Michigan Supreme Court

State Court Administrative Office
Court Services Division
Michigan Hall of Justice
P.O. Box 30048
Lansing, Michigan 48909
Phone (517) 373-4835

Jennifer Warner
Director

February 21, 2020

TO: Michigan Court Forms Committee, Civil Workgroup

FROM: Rebecca Schnelz, Forms and Resources Analyst

RE: Agenda and Materials for **March 12, 2020 Meeting**

PLACE: **Michigan Hall of Justice**, 925 West Ottawa, downtown Lansing

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Below is the agenda for the March 12, 2020 meeting of the Michigan Court Forms Committee, Civil Workgroup. The meeting will be held in room 1S-69 and will begin at 9:30 a.m. Lunch reservations have been made for you. **If you cannot attend, please contact me at least two days before the meeting.** Please note that our office is located at 925 W. Ottawa Street, Lansing, MI 48915.

This agenda is divided into three sessions: district court, joint, and circuit court. Please bring these agenda materials to the meeting. Although documentation is provided with the agenda, it would also be helpful to bring a copy of the Michigan Court Rules and any other resources you believe are necessary.

District Court Session

1. Minor Changes

DCi 84, Collecting Your Money From a Small Claims Judgment

The information on page 2 of this form regarding the fee for a garnishment will be corrected to accurately reflect that there is a $6 disclosure fee for a garnishment of an income tax refund and a $35 disclosure fee for periodic garnishments.

Draft provided.

2. CIA 02, Judgment, Civil Infraction

In 2019, the committee modified the notice portion at the bottom of this form regarding rights to appeal, withdraw an admission, or to request that a default be set aside. The specific language modified dealt with the motion to set aside a default. The intent of the change was to make the language more accurately reflect the language of the court rule because the current language implied a right to set aside a default. The language was changed. At the same time the language in the notice regarding bond was modified to match the bond language on CIA 07, Default Judgment, Civil Infraction. As modified, the bond language reads, "You must post a bond equal to the total fines and costs noted when requesting a hearing to set aside a default."

A suggestion was received that the language regarding bond should not have been changed and that the new language is creating difficulty for individuals wishing to appeal who do not realize they have to post a bond.

Prior to 2019, the notice portion of this form read,

> NOTICE TO THE DEFENDANT: If this judgment is the result of an informal hearing, you may appeal the decision within 7 days of the judgment date. If this judgment is the result of a formal hearing, you may appeal the decision within 21 days of the judgment date. If this judgment is based on an admission of responsibility, you may file a written request to withdraw your admission within 14 days of the admission. If this judgment is the result of a default, you may file a motion to set aside the default within 14 days of the date the judgment was served. A bond equal to the amount of the judgment is required in all instances.

It should be noted that the bond information on CIA 07 refers only to a motion to set aside a default, whereas the notice language on CIA 02 refers to appeal, withdrawing an admission, or default. Bond is applicable to all three situations pursuant to MCR 4.101(E) and (H).

Should the bond language on this form be modified to read, "A bond equal to the amount of the judgment is required in all instances"?

Draft provided.

3. DCi, 84, Collecting Your Money From a Small Claims Judgment

a. A suggestion was received to correct language on page two of the form regarding how long a periodic garnishment remains in effect. Currently, the form says that a "periodic garnishment is valid until the expiration date on the writ or until the judgment, interest, and costs are paid off, whichever occurs first." However, under

MCL 600.4012(1), a garnishment of periodic payments remains in effect until the balance of the judgment is satisfied.

The suggestor proposed revising the sentence to read that a "periodic garnishment is valid until the judgment, interest and costs are paid off, or further court order, whichever occurs first."

Should the language be modified?

b. It was suggested that language should be added to this form to clarify that an attorney cannot do post judgment collections on behalf of a plaintiff in a small claims case. The suggestor stated that this has been a point of confusion in the past and a simple explanatory sentence would be of benefit to the plaintiffs.

According to *In Re Goehring*, 184 Mich App 360, 365 (1990), attorneys may not file postjudgment proceedings in the small claims division. In that case, the attorney argued that MCL 600.8408 only applied to the filing, prosecution, or defense of litigation and did not exclude attorneys from participating in small claims postjudgment proceedings. The Court of Appeals declined to adopt that reading of the statute and instead held that the legislature intended small claims "prosecutions" and "litigation" to include postjudgment proceedings. Additionally, the court held that neither the provisions of MCL 600.8409 or MCR 4.301 confers the right to counsel once a small claims judgment has been entered.

Form DCi 84 is required by MCL 600.8409, which also specifies information that must be contained in the form:

> (2) The state court administrator shall prepare instruction sheets clearly explaining in plain English how, and under what circumstances, a plaintiff in whose favor a judgment has been entered may request the court to issue execution, attachment, or garnishment to enforce payment of the judgment…

Should language be added to this form to clarify that an attorney cannot provide representation in post-judgment actions in a small claims case?

Draft provided.

4. <u>DC 90, Petition Regarding Impoundment of Motor Vehicle</u>

A suggestion was received to modify this form to clarify that this petition may be filed by a vehicle owner even when they have not received the required notice regarding its abandonment. The suggestor stated that, in its current form, item 5 on the form could be

confusing to a petitioner in situations where they never received notice but are aware of what happened to the vehicle.

Should item 5 be modified to an optional item on the form or otherwise modified to indicate it is to be completed if applicable and adding appropriate language to the instructions?

5. DC 100c, Notice to Quit to Recover Possession of Property, Landlord-Tenant
DC 102c, Complaint to Recover Possession of Property
DC 111c, Answer to Complaint to Recover Possession of Property

A suggestion was received to add back a reference to the Protecting Tenants at Foreclosure Act (PTFA) to DC 100c. The reference was removed after the law sunset in 2014. Section 304 of Title 3 of the Economic Growth, Regulatory Relief, and Consumer Protection Act of Public Law 115-174 repealed the sunset and restored PTFA's §§ 701-703, effective June 23, 2018.

The language that was previously removed from the form appeared as part of the note and stated, "Except for a 90-day notice given under the authority of Public Law No. 111-22, § 702; 123 Stat 1660 after foreclosure of the premises, if the lease agreement does not state otherwise, the landlord/landlady must give notice equal in time to at least one rental period." The form currently reads, "Unless otherwise allowed by law, the landlord/landlady must give notice equal in time to at least one rental period."

The suggestor stated that adding a notation regarding PTFA might also be appropriate for forms DC 102c and DC 111c.

Should the language be reinstated on DC 100c? Should language regarding PTFA be added to DC 102c and DC 111c?

Draft DC 100c provided.

6. DC 102a, Complaint, Nonpayment of Rent, Landlord-Tenant
DC 102b, Complaint, Damage/Health Hazard to Property, Landlord-Tenant
DC 102c, Complaint to Recover Possession of Property

A suggestion was received to modify item 7 in all three forms to make them consistent and to improve the wording to more clearly incorporate statutory language regarding the premises being kept fit in compliance with the requirements of both state and local units of government.

Item 7 on each form currently reads "The plaintiff declares that this residential property was kept fit for the use intended and has been kept in reasonable repair during the term of the lease." DC 102a qualifies this statement with the parenthetical instruction, "Must be checked unless modified by lease." DC 102b qualifies item 7 by including "if applicable" in parentheses before the statement. There is no qualifying statement on DC 102c. The instruction sheet for all three forms instruct the filer to, "Check item 7 only when applicable."

The suggestion is to modify all three forms so that item 7 reads, "The plaintiff declares that this residential property was kept fit for the use intended, has been kept in reasonable repair during the term of the lease and in compliance with the applicable health and safety laws of the state and of the local unit of government where the premises are located."

The suggestor states that this would bring item 7 into conformity with the requirements of MCL 554.139:

1) In every lease or license of residential premises, the lessor or licensor covenant:
   (a) That the premises and all common areas are fit for the use intended by the parties.
   (b) To keep the premises in reasonable repair during the term of the lease or license, and to comply with the applicable health and safety laws of the state and of the local unit of government where the premises are located, except when the disrepair or violation of the applicable health or safety laws has been caused by the tenants willful or irresponsible conduct or lack of conduct.
2) The parties to the lease or license may modify the obligations imposed by this section where the lease or license has a current term of at least 1 year.
3) The provisions of this section shall be liberally construed, and the privilege of a prospective lessee or licensee to inspect the premises before concluding a lease or license shall not defeat his right to have the benefit of the covenants established herein.

The language in item 7 has been substantially the same since 1980. The suggestor notes that a variety of municipalities across the state have passed ordinances regarding rental housing that provide for additional rights, duties, and obligations on the parties in a landlord-tenant relationship in the intervening 40 years. The suggestor further notes that modification of the language is necessary to help make clear to landlords and the court that a robust inquiry into the compliance of the plaintiff is necessary for a judgment to enter in cases where compliance is an issue.

Should the forms be modified?

7. DC 107, Application and Order of Eviction, Landlord-Tenant/Land Contract

It has been suggested that a modification should be made to the language under the Order of Eviction section of this form. Specifically, the suggestor notes that the order is addressed only to a "Court Officer." The suggestor noted the recent changes to MCL 600.5744 regarding individuals who may serve an eviction now include a "…court officer appointed by or a bailiff of the issuing court, the sheriff or a deputy sheriff of the county in which the issuing court is located, or an officer of the law enforcement agency of the local unit of government in which the issuing court is located…." MCL 600.5744(1).

Should the language in the order section that currently reads, "To the Court Officer," be updated to more accurately reflect the range of individuals that can serve the order? Is the caption under the signature line in the return section still accurate?

Joint Session

8. Minor Changes

CIA 07, Default Judgment, Civil Infraction
MC 216, 14-Day Notice, Traffic

The notice regarding fines, costs, and other financial obligations will be modified to include the complete wording of MCR 1.110.

Drafts provided.

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

A suggestion has been made that this form requires modification due to the recent revisions to MCR 2.305(A)(2) that were part of the recent updates to the discovery process. Specifically, concern was expressed as to whether the current form meets all the court rule requirements for a document only subpoena. In addition, it was suggested that a notice should be included for third parties that they have to produce or object within 14 days of service and that if copies of documents are requested then reasonable copying costs must be paid. A question was also raised whether the current form can be used for inspection of tangible things and entry upon land.

Does the form require modification for use with MCR 2.305(A)(2)?

10. MC 14, Garnishee Disclosure

A suggestion was received to add language to the instructions to the garnishee on this form to remind the garnishee to verify that the SSN or financial account number to be garnished matches the information for the individual they are actually garnishing. The suggestion was received from an individual at a debt collection firm. It was noted that when a garnishee garnishes the wrong individual (e.g., someone with the same name that works for them) because they don't verify information, it can be a very difficult situation to fix. The suggestor stated that the plaintiff firms are frequently called by the improperly garnished person to fix the situation, but due to federal laws that regulate the disclosure to third parties of information concerning debt, the problem can be difficult to correct.

The suggestion was made to add the following language to item 1 on page 3 (How to Fill Out the Garnishee Disclosure Form) in bold or underlined type:

> Confirm that the defendant's social security number, employee ID, or account number listed on the garnishment match the information you have on file.

Should an instruction be added to the form?

11. MC 15a, Order Regarding Installment Payments

It was suggested that language should be added to this form detailing where the installment payments are to be sent, similar to the language contained in the second half of item 4 on MC 12, Request and Writ for Garnishment (Periodic).

Should language directing where payments are to be sent be added to the form?

12. MC 55, Claim of Appeal

a. A suggestion was made to modify the language in item 1 of the form to insert the word "final" before the word "order." Currently, the item reads, "____[Name]____ claims an appeal from a final judgment or order…" The suggestor pointed to MCR 7.103(A)(1) and MCR 7.203(A)(1) as authority. The purpose of the modification would be to act as a reminder to the user regarding what is appealable by right.

   Should the form be modified?

b. A modification to this form was suggested in relation to item 4. It was suggested that cases involving a FOIA issue should be added as an option because of the statutory direction to expedite such appeals. The purpose of item 4 is to identify cases that require some type of expedited process pursuant to MCR 7.204(D). FOIA cases are not identified in this rule, but MCL 15.240(5) requires appeals of FOIA denials to be "expedited in every way."

   Should FOIA issues be added to item 4?

13. MC 282, Domestic Violence Screening for Referral to Mediation

A new form for domestic violence screening is required to be developed as part of the new FOC alternative dispute resolution court rule, MCR 3.224. The decision has been made to not use or modify MC 282 for the purpose outlined in MCR 3.224 and instead create a form more specifically tailored to the screening for the FOC ADR process.

A suggestion was made that a note should be placed on MC 282 to clarify that the form should not be used for purposes under MCR 3.224.

Should a note be added to the form?

14. MC 306, Substitution of Attorney

A suggestion was received to modify MC 306 and remove the option for entry of the order ex parte. The suggestor questioned why entry of the order ex parte is currently allowed and suggested as an alternative that signature lines for opposing counsel should be added to the form.

The substitution of an attorney is addressed by MCR 2.117(C)(2):

> Unless otherwise stated in this rule, an attorney who has entered an appearance may withdraw from the action or be substituted for only on order of the court.

The question was raised in the context of a domestic relations action, which has a specific rule regarding the entry of ex parte orders. MCR 3.207 provides, in part:

> (A) Scope of Relief. The court may issue ex parte and temporary orders with regard to any matter within its jurisdiction, and may issue protective orders against domestic violence as provided in subchapter 3.700.
> (B) Ex Parte Orders.
> (1) Pending the entry of a temporary order, the court may enter an ex parte order if the court is satisfied by specific facts set forth in an affidavit or verified

> pleading that irreparable injury, loss, or damage will result from the delay required to effect notice, or that notice itself will precipitate adverse action before an order can be issued…

Should the form be modified?

15. <u>Notice of Limited Scope Appearance</u>
<u>Notice of Withdrawal From Limited Scope Appearance</u>
<u>Objection to Withdrawal From Limited Scope Appearance and Notice of Hearing</u>

In 2019, the committee considered creating forms to accommodate the 2017 court rule amendments for limited scope representation. See MCR 2.117.

Members had a robust discussion as to whether to create these forms. Some members argued that the SCAO does not have a responsibility to create these forms and the State Bar of Michigan may provide these forms to attorneys. Other members argued that creating these forms would help provide access to lawyers for individuals who need a lawyer for a limited time. Members agreed that the SCAO should create an objection to withdrawal from limited scope appearance form to assist self-represented litigants. Members also agreed that a motion for service upon limited scope client and a motion to determine scope of representation should not be created.

Ultimately, the committee was split on creation of the notice of limited scope appearance and notice of withdrawal from limited scope appearance forms. It was decided that SCAO staff would have additional internal discussion to decide if the forms would be created and the committee agreed with that approach.

After internal discussion, the SCAO decided to create the following forms:

> Notice of Limited Scope Appearance
> Notice of Withdrawal from Limited Scope Appearance
> Objection to Withdrawal from Limited Scope Appearance and Notice of Hearing

Drafts of the forms are provided for the committee's review.

Circuit Court Session

16. CC 269, Order Regarding Driver's License Restoration after Review of the Record

In 2019, the committee discussed modifying this form to accommodate 2018 PA 99. A proposed draft was reviewed and members agreed modifications to CC 269 were necessary, however the committee was unable to review the proposed draft because of time constraints. Members suggested that it may be better to split the proposed draft into multiple forms and asked SCAO staff to look into the issue.

The committee tabled this item for further review.

This item is being brought back to the committee for discussion of the proposed draft and suggestion for multiple forms.

Draft provided.

Item 1

COLLECTING YOUR MONEY FROM A SMALL CLAIMS JUDGMENT

If you receive a money judgment through a lawsuit, you have the right to collect the money by the means allowed by law.

How Much can I Collect?

You can collect the amount stated in your small claims judgment (form DC 85) plus any interest that accumulates during the time the other party pays off the judgment.

How can I Collect my Money?

There are several ways to collect your money.

1. If the party who lost the lawsuit (called a judgment debtor) has the money and is present at the trial, s/he can pay you (called a judgment creditor) right then.

2. If the judgment debtor does not have the money at that time, the judge can set up a payment schedule.

If the judgment debtor is not present at the trial, the court will send a copy of the small claims judgment to the judgment debtor. The judgment will order the judgment debtor to pay you in full within 30 days or to tell you and the court where the judgment debtor works and the location of his/her bank accounts.

3. If the judgment debtor doesn't pay the judgment as ordered, you can collect your money through proceedings to seize property or to garnish income of the judgment debtor.

What is Seizure of Property?

Seizure of property is a court procedure that allows a court officer to seize property belonging to the judgment debtor that can be sold to pay the money owed to you. To file a request to seize property, use form MC 19, *Request and Order to Seize Property.*

What is Garnishment?

Garnishment is a court procedure that allows you to collect the money owed to you by taking in from the judgment debtor's wages, bank account, or another source (such as income tax refunds). To file a garnishment, contact the court clerk for the proper forms. Instructions are provided with the form.

How do I get an Order to Seize Property or a Garnishment?

To get an order to seize property or for garnishment, you must know where the judgment debtor lives and works, what assets s/he has and where these assets are located, and any other information that identifies the judgment debtor and his/her property.

- If you already have the information described above, you can start the process for an order to seize property or for garnishment.

- If you don't have the information described above, you can order the judgment debtor to appear in court for questioning through a process called discovery. You can start this process by filing a discovery subpoena.

How to File a Discovery Subpoena

You must wait 21 days after your small claims judgment was signed before you can file a discovery subpoena. Use form MC 11, *Subpoena (Order to Appear and/or Produce)*.

Be sure to contact the court to set an appearance date and then put that date and location on the form. Complete the front of the *Subpoena* form and the "Affidavit for Judgment Debtor Examination" on the back of the form. The judge must sign the *Subpoena* before it becomes effective. After the *Subpoena* is signed, you must serve it on the judgment debtor.

The fee for filing the *Subpoena* with the court varies. The cost of serving it also varies.

How to File a Request to Seize Property

You must wait 21 days after your small claims judgment was signed before you can get an order to seize property. Use form MC 19, *Request and Order to Seize Property*, to start the process. Complete the "Request" portion of form MC 19 and file it with the court.

The filing fee varies. The court will issue the order by signing the form, and it will be executed (property seized) by a sheriff or court officer.

When do I get my Money from Seized Property? Once property is seized and sold, the money will be given to you. The sheriff or court officer is entitled to fees, which will be deducted from the sale of the property.

How to File a Request for Garnishment

You must wait 21 days after your small claims judgment was signed before you can get a garnishment. There are **three types of garnishment**: 1) periodic, 2) nonperiodic, and 3) income tax intercept. Use the appropriate form MC 12, MC 13 or MC 52, *Request and Writ for Garnishment*, to start the garnishment process.

A **periodic** writ of garnishment (form MC 12) is used to garnish the judgment debtor's wages, rent payments, land contract payments, or other debt that is paid to the judgment debtor on a periodic basis. A periodic garnishment is valid until ~~the expiration date on the writ or until~~ the judgment, interest, and costs are paid off, whichever occurs first.

or further court order,

A **nonperiodic** writ of garnishment (form MC 13) is used to garnish the judgment debtor's bank account or other property. Once money has been garnished under the nonperiodic writ, the writ is no longer valid. If there is a remaining balance due on the judgment, you must get another writ to collect more money.

An **income tax** writ of garnishment (form MC 52) is used to intercept the judgment debtor's income tax refund. Once the tax refund has been intercepted by the Department of Treasury, the writ is no longer valid. If there is a remaining balance due on the judgment, you must get another writ to collect more money.

Write or type in the names and addresses of the defendant (judgment debtor) and the garnishee on the "Request" part of the form. The **garnishee** is the person or business who has control or possession of the judgment debtor's money. After you complete the "Request," you must file it with the district court that entered your small claims judgment. The filing fee is $15.

The court will issue the "Writ" (order) by signing the form. The *Request and Writ for Garnishment* must be served on the garnishee along with the *Garnishee Disclosure*, form MC 14. There is a $6 disclosure fee for a garnishment of ~~periodic payments and~~ income tax refund. The cost of serving the writ varies.

an

and a $35 disclosure fee for a periodic garnishment

When do I get my Money from the Garnishment? The garnishee has 14 days after the writ is served to let you, the court, and the judgment debtor know if any money is available for garnishment. This information will be provided on the *Garnishee Disclosure*, form MC 14. If you are trying to garnish the judgment debtor's wages, you will only receive part of the wages, calculated by using a federal formula.

If money is available, it will be withheld from the judgment debtor right away. However, this money will be held for 28 days to allow the judgment debtor time to object. If the judgment debtor files no objections with the court, the withheld money will be automatically sent to you after 28 days. If the garnishment is for periodic payments, money will continue to be sent to you as payments become due to the judgment debtor until the writ expires.

What Else can I do?

If your case against the judgment debtor involved a traffic accident, you can ask the court for an abstract of judgment, which would suspend the judgment debtor's Michigan driver's license until s/he pays the judgment. You must wait 30 days after the date of judgment until you can get an abstract of judgment. You need to provide the judgment debtor's full name, date of birth, and Michigan driver's license number. There is no filing fee. The court clerk should have the necessary forms.

MichiganLegalHelp.org has tools that can help you with small claims cases.

Item 2

STATE OF MICHIGAN JUDICIAL DISTRICT COUNTY	JUDGMENT Civil Infraction	CASE NO. and JUDGE DRAFT

Court address **Court telephone no.**

Plaintiff

The ☐ State ☐ Township ☐ City ☐ Village

of _____

v

Defendant's name, address, and telephone no.

☐ Statute ☐ Ordinance Infraction: _____ Infraction date: _____

DEFAULT ENTRY

I certify that:

1. The defendant has not made a scheduled appearance nor answered the citation within the time allowed by statute.

☐ 2. The defendant is not in the military service or is in the military service but received notice and adequate time and opportunity to appear and defend.

3. The default of the defendant is entered.

_____
Judge/Magistrate/Deputy court clerk, bar no., and date

JUDGMENT

THE COURT FINDS:

☐ 1. The defendant is responsible and admitted responsibility
☐ by mail. ☐ in person/by representation.

☐ 2. The defendant is in default. The citation/complaint is sufficient to make a determination of responsibility.

☐ 3. After hearing, the defendant ☐ is ☐ is not responsible as amended: _____ .

☐ 4. The plaintiff failed to appear.

☐ 5. The plaintiff moved to dismiss the case.

IT IS ORDERED:

Note: For a defendant on active military duty, default judgment shall not be entered, except as provided by the Servicemembers Civil Relief Act.

☐ 6. The case is dismissed.

☐ 7. The defendant must pay the balance due by returning a copy of this judgment with payment.

Amount of judgment

Fine	$ _____
Costs	$ _____
State costs	$ _____
	$ _____
Total	**$** _____
Bond forfeited	$ _____
Balance due	**$** _____

Date owed: _____

8. Other:

_____
Judge/Magistrate/Deputy court clerk, bar no., and date

TO THE DEFENDANT: If you fail to pay within 28 days of the date owed, the Secretary of State may take action against your driving privileges. In addition, the fine, costs, and fees not paid within 56 days of the date owed are subject to a 20% late penalty on the amount owed. If you are not able to pay due to financial hardship, contact the court immediately to request a payment alternative.

If this judgment is the result of an informal hearing, you may appeal the decision within 7 days of the judgment date (form CIA 05). If this judgment is the result of a formal hearing, you may appeal the decision within 21 days of the judgment date (form CIA 05). If this judgment is based on an admission of responsibility, you may file a written request to withdraw your admission within 14 days of the admission (form CIA 05). If this judgment is the result of a default, you may be able to have the default judgment set aside by filing a motion (form CIA 04) within 14 days of the date the judgment was served. ~~You must post a cash bond equal to the total fines and costs noted when filing a motion to set aside a default judgment.~~

A bond equal to the amount of the judgment is required in all instances.

CERTIFICATE OF SERVICE

I certify that on this date

☐ I have personally served a copy of this judgment on the defendant.

☐ I have served a copy of this judgment on the defendant by first-class mail addressed to his/her last-known address as defined by MCR 2.107(C)(3).

I declare under the penalties of perjury that this certificate of service has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

_____
Clerk/Deputy court clerk/Magistrate, bar no., and date

Michigan Compiled Laws Annotated
Michigan Court Rules of 1985
Chapter 4. District Court
Subchapter 4.100. Civil Infraction Actions

MI Rules MCR 4.101

Rule 4.101 Civil Infraction Actions

Effective: January 1, 2020
Currentness

(A) Citation; Complaint; Summons; Warrant.

(1) Except as otherwise provided by court rule or statute, a civil infraction action may be initiated by a law enforcement officer serving a written citation on the alleged violator, and filing the citation in the district court. The citation serves as the complaint in a civil infraction action and may be prepared electronically or on paper. The citation must be signed by the officer in accordance with MCR 1.109(E)(4); if a citation is prepared electronically and filed with a court as data, the name of the officer that is associated with issuance of the citation satisfies this requirement.

(a) If the infraction is a parking violation, the action may be initiated by an authorized person placing a citation securely on the vehicle or mailing a citation to the registered owner of the vehicle.

(b) If the infraction is a municipal civil infraction, the action may be initiated by an authorized local official serving a written citation on the alleged violator. If the infraction involves the use or occupancy of land or a building or other structure, service may be accomplished by posting the citation at the site and sending a copy to the owner by first-class mail.

(2) A violation alleged on a citation may not be amended except by the prosecuting official or a police officer for the plaintiff.

(3) The citation serves as a summons to command

(a) the initial appearance of the defendant; and

(b) a response from the defendant as to his or her responsibility for the alleged violation.

(4) A warrant may not be issued for a civil infraction unless permitted by statute.

(B) Appearances; Failure to Appear; Default Judgment.

(1) Depending on the nature of the violation and on the procedure appropriate to the violation, a defendant may appear in person, by representation, or by mail.

(2) A defendant may not appear by making a telephone call to the court, but a defendant may telephone the court to obtain a date to appear.

(3) A clerk of the court may enter a default after certifying, on a form to be furnished by the court, that the defendant has not made a scheduled appearance, or has not answered a citation within the time allowed by statute.

(4) If a defendant fails to appear or otherwise to respond to any matter pending relative to a civil infraction action, the court:

(a) must enter a default against the defendant;

(b) must make a determination of responsibility, if the complaint is sufficient;

(c) must impose a sanction by entering a default judgment;

(d) must send the defendant a notice of the entry of the default judgment and the sanctions imposed; and

(e) may retain the driver's license of a nonresident as permitted by statute, if the court has received that license pursuant to statute. The court need not retain the license past its expiration date.

(5) If a defendant fails to appear or otherwise to respond to any matter pending relative to a traffic civil infraction, the court

(a) must notify the secretary of state of the entry of the default judgment, as required by MCL 257.732, and

(b) must initiate the procedures required by MCL 257.321a.

(6) If a defendant fails to appear or otherwise to respond to any matter pending relative to a state civil infraction, the court must initiate the procedures required by MCL 257.321a.

(C) Appearance by Police Officer at Informal Hearing.

(1) If a defendant requests an informal hearing, the court shall schedule an informal hearing and notify the police officer who issued the citation to appear at the informal hearing.

(2) The attendance of the officer at the hearing may not be waived.

Except when the court is notified before the commencement of a hearing of an emergency preventing an on-duty officer from appearing, failure of the police officer to appear as required by this rule shall result in a dismissal of the case without prejudice.

(D) Motion to Set Aside Default Judgment.

(1) A defendant may move to set aside a default judgment within 14 days after the court sends notice of the judgment to the defendant. The motion

(a) may be informal,

(b) may be either written or presented to the court in person,

(c) must explain the reason for the nonappearance of the defendant,

(d) must state that the defendant wants to offer a defense to or an explanation of the complaint, and

(e) must be accompanied by a cash bond equal to the fine and costs due at the time the motion is filed.

(2) For good cause, the court may

(a) set aside the default and direct that a hearing on the complaint take place, or

(b) schedule a hearing on the motion to set aside the default judgment.

(3) A defendant who does not file this motion on time may use the procedure set forth in MCR 2.603(D).

(E) Response.

(1) Except as provided in subrule (4), an admission without explanation may be offered to and accepted by

(a) a district judge;

(b) a district court magistrate as authorized by the chief judge, the presiding judge, or the only judge of the district; or

(c) other district court personnel, as authorized by a judge of the district.

(2) Except as provided in subrule (4), an admission with explanation may be written or offered orally to a judge or district court magistrate, as authorized by the district judge.

(3) Except as provided in subrule (4), a denial of responsibility must be made by the defendant appearing at a time set either by the citation or as the result of a communication with the court.

(4) If the violation is a trailway municipal civil infraction, and there has been damage to property or a vehicle has been impounded, the defendant's response must be made at a formal hearing.

(F) Contested Actions; Notice; Defaults.

(1) An informal hearing will be held unless

(a) a party expressly requests a formal hearing, or

(b) the violation is a trailway municipal civil infraction which requires a formal hearing pursuant to MCL 600.8717(4).

(2) The provisions of MCR 2.501(C) regarding the length of notice of trial assignment do not apply in civil infraction actions.

(3) A defendant who obtains a hearing date other than the date specified in the citation, but who does not appear to explain or contest responsibility, is in default, and the procedures established by subrules (B)(4)-(6) apply.

(4) For any hearing held under this subchapter, in accordance with MCR 2.407, the court may allow the use of videoconferencing technology by any participant as defined in MCR 2.407(A)(1).

(G) Postdetermination Orders; Sanctions, Fines, and Costs; Schedules.

(1) A court may not increase a scheduled civil fine because the defendant has requested a hearing.

(2) Upon a finding of responsibility in a traffic civil infraction action, the court:

(a) must inform the secretary of state of the finding, as required by MCL 257.732; and

(b) must initiate the procedures required by MCL 257.321a, if the defendant fails to pay a fine or to comply with an order or judgment of the court.

(3) Upon a finding of responsibility in a state civil infraction action, the court must initiate the procedures required by MCL 257.321a(1), if the defendant fails to pay a fine or to comply with an order or judgment of the court.

(4) The court may waive fines, costs and fees, pursuant to statute or court rule, or to correct clerical error.

(H) Appeal; Bond.

(1) An appeal following a formal hearing is a matter of right. Except as otherwise provided in this rule, the appeal is governed by subchapter 7.100.

(a) A defendant who appeals must post with the district court, at the time the appeal is taken, a bond equal to the fine and costs imposed. A defendant who has paid the fine and costs is not required to post a bond.

(b) If a defendant who has posted a bond fails to comply with the requirements of MCR 7.104(D), the appeal may be considered abandoned, and the district court may dismiss the appeal on 14 days' notice to the parties pursuant to MCR 7.113. The court clerk must promptly notify the circuit court of a dismissal and the circuit court shall dismiss the claim of appeal. If the appeal is dismissed or the judgment is affirmed, the district court may apply the bond to the fine and costs.

(c) A plaintiff's appeal must be asserted by the prosecuting authority of the political unit that provided the plaintiff's attorney for the formal hearing. A bond is not required.

(2) An appeal following an informal hearing is a matter of right, and must be asserted in writing, within 7 days after the decision, on a form to be provided by the court. The appeal will result in a de novo formal hearing.

(a) A defendant who appeals must post a bond as provided in subrule (1)(a). If a defendant who has posted a bond defaults by failing to appear at the formal hearing, or if the appeal is dismissed or the judgment is affirmed, the bond may be applied to the fine and costs.

(b) A plaintiff's appeal must be asserted by the prosecuting authority of the political unit that is responsible for providing the plaintiff's attorney for the formal hearing. A bond is not required.

(3) There is no appeal of right from an admission of responsibility. However, within 14 days after the admission, a defendant may file with the district court a written request to withdraw the admission, and must post a bond as provided in subrule (1)(a). If the court grants the request, the case will be scheduled for either a formal hearing or an informal hearing, as ordered by the court. If the court denies the request, the bond may be applied to the fine and costs.

Credits

[Adopted effective March 1, 1985. Amended March 23, 1989, effective June 1, 1989, 432 Mich; April 27, 1989, effective July 1, 1989, 432 Mich; April 24, 1997, effective September 2, 1997, 454 Mich; October 18, 2005, effective January 1, 2006, 474 Mich; December 13, 2005, effective January 1, 2006, 474 Mich. Amended effective August 24, 2012, 492 Mich. Amended September 21, 2016, effective January 1, 2017, 500 Mich; September 18, 2019, effective January 1, 2020, 503 Mich.]

Editors' Notes

COMMENTS

Staff Comment to 1985 Adoption

MCR 4.101 is based on DCR 2011. There is some reorganization and several slight modifications.

In subrule (A)(4), the prohibition on issuing a warrant for a civil infraction is qualified where issuance of a warrant is permitted by statute.

Under DCR 2011.3(A)(3), in order to enter a default, the clerk was required to certify that the defendant had not answered the citation. Subrule (B)(3)(b) adds the words “within the time allowed by statute”.

In subrule (E)(1) the reference to a “sworn” complaint is removed. Under MCL 257.727c(3), the citation is treated as sworn to if it includes the declaration provided by that statute.

The [March 1, 1985] amendment of MCR 4.101(E) excepts civil infraction actions from the requirement of MCR 2.501(C) that the parties be given at least 28 days' notice of trial.

Subrule (G)(2) provides that if a defendant who has posted a bond in order to appeal fails to appear at the formal hearing, the bond may be applied to the fine and costs imposed.

Staff Comment to June, 1989 Amendment

The March 23, 1989 [amendment to MCR 4.101, effective June 1, 1989, makes] several changes in the procedures for appealing to the circuit court.

MCR 4.101(G)(4) is amended to clarify the bond requirement when a defendant appeals to circuit court in a civil infraction action.

Staff Comment to July, 1989 Amendment

The May 3, 1989 amendments to MCR 4.101(B) and (F), 4.102(B) and 8.105(G) [effective July 1, 1989], suggested by the Task Force on Reporting Traffic-Related Offenses, are intended to implement recent statutory changes.

Staff Comment to 1997 Amendment

The September 1997 amendments of MCR 4.101, 4.401, and 6.615, and the addition of MCR 8.125, [effective September 2, 1997] were adopted at the request of the Michigan District Judges Association because of recent statutory changes that created new categories of civil infractions, and the availability of electronic filing. In addition, the amendment of MCR 4.401(G) was made to clarify the procedure for challenging a civil infraction judgment.

Staff Comment to October, 2005 Amendment

The amendment of MCR 4.101(A)(2) limits amendment of a violation on a citation filed with the court to the prosecuting official. The deletion of former subsection (A)(3) conforms to a change in MCR 6.615(A)(3), which takes effect January 1, 2006. The new subsection (C) requires the court to schedule an informal hearing when requested by the defendant, and notify the officer who issued the citation to appear, prohibits waiver of the presence of the officer at an informal hearing, and establishes

procedures if the police officer fails to appear for a hearing. The amendment of relettered (F)(1) makes this section consistent with changes of MCR 6.615(D)(1), which take effect January 1, 2006.

Staff Comment to December, 2005 Amendment

The amendment of MCR 4.101(A)(2) clarifies that those who may amend the violation on a citation are the prosecuting attorney or attorney for the political subdivision, the officer who issued the citation, or another police officer for the plaintiff.

Staff Comment to 2012 Amendment

These amendments reflect changes to correct minor technical errors that have occurred in drafting or to respond to recent adopted rule revisions, which occasionally inadvertently create incorrect cross-references in other rules.

Staff Comment to 2017 Amendment

These amendments permit courts to expand the use of videoconferencing technology in many court proceedings, and clarify the proceedings at which videoconferencing technology may be used.

Staff Comment to 2020 Amendment

The amendments of MCR 1.109, 2.107, 2.113, 2.116, 2.119, 2.222, 2.223, 2.225, 2.227, 3.206, 3.211, 3.212, 3.214, 3.303, 3.903, 3.921, 3.925, 3.926, 3.931, 3.933, 3.942, 3.950, 3.961, 3.971, 3.972, 4.002, 4.101, 4.201, 4.202, 4.302, 5.128, 5.302, 5.731, 6.101, 6.615, 8.105, and 8.119 and rescission of MCR 2.226 and 8.125 continue the process for design and implementation of the statewide electronic-filing system.

MI Rules MCR 4.101, MI R DIST CT MCR 4.101
Current with amendments received through November 1, 2019.

End of Document

Item 3

COLLECTING YOUR MONEY FROM A SMALL CLAIMS JUDGMENT

If you receive a money judgment through a lawsuit, you have the right to collect the money by the means allowed by law.

How Much can I Collect?

You can collect the amount stated in your small claims judgment (form DC 85) plus any interest that accumulates during the time the other party pays off the judgment.

How can I Collect my Money?

There are several ways to collect your money.

1. If the party who lost the lawsuit (called a judgment debtor) has the money and is present at the trial, s/he can pay you (called a judgment creditor) right then.

2. If the judgment debtor does not have the money at that time, the judge can set up a payment schedule.

If the judgment debtor is not present at the trial, the court will send a copy of the small claims judgment to the judgment debtor. The judgment will order the judgment debtor to pay you in full within 30 days or to tell you and the court where the judgment debtor works and the location of his/her bank accounts.

3. If the judgment debtor doesn't pay the judgment as ordered, you can collect your money through proceedings to seize property or to garnish income of the judgment debtor.

What is Seizure of Property?

Seizure of property is a court procedure that allows a court officer to seize property belonging to the judgment debtor that can be sold to pay the money owed to you. To file a request to seize property, use form MC 19, *Request and Order to Seize Property.*

What is Garnishment?

Garnishment is a court procedure that allows you to collect the money owed to you by taking in from the judgment debtor's wages, bank account, or another source (such as income tax refunds). To file a garnishment, contact the court clerk for the proper forms. Instructions are provided with the form.

How do I get an Order to Seize Property or a Garnishment?

To get an order to seize property or for garnishment, you must know where the judgment debtor lives and works, what assets s/he has and where these assets are located, and any other information that identifies the judgment debtor and his/her property.

- If you already have the information described above, you can start the process for an order to seize property or for garnishment.

- If you don't have the information described above, you can order the judgment debtor to appear in court for questioning through a process called discovery. You can start this process by filing a discovery subpoena.

How to File a Discovery Subpoena

You must wait 21 days after your small claims judgment was signed before you can file a discovery subpoena. Use form MC 11, *Subpoena (Order to Appear and/or Produce)*.

Be sure to contact the court to set an appearance date and then put that date and location on the form. Complete the front of the *Subpoena* form and the "Affidavit for Judgment Debtor Examination" on the back of the form. The judge must sign the *Subpoena* before it becomes effective. After the *Subpoena* is signed, you must serve it on the judgment debtor.

The fee for filing the *Subpoena* with the court varies. The cost of serving it also varies.

How to File a Request to Seize Property

You must wait 21 days after your small claims judgment was signed before you can get an order to seize property. Use form MC 19, *Request and Order to Seize Property*, to start the process. Complete the "Request" portion of form MC 19 and file it with the court.

The filing fee varies. The court will issue the order by signing the form, and it will be executed (property seized) by a sheriff or court officer.

When do I get my Money from Seized Property? Once property is seized and sold, the money will be given to you. The sheriff or court officer is entitled to fees, which will be deducted from the sale of the property.

How to File a Request for Garnishment

You must wait 21 days after your small claims judgment was signed before you can get a garnishment. There are **three types of garnishment**: 1) periodic, 2) nonperiodic, and 3) income tax intercept. Use the appropriate form MC 12, MC 13 or MC 52, *Request and Writ for Garnishment*, to start the garnishment process.

A **periodic** writ of garnishment (form MC 12) is used to garnish the judgment debtor's wages, rent payments, land contract payments, or other debt that is paid to the judgment debtor on a periodic basis. A periodic garnishment is valid until ~~the expiration date on the writ or until~~ the judgment, interest, and costs are paid off, whichever occurs first.

or further court order,

A **nonperiodic** writ of garnishment (form MC 13) is used to garnish the judgment debtor's bank account or other property. Once money has been garnished under the nonperiodic writ, the writ is no longer valid. If there is a remaining balance due on the judgment, you must get another writ to collect more money.

An **income tax** writ of garnishment (form MC 52) is used to intercept the judgment debtor's income tax refund. Once the tax refund has been intercepted by the Department of Treasury, the writ is no longer valid. If there is a remaining balance due on the judgment, you must get another writ to collect more money.

Write or type in the names and addresses of the defendant (judgment debtor) and the garnishee on the "Request" part of the form. The **garnishee** is the person or business who has control or possession of the judgment debtor's money. After you complete the "Request," you must file it with the district court that entered your small claims judgment. The filing fee is $15.

The court will issue the "Writ" (order) by signing the form. The *Request and Writ for Garnishment* must be served on the garnishee along with the *Garnishee Disclosure*, form MC 14. There is a $6 disclosure fee for a garnishment of ~~periodic payments and~~ income tax refund. The cost of serving the writ varies.

an

and a $35 disclosure fee for a periodic garnishment

When do I get my Money from the Garnishment? The garnishee has 14 days after the writ is served to let you, the court, and the judgment debtor know if any money is available for garnishment. This information will be provided on the *Garnishee Disclosure*, form MC 14. If you are trying to garnish the judgment debtor's wages, you will only receive part of the wages, calculated by using a federal formula.

If money is available, it will be withheld from the judgment debtor right away. However, this money will be held for 28 days to allow the judgment debtor time to object. If the judgment debtor files no objections with the court, the withheld money will be automatically sent to you after 28 days. If the garnishment is for periodic payments, money will continue to be sent to you as payments become due to the judgment debtor until the writ expires.

What Else can I do?

If your case against the judgment debtor involved a traffic accident, you can ask the court for an abstract of judgment, which would suspend the judgment debtor's Michigan driver's license until s/he pays the judgment. You must wait 30 days after the date of judgment until you can get an abstract of judgment. You need to provide the judgment debtor's full name, date of birth, and Michigan driver's license number. There is no filing fee. The court clerk should have the necessary forms.

MichiganLegalHelp.org has tools that can help you with small claims cases.

184 Mich.App. 360
Court of Appeals of Michigan.

In re Harold GOEHRING.
Harold GOEHRING, Plaintiff–Appellant,
v.
Robert McKEON, Defendant–Appellee.

Docket No. 117172.
|
Submitted April 10, 1990.
|
Decided June 19, 1990.
|
Released for Publication July 16, 1990.

Synopsis
Judgment debtor in small claims division of district court filed complaint for superintending control, requesting order allowing debtor to be represented by attorney in postjudgment proceeding and to stop continuing judgment debtor's subpoena. The Circuit Court, Kent County, Dennis B. Leiber, J., dismissed and imposed sanctions against debtor and his attorney for a vexatious proceeding. Debtor appealed. The Court of Appeals held that: (1) statute prohibiting attorneys from the "filing, prosecution, or defense of litigation" in small claims division excludes attorney from participation in small claims postjudgment proceedings; (2) small claims judge had authority to continue judgment debtor discovery subpoena as necessary to enforce judgment; and (3) circuit court's conclusion that judgment debtor's complaint for superintending control based on denial of counsel in postjudgment proceedings in small claims court in granting of continuances was not well-grounded and was inappropriate, vexatious, and harassing was supported by record, thus requiring assessment of costs against debtor and his attorney.

Affirmed and remanded.

Procedural Posture(s): On Appeal.

West Headnotes (10)

[1] Courts
Procedure

Statute prohibiting attorneys from the "filing, prosecution, or defense of litigation" in small claims division excludes attorney from participation in small claims postjudgment proceedings; small claims "prosecution" and "litigation" include "postjudgment proceedings." M.C.L.A. §§ 600.8401 et seq., 600.8408(1), 600.8412.

2 Cases that cite this headnote

[2] Statutes
Plain Language; Plain, Ordinary, or Common Meaning

Rules of statutory interpretation require that statutory language be interpreted in light of established usage of words.

[3] Courts
Procedure

Civil rule indicating that, after small claims judgment, other court rules govern action and statute indicating that small claims judgment may be enforced in any other manner as provided by law merely clarify that postjudgment enforcement procedures available in other cases are also available in small claims cases, and do not confer right to counsel once small claims judgment has been entered. M.C.L.A. §§ 600.8401 et seq., 600.8408(1), 600.8409; MCR 4.301.

1 Cases that cite this headnote

[4] Courts
Procedure

Statutory scheme for small claims division contemplates relatively informal proceedings, without either party being represented by counsel at any stage. M.C.L.A. §§ 600.8401 et seq., 600.8408(1), 600.8412.

[5] Courts
Procedure

Defendant in small claims suit, by electing not to remove suit to district court, thereby waived

his right to counsel for all proceedings in small claims action, including judgment enforcement proceedings. M.C.L.A. §§ 600.8401 et seq., 600.8408(1), 600.8412.

1 Cases that cite this headnote

[6] Creditors' Remedies

Time for proceedings; limitations and laches

Small claims judge had authority to continue judgment debtor discovery subpoena as necessary to enforce judgment. M.C.L.A. §§ 600.6110(2), 600.8409, 600.8410(2), 600.8420(1); U.S.C.A. Const.Amend. 6.

[7] Creditors' Remedies

Time for proceedings; limitations and laches

Judgment debtor's claim that purpose of small claims judge in granting continuances to judgment debtor discovery subpoena was to harass debtor was not supported by evidence, which indicated that debtor not only agreed to each continuance, but effectively invited them by representing to court at each hearing that he expected to collect sufficient money to satisfy judgment within the next 30 days. M.C.L.A. §§ 600.6110(2), 600.8409, 600.8410(2), 600.8420(1); U.S.C.A. Const.Amend. 6.

[8] Courts

Issuance of Prerogative or Remedial Writs

Grant or denial of petition for superintending control is within sound discretion of court.

9 Cases that cite this headnote

[9] Courts

In issuance of writs

Absent abuse of discretion, Court of Appeals will not disturb denial of request for order of superintending control.

8 Cases that cite this headnote

[10] Attorney and Client

Liability for costs; sanctions

Costs

Bad faith or meritless litigation

Circuit court's conclusion that judgment debtor's complaint for superintending control based on denial of counsel in postjudgment proceedings in small claims court and granting of continuances was not well-grounded and was inappropriate, vexatious, and harassing as an attempt to catapult $1,100 small claims action into circuit court for disposition was supported by record, thus requiring assessment of costs against debtor and his attorney. MCR 2.114.

5 Cases that cite this headnote

Attorneys and Law Firms

****376** ***361** Wheeler, Upham, Bryant & Uhl, P.C. by Duane J. Beach, Grand Rapids, for Harold Goehring.

***362** Miller, Johnson, Snell & Cummiskey by James S. Brady and Thomas R. Knecht, Grand Rapids, for Robert McKeon.

Before REILLY, P.J., and MacKENZIE and SULLIVAN, JJ.

Opinion

PER CURIAM.

This is an action for superintending control. Plaintiff Harold Goehring appeals as of right from an order granting summary disposition in favor of defendant and imposing sanctions against Goehring and his attorney. We affirm.

****377** On September 13, 1988, defendant Robert McKeon obtained a judgment against Goehring, in the amount of $1,172.60, in the small claims division of district court. Pursuant to M.C.L. §§ 600.6104 and 600.6110; M.S.A. §§ 27A.6104 and 27A.6110, the district court judge issued a judgment debtor discovery subpoena directed to Goehring, requiring him to appear on November 10, 1988, and produce certain financial records and documents.

Goehring appeared on the return date. After stating that he expected to collect on a commission within the next thirty days, the court continued the subpoena to December 8, 1988, with the consent of both parties. On December 8, Goehring told the court the anticipated funds had not come through, but he expected to collect within thirty days. The court continued the subpoena until January 12, 1989, with the consent of both parties.

On January 12, Goehring appeared with an attorney who objected to the court's authority to continue the subpoena another month. After some discussion, the court stated that there was a "good likelihood" that he would not permit the attorney to represent Goehring. The court then continued the subpoena until February 9.

Goehring subsequently filed his complaint for ***363** superintending control in the circuit court, requesting that the court order the district judge (1) to allow Goehring to be represented by counsel, and (2) "to stop ordering and requiring Harold Goehring to repeatedly appear before the court for repeated post-judgment discovery examinations." The circuit court dismissed the complaint, ruling that there is no right to counsel in postjudgment proceedings in small claims court and that the continuing subpoena was warranted by plaintiff's failure to produce requested documents. The court further found that the circuit court proceeding was vexatious and harassing and awarded sanctions in the amount of $500 against Goehring and his attorney.

Chapter 84 of the Revised Judicature Act, M.C.L. § 600.8401 *et seq.;* M.S.A. § 27A.8401 *et seq.,* sets forth the framework of the small claims division of the district court. Unless a party removes a small claims action to the district court, all parties to an action in the small claims division are considered to have waived the right to counsel. M.C.L. § 600.8412; M.S.A. § 27A.8412. With certain exceptions not relevant here, an attorney may not take part in the filing, prosecution, or defense of litigation in the small claims division. M.C.L. § 600.8408(1); M.S.A. § 27A.8408(1). Goehring asserts that these provisions do not apply to postjudgment proceedings in the small claims division, so that the district judge should have been ordered to allow counsel to represent him. The argument is without merit.

[1] **[2]** Goehring argues that the language of M.C.L. § 600.8408(1); M.S.A. § 27A.8408(1) prohibiting attorneys from the "filing, prosecution, or defense of litigation" in the small claims division does not exclude attorneys from participation in small claims postjudgment proceedings. We decline to adopt such an expansive reading of the statutory ***364** language. M.C.L. § 600.8408(1); M.S.A. § 27A.8408(1) uses the terms "prosecution" and "litigation" without limitation to any stage of the proceedings. Further, several sections of Chapter 84 refer to postjudgment collection proceedings within the small claims division, compelling the conclusion that the Legislature intended small claims "prosecution" and "litigation" to include postjudgment proceedings. See M.C.L. § 600.8410(2); M.S.A. § 27A.8410(2) (enforcement of installment payment judgments); M.C.L. § 600.8420(1); M.S.A. § 27A.8420(1) (fee for issuance of judgment debtor discovery subpoena); M.C.L. § 600.8421; M.S.A. § 27A.8421 (taxable costs to include cost of execution upon a judgment). The rules of statutory interpretation require that statutory language be interpreted in light of the established usage of the words. *In re Transamerica Ins. Co. of America,* 163 Mich.App. 124, 126, 414 N.W.2d 158 (1987), vacated on other grounds 430 Mich. 899 (1988). Goehring has failed to demonstrate any established usage of the terms "litigation" ****378** or "prosecution" to exclude postjudgment enforcement proceedings where no new action has been commenced.

[3] Goehring further argues that MCR 4.301 provides for a change in procedure after judgment. That rule states:

> Actions in a small claims division are governed by the procedural provisions of Chapter 84 of the Revised Judicature Act, MCL 600.8401 *et seq.;* MSA 27A.8401 *et seq.,* and by this subchapter of the rules. After judgment, other applicable Michigan Court Rules govern actions that were brought in a small claims division.

Goehring also points to M.C.L. § 600.8409; M.S.A. § 27A.8409, providing that "the [small claims] judgment may be enforced in any other manner provided ***365** by law," as support for his claim that the waiver of counsel ceases upon entry of judgment. We are satisfied that the language of these two provisions merely clarifies that postjudgment enforcement procedures available in other cases are also

available in small claims cases. Neither provision confers the right to counsel once a small claims judgment has been entered.

[4] **[5]** The statutory scheme for the small claims division contemplates relatively informal proceedings, without either party being represented by counsel at any stage. See Domanskis, *Small claims courts: an overview and recommendation,* 9 U Mich J L Ref 590, 602–604 (1976). In this case, Goehring elected not to remove the small claims action to district court. He thereby waived his right to counsel for all proceedings in the small claims action, including judgment enforcement proceedings. The circuit court, therefore, did not err in dismissing the complaint for superintending control to the extent that the complaint charged an error of law in the small claims court's refusal to permit the appearance of counsel.

[6] **[7]** Goehring next contends that the circuit court improperly dismissed the complaint for superintending control because the district court's continuances of the judgment debtor discovery subpoena constituted an abuse of discretion designed to harass Goehring. This contention is baseless both legally and factually.

Continuing a judgment debtor discovery subpoena is within the statutory authority of a small claims judge. Judgments in small claims cases may be enforced in any manner provided by law, unless prohibited by one of the small claims statutory provisions. M.C.L. § 600.8409; M.S.A. § 27A.8409. M.C.L. § 600.8410(2); M.S.A. § 27A.8410(2) and M.C.L. § 600.8420(1); M.S.A. § 27A.8420(1) clearly contemplate ***366** the use of judgment debtor discovery subpoenas to enforce a small claims judgment. The statute governing judgment debtor discovery subpoenas authorizes the judge to adjourn proceedings examining a judgment debtor "from time to time as he thinks proper." M.C.L. § 600.6110(2); M.S.A. § 27A.6110(2). Thus, the district court in this case could continue the postjudgment proceedings as necessary to enforce the judgment. Moreover, there is nothing in this record to support Goehring's claim that the purpose of the continuances was to harass him. Goehring not only agreed to each of the continuances, he effectively invited them by representing to the court at each hearing that he expected to collect sufficient money to satisfy the judgment within the next thirty days.

[8] **[9]** The grant or denial of a petition for superintending control is within the sound discretion of the court. Absent an abuse of discretion, this Court will not disturb the denial of a request for an order of superintending control. *Marshall v. Pech,* 95 Mich.App. 454, 460, 291 N.W.2d 78 (1980), lv. den. 409 Mich. 904 (1980). In this case, we find no abuse of discretion. The bases for Goehring's complaint—that he was entitled to postjudgment counsel and that the district court's continuances of the postjudgment discovery subpoena should stop—were both without merit.

[10] Goehring further claims that the circuit court erroneously assessed costs against him and his attorney pursuant to MCR 2.114. Again, we disagree.

MCR 2.114 provides in relevant part:

> ****379** (D) Effect of Signature. The signature of an attorney or party, whether or not the party is represented by an attorney, constitutes a certification by the signer that
>
> ***367** (1) he or she has read the pleading;
>
> (2) to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the pleading is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law; and
>
> (3) the pleading is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.
>
> (E) Sanctions for Violation. If a pleading is signed in violation of this rule, the court, on the motion of a party or on its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, including reasonable attorney fees.

The sanction rule of MCR 2.114 is mandatory. The court must impose a sanction if it finds a violation of MCR 2.114 has occurred. In *Contel Systems Corp v. Gores,* 183 Mich.App. 706, 710–711, 455 N.W.2d 398 (1990), this Court stated:

Since the imposition of a sanction under MCR 2.114 is mandatory upon the finding that a pleading was signed in violation of the court rule, or a frivolous action or defense had been pled, there is no discretion for the trial court to exercise in determining if a sanction should be awarded. Rather, the relevant inquiry is whether the trial court erred in finding that the court rule had been violated and, therefore, that the imposition of a sanction was required. Since this involves a finding of fact by the trial court, that finding must be reviewed to determine if it is clearly erroneous. MCR 2.613(C). A finding of fact is clearly erroneous when, although there is evidence to support it, the reviewing court is left with a definite and firm ***368** conviction that a mistake has been committed. *Tuttle v Dep't of State Hwys,* 397 Mich 44; 243 NW2d 244 (1976).

Here, the circuit court concluded that Goehring's complaint for superintending control was not well grounded and that "catapulting" a $1,100 small claims action into circuit court for disposition was "inappropriate," vexatious, and harassing. We are not left with a firm and definite conviction that this conclusion was mistaken. The record supports a finding that Goehring engaged in ongoing delay tactics throughout the postjudgment proceedings against him. The record also supports a finding that he filed this action for no other reason than to cause further delay.

The order of the circuit court is affirmed. Defendant McKeon's motion for actual damages and expenses, including reasonable attorney fees, is granted. MCR 7.216(C)(2). We remand to the circuit court for a determination of actual damages.

Affirmed and remanded. We retain no further jurisdiction.

All Citations

184 Mich.App. 360, 457 N.W.2d 375

REVISED JUDICATURE ACT OF 1961 (EXCERPT)
Act 236 of 1961

600.8408 Parties; representation; request for trial before district court judge; removal; waiver.

Sec. 8408. (1) An attorney at law, except on the attorney's own behalf, a collection agency or agent or employee of a collection agency, or a person other than the plaintiff and defendant, except as is otherwise provided in this chapter, shall not take part in the filing, prosecution, or defense of litigation in the small claims division.

(2) A sole proprietorship, partnership, or corporation as plaintiff or defendant may be represented by an officer or employee who has direct and personal knowledge of facts in dispute. If the officer or employee who has direct and personal knowledge of facts in dispute is no longer employed by the defendant or plaintiff or is medically unavailable, the representation may be made by that person's supervisor, or by the sole proprietor, a partner, or an officer or a member of the board of directors of a corporation.

(3) A county, city, village, township, or local or intermediate school district as plaintiff or defendant may be represented only by an elected or appointed officer or an employee who has direct and personal knowledge of the facts in dispute. If the officer or employee who has direct and personal knowledge of the facts in dispute is no longer an officer or employee of the plaintiff or defendant, the representation may be made by that officer's successor or that employee's supervisor, or by a member of the governing body of the county, city, village, township, or local or intermediate school district. In addition, a person may not represent a county, city, village, township, or local or intermediate school district in the small claims division unless authorized to appear in the case by the governing body of the county, city, village, township, or local or intermediate school district.

(4) Before commencement of a trial, the plaintiff or defendant may, upon demand, require that the trial be conducted before a district court judge and not a magistrate, or may remove the case from the small claims division to the general civil division of the district court. If the parties commence a trial of the case in the small claims division, both parties waive all rights mentioned in section 8412.

History: Add. 1968, Act 154, Imd. Eff. June 17, 1968;—Am. 1978, Act 496, Eff. Jan. 1, 1979;—Am. 1984, Act 272, Imd. Eff. Dec. 19, 1984;—Am. 1984, Act 278, Eff. Jan. 1, 1985;—Am. 1991, Act 192, Eff. July 1, 1992.

REVISED JUDICATURE ACT OF 1961 (EXCERPT)
Act 236 of 1961

600.8409 Attachment or garnishment prohibited; execution; judgment, enforcement; instruction sheets.

Sec. 8409. (1) Attachment or garnishment shall not issue from the small claims division prior to judgment but execution may issue in the manner prescribed by law and the judgment may be enforced in any other manner provided by law and not prohibited under the provisions of this chapter.

(2) The state court administrator shall prepare instruction sheets clearly explaining in plain English how, and under what circumstances, a plaintiff in whose favor a judgment has been entered may request the court to issue execution, attachment, or garnishment to enforce payment of the judgment. A copy of the instruction sheet shall be offered to the plaintiff at the same time as a copy of the judgment is given to the plaintiff under section 8410. Additional copies of the instruction sheets, and forms for writs of garnishment, shall be made available at the office of each clerk and deputy clerk of the district court.

History: Add. 1968, Act 154, Imd. Eff. June 17, 1968;—Am. 1991, Act 192, Eff. July 1, 1992.

Item 4

STATE OF MICHIGAN JUDICIAL DISTRICT	PETITION REGARDING IMPOUNDMENT OF MOTOR VEHICLE	CASE NO. and JUDGE

Court address **Court telephone no.**

Petitioner's name, address, and telephone no.	v	Respondent's name, address, and telephone no.
Note: The petitioner must be an owner or secured party of the vehicle.		Note: The respondent may be a police agency, towing agency, vehicle custodian, or private property owner.

PETITION

1. The petitioner requests a court hearing to determine
   - ☐ a. whether a vehicle owned by the petitioner was properly deemed abandoned or removed according to law.
   - ☐ b. the reasonableness of towing/storage fees.

2. The accrued towing and storage fees are $ _____ .
   - ☐ a. The accrued towing and storage fees were paid directly to the vehicle custodian, and a $40.00 fee was paid to the court.
   - ☐ b. Bond in the amount of the accrued towing and storage fees and a $40.00 fee were paid to the court.

3. The vehicle is described as follows:

Year	Make	Model	VIN	License plate no.

4. The vehicle described above was removed on _____ (Date) by _____ (Police agency/Private property owner) .

5. The petitioner received notice of the removal on _____ (Date) .

6. For purposes of providing notice of hearing, the applicable names and addresses are provided below:

		Name	Address
☐	Owner	Name	Address
☐	Secured Party	Name	Address
☐	Police Agency	Name	Address
☐	Vehicle Custodian	Name	Address
☐	Towing Agency	Name	Address
☐	Private Property Owner	Name	Address

Date Petitioner

Distribute form to:
Court
Petitioner
Respondent
Vehicle custodian

For court use only

NOTICE OF HEARING

A hearing on the above petition will be held on _____
Date and time

at _____ .
Location

Persons with knowledge of the facts should appear at this hearing.

_____
Judge/Deputy clerk signature and date

If you require accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

CERTIFICATE OF MAILING

I certify that on this date I served a copy of this petition and notice on the parties and any other person required to receive notice by first-class mail addressed to their last-known addresses as defined by MCR 2.107(C)(3). I declare under the penalties of perjury that this certificate has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

_____
Deputy clerk signature and date

Item 5

Approved, SCAO

STATE OF MICHIGAN	NOTICE TO QUIT TO RECOVER POSSESSION OF PROPERTY Landlord-Tenant	DRAFT

TO: (A)

1. Your landlord/landlady, (B) _____ (Name (type or print)), is seeking to recover possession of property pursuant to

(C) ☐ MCL 554.134(1) or (3) (see other side) ☐ other: _____ and wants to evict you from:

(D) Address or description of premises rented (if different from mailing address):

(E) 2. You must move by _____ (Date (*see note)) or your landlord/landlady may take you to court to evict you.

3. If your landlord/landlady takes you to court to evict you, you will have the opportunity to present reasons why you believe you should not be evicted.

4. If you believe you have a good reason why you should not be evicted, you may have a lawyer advise you. Call him or her soon.

Except for a 90-day notice given under the authority of Public Law No. 111-22, § 702; 123 Stat 1660 after foreclosure of the premises, if the lease agreement does not state otherwise, the landlord/landlady must give notice equal in time to at least one rental period.

(F) _____
Date

_____
Signature of owner of premises or agent

_____
Address

_____
City, state, zip Telephone no.

*NOTE: ~~Unless otherwise allowed by law, the landlord/landlady must give notice equal in time to at least one rental period~~.

CERTIFICATE OF SERVICE

(G)

I certify that on _____ (Date) I served this notice on _____ (Name)

by ☐ delivering it personally to the person in possession.
☐ delivering it on the premises to a member of his/her family or household or an employee of suitable age and discretion with a request that it be delivered to the person in possession.
☐ first-class mail addressed to the person in possession.
☐ electronic service to the person in possession (who has consented in writing to such service) at the following electronic service address: _____ .

_____
Signature

Court copy (to be copied, if necessary, to attach to the complaint)

Approved, SCAO

STATE OF MICHIGAN	NOTICE TO QUIT TO RECOVER POSSESSION OF PROPERTY Landlord-Tenant	DRAFT

TO: ⌜ ⌝

⌞ ⌟

1. Your landlord/landlady, _____ , is seeking to recover possession of property pursuant to
   Name (type or print)

   ☐ MCL 554.134(1) or (3) (see other side) ☐ other: _____ and wants to evict you from:

   Address or description of premises rented (if different from mailing address):

2. You must move by _____ or your landlord/landlady may take you to court to evict you.
   Date (*see note)

3. If your landlord/landlady takes you to court to evict you, you will have the opportunity to present reasons why you believe you should not be evicted.

4. If you believe you have a good reason why you should not be evicted, you may have a lawyer advise you. Call him or her soon.

_____
Date

_____
Signature of owner of premises or agent

_____
Address

_____
City, state, zip Telephone no.

Except for a 90-day notice given under the authority of Public Law No. 111-22, § 702; 123 Stat 1660 after foreclosure of the premises, if the lease agreement does not state otherwise, the landlord/landlady must give notice equal in time to at least one rental period.

*NOTE: ~~Unless otherwise allowed by law, the landlord/landlady must give notice equal in time to at least one rental period.~~

HOW TO GET LEGAL HELP

1. Call your own lawyer.

2. If you do not have an attorney but have money to retain one, you may locate an attorney through the State Bar of Michigan Lawyer Referral Service at 1-800-968-0738 or through a local lawyer referral service. Lawyer referral services should be listed in the yellow pages of your telephone directory or you can find a local lawyer referral service at www.michbar.org.

3. If you do not have an attorney and cannot pay for legal help, you may qualify for assistance through a local legal aid office. Legal aid offices should be listed in the yellow pages of your telephone directory or you can find a local legal aid office at www.michiganlegalhelp.org. If you do not have Internet access at home, you can access the Internet at your local library.

Tenant's copy

554.134 Termination of estate at will or by sufferance or tenancy from year to year.

(1) Except as provided otherwise in this section, an estate at will or by sufferance may be terminated by either party by giving 1 month's notice to the other party. If the rent reserved in a lease is payable at periods of less than 3 months, the time of notice is sufficient if it is equal to the interval between the times of payment. Notice is not void because it states a day for the termination of the tenancy that does not correspond to the conclusion or commencement of a rental period. The notice terminates the tenancy at the end of a period equal in length to the interval between times of payment.

(3) A tenancy from year to year may be terminated by either party by a notice to quit, given at any time to the other party. The notice shall terminate the lease at the expiration of 1 year from the time of the service of the notice.

Form DC 102c

COMPLAINT TO RECOVER POSSESSION OF PROPERTY

Use this form if you want to recover possession of real property.

Approved, SCAO

Original - Court
1st copy - Tenant

2nd copy - Mailing
3rd copy - Landlord

(A) STATE OF MICHIGAN JUDICIAL DISTRICT	COMPLAINT TO RECOVER POSSESSION OF PROPERTY	CASE NO.
Court address		**Court telephone no.**

(B)

Plaintiff name(s), address(es), and telephone no(s).		Defendant name(s), and address(es)
	v	
Plaintiff's attorney, bar no., address, and telephone no.		

The plaintiff states:

(C) 1. ☐ There is no other pending or resolved civil action arising out of the same transaction or occurrence alleged in this complaint.

☐ A civil action between these parties or other parties arising out of the transaction or occurrence alleged in this complaint has been previously filed in _____ Court. The docket number and assigned judge are _____ .

The action ☐ remains ☐ is no longer pending.

2. Attached to this complaint is a copy of the lease or occupancy agreement, if any, under which possession is claimed, and a copy of the notice to quit or demand for possession, if any, showing when and how it was served.

(D) 3. The person entitled to possession of the property described ☐ in the attached notice/demand ☐ as follows: _____

_____

is _____ .
Name (type or print)

(E) 4. The defendant is in possession of the following portion of the property: _____

_____

(F) 5. The plaintiff has a right to possession of the property because:

☐ a. lease expired on _____ . ☐ b. tenancy was terminated by notice to quit.

☐ c. lease terminated per provision in lease (para. no. ____) ☐ d. defendant is a trespasser. Explain in space beneath item f.

☐ e. forcible entry was made or possession was held by force after a peaceful entry.

☐ f. other: _____

Describe in detail how the trespass occurred on how the premises are being illegally held. State that no lawful tenancy existed between the parties in the time that has passed since the trespasser took possession. Use a separate sheet of paper if needed.

(G) ☐ 6. The tenancy involves regulated housing operated by or under rules of a governmental unit. The rule or law under which the tenancy is ended is _____ .

(H) ☐ 7. The plaintiff declares that this residential property was kept fit for the use intended and has been kept in reasonable repair during the term of the lease.

(I) ☐ 8. The defendant remains in possession of the property.

9. **The plaintiff requests** a judgment of possession and costs.

(J) NOTE: If you wish to demand a jury trial, you must file a jury demand (MC 22).

SUPPLEMENTAL COMPLAINT

(K) ☐ 10. Complaint is made and judgment is sought for money damages against the defendant as follows: Use a separate sheet of paper if needed.

(L) _____ _____
Date Plaintiff/Attorney signature

Approved, SCAO

Original - Court
1st copy - Plaintiff
2nd copy - Defendant

A STATE OF MICHIGAN JUDICIAL DISTRICT	ANSWER TO COMPLAINT TO RECOVER POSSESSION OF PROPERTY	CASE NO.
Court address		**Court telephone no.**

B

Plaintiff name(s), address(es), and telephone no(s).	v	Defendant name(s), address(es), and telephone no(s).
Plaintiff's attorney, bar no., address, and telephone no.		Defendant's attorney, bar no., address, and telephone no.

C ☐ 1. I demand a jury trial.

2. I received a complaint from the plaintiff and I appear and answer as follows.

D 3. I ☐ agree that ☐ disagree that ☐ do not know whether the person named in item 3 of the complaint is the owner of the property described in the notice to quit. Explain in detail why you disagree. Use a separate sheet of paper if needed.

E 4. I ☐ agree that ☐ disagree that ☐ do not know whether I am in possession of the portion of property described in item 4 of the complaint. Explain in detail why you disagree. Use a separate sheet of paper if needed.

F 5. I ☐ agree that ☐ disagree that ☐ do not know whether the plaintiff has the right to possession of the property and that the reason for termination of tenancy is accurate as stated in item 5 of the complaint. Explain in detail why you disagree. Use a separate sheet of paper if needed.

G ☐ 6. I ☐ agree that ☐ disagree that ☐ do not know whether the tenancy involves regulated housing as stated in item 6 of the complaint. Explain in detail why you disagree. Use a separate sheet of paper if needed.

H ☐ 7. I ☐ agree that ☐ disagree that ☐ do not know whether the plaintiff kept the residential property fit for the use intended and in reasonable repair during the term of the lease as stated in item 7 of the complaint. Explain in detail why you disagree. Use a separate sheet of paper if needed.

I ☐ 8. I ☐ agree that ☐ disagree that I remain in possession of the property as stated by the plaintiff in item 8 of the complaint. Explain in detail why you disagree. Use a separate sheet of paper if needed.

J 9. I ☐ agree ☐ disagree with the plaintiff's request for judgment and costs as stated in item 9 of the complaint. Explain in detail why you disagree. Use a separate sheet of paper if needed.

K ☐ 10. I ☐ agree ☐ disagree with the supplemental complaint for money damages. Explain in detail why you disagree. Use a separate sheet of paper if needed.

L 11. Other statements related to this case are: Use a separate sheet of paper if needed.

M

Date _____ Defendant/Attorney signature _____

CERTIFICATE OF MAILING

I certify that on this date I served a copy of this answer on the plaintiff or his/her attorney by first-class mail addressed to his/ her last-known address as defined in MCR 2.107(C)(3).

N

Date _____ Defendant/Attorney signature _____

S.2155 - Economic Growth, Regulatory Relief, and Consumer Protection Act

115th Congress (2017-2018)

Sponsor: Sen. Crapo, Mike [R-ID] (Introduced 11/16/2017)
Committees: Senate - Banking, Housing, and Urban Affairs
Latest Action: 05/24/2018 Became Public Law No: 115-174. (TXT | PDF) (All Actions)
Roll Call Votes: There have been 7 roll call votes
Tracker: Introduced Passed Senate Passed House To President **Became Law**

Summary(5) Text(5) Actions(56) Titles(6) Amendments(163) Cosponsors(26) Committees(1) Related Bills(59)

There are 5 summaries for S.2155. Public Law (05/24/2018)

Bill summaries are authored by CRS.

Shown Here:
Public Law No: 115-174 (05/24/2018)

Economic Growth, Regulatory Relief, and Consumer Protection Act

TITLE I--IMPROVING CONSUMER ACCESS TO MORTGAGE CREDIT

(Sec. 101) This bill amends the Truth in Lending Act (TILA) to allow a depository institution or credit union with assets below a specified threshold to forgo certain ability-to-pay requirements regarding residential mortgage loans. Specifically, those requirements are waived if a loan: (1) is originated by and retained by the institution, (2) complies with requirements regarding prepayment penalties and points and fees, and (3) does not have negative amortization or interest-only terms. Furthermore, for such requirements to be waived, the institution must consider and verify the debt, income, and financial resources of the consumer.

The bill also provides for circumstances in which such requirements shall be waived with respect to a loan that is transferred: (1) by reason of bankruptcy or failure of the originating institution, (2) to a similar institution, (3) in the event of a merger, or (4) to a wholly owned subsidiary of the institution.

(Sec. 102) Mortgage appraisal services donated by a fee appraiser to an organization eligible to receive tax-deductible charitable contributions are deemed to be customary and reasonable under TILA.

(Sec. 103) The bill amends the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 to exempt from appraisal requirements certain federally related, rural real-estate transactions valued below a specified limit if no certified appraiser is available.

(Sec. 104) The bill amends the Home Mortgage Disclosure Act of 1975 to exempt from specified public disclosure requirements depository institutions and credit unions that originate fewer than a specified number of closed-end mortgages or open-end lines of credit.

The Government Accountability Office (GAO) must report on these changes.

(Sec. 105) The bill amends the Federal Credit Union Act to allow a credit union to extend a member business loan with respect to a one- to four-family dwelling, regardless of whether the dwelling is the member's primary residence. Under current law, a member business loan may be extended with respect to such a dwelling only if it is the member's primary residence.

(Sec. 106) The bill amends the S.A.F.E. Mortgage Licensing Act of 2008 to revise the Act's civil liability immunity provisions and to temporarily allow loan originators that meet specified requirements to continue to originate loans after moving: (1) from one state to another, or (2) from a depository institution to a non-depository institution.

(Sec. 107) The bill amends TILA to specify that a retailer of manufactured housing that meets certain requirements is generally not a "mortgage originator" subject to requirements under that Act.

(Sec. 108) The bill exempts from certain escrow requirements a residential mortgage loan held by a depository institution or credit union that: (1) has assets of $10 billion or less, (2) originated 1,000 or fewer mortgages in the preceding year, and (3) meets other specified requirements.

(Sec. 109) The required mortgage disclosure waiting period is eliminated with respect to a second offer of credit if the creditor offers a consumer a lower annual percentage rate in the second offer.

TITLE II--REGULATORY RELIEF AND PROTECTING CONSUMER ACCESS TO CREDIT

(Sec. 201) Federal banking agencies must develop a specified Community Bank Leverage Ratio (the ratio of a bank's equity capital to its consolidated assets) for banks with assets of less than $10 billion. Such banks that exceed this ratio shall be deemed to be in compliance with all other capital and leverage requirements. Federal banking agencies may consider a company's risk profile when evaluating whether it qualifies as a community bank for purposes of the ratio requirement.

(Sec. 202) The bill amends the Federal Deposit Insurance Act to exclude reciprocal deposits of an insured depository institution from certain limitations on prohibited broker deposits if the total reciprocal deposits of the institution do not exceed the lesser of $5 billion or 20% of its total liabilities. Reciprocal deposits are deposits that banks make with each other in equal amounts. (Generally, an insured depository institution that is not well capitalized may not accept funds obtained by or through any deposit broker for deposit.)

(Sec. 203) The bill amends the Bank Holding Company Act of 1956 to exempt from the "Volcker Rule" banks with: (1) total assets valued at less than $10 billion, and (2) trading assets and liabilities comprising not more than 5% of total assets. (The Volcker Rule prohibits banking agencies from engaging in proprietary trading or entering into certain relationships with hedge funds and private-equity funds.)

(Sec. 204) Volcker Rule restrictions on entity name sharing are eased in specified circumstances.

(Sec. 205) The bill amends the Federal Deposit Insurance Act to require federal banking agencies to issue regulations allowing certain small depository institutions to satisfy reporting requirements with a reduced Report of Condition and Income (i.e., call report).

(Sec. 206) The bill amends the Home Owners' Loan Act to permit certain federal savings associations to elect to operate, subject to supervision by the Office of the Comptroller of the Currency, with the same rights and duties as national banks (including operating without certain lending restrictions).

(Sec. 207) The Federal Reserve Board (FRB) must increase, from $1 billion to $3 billion, the consolidated asset threshold (i.e., permissible debt level) for a bank holding company or savings and loan holding company that: (1) is not engaged in significant nonbanking activities; (2) does not conduct significant off-balance-sheet activities; and (3) does not have a material amount of debt or equity securities, other than trust-preferred securities, outstanding. If warranted for supervisory purposes, the FRB may exclude a company from this threshold increase.

(Sec. 208) The bill amends the Expedited Funds Availability Act to apply the Act, which governs bank deposit holds, to American Samoa, the Commonwealth of the Northern Mariana Islands, and Guam. The Act's one-day extension for certain deposits in noncontiguous states or territories shall also apply to these territories.

(Sec. 209) The bill amends the United States Housing Act of 1937 to reduce inspection requirements and environmental-review requirements for certain smaller, rural public-housing agencies.

(Sec. 210) The bill amends the Federal Deposit Insurance Act to increase the asset limit below which certain depository institutions are eligible for an 18-month, instead of a 12-month, examination cycle.

(Sec. 211) The bill creates the Insurance Policy Advisory Committee on International Capital Standards and Other Insurance Issues at the FRB. The FRB and the Department of the Treasury must report on: (1) their efforts regarding global insurance regulatory or supervisory forums, and (2) any final international insurance capital standards prior to adoption of such standards.

(Sec. 212) The bill amends the Federal Credit Union Act to require the National Credit Union Administration to hold public hearings on its draft annual budget.

(Sec. 213) A financial institution is authorized to record personal information from a scan, copy, or image of an individual's driver's license or personal identification card and store the information electronically when an individual initiates an online request to open an account or obtain a financial product. The financial institution may use the information for the purpose of verifying the authenticity of the driver's license or identification card, verifying the identity of the individual, or complying with legal requirements. The financial institution must delete any copy or image of an individual's driver's license or personal identification card after use.

(Sec. 214) The bill amends the Federal Deposit Insurance Act to specify that a federal banking agency may not subject a depository institution to higher capital standards with respect to a high-volatility commercial real-estate (HVCRE) exposure unless the exposure is an HVCRE acquisition, development, or construction (ADC) loan.

An HVCRE ADC loan : (1) is secured by land or improved real property; (2) has the purpose of providing financing to acquire, develop, or improve the real property such that the property becomes income-producing; and (3) is dependent upon future income or sales proceeds from, or refinancing of, the real property for the repayment of the loan.

(Sec. 215) The Social Security Administration (SSA) is directed to develop a database to facilitate the verification of consumer information upon request by a certified financial institution. Such verification shall be provided only with the consumer's consent and in connection with a credit transaction. Users of the database shall pay system costs as determined by the SSA.

(Sec. 216) The bill directs Treasury to report on the risks of cyber threats to financial institutions and capital markets.

(Sec. 217) The bill amends the Federal Reserve Act to lower the maximum allowable amount of surplus funds of the Federal Reserve banks.

TITLE III--PROTECTIONS FOR VETERANS, CONSUMERS, AND HOMEOWNERS

(Sec. 301) The bill amends the Fair Credit Reporting Act to increase the length of time a consumer reporting agency must include a fraud alert in a consumer's file. It also: (1) requires a consumer reporting agency to provide a consumer with free credit freezes and to notify a consumer of their availability, (2) establishes provisions related to the placement and removal of these freezes, (3) creates requirements related to the protection of the credit records of minors.

(Sec. 302) The bill limits, and establishes a dispute process and verification procedures with respect to, the inclusion of a veteran's medical debt in a consumer credit report.

(Sec. 303) The bill extends immunity from liability to certain individuals employed at financial institutions who, in good faith and with reasonable care, disclose the suspected exploitation of a senior citizen to a regulatory or law-enforcement agency. Similarly, the employing financial institution shall not be liable with respect to disclosures made by such employees.

The bill allows financial institutions and third-party entities to offer training related to the suspected financial exploitation of a senior citizen to specified employees. The bill provides guidance regarding the content, timing, and record-maintenance requirements of such training.

(Sec. 304) The sunset provision of the Protecting Tenants at Foreclosure Act is repealed, restoring notification requirements and other protections related to the eviction of renters in foreclosed properties. (The Act expired on December 31, 2014.)

(Sec. 305) Treasury may use loan guarantees and credit enhancements to remediate lead and asbestos hazards in residential properties.

(Sec. 306) The bill amends the United States Housing Act of 1937 to revise the Family-Self-Sufficiency (FSS) program, an employment and savings incentive program for families that reside in public housing or have housing vouchers. Specifically, the bill:

- combines existing, separately operated FSS programs into a single program;
- extends program eligibility to tenants of certain privately owned properties subsidized with project-based rental assistance;
- revises program requirements related to eligibility, supportive services, and escrow deposits; and
- otherwise modifies the FSS program.

(Sec. 307) The Consumer Financial Protection Bureau is directed to promulgate ability-to-repay regulations regarding property assessed clean energy financing.

(Sec. 308) The bill directs the GAO to report on the accuracy and security of consumer reporting agencies and consumer reports.

(Sec. 309) A refinanced home loan may not be guaranteed by the Department of Veterans Affairs (VA), unless: (1) a specified minimum time period has passed between the original loan and the refinancing; and (2) the lender complies with provisions related to fee recoupment, mortgage interest rates, and net tangible benefit tests.

The Department of Housing and Urban Development (HUD) and the Government National Mortgage Association (Ginnie Mae) must report on the liquidity of the VA Housing Loan Program.

The VA must report annually on refinanced home loans to veterans.

(Sec. 310) The bill amends the Federal National Mortgage Association Charter Act and the Federal Home Loan Mortgage Corporation Act to allow the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac), when determining whether to purchase a residential mortgage, to consider a borrower's credit score only if certain procedural requirements are met with respect to the validation and approval of credit-scoring models.

The Federal Housing Finance Agency must, by regulation, establish standards and criteria for processes used by Fannie Mae and Freddie Mac to validate and approve credit-scoring models in accordance with the bill.

(Sec. 311) The GAO is directed to report on foreclosures, homeownership, and mortgage defaults in Puerto Rico before and after Hurricane Maria.

(Sec. 312) HUD must report on and provide recommendations for lead-based paint hazard prevention and abatement, with an emphasis on preventing exposure in children.

(Sec. 313) The bill amends the Honoring America's Veterans and Caring for Camp Lejeune Families Act of 2012 to make permanent the one-year grace period during which a servicemember is protected from foreclosure after leaving military service.

TITLE IV--TAILORING REGULATIONS FOR CERTAIN BANK HOLDING COMPANIES

(Sec. 401) The bill amends the Financial Stability Act of 2010, with respect to nonbank financial companies supervised by the FRB and certain bank holding companies, to:

- increase the asset threshold at which certain enhanced prudential standards shall apply, from $50 billion to $250 billion, while allowing the FRB discretion in determining whether a financial institution with assets equal or greater than $100 billion must be subject to such standards;
- increase the asset threshold at which company-run stress tests are required, from $10 billion to $250 billion; and
- increase the asset threshold for mandatory risk committees, from $10 billion to $50 billion.

(Sec. 402) The bill requires the appropriate federal banking agencies to exclude, for purposes of calculating a custodial bank's supplementary leverage ratio, funds of a custodial bank that are deposited with a central bank. ("Supplementary leverage ratio" is a capital adequacy measure that refers to the ratio of a banking organization's tier-one capital to its leverage exposure.) The amount of such funds may not exceed the total value of deposits of the custodial bank linked to fiduciary or custodial and safekeeping accounts.

(Sec. 403) This bill amends the Federal Deposit Insurance Act to require certain municipal obligations to be treated as level 2B liquid assets if they are investment grade, liquid, and readily marketable. Under current law, corporate debt securities and publicly traded common-equity shares, but not municipal obligations, may be treated as level 2B liquid assets (which are considered to be high-quality assets).

TITLE V--ENCOURAGING CAPITAL FORMATION

(Sec. 501) The bill amends the Securities Act of 1933 to exempt from state registration securities qualified for national trading by the Securities and Exchange Commission (SEC) and authorized to be listed on a national securities exchange. Currently, securities listed on exchanges specified by statute or SEC rule are exempt.

(Sec. 502) The bill directs the SEC to report on the risks and benefits of algorithmic trading in capital markets.

(Sec. 504) The bill amends the Investment Company Act of 1940 to exempt from the definition of an "investment company," for purposes of specified limitations applicable to such a company under the Act, a qualifying venture capital fund that has no more than 250 investors. Specifically, the bill applies to a venture capital fund that has less than $10 million in aggregate capital contributions and uncalled committed capital. Under current law, a venture capital fund is considered to be an investment company if it has more than 100 investors.

(Sec. 505) The bill requires the SEC to offset future fees and assessments due from a national securities exchange or association that: (1) has previously overpaid such fees and assessments, and (2) informs the SEC of the overpayment within 10 years.

(Sec. 506) The bill amends the Investment Company Act of 1940 to apply the Act to investment companies created under the laws of Puerto Rico, the U.S. Virgin Islands, or any other U.S. possession.

(Sec. 507) The bill requires the SEC to increase, from $5 million to $10 million, the 12-month sales threshold beyond which an issuer is required to provide investors with additional disclosures related to compensatory benefit plans.

(Sec. 508) The bill expands the applicability to issuers of "Regulation A+" (which exempts certain smaller offerings from securities registration requirements).

(Sec. 509) The bill directs the SEC to revise registration rules to allow a closed-end company to use offering and proxy rules currently available to other issuers of securities, thereby reducing filing requirements and restrictions on communications with investors in certain circumstances. (A closed-end company is a publicly traded investment management company that sells a limited number of shares to investors in an initial public offering.)

TITLE VI--PROTECTIONS FOR STUDENT BORROWERS

(Sec. 601) The bill amends TILA to prospectively revise provisions relating to cosigners of private student loans. Specifically, the bill: (1) prohibits a creditor from declaring a default or accelerating the debt of a private student loan on the sole basis of the death or bankruptcy of a cosigner to such a loan, and (2) directs loan holders to release cosigners from any obligation upon the death of the student borrower.

(Sec. 602) The bill amends the Fair Credit Reporting Act to allow a person to request the removal of a previously reported default regarding a private education loan from a consumer report if: (1) the lender chooses to offer a loan-rehabilitation program that requires a number of consecutive on-time monthly payments demonstrating renewed ability and willingness to repay the loan, and (2) the consumer meets those requirements. A consumer may obtain such rehabilitation benefits only once per loan. The GAO shall report on the implementation of these provisions.

(Sec. 603) The bill amends the Financial Literacy and Education Improvement Act to direct the Financial Literacy and Education Commission to establish best practices for teaching financial literacy skills at institutions of higher education.

Item 6

Form DC 102a

COMPLAINT,
NONPAYMENT OF RENT

Use this form if:

- you want to start eviction proceedings against a tenant who has not paid rent, and
- you delivered to the tenant a demand for possession for nonpayment of rent, and
- at least 7 days has passed since the date you delivered the demand for possession.

Approved, SCAO

Original - Court
1st copy - Tenant

2nd copy - Mailing
3rd copy - Landlord

(A) STATE OF MICHIGAN JUDICIAL DISTRICT	COMPLAINT NONPAYMENT OF RENT Landlord - Tenant	CASE NO.
Court address		**Court telephone no.**

(B)

Plaintiff name(s), address(es), and telephone no(s).		Defendant name(s), and address(es)
	v	
Plaintiff's attorney, bar no., address, and telephone no.		

The plaintiff states:

(C)

1. ☐ There is no other pending or resolved civil action arising out of the same transaction or occurrence alleged in this complaint.
   ☐ A civil action between these parties or other parties arising out of the transaction or occurrence alleged in this complaint has been previously filed in _____ Court. The docket number and assigned judge are _____ .
   The action ☐ remains ☐ is no longer pending.
2. Attached to this complaint is a copy of the lease or occupancy agreement, if any, under which possession is claimed, and a copy of the demand for possession showing when and how it was served.

(D)

3. The person entitled to possession of the property described in the attached demand for possession is _____ .
   Name (type or print)

(E)

4. The defendant is in possession of the following portion of the property: _____

(F)

5. The plaintiff has a right to possession of the property for nonpayment of rent:
   a. Rental rate: $ _____ per _____ b. Payable on: _____
   c. Rent is paid through _____ d. Total rent due now is $ _____
   e. Other money is due: $ _____ for _____ and due by _____ .

(G)

☐ 6. The tenancy involves regulated housing operated by or under rules of a governmental unit. The rule or law under which the tenancy is ended is _____ .

(H)

☐ 7. (Must be checked unless modified by lease.) The plaintiff declares that this residential property was kept fit for the use intended and has been kept in reasonable repair during the term of the lease.

8. The defendant has not complied with the demands made.
9. **The plaintiff requests** a judgment of possession and costs.

(I)

NOTE: If you wish to demand a jury trial, you must file a jury demand (MC 22).

SUPPLEMENTAL COMPLAINT

(J)

☐ 10. Complaint is made and judgment is sought for money damages against the defendant as follows:
   ☐ Rent owing as set out in paragraph 5 above, plus additional rent at the rate of $ _____ per _____ until judgment, plus costs.
   ☐ Damages claimed:

(K)

_____ Date

_____ Plaintiff/Attorney signature

Form DC 102b

COMPLAINT,
DAMAGE/HEALTH HAZARD TO PROPERTY

Use this form if:

- you want to start eviction proceedings against a tenant who has caused extensive and continuing damage or a serious and continuing health hazard to rental property, and
- you delivered to the tenant within 90 days of discovering the damage or health hazard a demand for possession because of damage or health hazard, and
- at least 7 days has passed since the date you delivered the demand for possession.

Approved, SCAO

Original - Court
1st copy - Tenant

2nd copy - Mailing
3rd copy - Landlord

(A) STATE OF MICHIGAN JUDICIAL DISTRICT	COMPLAINT DAMAGE/HEALTH HAZARD TO PROPERTY Landlord - Tenant	CASE NO.
Court address		**Court telephone no.**

(B)

Plaintiff name(s), address(es), and telephone no(s).	v	Defendant name(s), and address(es)
Plaintiff's attorney, bar no., address, and telephone no.		

The plaintiff states:

(C) 1. ☐ There is no other pending or resolved civil action arising out of the same transaction or occurrence alleged in this complaint.

☐ A civil action between these parties or other parties arising out of the transaction or occurrence alleged in this complaint has been previously filed in _____ Court. The docket number and assigned judge are _____ .

The action ☐ remains ☐ is no longer pending.

2. Attached to this complaint is a copy of the lease or occupancy agreement, if any, under which possession is claimed, and a copy of the notice to quit or demand for possession showing when and how it was served.

(D) 3. The person entitled to possession of the property described in the attached demand for possession is

_____ .
Name (type or print)

(E) 4. The defendant is in possession of the following portion of the property: _____

_____

5. The plaintiff has a right to possession of the property because the defendant has caused a serious and continuing health hazard or extensive and continuing damage to the premises.

(F) State the exact nature and extent of the hazard or injury, and state the period of time that it has continued.

(G) ☐ 6. The tenancy involves regulated housing operated by or under rules of a governmental unit. The rule or law under which the tenancy is ended is _____ .

(H) ☐ 7. (If applicable.) The plaintiff declares that this residential property was kept fit for the use intended and has been kept in reasonable repair during the term of the lease.

8. The defendant has not complied with the demands made and has not moved.

(I) 9. **The plaintiff requests** a judgment of possession and costs.

☐ **The plaintiff requests** an immediate order of eviction.

(J) NOTE: If you wish to demand a jury trial, you must file a jury demand (MC 22).

SUPPLEMENTAL COMPLAINT

(K) ☐ 10. Complaint is made and judgment is sought for money damages against the defendant as follows:

(L) _____ Date

_____ Plaintiff/Attorney signature

Form DC 102c

COMPLAINT TO RECOVER POSSESSION OF PROPERTY

Use this form if you want to recover possession of real property.

Approved, SCAO

Original - Court
1st copy - Tenant

2nd copy - Mailing
3rd copy - Landlord

(A) STATE OF MICHIGAN JUDICIAL DISTRICT	COMPLAINT TO RECOVER POSSESSION OF PROPERTY	CASE NO.
Court address		**Court telephone no.**

(B)

Plaintiff name(s), address(es), and telephone no(s).		Defendant name(s), and address(es)
	v	
Plaintiff's attorney, bar no., address, and telephone no.		

The plaintiff states:

(C) 1. ☐ There is no other pending or resolved civil action arising out of the same transaction or occurrence alleged in this complaint.

☐ A civil action between these parties or other parties arising out of the transaction or occurrence alleged in this complaint has been previously filed in _____ Court. The docket number and assigned judge are _____ .

The action ☐ remains ☐ is no longer pending.

2. Attached to this complaint is a copy of the lease or occupancy agreement, if any, under which possession is claimed, and a copy of the notice to quit or demand for possession, if any, showing when and how it was served.

(D) 3. The person entitled to possession of the property described ☐ in the attached notice/demand ☐ as follows: _____

_____

is _____ .
Name (type or print)

(E) 4. The defendant is in possession of the following portion of the property: _____

_____

(F) 5. The plaintiff has a right to possession of the property because:

☐ a. lease expired on _____ . ☐ b. tenancy was terminated by notice to quit.

☐ c. lease terminated per provision in lease (para. no. ____) ☐ d. defendant is a trespasser. Explain in space beneath item f.

☐ e. forcible entry was made or possession was held by force after a peaceful entry.

☐ f. other: _____

Describe in detail how the trespass occurred on how the premises are being illegally held. State that no lawful tenancy existed between the parties in the time that has passed since the trespasser took possession. Use a separate sheet of paper if needed.

(G) ☐ 6. The tenancy involves regulated housing operated by or under rules of a governmental unit. The rule or law under which the tenancy is ended is _____ .

(H) ☐ 7. The plaintiff declares that this residential property was kept fit for the use intended and has been kept in reasonable repair during the term of the lease.

(I) ☐ 8. The defendant remains in possession of the property.

9. **The plaintiff requests** a judgment of possession and costs.

(J) NOTE: If you wish to demand a jury trial, you must file a jury demand (MC 22).

SUPPLEMENTAL COMPLAINT

(K) ☐ 10. Complaint is made and judgment is sought for money damages against the defendant as follows: Use a separate sheet of paper if needed.

(L) _____ _____
Date Plaintiff/Attorney signature

Item 7

Approved, SCAO

Original - Officer return
1st copy - Court

2nd copy - Defendant
3rd copy - Plaintiff

STATE OF MICHIGAN JUDICIAL DISTRICT	APPLICATION AND ORDER OF EVICTION Landlord-Tenant / Land Contract	CASE NO.

Court address

Court telephone no.

Plaintiff's name, address, and telephone no.		Defendant's name(s) and address(es)
Plaintiff's attorney, bar no., address, and telephone no.	**v**	

NOTE: An application may be required even though a request for an order of eviction is granted in the judgment.

APPLICATION

1. On _____ (Date) judgment was entered against the defendant(s) and the plaintiff was awarded possession of the following described property: _____

2. No payment has been made on the judgment or no rent has been received since the date of judgment, except the sum of $ _____ received under the following conditions: _____

3. The plaintiff has complied with the terms of the judgment.

4. The time stated in the judgment before an order of eviction can be issued has elapsed.

I declare that the statements above are true to the best of my information, knowledge, and belief.

Date

Plaintiff/Attorney signature

ORDER OF EVICTION

IN THE NAME OF THE PEOPLE OF THE STATE OF MICHIGAN:

To the Court Officer: You are ordered to restore the plaintiff to, and put the plaintiff in, full possession of the premises.

Date issued

Judge

Bar no.

NOTE: In tenancy cases, this order must be executed within 56 days of the issuance date.

MCL 600.5744, MCR 4.201(L), MCR 4.202(K)

APPLICATION AND ORDER OF EVICTION

CASE NO.

RETURN

I certify and return that on _____ I executed the order of eviction on the other side of this form
Date

by evicting _____
Name(s)

from the property, and I have restored the plaintiff to peaceful possession as ordered.

_____ _____
Date (Deputy) sheriff/Court officer/Bailiff

Service fee	Miles traveled Fee		
$		$	
Incorrect address fee	Miles traveled Fee		**TOTAL FEE**
$		$	$

REVISED JUDICATURE ACT OF 1961 (EXCERPT)
Act 236 of 1961

600.5744 Issuance of writ of restitution; conditions; foreclosure of equitable right of redemption.

Sec. 5744. (1) Subject to the time restrictions of this section, the court entering a judgment for possession in a summary proceeding shall issue a writ commanding a court officer appointed by or a bailiff of the issuing court, the sheriff or a deputy sheriff of the county in which the issuing court is located, or an officer of the law enforcement agency of the local unit of government in which the issuing court is located to restore the plaintiff to and put the plaintiff in full, peaceful possession of the premises by removing all occupants and all personal property from the premises and doing either of the following:

(a) Leaving the property in an area open to the public or in the public right-of-way.

(b) Delivering the property to the sheriff as authorized by the sheriff.

(2) Abandonment of the premises that is the subject of a writ under subsection (1) and of any personal property on the premises must be determined by the officer, bailiff, sheriff, or deputy sheriff serving the writ.

(3) On conditions determined by the court, a writ of restitution may be issued immediately after the entry of a judgment for possession if any of the following is pleaded and proved, with notice, to the satisfaction of the court:

(a) The premises are subject to inspection and certificate of compliance under the housing law of Michigan, 1917 PA 167, MCL 125.401 to 125.543, and the certificate or temporary certificate has not been issued and the premises have been ordered vacated.

(b) Forcible entry was made contrary to law.

(c) Entry was made peaceably but possession is unlawfully held by force.

(d) The defendant came into possession by trespass without color of title or other possessory interest.

(e) The tenant, willfully or negligently, is causing a serious and continuing health hazard to exist on the premises or is causing extensive and continuing injury to the premises and is neglecting or refusing either to deliver up possession after demand or to substantially restore or repair the premises.

(f) The action is an action to which section 5714(1)(b) applies.

(4) If a judgment for possession is based on forfeiture of an executory contract for the purchase of the premises, a writ of restitution must not be issued until the expiration of 90 days after the entry of judgment for possession if less than 50% of the purchase price has been paid or until the expiration of 6 months after the entry of judgment for possession if 50% or more of the purchase price has been paid.

(5) If subsections (3) and (4) do not apply, a writ of restitution must not be issued until the expiration of 10 days after the entry of the judgment for possession.

(6) If an appeal is taken or a motion for new trial is filed before the expiration of the period during which a writ of restitution must not be issued and if a bond to stay proceedings is filed, the period during which the writ must not be issued is tolled until the disposition of the appeal or motion for new trial is final.

(7) If a judgment for possession is for nonpayment of money due under a tenancy or for nonpayment of money required to be paid under or any other material breach of an executory contract for purchase of the premises, the writ of restitution must not be issued if, within the time provided, the amount stated in the judgment, with the taxed costs, is paid to the plaintiff and other material breaches of the executory contract for purchase of the premises are cured.

(8) Issuance of a writ of restitution following entry of a judgment for possession because of the forfeiture of an executory contract for the purchase of the premises forecloses any equitable right of redemption that the purchaser has or could claim in the premises.

History: Add. 1972, Act 120, Eff. July 1, 1972;—Am. 2004, Act 105, Eff. Sept. 1, 2004;—Am. 2019, Act 2, Eff. July 2, 2019.

Item 8

Formatting redesigned to comply with USPS regulations

Approved, SCAO

Original - Court Copy - Defendant

STATE OF MICHIGAN JUDICIAL DISTRICT	DEFAULT JUDGMENT Civil Infraction	Court Telephone No.

DRAFT

The ☐ State ☐ Twp. ☐ City ☐ Village of: _____

v Defendant (name and address printed on other side)

DEFAULT ENTRY I certify that the

1. defendant has not made a scheduled appearance or answered a citation within time allowed by statute.
2. defendant is not in the military service, or is in the military service but received notice and adequate time and opportunity to appear and defend.
3. default is entered against the defendant.

DEFAULT JUDGMENT is entered in the amount stated on the other side.

Return this notice with payment in the amount of the judgment stated on the other side of this form. Fines, costs, and other financial obligations imposed by the court must be paid at the time of assessment, except when the court allows otherwise, for good cause shown. If you fail to pay within 28 days of the default judgment date, the court may notify the Secretary of State to take action against your driving privileges. In addition, fines, costs, and fees not paid within 56 days of the default judgment date are subject to a 20% late penalty on the amount owed. If you are not able to pay due to financial hardship, contact the court immediately to request a payment alternative.

CERTIFICATE OF SERVICE: I certify that on this date I served a copy of this judgment on the defendant by first-class mail addressed to his/her last-known address as defined by MCR 2.107(C)(3). I declare under the penalties of perjury that this certificate of service has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Date of Default/Judgment*
Date of entry and mailing

_____
Clerk/Deputy clerk/Magistrate

NOTICE: You may be able to have the default judgment set aside by filing a motion within 14 days of the mailing date. You must post a cash bond equal to the total fines and costs noted when filing a motion to set aside a default judgment.

Formatting redesigned to comply with USPS regulations

DEFAULT JUDGMENT Civil Infraction	
Case Number	
Infraction Date	
Civil Infraction	
Vehicle Plate No.	

Appearance Date	Default/Judgment Date*

AMOUNT OF JUDGMENT	
Fines	$
Costs	$
State Costs	$
	$
Total	$
Bond Forfeited	$
Balance Due	$

XXRD DISTRICT COURT
1234 E. Main St. NE
Everywhere, MI XXXXX

Formatting redesigned to comply with USPS regulations

Approved, SCAO

Original - Court Copy - Defendant

STATE OF MICHIGAN JUDICIAL DISTRICT JUDICIAL CIRCUIT	14-DAY NOTICE Traffic	Court Telephone No. DRAFT

TO THE DEFENDANT:

1. You have failed to appear or respond to the violation cited on the other side of this card or you have failed to comply with an order or judgment of the court, including payment of fine, costs, or assessments.

2. You have **14 days** from the date of this notce to appear in court or to comply with the order or judgment of the court.

3. **If you fail to appear in court or comply with the judgment** as indicated, the Secretary of State will be notified to suspend your driver's license and the cost to compel appearance may be added to the amount of your judgment.

4. A warrant for your arrest has been or will be issued.

Fines, costs, and other financial obligations imposed by the court must be paid at the time of assessment, except when the court allows otherwise, for good cause shown. If you are not able to pay due to financial hardship, contact the court immediately to request a payment alternative.

MC 216 (7/19) **14-DAY NOTICE, Traffic** MCL 257.321a(2), MCR 1.110

Formatting redesigned to comply with USPS regulations

XXRD DISTRICT COURT
1234 E. Main St. NE
Everywhere, MI XXXXX

14-DAY NOTICE

Case no.:
Violation:
Violation date:

Notice date:

By:

Fine/Costs	Bond

Item 9

Approved, SCAO

Original - Return
1st copy - Witness
2nd copy - File
3rd copy - Extra

STATE OF MICHIGAN JUDICIAL DISTRICT JUDICIAL CIRCUIT COUNTY PROBATE	SUBPOENA Order to Appear and/or Produce	CASE NO.

Court address **Court telephone no.**

Police Report No. (if applicable):

Plaintiff(s)/Petitioner(s)		Defendant(s)/Respondent(s)
☐ People of the State of Michigan ☐ _____	**v**	
☐ Civil ☐ Criminal		Charge
☐ Probate In the matter of _____		

In the Name of the People of the State of Michigan. TO:

If you require special accommodations to use the court because of disabilities, please contact the court immediately to make arrangements.

YOU ARE ORDERED TO:

☐ 1. Appear personally at the time and place stated below: You may be required to appear from time to time and day to day until excused.

☐ The court address above ☐ Other:

Day	Date	Time

☐ 2. Testify at trial / examination / hearing.

☐ 3. Produce/permit inspection or copying of the following items: _____

☐ 4. Testify as to your assets, and bring with you the items listed in line 3 above.

☐ 5. Testify at deposition.

☐ 6. Abide by the attached prohibition against transferring or disposing of property. (MCL 600.6104(2), 600.6116, or 600.6119.)

☐ 7. Other: _____

☐ 8.

Person requesting subpoena		Telephone no.
Address		
City	State	Zip

NOTE: If requesting a debtor's examination under MCL 600.6110, or an injunction under item 6. this subpoena must be issued by a judge. For a debtor examination, the affidavit of debtor examination on the other side of this form must also be completed. Debtor's assets can also be discovered through MCR 2.305 without the need for an affidavit of debtor examination or issuance of this subpoena by a judge.

FAILURE TO OBEY THE COMMANDS OF THE SUBPOENA OR TO APPEAR AT THE STATED TIME AND PLACE MAY SUBJECT YOU TO PENALTY FOR CONTEMPT OF COURT.

SEAL OF THE MICHIGAN SUPREME COURT · LANSING · JUSTITIAM DISCITE MONITI

Court use only
☐ Served ☐ Not served

Date Judge/Clerk/Attorney Bar no.

SUBPOENA

Case No.

PROOF OF SERVICE

TO PROCESS SERVER: You must make and file your return with the court clerk. If you are unable to complete service, you must return this original and all copies to the court clerk.

CERTIFICATE / AFFIDAVIT OF SERVICE / NONSERVICE

☐ **OFFICER CERTIFICATE**

I certify that I am a sheriff, deputy sheriff, bailiff, appointed court officer, or attorney for a party [MCR 2.104(A)(2)], and that: (notarization not required)

OR

☐ **AFFIDAVIT OF PROCESS SERVER**

Being first duly sworn, I state that I am a legally competent adult who is not a party or an officer of a corporate party, and that: (notarization required)

☐ I served a copy of the subpoena, together with _____ (including any required fees) by
Attachment

☐ personal service ☐ registered or certified mail (copy of return receipt attached) on:

Name(s)	Complete address(es) of service	Day, date, time

☐ I have personally attempted to serve the subpoena and required fees, if any, together with _____
Attachment
on the following person(s) and have been unable to complete service.

Name(s)	Complete address(es) of service	Day, date, time

Service fee	Miles traveled Fee		
$		$	
Incorrect address fee	Miles traveled Fee		**TOTAL FEE**
$		$	$

_____
Signature

_____
Name (type or print)

_____
Title

Subscribed and sworn to before me on _____ (Date), _____ County, Michigan.

My commission expires: _____ (Date) Signature: _____ (Deputy court clerk/Notary public)

Notary public, State of Michigan, County of _____

ACKNOWLEDGMENT OF SERVICE

I acknowledge that I have received service of the subpoena and required fees, if any, together with _____
Attachment

_____ on _____
Day, date, time

_____ on behalf of _____.
Signature

AFFIDAVIT FOR JUDGMENT DEBTOR EXAMINATION

I request that the court issue a subpoena that orders the party named on this form to be examined under oath before a judge concerning the money or property of:
for the following reasons:

_____
Signature

Subscribed and sworn to before me on _____ (Date), _____ County, Michigan.

My commission expires: _____ (Date) Signature: _____ (Deputy court clerk/Notary public)

Notary public, State of Michigan, County of _____

Michigan Compiled Laws Annotated
Michigan Court Rules of 1985
Chapter 2. Civil Procedure
Subchapter 2.300. Discovery

MI Rules MCR 2.305

Rule 2.305. Discovery Subpoena to a Non-Party

Effective: January 1, 2020
Currentness

(A) General Provisions.

(1) A represented party may issue a subpoena to a non-party for a deposition, production or inspection of documents, inspection of tangible things, or entry to land upon court order or after all parties have had a reasonable opportunity to obtain an attorney, as determined under MCR 2.306(A). An unrepresented party may move the court for issuance of non-party discovery subpoenas. MCR 2.306(B)(1)-(2) and (C)-(G) apply to a subpoena under this rule. This rule governs discovery from a non-party under MCR 2.303(A)(4), 2.307, 2.310(D) or 2.315. MCR 2.506(A)(2) and (3) apply to any request for production of ESI. A subpoena for hospital records is governed by MCR 2.506(I).

(2) A subpoena may provide that it is solely for producing documents or other tangible things for inspection and copying, and that the party does not intend to examine the deponent. The subpoena shall specify whether an inspection is requested or whether the subpoena may be satisfied by delivering a copy of the requested documents. Any request for documents shall indicate that the subpoenaing party will pay reasonable copying costs.

(3) A subpoena shall provide a minimum of 14 days after service of the subpoena (or a shorter time if the court directs) for the requested act. The subpoenaing party may file a motion to compel compliance with the subpoena under MCR 2.313(A). The motion must include a copy of the request and proof of service of the subpoena. The movant must serve the motion on the non-party as provided in MCR 2.105.

(4) A subpoena issued under this rule is subject to the provisions of MCR 2.302(C), and the court in which the action is pending or in which the subpoena is served, on timely motion made by a party or the subpoenaed non-party before the time specified in the subpoena for compliance, may:

(a) quash or modify the subpoena if it is unreasonable or oppressive;

(b) enter an order permitted by MCR 2.302(C); or

(c) conditionally deny the motion on prepayment by the party on whose behalf the subpoena is issued of the reasonable cost of producing documents or other tangible things.

The non-party's obligation to respond to the subpoena is stayed until the motion is resolved.

(5) Service of a subpoena on the deponent must be made as provided in MCR 2.506(G). A copy of the subpoena must be served on all other parties on the date of issuance.

(6) In a subpoena for a non-party deposition, a party may name as the deponent a public or private corporation, partnership, association, or governmental agency and describe with reasonable particularity the matters on which examination is requested. The subpoena shall be served at least 14 days prior to the scheduled deposition. No later than 10 days after being served with the subpoena, the subpoenaed entity may serve objections, or file a motion for protective order, upon which the party seeking discovery may either proceed on topics as to which there was no objection or move to enforce the subpoena. The organization named must designate one or more officers, directors, managing agents, or other persons, who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. The deposition of each produced witness may not exceed one day of seven hours. The persons designated shall testify to matters known or reasonably available to the organization.

(7) Upon written request from another party and payment of reasonable copying costs, the subpoenaing party shall provide copies of documents received pursuant to a subpoena.

(B) Place of Compliance. Except for a subpoena for delivery of copies of documents only under subrule (A)(2), a non-party served with a subpoena in Michigan may be required to comply with the subpoena only in the county where the deponent resides, is employed, has its principal place of business or transacts relevant business; or at the location of the things to be inspected or land to be entered; or at another convenient place specified by order of the court.

(C) Petition to Courts Outside Michigan. When the place of compliance is in another state, territory, or country, the subpoenaing party may petition a court of that state, territory, or country for a subpoena or equivalent process.

(D) Action Pending in Another Country. An officer or a person authorized by the laws of another country to issue a subpoena in Michigan, with or without a commission, in an action pending in a court of that country may submit an application to a court of record in the county in which the subpoenaed person resides, is employed, has its principal place of business, transacts relevant business, or is found, for a subpoena. The court may hear and act on the application with or without notice, as the court directs.

(E) Action Pending in Another State or Territory. A person may request issuance of a subpoena in this state for an action pending in another state or territory under the Uniform Interstate Depositions and Discovery Act, MCL 600.2201 *et seq.,* to require a person to attend a deposition, to produce and permit inspection and copying of materials, or to permit inspection of premises under the control of the person.

Credits

[Adopted effective March 1, 1985. Amended September 22, 1998, effective December 1, 1998, 459 Mich; October 2, 2013, effective January 1, 2014, 495 Mich; May 25, 2016, effective September 1, 2016, 499 Mich; June 19, 2019, effective January 1, 2020, 503 Mich.]

Editors' Notes

COMMENTS

Staff Comment to 1985 Adoption

MCR 2.305 is based on GCR 1963, 305.

The main substantive change is the addition of subrule (B) covering the subject of subpoenas directing the production of documents or other tangible things. When such a subpoena is directed to a party deponent, the procedures of MCR 2.310, regarding requests to produce, apply.

In addition, in subrule (A)(1), the reference to the subpoena being issued by the clerk is deleted in view of the change in MCR 2.506, which permits subpoenas to be signed by the attorney for a party.

Staff Comment to 1998 Amendment

The amendment of Rule 2.305 was suggested by the Representative Assembly of the State Bar of Michigan. The changes made clear that nonparty records-only discovery subpoenas are authorized. The normal procedure for noticing a deposition applies to records-only subpoenas, and the procedure in MCR 2.310 still pertains to requests to a nonparty for entry on land or production of items for testing or sampling. The time for responding to a document subpoena or a document request under Rule 2.305(B)(1) was changed from seven to fourteen days. The amendment also made nonsubstantive changes to clarify and simplify language.

Staff Comment to 2014 Amendment

The changes of MCR 2.305 make subrule (E) applicable only to actions pending in another country, while new subrule (F) cross references the Uniform Interstate Depositions and Discovery Act, which establishes the procedures to be used in seeking a deposition or discovery subpoena in Michigan for use in an action that is pending in another state or territory.

Staff Comment to 2016 Amendment

The amendment of MCR 2.305 clarifies that subpoenas requesting the production of documents shall be issued only after defendant has had reasonable time after the complaint is filed and served to obtain an attorney, as described in MCR 2.306(A)(1).

Staff Comment to 2020 Amendment

These amendments are based on a proposal created by a special committee of the State Bar of Michigan and approved for submission to the Court by the Bar's Representative Assembly. The rules require mandatory discovery disclosure in many cases, adopt a presumptive limit on interrogatories (20 in most cases, but 35 in domestic relations proceedings) and limit a deposition to 7 hours. The amendments also update the rules to more specifically address issues related to electronically stored information, and encourage early action on discovery issues during the discovery period.

The amendment of MCR 2.309(A)(2) sets a presumptive limit of twenty interrogatories for each separately represented party. Several commenters suggested that the term “discrete subpart” be more explicitly defined. But the rule's reference to “a discrete subpart” is intended to draw guidance from federal courts construing FR Civ P 30(a)(1). Generally, subparts are not separately counted if they are logically or factually subsumed within and necessarily related to the primary question. In upholding the limit, parties and courts should also pragmatically balance the overall goals of discovery and the admonition of MCR 1.105. Further, the intent of the provision at MCR 2.301(B)(4) is to ensure that parties responding to discovery requests have the full time period to do so as provided for under these rules prior to the expiration of the discovery period.

MI Rules MCR 2.305, MI R RCP MCR 2.305
Current with amendments received through November 1, 2019.

Item 10

Approved, SCAO

Original - Court
1st copy - Plaintiff
2nd copy - Garnishee
3rd copy - Defendant

STATE OF MICHIGAN JUDICIAL DISTRICT JUDICIAL CIRCUIT	GARNISHEE DISCLOSURE	CASE NO.

Court address **Court telephone no.**

Plaintiff's name, address, and telephone no. (judgment creditor)	v	Defendant's name, address, and telephone no. (judgment debtor)
Plaintiff's attorney, bar no., address, and telephone no.		Garnishee name and address

SEE INSTRUCTIONS ON OTHER SIDE

1. This disclosure is for a writ of garnishment issued on _____ and received by garnishee on _____.
   - ☐ a. The garnishee mailed or delivered a copy of the writ of garnishment to the defendant on _____.
   - ☐ b. The garnishee was unable to mail or deliver a copy of the writ of garnishment to the defendant.
   - ☐ c. The garnishee will not withhold payments under the writ of garnishment. The writ of garnishment was served after the deadline date for service and the writ is invalid.
2. At the time of service of the writ:

Nonperiodic Garnishments

- ☐ a. The garnishee is not indebted to the defendant for any amount and does not possess or control the defendant's property, money, etc. Reason: _____
- ☐ b. The garnishee is indebted to the defendant for nonperiodic payments as follows:

_____ _____
Description of property, money, negotiable instruments, etc. under garnishee's control | Type of account and account number, if applicable

The amount to be withheld is $ _____ and does not exceed the amount stated in item 2 of the writ.

- ☐ c. Withholding is exempt because _____.
  State the exemption and legal authority

Periodic Garnishments

- ☐ d. The garnishee is not obligated to pay the defendant during the period of the writ.
  Reason: ☐ not employed. ☐ other _____
- ☐ e. The garnishee is obligated to pay the defendant during the period of the writ.
  Payments are for ☐ earnings. ☐ nonearnings _____.
  Specify nature of payment (see instructions on other side)

  Payments are made ☐ weekly. ☐ biweekly. ☐ semimonthly. ☐ monthly. ☐ other: _____
  frequency of payment

  A higher priority writ/order ☐ is ☐ is not currently in effect. If a higher priority writ/order is in effect, complete the following.

  _____ _____ _____ _____
  Name of court that issued higher priority writ/order | Case number | Date issued | Date served

  Withholding under this writ
  ☐ will begin immediately if sufficient funds are available.
  ☐ will not begin immediately because defendant is ☐ laid off. ☐ sick. ☐ on leave. ☐ other: _____.
  specify

I declare that the statements above are true to the best of my information, knowledge, and belief.

_____ _____
Date | Garnishee/Agent/Attorney signature

I certify that:

on _____ I mailed or personally delivered the original of this disclosure to the court.
on _____ I mailed or personally delivered a copy of this disclosure to the plaintiff/attorney.
on _____ I mailed or personally delivered a copy of this disclosure to the defendant.

_____ _____
Date | Garnishee/Agent/Attorney signature

DO NOT Include Your Payment With This Disclosure. See item 3 of the instructions for details.

GARNISHEE INSTRUCTIONS

Definitions

- A garnishment is a court order allowing the plaintiff (creditor) to take part or all of money owed to the defendant to pay for a judgment. You have been identified as a "garnishee," a person who has control over some or all of the money that is paid to the defendant.
- Periodic payments are payments you make to the defendant on a regular basis. These payments could be paychecks, rent payments, land contract payments, or other contract payments.
- Nonperiodic payments include bank accounts, other property, money, goods, chattels, credits, negotiable instruments or effects, or earnings in the form of bonuses that are not paid to the principal defendant on a periodic basis. The rest of these instructions do not apply to garnishment of property, which needs to be sold before it can be applied to the judgment.

Responsibility to Disclose: Within 14 days after being served with the writ of garnishment, you must deliver or mail copies of this completed disclosure to the court, plaintiff's attorney (or plaintiff, if no attorney), and the defendant. This applies even if you are not indebted or not obligated to make periodic payments to the defendant. No further disclosures are required.

Withholding Instructions: As the garnishee, you are being court ordered to withhold all or part of the money you owe the defendant to pay the plaintiff's judgment. You are required to withhold money until the plaintiff's judgment is satisfied or the court orders otherwise. If you do not do this, a judgment may be entered against you.

1. Determine when funds should be withheld.

a. If item 2b is checked, funds or other property available at the time of service of the writ must be withheld from the defendant from the time of this disclosure.

b. If item 2e is checked, funds must be withheld for each period you are indebted to the defendant. For example, if the defendant is your employee and he or she is paid weekly, you would withhold weekly.

Determine the date withholding will begin as follows.

1) For garnishees with weekly, biweekly, or semimonthly pay periods, withholding begins with the first full pay period after the writ was served.

2) For garnishees on a monthly pay period,
   - if the writ is served on the garnishee within the first 14 days of the pay period, withholding begins on the date the writ was served.
   - if the writ is served on or after the 15th day of the pay period, withholding begins on the next full pay period after the writ was served.

2. Priority Writs or Orders and Multiple Writs (for periodic garnishments only):

Garnishments with a higher priority than this garnishment of periodic payments are

- orders of bankruptcy court.
- income withholding for support of any person.
- orders for past due federal or state taxes.
- other general garnishments served before this writ.

a. If a higher priority writ/order is currently in effect and withholding under this writ is not appropriate at this time, you must keep this writ until (1) the higher priority writ/order has been satisfied or is otherwise not applicable, (2) the defendant's wages are sufficient for multiple writs, or (3) other circumstances change, which make funds available. Then, you must determine whether withholding can begin under this writ.

b. If a higher priority writ/order is served on you while this writ is in effect and there is not enough money available for multiple writs, you must suspend withholding under this writ and inform the plaintiff of that fact.

c. The plaintiff may not file another writ of garnishment of periodic payments for the same defendant, garnishee, and judgment while the existing writ is pending.

3. Determine the amount to be withheld. The amount withheld cannot exceed the amount of the balance of the judgment specified in item 2 of the request. <u>For periodic garnishment of earnings only</u>, a calculation sheet (the last sheet of this multipart form) is provided to determine the amount to be withheld. You do not need to use this calculation sheet, but if you do, you are not required to file it with the court or provide it to the defendant and plaintiff. However, a record of payment calculations must be maintained and made available for review by the plaintiff, defendant, or court upon request.

Payment Instructions: Determine when disclosed amounts may be released. Funds available under this writ of garnishment may not be released to the plaintiff or court until 28 days after you were served with the writ. After 28 days, funds must be paid as ordered in this writ unless otherwise notified by the court.

<u>For periodic garnishments only</u>. After 28 days from the date of the service of the writ on the garnishee, the garnishee shall transmit all withheld funds to the plaintiff or the court as directed by the court unless notified that objections have been filed. Every time a periodic payment is withheld, the garnishee must provide the plaintiff, defendant (and the court if funds are deposited with the court) with the case name, case number, date of withholding, amount withheld, and the balance due on the writ. At least once every six months, the creditor must provide a statement of the balance remaining on the judgment, including interest and costs. The garnishee should rely on this statement to determine when the judgment is satisfied.

Final Statement Instructions: A final statement of withholding is required for periodic garnishments. Within 14 days after the garnishee is no longer obligated to make periodic payments or the judgment is satisfied, the garnishee must file with the court and mail or deliver to the plaintiff and defendant a final statement of the total amount paid on the writ. The statement must include the names of the parties, the court in which the case is pending, the case number, the date of the statement, and the total amount withheld. The "Final Statement on Garnishment of Periodic Payments" form (Form MC48) can be used for this.

HOW TO FILL OUT THE GARNISHEE DISCLOSURE FORM

1. Determine whether you are obligated to make periodic payments to the defendant.

2. Write in the date the garnishment was issued (found in the lower left-hand corner of the Request and Writ of Garnishment) and the date you received the Request and Writ for Garnishment and Garnishee Disclosure forms on line 1 of the Garnishee Disclosure.

   - Determine if the writ is valid. The plaintiff is required to serve the Request and Writ for Garnishment within 182 days from the date it was issued. If the Request and Writ for Garnishment was not served within this time, it is invalid. If it is invalid, check box 1c. Date and sign the form and follow the instructions in item 3 below. If the writ is valid, continue on.

   - If you don't know the defendant or are not obligated to make payments to him or her, check boxes 1b and 2d. Then check the box that describes the reason you are not obligated. If you check "other," write out the reason. Date and sign the form and follow the instructions in item 3 below.

   - If you know the defendant and are obligated to make payments to him or her, you must mail or deliver a copy of the Request and Writ for Garnishment to the defendant. After mailing or delivering it to the defendant, check box 1a and write in the date you mailed or delivered it. Follow the instructions in item 2 below. The term "obligated to pay" includes employees who may not necessarily be receiving a paycheck at the time. For example, employees may be sick, laid off, or on leave when this writ was issued, but they are still your employees and will eventually be back to work.

3. Check box 2e and complete the information in item 2e as explained below.

   - Check either the box "earnings" or "nonearnings" so the plaintiff knows what kind of payments you make to the defendant. If you check "nonearnings," write in the kind of payments (for example, if you make rent payments, write that on the line after the "nonearnings" box).

   - Check the box that describes how often you make the payments to the defendant. If you check the "other" box, write on the line after that box how often you make the payments.

   - Check whether or not you are already garnishing money from the defendant (a higher priority writ/order). If you check the box that a higher priority writ/order is in effect, copy from those papers the name of the court that issued that writ, the case number of that writ, the date that writ was issued, and the date it was served on you.

   - If the defendant is currently due to receive payments from you from the date the writ was issued, check the box that says withholding "will begin immediately if sufficient funds are available." If the defendant is not due to receive a payment, check the box that says "will not begin immediately." Then check the box that explains why payment is not due; for example, defendant is laid off, sick, or on leave of absence.

   Date and sign the form and follow the instructions in item 3.

4. Fill in the dates that you will be mailing or delivering the copies of this form. Date and sign this part of the form. Separate the four copies of the form. Mail the original to the court and one copy to the plaintiff. You can either mail a copy to the defendant or hand deliver it to him or her. Keep one copy for your records.

See other side for calculation sheet.

You do not need to use this calculation sheet. If you do, it does not need to be filed with the court or provided to the defendant and plaintiff. However, you must maintain some type of record of your payment calculations and make it available for review by the plaintiff, defendant, or court upon request.

GARNISHEE CALCULATION SHEET FOR EARNINGS

1. The employer's current payday is _____. The principal defendant's gross earnings from the employer that were earned for this pay period are: $ _____

2. Deductions required by law to be withheld from gross earnings shown on line 1:
   a. Federal withholding tax (for income tax) $ _____
   b. State withholding tax (for income tax) $ _____
   c. Employee portion of social security tax $ _____
   d. Employee portion of medicare tax $ _____
   e. City withholding tax (for income tax) $ _____
   f. Public employee retirement when required by law $ _____
   g. Total (add lines 2a through 2f) $ _____

3. **Disposable earnings** (subtract line 2g from line 1) $ _____

4. Test I for amount available for garnishment (25% of line 3): $ _____
   (this percentage does not apply to garnishments for support of a person)

5. Test II for amount available for garnishment (disposable earnings minus federal minimum wage multiplied by appropriate multiple for normal pay period):
   a. Locate the appropriate figure from the chart below and insert here $ _____
   b. Subtract amount on line 5a from amount on line 3. Insert amount here. If the amount is less than zero, enter -0-. $ _____

6. Maximum amount subject to garnishment (line 4 or 5b, whichever is less) $ _____

7. Amounts withheld from disposable earnings (see line 3) pursuant to orders with priority:
   a. Orders of bankruptcy court $ _____
   b. Orders for past due federal or state taxes $ _____
   c. Income withholding for support of any person $ _____
   d. Other general garnishments served prior to this writ $ _____
   e. Total of all priority amounts withheld (add lines 7a through 7d) $ _____

8. Amount subject to garnishment under this writ (subtract line 7e from line 6) $ _____

9. **Amount to be withheld in response to this writ** (line 8 above or line 2 on the request and writ for garnishment, whichever is less) $ _____

Chart *

Test II for Amount Available for Garnishment Beginning:	July 24, 2009
Weekly (or more frequently) pay period	$217.50
Biweekly pay period	$435.00
Semimonthly pay period	$471.25
Monthly pay period	$942.50

*Training wage: for person aged 16 to 19 on their first job, use 85% of the above figures.

Item 11

Approved, SCAO

Original - Court
1st copy - Plaintiff

2nd copy - Defendant
3rd copy - Garnishee

STATE OF MICHIGAN JUDICIAL DISTRICT JUDICIAL CIRCUIT	ORDER REGARDING INSTALLMENT PAYMENTS ☐ AMENDED	CASE NO.

Court address **Court telephone no.**

Plaintiff's name (judgment creditor), address, and telephone no.		Defendant' name (judgment debtor), address, and telephone no.
	v	
Plaintiff's attorney, bar no., address, and telephone no.		Garnishee's name, address, and telephone no.

Date of judgment: _____ Amount of judgment (including costs): $ _____

1. The defendant filed a motion for installment payments with this court on _____ (Date) .

☐ 2. The court entered a writ of garnishment for periodic payments on _____ (Date) .

IT IS ORDERED:

☐ 3. The motion for installment payments is denied for the reasons stated on the record or for the following reasons:

☐ 4. The defendant shall pay the judgment in installments as follows:

$ _____ every ☐ week ☐ two weeks ☐ month starting _____ .

No writ of garnishment on this judgment shall issue for wages/personal work and labor until further order of the court.

☐ 5. The writ for periodic payments issued on _____ (Date) is suspended and the garnishee is ordered to discontinue withholding amounts under the writ unless otherwise ordered by the court. Any funds deposited with the court or held by the garnishee before the date of this order shall be paid and mailed to the plaintiff/plaintiff's attorney.

6. **FURTHER ORDERS:** If the defendant fails to make the above payments, the plaintiff may file a motion to set this order aside. Copies of the motion must be served by first-class mail to the defendant's last-known address. An order setting aside the installment payments will be entered 14 days from the date of mailing of the motion to set aside installment payments unless the defendant, within that time, requests a hearing.

_____ _____ _____
Date Judge Bar no.

Instructions to Defendant: Do not serve the order on the garnishee if the motion for installment payments is denied.

CERTIFICATE OF MAILING

I certify that on this date I served a copy of this order on the parties or their attorneys by first-class mail addressed to their last-known addresses as defined by MCR 2.107(C)(3).

_____ _____
Date Signature

Item 12

Approved, SCAO

Original - Court of Appeals/Circuit court
1st copy - Trial court

JIS CODE: COA
2nd copy - Appellee
3rd copy - Appellant

STATE OF MICHIGAN JUDICIAL ☐ CIRCUIT ☐ DISTRICT COUNTY ☐ IN THE COURT OF APPEALS	CLAIM OF APPEAL	CASE NO. CIRCUIT DISTRICT PROBATE

Court address **Court telephone no.**

Plaintiff's/Petitioner's name(s) and address(es) ☐ Appellant ☐ Appellee	v	Defendant's/Respondent's name(s) and address(es) ☐ Appellant ☐ Appellee
Plaintiff's attorney, bar no., address, and telephone no.		Defendant's attorney, bar no., address, and telephone no.

☐ Probate In the matter of _____

Other interested party(ies) of probate matter

1. _____ claims an appeal from a final judgment or order entered on
Name

_____ in the _____ Court of the State of Michigan,
Date Court name and number or county

by ☐ district judge ☐ circuit judge ☐ probate judge ☐ district court magistrate

_____ .
Name of judge or district court magistrate Bar no.

2. Bond on appeal is ☐ filed. ☐ attached. ☐ waived. ☐ not required.
3. ☐ a. The transcript has been ordered.
☐ b. The transcript has been filed.
☐ c. No record was made.
☐ 4. THIS CASE INVOLVES
☐ a. A CONTEST AS TO THE CUSTODY OF A MINOR CHILD.
☐ b. AN ADULT OR MINOR GUARDIANSHIP UNDER THE ESTATES AND PROTECTED INDIVIDUALS CODE OR UNDER THE MENTAL HEALTH CODE.
☐ c. AN INVOLUNTARY MENTAL HEALTH TREATMENT CASE UNDER THE MENTAL HEALTH CODE.
☐ d. A RULING THAT A PROVISION OF THE MICHIGAN CONSTITUTION, A MICHIGAN STATUTE, A RULE OR REGULATION INCLUDED IN THE MICHIGAN ADMINISTRATIVE CODE, OR ANY OTHER ACTION OF THE LEGISLATIVE OR EXECUTIVE BRANCH OF STATE GOVERNMENT IS INVALID.

_____ /s/ _____
Date Appellant/Attorney signature

PROOF OF SERVICE

I certifiy that copies of this claim of appeal and bond (if required) were served on

_____ on _____ by ☐ personal service. ☐ first-class mail.
Name Date

_____ on _____ by ☐ personal service. ☐ first-class mail.
Name Date

_____ on _____ by ☐ personal service. ☐ first-class mail.
Name Date

_____ _____
Date Signature

Michigan Compiled Laws Annotated
Michigan Court Rules of 1985
Chapter 7. Appellate Rules
Subchapter 7.100. Appeals to Circuit Court

MI Rules MCR 7.103

Rule 7.103 Appellate Jurisdiction of the Circuit Court

Currentness

(A) Appeal of Right. The circuit court has jurisdiction of an appeal of right filed by an aggrieved party from the following:

(1) a final judgment or final order of a district or municipal court, except a judgment based on a plea of guilty or nolo contendere;

(2) a final order or decision of an agency governed by the Administrative Procedures Act, MCL 24.201 *et seq.*; and

(3) a final order or decision of an agency from which an appeal of right to the circuit court is provided by law.

(B) Appeal by Leave. The circuit court may grant leave to appeal from:

(1) a judgment or order of a trial court when

(a) no appeal of right exists, or

(b) an appeal of right could have been taken but was not timely filed;

(2) a final order or decision of an agency from which an appeal by leave to the circuit court is provided by law;

(3) an interlocutory order or decision of an agency if an appeal of right would have been available for a final order or decision and if waiting to appeal of right would not be an adequate remedy;

(4) a final order or decision of an agency if an appeal of right was not timely filed and a statute authorizes a late appeal; and

(5) a decision of the Michigan Parole Board to grant parole.

Credits
[Adopted effective March 1, 1985. Amended June 13, 2000, effective September 1, 2000, 462 Mich; January 23, 2007, effective May 1, 2007, 477 Mich; December 8, 2011, effective May 1, 2012, 490 Mich. Amended effective June 21, 2017, 500 Mich.]

Editors' Notes

COMMENTS

Staff Comment to 1985 Adoption

MCR 7.103 is comparable to GCR 1963, 703.

As in the corresponding rules applicable to the Court of Appeals (MCR 7.205[E]) and the Supreme Court (MCR 7.302[C][3]), subrule (B)(6) does not refer to an affidavit of "nonculpable negligence" (see GCR 1963, 703.2[f]), but rather says that the affidavit must explain the delay and that the appellate court may consider the length of and reason for the delay in deciding whether to grant the application.

Subrule (C) states in more detail than did GCR 1963, 703.3 what actions must be taken after leave to appeal is granted, and when.

Staff Comment to 2000 Amendment

The amendment of MCR 7.103(B)(6) [effective September 1, 2000] places a 6-month time limit on applications for leave to appeal to circuit court, corresponding to the 12-month limit applicable in appeals to the Court of Appeals. See MCR 7.205(F)(3). As to judgments entered before the effective date of the amendment, the 6-month period specified in MCR 7.103(B)(6) begins on the effective date, September 1, 2000.

Staff Comment to 2007 Amendment

The amendment of Rule 7.103 is a technical amendment necessitated by the amendment of Rule 6.625.

Staff Comment to 2011 Amendment

These rules reflect a total rewrite of the rules relating to appeals to circuit court, and are modeled on the rules of the Court of Appeals.

Staff Comment to 2017 Amendment

These amendments conform to recent statutory changes that require all appeals from probate court to be heard in the Court of Appeals, instead of the bifurcated system that previously required some probate appeals to be heard in the Court of Appeals and some to be heard in the local circuit court. The amendments also establish priority status for appeals in guardianship and involuntary mental health treatment cases, similar to child custody cases.

MI Rules MCR 7.103, MI R A MCR 7.103
Current with amendments received through November 1, 2019.

End of Document

Michigan Compiled Laws Annotated
Michigan Court Rules of 1985
Chapter 7. Appellate Rules
Subchapter 7.200. Court of Appeals

MI Rules MCR 7.203

Rule 7.203 Jurisdiction of the Court of Appeals

Currentness

(A) Appeal of Right. The court has jurisdiction of an appeal of right filed by an aggrieved party from the following:

(1) A final judgment or final order of the circuit court, or court of claims, as defined in MCR 7.202(6), except a judgment or order of the circuit court

(a) on appeal from any other court or tribunal;

(b) in a criminal case in which the conviction is based on a plea of guilty or nolo contendere;

An appeal from an order described in MCR 7.202(6)(a)(iii)-(v) is limited to the portion of the order with respect to which there is an appeal of right.

(2) A judgment or order of a court or tribunal from which appeal of right to the Court of Appeals has been established by law or court rule.

(B) Appeal by Leave. The court may grant leave to appeal from:

(1) a judgment or order of the circuit court and court of claims that is not a final judgment appealable of right;

(2) a final judgment entered by the circuit court on appeal from any other court;

(3) a final order of an administrative agency or tribunal which by law is appealable to or reviewable by the Court of Appeals or the Supreme Court;

(4) any other judgment or order appealable to the Court of Appeals by law or rule;

(5) any judgment or order when an appeal of right could have been taken but was not timely filed.

(C) Extraordinary Writs, Original Actions, and Enforcement Actions. The court may entertain an action for:

(1) superintending control over a lower court or a tribunal immediately below it arising out of an action or proceeding which, when concluded, would result in an order appealable to the Court of Appeals;

(2) mandamus against a state officer (see MCL 600.4401);

(3) habeas corpus (see MCL 600.4304);

(4) quo warranto involving a state office or officer;

(5) any original action required by law to be filed in the Court of Appeals or Supreme Court;

(6) any action to enforce a final order of an administrative tribunal or agency required by law to be filed in the Court of Appeals or Supreme Court.

(D) Other Appeals and Proceedings. The court has jurisdiction over any other appeal or action established by law. An order concerning the assignment of a case to the business court under MCL 600.8301 *et seq.* shall not be appealed to the Court of Appeals.

(E) Appeals by Prosecution. Appeals by the prosecution in criminal cases are governed by MCL 770.12, except as provided by MCL 770.3.

(F) Dismissal.

(1) Except when a motion to dismiss has been filed, the chief judge or another designated judge may, acting alone, dismiss an appeal or original proceeding for lack of jurisdiction.

(2) The appellant or plaintiff may file a motion for reconsideration within 21 days after the date of the order of dismissal. The motion shall be submitted to a panel of 3 judges. No entry fee is required for a motion filed under this subrule.

(3) The clerk will not accept for filing a motion for reconsideration of an order issued by a 3-judge panel that denies a motion for reconsideration filed under subrule (2).

Credits

[Adopted effective March 1, 1985. Amended March 30, 1989, effective October 1, 1989, 432 Mich; December 15, 1993, effective February 1, 1994, 444 Mich. Amended effective December 27, 1994. Amended October 19, 1995, effective January 1, 1996, 450 Mich; amended June 2, 1999, effective September 1, 1999, 459 Mich; November 30, 1999, 461 Mich. Amended December 22, 1999, effective February 1, 2000, 461 Mich. Amended effective September 11, 2001, 465 Mich. Amended June 4,

12002, effective September 1, 2002, 466 Mich; January 22, 2003, effective May 1, 2003, 467 Mich. Amended effective October 5, 2004, 471 Mich. Amended December 21, 2005, effective January 1, 2006, 474 Mich; June 5, 2013, effective September 1, 2013, 494 Mich. Amended effective May 7, 2014, 495 Mich; December 14, 2016, 500 Mich.]

Editors' Notes

COMMENTS

Staff Comment to 1985 Adoption

MCR 7.203 is drawn from GCR 1963, 801, 806.1, 806.2, and 816.2(2). The provisions of the former rules are rewritten, although their substance is not changed.

In subrule (B)(2) a reference to cases that were appealed to the Recorder's Court of the City of Detroit is added, in view of that court's appellate jurisdiction over the 36th District Court. MCL 770.3(1)(c).

The [March 1, 1985] amendment of MCR 7.203(B)(2) corrects an inadvertent addition of the words “or tribunal” at the end of the subrule, which describes the class of cases appealable to the Court of Appeals by leave. This makes the rule consistent with GCR 1963, 806.2(4).

Subrule (B)(3) is new. It limits review of agency decisions to final orders, a principle that had previously been expressed in appellate decisions.

The 18-month time limit on filing an application for leave to appeal in a civil action (see GCR 1963, 806.2) is placed in MCR 7.205(F).

Staff Comment to 1989 Amendment

The [October 1, 1989] amendment of MCR 7.203(E) incorporates the statute governing appeals by the prosecutor. The circumstances in which such appeals can be taken was considerably expanded by 1988 PA 66.

Staff Comment to February, 1994 Amendment

The change in MCR 7.203(A)(1) [effective February 1, 1994] eliminates appeals of right as to certain types of judgments or orders. An appeal from a lower court judgment after review of an agency decision will be by leave only. In domestic relations cases, the only postjudgment orders that will be appealable by right are those involving the custody of minors.

Staff Comment to December, 1994 Amendment

The December 30, 1994 amendments of MCR 6.301, 6.302, 6.311, 6.425, 7.203, 7.204 and 7.205 modified procedure regarding appeals in criminal cases in light of the amendment of Const 1963, art 1, § 20 at the November 1994 general election and the legislation implementing the constitutional amendment. Changes will remain in effect until April 1, 1995 and will be reconsidered by the Court in light of comments received and any further legislation.

Staff Comment to 1996 Amendment

New MCR 7.203(A)(3) retains an exception, formerly found in MCR 7.203(A)(1), for postjudgment orders in divorce and paternity actions that affect the custody of a minor. MCR 7.203(A)(2) is amended to make clear that appeals of right exist where so provided by court rule, as well as by statute. See, e.g., MCR 5.801(B); MCR 5.993(A).

Staff Comment to September, 1999 Amendment

New MCR 7.203(F) permits the chief judge, or another designated judge, acting alone, to dismiss an appeal or original proceeding for lack of jurisdiction, and creates a procedure for the appellant or plaintiff to seek reconsideration of that decision.

Staff Comment to November, 1999 Amendment

The amendment of MCR 7.203(A)(1) is explained in *Allied Electric Supply Co, Inc v Tenaglia*, 461 Mich 285, 290; 602 NW2d 572 (1999).

Staff Comment to December, 1999 Amendment

The amendment to MCR 7.203 deals with the issue regarding the relationship of appeals and orders awarding or denying attorney fees and costs.

MCR 7.203(A) is amended to make orders awarding or denying sanctions appealable by right.

Staff Comment to 2001 Amendment

The September 11, 2001, amendment of subrule (A)(3) clarified that the provision applies to all domestic relations actions, not just to divorce and paternity actions.

The amendment of MCR 7.203(E) incorporates the statute governing appeals by the prosecutor. The circumstances in which such appeals can be taken was considerably expanded by 1988 PA 66.

Staff Comment to 2002 Amendment

The June 4, 2002, amendments of MCR 7.202, 7.203, and 7.209, effective September 1, 2002, involve orders appealable by right to the Court of Appeals.

The provisions concerning custody orders in domestic relations cases and orders regarding attorney fees and costs are moved from MCR 7.203(A)(3) and (4) to MCR 7.202(7)(a)(iii) and (iv). There is also a change in the language regarding fees and costs, to refer to “postjudgment” orders.

New MCR 7.202(7)(a)(v) includes as “final” an order denying immunity to a governmental defendant, as is provided in many jurisdictions. See, *e.g., Mitchell* v *Forsyth*, 472 US 511; 105 S Ct 2806; 86 L Ed 2d 411 (1985).

Language is added to MCR 7.203(A) to make clear that an appeal from an order described in MCR 7.202(7)(a)(iii)-(v) is limited to the portion of the order regarding which there is an appeal of right. In addition, obsolete references to the recorder's court are deleted from that subrule.

New MCR 7.209(E)(4) provides for a stay with respect to a governmental party who takes an appeal of right from an order denying immunity.

Staff Comment to 2003 Amendment

The January 22, 2003, amendment of MCR 7.211(B), effective May 1, 2003, clarifies the deadline for answering a substantive motion when there also is a motion for immediate consideration of that motion.

The January 22, 2003, amendment of MCR 7.215(H), effective May 1, 2003, details how the Court of Appeals carries out the notification duties assigned to it by the 2000 PA 503 amendments of the Crime Victims Rights Act, MCL 780.751 *et seq*.

The January 22, 2003, amendment of MCR 7.215(I) (4), effective May 1, 2003, added the provision that the Court of Appeals clerk will not accept untimely motions for reconsideration. The same amendment order changed the title of a motion for "rehearing" to "reconsideration" in several other MCR Subchapter 7.200 rules.

Staff Comment to 2004 Amendment

New subrule MCR 7.203(G) implements the Court of Appeals expedited summary disposition docket. Subrule (G) alerts litigants involved in appeals from orders disposing of summary disposition motions that they are to follow the procedures set forth in the administrative order.

Staff Comment to 2005 Amendment

The amendments of MCR 7.203(A) and 7.209(D), effective January 1, 2006, recognize numbering changes in MCR 7.202.

Staff Comment to 2013 Amendment

Under 2012 PA 333, an order by a court in which a case is assigned to a business court is not subject to appeal by right or leave in the Court of Appeals. That prohibition is codified in MCR 7.203(D). Note that the decision to assign a case to a business court is appealable to the court's chief judge under the amendment of MCR 2.112 adopted in ADM File No. 2012-36.

Staff Comment to 2014 Amendment

These amendments reflect changes that correct minor technical errors that have occurred in drafting or the changes respond to recent adopted rule revisions, which occasionally inadvertently create incorrect cross-references in other rules.

Staff Comment to 2016 Amendment

These amendments update cross-references and make other nonsubstantive revisions to clarify the rules.

Notes of Decisions (3)

MI Rules MCR 7.203, MI R A MCR 7.203
Current with amendments received through November 1, 2019.

End of Document

Michigan Compiled Laws Annotated
Michigan Court Rules of 1985
Chapter 7. Appellate Rules
Subchapter 7.200. Court of Appeals

MI Rules MCR 7.204

Rule 7.204. Filing Appeal of Right; Appearance

Currentness

(A) Time Requirements. The time limit for an appeal of right is jurisdictional. See MCR 7.203(A). The provisions of MCR 1.108 regarding computation of time apply. For purposes of subrules (A)(1) and (A)(2), "entry" means the date a judgment or order is signed, or the date that data entry of the judgment or order is accomplished in the issuing tribunal's register of actions.

(1) An appeal of right in a civil action must be taken within

(a) 21 days after entry of the judgment or order appealed from;

(b) 21 days after the entry of an order deciding a motion for new trial, a motion for rehearing or reconsideration, or a motion for other relief from the order or judgment appealed, if the motion was filed within the initial 21-day appeal period or within further time the trial court has allowed for good cause during that 21-day period;

(c) 14 days after entry of an order of the family division of the circuit court terminating parental rights under the Juvenile Code, or entry of an order denying a motion for new trial, rehearing, reconsideration, or other postjudgment relief from an order terminating parental rights, if the motion was filed within the initial 14-day appeal period or within further time the trial court may have allowed during that period; or

(d) another time provided by law.

If a party in a civil action is entitled to the appointment of an attorney and requests the appointment within 14 days after the final judgment or order, the 14-day period for the taking of an appeal or the filing of a postjudgment motion begins to run from the entry of an order appointing or denying the appointment of an attorney. If a timely postjudgment motion is filed before a request for appellate counsel, the party may request counsel within 14 days after the decision on the motion.

(2) An appeal of right in a criminal case must be taken

(a) in accordance with MCR 6.425(G)(1);

(b) within 42 days after entry of an order denying a timely motion for the appointment of a lawyer pursuant to MCR 6.425(G)(1);

(c) within 42 days after entry of the judgment or order appealed from; or

(d) within 42 days after the entry of an order denying a motion for a new trial, for directed verdict of acquittal, or to correct an invalid sentence, if the motion was filed within the time provided in MCR 6.419(C), 6.429(B), or 6.431(A), as the case may be.

(e) If a claim of appeal is received by the court after the expiration of the periods set forth above, and if the appellant is an inmate in the custody of the Michigan Department of Corrections and has submitted the claim as a pro se party, the claim shall be deemed presented for filing on the date of deposit of the claim in the outgoing mail at the correctional institution in which the inmate is housed. Timely filing may be shown by a sworn statement, which must set forth the date of deposit and state that first-class postage has been prepaid. The exception applies to claims of appeal from decisions or orders rendered on or after March 1, 2010. This exception also applies to an inmate housed in a penal institution in another state or in a federal penal institution who seeks to appeal in a Michigan court.

A motion for rehearing or reconsideration of a motion mentioned in subrules (A)(1)(b) or (A)(2)(d) does not extend the time for filing a claim of appeal, unless the motion for rehearing or reconsideration was itself filed within the 21- or 42-day period.

(3) Where service of the judgment or order on appellant was delayed beyond the time stated in MCR 2.602, the claim of appeal must be accompanied by an affidavit setting forth facts showing that the service was beyond the time stated in MCR 2.602. Appellee may file an opposing affidavit within 14 days after being served with the claim of appeal and affidavit. If the Court of Appeals finds that service of the judgment or order was delayed beyond the time stated in MCR 2.602 and the claim of appeal was filed within 14 days after service of the judgment or order, the claim of appeal will be deemed timely.

(B) Manner of Filing. To vest the Court of Appeals with jurisdiction in an appeal of right, an appellant shall file with the clerk within the time for taking an appeal

(1) the claim of appeal, and

(2) the entry fee.

(C) Other Documents. With the claim of appeal, the appellant shall file the following documents with the clerk:

(1) a copy of the judgment or order appealed from;

(2) a copy of the certificate of the court reporter or recorder filed under subrule (E)(4), a statement by the attorney that the transcript has been ordered (in which case the certificate of the court reporter or recorder must be filed as soon as possible thereafter), or a statement by the attorney that there is no record to be transcribed;

(3) proof that a copy of the claim of appeal was served on all other parties in the case and on any other person or officer entitled by rule or law to notice of the appeal;

(4) if the appellant has filed a bond, a true copy of the bond;

(5) a copy of the register of actions of the lower court, tribunal, or agency; and

(6) a jurisdictional checklist on a form provided by the clerk's office.

(D) Form of Claim of Appeal.

(1) A claim of appeal is entitled "In the Court of Appeals." The parties are named in the same order as they appear in the trial court, with the added designation "appellant" or "appellee" as appropriate. The claim must be substantially in the following form:

> [*Name of appellant*], [*plaintiff or defendant*], claims an appeal from the [*judgment or order*] entered [*date of judgment or order or date sentence imposed*] in the [*name of court or tribunal from which the appeal is taken*] by [*name of judge or officer who entered the judgment, order, or sentence*].

(2) The claim of appeal must be dated and signed, and must list the appropriate business address and telephone number under the signature.

(3) If the case involves

(a) a contest as to the custody of a minor child,

(b) a case involving an adult or minor guardianship under the Estates and Protected Individuals Code or under the Mental Health Code or an involuntary mental health treatment case under the Mental Health Code, or

(c) a ruling that a provision of the Michigan Constitution, a Michigan statute, a rule or regulation included in the Michigan Administrative Code, or any other action of the legislative or executive branch of state government is invalid,

that fact must be stated in capital letters on the claim of appeal. In an appeal specified in subrule (D)(3)(c), the Court of Appeals shall give expedited consideration to the appeal, and, if the state or an officer or agency of the state is not a party to the appeal, the Court of Appeals shall send copies of the claim of appeal and the judgment or order appealed from to the Attorney General.

(E) Trial Court Filing Requirements. Within the time for taking the appeal, the appellant shall file in the court or the tribunal from which the appeal is taken

(1) a copy of the claim of appeal;

(2) any fee required by law;

(3) any bond required by law as a condition for taking the appeal; and

(4) unless there is no record to be transcribed, the certificate of the court reporter or recorder stating that a transcript has been ordered and payment for it made or secured, and that it will be filed as soon as possible or has already been filed.

(F) Other Requirements. Within the time for taking the appeal, the appellant shall also

(1) make any delivery or deposit of money, property, or documents, and do any other act required by the statute authorizing the appeal, and file with the clerk an affidavit or other evidence of compliance;

(2) serve on all other parties in the case and on any other person or officer entitled by rule or law to notice of the appeal a copy of the claim of appeal and a copy of any bond filed under subrule (C)(4).

(G) Appearance. Within 14 days after being served with the claim of appeal, the appellee shall file an appearance (identifying the individual attorneys of record) in the Court of Appeals and in the court or tribunal from which the appeal is taken. An appellee who does not file a timely appearance is not entitled to notice of further proceedings until an appearance is filed.

(H) Docketing Statement. In all civil appeals, within 28 days after the claim of appeal is filed, the appellant must file two copies of a docketing statement with the clerk of the Court of Appeals and serve a copy on the opposing parties.

(1) *Contents.* The docketing statement must contain the information required from time to time by the Court of Appeals through the office of the Chief Clerk on forms provided by the Clerk's office and must set forth:

(a) the nature of the proceeding;

(b) the date of entry of the judgment or order sought to be reviewed as defined in MCR 7.204(A) or MCR 7.205(A), and whether the appeal was timely filed and is within the court's jurisdiction;

(c) a concise, accurate summary of all facts material to consideration of the issues presented, but transcripts are not required at this stage;

(d) the issues presented by the appeal, including a concise summary of how they arose and how they were preserved in the trial court. General conclusory statements such as, “the judgment of the trial court is not supported by the law or the facts,” will not be accepted;

(e) a reference to all related or prior appeals, and the appropriate citation, if any.

(2) *Amendment.* The Court of Appeals may, upon motion and good cause shown, allow for the amendment of the docketing statement.

(3) *Cross Appeals.* A party who files a cross appeal shall file a docketing statement in accordance with this rule within 28 days after filing the cross appeal.

(4) *Dismissal.* If the appellant fails to file a timely docketing statement, the chief judge may dismiss the appeal pursuant to MCR 7.217.

Credits

[Adopted effective March 1, 1985. Amended August 23, 1989, effective October 1, 1989, 432 Mich; December 15, 1993, effective February 1, 1994, 444 Mich; January 28, 1994, effective February 1, 1994, 444 Mich. Amended effective December 30, 1994, 447 Mich. Amended February 23, 1995, effective May 1, 1995, 448 Mich; April 30, 1996, effective September 1, 1997, 454 Mich; June 2, 1998, effective September 1, 1998, 457 Mich. Amended effective November 30, 1999, 461 Mich. Amended May 17, 2002, effective September 1, 2002, 466 Mich; February 3, 2004, effective May 1, 2004, 469 Mich; March 30, 2004, effective May 1, 2004, 469 Mich. Amended effective November 2, 2004, 471 Mich. Amended February 23, 2006, effective May 1, 2006, 474 Mich; March 15, 2007, effective May 1, 2007, 477 Mich; May 28, 2008, effective September 1, 2008, 481 Mich; February 25, 2010, effective May 1, 2010, 485 Mich. Amended effective June 21, 2017, 500 Mich; March 21, 2018, 501 Mich. Amended August 30, 2018, effective September 1, 2018, 502 Mich.]

Editors' Notes

COMMENTS

Staff Comment to 1985 Adoption

MCR 7.204 is based on GCR 1963, 802.1, 803.1, 803.5, 804.1, and 805. The rule brings together the various provisions on the filing of an appeal of right.

The [March 1, 1985] amendments of MCR 6.101(F)(7)(e) and 7.204(A)(3) have the effect of allowing a criminal defendant to file a motion for resentencing in the trial court before filing a claim of appeal. If the defendant does so, the time for taking an appeal of right runs from the denial of the motion.

Under GCR 1963, 805(3) the appellant was required to file a copy of the court reporter or recorder's certificate that the transcript had been ordered. GCR 1963, 812.3(1); MCR 7.210(B)(3)(a). Subrule (C)(2) permits as a substitute a statement by the attorney that the transcript has been ordered. In certain circumstances the time required to obtain the certificate itself might delay the taking of an appeal. However, the certificate must be filed as soon as possible thereafter.

Subrule (C)(4) adds a requirement that if a bond was filed a copy of it must be filed in the Court of Appeals with the claim of appeal. A copy must be served on the other parties under subrule (F)(2).

Subrule (G) adds a new requirement that the appellee file an appearance in the Court of Appeals. Under MCR 2.117(C)(1), an appearance by an attorney in the trial court continues only until the entry of final judgment and through the time for taking an appeal of right. Thus, a timely claim of appeal could be served on the attorney for a party. However, the trial court appearance will have expired by the time the appellant's brief is to be served.

The provisions of GCR 1963, 803.6, which halved the time for filing a claim of appeal (among other steps) in certain cases, are omitted.

The checklist of steps on appeal formerly found in GCR 1963, 823 is omitted.

Staff Comment to 1989 Amendment

There are three changes [under the October 1, 1989 amendment] in MCR 7.204(A). The last paragraph of MCR 7.204(A)(1) is amended to adjust the relationship between the times for taking an appeal of right and for requesting appointment of counsel in those situations in which a civil litigant is entitled to such an appointment. Under the prior rule, a party could lose an appeal of right where a post-trial motion was filed but counsel was not requested until more than 21 days after the judgment.

The provisions of subrule (A)(2) on the taking of an appeal of right in criminal cases are modified to take account of the revised procedures in MCR 6.425(E) and (F). The basic time for taking an appeal, or for requesting counsel, is shortened from 56 to 42 days. Former subrule (A)(3), which created a separate procedure in guilty plea cases, is eliminated.

A new concluding paragraph of MCR 7.204(A) is added to make clear that a series of postjudgment motions cannot indefinitely extend the time for taking an appeal. Only motions filed within 21 days after the judgment in civil cases, and 42 days in criminal cases, extend the time for taking an appeal.

Staff Comment to February, 1994 Amendment

MCR 7.204(H) is a new provision [adopted December 15, 1993, effective February 1, 1994]. It requires that a docketing statement be filed in all appeals.

The January 28, 1994 amendment of MCR 7.204(H) [effective February 1, 1994] makes it clear that the requirement that a docketing statement be filed applies only in appeals of civil cases. The Supreme Court is considering, as a separate matter, whether to impose such a requirement in appeals of criminal cases.

Staff Comment to December, 1994 Amendment

The December 30, 1994 amendments of MCR 6.301, 6.302, 6.311, 6.425, 7.203, 7.204 and 7.205 modified procedure regarding appeals in criminal cases in light of the amendment of Const 1963, art 1, § 20 at the November 1994 general election and the legislation implementing the constitutional amendment. Changes will remain in effect until April 1, 1995 and will be reconsidered by the Court in light of comments received and any further legislation.

Staff Comment to 1995 Amendment

MCR 7.204(C)(5) is amended to require a copy of the docket or calendar entries in all appeals of right.

Staff Comment to 1997 Amendment

There are two changes in MCR 7.204(H) regarding the docketing statement that must be filed in the Court of Appeals. Two copies would be required, and the Court of Appeals would be authorized to require that additional information be included on the docketing statement form.

Staff Comment to 1998 Amendment

MCR 7.204(C) requires a jurisdictional checklist to be filed with the claim of appeal.

Staff Comment to 1999 Amendment

The amendment of MCR 7.204(A) is explained in Allied Electric Supply Co, Inc v Tenaglia, 461 Mich 285, 290; 602 NW2d 572 (1999).

Staff Comment to 2002 Amendment

The May 17, 2002, amendments of MCR 7.204, 7.212, 7.213, 7.215, and 7.302, which are effective September 1, 2002, relate to appeals in which a Michigan constitutional provision, statute, regulation, or other governmental action has been held to be invalid.

The amendment of MCR 7.204(D)(3) requires that the claim of appeal identify cases involving such a ruling, and directs the Court of Appeals to give expedited treatment to such appeals and to send copies of the claim of appeal and the order appealed from to the Attorney General if the state is not a party.

Staff Comment to February, 2004 Amendment

The February 3, 2004, amendment of MCR 7.202, 7.204, 7.205, and 7.212, effective May 1, 2004, was adopted on the basis of a recommendation from a work group appointed by the Court of Appeals. The amendments [in subrule (A), adding the third sentence to the introductory paragraph, and adding new paragraph (3)] clarify the definition of "entry" of an order for jurisdictional purposes at the Court of Appeals.

The February 3, 2004, amendments to MCR 3.977(I), effective May 1, 2004, accomplish the following: (1) shorten the deadline for requesting the appointment of counsel following entry of orders terminating parental rights; (2) impose a new deadline for entry of the order appointing counsel in such cases; (3) impose primary responsibility on the chief judge of the court to ensure that the appointment is timely made; and (4) require the appointment of counsel and the transcript order to be contained on a form that functions as the claim of appeal.

Subrule (I)(2)(b) is a new rule that provides that the order appointing appellate counsel also serves as a claim of appeal in cases where the respondent makes a timely request for appellate counsel. The subrule further directs the State Court Administrative Office to approve a form for use by the trial courts that will act as a combination order of appointment, transcript order, and claim of appeal.

The amendment to MCR 7.204(A)(1) shortens the time for requesting the appointment of appellate counsel in appeals from orders terminating parental rights. This new deadline conforms to the amendments to MCR 3.977(I).

Staff Comment to March, 2004 Amendment

The March 30, 2004, amendment of Rule 7.204(A)(1)(c), which was given immediate effect, shortened the deadline for filing claims of appeal in retained appeals from orders terminating parental rights or denying timely filed postconviction motions. The purpose of this amendment was to conform the deadline for filing claims of appeal in appeals with retained counsel to the recently adopted 14-day deadline in appeals with appointed counsel from orders terminating parental rights.

Staff Comment to April, 2004 Amendment

The order of April 2, 2004, is designed to make the effective date of changes of MCR 7.204 coincide with effective dates of earlier amendments of the Rules.

The order of April 2, 2004, referenced above, provided: "On order of the Court, the order amending Rule 7.204 of the Michigan Court Rules, entered March 30, 2004, is modified to change the effective date of the amendment of Rule 7.204 of the Michigan Court Rules to May 1, 2004."

Staff Comment to November, 2004 Amendment

The amendment of MCR 7.204(A)(1)(c) clarifies that the 14-day time limit for seeking an appeal from an order terminating parental rights or entry of an order denying postjudgment relief from an order terminating parental rights is limited to appeals from orders entered under the Juvenile Code. This limitation is consistent with MCL 710.65, which provides a 21-day limit for appeals from orders entered under the Adoption Code.

Staff Comment to 2006 Amendment

The amendment of MCR 7.204(C)(5) makes the terminology consistent with current usage. See MCR 8.119(D)(1)(c). The amendment also clarifies the distinction between the lower court register of actions and the Court of Appeals docketing statement referred to in MCR 7.204(H) and 7.205(D)(3).

Staff Comment to 2007 Amendment

These changes reflect relettered provisions of MCR 6.425.

Staff Comment to 2008 Amendment

The amendments of MCR 7.204 and MCR 7.205 clarify that a party who seeks to appeal to the Court of Appeals has 21 days after the entry of an order deciding a motion for new trial, a motion for rehearing or reconsideration, or a motion for other relief from the order or judgment appealed to file a claim of appeal or an application for leave to appeal, if the motion is filed within the initial 21-day appeal period. The amendments also limit the ability of the trial court to extend the 21-day period under MCR 7.204(A)(1)(b), MCR 7.205(A)(2), and MCR 7.205(F)(3)(b) to situations in which good cause is shown.

For consistency with the amendments of MCR 7.204 and MCR 7.205, and to eliminate a conflict between MCR 2.119(F)(1) and MCR 7.204(A)(1)(b), the time limit for filing a motion for rehearing or reconsideration in the trial court under MCR 2.119(F)(1) is increased from 14 to 21 days.

Staff Comment to 2010 Amendment

These amendments create a prison mailbox rule, which allow a claim of appeal or application for leave to appeal to be deemed presented for filing when a prison inmate acting pro se places the legal documents in the prison's outgoing mail. The rule applies to appeals from administrative agencies, appeals from circuit court (both claims of appeal and applications for leave to appeal), and appeals from decisions of the Court of Appeals to the Supreme Court.

Staff Comment to 2017 Amendment

These amendments conform to recent statutory changes that require all appeals from probate court to be heard in the Court of Appeals, instead of the bifurcated system that previously required some probate appeals to be heard in the Court of Appeals and some to be heard in the local circuit court. The amendments also establish priority status for appeals in guardianship and involuntary mental health treatment cases, similar to child custody cases.

Staff Comment to March, 2018 Amendment

These amendments update cross-references and make other nonsubstantive revisions to clarify the rules. The amendment of MCR 6.110(B)(1) addresses an inadvertent omission from the last amendment of this rule that was intended to be shown in overstrike. Accordingly, the current rule does not match the published version. Striking the clause “for good cause shown” will

provide consistency with other published versions of the rule and with the statute, MCL 766.7, which allows a magistrate to adjourn a preliminary examination with the consent of the parties without the need for good cause to be shown.

Staff Comment to September, 2018 Amendment

These amendments update cross-references in the rules, and are intended to reflect changes that are necessary as a result of the Court's recent e-Filing rules amendments.

MI Rules MCR 7.204, MI R A MCR 7.204
Current with amendments received through November 1, 2019.

End of Document

FREEDOM OF INFORMATION ACT (EXCERPT)
Act 442 of 1976

15.240 Options by requesting person; appeal; actions by public body; receipt of written appeal; judicial review; civil action; venue; de novo proceeding; burden of proof; private view of public record; contempt; assignment of action or appeal for hearing, trial, or argument; attorneys' fees, costs, and disbursements; assessment of award; damages.

Sec. 10. (1) If a public body makes a final determination to deny all or a portion of a request, the requesting person may do 1 of the following at his or her option:

(a) Submit to the head of the public body a written appeal that specifically states the word "appeal" and identifies the reason or reasons for reversal of the denial.

(b) Commence a civil action in the circuit court, or if the decision of a state public body is at issue, the court of claims, to compel the public body's disclosure of the public records within 180 days after a public body's final determination to deny a request.

(2) Within 10 business days after receiving a written appeal pursuant to subsection (1)(a), the head of a public body shall do 1 of the following:

(a) Reverse the disclosure denial.

(b) Issue a written notice to the requesting person upholding the disclosure denial.

(c) Reverse the disclosure denial in part and issue a written notice to the requesting person upholding the disclosure denial in part.

(d) Under unusual circumstances, issue a notice extending for not more than 10 business days the period during which the head of the public body shall respond to the written appeal. The head of a public body shall not issue more than 1 notice of extension for a particular written appeal.

(3) A board or commission that is the head of a public body is not considered to have received a written appeal under subsection (2) until the first regularly scheduled meeting of that board or commission following submission of the written appeal under subsection (1)(a). If the head of the public body fails to respond to a written appeal pursuant to subsection (2), or if the head of the public body upholds all or a portion of the disclosure denial that is the subject of the written appeal, the requesting person may seek judicial review of the nondisclosure by commencing a civil action under subsection (1)(b).

(4) In an action commenced under subsection (1)(b), a court that determines a public record is not exempt from disclosure shall order the public body to cease withholding or to produce all or a portion of a public record wrongfully withheld, regardless of the location of the public record. Venue for an action against a local public body is proper in the circuit court for the county in which the public record or an office of the public body is located has venue over the action. The court shall determine the matter de novo and the burden is on the public body to sustain its denial. The court, on its own motion, may view the public record in controversy in private before reaching a decision. Failure to comply with an order of the court may be punished as contempt of court.

(5) An action commenced under this section and an appeal from an action commenced under this section shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

(6) If a person asserting the right to inspect, copy, or receive a copy of all or a portion of a public record prevails in an action commenced under this section, the court shall award reasonable attorneys' fees, costs, and disbursements. If the person or public body prevails in part, the court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements. The award shall be assessed against the public body liable for damages under subsection (7).

(7) If the court determines in an action commenced under this section that the public body has arbitrarily and capriciously violated this act by refusal or delay in disclosing or providing copies of a public record, the court shall order the public body to pay a civil fine of $1,000.00, which shall be deposited into the general fund of the state treasury. The court shall award, in addition to any actual or compensatory damages, punitive damages in the amount of $1,000.00 to the person seeking the right to inspect or receive a copy of a public record. The damages shall not be assessed against an individual, but shall be assessed against the next succeeding public body that is not an individual and that kept or maintained the public record as part of its public function.

History: 1976, Act 442, Eff. Apr. 13, 1977;—Am. 1978, Act 329, Imd. Eff. July 11, 1978;—Am. 1996, Act 553, Eff. Mar. 31, 1997;—Am. 2014, Act 563, Eff. July 1, 2015.

Popular name: Act 442

Popular name: FOIA

Item 13

Approved, SCAO

STATE OF MICHIGAN JUDICIAL DISTRICT JUDICIAL CIRCUIT COUNTY PROBATE	DOMESTIC VIOLENCE SCREENING FOR REFERRAL TO MEDIATION	CASE NO.

Court address **Court telephone no.**

Plaintiff's name	v	Defendant's name
Plaintiff's attorney, bar no., address, and telephone no.		Defendant's attorney, bar no., address, and telephone no.

Note: If you have an attorney, this form should be completed with your attorney.
Please return this completed form to the ADR clerk at the above court address within 7 business days.

Instructions: If there are any actions involving you or the other party, specify the names of the persons involved, the case number, the name of the court where the action was filed, including the county and state. If there are no actions, write "NONE."

1. I am aware of the following personal protection actions involving myself and/or the other party:

2. I am aware of the following domestic violence criminal actions involving myself and/or the other party:

3. I am aware of the following pending child protective (abuse/neglect) actions involving myself and/or the other party:

Date

Signature

Item 14

Approved, SCAO

Original - Court
1st copy - Plaintiff
2nd copy - Defendant

STATE OF MICHIGAN JUDICIAL DISTRICT JUDICIAL CIRCUIT COUNTY PROBATE	SUBSTITUTION OF ATTORNEY	CASE NO.
Court address		**Court telephone no.**

Plaintiff/Petitioner name, address, and telephone no.	v	Defendant/Respondent/Minor name, address, and telephone no.

☐ Probate In the matter of _____

NOTICE

TO: Clerk of the Court, all attorneys of record, and unrepresented parties: Specify names and addresses

I replace attorney _____ on behalf of _____

_____ and request copies of all papers filed in this case after this date.

The date of the next scheduled hearing is _____ .
Date

Date

Signature

Name (type or print) Bar no.

Firm

Address

City, state, zip Telephone no.

I consent to the substitution of the above attorney in this case.

Date

Client's signature

Name (type or print)

Withdrawing attorney's signature

Name (type or print) Bar no.

Firm

Address

City, state, zip Telephone no.

EX PARTE ORDER

IT IS SO ORDERED.

Date

Judge Bar no.

Michigan Compiled Laws Annotated
Michigan Court Rules of 1985
Chapter 2. Civil Procedure
Subchapter 2.100. Commencement of Action; Service of Process; Pleadings; Motions

MI Rules MCR 2.117

Rule 2.117. Appearances

Effective: May 1, 2019
Currentness

(A) Appearance by Party.

(1) A party may appear in an action by filing a notice to that effect or by physically appearing before the court for that purpose. In the latter event, the party must promptly file a written appearance and serve it on all persons entitled to service. A written appearance must comply with the caption requirements in MCR 1.109(D)(1)(b).

(2) Filing an appearance without taking any other action toward prosecution or defense of the action neither confers nor enlarges the jurisdiction of the court over the party. An appearance entitles a party to be served with all documents as provided by MCR 2.107(A). In all other respects, the party is treated as if the appearance had not been filed.

(B) Appearance by Attorney.

(1) *In General.* An attorney may appear by an act indicating that the attorney represents a party in the action. An appearance by an attorney for a party is deemed an appearance by the party. Unless a particular rule indicates otherwise, any act required to be performed by a party may be performed by the attorney representing the party.

(2) *Notice of Appearance*.

(a) If an appearance is made in a manner not involving the filing of a document with the court, the attorney must promptly file a written appearance and serve it on the parties entitled to service. The written appearance must comply with the caption requirements in MCR 1.109(D)(1)(b).

(b) If an attorney files an appearance, but takes no other action toward prosecution or defense of the action, the appearance entitles the attorney to be served with all documents as provided by MCR 2.107(A).

(c) Pursuant to MRPC 1.2(b), a party to a civil action may appear through an attorney for limited purposes during the course of an action, including, but not limited to, depositions, hearings, discovery, and motion practice, if the following conditions are satisfied:

(i) The attorney files and serves a notice of limited appearance with the court before or during the relevant action or proceeding, and all parties of record are served with the limited entry of appearance; and

(ii) The notice of limited appearance identifies the limitation of the scope by date, time period, and/or subject matter.

(d) An attorney who has filed a notice of limited appearance must restrict activities in accordance with the notice or any amended limited appearance. Should an attorney's representation exceed the scope of the limited appearance, opposing counsel (by motion), or the court (by order to show cause), may set a hearing to establish the actual scope of the representation.

(3) *Appearance by Law Firm*.

(a) A pleading, appearance, motion, or other document filed by a law firm on behalf of a client is deemed the appearance of the individual attorney first filing a document in the action. All notices required by these rules may be served on that individual. That attorney's appearance continues until an order of substitution or withdrawal is entered, or a confirming notice of withdrawal of a notice of limited appearance is filed as provided by subrule (C)(3). This subrule is not intended to prohibit other attorneys in the law firm from appearing in the action on behalf of the party.

(b) The appearance of an attorney is deemed to be the appearance of every member of the law firm. Any attorney in the firm may be required by the court to conduct a court ordered conference or trial.

(C) Duration of Appearance by Attorney.

(1) Unless otherwise stated or ordered by the court, an attorney's appearance applies only in the court in which it is made, or to which the action is transferred, until a final judgment or final order is entered disposing of all claims by or against the party whom the attorney represents and the time for appeal of right has passed. The appearance applies in an appeal taken before entry of final judgment or final order by the trial court.

(2) Unless otherwise stated in this rule, an attorney who has entered an appearance may withdraw from the action or be substituted for only on order of the court.

(3) An attorney who has filed a notice of limited appearance pursuant to MCR 2.117(B)(2)(c) and MRPC 1.2(b) may withdraw by filing a notice of withdrawal from limited appearance with the court, served on all parties of record, stating that the attorney's limited representation has concluded and the attorney has taken all actions necessitated by the limited representation, and providing to the court a current service address and telephone number for the self-represented litigant. If the notice of withdrawal from limited appearance is signed by the client, it shall be effective immediately upon filing and service. If it is not signed by the client, it shall become effective 14 days after filing and service, unless the self-represented client files and serves a written objection to the withdrawal on the grounds that the attorney did not complete the agreed upon services.

(D) Nonappearance of Attorney Assisting in Document Preparation. An attorney who assists in the preparation of pleadings or other documents without signing them, as authorized in MRPC 1.2(b), has not filed an appearance and shall not be deemed

to have done so. This provision shall not be construed to prevent the court from investigating issues concerning the preparation of such a document.

(E) Service of Documents After Removal of Appearance. If an attorney has filed a limited appearance or the attorney is removed from the case for any other reason, the attorney shall not continue to be served with documents in the case after the limited appearance ends or after an order is entered removing the attorney from the case.

Credits

[Adopted effective March 1, 1985. Amended January 29, 2014, effective May 1, 2014, 495 Mich; September 20, 2017, effective January 1, 2018, 501 Mich; March 20, 2019, effective May 1, 2019, 502 Mich.]

Editors' Notes

COMMENTS

Staff Comment to 1985 Adoption

MCR 2.117 is largely new and governs appearances by parties and attorneys.

Under subrule (A) a party may appear by filing a written notice of appearance, which may follow a physical appearance before the court. The only effect of such an appearance is to entitle the party to receive copies of papers as provided by MCR 2.107(A).

Subrule (B) governs appearances by attorneys. In general, an attorney who has appeared for a party may act for the party in the action. See subrule (B)(1). As in the case of a party, an attorney's appearance may be in the form of filing a notice of appearance, with no further action being taken. The effect is the same: the attorney is entitled to receive copies of papers filed. See subrule (B)(2)(b).

Subrule (B)(3) governs appearances by a law firm. Notices may be served on the individual attorney who first signs a paper filed in the case. However, the rule is not meant to prevent other attorneys in the firm from appearing. The appearance is also deemed to be the appearance of every other member of the law firm, and the court may order another attorney in the firm to appear at a conference or for trial.

Subrule (C) governs the duration of an attorney's appearance. An appearance applies only until the time for an appeal of right from the final judgment has passed. Thereafter, the attorney is deemed not to represent the party, and service of further notices must be on the party. The attorney's appearance does apply in an appeal taken before entry of final judgment. See subrule (C)(1). Otherwise, an appearance in the trial court does not apply on appeal. The rules governing appeals to circuit court (MCR 7.101[D][1]) and the Court of Appeals (MCR 7.204[G]) require the filing of a new appearance for an appellee.

Under subrule (C)(2) a court order is required for withdrawal or substitution of an attorney.

Staff Comment to 2014 Amendment

The amendment of MCR 2.107 provides clarification by adding the phrase “final order” so that after either a final judgment or final order has entered, papers should be served on the party after the time for appeal has passed. The amendment of MCR 2.117 states that the duration of an attorney's appearance extends until a final judgment or final order is entered. This amendment is intended to clarify that representation by an attorney who appears in a postjudgment motion ends with the final order related to that matter (after the period for appeal of right has passed).

Staff Comment to 2017 Amendment

The amendments of Rules 1.0, 1.2, 4.2, and 4.3 of the Michigan Rules of Professional Conduct and Rules 2.107, 2.117, and 6.001 of the Michigan Court Rules were submitted to the Court by the State Bar of Michigan Representative Assembly. The rules are intended to provide guidance for attorneys and clients who would prefer to engage in a limited scope representation. The rules allow for such an agreement "preferably in writing," and enable an attorney to file a notice of LSR with the court when the representation is undertaken as well as a termination notice when the representation has ended. The rules also explicitly allow attorneys to provide document preparation services for a self-represented litigant without having to file an appearance with the court.

Staff Comment to 2019 Amendment

The amendments of Rules 1.109, 2.102, 2.104, 2.106, 2.107, 2.117, 2.119, 2.403, 2.503, 2.506, 2.508, 2.518, 2.602, 2.603, 2.621, 3.101, 3.104, 3.203, 3.205, 3.210, 3.302, 3.607, 3.613, 3.614, 3.705, 3.801, 3.802, 3.805, 3.806, 4.201, 4.202, 4.303, 4.306, 5.001, 5.104, 5.105, 5.107, 5.108, 5.113, 5.117, 5.118, 5.119, 5.120, 5.125, 5.126, 5.132, 5.162, 5.202, 5.203, 5.205, 5.302, 5.304, 5.307, 5.308, 5.309, 5.310, 5.311, 5.313, 5.402, 5.404, 5.405, 5.409, 5.501, and 5.784 and addition of Rule 3.618 of the Michigan Court Rules are an expected progression necessary for design and implementation of the statewide electronic-filing system. These particular amendments will assist in implementing the goals of the project.

MI Rules MCR 2.117, MI R RCP MCR 2.117
Current with amendments received through November 1, 2019.

End of Document

Michigan Compiled Laws Annotated
Michigan Court Rules of 1985
Chapter 3. Special Proceedings and Actions
Subchapter 3.200. Domestic Relations Actions

MI Rules MCR 3.207

Rule 3.207 Ex Parte, Temporary, and Protective Orders

Currentness

(A) Scope of Relief. The court may issue ex parte and temporary orders with regard to any matter within its jurisdiction, and may issue protective orders against domestic violence as provided in subchapter 3.700.

(B) Ex Parte Orders.

(1) Pending the entry of a temporary order, the court may enter an ex parte order if the court is satisfied by specific facts set forth in an affidavit or verified pleading that irreparable injury, loss, or damage will result from the delay required to effect notice, or that notice itself will precipitate adverse action before an order can be issued.

(2) The moving party must arrange for the service of true copies of the ex parte order on the friend of the court and the other party.

(3) An ex parte order is effective upon entry and enforceable upon service.

(4) An ex parte order remains in effect until modified or superseded by a temporary or final order.

(5) An ex parte order providing for child support, custody, or visitation pursuant to MCL 722.27a, must include the following notice:

"NOTICE:

"1. You may file a written objection to this order or a motion to modify or rescind this order. You must file the written objection or motion with the clerk of the court within 14 days after you were served with this order. You must serve a true copy of the objection or motion on the friend of the court and the party who obtained the order.

"2. If you file a written objection, the friend of the court must try to resolve the dispute. If the friend of the court cannot resolve the dispute and if you wish to bring the matter before the court without the assistance of counsel, the friend of the court must provide you with form pleadings and written instructions and must schedule a hearing with the court.

"3. The ex parte order will automatically become a temporary order if you do not file a written objection or motion to modify or rescind the ex parte order and a request for a hearing. Even if an objection is filed, the ex parte order will remain in effect and must be obeyed unless changed by a later court order."

(6) In all other cases, the ex parte order must state that it will automatically become a temporary order if the other party does not file a written objection or motion to modify or rescind the ex parte order and a request for a hearing. The written objection or motion and the request for a hearing must be filed with the clerk of the court, and a true copy provided to the friend of the court and the other party, within 14 days after the order is served.

(a) If there is a timely objection or motion and a request for a hearing, the hearing must be held within 21 days after the objection or motion and request are filed.

(b) A change that occurs after the hearing may be made retroactive to the date the ex parte order was entered.

(7) The provisions of MCR 3.310 apply to temporary restraining orders in domestic relations cases.

(C) Temporary Orders.

(1) A request for a temporary order may be made at any time during the pendency of the case by filing a verified motion that sets forth facts sufficient to support the relief requested.

(2) A temporary order may not be issued without a hearing, unless the parties agree otherwise or fail to file a written objection or motion as provided in subrules (B)(5) and (6).

(3) A temporary order may be modified at any time during the pendency of the case, following a hearing and upon a showing of good cause.

(4) A temporary order must state its effective date and whether its provisions may be modified retroactively by a subsequent order.

(5) A temporary order remains in effect until modified or until the entry of the final judgment or order.

(6) A temporary order not yet satisfied is vacated by the entry of the final judgment or order, unless specifically continued or preserved. This does not apply to support arrearages that have been assigned to the state, which are preserved unless specifically waived or reduced by the final judgment or order.

Credits

[Adopted January 28, 1993, effective May 1, 1993, 441 Mich. Amended January 23, 1996, effective April 1, 1996, 450 Mich; August 11, 1997, effective September 1, 1997, 456 Mich.]

Editors' Notes

COMMENTS

Staff Comment to 1993 Adoption

Parts of revised Rule 3.207 [effective May 1, 1993] come from former Rule 3.206, but much of it is new. The revised rule clarifies and makes consistent existing practice. The terms “ex parte” and “temporary” are continued, but the term “interim” has been eliminated. “Hearing” in the context of subrule (C)(2) does not imply a full evidentiary hearing. Subrule (C)(3) permits modification of a temporary order on the basis of a showing of good cause, whereas former subrule 3.206(D)(3) permitted modification of a temporary order upon a change of circumstance. “Good cause” includes the prior entry of a temporary order without an evidentiary hearing. Subrule (D) emphasizes the availability of protective orders, as a matter of public concern and policy.

Staff Comment to 1996 Amendment

The 1996 amendment of MCR 3.207(B)(5) extended the mandatory notice provision in visitation cases to child support and custody cases. Other changes were made to reflect the November 1993 amendment of MCL 722.27a(13).

Staff Comment to 1997 Amendment

The amendment of MCR 3.207 is designed to implement the statutes providing for the issuance of personal protection orders. See MCL 600.2950, MCL 600.2950a.

MI Rules MCR 3.207, MI R SPEC P MCR 3.207
Current with amendments received through November 1, 2019.

End of Document

Item 15

Approved, SCAO

NEW FORM

STATE OF MICHIGAN JUDICIAL CIRCUIT COUNTY	NOTICE OF LIMITED SCOPE APPEARANCE	CASE NO. DRAFT
Court address		**Court telephone no.**

Plaintiff/Petitioner	v	Defendant/Respondent

1. Attorney _____ (Name) _____ (Bar no.), and the Party, _____ (Name), agree that attorney will provide limited scope representation to the party in this matter according to paragraphs 3 and 4 below.

☐ Amendment: This notice amends notice filed _____ (Date).

☐ by adding an appearance for the matter(s) indicated in paragraph 3.

☐ other: _____.

2. The party is: ☐ Plaintiff ☐ Petitioner ☐ Defendant ☐ Respondent ☐ Other _____.

3. Attorney appears under MCR 2.117(B)(2)(c). Representation is limited by date/time period, purpose/activity, and/or subject matter as follows: Check all that apply.

☐ Date/time period: _____
(Ex. date certain, until judgment and submission of order, etc.)

☐ Purpose(s)/activity(ies): _____
(Ex. mediation, arbitration, discovery, deposition of party(ies), trial, scheduling conference, motion for summary disposition, etc.)

☐ Subject matter(s): _____
(Ex. child support, QDRO, property settlement, contractual dispute, etc.)

☐ Representation in the hearing scheduled for _____ ☐ and in any continuance of that proceeding.
(Ex. trial (date), motion for summary deposition (date), etc.)

4. Consent: Party consents to this limited scope representation.

5. Service: Under MCR 2.107(B)(1)(e), all documents, both court filings and otherwise, must be served on both the party and the limited scope attorney for the duration of this limited appearance, unless otherwise ordered by the court.

6. Communication: Limited scope attorney will inform all opposing parties and counsel whether oral and/or written communication should be directed to party, attorney, or both for the duration of this limited appearance, under MRPC 4.2 and 4.3.

7. Duration: Upon termination of representation indicated above, the attorney will file a notice of withdrawal from limited appearance pursuant to MCR 2.117(C)(3) in this court, and serve a copy upon the party and opposing counsel/party.

Date	Date
Signature of attorney	Signature of party
Attorney name (type or print) Bar no.	Party name (type or print)
Address	Address
City, state, zip Telephone no.	City, state, zip Telephone no.

Approved, SCAO

NEW FORM

STATE OF MICHIGAN JUDICIAL CIRCUIT COUNTY	NOTICE OF WITHDRAWAL FROM LIMITED SCOPE APPEARANCE	CASE NO. DRAFT

Court address **Court telephone no.**

Plaintiff/Petitioner	v	Defendant/Respondent

Pursuant to MCR 2.117(C)(3), notice is given that limited scope attorney _____ concluded the limited scope representation and withdraws as an attorney of record in this case.

1. Under MCR 2.117(B)(2)(c), I entered a Notice(s) of Limited Scope Appearance on the following date(s):

   _____ .

2. I have completed all services within the scope of my representation related to the above appearance(s).

3. The last known service address for _____ is
   Client's name

   _____ .
   Insert address unless confidential by court order or rule.

4. The last known phone number for _____ is
   Client's name

   _____ .
   Insert phone number unless confidential by court order or rule.

5. Effective Date: Pursuant to MCR 2.117(C)(3), my withdrawal pursuant to this notice is effective:

   ☐ immediately upon filing and service, because it is signed by the party, or

   ☐ 14 days from the time of filing and service unless the party files a timely objection on the grounds that the agreement has not been completed.

6. Service: Pursuant to MCR 2.107(B)(1)(e), service on attorney is no longer required, and shall be made only on the party.

7. Communication: Pursuant to MRPC 4.2, the party is no longer represented by me, and all communication must be made directly to the party.

Date	Date
Signature of attorney	Signature of party
Attorney name (type or print) Bar no.	Party name (type or print)
Address	Address
City, state, zip Telephone no.	City, state, zip Telephone no.

Approved, SCAO

NEW FORM

STATE OF MICHIGAN JUDICIAL CIRCUIT COUNTY	OBJECTION TO WITHDRAWAL FROM LIMITED SCOPE APPEARANCE AND NOTICE OF HEARING	CASE NO. DRAFT

Court address **Court telephone no.**

Plaintiff/Petitioner	v	Defendant/Respondent

Under MCR 2.117(C)(3), party _____ ☐ Plaintiff/Petitioner ☐ Defendant/Respondent ☐ Other _____ objects to the Withdrawal from Limited Scope Appearance filed by _____, limited scope attorney.

1. Under MCR 2.117(B)(2)(c), Limited Scope Attorney entered a Notice(s) of Limited Scope Appearance on the following date(s): _____ .

2. Limited scope attorney entered a Notice of Withdrawal from Limited Scope Appearance on _____ (Date), and I did not sign that notice.

3. I am filing this objection within fourteen (14) days of the entry of that notice.

4. I object to this withdrawal, because my limited scope attorney did not complete all services within the scope of their representation related to this case. Specifically, (list incomplete tasks)

_____

_____

_____ .

5. ☐ I would consider all services within the scope to be complete if limited scope attorney were to:

_____

_____

_____ .

6. I ask this court to deny the limited scope attorney's request to withdraw until all services within the scope of their representation are complete.

_____ Date

_____ Signature

_____ Name (type or print)

NOTICE OF HEARING

A hearing on the above matter will be held on _____ (Date) at _____ (Time) at _____ (Location) before Judge _____ .

_____ Date

_____ Signature

_____ Name (type or print)

Michigan Compiled Laws Annotated
Michigan Court Rules of 1985
Chapter 2. Civil Procedure
Subchapter 2.100. Commencement of Action; Service of Process; Pleadings; Motions

MI Rules MCR 2.117

Rule 2.117. Appearances

Effective: May 1, 2019
Currentness

(A) Appearance by Party.

(1) A party may appear in an action by filing a notice to that effect or by physically appearing before the court for that purpose. In the latter event, the party must promptly file a written appearance and serve it on all persons entitled to service. A written appearance must comply with the caption requirements in MCR 1.109(D)(1)(b).

(2) Filing an appearance without taking any other action toward prosecution or defense of the action neither confers nor enlarges the jurisdiction of the court over the party. An appearance entitles a party to be served with all documents as provided by MCR 2.107(A). In all other respects, the party is treated as if the appearance had not been filed.

(B) Appearance by Attorney.

(1) *In General.* An attorney may appear by an act indicating that the attorney represents a party in the action. An appearance by an attorney for a party is deemed an appearance by the party. Unless a particular rule indicates otherwise, any act required to be performed by a party may be performed by the attorney representing the party.

(2) *Notice of Appearance*.

(a) If an appearance is made in a manner not involving the filing of a document with the court, the attorney must promptly file a written appearance and serve it on the parties entitled to service. The written appearance must comply with the caption requirements in MCR 1.109(D)(1)(b).

(b) If an attorney files an appearance, but takes no other action toward prosecution or defense of the action, the appearance entitles the attorney to be served with all documents as provided by MCR 2.107(A).

(c) Pursuant to MRPC 1.2(b), a party to a civil action may appear through an attorney for limited purposes during the course of an action, including, but not limited to, depositions, hearings, discovery, and motion practice, if the following conditions are satisfied:

(i) The attorney files and serves a notice of limited appearance with the court before or during the relevant action or proceeding, and all parties of record are served with the limited entry of appearance; and

(ii) The notice of limited appearance identifies the limitation of the scope by date, time period, and/or subject matter.

(d) An attorney who has filed a notice of limited appearance must restrict activities in accordance with the notice or any amended limited appearance. Should an attorney's representation exceed the scope of the limited appearance, opposing counsel (by motion), or the court (by order to show cause), may set a hearing to establish the actual scope of the representation.

(3) *Appearance by Law Firm*.

(a) A pleading, appearance, motion, or other document filed by a law firm on behalf of a client is deemed the appearance of the individual attorney first filing a document in the action. All notices required by these rules may be served on that individual. That attorney's appearance continues until an order of substitution or withdrawal is entered, or a confirming notice of withdrawal of a notice of limited appearance is filed as provided by subrule (C)(3). This subrule is not intended to prohibit other attorneys in the law firm from appearing in the action on behalf of the party.

(b) The appearance of an attorney is deemed to be the appearance of every member of the law firm. Any attorney in the firm may be required by the court to conduct a court ordered conference or trial.

(C) Duration of Appearance by Attorney.

(1) Unless otherwise stated or ordered by the court, an attorney's appearance applies only in the court in which it is made, or to which the action is transferred, until a final judgment or final order is entered disposing of all claims by or against the party whom the attorney represents and the time for appeal of right has passed. The appearance applies in an appeal taken before entry of final judgment or final order by the trial court.

(2) Unless otherwise stated in this rule, an attorney who has entered an appearance may withdraw from the action or be substituted for only on order of the court.

(3) An attorney who has filed a notice of limited appearance pursuant to MCR 2.117(B)(2)(c) and MRPC 1.2(b) may withdraw by filing a notice of withdrawal from limited appearance with the court, served on all parties of record, stating that the attorney's limited representation has concluded and the attorney has taken all actions necessitated by the limited representation, and providing to the court a current service address and telephone number for the self-represented litigant. If the notice of withdrawal from limited appearance is signed by the client, it shall be effective immediately upon filing and service. If it is not signed by the client, it shall become effective 14 days after filing and service, unless the self-represented client files and serves a written objection to the withdrawal on the grounds that the attorney did not complete the agreed upon services.

(D) Nonappearance of Attorney Assisting in Document Preparation. An attorney who assists in the preparation of pleadings or other documents without signing them, as authorized in MRPC 1.2(b), has not filed an appearance and shall not be deemed

to have done so. This provision shall not be construed to prevent the court from investigating issues concerning the preparation of such a document.

(E) Service of Documents After Removal of Appearance. If an attorney has filed a limited appearance or the attorney is removed from the case for any other reason, the attorney shall not continue to be served with documents in the case after the limited appearance ends or after an order is entered removing the attorney from the case.

Credits

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COMMENTS

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Subrule (B) governs appearances by attorneys. In general, an attorney who has appeared for a party may act for the party in the action. See subrule (B)(1). As in the case of a party, an attorney's appearance may be in the form of filing a notice of appearance, with no further action being taken. The effect is the same: the attorney is entitled to receive copies of papers filed. See subrule (B)(2)(b).

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Subrule (C) governs the duration of an attorney's appearance. An appearance applies only until the time for an appeal of right from the final judgment has passed. Thereafter, the attorney is deemed not to represent the party, and service of further notices must be on the party. The attorney's appearance does apply in an appeal taken before entry of final judgment. See subrule (C)(1). Otherwise, an appearance in the trial court does not apply on appeal. The rules governing appeals to circuit court (MCR 7.101[D][1]) and the Court of Appeals (MCR 7.204[G]) require the filing of a new appearance for an appellee.

Under subrule (C)(2) a court order is required for withdrawal or substitution of an attorney.

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MI Rules MCR 2.117, MI R RCP MCR 2.117
Current with amendments received through November 1, 2019.

End of Document

Item 16

Modified SCAO Form

Original - Court
1st copy - Secretary of State
2nd copy - Petitioner
3rd copy - Attorney General/Prosecutor

STATE OF MICHIGAN JUDICIAL CIRCUIT COUNTY	ORDER REGARDING DRIVER'S LICENSE RESTORATION AFTER REVIEW OF THE RECORD	CASE NO. DRAFT

Court address **Court telephone no.**

Petitioner's name, address, and telephone no.		v	Respondent SECRETARY OF STATE OF THE STATE OF MICHIGAN Driver Assessment and Appeal Division PO Box 30196 Lansing, Michigan 48909-7696
Driver's license no.	Date of birth		
Petitioner's attorney, bar no., address, and telephone no.			Respondent's attorney, bar no., address, and telephone no.

Date of Hearing: _____ Judge: _____
Bar no.

1. On _____ (Date) petitioner filed a petition for review of the _____ (Date)

   a. revocation/suspension for (For arrests before 1/1/92.)
      two convictions for OUIL within 7 years with arrest date before 1/1/92.
      three convictions for any combination of OUIL/OWI with arrest date before 1/1/92.
      a conviction pursuant to MCL 257.625(4) or (5).
      a conviction of negligent homicide, manslaughter, or murder involving use of motor vehicle.

   b. _____ (License action) suspension/revocation/restriction/denial other than an application denial for medical reasons, driver assessment suspension/restriction, first implied consent suspension, or mandatory additional suspension for driving while license suspended. (For arrests on or after 10/1/99.)

IT IS ORDERED:

2. **Administrative Revocation/Denial:** After a review of the record created pursuant to MCL 257.322, in the matter of a determination resulting in a denial or revocation authorized pursuant to MCL 257.303,
   a. the hearing officer's decision is upheld by competent, material, and substantial evidence on the whole record in accordance with MCL 257.323(4) and the petition is denied. **OR**
   b. the hearing officer's decision is set aside and the petition is granted because the petitioner's substantial rights have been prejudiced by the determination, which is
      in violation of the constitution of the United States, the state constitution of 1963, or a statute.
      in excess of the Secretary of State's statutory authority or jurisdiction.
      made upon unlawful procedure resulting in material prejudice to the petitioner.
      not supported by competent, material, and substantial evidence on the whole record.
      arbitrary, capricious, or clearly an abuse or unwarranted exercise of discretion.
      affected by other substantial and material error of law.

   This conclusion is based on the fact that _____

_____

_____

_____.

c. the hearing officer's decision is set aside and the petitioner is eligible for restricted driving privileges because all of the following have been met:

the revocation or denial that is the subject of this petition occurred at least 1 year after the petitioner's license was revoked or denied, or, if the petitioner's license was previously revoked or denied within the 7 years preceding the most recent revocation or denial, at least 5 years have elapsed since the most recent revocation or denial.

For a revocation or denial under MCL 257.303(2)(a), (b), (c), or (g): The petitioner has rebutted by clear and convincing evidence the presumption that he or she is a habitual offender and established to the Court's satisfaction that he or she is likely to adhere to any requirements imposed by the Court.

The petitioner meets the Secretary of State's requirements under the department's administrative rules for the issuance of a license, including but not limited to all of the following:

The petitioner's alcohol or substance abuse problems, if any, are under control and likely to remain under control.

The risk of the petitioner repeating his or her past abusive behavior is a low or minimal risk.

The risk of the petitioner repeating the act of operating a motor vehicle while impaired by, or under the influence of, alcohol or controlled substances or a combination of alcohol and a controlled substance or repeating any other offense listed in MCL 257.303(1)(d), (e), or (f) or (2)(c), (d), (e), or (f) is of low or minimal risk.

The petitioner has the ability and motivation to drive safely and within the law.

The petitioner has proven by clear and convincing evidence that he or she has completely abstained from the use of alcohol and controlled substances, except for controlled substances prescribed by a licensed health care professional, for a period of not less than 6 consecutive months or has abstained for a period of not less than 12 consecutive months due to evidence at the hearing underlying this petition establishing that a longer period of abstinence is necessary. Petitioner has been abstinent from alcohol and controlled substances since_____.

d. The decision shall be set aside and:

full licensing privileges shall be reinstated subject to the payment of a reinstatement fee and compliance with renewal procedures.

a restricted license shall be issued subject to the conditions in paragraph 5.

e. the court remands the matter to the Driver Assessment and Appeal Division for_____

_____

_____.

3. This order is without effect if no review of the appellate record prepared pursuant to MCL 257.322 has been conducted or the form and content of the order fail to meet the requirements of MCL 257.323.

4. In all other cases for arrests after 10/1/99, during the minimum period of revocation:

after a review of the driving record created pursuant to MCL 257.204a, it is found the action was legally imposed pursuant to law.

the action was imposed in violation of law and is set aside.

5. The Court finds that the petitioner meets the requirements for the issuance of a restricted license under MCL 257.323(4)(b); It is therefore ordered that:
   a. Each motor vehicle operated by the petitioner be equipped with a properly installed and functioning ignition interlock device for a period of at least one year. The petitioner shall bear the costs of any ignition interlock devices installed. A restricted license shall not be issued to the petitioner until the secretary of state has verified that all required ignition interlock devices have been installed.
   b. The petitioner must maintain no-fault insurance for each vehicle operated by the petitioner. Defendant must provide verification of no-fault insurance to the court by:_____

      _____

      _____.
   c. Any restricted license issued pursuant to this order shall not permit the petitioner to operate a commercial motor vehicle that hauls hazardous materials.
   d. The secretary of state shall revoke the petitioner's restricted license issued pursuant to this order if any of the following occur:
      i. The petitioner violates the restrictions on his or her license.
      ii. The petitioner operates a vehicle without a properly installed and functioning ignition interlock device.
      iii. The petition removes, or causes to be removed, an ignition interlock device required under this order, unless the secretary of state has authorized the removal under MCL 257.322a.
      iv. The petitioner commits an act that would be a major violation if the petitioner's license had been issued under MCL 257.322(6) or consumes alcohol or a controlled substance without a prescription. "Major violation" means that term as defined in R 257.301a of the Michigan Administrative Code.
      v. The petitioner is arrested for a violation of MCL 257.625 or a local ordinance, law of this state or another state, or law of the United States that substantially corresponds to MCL 257.625.
   e. The petitioner intends to operate a vehicle owned by his or her employer. The court will notify the petitioner's employer of the requirement that any vehicle he or she operates be equipped with a properly installed and functioning ignition interlock device.

6. This order shall be void and without effect if a certified copy of this order is not served on the Secretary of State, Driver Assessment and Appeal Division, PO Box 30196, Lansing, Michigan 48909-7696 within 7 days of the date this order is signed.

_____ _____

Date Judge

Approved as to form: _____

Assistant attorney general/Assistant prosecuting attorney

CERTIFICATE OF MAILING

I certify that on this date I served a certified copy of this order on the Secretary of State by first-class mail at the address provided in this order as defined by MCR 2.107(B)(1)(d).

_____ _____

Date Signature of petitioner

HB-5282, As Passed House, March 22, 2018
HB-5282, As Passed Senate, March 22, 2018

HOUSE BILL No. 5282

HOUSE BILL No. 5282

November 28, 2017, Introduced by Rep. Lucido and referred to the Committee on Judiciary.

A bill to amend 1949 PA 300, entitled

"Michigan vehicle code,"

by amending section 323 (MCL 257.323), as amended by 2016 PA 117.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 323. (1) A person aggrieved by a final determination of the secretary of state denying the person an operator's or chauffeur's license, a vehicle group designation, or an indorsement on a license or revoking, suspending, or restricting an operator's or chauffeur's license, vehicle group designation, or an indorsement may petition for a review of the determination in the circuit court in the county where the person was arrested if the denial or suspension was imposed under section 625f or under the order of a trial court under section 328 or, in all other cases, in

HOUSE BILL No. 5282

the circuit court in the person's county of residence. The person shall file the petition within 63 days after the determination is made except that for good cause shown the court may allow the person to file petition within 182 days after the determination is made. As provided in section 625f, a peace officer aggrieved by a determination of a hearing officer in favor of a person who requested a hearing under section 625f may, with the prosecuting attorney's consent, petition for review of the determination in the circuit court in the county where the arrest was made. The peace officer shall file the petition within 63 days after the determination is made except that for good cause shown the court may allow the peace officer to file the petition within 182 days after the determination is made.

(2) Except as otherwise provided in this section, the circuit court shall enter an order setting the cause for hearing for a day certain not more than 63 days after the order's date. The order, a copy of the petition that includes the person's full name, current address, birth date, and driver's license number, and all supporting affidavits ~~shall~~ **MUST** be served on the secretary of state's office in Lansing not less than 20 days before the date set for the hearing. If the person is seeking a review of the record prepared under section 322 or section 625f, the service upon the secretary of state ~~shall~~ **MUST** be made not less than 50 days before the date set for the hearing.

(3) The court may take testimony and examine all the facts and circumstances relating to the denial, suspension, or restriction of the person's license under sections 303(1)(d), 320, or 904(10) or

(11), a licensing action under section 310d, or a suspension for a first violation under section 625f. The court may affirm, modify, or set aside the restriction, suspension, or denial, except the court shall not order the secretary of state to issue a restricted or unrestricted chauffeur's license that would permit the person to drive a commercial motor vehicle that hauls a hazardous material. The court shall enter the order and the petitioner shall file a certified copy of the order with the secretary of state's office in Lansing within 7 days after entry of the order.

(4) Except as otherwise provided in this section, in reviewing a determination resulting in a denial, suspension, restriction, or revocation under this act, the court shall confine its consideration to a review of the record prepared under section 322 or 625f or the driving record created under section 204a for a statutory legal issue, and may determine that the petitioner is eligible for full driving privileges or, if the petitioner is subject to a revocation under section 303, may determine that the petitioner is eligible for restricted driving privileges. The court shall set aside the secretary of state's determination only if 1 or more of the following apply:

(a) In determining whether a petitioner is eligible for full driving privileges, the petitioner's substantial rights have been prejudiced because the determination is any of the following:

(*i*) In violation of the Constitution of the United States, the state constitution of 1963, or a statute.

(*ii*) In excess of the secretary of state's statutory authority or jurisdiction.

(*iii*) Made upon unlawful procedure resulting in material prejudice to the petitioner.

(*iv*) Not supported by competent, material, and substantial evidence on the whole record.

(*v*) Arbitrary, capricious, or clearly an abuse or unwarranted exercise of discretion.

(*vi*) Affected by other substantial and material error of law.

(b) In determining whether a petitioner is eligible for review of a revocation or denial under section 303, or whether a petitioner is eligible for restricted driving privileges, ~~1 or more~~ **ALL** of the following apply:

(*i*) The petitioner's substantial rights have been prejudiced as described in subdivision (a).

(*ii*) All of the following are satisfied:

(A) The revocation or denial occurred at least 1 year after the petitioner's license was revoked or denied, or, if the petitioner's license was previously revoked or denied within the 7 years preceding the most recent revocation or denial, at least 5 years after the most recent revocation or denial, whichever is later.

(B) The court finds that the petitioner meets the department's requirements under the rules promulgated by the department under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.238. For purposes of this sub-subparagraph only, the court may take additional testimony to supplement the record prepared under section 322 or 625f or the driving record created under section 204a, but shall not expand the record.

(C) If the revocation or denial was under section 303(2)(a), (b), (c), or (g), the petitioner rebuts by clear and convincing evidence the presumption that he or she is a habitual offender, and establishes to the court's satisfaction that he or she is likely to adhere to any requirements imposed by the court. For purposes of this sub-subparagraph, the conviction that resulted in the revocation and any record of denial of reinstatement by the department are prima facie evidence that the petitioner is a habitual offender. For purposes of this sub-subparagraph only, the court may take additional testimony to supplement the record prepared under section 322 or 625f or the driving record created under section 204a, but shall not expand the record.

(5) If the court determines that a petitioner is eligible for restricted driving privileges under subsection (4)(b), the court shall issue an order that includes, but is not limited to, all of the following:

(a) The court's findings under section 303 and R 257.1 to R 257.1727 of the Michigan ~~administrative code.~~**ADMINISTRATIVE CODE.**

(b) A requirement that each motor vehicle operated by the petitioner be equipped with a properly installed and functioning ignition interlock device for a period of ~~at least~~ **NOT LESS THAN** 1 year **BEFORE THE PETITIONER WILL BE ELIGIBLE TO RETURN TO THE SECRETARY OF STATE FOR A HEARING.** The petitioner shall bear the cost of an ignition interlock device required under this subdivision. A restricted license ~~shall~~ **MUST** not be issued to the petitioner until the secretary of state has verified that 1 or more ignition interlock devices, if applicable, have been installed as

required by this subdivision.

(c) A method by which the court will verify that the petitioner maintains no-fault insurance for each vehicle described in subdivision (b) as required by chapter 31 of the insurance code of 1956, 1956 PA 218, MCL ~~500.3103~~ **500.3101** to 500.3179.

(d) A requirement that a restricted license issued to the petitioner ~~shall~~ **MUST** not permit the petitioner to operate a commercial motor vehicle that hauls hazardous materials.

(e) A provision that the secretary of state shall revoke the petitioner's restricted license if any of the following occur:

(*i*) The petitioner violates the restrictions on his or her license.

(*ii*) The petitioner violates subdivision (b).

(*iii*) The petitioner removes, or causes to be removed, an ignition interlock device required under subdivision (b), unless the secretary of state has authorized the removal under section 322a.

(*iv*) The petitioner commits an act that would be a major violation if the petitioner's license had been issued under section 322(6) or consumes alcohol or a controlled substance without a prescription. As used in this subparagraph, "major violation" means that term as defined in R 257.301a of the Michigan ~~administrative code.~~**ADMINISTRATIVE CODE.**

(*v*) The petitioner is arrested for a violation of section 625 or a local ordinance, law of this state or another state, or law of the United States that substantially corresponds to section 625.

(6) If the court determines that a petitioner is eligible for

restricted driving privileges under this section and the petitioner intends to operate a vehicle owned by his or her employer, the court shall notify the employer of the petitioner's obligation under subsection (5)(b). This subsection does not require an employer who receives a notice under this subsection to install an ignition interlock device on a vehicle. This subsection does not apply to a vehicle that is operated by a self-employed individual who uses the vehicle for both business and personal use.

(7) If a court determines that a petitioner is eligible for restricted driving privileges, the secretary of state shall not issue a restricted license to the petitioner until he or she has satisfied any other applicable requirements of state or federal law, and shall not issue a restricted license to the petitioner if the order granting eligibility for restricted driving privileges does not comply with subsection (5).

(8) IF A COURT DETERMINES THAT A PETITIONER IS ELIGIBLE FOR RESTRICTED DRIVING PRIVILEGES, THE COURT SHALL NOTIFY THE DEPARTMENT OF ITS DETERMINATION THROUGH THE ISSUANCE OF AN ORDER UNDER SUBSECTION (5) AND SHALL NOT RETAIN JURISDICTION OVER A LICENSE ISSUED UNDER THIS SECTION.

Enacting section 1. This amendatory act takes effect 90 days after the date it is enacted into law.