



Michigan Supreme Court

State Court Administrative Office

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February 18, 2022

TO: Michigan Court Forms Committee, Criminal Workgroup

FROM: Rebecca A. Schnelz, Forms and Resources Manager

RE: Agenda and Materials for **March 3, 2022 Meeting**

PLACE: Meeting to be held by Zoom

Below is the agenda for the March 3, 2022 meeting of the Michigan Court Forms Committee, Criminal Workgroup. The meeting will be held by Zoom and will begin at 9:30 a.m. and continue until all items have been addressed, but no later than 3:30 p.m. A half-hour break is planned for lunch at noon. We do ask that attendees appear on camera whenever possible so that all members easily know who is speaking. An email invitation with the Zoom link will be sent separately.

Links to the relevant statutes, court rules, and forms are provided within this document. Draft documents are provided as attachments for reference. If needed, the links to the full online resources for Michigan statutes and the Michigan Court Rules are as follows:

- [Michigan Legislative MCL search page](#)
- [Michigan Court Rules](#)

Please note that any drafts included with the agenda are for discussion purposes only and not for distribution.

1. **[MC 218, Order Revoking Release and Forfeiting Bond, Notice of Intent to Enter Judgment](#)**

A suggestion was made to modify the checkbox language to add additional information regarding the location and judge for the hearing being set if the defendant has failed to appear and a surety bond was posted.

[MC 230, Motion and/or Order to Show Cause](#), may be used to provide a specific order show causing the surety and it contains all necessary hearing information.

Should language regarding the location and judge for the show cause hearing be added to MC 218?

2. [MC 227a, Application to set Aside Misdemeanor Marihuana Convictions\(s\)](#)

A court administrator has suggested modifying MC 227a to include a space for the applicant to specify which prosecuting official was served. It was suggested that this information is necessary for the court to verify whether the correct prosecuting official was served. The suggestor noted that [MC 227, Application to Set Aside Conviction\(s\)](#), has a space to include this information. The information is included on MC 227 in the notice of hearing portion of the form, which MC 227a does not require.

Should the form be modified to include a space for the applicant to list the name of the prosecuting official that was served?

Public Comments

➤ Yes.

Tammy Sjolund
55th District Court
Ingham County

3. [MC 245o, Order for Discharge from Probation](#)

A question was raised whether it is appropriate for the signature line on the order to include “magistrate.” Magistrate was added to the signature line at the recommendation of the committee in 1999.

Magistrates may only exercise duties as expressly allowed by statute and authorized by the chief judge of the district or division. [MCR 4.401\(B\)](#). Chapter 85 of the Revised Judicature Act addresses the appointment, authority, and other details regarding district court magistrates. In particular, [MCL 600.8511](#), [MCL 600.8512](#), and [MCL 600.8512a](#), provide specifics on a district court magistrate’s jurisdiction, powers, and duties. The authority to discharge an individual from probation is not specifically mentioned in the referenced statutes.

Should “magistrate” be removed from the signature line on this form?

Note: Since the 2020 meeting, MC 245 was split into separate motion and order forms,

[MC 245m and MC 245o](#), during the release of forms impacted by the protection of personal identifying information. The committee's 2020 recommendation to add CJIC was not included with the 2021 release. For the June 2022 release, CJIC will be added to the distribution and the DOB will be added back on MC 245o.

4. [MC 294, Order Delaying Sentence](#)

This item was not published for comment. It is being brought back for further discussion from 2020 workgroup meeting.

At the 2020 workgroup meeting, a committee member expressed a concern regarding item #9 on the form and whether ordering such upfront jail time for failure to pay as part of the delayed sentence is in conflict with the statute. SCAO staff noted the concern and set the question for review regarding the appropriateness of including that option on the form.

It was determined that [MCL 769.3](#) and [MCL 769.4](#) provided general authority for the language of the item. However, SCAO staff questioned whether the option regarding a conditional sentence belongs on the Order Delaying Sentence.

Should item #9 on the form include the option regarding jail time for nonpayment be included on the form?

5. [MC 433, Order Following Probation Violation Hearing](#)

Suggestions were received from a district court and a probation supervisor to modify this form to more clearly reflect the number of probation violations that the defendant is found guilty of when more than one possible violation is addressed at a single hearing. It was noted that the form is written to refer only to a singular violation. The form currently includes a space to designate what number of technical violation it is for the defendant when they are found guilty of one, but does not address multiple violations.

In addition, it was suggested that the form be changed to clarify the decision on each alleged violation when more than one violation is addressed at a hearing.

Should the form be modified to accommodate multiple violations? Would including a grid similar to what is on [MC 219, Judgment of Sentence](#), be beneficial in order to specify the outcome of multiple violation allegations, including information on whether something is a technical violation?

6. [New Forms: Motion Amending Restitution and Order Regarding Amending Restitution](#)

A court has requested the development of forms for a motion and an order for use in amending restitution pursuant to [MCR 6.430](#), which reads:

- (A) The court may amend an order of restitution entered under the Crime Victim's Rights Act on a motion filed by the prosecuting attorney, the victim, or the defendant based upon new or updated information related to the injury, damages, or loss for which the restitution was ordered.
- (B) Filing. The moving party must file the motion and a copy of the motion with the clerk of the court in which the defendant was convicted and sentenced. Upon receipt of a motion, the clerk shall file it under the same case number as the original conviction. If an appeal is pending when the motion is filed, the moving party must serve a copy on the appellate court.
- (C) Service and Notice of Hearing. If the defendant is the moving party, he/she shall serve a copy of the motion and notice of its filing on the prosecuting attorney and the prosecutor shall then serve a copy of the motion and notice upon the victim. If the prosecutor is the moving party, he/she shall serve a copy of the motion and notice of its filing on the defendant and the victim. If the victim is the moving party, he/she shall serve a copy of the motion and notice of its filing on the defendant and the prosecutor. The home address, home telephone number, work address, and work telephone number of the victim, if included on a motion to amend restitution, is nonpublic. The non-moving party is permitted but not required to respond. Any response to the motion shall comply with the time for service of the response as provided in MCR 2.119(C)(2). The court shall provide written notice of hearing on the motion to the defendant and prosecutor. The prosecutor shall then serve notice of hearing upon the victim.
- (D) Appearance. As permitted by MCR 6.006(A), the court may allow the defendant to appear by two-way interactive video technology to conduct the proceeding between a courtroom and a prison, jail, or other location.
- (E) Ruling. The court, in writing, shall enter an appropriate order disposing of the motion and, if the motion is granted, enter an order amending the restitution. If an appeal was pending when the motion was filed, the moving party must provide a copy of the order to the appellate court.
- (F) Appeal. An appeal from this subsection is processed as provided by MCR 7.100 *et seq.*, and MCR 7.200 *et seq.*

Should new forms be developed?

7. New Form: Notice of Appellate Rights, Request for Appointment of Appellate Attorney, and Order

This item was not published for comment. It is being brought back for further discussion from the 2020 meeting.

In 2020, the committee discussed a suggestion to create a misdemeanor advice of rights and request for counsel form. The suggestors noted that while there is a form available for circuit court, the same was not true in district court.

In addition, the suggestors described the need to have a clear, standard mechanism for defendants to request appellate counsel rather than continue with the variety of unclear communications that the courts receive from defendants. A form was also suggested to provide a standard method for the court to advise a defendant of his or her rights. The committee reviewed a sample form that was submitted with the suggestion.

The committee discussed the option of using [MC 222](#) instead of creating a new form. A committee member noted that the sample form would allow a simplified process of handing the form to the defendant in the courtroom immediately, and this would address the issue of the 14-day window for a defendant to submit the request for counsel and the particular difficulty if the defendant is in jail.

The development of a form based on the presented sample was recommended by the committee.

Since the 2020 meeting, the court rules regarding the appointment of counsel have been modified to incorporate the existence of local funding unit appointing authorities. MC 222 was modified in 2021 to take the court rule changes into account and after input from MIDC.

The draft form is being brought back to the committee for further discussion regarding what changes are needed to accommodate the court rule changes and local funding unit appointing authority needs.

A draft Notice of Appellate Rights, Request for Appointment of Appellate Attorney, and Order is included as an attachment to the agenda.

8. New Form: Affidavit in Support of Probable Cause

The decision to bring to this item to the committee for discussion was made after the publication of the proposals for comment.

A suggestion was received to create a form that would act as an affidavit in support of probable cause for use fulfilling the probable cause requirement as allowed by [MCL 764.1a\(4\)](#). The suggestor stated that many courts that previously took testimony of a sworn witness pursuant to the rule are considering the use of an affidavit instead so that the entire complaint and warrant process can be done in writing and electronically submitted.

Should a form be developed?

9. General Discussion – Division of Multi-purpose Forms

As the SCAO Forms Unit processes form changes, it is reviewing forms that are multi-purpose forms to determine whether, and how, to divide the forms for processing through the electronic document environment of MiFILE. The Forms Unit is bringing the matter to the committee for discussion and for some general information gathering on how documents are handled at the court end. Three forms that are scheduled for publication with previous committee recommended changes will be used for discussion. The forms are MC 203, Writ of Habeas Corpus, MC 229m, Motion and Affidavit for Bench Warrant, MC 229w, Bench Warrant, and MC 240, Pretrial Release Order. Draft versions of these forms in the new layout are attached to this agenda. Please note these drafts are not for circulation.

10. CC 295, Appeal of Suspension, Revocation, or Denial of Driver's License

A suggestion was received from a County Clerk's office to modify the instructions regarding Protected Personal Identifying Information (P-PII) in the information grid on the form. The form currently directs the person completing it to enter the petitioner's driver's license number and date of birth in row 10 on [MC 97a, Addendum to Protected Personal Identifying Information](#).

The individual making the suggestion expressed concern that people filling out the form will not understand that the DLN is intended to go in the "other" section on MC 97a and that the instruction should specify that the information goes in the "other" section.

Alternatively, it was suggested that people filling out CC 295 be directed to instead use form [MC 97, Protected Personal Identifying Information](#), which has a specific line for the DLN.

When the instructions for the protected PII were placed on the form, MC 97a was chosen because it is the form that was designed to be used for the information on anyone who was not a defendant, respondent, or decedent. In this instance, while the individual would have been the defendant in the underlying case in which their driver's license was at issue, in the appeal process they are labeled a petitioner and the Secretary of State is the respondent. MC 97a was chosen to be consistent with the wording on and intended use of that form.

Should the directions in the CC 295 information grid regarding petitioner be modified to direct that the DLN be placed in the "other" section on MC 97a?