

Michigan Judicial Institute

District Court Case Processing: *General Civil*

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CAUTION:
This is a Best Practices training and may not reflect
exactly how general civil cases are processed in
your court.

Typical General Civil Caseflow

- *Plaintiff* files a *Complaint* with the court.
- Court issues a *Summons*.
- *Defendant* is served.
- An *Answer* to the *Complaint* is filed.
- Case is set for a *Pre-Trial Conference*.
- If the case does not settle, a *Trial* is held.
- *Motions* are often filed at different times during the case.

Complaint

- Plaintiff starts the civil action by filing a complaint with the court.
- Names the defendant or defendant(s)
- Plaintiff will include an “amount in controversy”
 - District Court Jurisdiction in civil claims: This amount should not exceed \$25,000 for district courts to have jurisdiction over the civil action. MCL 600.8301
- Corporations must be represented by attorneys. MCL 450.681

Summons

- Clerk issues the summons when the complaint is filed
- Expiration of the summons is 91 days after the summons is issued
 - Within those 91 days, if plaintiff can show due diligence in trying to serve the summons, the assigned judge may order a second summons to issue with an expiration date up to 1 year out.
 - The second summons expires at the end of the extended period.
- Summons must be sealed with the court's seal

Serving the Summons

- Generally, service may be made by any legally competent adult who is not a party to the case
 - Service is different for seizure of property, gov. institutions, or process requiring arrest. MCR 2.103(B-D)
- Three ways to show proof of service
 - Defendant can sign that he received the summons
 - A certificate stating the facts of service, if service is made by a sheriff, deputy sheriff/bailiff, appointed court officer, attorney for a party
 - Notarization not required
 - Affidavit stating the facts of service by process server or individual
 - Notarization required

Serving the Summons

- Service on an Individual may be by
 - Personal service on the defendant
 - Registered or certified mail, return receipt, restricted delivery (attach green card as proof)
- Alternate Service under MCR 2.105(I)
 - Party must show service can't reasonably be made as provided by rule
 - Court may order service by "any other manner reasonably calculated" to give notice
 - Request is made by motion
 - A hearing is not required on the motion unless the court wants one
 - If service by publication or posting is authorized, then follow MCR 2.106.

Non Service Dismissal

- When the summons expires and a defendant has not been served (and the defendant was included on the complaint at the time of filing)
 - Action is deemed dismissed without prejudice as to the defendant who has not been served
 - Unless he/she submitted to jurisdiction of the court – if defendant wasn't served but physically appears before the court, he must file a written appearance. MCR 2.117.
- Clerk shall enter an order dismissing the action as to the defendant that hasn't been served
- Clerk shall provide notice of the lack of progress dismissal entry either by delivery or by mail.
- MCR 2.102(E)

Venue

- *Venue*: The particular county, city or geographical area in which a court with jurisdiction may hear and determine a case.
- Proper in the county in which a defendant
 - resides,
 - has a place of business, or
 - conducts business, or
 - in which the registered office of a defendant corporation is located, MCL 600.1621
- Venue is a legal issue to be determined by the judge.
- Venue for torts controlled by MCL 600.1629
- If questions about proper venue, see your court administrator or judge. Clerks only have authority to reject filings for specific deficiencies. (See future slide)

Changing Venue

- If **court** believes venue is improper, the court shall order a change of venue on a timely motion from the defendant or, on the courts own initiative, with notice to the parties and an opportunity for them to be heard by the court on the venue question
 - If venue determined improper, action may be transferred.
 - Plaintiff must pay a new filing fee to the court where the action is transferred to.
 - If plaintiff doesn't pay the fees within 56 days from the date of the order changing venue, the action must be dismissed by the court to which it was transferred. MCR 2.223(B)(2).
 - Clerk must forward any jury fee.

Changing Venue

- If venue is proper in the original court, but a party files motion to change venue and prevails, that party pays the filing fee as part of the order entering in the original court.
 - The party who wants to change venue pays the new filing fee.
- The fee is made payable to the court where the action is being transferred.

Accepting Pleadings - Requirements

If the filing contains the following information and meets the following 6 requirements, accept it:

- 1) Filings must be on 8.5x11 inch paper or transmitted through an approved electronic means.
- 2) Font is 12 point
- 3) English

Accepting Pleadings - Requirements

- 4) Include in caption: name of court; name of parties/title of action; case number; identification of the pleading (ex: Complaint or Counterclaim); If an attorney then include name of attorney and address/phone/P number; if pro se then party's name, address, phone; and name and P number of any other attorneys who appeared in the action
- 5) Must be signed
- 6) Filing fee must be paid

Rejecting Pleadings

- The Clerk of the Court may only reject documents that **do not** meet the minimum filing requirements. MCR 8.119(C).
 - See the filing requirements #1-6 in the previous slides
- If any questions regarding accepting or rejecting a filing, see your court administrator or judge.
- Remember: Clerks may only reject documents that don't meet the minimum filing requirements– if the filings meet the requirements #1-6, accept the filing.

Indigency Waiver

- If a party is unable to pay fees and costs, party fills out waiver form
 - The waiver applies to the party, not to the case
 - Companies and corporations are not eligible for waiver
- Forward to the judge for determination
- If granted then the following fees are waived:
 - Filing fees
 - Motion fees
 - Jury demand fees
 - Post judgment collection fees
 - Service fees in certain circumstances per MCR 2.002(F)
 - Does not apply to transcript fees
- Payment of fees and costs are waived/suspended until further order of the court.

Jury Demand

- Either party may file a written demand
- Within 28 days after the filing of the Answer or a timely Reply
- Jury fee must be paid at the time the demand is filed
- A party who fails to file a demand or pay the jury fee waives trial by jury. MCR 2.508(D)
- District court jury demand fee is \$50

Previous Filings

- If a party has filed the same suit against the same defendant previously and it was dismissed or transferred to another court, then assign the new suit to the same judge that had the previous matter.
- MCR 8.111(D)(2)
- Look for this information on the Summons

Answering the Complaint

- Defendant may file an Answer to the Complaint or take other action
- Timeframe for Answer to be filed:
 - If defendant was served personally, 21 days.
 - If defendant served by registered mail, 28 days.
 - If defendant served by posting/publication, at least 28 days.
- “Other action” could be the filing of a motion

Counterclaims

- *Counterclaim*: A claim by a defendant in a civil case that the plaintiff has injured him or her.
- Defendant has the option of filing a counterclaim
- If defendant files a Counterclaim-
 - The defendant must clearly label filing as a Counterclaim.
 - A counterclaim must be filed with the answer or within the time required for the answer. MCR 2.203(E)

Counterclaims that Exceed District Court Jurisdiction

- If defendant files a Counterclaim that is in excess of district court's jurisdiction or demands a type of relief not available in district court-
 - Accept the pleading and take to the judge assigned to the case.
 - The judge shall either order the matter transferred to circuit court or inform the defendant that the defendant must request the transfer by motion with notice to the parties.
- Entire case is transferred to circuit court.

Counterclaims that Exceed District Court Jurisdiction (cont'd)

- The counterclaimant (the defendant) must pay the circuit court filing fee to the district court clerk.
 - Currently \$150
- If the case is transferred to circuit court and a district court jury fee was paid, that fee is forwarded to circuit court.
 - But, if circuit court jury fee is more expensive, then the party requesting the jury must pay the difference to circuit court.
- After the district court orders the transfer and collects the costs and fees, the district court shall forward to the circuit court the original papers and the circuit court filing fee.
- MCR 4.002. (For summary proceedings, see 4.201 and 4.202).
- Circuit court handles the case after the transfer.

Answering Counterclaims

- The party served with the counterclaim must serve and file an Answer or take other action within 21 days after service.
- MCR 2.108(A)(4)
- “Other action” could include filing motion

Lack of Progress Dismissal

- The court may order that a matter in which nothing has happened in the past 91 days be dismissed for lack of progress unless the parties show that progress is being made or that the lack of progress is not attributable to the party seeking affirmative relief.
 - May be on motion of a party or
 - On court's own initiative

Lack of Progress Dismissal (cont'd)

- Notice of the proposed dismissal:
 - Sent by mail or delivered with 28 day notice (see MCR 2.501(C))
 - Notice of proposed dismissal may NOT be sent on a case where there is a scheduling order and the scheduled events have not expired, where there is a date set for a conference, ADR, hearing or trial
- If a party does not make the required showing, the court may direct the clerk to dismiss case. Dismissal is without prejudice unless court indicates otherwise.
- If action is not dismissed, court shall enter an order to facilitate the prompt disposition of the matter.
- Reinstatement of dismissed action: party must make a motion, court may reinstate "on terms the court deems just"
- 2.502

Default and Default Judgment

- MCR 2.603
- “Default” is when a party fails to respond to lawsuit.
 - Default Entry
 - If party fails to plead or defend and the plaintiff notifies the court by affidavit, clerk must enter a default against that party. SCAO form MC 07
 - Send notice of the default to the defaulted party.
- “Default Judgment” is when a party obtains a judgment based on the defendant failing to respond or appear in the lawsuit.
 - Default Judgment
 - Clerk enters
 - Judge enters
 - 7 day notice

Default Judgment – Entered by Clerk

- Plaintiff must request entry of default judgment and support with an affidavit as to the amount due
- Clerk signature/entry is allowed if **ALL** the following are true:
 - Claim is for a sum certain,
 - defendant defaulted for failure to appear
 - defaulted defendant not an infant or incompetent
 - Damages requested in default judgment are not more than the amount listed on the complaint (it is ok if damages listed on default judgment are less)
 - *If any of the above are not true, then the judge must sign the default judgment.*
- Mail notice of entry of default judgment to all parties
- MCR 2.603(B)(2)
- SCAO form MC 07a

Default judgment - Entered by Judge

- In all other cases not eligible for clerk entry, the judge enters the default judgment.
- A party must file a motion asking the court to enter the default judgment.
 - Some attorneys will refer to this as a Notice or Request, instead of a Motion
- Court may conduct a hearing to take an accounting, determine damages, establish truth of an allegation, investigate any other matter
- Mail notice of entry of default judgment to all parties

Default Judgments Requiring 7 Day Notice

- 7 day notices are typically in conjunction with default judgments that must be entered by the judge.
- 7 day notice of the request for entry of a default judgment required if:
 - The party against whom the default judgment will enter has appeared in the case,
 - The relief requested in the default judgment is different than what was stated in the pleadings, or
 - The pleadings did not state a specific amount demanded
- The notice must be served at least 7 days before entry of the default judgment
 - Notice not required if the defendant failed to appear for a scheduled trial.
- MCR 2.603(B)(1)

General Motion Practice

- \$20 motion fee
- MCR 2.119
- Notice of hearing and motion must be served as follows
 - At least 9 days before time set for hearing, if served by mail
 - At least 7 days before the time set for hearing, if served by delivery under 2.107(C)(1) or (2)
- Motion must be filed with the court at least 7 days before the hearing and any responses filed at least 3 days before the hearing
 - Court may set a different timeframe per MCR 2.119(C)(4)

Motions for Summary Disposition

- *Summary disposition*: A court order that decides a case in favor of one side on the basis of affidavits or other evidence, before the trial commences. Used when there is no dispute as to the facts of the case, and one party is entitled to judgment as a matter of law. Sometimes referred to as summary judgment.
- Time: MCR 2.116(G)(1)(a)(i) - The court and opposing party get the summary disposition paperwork at least 21 days before the hearing date.
- Any response must be filed and served at least 7 days before the hearing MCR 2.116(G)(1)(a)(ii)
- Court may set a different timeframe

Motion to Set Aside Default/Judgment

- Setting Aside a Default or Default Judgment
 - Unless based on lack of jurisdiction, this motion must show good cause and a meritorious defense
 - If personal service was made on the defendant, the default and default judgment if one has entered, may be set aside only if the motion is filed before entry of the default judgment or if the default judgment has entered, within 21 days of that entry.
 - If the motion is not filed within that timeframe, then the party must proceed under MCR 2.612.
 - Court may set aside the default judgment under 2.612(B) if the defendant did not have knowledge of the action against him and he enters his appearance in the matter within 1 year after the final judgment was entered. The court has the power and discretion to set aside a judgment under 2.612.

Pre-Trial Conference

- Any time after the action starts, the court may direct that the attorneys appear, with or without the parties, for a conference.
- Typically set after an Answer is filed.
- Scheduling orders shall establish times for events, including:
 - Initiation/completion of alternative dispute resolution (ADR)
 - Amendment of pleadings/adding parties/filing motions
 - Completing discovery (if discovery was permitted)
 - Exchange of witness lists
 - Scheduling of an additional pretrial conference/settlement conference/trial
- More than one scheduling order may be entered in a case
- May be conducted by phone. MCR 2.402.

Case Evaluation (A form of ADR)

- MCR 2.403 – district court cases may be submitted to case evaluation – this is optional.
- Court shall designate an ADR clerk to administer the program
- The ADR panel reviews the case and makes an evaluation
- After evaluation takes place, each party shall file a written acceptance or rejection of the evaluation with the ADR clerk within 28 days after service of the panel’s evaluation.
 - Failure to file a written acceptance or rejection = rejection.
 - After the 28 day period, ADR clerk sends a notice indicating each party’s acceptance or rejection

Case Evaluation

- If panel’s evaluation is rejected, the action proceeds to trial.
- ADR clerk puts a copy of 1) the case evaluation and 2) the parties’ acceptances/rejections in a sealed envelope to be filed with the clerk of the court
- In a non-jury action, the envelope may not be opened and parties may not reveal the amount of the evaluation until the judge has rendered judgment.

Trial

- In preparation for trial, the papers in the case file should be organized in reverse chronological order pursuant to the case file management standards
 - Oldest papers on bottom/newest on top
- The judge or jury will hear the facts in a case and issue a decision based on the application of the facts to applicable law.
 - When a trial heard is by a judge without a jury, this is a “bench trial.”

Post judgment

- Enforcement – must wait 21 days from entry of judgment before enforcing the judgment MCR 2.614
- Garnishments MC 12/objections to garn
 - Writ is good for 182 days from date of issuance
 - Defendant may file objection within 14 days of the date the defendant is served with it.
 - Hearing date shall be within 21 days of the date the objection was filed

Post Judgment

- Installment Payments MC 15
 - Defendant may file a motion for installment payments
 - Plaintiff must be served with a copy by the clerk; plaintiff has 14 days to object
 - Motion will be granted unless Plaintiff files objection within 14 days of getting served with the motion. If objections filed, court may decide motion based on papers filed or having a hearing.
 - If defendant doesn't comply with installments, Plaintiff may file motion to set aside installments.
 - Order for Installment payments suspends a writ of garnishment for periodic payments (wage garnishment) but it does not suspend the tax garnishment or non-periodic garnishment. MCR 3.101(N).

Post Judgment

- Seize Property MC 19
 - The court will issue the order by signing the form, and it will be executed (property seized) by a sheriff or court officer.
- Discovery Subpoena MC 11
 - The judge has to sign this if the reason for the subpoena is to require the defendant to appear before the judge under oath for a debtor's exam. MCL 600.6110.
- Remedy if the case involved a Traffic Accident
 - If case involved a traffic accident, you can ask the court for an abstract of judgment, which would place a hold on the judgment debtor's Michigan driver's license until 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. (SOS book Forms Tab)

Post Judgment

- Renew Judgment
 - MC 390
 - 10 years for general civil (6 years for small claims)
 - Must be renewed “within the applicable period of limitations” MCL 600.5809(3)
 - File the motion in the court that issued the judgment.
 - There is no limit on the number of times a judgment may be renewed if renewed within the applicable period of limitations.
 - The statute of limitations is tolled (stopped) during the time the judgment is being paid in installments.

Post Judgment

- Assignments of Judgment
 - What procedure should the court follow when an assignment of judgment is filed?
 - When an assignee presents an assignment to the clerk, it should be date stamped and filed in the case file. The clerk should then enter the assignee in the case management system and make an entry on the register of actions that the judgment has been assigned and the date of the assignment. The original plaintiff should never be changed in the system.
 - No motion fee necessary
 - No SCAO form for this procedure
 - Assignments are not permitted on small claims cases

Post Judgment

- Satisfaction of Judgment MCR 2.620
 - MC 17
 - Three ways:
 - Can be filed with the clerk and signed by the prevailing party;
 - payment made to the clerk of the judgment/interests/costs; or,
 - by filing a motion for entry of order of satisfaction
 - If a motion is filed, the court shall hear proofs to determine if the order will enter
 - Clerk must put in the record that the judgment was satisfied in whole or part

Substitution of Attorney

- Substitution of Attorney
 - MCR 2.117(C)(1)
 - Motion for Substitution of Attorney
 - The court should permit the withdrawal or substitution of counsel only with a stipulation and order or after a hearing on a motion to withdraw is served on the client.
 - An attorney's appearance applies only until the time for an appeal of right from the final judgment has passed – if after the appeal period has passed, a new attorney comes in to file post judgment proceedings, there is no need for a substitution to remove the original attorney.

Bankruptcy

- When a civil matter is pre judgment, then the MC 300 Administrative Closing is entered on the file.
- When the civil matter is post judgment, the case is stayed by the bankruptcy automatic stay provisions, per 11 U.S.C. § 362.
 - All attempts to collect the judgment are stayed.
- Click here to view a Bankruptcy and District Court webcast (scroll down to select the web cast)

Appeals

- Appealing a Final Order/Judgment
 - Timeframe: 21 days after entry of judgment that is being appealed, unless a timely motion for reconsideration, rehearing or order denying motion for trial has been filed.
 - Appellant (the party appealing the judgment) files with District court: copy of the claim of appeal, pay the fee to district court, any bond required by the trial court or by law, court reporter certificate or a statement that the transcript has been ordered & payment for it made/secured
 - After the claim of appeal is filed, circuit court has jurisdiction.

Appeals

- Parties keep their own exhibits
- Within 14 days after the transcript is filed or a certified copy of the record has been requested, the district court shall send the record to circuit court.
 - Attach a certificate identifying the case and list what is being filed. See form MC 57.
 - Include the ROA, any exhibits in the file, all documents and papers in the file, all transcripts, all opinions/findings/orders of the court and the order/judgment being appealed.

Appeals

- Circuit court notifies the parties that the record was filed in circuit court.
- After appeal is over, Circuit court returns the original record to the district court with a certified copy of the order and any written opinion
- After the resolution in Circuit court, the district court should ensure that the register of action is updated.

Questions?

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