is the funding unit for that portion of the court.

b. Second-Class District

Second-class district courts comprise the political subdivisions within the portion of a county not included in the boundaries of one or more third-class district courts in the same county. The county is the funding unit for a second-class district court.

c. Third-Class District

A third-class district court is comprised of one or more political subdivisions (cities, townships, or incorporated villages) within one county. The funding unit of a third-class district court is the city(ies), township(s), or incorporated village(s) unless there is an agreement among themselves adopted by the governing body of the political subdivisions entering into the agreement. (MCL 600.8101, MCL 600.8104)

4. Place of Holding Court**a. Places of Sitting of District Court (MCL 600.8251)**

- 1) In districts of the first class, the court shall sit at each county seat. In counties with a population of 130,000 or more, the court shall also sit at each city having a population of 6,500 or more, except the court is not required to sit at any city that is contiguous to the county seat or contiguous to a city having a greater population. The court shall also sit at other places as the judges of the district determine. The court shall sit not less than once each week in each county of a multi-county district.
- 2) In districts of the second class, the court shall sit at any county seat within the district, and at each city and incorporated village within the district having a population of 3,250 or more, except that if two or more cities or incorporated villages are contiguous the court need sit only in the city having the greater population. The court shall not be required to sit in any political subdivision if the governing body of that subdivision and the court agree by resolution that the court shall not sit in the political subdivision. If the district does not contain a county seat and does not contain any city or incorporated village having a population of 3,250 or more, the court shall sit at a place or places within the district as the judges of the district determine.

In addition to the place or places where the court is required to sit, the court may upon agreement of a majority of the judges of the district and upon approval by resolution of the board of commissioners also sit at the county seat of its district control unit situated outside the district, but the court shall sit not less than once each week within the district. If the district does not contain any city, then the

foregoing provisions do not apply to the district, and the court shall sit at the county seat of its district control unit situated outside the district.

In addition to the place or places where the court is required to sit pursuant to the provisions of this subsection, the court may sit at a place or places within the district as the judges of the district determine. If the court sits at a county seat situated outside the district pursuant to this subsection, it shall exercise the same powers, jurisdiction, and venue as if sitting within the district.

- 3) In districts of the third class, the court shall sit at each city having a population of 3,250 or more and within each township having a population of 12,000 or more and at other places as the judges of the district determine. The court shall not be required to sit in any political subdivision if the governing body of that subdivision and the court agree by resolution that the court shall not sit in the political subdivision.
- 4) Each judge of the district shall sit at places within the district as the presiding judge designates.
- 5) A district judge or district court magistrate may sit at a place outside the district under a multiple district plan pursuant to MCL 600.8320.
- 6) As used in this section, "population" means population according to the most recent federal decennial census, except that the most recent census shall not apply until the expiration of 18 months from the date on which the census is taken.

b. District Court; Establishment; Court of Record; Judicial Districts; City Located in More than One District (MCL 600.8101)

- 1) A district court is established in the state. The district court is a court of record. The state is divided into judicial districts of the district court, each of which is an administrative unit subject to the superintending control of the Supreme Court.
- 2) When a city is located in more than one district, the provisions of MCL 600.8251 as to where the district court is required to sit shall apply only to that part of such city lying within the particular county or district. A city having a population in excess of 20,000 which is located in more than one district is a part of the district containing the greater portion of the population of the city.

c. Location of Magistrates (MCL 600.8551)

Magistrates shall sit at any county seat and city or other locations as determined by the presiding judge.

B. Authority and Appointment

In the Code of Criminal Procedure, the term magistrate is defined as “a judge of the district court or a judge of a municipal court. Magistrate does not include a district court magistrate, except that a district court magistrate may exercise the powers, jurisdiction, and duties of a magistrate if specifically provided in this act, the revised judicature act ..., or any other statute.” (MCL 761.1) Therefore, whenever the term “magistrate” is found in the statutes, it is generally not referring to a district court magistrate. The Legislature generally uses the term “district court magistrate” in those statutes dealing specifically with a person or the duties performed by a person appointed as a district court magistrate by a district court judge pursuant to Chapter 85 of the Revised Judicature Act.

1. Authority

The office of district court magistrate was created by the District Court Act, 1968 PA 154, Chapter 85. In a county that elects by itself fewer than two district court judges, the county board of commissioners shall provide for one district court magistrate.

In all other counties in districts of the first and second class, the county boards of commissioners shall provide for at least one magistrate when recommended by the judges of the district court. Additional magistrates may be provided by the board upon recommendation of the judges and the appointments shall be subject to approval by the county board of commissioners before the person assumes the office of magistrate.

In each district of the third class, the judge or judges of the district may appoint one or more district court magistrates. Before a person assumes the office of magistrate in a district of the third class, the appointment of that person shall be subject to approval by the governing body(ies) of the district control unit(s) which, individually or in the aggregate, contain more than 50 percent of the population of the district. This section does not apply to the 36th District Court.

The 36th District Court shall have not more than six district court magistrates. The chief judge of the 36th District may appoint one or more magistrates. If a vacancy occurs, the chief judge may appoint a successor. (MCL 600.8501[1],[2],[3])

A district judge may not extend the jurisdiction of a district court magistrate beyond the jurisdiction expressly provided by law. (MCL 600.8541)

2. Appointment

Before being appointed to the office of magistrate in a first- or second-class district, a person must be a registered elector in the appointed county pursuant to MCL 600.8507(1). A person being appointed to the office of magistrate in a third-class district must be a registered elector in the appointed district pursuant to MCL 600.8501(2).

Subject to the provisions of MCL 600.8501, judges of the district court within a district of the first or second class may appoint a clerk or deputy clerk as a magistrate to perform the duties and exercise the powers of a magistrate in addition to his/her duties as clerk or deputy clerk of the district court. (MCL 600.8503)

It is strongly recommended that delegation of authority to a district court magistrate be documented through local administrative order. See Model Local Administrative Orders 3a and 3b at <http://courts.michigan.gov/scao/resources/other/lao.htm#mdc>.

Frequent questions are raised regarding: (1) residency and the authority to serve in courts other than the one appointed, and (2) the scope of multi-district plans. The following are some of the more common questions and the answers to those questions.

- Can a magistrate of one county serve in another county?

Answer: In a district of the first class which consists of more than one county, if a magistrate is temporarily absent or incapacitated, the district judge may direct a magistrate of another county of the same district to serve temporarily in the county where the magistrate is temporarily absent or incapacitated. The district judge shall make his or her order in writing. A magistrate serving temporarily under this subsection shall not be entitled to additional compensation but shall be reimbursed for actual and necessary expenses incurred during the authorized temporary service upon certification and approval by the state court administrator. Upon allowance, the reimbursement shall be paid by the state treasurer out of the appropriation for the State Court Administrative Office. (MCL 600.8507[2])

- Can a magistrate of a third-class district court serve in the second-class district court of the same county?

Answer: Yes. By meeting the voter registration requirement of the third-class district court, a person automatically qualifies for the voter registration requirement of the second-class district court.

See also Section 1.2, page 15.

C. Term of Office

All magistrates appointed shall serve at the pleasure of the judge(s) of the district court. (MCL 600.8507[1])

D. Relationship to Judge and Court Administrator

The judges of the district court shall exercise superintending control over all magistrates within their districts. (MCL 600.8541)

As director of the administration of the court, a chief judge has administrative superintending power and control over the judges of the court and all court personnel. The chief judge has authority and responsibility to effect compliance by the court with all applicable court rules and provisions of the law. Furthermore, the chief judge has the authority and responsibility to perform any act or duty or enter any order necessarily incidental to carrying out the purposes of the chief judge rule. (MCR 8.110[C][1], [2], [3])

MCR 8.110(C)(6) provides for delegation of administrative duties by a chief judge to a trial court administrator or others. The duties of these trial court administrators or court managers vary depending upon the location and size of the court in which they are employed. The court administrator or manager functions in management areas rather than legal areas. They provide an executive component to the court, blending judicial management skills with the discipline of business and public administration.

Because the magistrate serves at the pleasure of the judges of the district court and, in light of the administrative superintending power and control of the chief judge, the magistrate receives direction from the chief judge with regard to both the legal and management aspects of the court.

In courts where administrative duties of the chief judge have been delegated to a court administrator, the magistrate receives direction from the court administrator as it relates to those management functions. This ensures that policies and procedures regarding the management of records, information, caseload, human resources, and other administrative matters are observed by all employees of the court for the effective administration of the court.

E. Qualifications

A district court magistrate may hear and preside over traffic civil infraction informal hearings only after successfully completing a special training course given by the state court administrator in traffic law adjudication and sanctions. (MCL 600.8512[2])

No training is required for performing duties and functions associated with municipal civil infractions and state civil infractions.

Contingent upon authorization by the chief judge of the district court, a district court magistrate may conduct small claims hearings if he or she is an attorney licensed to practice law in Michigan. (MCL 600.8427, MCL 600.8514)

F. Surety Bond Requirements

Before assuming office, a person appointed as a magistrate shall take the constitutional oath of office and file a bond with the county treasurer in an amount determined by the state court administrator. (MCL 600.8507[1], MCR 8.204) The bond shall also apply to temporary service in another county pursuant to MCL 600.8507(2). The surety bond for a district court magistrate is an individual bond in the amount of \$50,000.00. This amount is the minimum amount; a higher amount may be appropriate depending upon individual court circumstances.

Michigan Court Rule requires that the magistrate file with the chief judge a bond approved by the chief judge in a penal sum determined by the state court administrator, conditioned that the magistrate will perform the duties as magistrate and account for and pay over all money which may be received by the magistrate to the person or persons lawfully entitled. (MCR 8.204)

All positions require faithful performance and honesty bond coverage which should be effective before assuming and/or performing the duties of office. "Boiler plate" language in some blanket bonds appears to exclude performance and/or honesty bond coverage for the very people for whom it is required; therefore, it is strongly recommended that each court obtain a copy of all documents, including riders relating to its bond coverage, and review them carefully to insure satisfactory compliance.

If the magistrate is covered by a blanket bond, the bond should explicitly indicate that the district court magistrate is covered and that the bond amount is at least \$50,000.00. Language in the blanket bond which excludes employees required to give statutory bonds should be modified to allow coverage for the district court magistrate. For information on the bonding of employees involved in the receipt and disbursement process, see Section 6-05, page 6-05-03, of the *Michigan Court Administration Reference Guide* at http://courts.michigan.gov/scao/resources/publications/manuals/carg/rg_sec6.pdf. For more information on surety bonds, see Section 13 of the *Michigan Court Administration Reference Guide* at http://courts.michigan.gov/scao/resources/publications/manuals/carg/rg_sec13.pdf.

G. Court Administration

The district court magistrate should be familiar with local administrative policies and procedures of the court, as well as overall court administration. Administrative subject matters most pertinent to the magistrate are human resources, fiscal management, caseflow, records management, facilities, and court security. Although many of these subjects do not relate specifically to the management of the cases for which the magistrate is responsible, they are relevant to the everyday operations of the court. For additional details, see Section 1.8, page 55.

The *Michigan Court Administration Reference Guide*, published by the State Court Administrative Office, is available to every district court magistrate. The guide provides an overview of the authority, function, and pertinent details of court administration, and can be accessed at <http://courts.michigan.gov/scao/resources/publications/manuals/carg.htm>.

Administrative rules applicable to district court are MCR 8.101-8.125 and MCR 8.201-8.205.

H. Prohibition on Practice of Law

An attorney at law who is a magistrate shall be prohibited from the practice of law in the district court for the district in which the attorney serves. A person who is appointed as a magistrate in the 36th District Court shall not engage in the practice of law while he or she is a magistrate. Several ethics opinions in the Appendix of this section discuss circumstances relating to part-time magistrates and practice of law. (MCL 600.8525)

I. Sources of Michigan Law

In adjudicating a case, the magistrate must first make sure that the violation in question is a civil infraction or criminal misdemeanor over which he or she has jurisdiction. Next, the magistrate must determine the proper procedural steps to take in processing the case. Ultimately, the magistrate must decide whether the defendant's conduct is in violation of state law or a local ordinance and impose the proper penalty. In making all these decisions, the magistrate must consult Michigan law. The following discussion is intended to give the magistrate a "road map" through the reference works where Michigan law can be found. These reference works should be available in the court's library.

Finding Michigan law can be a confusing task for the following reasons:

- Because both the state Legislature and local governments enact laws, there is no single official compilation of statutes and ordinances that contains all of Michigan law. An offender may be charged under state or local law, depending on where the offense occurred and what law enforcement agency took action.

- The Legislature has not put all of its enactments on traffic matters into one place. Michigan legislation is organized by broad topical categories, and statutes involving motor vehicles are scattered throughout these categories. Thus, even though the Michigan Vehicle Code contains most of the “rules of the road,” the Penal Code contains certain additional crimes involving vehicles.
- To some extent, the laws describing the elements of Michigan’s traffic violations are compiled separately from the laws describing the procedure for adjudicating traffic violation cases.
- In some cases, one statute may describe an offense and a second statute may describe the penalty for that offense. Because all Michigan traffic law is not located in one place, the magistrate must be prepared to consult multiple sources of law in adjudicating a traffic case. The rest of this section describes the most common sources of law.

1. Michigan Compiled Laws (MCL)

When the Michigan Legislature first enacts a statute, it is referred to as a “Public Act” and given a number. Public Acts are numbered chronologically during the legislative session for a single year; accordingly, the first Public Act enacted during the 1996 legislative session will be cited as “1996 PA 1,” and the first Public Act enacted during the 1997 session will be cited as “1997 PA 1.” After enactment, Public Acts are incorporated into a statutory compilation known as the Michigan Compiled Laws. The Michigan Compiled Laws is a topical collection of all the statutes enacted by the Michigan Legislature. This compilation is divided into chapters, from 1 to 830, with each addressing a particular broad subject matter. Upon incorporation into the Michigan Compiled Laws, a Public Act will get a new number that corresponds to the topic to which it was assigned. The following chapters are of particular interest to magistrates in handling civil infraction cases:

- Chapter 257 of the MCL deals with the broad subject of motor vehicles. Chapter 257 contains the Michigan Vehicle Code (MVC), which includes traffic civil infractions. In addition to the MVC, Chapter 257 of the MCL contains other motor vehicle legislation regarding such things as school buses, accident claims, and vehicle emissions.
- Chapter 600 of the MCL contains the Revised Judicature Act, which addresses the organization and jurisdiction of the Michigan courts. Within Chapter 600, subchapter 85 specifically addresses the powers of district court magistrates. Chapter 600 also contains provisions regarding small claims (subchapter 84), and civil infraction procedures that do not involve traffic violations (subchapters 87-88).

The Legislative Service Bureau is the official publisher of the MCL. However, its compilation is not widely used. More commonly used are the unofficial *Michigan Compiled Laws Annotated (MCLA)* volumes produced by West Publishing Company, and the *Michigan Compiled Laws Service (MCLS)* volumes produced by Lexis-Nexis Matthew Bender, which both contain identical statutory provisions and numbering systems to those found in the Legislative Service Bureau's official publication. In addition to the statutory language, the annotated MCLA and MCLS volumes provide lengthy references to relevant appellate case decisions ("annotations") following each statute. The cases described in the "annotations" often interpret ambiguous language in the statutes or decide the outcome in situations not specifically addressed in the statutes. The annotations also give historical information about a statute's passage in the Legislature, such as its Public Act number or effective date.

A citation from the MCL contains two parts after the designation "MCL." The chapter number for the broad major subject matter is given first, followed by a period. After the period comes the specific section number for the provision within the broad chapter. For example, the MCL provision regarding passing another vehicle on the left would be cited as follows:

MCL 257.638 — "MCL" refers to the "Michigan Compiled Laws." The prefix number "257" refers to the main chapter on motor vehicles within the Michigan Compiled Laws. The suffix number ".638" refers to the section number of the specific provision on passing on the left. This statute may sometimes be referenced by these last three numbers, as "section 638 of the Vehicle Code."

Citations to the MCL can be looked up in any of the compilations mentioned above.

2. Local Ordinances

Local ordinances are a type of law enacted by a local unit of government, such as a city or township. They are a major source of traffic law in many parts of Michigan. Some ordinances deal with subjects not addressed by the Michigan Legislature; others are identical to, or substantially similar to, statutes enacted by the Legislature. Local ordinances must be consistent with the Michigan Vehicle Code, Chapter 257 of the Michigan Compiled Laws. According to Michigan law, local ordinances that conflict with the Michigan Vehicle Code are void to the extent of the conflict.

Therefore, many local governments adopt the Michigan Vehicle Code (MCL Chapter 257) “by reference” – that is, they enact a set of ordinances identical to the code. In addition, local governments may, and do, enact ordinances governing specific areas. Areas that local governments are allowed to regulate include the following:

- parking,
- speed regulations,
- traffic signals,
- one-way streets,
- stop or yield signs,
- turns,
- use of highways (e.g., restriction to certain vehicles, regulating parades, etc.), and
- bicycles.

Magistrates should familiarize themselves with the applicable local ordinances in their jurisdiction because no two sets of local ordinances are exactly the same in format, organization, or numbering system. Ordinance compilations may be obtained from local sources such as courts, public libraries, and city, county, village and township clerks’ offices.

Because preparing a set of ordinances is a detailed and time-consuming task, many localities have adopted a model set of traffic ordinances called the Uniform Traffic Code for Cities, Townships and Villages (UTC). The UTC was prepared by the Michigan Department of State Police in the early 1980s, and was amended in October 2002.* All violations found in the 1980s version that are also found in the MVC have been removed, leaving only violations from the original UTC that are not also found in statutes. The numbering system was also changed. All cities, townships, and villages, therefore, should adopt the MVC by reference in order to continue to write those violations under local ordinances.

Citations to the UTC may be preceded by the letter “R.” “R” means that the citation is to an administrative agency’s rule, here the Department of State Police. An example of a UTC provision follows:

R 28.1498 Sec. 4.98. Opening vehicle doors so as to impede traffic prohibited; violation as civil infraction.

(1) A person shall not open a door of a vehicle in a manner that interferes with or impedes the flow of traffic. (2) A person who violates this section is responsible for a civil infraction.

3. Michigan Court Rules

The Michigan Court Rules are adopted by the Michigan Supreme Court and set forth procedural requirements for Michigan courts. The magistrate should be aware of court

rules governing traffic adjudication procedures, the powers of the district judge and magistrate, and recordkeeping requirements. For example:

- MCR 4.101 — procedures to be followed in civil infraction cases.
- MCR 4.301-4.306 — small claims matters.
- MCR 4.401 — district judge’s control over the magistrate’s duties, responsibilities, and decisions.
- MCR 6.615 — procedures to be followed in traffic misdemeanor cases.
- MCR 8.119 — court recordkeeping and reporting requirements.

In the foregoing citations, “MCR” refers to “Michigan Court Rules.” The first number before the period refers to the chapter of the court rules governing a broad topic area, such as district courts. The number after the period refers to the specific rule.

4. Published Case Decisions

In published case decisions, the Michigan Supreme Court and Court of Appeals resolve questions not directly addressed by the foregoing statutes, ordinances, and court rules. Michigan Supreme Court decisions are collected in reporters called the *Michigan Reports*. Court of Appeals decisions appear in reporters called *Michigan Appeals Reports*. All Michigan trial courts are required to follow published case decisions by the state’s appellate courts.

Note: The Michigan Supreme Court publishes all of its decisions. The Court of Appeals, however, only publishes selected decisions. Michigan trial courts are only required to follow published decisions by the Court of Appeals. Unpublished Court of Appeals opinions may be considered but are not binding. (MCR 7.215[C][1]) When published Court of Appeals opinions conflict with one another, MCR 7.215(J)(1) requires a Court of Appeals panel to follow the rule of law established by the prior opinion issued on or after November 1, 1990, that has not been reversed or modified by the Michigan Supreme Court or by a special panel of the Court of Appeals.

Citations to Michigan cases follow this format:

- *Jackson v Trogan*, 364 Mich 148 (1961)
- *People v Ferency*, 133 Mich App 526 (1984)

The italicized names at the beginning of the citation identify the parties to the case. The first name identifies the plaintiff, the second the defendant. The first number following the parties’ names identifies the volume of the *Michigan Reports* or the *Michigan Appeals Reports* in which the published case is located. The “Mich” or “Mich App” portion of the cite refers to the Supreme Court or the Court of Appeals, respectively. The

number following the court designation refers to the page in the reporter volume at which the opinion is found. Finally, the year in parentheses is the year the decision was issued.

Note: Cases where the plaintiff is the “*People*” (e.g., *People v Ferency*) are criminal cases. In criminal cases, the prosecuting attorney proceeds against the defendant on behalf of the People of the State of Michigan.

Michigan court decisions are published in a parallel reporter from West Publishing Company called *Northwestern Reporter*. The elements of a parallel citation to the *Northwestern Reporter* are the same as noted above, and appear in the same order. When used, the parallel citation always follows the official *Michigan Reports* or *Michigan Appeals Reports* citation. A citation to the official and parallel reports of *People v Ferency* follows:

- *People v Ferency*, 133 Mich App 526; 351 NW2d 225 (1984)

Parallel citations for cases are not always given in legal reference materials.

5. Attorney General Opinions

Occasionally, the Michigan Attorney General issues opinions about legal issues that magistrates might encounter. The courts are not required to follow these opinions, but they typically offer helpful guidance. Michigan Attorney General opinions are found in a multi-volume set called *Report of the Attorney General*. Each volume in the set contains opinions issued during a one- or two-year period. Michigan Attorney General opinions are cited as follows:

OAG, 1987, No 6481, p 228 (December 9, 1987)

“OAG” in the above cite refers to “Opinion of the Attorney General,” and references the *Report of the Attorney General* compilation. “No 6481” refers to the number assigned to the opinion. The opinion number is followed by the page number in the *Report of the Attorney General* compilation, and the exact date on which the opinion was issued. To find an opinion from the above cite, the user would first look for the volume for the year 1987, and then turn in that volume to page 228, checking to make sure that the date and opinion number match the date and number in the citation.

The *Report of the Attorney General* compilation has index volumes in which opinions can be found under key topic words.

1.2 Role of Magistrate

A. Statutory Jurisdiction and Duties

A district judge may not extend the jurisdiction of a district court magistrate beyond the jurisdiction expressly provided by law. (MCL 600.8541[1])

Although a district court magistrate can perform any of the duties under his or her statutory jurisdiction, it is strongly advised that the magistrate confer with the judges he or she serves and obtain an express written description of the magistrate's duties. The written authorization of duties should be signed by the magistrate and judges. This written authorization of the magistrate's duties will eliminate confusion and assist the magistrate in effectively performing his or her duties. It is recommended that a local administrative order for the appointment of an attorney magistrate or a nonattorney magistrate include the specific duties of that magistrate. For more information, see Section 1.1, page 2.

In addition to performing duties within the court to which he or she is appointed, a district court magistrate may be appointed in one county to serve in another county within a district. MCL 600.8320 allows two or more district courts within a county or two adjoining districts of the first class to establish a multiple district plan in which a district court magistrate is authorized to conduct arraignments, set bail or recognizance, provide for the appointment of counsel, or make determinations of probable cause and issue warrants for all of the participating districts within the multiple district area. For districts consisting of more than one county, the chief judge or the only judge may authorize a magistrate appointed in one county to serve in another county within the district. Courts choosing to establish a multiple district plan must submit to the state court administrator a local administrative order signed by the chief or only judges of all participating districts. (MCL 600.8320)

A district court magistrate has the following jurisdiction and duties if authorized by the chief judge of the district.

1. Arraignments

- a. To arraign and sentence upon pleas of guilty or nolo contendere for violations of the following acts or parts of acts, or a local ordinance substantially corresponding to these acts or parts of acts, when authorized by the chief judge of the district court and if the maximum permissible punishment does not exceed 90 days in jail or a fine, or both: (MCL 600.8511[a])
 - i. Sport fishing, part 487 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.48701-324.48740.

- ii. Wildlife conservation, part 401 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.40101-324.40119.
 - iii. Marine safety, part 801 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.80101-324.80199.
 - iv. The Motor Carrier Act, 1933 PA 254, MCL 475.1-479.43.
 - v. Motor Carrier Safety Act, 1963 PA 181, MCL 480.11-480.22.
 - vi. Dog Law of 1919, 1919 PA 339, MCL 287.261-287.290.
 - vii. Section 703 or 915 of the Michigan Liquor Control Code of 1998, 1998 PA 58, MCL 436.1703 and MCL 436.1915.
 - viii. Part 5 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.501-324.511.
 - ix. Littering, part 89 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.8901-324.8907.
 - x. Hunting and fishing licenses, part 435 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.43501-324.43561.
 - xi. Recreational trespass, part 731 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.73101-324.73111.
 - xii. Trespass, Chapter 85 of the Michigan Penal Code, 1931 PA 328, MCL 750.546- 750.552b.
- b. To arraign and sentence upon pleas of guilty or nolo contendere for violations of the Michigan Vehicle Code, 1949 PA 300, MCL 257.1-257.923, or a local ordinance substantially corresponding to a provision of the Michigan Vehicle Code, if the maximum permissible punishment does not exceed 93 days in jail or a fine, or both, except for violations of sections 625 and 625m of the Michigan Vehicle Code, MCL 257.625 and 257.625m, or a local ordinance substantially corresponding to these sections. However, the magistrate is authorized to arraign defendants and set bond with regard to violations of section 625 or 625m, or a local ordinance substantially corresponding to these provisions. (MCL 600.8511[b])

- c. To arraign and sentence upon pleas of guilty or nolo contendere for violations of the following acts, if the maximum permissible punishment does not exceed 93 days in jail, a fine, or both: (MCL 600.8511[c])
 - i. Off-road recreation vehicles, part 811 of the Natural Resources and Environmental Protection Act, MCL 324.81101-324.81150, or local ordinances substantially corresponding to these provisions, except for violations of MCL 324.81134 and MCL 324.81135. However, the magistrate is authorized to arraign defendants and set bond with regard to violations of MCL 324.81134 and MCL 324.81135.
 - ii. Snowmobiles, part 821 of the Natural Resources and Environmental Protection Act, MCL 324.82101-324.82160, or local ordinances substantially corresponding to these provisions, except for violations of MCL 324.82128 and MCL 324.82129. However, the magistrate is authorized to arraign defendants and set bond with regard to violations of MCL 324.82128 and MCL 324.82129.
- d. To arraign, when authorized by the chief judge of the district court district, for a contempt violation or a violation of a condition of probation when either arises directly out of a case for which a judge or district court magistrate conducted the arraignment under subdivision (a), (b), or (c), or the first appearance under section 8513, involving the same defendant. This subdivision applies only to offenses punishable by imprisonment for not more than one year or a fine, or both. The district court magistrate may set bond and accept a plea but may not conduct a violation hearing or sentencing. (MCL 600.8511[d])
- e. If authorized by chief judge of the district, a district court magistrate may:
 - i. conduct the first appearance of a defendant in all criminal and ordinance violation cases, including acceptance of any written demand or waiver of preliminary examination and acceptance of any written demand or waiver of jury trial. However, the magistrate may only accept pleas of guilty or nolo contendere expressly authorized by MCL 600.8511 or MCL 600.8512a. (MCL 600.8513[1]).
 - ii. accept an admission of responsibility and order civil sanctions for a civil infraction and order an appropriate civil sanction permitted by the statute or ordinance defining the act or omission (MCL 600.8512a).
 - iii. accept a plea of guilty or nolo contendere and impose sentence for a misdemeanor or ordinance violation punishable by a fine and which is not punishable by imprisonment by the terms of the statute or ordinance creating the offense (MCL 600.8512a).

- iv. approve and grant petitions for the appointment of an attorney for an indigent defendant accused of any misdemeanor punishable by up to one year or ordinance punishable by imprisonment (MCL 600.8513[2][a]).
- v. suspend payment of court fees by an indigent party in any civil, small claims, or summary proceedings action until after judgment is rendered (MCL 600.8513[2][b]).
- vi. upon written authorization of the prosecuting or city attorney, sign a nolle prosequi, dismissing any criminal or ordinance violation case over which the district court has jurisdiction and release any bail bond or bail bond deposit to whom it is entitled, unless a preliminary examination or trial has been commenced or the judge has accepted a plea of guilty or no contest (MCL 600.8513[2][c]).
- vii. execute and issue process to carry into effect authority expressly granted by law to district court magistrates (MCL 600.8513[2][d]).

2. Warrants

- a. To issue warrants for arrest upon written authorization of the prosecutor or municipal attorney. Authorization is not required for a vehicle law or ordinance violation within the magistrate's jurisdiction if a police officer issued a traffic citation pursuant to MCL 257.728 and the defendant failed to appear.

Authorization is not required for violations of the Motor Carrier Act if the warrant is requested by agents of the state transportation department, county road commission, or the public service commission. Authorization is not required for a violation of a law protecting wild game or fish if the warrant is requested by the director, special assistant, or conservation officer of the Department of Natural Resources. (MCL 600.8511[e], MCL 764.1[2])

A district court magistrate may not issue an arrest warrant by electronic or electromagnetically transmitted facsimile (fax) or computer network.

- b. To issue search warrants, when authorized to do so by a district judge. Authorization may be either broad (blanket) or narrow (case-by-case basis). (MCL 600.8511[g])

3. Bail

- a. To fix bail and accept bond in all criminal cases. (MCL 600.8511[f])

- b. To set bail, accept bond, and order an individual to appear before the circuit court in the county for a hearing on the charge of violating a personal protection order when the circuit court judge may not be present or available within 24 hours after arrest of the individual. (MCL 764.15b[3])

4. Civil Infractions

- a. To the extent expressly authorized by the chief judge, presiding judge, or only judge of the district, a magistrate may hear and preside over admissions and admissions with explanation, and conduct informal hearings in civil infraction actions, and impose all sanctions allowed by statute, pursuant to the authority of MCL 600.8512a(a), MCL 600.8512 (traffic and parking civil infractions), MCL 600.8719 (municipal civil infractions), MCL 600.8819 (state civil infractions), and other applicable sections of these acts.
- b. A district court magistrate shall not conduct an informal hearing involving a traffic or parking violation governed by the Michigan Vehicle Code until he or she has successfully completed a special training course given by the state court administrator in traffic law adjudication and sanctions. (MCL 600.8512[2])
- c. The magistrate may not handle municipal and state nontraffic civil infractions for juveniles under the age of 17 unless the district court has entered into an agreement with the circuit court for the county in which the district court is located to waive jurisdiction over any or all state or municipal nontraffic civil infractions alleged to have been committed by juveniles. The agreement must specify for which civil infractions jurisdiction has been waived. For a civil infraction waived, the district or municipal court has jurisdiction over the juvenile in the same manner as if an adult had committed the civil infraction. (MCL 712A.2, MCL 712A.2[e][1])

5. Small Claims

- a. A district court magistrate who is an attorney licensed to practice law in Michigan, if authorized by the chief judge of the district, in cases in the small claims division, may administer oaths, examine witnesses, make findings of fact and conclusions of law, and recommend a judgment in the case. In doing so, the magistrate shall perform all functions that a district judge could perform in trying a case. (MCL 600.8427, MCL 600.8514)
- b. Magistrates shall exercise the same powers and perform the same duties as deputy clerks of the district court for the purpose of carrying out the provisions of Chapter 84, although they shall not be considered deputy clerks. (MCL 600.8545)

6. Marriage Ceremonies

- a. District court magistrates are authorized by statute to perform marriage ceremonies only in the district in which the magistrate serves. (MCL 551.7[1][b]) The magistrate must keep a record of all marriages performed by the magistrate in a book used expressly for that purpose. (MCL 551.104)
- b. District court magistrates are authorized to perform marriages and charge a fee of \$10.00, which shall be deposited with the court for transmission to the funding unit at the end of each month. (MCL 600.8316)

7. Appeals

- a. Every determination that a magistrate makes regarding responsibility is appealable to the district court judge as a matter of right. (MCR 4.401[D]) Appeals as of right may be taken from the district court magistrate to the district court. An appeal shall be taken within seven days after the entry of the decision of the magistrate and shall be de novo. (MCL 600.8515)

8. Contempt and Show Cause

- a. Magistrates do not have the specific authority to hold an individual in contempt, including contempts within his or her presence. A magistrate may schedule a show-cause hearing; however, the magistrate does not have the authority to conduct a show-cause hearing or to issue a contempt order. A magistrate does not have the authority to issue a bench warrant.
- b. When read together, MCR 4.401(A), (B) and MCL 600.8511 do not provide magistrates with the authority to conduct contempt proceedings. MCR 4.401(B) does not allow the chief judge to expand a magistrate's duties beyond those listed in Chapter 85 of the Revised Judicature Act.

9. Other

- a. Upon a sworn complaint that an animal is dangerous and has caused serious injury or death to a person or has caused serious injury or death to a dog, a district court magistrate shall issue a summons to the owner ordering him or her to appear to show cause why the animal should not be destroyed, and shall order other action as well. After conducting a hearing, the magistrate shall enter appropriate orders regarding the animal. (MCL 287.322)
- b. Administer oaths and affirmations and take acknowledgments in writing. (MCL 600.8317)

For more information, see MJI's *Magistrates Traffic Adjudication Manual* and *Magistrates Self-Instructional Training Package*.

B. Other Duties

The magistrate provides nonlegal advice and assistance to both the public and the court staff. The magistrate is routinely asked to resolve questions that frequently require discussion with other authorities such as law enforcement officers, prosecuting officials, judicial officers, etc. Other duties or activities the magistrate may perform include the following.

- a. Collecting and recording payment for fines and costs. Except as provided in MCL 600.8535(2), district court magistrates shall pay all fines and costs received by them to the clerk of the district court on or before the last day of the month following receipt of those funds, which shall be allocated as provided in section 8379. (MCL 600.8535[1]) In the 36th District Court, each magistrate shall cause all fines and costs received by the magistrate to be paid immediately to the clerk of the district court. (MCL 600.8535[2])

NOTE: While a magistrate may collect and record payment for fines and costs in courts where there are limited human resources, it is highly discouraged if resources are available. If a magistrate collects and records payments, the magistrate must follow the fiscal management guidelines regarding the receipt and deposit of money in Section 6-05 of the *Michigan Court Administration Reference Guide* at http://courts.michigan.gov/scao/resources/publications/manuals/carg/rg_sec6.pdf.

- b. Recording, indexing, filing, and posting the disposition of all cases processed.
- c. Notifying arresting agencies and Secretary of State of notices for failure to appear in court.
- d. Answering correspondence and complaints regarding cases processed.
- e. Administering oaths and affirmations.
- f. Taking acknowledgments.
- g. Issuing bond forfeiture notices and taking other actions associated with bond forfeiture.

C. Liability/Immunity

A district court magistrate, for acts done within his or her jurisdiction as provided by law, shall have judicial immunity to the extent accorded a district court judge. (MCL 600.8513[3])

1. Statutory Authority

Statute indicates that all governmental agencies shall be immune from tort liability in all cases wherein the governmental agency is engaged in the exercise or discharge of a governmental function, **but it is unclear whether this statute extends to the judiciary.** (MCL 691.1407[7]) For further details on liability protection for the judiciary, see Section 13 of the *Michigan Court Administration Reference Guide* at http://courts.michigan.gov/scao/resources/publications/manuals/carg/rg_sec13.pdf.

2. Conditions

Each officer and employee of a governmental agency and each volunteer acting on behalf of a governmental agency shall be immune from tort liability for injuries to persons or damages to property caused by the officer or employee while in the course of employment or service or by a volunteer while acting on behalf of a governmental agency if the following specific conditions are met. (MCL 691.1407[2])

a. Acting Within Scope of Authority

The officer, employee, members or volunteer must be acting or must reasonably believe he or she is acting within the scope of his or her authority.

b. Legitimate Governmental Function

The governmental agency must be engaged in the exercise or discharge of a governmental function.

c. No Gross Negligence

The conduct of the officer, employee, member, or volunteer must not amount to gross negligence that is the proximate cause of the injury or damage. "Gross negligence" means conduct so reckless that it demonstrates a substantial lack of concern for whether an injury results.

D. Conduct and Ethical Considerations

Ethics are the principles of conduct governing an individual or group, especially a professional group. Ethical principles help a person make appropriate decisions and respond properly in difficult situations. Following the ethical principles of the profession reduces the risk of job loss, criminal charges, and liability for unsuitable behavior.

1. Michigan Code of Judicial Conduct

As a judicial officer, magistrates are subject to the Michigan Code of Judicial Conduct. (Advisory Opinion 50, Judicial Tenure Commission) This includes the filing of financial reports pursuant to Canons 6C and 5C(4)(c). ([Memorandum from State Court Administrator Carl L. Gromek dated June 24, 2008](#)) There are seven canons of judicial conduct. See the Michigan Court Rules for the specific content of the canons. The following are the canon headings.

- A judge should uphold the integrity and independence of the judiciary.
- A judge should avoid impropriety and the appearance of impropriety in all activities.
- A judge should perform the duties of office impartially and diligently.

- A judge may engage in activities to improve the law, the legal system, and the administration of justice.
- A judge should regulate extrajudicial activities to minimize the risk of conflict with judicial duties.
- A judge should regularly file reports of compensation received for quasi-judicial and extrajudicial activities and of monetary contributions.
- A judge or a candidate for judicial office should refrain from political activity inappropriate to judicial office.

The State Bar of Michigan has created a Standing Committee on Professional and Judicial Ethics that renders opinions on questions of professional responsibility submitted by judges and attorneys. These opinions address the propriety of various actions by judges and quasi-judicial personnel in light of the Code of Judicial Conduct. Some of these opinions apply directly to magistrates; others apply indirectly. While the committee's opinions are not binding on state or federal courts, they are widely relied upon by judges and lawyers who have questions about professional responsibility. Published ethics opinions are available at <http://www.michbar.org>

Allegations of misconduct against a magistrate are investigated by the Judicial Tenure Commission, which determines whether to file a formal complaint based on the allegations. If a complaint is filed, a public hearing is held before the commission or an appointed master. After the hearing, the commission may recommend to the Michigan Supreme Court that a magistrate be censured removed from office. MCR 9.201-9.227 contain the rules governing procedures before the commission.

2. Judicial Ethics Opinions

There are a series of judicial ethics opinions published by the Subcommittee on Judicial Ethics Opinions in the *Michigan Ethics Opinions Manual*. See the Appendix of this section for more information.

3. Michigan Codes of Conduct

Although not necessarily a court manager or administrator, as a member of the staff of the court, every magistrate should be familiar with the Michigan Uniform Code of Conduct for Court Managers and Administrators established by the Michigan Court Administration Association and Michigan Association of Circuit Court Administrators. Magistrates should also be familiar with the Model Code of Conduct for Court Employees at <http://courts.michigan.gov/mji/resources/ModelCodeOfConduct.pdf>.

4. Core Ethical Principles

In addition to ethics specific to the magistrate, the following ten core ethical principles of all public service professionals should be exhibited by the magistrate: honesty,

integrity, promise-keeping, fairness, caring and concern for others, respect for others, civic duty, pursuit of excellence, personal accountability, and loyalty.

5. Gender and Race Bias Issues

The magistrate should, at all times, be cognizant of gender and race bias issues and follow established court policies, both formal and behavioral, to minimize the appearance of bias. The community expects the magistrate to reflect gender and race neutrality. Magistrates are encouraged to review the findings and recommendations of the Gender and Race Bias Task Forces and Supreme Court Administrative Order 1990-3 regarding policy and behavior which eliminates any suggestion of differential treatment. For more details, see Section 1.6.

E. Ancillary Agencies and Community Coordination

District courts interact with a variety of state and local agencies, reporting convictions, obtaining case information, and referring for pretrial or postadjudication services. Communication and coordination with these agencies facilitates a good working relationship and delivery of services. Magistrates should be familiar with the services and employees who interface with the courts from the following agencies.

- Local law enforcement.
- Michigan State Police, Central Records Division.
- Michigan State Police, CJIS Field Services.
- Department of State, Court Records Division.
- Department of State, Court Liaison.
- Community Health, Communicable Disease Counseling and Testing.
- Community Corrections, Community Service Opportunities.
- Pretrial Services, Bail Recommendations.
- Department of Corrections, Probation and Parole.
- Department of Natural Resources, Law Enforcement and Parks and Recreation Divisions.
- Area traffic and driver improvement education providers.
- Area domestic violence shelters and counseling providers.
- Area alcohol and substance abuse treatment providers.

F. Part-Time Magistrates

An attorney magistrate is prohibited from practicing law in the district court in which the magistrate serves. An attorney magistrate in the 36th District Court is prohibited from practicing law while he or she serves as a magistrate. Several ethics opinions in the Appendix of this section discuss circumstances relating to part-time magistrates and practice of law. (MCL 600.8525)

1.3 Rules of Confidentiality

A. Confidentiality of Records Generally

1. Public Access

Unless access to a file is restricted by statute, court rule, or an order sealing records according to MCR 8.119(F), any person may inspect pleadings and other papers in the clerk's office and may obtain copies as provided in MCR 8.119(E)(2) and (E)(3). Every court shall adopt an administrative order to make reasonable regulations necessary to protect its public records and prevent excessive and unreasonable interference with the discharge of its functions. (MCR 8.119[E][4]) See Section 1.8 for details on records and information management.

2. Privileged Information

Privileged information gathered from confidential relationships is not open to public inspection. For details about privileged information versus confidential information, see B below, and the *Manual for District Court Probation Officers*, Sections 1-03, 4-03, and 4-05 at <http://courts.michigan.gov/scao/resources/publications/manuals/prbofc.htm>.

3. Results of Blood Testing for HIV and Other Diseases

MCL 333.5131 and 333.5133 state that all reports, records and data pertaining to testing, care, treatment, reporting and research associated with a communicable disease or infection are confidential. Any person who releases test results in compliance with the law is immune from civil or criminal liabilities or administrative penalties for the release of that information. The test results for the presence of a communicable disease or infection, and the fact that a test was ordered, is subject only to physician-patient privilege laws.

4. Crime Victim's Impact Statement

If a victim has requested that his or her victim's impact statement be included in a presentence investigation report, it will be made available to the defendant unless exempted from disclosure by the court as specified by MCL 771.14(3) and MCR 6.425(B) and (C). (MCL 780.823[1][e], MCL 780.824)

B. Confidentiality of Probation Records

The magistrate may be accessing the records of probation officers for purposes of sentencing. All records and reports of investigations made by a probation officer and all case histories of probationers shall be privileged or confidential communications not open to public inspection. Magistrates shall have access to these records, reports, and case histories. (MCL 791.229, MCR 6.425)

1. Privileged Information

The only communications of the defendant which are privileged are those made to the probation officer within the scope of his or her statutory responsibility. (*People v Burton*, 74 Mich App 215; 253 NW2d 710 [1977]) The statutory privilege established by MCL 791.229 precluding discovery of a probation report may be waived. (*Howe v Detroit Free Press*, 440 Mich 203; 487 NW2d 374 [1992])

2. Release of Information

The rules of confidentiality require a release of information signed by a probationer or defendant when a probation officer is conferring with other professionals about the individual. Confidentiality limits what can be said when consulting the individual's significant others. It also limits what can be revealed to a witness in the probationer's or defendant's case. Discussing probationers or defendants within earshot of others violates the rules of confidentiality.

3. Disclosing Presentence Investigation Report and Related Records

The presentence report must be disclosed prior to sentencing. (MCL 771.14, MCR 6.425[B]) The defendant, the defense attorney, and the prosecutor have the right to read the presentence report. (MCL 771.14[5], MCR 6.425[B])

At the time of sentencing, either party may challenge, on the record, the accuracy or relevancy of any information contained in the presentence investigation report.

4. Records, Reports, and Case Histories

a. Exemptions from Disclosure

The sentencing magistrate may exempt from disclosure to the defendant parts of the presentence report that might seriously disrupt a program of rehabilitation and sources of information that have been obtained on a promise of confidentiality. When a part of the report is not disclosed, the court must advise the defendant and the defendant's attorney that information has not been disclosed and state on the record the reason for nondisclosure. (MCL 771.14[3], MCR 6.425[B])

b. Disclosure of Presentence Investigation Report**1) Before Sentencing****a) Review by Parties**

The sentencing court must permit the prosecutor, the defendant's lawyer and the defendant to review the presentence report at a reasonable time before the day of sentencing. The court may exempt from disclosure: (1) any information or diagnostic opinion that might seriously disrupt a program of rehabilitation, and (2) any sources of information that have been obtained on a promise of confidentiality. The defendant can object to consideration of prior felony or misdemeanor convictions.

b) Nondisclosure

When part of a presentence investigation report is not disclosed, the court must inform the parties that information has not been disclosed and state on the record the reasons for nondisclosure. To the extent it can do so without defeating the purpose of nondisclosure, the court also must provide the parties with a written or oral summary of the nondisclosure information and give them an opportunity to comment on it. The court's decision to exempt part of the report from disclosure is subject to appellate review. (MCR 6.425[B])

2) After Sentencing

After sentencing, the court, on written request, must provide copies of the presentence report and any attachments to the prosecutor and the defendant's lawyer. (MCR 6.425[C])

c. Responsibility of Probation Officer

Probation officers have a dual responsibility of protecting the public and promoting the rehabilitation of offenders. While the information that a probation officer has obtained and maintained in the probation file is confidential material, some materials may be released in certain instances. The presentence investigation report contains numerous bits of information about an offender's background, such as his or her education, social and medical history, and work experience. A probation file may also consist of other reports written by counselors, psychologists, and case workers. Therefore, a large amount of personal and confidential information is maintained by the probation officer, and should not be disclosed arbitrarily.

1) Releasing Conviction Information on Defendant

When conviction information is a matter of public record, probation officers may disclose this information to noncriminal justice agencies or other persons as long as agency regulations are observed.

2) Releasing Background Information on Defendant

Probation officers may also disclose an offender's background to criminal justice agencies on a need-to-know basis, provided the inquiry is related to an ongoing investigation. Courts generally base their decision to disclose information about an offender's background on the nature of the offender's crime and on the probation officer's opinion for potential harm.

3) Releasing Privileged Information

Privileged information gathered from confidential relationships is not open to public inspection.

4) Releasing Confidential Information

Confidential information gathered from the defendant is privileged only when given to the probation officer within the scope of the probation officer's statutory responsibility. (*People v Burton*, 74 Mich App 215; 253 NW2d 710 [1977])

5. Probationer's Statements

Any statements a defendant makes to a probation officer about criminal conduct should be included in a presentence report; however, if these statements are later denied in court, a magistrate should not consider them true in imposing sentence. (*People v Hildabridge*, 45 Mich App 93; 206 NW2d 216 [1973])

6. Crime Victim Rights

If a victim has requested his or her victim's impact statement be included in the presentence investigation report, it will be made available to the defendant unless exempted from disclosure by the court as specified in MCL 771.14(3) and MCR 6.425(B) and (C). (MCL 780.823[1][e], MCL 780.824)

C. LEIN Records

Dissemination of criminal history record information (CHRI) obtained via the Law Enforcement Information System (LEIN) is controlled by MCL 28.214, Criminal Justice Information Systems (CJIS) Policy Council rules, and Chapter 1 of Title 28 of the Code of Federal Regulations. Title 28 was developed to ensure the constitutional rights and privacy of individuals with CHRI, and to control the collection and dissemination of such information. LEIN Field Services is required by Title 28 to ensure that its requirements are satisfied by security standards.

Misdemeanor and felony violations were created by 1998 Public Act 82 for disclosure of information from LEIN in a manner not authorized by law or rule.

Title 28 limits the dissemination of nonconviction data directly or through an intermediary to criminal justice agencies for criminal justice purposes or employment, or other individuals and agencies as authorized by statute, executive order, or court rule.

LEIN administrative rule 28.6210 states that a user agency shall not disseminate criminal history record information received through the LEIN to a private person. A private person may receive verbal information from a law enforcement agency as to whether or not a warrant ordering his or her arrest has been issued by a court and entered into either LEIN or national crime information center (NCIC) files if proper identification is provided.

For related details on records and information management, see Section 1.8 of this manual. See also Section 8 of the *Michigan Court Administration Reference Guide* at http://courts.michigan.gov/scao/resources/publications/manuals/carg/rg_sec8.pdf.

D. Substance Abuse Assessment and Treatment

Section 42, Part 2 of the Code of Federal Regulations (42 CFR Part 2) restricts access by the public to information that identifies a person as participating in substance abuse treatment. Access to otherwise public records, such as an order of probation or register of actions, that contain references to substance abuse counseling or treatment must be restricted. When such information exists, before providing public access to a document containing such information, a copy of the document must be made and the relevant information redacted.

1.4 Definitions and Terms

Abstract - A summary of the court's judgment in a moving traffic violation case. The court sends abstracts of determinations of responsibility to the Secretary of State on form DS1-22.

Acknowledgment - A person's formal declaration before a judicial officer that a written instrument was his or her free act and deed.

Adjournment - The postponing of a case or session of court until another time.

Admission of Responsibility with Explanation - A procedure by which a person charged with a civil infraction admits committing the infraction, but contends the sanctions should be mitigated because of the circumstances surrounding the incident.

Admit Responsibility - In a civil infraction case, to admit responsibility is the equivalent of pleading guilty. The defendant who admits responsibility admits he or she committed the infraction, gives up the right to contest responsibility or explain the circumstances to the court, and pays the civil fine and costs.

Affidavit - A written statement of fact that is verified by oath or affirmation (sworn to before a person having authority to administer an oath). In small claims court, a suit is started when the plaintiff files an affidavit with the district court.

Affirmations - Declaration of the truth of one's statements, often made in lieu of oaths by persons whose religious beliefs prohibit them from taking oaths (see Oaths).

Appeal - An application to a higher court to change the judgment of a lower court. An appeal of the magistrate's decision in an informal hearing goes to the district judge.

Appearance - The formal act of submitting to a court's jurisdiction. A personal appearance in court is not always necessary to constitute an appearance. In a civil infraction case, a defendant may submit to the court's jurisdiction by mail or by representation.

Appearance by Representation - In a civil infraction case, an appearance by representation occurs when another person appears in court on behalf of the defendant to respond to the infraction charged. The person representing the defendant need not be an attorney at law.

Appearance Date - The last day on which the cited defendant may appear without losing the case by default.

Appellate Court - A court that reviews the decisions of lower courts (usually trial courts). In most instances, an appellate court makes its decision based on the transcript or written record of the lower court. In Michigan, the appellate courts are the Supreme Court and the Court of Appeals. The circuit court hears appeals of district court decisions; a district judge hears appeals of informal hearing decisions by magistrates.

Arraign - To hold a hearing in court in which defendants are informed of the charges against them, advised of their rights, appointed an attorney if necessary, and given the opportunity to plead to the charges.

Arraignment - A hearing in court in which persons charged with crimes are informed of the charges, advised of their rights, given the opportunity to answer the charges, and assigned appointed counsel, if necessary. Pretrial motions may be made and bail is set.

Arrest Warrant - A written order from a judge or magistrate directing an officer to arrest a specific person. To obtain an arrest warrant, the officer seeking the warrant must establish probable cause, i.e., a reasonable belief that the facts justify issuing a warrant.

Bail - A method of releasing a person accused of a crime before trial. The accused person or someone on the accused's behalf posts security with the court to ensure appearance at later proceedings, such as the trial.

Bench Warrant - An order issued by the judge for the arrest of a person for violating a court order.

Bind Over - To hold for trial; a finding at a preliminary examination that sufficient evidence exists to require a trial on the charges made against the defendant.

Bond - A financial obligation by the accused or someone on the accused's behalf to guarantee his or her future appearance in court. Also known as bail bond.

Bond Investigations - The bond insures that the defendant appears in court. The bond investigation gives the magistrate, who sets the bond, all the available information about the defendant to help determine the type and the money value of the bond needed to ensure the defendant's court appearance.

Calendar - Schedule of cases for the day. The same as "docket."

Case File - A file containing the documents pertaining to a case before a court.

CCH - Computerized Criminal History. Maintained by the Michigan State Police and accessible by criminal justice agencies via the Law Enforcement Information Network (LEIN) and by the public via the Internet connection I-CHAT.

CTN - Criminal tracking number; assigned by the prosecuting attorney.

Circuit Court Misdemeanor - Includes any offense which the statute designates as a misdemeanor which is punishable by more than one year imprisonment. It is processed in circuit court like a felony. Also called a high court misdemeanor.

Citation - A traffic ticket, civil infraction nontraffic ticket, or appearance ticket. The document charging a defendant with an offense. The court copy (original) is the complaint, and the misdemeanor or civil infraction copy given to the defendant is the summons.

Civil Fine - A monetary penalty that a person who commits a civil infraction must pay. Except for its name, a civil fine is the same as a penal fine.

Civil Infraction - An act or omission prohibited by law which is not a crime, for which civil sanctions may be ordered. Many civil infractions are traffic offenses, but not all traffic offenses are civil infractions.

Civil Sanctions - Penalties imposed on a person found responsible for a civil infraction. Possible sanctions include a civil fine, court costs, and mandatory attendance at a program, such as a driver-improvement course or drug or alcohol abuse program.

Civil Suit - A noncriminal action in which one private person brings suit against another as a result of an alleged violation of his or her rights.

Common Law - A system of laws that evolved from early English days to the present. It consists of old and accepted customs, precedents and court decisions, old English statutes, and other unwritten but accepted standards. In Michigan, the common law is still in effect except where it has been modified or repealed by statutes.

Complainant - One who makes a complaint; often interchanged with plaintiff and victim.

Complaint - The document that states the charges against the defendant. In a civil infraction case, the citation serves as the complaint and the plaintiff is the State of Michigan or a local governmental unit.

Contempt of Court - An act which hinders or obstructs a court in administering justice or lessens its authority or dignity. Only a judge may hold an individual in contempt.

Convict - To find or adjudge guilty of a criminal offense.

Crime - An offense against the public that is forbidden by law specifically and is punishable by imprisonment. In Michigan, a civil infraction is not a crime.

Crime Victim's Rights Act - An act to establish the rights of victims of crime and juvenile offenses, to provide for certain procedures, to establish certain immunities and duties, to limit convicted criminals from deriving profit under certain circumstances, to prohibit certain conduct of employers or employers agents toward victims, and to provide for penalties and remedies. (MCL 780.751 *et seq.*)

Decriminalization - A legislative decision to remove certain offenses, especially traffic offenses, from the category of “crimes” and place them in another category “civil infractions.” Decriminalization eliminates jail as a possible penalty. It usually involves replacing such criminal law terminology as “misdemeanor” and “conviction” with new terms such as “civil infraction” and “responsible.”

Default - Failing to do what, by law, ought to be done. In a civil infraction case, a default occurs when the defendant fails to answer a citation, or fails to appear at a scheduled hearing.

Default Judgment - Action taken by the court when the defendant fails to respond to a citation.

Defendant - The person against whom a court action is started.

Deny Responsibility - In a civil infraction case, to deny responsibility is the equivalent of pleading not guilty. The defendant who denies responsibility denies committing the infraction and demands that those who charged him or her with the infraction prove it in court.

Destruction of Records - The act of physically destroying information (including criminal records) in files, computers, or other depositories. Files should be destroyed pursuant to the *Records Retention and Disposal Schedule for Michigan Trial Courts, Schedule 16*.

Dismiss - To order a court action discontinued. Dismissal with prejudice forever bars the right to bring a lawsuit on the same claim or cause. Dismissal without prejudice disposes of the particular lawsuit before the court, but permits a new lawsuit to be brought based on the same claim or cause.

Disposition - Determination of a case, whether by dismissal, plea and sentence, settlement and dismissal, or verdict and judgment.

District Court - All criminal cases are commenced in district court. Felony cases may be bound over to circuit court after preliminary examination or waiver. Misdemeanors are tried in district court. Civil cases under \$25,000.00 and summary proceedings for possession of real estate constitute most of the civil caseload.

Docket - A calendar or schedule of cases.

Equity - A system of law and legal remedies that arose in common law England to provide remedies, such as injunctions, that the common law then could not provide. Although Michigan law has abolished the procedural distinction between common law and equity, the substance remains, as well as many of its terms. In Michigan, the circuit court has jurisdiction over equity suits.

Expunge - To destroy; blot out; obliterate; erase. There is no authority to expunge district court files. (See Destruction of Records.)

FAC - Failure to answer citation. When a person fails to answer a traffic citation (ticket), the court notifies the Department of State, which enters this information into its computer system. The defendant's license is suspended until the FAC is set aside after the case is disposed of and a fee is paid.

FCJ - Failure to comply with judgment imposed for violations of civil infractions that are issued on traffic violations; follows the same procedure as FAC.

Felony - A crime punishable by more than one year in the state prison, unless it is specifically stated to be a misdemeanor. Felonies are tried in the circuit court.

Felonious Driving - Reckless driving that causes crippling injury to another person. Felonious driving is a felony punishable by up to two years imprisonment, a \$1,000.00 fine, or both.

Findings of Fact - A decision by the court of issues involving disputed facts in a case. In an informal hearing, findings of fact are made by the magistrate.

Formal Hearing - A hearing to determine whether or not the defendant committed a civil infraction. Only a district judge may conduct formal hearings.

Inactive Case - A pending case over which the court has no effective control; a case which is filed in court, but for some reason cannot be processed by the court, such as defendant absconded or was never arraigned.

Incarceration - Commitment to jail or prison.

Informal Hearing - A hearing held to determine whether or not the defendant committed a civil infraction. Magistrates and district court judges may conduct informal hearings. The citing officer, defendant, and witnesses are present at an informal hearing, but attorneys are not allowed to represent either side. Either side may appeal the magistrate's determination; an appeal results in a formal hearing.

Interim Bond - Refers to a bond that is set by a police officer when a person is arrested for a misdemeanor minor offense without a warrant. Any misdemeanor warrant may also have an interim bond endorsed on it by the issuing judge or magistrate. Interim bond allows one to be released but be available for an arraignment.

Judgment - The decision of a court.

Judicial Notice - The act by which a court will, of its own motion and without the production of evidence, recognize the existence and truth of certain facts.

Jury - A body of men and/or women sworn to consider the evidence presented and to deliver a true verdict or decision in a judicial proceeding. There are six jurors for district court in civil and criminal matters. In circuit court there are six jurors for civil matters and 12 for criminal matters.

Killebrew Agreement - In *People v Killebrew*, 416 Mich 189; 330 NW2d 834 (1982), the court said the role of the trial court in plea negotiations is limited to consideration of bargains between defendants and prosecutors. The trial court may not participate in negotiations and, where it does not accept a proffered bargain or follow the prosecutor's recommendation, the defendant must be given the opportunity to affirm or withdraw a plea of guilty offered as part of the agreement. Judicial Ethics Opinion JI-177, contained in the Appendix of this section, discusses the court's responsibility to avoid the appearance of impropriety by sanctioning a plea bargain in a criminal case in which a prosecutor requires a defendant to pay costs of prosecution to the prosecutor's office in return for a reduction or dismissal of the pending criminal offense.

LEIN - Law Enforcement Information Network. A communications and integrated system providing access to a variety of databases, including wanted persons, criminal history records, driver records, and vehicle records.

MADCM - Michigan Association of District Court Magistrates.

MCL - An acronym for "Michigan Compiled Laws," the official compilation of Michigan statutes published by the Michigan Legislative Council.

MCLA - An acronym for *Michigan Compiled Laws Annotated*, a series of law books published by West Group.

MCR - An acronym for "Michigan Court Rules."

Minor - A person under the age of 18 years by civil law; a person under the age of 17 years by criminal and juvenile law.

Minor Offense - A misdemeanor or ordinance violation for which the maximum imprisonment does not exceed 92 days and the maximum permissible fine does not exceed \$500.00.

Misdemeanor - A violation of a penal law of this state which is not a felony, or a violation of an order, rule, or regulation of a state agency that is punishable by imprisonment or by a fine that is not a civil fine.

Mitigate - With respect to civil sanctions, to mitigate means to reduce the severity of the sanctions in light of extenuating circumstances.

MJI - Michigan Judicial Institute. The training department of the State Court Administrative Office.

Motion - An application to the court for the purpose of obtaining a certain order or decision in favor of the applicant.

Municipal Court - A court whose authority is confined to the city or community in which it is established. Municipal court civil jurisdiction is limited to \$1,500.00. Civil jurisdiction is increased to \$3,000 under certain circumstances. A few cities chose to retain this court rather than change to the district court system.

Nolle Prosequi - Unwilling to prosecute; a formal entry made on the court record by which the prosecutor declares he or she will not further prosecute the case. Usually based on some form of agreement. The prosecutor reserves the right to initiate the case again.

Nolo Contendere - Latin for "I will not contest it." It is a plea treated as a guilty plea except that it is not an admission of guilt, but an indication of readiness to accept conviction and sentence rather than go to trial. By pleading nolo contendere, there is no requirement for the defendant to tell the court what he or she did. This allows the defendant to avoid incriminating testimony in a pending civil action, or one that may later be filed against the defendant.

Notice of Hearing - Document notifying the scheduling of matters in court.

Oath - An affirmation by a defendant or witness that he or she will testify truthfully.

Offense - A crime or ordinance violation.

Order - A direction of a court made or entered in writing. An order may terminate an action, or decide some matter litigated by the parties.

Ordinance - A local law or regulation enacted by a municipal government. It has no effect outside that city or village.

ORI - Originating agency number. (See the *Law Enforcement Information Network Manual*.)

PACC Charge Code - A code used by the county prosecutor or attorney general to identify the crimes charged. PACC codes are not assigned to ordinance violations. The number is associated to the MCL cite.

Peace Bond - A proceeding in district court to require a person to keep the peace, either before a criminal complaint is brought to the court pursuant to MCL 772.1, or to continue the peace after a criminal judgment pursuant to MCL 769.6.

Peace Officer - Any public officer or official having authority to arrest to enforce the law and preserve peace; generally includes any sheriff, deputy sheriff, any state or municipal officer, and any state conservation officer.

Personal Recognizance - The release that is gained in a criminal case without having to post money or a surety bond with the court. The court accepts the defendant's word that he or she will appear for a scheduled matter or when advised to appear.

Petition - An application made in writing to the court.

Plaintiff - In criminal cases, the prosecuting attorney is the plaintiff. In civil cases, the person who initiates the lawsuit is the plaintiff. In civil infraction cases, it is the law enforcement officer or other designated official with authority to initiate a complaint.

Plea - The defendant's response to a criminal charge such as not guilty, guilty, or nolo contendere.

Plea Bargaining - An arrangement between the prosecutor and defense where the defendant agrees to plead guilty to a particular offense in return for the prosecuting attorney's agreement to allow such a plea (usually to a reduced charge) or a promise to dismiss some other offense pending against the defendant.

Plead - To answer the indictment, information, complaint and warrant, citation, appearance ticket, etc.; to answer an allegation.

Preliminary Examination - A hearing in a felony case before a district judge at which the prosecution presents evidence (the defendant and his or her counsel being present) from which the district judge decides whether there is probable cause to believe that a crime has been committed and that the defendant committed the crime, and to "bind over" or refer the defendant to the circuit court for trial.

Preponderance of the Evidence - A majority (i.e., 51 percent) of the evidence. In a civil infraction case, only a preponderance of the evidence is needed to find a defendant responsible for a civil infraction. This standard of proof differs from that used in a criminal trial, where the prosecution must prove guilt beyond a reasonable doubt.

Presentence Investigation - Investigation of the relevant background of a convicted offender. Usually conducted by a court's probation officer; designated to act as a sentencing guide for the sentencing magistrate.

Presentence Report - Written report prepared by the probation department, containing the family and personal history of the accused, evaluation of the crime and its ramifications, and recommendations as to sentencing. Required in all felony cases. Presented to the judge as a guide in determining sentence.

Presiding Magistrate - The magistrate conducting a hearing or trial or in charge of a case.

Pretrial Conference - A hearing in a criminal or civil case between the magistrate and the attorneys to discuss any questions or matters that can be resolved prior to trial itself, so as to assist in expediting or simplifying the trial. Such hearings are usually informal and without clients participating in the hearing itself.

Probation - Allowing a person convicted of an offense to remain in the community instead of going to jail or prison, as long as the offender fulfills the conditions of probation. The offender's probation is usually supervised by a probation officer. If a person violates probation, probation can be revoked and the defendant resentenced.

Procedural Safeguards - Aspects of a criminal proceeding intended to ensure that the accused receives a fair trial. They include jury trial, the right to an attorney (if the defendant has no money, one is appointed at state expense), and the requirement of proof beyond a reasonable doubt.

Pro Per or Pro Se - A person who represents himself or herself in court without the aid of an attorney.

Prosecuting Attorney - A public officer whose duty is to institute and conduct criminal proceedings on behalf of the people.

PSI - Presentence investigation.

Public Defender - An attorney paid by the county to defend one who is indigent.

Quash - To nullify a conviction or order.

Quasi-Judicial - Having a partly judicial character as applied to the magistrate's authority and duties. The district court magistrate must make a number of decisions similar to those made by judges and must abide by standards of conduct that apply to judges.

Record - The word for word (verbatim) account by the official court reporter/recorder of the proceeding. In certain circumstances, a written record is acceptable. (See MCR 6.610.)

Register of Actions - (formerly known as docket or journal) Case history. A written list of all important actions performed for an individual case from beginning to end. The register of actions (for actions performed), the case file (for documents filed), and any transcript of proceedings together form the "record." Often improperly used interchangeably with "docket."

Remand - To send a case back to the court from which it came for further proceedings. To send back to the lower or trial court from which it was appealed, with instructions as to what further proceedings should take place. A higher court usually will remand cases only when the lower court incorrectly applied the law or rules of evidence or procedure, and the lower court's errors affected the outcome of the case.

Responsible - In a civil infraction case, the legal status of having committed the infraction charged. It is the equivalent of being found guilty in a criminal case.

Restraining Order - An order of the court that is intended to restrain a person's action and preserve the status quo until a hearing can be held to determine if a temporary injunction should be issued. Not the same as a personal protection order filed in the circuit court.

Sanctions - Penalties, prescribed by law, to be imposed on those who violate the law. There are both criminal and civil sanctions.

SCAO - State Court Administrative Office. The administrative division of the Michigan Supreme Court.

Screening and Assessment - A procedural method in which the sentencing magistrate shall order and receive the facts pertaining to the defendant's alcohol/drug related history, prior offenses and driving record; blood-alcohol concentration results; screening and assessment testing procedures and results; current alcohol/drug dependency; prior alcohol/drug education or treatment; and any assessment recommendations for proposed rehabilitation services.

Search Warrants - Written orders from a judge or magistrate directing an officer to search a specific place for a specific object; issued upon a showing of probable cause.

Sentence - The punishment imposed upon the defendant following a conviction in a criminal proceeding.

Set Aside - In a civil infraction case, to set aside an admission of responsibility means to cancel it from the record and allow the defendant to offer a different response to the infraction charged. A court may set aside a defendant's admission when the facts of the case do not justify an admission.

Setting Aside Conviction - An order of the court which removes convictions of specific offenses from the public records. A nonpublic record is maintained by the Department of State Police on all convictions set aside. Not the same as expungement.

Show-Cause Order - An order to appear as directed and present to the court with reasons and considerations as to why certain circumstances should be continued, permitted, or prohibited. A magistrate may issue a show-cause order, but may not conduct a show-cause hearing.

SID - State identification number. A number provided by the Department of State Police based on positive fingerprint identification. It is generated when the law enforcement agency reports an arrest through the prosecutor to the Department of State Police.

Simple Misdemeanors - Misdemeanors punishable by no more than 90 days in jail, a fine, or both, and tried in the district court.

Small Claims Court - A division of the district court whose jurisdiction is limited to civil cases where the amount claimed does not exceed \$3,000.00. Small claims may be heard by a magistrate licensed to practice law in the state. When the magistrate hears the case, there is a right to an appeal, de novo, by either party within seven days after the decision by the magistrate.

State Case - Refers to a violation of state law. The term is most often used in district courts and municipal courts to distinguish between local ordinance violations and violations of state statute.

Statutes - Laws enacted by the state Legislature.

Stay - The suspension of a judicial proceeding by court order.

Subpoena - A writ or order to compel attendance in a court with a penalty for failure to do so.

Summons - A notice advising a person that legal proceedings have been started against him or her. In a civil infraction case, the citation serves as the summons. It commands the person to appear in court to answer the charges and warns that failure to respond will result in a default judgment being entered.

Superintending Control - Administrative supervision over lower courts. The Michigan Constitution gives the Michigan Supreme Court superintending control over all other Michigan courts. In addition, the circuit court has superintending control over district and probate court.

Traffic Crimes - Violations of the penal code or the Michigan Vehicle Code that are defined as crimes, i.e., either felonies or misdemeanors.

Traffic Misdemeanors - Violations of the Michigan Vehicle Code that are defined as misdemeanors. Unless the statute defining such a violation specifically provides otherwise, the violation is a misdemeanor punishable by up to 90 days in jail, a \$100.00 fine, and/or court costs.

Transfer - Movement of a case from one court to another because of lack of jurisdiction or for change of venue.

Trial De Novo - A retrial in which the parties start over from the beginning and proceed as if the first hearing never occurred. "De novo" is Latin for "anew." An appeal from the decision of an informal hearing results in a formal hearing.

Venue - The county or locality in which a cause of action occurs or a crime is committed and where court proceedings can be instituted. (See MCR 2.221-2.227.)

Verdict - The jury's decision or finding on the issues submitted to it for determination.

Warrant - A writ or paper issued by a judge or magistrate that allows the police to arrest or search a person.

Warrant Recall - A procedure for removing from LEIN information concerning cancelled warrants in order to avoid repeated or mistaken arrests, and for returning the warrant to the court.

With Prejudice - A claim dismissed "with prejudice" means that the plaintiff is forever barred from bringing criminal proceedings on the same claim.

Without Prejudice - A claim dismissed "without prejudice" may be the subject of a new proceeding on the same claim.

Writ - A court order giving the authority to require the performance of a specific act.

1.5 Access Issues

A. Accommodations

The magistrate should be sensitive to the various limitations of parties to access the court due to disabilities. Most SCAO-Approved forms that incorporate some sort of hearing notice have language about contacting the court for special accommodations which are needed to access the court. In addition, there is a Request for Accommodations (SCAO-Approved form MC 70) which can be mailed to parties upon request. The court is required to adopt a policy to address accommodations for persons with disabilities. For details, see the SCAO Model Policy on Requests for Accommodations by Persons with Disabilities at http://courts.michigan.gov/scao/resources/standards/aj_accom.pdf. Each court should have a designated ADA coordinator to assist with making accommodations available in the event there is a request.

B. Foreign Language Interpreters

The following excerpts were taken from *Court Interpretation: Model Guides for Policy and Practice in the State Courts*, published by National Center for State Courts.

1. Determining Need for Interpreter

Many individuals have enough proficiency in a second language to communicate at a very basic level; however, participating in court proceedings requires far more. When a party does not request an interpreter but appears to have a limited ability to communicate in English, the magistrate should conduct a brief voir dire to determine the extent of the disability. Avoid questions that can be appropriately answered with “yes” or “no.” The voir dire should include what, where, who, and when questions.

Some verification questions to ask are:

- Please tell the court your name and address.
- Please also tell us your birthday, how old you are, and where you were born.

Questions using active vocabulary in vernacular English are:

- How did you come to court today?
- What kind of work do you do?
- What was the highest grade you completed in school?
- Where did you go to school?
- What have you eaten today?
- Please describe for me some of the things (or people) you see in the courtroom.
- Please tell me a little bit about how comfortable you feel speaking and understanding English.

When there is any doubt about the ability of a person to comprehend proceedings fully or to adequately express himself or herself in English, an interpreter should be appointed. Caution should be used in permitting waiver of a right to an interpreter. It is recommended that the magistrate not allow a person to waive the use of an interpreter unless the person requests a waiver in writing and in the person's native language.

2. Determining Qualifications of Interpreter

All interpreters appointed by the court should be highly qualified. It is preferable for a court to establish the qualifications of interpreters before they are assigned to a courtroom. However, if a court does not have a program in place for coordinating interpreter services including appropriate screening and assessment of skills, it is recommended that the magistrate establish on the record that the proposed interpreter:

- communicates effectively with the officers of the court and the person(s) who receive(s) the interpreting services.
- knows and understands the Code of Professional Responsibility for Interpreters.
- will comply with the Code of Professional Responsibility, noting on the record any of its provisions that cannot be honored.
- takes the same oath that all interpreters must take in a court proceeding.

The following are some questions which should be asked to establish the qualifications of interpreters when no court testing or other prior screening standards exist.

- Do you have any particular training or credentials as an interpreter?
- What is your native language?
- How did you learn English and the foreign language?
- What is the highest grade you completed in school?
- Have you spent any time in the foreign country?
- Did you formally study either language in school? (Please explain.)
- How many times have you interpreted in court?
- Have you interpreted for this type of hearing or trial before and to what extent?
- Are you familiar with the Code of Professional Responsibility for Court Interpreters? Briefly describe some of the main points (i.e., interpret everything that is said).
- Are you a potential witness in this case?
- Do you know or work for any of the parties?
- Do you have any other potential conflicts of interest?
- Have you had an opportunity to speak with the non-English speaking person informally and, if so, were there any particular communication problems?
- Are you familiar with the dialectal or idiomatic peculiarities of the witnesses?
- Are you able to interpret simultaneously without leaving out or changing anything that is said?
- Are you able to interpret consecutively?

3. Oath of Interpreter

Every interpreter used in the court should be required to swear an oath of true interpretation. For interpreters who are full- or part-time employees of the court, an oath that binds them throughout their employment with the judiciary is preferable so that the oath does not need to be administered again for each proceeding. For interpreters who are not employees of the court and who are used intermittently, it is recommended that the interpreter be sworn at the beginning of the proceeding or at the beginning of a day's work in a given courtroom. See Section 1.7, page 54, for the oath of interpreters.

4. Explaining Role of Interpreter

The magistrate should explain the role and responsibilities of the interpreter to all the courtroom participants in any court proceeding. The explanation should be given before the proceedings begin.

C. Gender and Racial/Ethnic Issues

The court should, at all times, be cognizant of gender and racial/ethnic bias issues and establish policies, both formal and behavioral, to minimize the appearance of bias. The community expects that the court administration and staff reflect gender neutrality. The court and administrators are encouraged to review the findings and recommendations of the "Supreme Court Task Force Reports on Gender and Racial/Ethnic Issues in the Courts" and Supreme Court Administrative Order (AO) 1990-3 to assist in initiating policy and behavior, which eliminates any suggestion of differential treatment.

For more information, see the State Court Administrative Office "Self-Help Center" at <http://courts.michigan.gov/scao/selfhelp/intro/questions.htm>.

1.6 Acknowledgments

A. Authority and Purpose

Magistrates may take acknowledgments of instruments in writing. (MCL 600.8317)

When a magistrate takes an acknowledgment of an instrument, he or she is certifying that someone came before the magistrate and acknowledged that the instrument was executed for the purpose stated in the instrument. The acknowledgment is often a prerequisite for recording a deed, lease, bond, mortgage, etc.

B. Definition

An acknowledgment is a formal declaration by a person who executed an instrument before an authorized official that it is his or her free act and that the instrument is what it purports to be. (*Black's Law Dictionary*, Fifth Edition, p. 21) It is also a declaration as to the genuineness of a document or instrument, the truth of a statement, or an action taken, as in service of process, or that an act or deed has been done freely (voluntarily). When an officer certifies on an instrument that it has been acknowledged, this is also referred to as a "jurat" or "acknowledgment."

An instrument is a formal or legal written document such as a contract, deed, will, bond, lease, or security agreement. (*Black's Law Dictionary*, Fifth Edition, p. 719)

C. Procedure

Statute requires the person who executed the instrument to appear in person before the magistrate, deputy clerk, or notary public. The magistrate is required to either know the acknowledging person or obtain proper identification to ensure that the acknowledging person is the same person who executed the instrument. (MCL 565.264)

1. Administering Oath

The magistrate is not specifically required to administer an oath or affirmation to the acknowledging person, but some magistrates prefer to administer an oath at the beginning of the procedure. The following oath is sufficient.

- Raise your right hand. State your name. Do you solemnly swear or affirm that the statements you are about to make are the truth, the whole truth and nothing but the truth?

2. Acknowledgment

The person appearing before the magistrate must acknowledge that he or she executed the instrument for the purposes stated in the instrument. Additionally, if the instrument is executed: (1) on behalf of a corporation, by an officer or agent, (2) on behalf of a partnership, by a partner or an agent, (3) on behalf of a principal, by attorney in fact, or (4) by a public officer, trustee, administrator, guardian, or other representative, then that person must acknowledge that he or she is a qualified representative who has the proper authority to sign the instrument, and that the instrument is executed for the purpose stated in the instrument. (MCL 565.266)

D. Forms

Michigan has adopted the Uniform Recognition of Acknowledgments Act. (MCL 565.261 *et seq.*) This act requires that the certificate of acknowledgment, which if filled out by the magistrate, is in a form recognized by state law, or that the certificate contains the words “acknowledged before me.” (MCL 565.265) The forms of acknowledgment set forth in statute may be used and are sufficient for their purposes under any law of Michigan. The forms are known as “statutory short forms of acknowledgment” and may be referred to by that name. The authorization of the forms does not preclude the use of other forms. (MCL 565.267)

- For an individual acting in his or her own right:

State of _____
County of _____

The foregoing instrument was acknowledged before me this *(date)* by *(name of person acknowledged)*.

(signature of person taking acknowledgment)
(title or rank)
(serial number, if any)

- For a corporation:

State of _____
County of _____

The foregoing instrument was acknowledged before me this *(date)* by *(name of officer or agent, title of officer or agent)* of *(name of corporation acknowledging)* a *(state of place of incorporation)* corporation, on behalf of the corporation.

(signature of person taking acknowledgment)
(title or rank)
(serial number, if any)

- For a partnership:

State of _____
 County of _____

The foregoing instrument was acknowledged before me this *(date)* by *(name of acknowledging partner or agent)*, partner *(or agent)* on behalf of *(name of partnership)*, a partnership.

(signature of person taking acknowledgment)
 (title or rank)
 (serial number, if any)

- For an individual acting as principal by attorney in fact:

State of _____
 County of _____

The foregoing instrument was acknowledged before me this *(date)* by *(name of attorney in fact)*, as attorney in fact on behalf of *(name of principal)*.

(signature of person taking acknowledgment)
 (title or rank)
 (serial number, if any)

- By any public officer, trustee, or personal representative:

State of _____
 County of _____

The foregoing instrument was acknowledged before me this *(date)* by *(name and title of position)*.

(signature of person taking acknowledgment)
 (title or rank)
 (serial number, if any)

After the short form is completed, attach the certificate to the instrument.

1.7 Oaths and Affirmations

A. Authority and Purpose

Magistrates may administer oaths and affirmations and take acknowledgments in writing. (MCL 600.8317)

Michigan Rule of Evidence 603 requires that, before testifying, every witness shall be required to declare that the witness will testify truthfully, by oath or affirmation administered in a form calculated to awaken the witness' conscience and impress the witness' mind with the duty to do so.

B. Procedure

The usual method of administering an oath in Michigan shall be observed in all cases in which an oath may be administered by law, except as otherwise provided by law. The statutory procedure for administering an oath begins with the person who is to be sworn holding up his or her right hand. The statute does not require a specific form of oath, but it does require that the oath begin with the words "Do you solemnly swear or affirm"

1. Administering Oaths

The following are permissible methods for administering oaths.

- Raise your right hand. State your name. Do you solemnly swear or affirm that the testimony you are about to give in this cause (now here pending), will be the truth, the whole truth and nothing but the truth, so help you God?
- Raise your right hand. State your name. Do you solemnly swear or affirm that your testimony will be the truth, so help you God? (OAG 1943-1944, No 0-79, p 258)

2. Administering Affirmations

If a person is "conscientiously opposed to taking an oath," he or she may "solemnly and sincerely affirm, under the pains and penalties of perjury" that the testimony to be given will be the truth. (MCL 600.1434) The following is one permissible method for administering affirmations.

- Raise your right hand. State your name. Do you solemnly and sincerely promise and affirm that you will tell the truth, the whole truth and nothing but the truth, under the pains and penalties of perjury?

3. Administering Oaths and Affirmations by Electronic Means

An oath or affirmation administered by electronic or electromagnetic means of communication pursuant to MCL 780.651 or MCL 764.1 is considered to be administered before the magistrate. (MCL 600.1432)

4. Oath of Jurors

The oath to jurors is administered by the court clerk. The jury must be sworn by the clerk substantially as follows:

“Each of you do solemnly swear (or affirm) that, in this action now before the court, you will justly decide the questions submitted to you, that, unless you are discharged by the court from further deliberation, you will render a true verdict, and that you will render your verdict only on the evidence introduced and in accordance with the instructions of the court, so help you God.”

5. Oath for Interpreters

The following are sample oaths for interpreters.

- Do you swear or affirm that you will faithfully interpret these proceedings from English into (target language), and (target language) into English, to the best of your skill and judgment? (Use Oath 1 when a litigant needs an interpreter.)
- Do you swear or affirm that you will faithfully interpret all questions asked and the answers given from English into (target language), and (target language) into English, to the best of your skill and judgment? (Use Oath 2 when only a witness needs an interpreter, i.e., when the rest of the proceedings are in English and the litigants speak English.)
- Do you solemnly swear or affirm that you will interpret accurately, completely, and impartially, using your best skill and judgment in accordance with the standards prescribed by law and (the code of ethics for legal interpreters), follow all official guidelines established by this court for legal interpreting or translating, and discharge all of the solemn duties and obligations of legal interpretation and translation?
- (Alternate form) Do you promise that, to the best of your skill and judgment, you will make a true interpretation to this (deaf person or person unable to communicate the English language) of all the proceedings in a language which such person understands and that you will, in the English language, repeat the statements of such person to the court?

1.8 Administrative Issues

There are several areas of court administration with which the magistrate should become familiar, especially regarding local policy and procedures for caseload management, records and information management, and security management. In addition, the magistrate should be aware of policies and procedures pertaining to the management of court technology, facilities, equipment, supplies, personnel or human resources, and finance.

A. Caseload Management

The magistrate's primary concern regarding caseload management is the scheduling of cases. However, there are a number of other elements in caseload management with which the magistrate may want to become familiar. See the *Caseload Management Guide* at <http://courts.michigan.gov/scao/resources/publications/manuals/cfmg.pdf> for further details on caseload management.

The Michigan Supreme Court has issued Administrative Order (AO) 2003-7 establishing revised goals for case processing. In the order, the state court administrator is directed to assist trial courts in implementing caseload management plans, gather information from trial courts on compliance with caseload management guidelines, and assess the effect of caseload management plans, time guidelines, and tracking and monitoring systems.

The magistrate is required to prepare reports on the management and disposition of cases. See Section 7 of the *Michigan Court Administration Reference Guide* at http://courts.michigan.gov/scao/resources/publications/manuals/carg/rg_sec7.pdf for details about caseload reports, and see Section 8 of the *Michigan Court Administration Reference Guide* at http://courts.michigan.gov/scao/resources/publications/manuals/carg/rg_sec8.pdf for information on case disposition reports to state agencies.

1. Time Guidelines

In general civil cases, 90 percent should be settled, tried, or otherwise concluded within 273 days from the date of case filing, 98 percent within 364 days, and 100 percent within 455 days except for individual cases in which the court determines exceptional circumstances exist and/or for which a continuing review should occur. (AO 2003-7)

Small claims and other summary civil cases should be settled or otherwise concluded within 126 days from the date of filing. In those cases where a jury is demanded, actions should be concluded within 154 days from the date of filing. (AO 2003-7)

In misdemeanor criminal and traffic proceedings, 90 percent should be adjudicated or otherwise concluded within 63 days from the date of the first appearance, 98 percent within 91 days, and 100 percent within 126 days. (AO 2003-7)

Felony criminal and traffic preliminary examinations and extradition/detainer cases should be concluded within 14 days of arraignment unless good cause is shown. (AO 2003-7, MCL 766.4) Arraignment on the warrant or complaint must occur without unnecessary delay. In a misdemeanor case in which the defendant has been incarcerated for a period of 28 days or more to answer for the same crime or a crime based on the same conduct or arising from the same criminal episode, the defendant must be released on personal recognizance. (MCR 6.004[C], MCR 6.104) The court should have a local policy on the proper handling of incarcerated defendants.

In all civil infraction (including parking) cases, 90 percent should be adjudicated within 35 days from the date of filing, 98 percent within 56 days, and 100 percent within 84 days.

When a case is removed from circuit to district court, the district court time guidelines should apply and the time should commence when the case is received by the district court. (AO 2003-7)

2. Scheduling Cases

A definite time must be set for all court sessions, and the magistrate shall promptly open a session. Recesses shall be taken regularly, but should be short, and court must resume on time. Persons having business with a court must be in court and ready to begin at the opening of the session, and must otherwise be punctual for all court business. (MCR 8.116[A], [B])

a. Priority of Cases

- 1) The trial court has the responsibility to establish and control a trial calendar. In assigning cases to the calendar, insofar as it is practicable, the trial of criminal cases must be given preference over the trial of civil cases, and the trial of defendants in custody and of defendants whose pretrial liberty presents unusual risks must be given preference over other criminal cases. (MCR 6.004[B])
- 2) On its own initiative, the motion of a party, or the stipulations of all parties, the court may shorten the time in which a civil action will be scheduled for trial, subject to the notice provisions of MCR 2.501(C). In scheduling trials, the court shall give priority to actions afforded precedence by statute or court rule. (MCR 2.501[B])

b. Notice of Trial

Attorneys and parties must be given 28 days' notice of trial assignments, unless a rule or statute provides otherwise as to a particular type of action, the adjournment is of a previously scheduled trial, or the court otherwise directs for good cause. Notice may be given orally if the party is before the court when the matter is scheduled, or by mailing or delivering copies of the notice or calendar to attorneys of record and to any party who appears on his or her own behalf.

In small claims cases, the date for the appearance of a defendant provided in the notice shall not be less than 15 days nor more than 45 days after the date of the notice. If another appearance date must be scheduled because the notice was not served within the time required, the date shall not be less than 15 days nor more than 30 days after the date of the issuance of the new notice. (MCL 600.8406[1])

c. Scheduling Methods

According to Michigan Court Rule, all court events shall be scheduled in a staggered method so that parties may be heard within a time reasonably close to the scheduled time and, except for good cause, the docket shall be called in order. (MCR 8.116[C]) The court must be sensitive to the schedules of the public and provide a hearing time that is obtainable without undue inconvenience to anyone. Scheduling should be done to lessen as much as possible the time that it is necessary for a plaintiff or defendant to be absent from employment.

Some courts follow methods of scheduling other than staggered, such as by type of case, or straight scheduling which consists of scheduling all cases for the same time. Scheduling pretrials, hearings, and bench trials in large groups is not recommended because it increases the waiting time for litigants and gives the appearance of unimportance to certain types of cases.

3. Arraignment of Defendant Arrested Outside County

In conjunction with court rule and statutory requirement, the court should have a local policy for handling defendants arrested outside its judicial district. The general procedure outlined in court rule is as follows.

a. Place of Arraignment

An accused person arrested without a warrant must be taken to a court in the judicial district in which the offense allegedly occurred. If the arrest occurs outside the county in which these courts are located, the arresting agency must make arrangements with the authorities in the demanding county to have the accused promptly transported to the latter county for the arraignment in accordance with the provisions of MCR 6.104. If prompt transportation cannot be arranged, the accused must be taken without unnecessary delay before the nearest available court for preliminary appearance in accordance with MCR 6.104(C). (MCR 6.104[B], MCL 764.4-764.7)

b. Preliminary Appearance Outside County of Offense

When an accused is taken before a court outside the county of the alleged offense, the court must advise the accused of the rights specified in MCR 6.104(E)(2) and determine what form of pretrial release, if any, is appropriate. To be released, the accused must submit a recognizance for appearance within the next 14 days before a court specified in the arrest warrant or, in a case involving an arrest without a warrant, before either a court in the judicial district in which the offense allegedly occurred or some other court designated by that court. The court must certify the recognizance and have it delivered or sent without delay to the appropriate court. If the accused is not released, the arresting agency must arrange prompt transportation to the judicial district of the offense. In all cases, the arraignment is then to continue pursuant to MCR 6.104(D), if applicable, and MCR 6.104(E) either in the judicial district of the alleged offense or in such court as otherwise designated. (MCR 6.104[C])

B. Records and Information Management**1. Generally**

Although most information is generally found in the context of records, information management differs from records management. Information management encompasses not only records management but forms management, publications or public information management, case management, and other types of information systems. An overall information management system values all the sources of information within the office and links information needs with the appropriate source and the procedures that either create or move the information through the system.

The magistrate must have ready access to the information necessary to make informed, accurate, and timely decisions with regard to the services he or she is providing. Adequate management of information ensures that this access is made available and that the information is not only readily available, but accurate and reliable. It isn't enough to produce and distribute memorandums, manuals, brochures, newsletters, and other written media. Information must be conveyed and provided in context with the procedures.

Every court should have a program for managing the creation, maintenance, and disposition of all court records, both case and internal operations, including personnel. Any records management program should be followed by the magistrate. General information on records management, such as the method for keeping certain records, public access to court records, record retention and disposal, and report requirements, can be found in Section 8 of the *Michigan Court Administration Reference Guide* at http://courts.michigan.gov/scao/resources/publications/manuals/carg/rg_sec8.pdf, while detailed information can be found in the *Michigan Trial Court Case File Management Standards* at http://courts.michigan.gov/scao/resources/standards/cf_stds.pdf.

There are three aspects of record keeping that are of primary concern to the magistrate: (1) accounting, (2) case management, and (3) administrative operations. Administrative staff should be organized to effectively coordinate and integrate the management of information with records and caseload management.

Policies and procedures should be established for recording, transmitting, retrieving, and storing information pertinent to: (1) accurate and timely processing of cases from initiation to closure, (2) initiating and completing reviews and investigations, (3) returns on warrants, (4) the daily operations and administrative matters of the office, and (5) financial operations. The magistrate should become familiar with these local policies. Without clear, detailed, and complete record keeping practices, valuable information necessary for effective operation of the court can be lost or misplaced, efficiency may be reduced, and clients may be adversely affected because of unnecessary duplication, incomplete information, and misplaced financial and case records.

2. Record Retention and Disposal

Retention and disposal of trial court records is regulated by General Schedule 16 as approved by the State Court Administrative Office, Department of Attorney General and Michigan Department of History, Arts and Libraries. The schedule can be found at http://courts.michigan.gov/scao/resources/standards/cf_schd.pdf. Records may only be destroyed in accordance with the court's schedule and policies. The schedule must be used in conjunction with the Michigan Trial Court Case File Management Standards, which can be found at http://courts.michigan.gov/scao/resources/standards/cf_stds.pdf.

3. Providing Forms

A court may, but is not required to, delegate authority and make directions to court staff for certain functions, including providing forms to litigants and lawyers. To delegate this authority and make directions, the court must issue a local administrative order. For more information, see <http://courts.michigan.gov/scao/resources/other/lao.htm#certain>.

4. Public Access to Court Case Records

Generally, unless access to a file is restricted by statute, court rule, or an order according to MCR 8.119(F), any person may inspect pleadings and other papers in a court clerk's office and may obtain copies as provided by MCR 8.119(E)(2) and (3). Every court shall adopt an administrative order to make reasonable regulations necessary to protect its public records and prevent excessive and unreasonable interference with the discharge of its functions. See Section 1.3, page 25, for more information.

Access to an entire file may be restricted by court rule, statute, or a judicial order under certain circumstances. Case folders and related records (register of actions, indexes, court reporter notes, audio or video recordings, calendars, and public calendar, etc.) of certain types should be marked confidential. See “Nonpublic and Limited-Access Court Records” at http://courts.michigan.gov/scao/resources/standards/cf_chart.pdf.

The file area containing restricted access files that are frequently accessed should be away from the area accessible to the general public and unauthorized personnel and should be supervised. Each folder should be clearly identified to warn court personnel that access to the folder is restricted. The procedures and policies for restricted access files should be explicitly stated in the court rules or clerk of the court's manual and periodically reviewed with all staff who come into contact with such files. The clerk of the court must also take precautions to maintain the confidentiality of pieces of information in restricted access case files and other court records. This information includes confidential information regulated by Michigan or federal statute, federal regulation, or court rule.

When access to a record is restricted by statute, court rule, or order, the trial court should clearly mark the record "NONPUBLIC RECORD." **NOTE:** Search warrants, affidavits and tabulations are nonpublic for a period of time. See Section 2.2.11, page 31, for details.

When a court has ordered, or has pending before it a request to order, a limitation on the access of the public to court proceedings or records of those proceedings that are otherwise public, any person may file a motion to set aside the order or an objection to entry of the proposed order. If the court denies a motion to set aside the order or enters the order after objection is filed, the moving or objecting party may file an application for leave to appeal in the same manner as a party to the action. (MCR 8.116[D])

When public inquiry is made about a record but access is restricted by court order, court personnel should admit that a record exists without specifying what the record is, should indicate that access to the record is restricted, and should refer the inquiring person to the procedure for access to these records in MCR 8.116(D).

For more information on public access to court case records, see Section 8 of the *Michigan Court Administration Reference Guide*, which can be accessed on-line at http://courts.michigan.gov/scao/resources/publications/manuals/carg/rg_sec8.pdf.

Additional information can also be found in Section 1.3 of this manual and in the *Michigan Trial Court Case File Management Standards*, which can be accessed on-line at http://courts.michigan.gov/scao/resources/standards/cf_stds.pdf.

5. Filing Procedures

MCR 8.119 governs records and entries kept by the district court clerk. The clerk is responsible for keeping a file folder for each action along with all necessary pleadings, process, orders, and judgments filed in the action. The clerk may not permit any record or paper on file in the clerk's office to be taken from it without the order of the court.

The magistrate should adhere to the local policy and procedures of the court for specific filing methods and maintenance of files. Accurate and timely filing practices are important to ensure that all office staff has ready access to accurate, up-to-date information on case files. The keeping of case files in the magistrate's office is discouraged.

6. Media Relations

The magistrate staff should comply with the provisions of MCR 8.110(C)(2)(e), which states, "As the presiding officer of the court, a chief judge shall: ... represent the court in its relations with ... the news media."

The purpose of this rule is to ensure that a single and consistent "voice" is speaking on behalf of the court, and to decrease the opportunity for dissemination of inaccurate or contrary information. The court rule allows for delegation of this responsibility, but uncoordinated communication with the media can have detrimental effects on the public's perception of the court. The magistrate, in consultation with the court, should develop a policy on communicating with the media.

Written and video training materials are available through the Michigan Judicial Institute and the National Association for Court Management. All media contacts should be made with the chief judge's prior permission.

However, the court rule should not be read to prohibit staff from answering routine inquiries (e.g., hearing date and time, names and contact information for attorneys) that is a matter of public record. The court rule should also not be read as requiring the advance permission of the chief judge to give media access to files and other public information. The court's media policy should address when a chief judge's advance permission is required, and whether and when magistrates or staff can answer media inquiries.

C. Security Management

General information on court security and security management can be found in Section 14 of the *Michigan Court Administration Reference Guide*, which can be accessed on-line at http://courts.michigan.gov/scao/resources/publications/manuals/carg/rg_sec14.pdf.

The magistrate should be familiar with the local security guidelines of his or her court. Policies and procedures the magistrate should be familiar with are: handling emergencies, prisoner escort, weapons screening, use of firearms, deadly force and chemical irritants by staff, and use and security of the building after normal business hours.

1. Emergencies

Policies and procedures should exist for such emergencies as bomb threat, hostage situation, armed or unarmed assault, irate or violent clients, flood, utility failure (unplanned), medical emergency, tornado, snowstorm/winter weather emergencies, and civil disorder. Emergency plans on specific policy and response, developed in conjunction with local law enforcement agencies, should be available. This includes the means in which to summon emergency services and report incidents.

2. Prisoner Escort

The court should have policies and procedures regarding prisoner escort and should ensure that staff comply with these procedures. As much as possible, avoid escorting prisoners through corridors and in elevators used by the general public.

3. Weapons Screening

The court should have a procedure for conducting weapons screening. Permanent weapons screening stations may be cost prohibitive in terms of equipment needs and personnel for the station. The court may have developed a program with local law enforcement to provide periodic screening on a random, yet regular, basis. Signs should be posted informing visitors that weapons are not allowed in the facility and that visitors are subject to routine search.

4. Use of Firearms, Deadly Force and Chemical Irritants by Staff

The court should have policies regarding the use of firearms, deadly force, and chemical irritants by staff. The policies should address firearms training, prohibit use of deadly force in effectuating arrest under civil warrants, and prohibit the carrying of chemical irritants without authorization. There may be instances in which staff regularly carry weapons in the course of daily work. However, the necessity for this should be reviewed carefully in the context of self-protection and the potential for violence as a result of use and discharge of weapons. Generally, the carrying of weapons is usually limited to officers who are effectuating the arrest of individuals and not by staff within the office.

5. Use and Security of Court Building After Normal Business Hours

Magistrate access to the court building during nonbusiness hours should be limited, occurring only upon prior approval of management and for a specific purpose and duration. A procedure should be established to notify local law enforcement personnel when an employee may be working after hours or will be alone in the office. The policy should also indicate whether the public will need admittance to the office during these periods.

D. Video Proceedings

Interactive video technology can be used in specified criminal proceedings and is governed by MCR 6.006. See also Section 9 of the Michigan Court Administration Reference Guide at http://courts.michigan.gov/scao/resources/publications/manuals/carg/rg_sec9.pdf.

1.9 Michigan Association of District Court Magistrates

A. History

The Michigan Association of District Court Magistrates (MADCM) was originally founded in 1973 as a nonprofit organization.

B. Purpose

The object of the association is to promote the welfare, interest, and coordination of those persons charged with the administration of justice in the district court of the State of Michigan. The association will work for the benefit of its members, for the good of the judicial branch of government in Michigan, and the people of the state. In conjunction with other educational institutions, the Michigan Association of District Court Magistrates exists to provide continuing education and professionalism to enhance the procedural skills and a common sense approach to dispensing justice.

C. Membership

Membership in the association is open to any person holding the position of magistrate in a district court in the State of Michigan upon payment of the annual dues. An honorary membership in the association (without voting privileges) is open to retired member magistrates upon notification to the association of his or her retirement, or to persons awarded an honorary membership by the association. An associate membership in the association is open to any other person interested in the administration of justice and the association (without voting privileges) upon payment of the annual dues for associate members. Information about membership can be attained simply by contacting any association officer, by referring to the association newsletter, or contacting another magistrate who is a member. The board and its members encourage all magistrates to take an active part in the association by joining and attending seminars sponsored by the association.

D. Newsletter and Website

The association publishes a quarterly newsletter called "The Docket." The association's website is at <http://www.madcm.org/>.

E. Annual Conference

An annual conference is held in September of each year. Locations vary and are selected by the executive board. In addition to the educational benefits, the conference provides magistrates the opportunity to meet and exchange ideas with their colleagues. An annual general membership meeting is also conducted at the conference, at which time the election of officers is held.

APPENDIX 1

Attorney General Opinions

Michigan Ethics Opinions

SCAO Model Policy: Requests for Accommodations
by Persons with Disabilities

SCAO Model Policy: Requests for accommodations by persons with disabilities.

(a) **[Policy]** It shall be the intent of the _____ court to assure that qualified individuals with disabilities have equal and full access to the judicial system by providing a written accommodations policy. Nothing in this policy shall be construed to impose limitations or to invalidate the remedies, rights, and procedures accorded to any qualified individuals with disabilities under state or federal law.

(b) **[Definitions]** The following definitions shall apply under this policy:

(1) "Qualified individuals with disabilities" means persons covered by the Americans with Disabilities Act of 1990 (42 U.S.C. §12101 *et seq.*) and other related state and federal law; and includes individuals who have a physical or mental impairment that substantially limits one or more of the major life activities; have a record of such an impairment; or are regarded as having such an impairment.

(2) "Applicant" means a qualified individual who is involved in a case such as lawyer, party, witness, juror, or any other individual (such as a parent, family member, guardian etc.) with a legitimate interest in attending any proceeding before any court of this state.

(3) "Accommodation(s)" may include, but are not limited to, making reasonable modifications in policies, practices, and procedures; furnishing, at no charge, to the qualified individuals with disabilities, auxiliary aids and services, which are not limited to equipment, devices, materials in alternative formats, and qualified interpreters or readers; and making each service, program, or activity, when viewed in its entirety, readily accessible to and usable by qualified individuals with disabilities requesting accommodations. Access may be provided by various methods including alteration of existing facilities, acquisition or construction of additional facilities, relocation of a service or program to an accessible facility, or provision of services at alternate sites. The court will consider the expressed choice of the individual requesting the accommodation to facilitate effective communication. The court may not place a surcharge on a particular individual or group of individuals to cover the cost of accommodation.

(4) The "policy" means this policy regarding requests for accommodations in state and local courts by qualified individuals with disabilities.

(5) "Confidentiality" applies to the identity of the applicant in all oral or written communications, including all files and documents submitted by an applicant as part of the application process.

(c) **[Process]** The following process for requesting accommodations is established:

(1) Applications requesting accommodations pursuant to this policy may be presented *ex parte* in writing, on a form approved by the State Court Administrative Office and provided by the court, or orally as the court may allow. Applications should be made at the office designated by the court where the proceeding will take place, or to the judicial officer who will preside over the proceeding, or other court staff designated to coordinate requests for accommodations.

(2) All applications for accommodations shall include a description of the accommodation sought along with a statement of the functional impairment that necessitates such accommodation. The court, in its discretion, may require the applicant to provide additional information about the qualifying impairment.

(3) Applications should be made as far in advance of the requested accommodations implementation date as possible.

(4) Upon request, the court shall maintain the application form in a separate, confidential file so as not to reveal the identity or other information contained in the application for accommodation.

(d) [Permitted communication] An applicant may make ex parte communications with the court; such communications shall deal only with the accommodation(s) necessary to provide access and shall not deal in any manner with the subject matter or merits of the proceedings before the court.

(e) [Grant of accommodation] A court shall grant an accommodation as follows:

(1) In determining whether to grant an accommodation and what accommodation to grant, the court shall consider, but is not limited by, the applicable provisions of the Americans with Disabilities Act of 1990, Section 504 of the Rehabilitation Act of 1973, the state Deaf Persons Interpreters Act, PA 204 of 1982; Michigan Handicapper Civil Rights Act, PA 220 of 1976; and the Elliott-Larsen Civil Rights Act, PA 453 of 1976.

(2) The court shall inform the applicant in writing, or other accessible format needed by the applicant, of the reasons and basis upon which an order either grants or denies the accommodations request.

(f) [Denial of accommodation] An application may be denied **only if** the court finds that:

(1) The applicant has failed to satisfy the requirements of this policy; or

(2) The requested accommodation(s) would result in a fundamental alteration in the nature of the program, service or activity, or create an undue financial or administrative burden on the court.

(3) All courts however, **must make every effort** to enable individuals with disabilities to participate in and benefit from the services, programs and activities of the court.

(g) [Review procedure]

(1) An applicant or any participant in the proceeding in which an accommodation has been denied or granted may seek review of a determination made by nonjudicial court personnel within 5 days of the date of the notice of denial or grant by submitting a request for review to the presiding judge of the case.

(2) An applicant or any participant in the proceeding in which an accommodation has been denied or granted may seek review of a determination made by a presiding judge within 10 days of the date of the notice of denial or grant by submitting a request for review to the chief judge of the court.

(h) [Duration of accommodations] The accommodations by the court shall commence on the date indicated in the notice of accommodation and shall remain in effect for the period specified in the notice of accommodation. The court may grant accommodations for indefinite periods of time or for a particular matter or appearance. (Adopted effective _____, 1998.)