

## **BEST PRACTICES FOR PROBABLE CAUSE CONFERENCES AND PRELIMINARY EXAMINATIONS**

### **Scheduling**

- Both the probable cause conference (PCC) and the preliminary examination (PE) dates must be scheduled at the time of arraignment. MCL 766.4(1)
- The PCC must be scheduled no less than 7 days or more than 14 days after the arraignment, but can be waived by the parties. MCL 766.4(1), (2)
- The PE must be scheduled no less than 5 days or more than 7 days after the PCC unless the parties agree to an earlier date. MCL 766.4(1), (4)
- Codefendants must be consolidated with only one PCC and one PE held if the codefendants were arraigned at least 72 hours before the PCC (unless the prosecutor consents to a severance). MCL 766.4(5)

### **Probable Cause Conference**

- The purpose of the PCC is for the prosecutor, defendant, and defense attorney to have discussions regarding plea negotiations, bond modifications, stipulations regarding the case, or any other matters relevant to the case. MCL 766.4 (1)(a)-(d)
- We recommend that the PCC not be conducted on the record or in open court due to the nature of the discussions and instead recommend the PCC takes place in a private conference room or meeting area.
- Although the district court judge<sup>1</sup> must be available to take felony pleas, address requests for bond modification, or take testimony from the victim upon the prosecutor's request, the actual PCC does not have to involve the court. MCL 766.4(3)
- Although a district court magistrate has authority to conduct the PCC when authorized by the chief judge, we do not encourage district court magistrates to participate in the discussions regarding plea negotiations. MCL 600.8511(h)
- The court should develop a procedure for how it should be notified regarding whether a plea, request for bond modification, or PE is needed. For example, the prosecutor or the district court magistrate could notify the court whether a PE is necessary.

### **Preliminary Examination**

- The district court judge may adjourn the PE with consent of the parties. If there is not consent of both parties, the judge may only adjourn the PE for good cause shown. MCL 766.7
- Upon the request of the prosecutor, the PE must commence immediately if the sole purpose is to preserve the testimony of the victim. MCL 766.4(4)
- Defendant can only waive the PE with the consent of the prosecutor. MCL 766.7
- The district court judge must allow witnesses to testify by telephone or video (on a motion of either party), except for the complaining witness, alleged eyewitness, or law enforcement officer to whom the defendant made an incriminating statement. MCL 766.11a

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<sup>1</sup> A municipal court is governed by the statutes and supreme court rules applicable to the district court. MCL 774.49

- The Rules of Evidence apply except that the following evidence will be admissible without requiring testimony of the author of the report, any foundation laid, or authentication: results of drug field tests; certified copy of judgment; ROA; government agency records; reports (other than law enforcement) kept in ordinary course of business; forensic science reports; lab reports; medical reports; arson reports; and autopsy reports. MCL 766.11b(1) (a)-(d)
- The judge must allow prosecutor/defendant to subpoena and call witness from who hearsay testimony was introduced on a satisfactory showing that live testimony will be relevant. MCL 766.11b(2)
- If probable cause exists, the district court judge must immediately bind the defendant over to the circuit court to appear for circuit court arraignment within 14 days or the district court judge may conduct the circuit court arraignment. MCL 766.13

### **Felony Plea at District Court**

- All district court judges are required to take misdemeanor or felony pleas if an agreement is reached between the parties and cannot opt out of taking or agree not to accept the plea. MCL 766.4(3)
- If a felony plea agreement is reached between the parties, the following procedures must be followed by the district court:
  - The defendant must first waive the preliminary examination.
  - The district court clerk must enter the waiver and bind over into the case management system.
  - The prosecuting attorney shall file the information (and any habitual offender notice), as required by MCR 6.112(C), with the clerk of the district court or with the district court judge as permitted by MCR 2.107(G). The district court will forward the information (or habitual offender notice) along with the remaining bind over and plea paperwork to the circuit court for entry into the circuit court case management system.
  - The district court judge must arraign the defendant on the information.
  - The defendant cannot waive the right to be provided with the information before or at the time of the guilty plea. The information can be completed as part of the felony set (MC 200) and amended as needed at the probable cause conference. Alternatively, the prosecutor could prepare an information in advance, based on the offer made to the defendant. MCR 6.112(H) allows for amendment of the information as long as it would not unfairly surprise or prejudice the defendant.
  - Before taking the felony guilty plea, the circuit court sentencing judge must be assigned and known to the parties.<sup>2</sup> The district court no longer needs to obtain a waiver from the defendant to be sentenced by a judge other than the one who took the plea. If the guilty plea is not accepted by the district court, the circuit court judge

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<sup>2</sup>The district court is encouraged to work with the circuit court to develop a mechanism for assigning the circuit court sentencing judge prior to any possible plea. Some courts use a hotline system under which the district court will contact the circuit court before entry of the plea to identify the assigned circuit court sentencing judge. Other courts assign the district court judge and circuit court judge by blind draw at the same time. Courts also may assign each district court judge a circuit court judge counterpart. When a district court judge is assigned by blind draw, the district judge's counterpart in circuit court is automatically the designated circuit court judge for sentencing. For example, all cases assigned by blind draw to District Judge X will be assigned to Circuit Judge Y for sentencing.

that was assigned shall remain the assigned judge for the remainder of the case in order to avoid “judge shopping.”

- The district court judge must take the felony plea in conformity with MCR 6.301 and 6.302.
  - The district court judge should avoid accepting any felony pleas that are contingent upon sentencing agreements, *Cobbs* proposals, deferred judgment of guilt, or delayed sentence unless there is an agreement between circuit and district judges on how this is to be done. It is therefore recommended that these cases be bound over to circuit court and the assigned circuit court judge should consider whether or not to accept the plea under the stated conditions.
  - The defendant whose plea has been accepted should be provided with a circuit court sentencing date and instructions on reporting to MDOC for the presentence investigation.<sup>3</sup>
  - The district court clerk must enter the new event code (not disposition code) for felony pleas accepted by the district court and forward the file to the circuit court for processing.
  - The district court may enter the Order for DNA Sample (MC 283) if the sentencing date is known at the time the felony plea is accepted and it has not previously been taken by law enforcement. Otherwise, the circuit court should prepare the Order for DNA Sample as soon as it receives the file from district court and a sentencing date is scheduled. MCL 28.176(4)
  - Once the bind over is entered by the district court and a guilty plea accepted, the district court transfers jurisdiction of the case to the circuit court. All future events, including motions, sentencing, and postjudgment matters should be conducted by the assigned circuit court judge.
  - It is important for district courts to transfer the file to circuit court as quickly as possible in order to minimize any delay between the time for taking the felony plea and abstracting the conviction to MSP and SOS.
- After the bind-over file is received, the following procedures must be followed by the circuit court:
    - The circuit court clerk must open the case and assign it to the circuit court sentencing judge that was determined prior to entry of the felony guilty plea in district court.
    - The district court bind-over date is the circuit court filing date.
    - The circuit court clerk must enter the bind-over information on the circuit court’s case management system and enter the felony plea disposition for the date on which it was accepted by the district court (which is the same date as the bind-over date and the circuit court filing date).
    - If a sentencing date was previously provided to the defendant, the circuit court clerk must enter the date for sentencing in the case management system. The circuit court should generate the Notice to Appear and provide it to the parties unless the district court agreed to manually generate the Notice to Appear.

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<sup>3</sup> The district court is encouraged to work with the circuit court to develop a mechanism for determining the sentencing date in advance of the plea so that the defendant leaves the courtroom knowing when sentencing is scheduled.

- Because the district courts will enter an event code (as opposed to a disposition code) in their case management system when the felony plea is taken, the circuit court should continue to abstract the convictions to MSP and SOS at the time the circuit court enters the disposition. Most circuit court case management systems will automatically transmit disposition (i.e., conviction) information to MSP and SOS when the disposition codes are entered.

### **Reporting**

- The district court caseload reporting instructions now require the district court to report the number of felony pleas accepted. This information can be used to document the additional workload in district court.