

**Michigan Supreme Court**  
State Court Administrative Office  
309 N. Washington Square, P. O. Box 30048  
Lansing, Michigan 48909  
(517) 373-4835  
John D. Ferry, Jr., State Court Administrator

**M E M O R A N D U M**

**DATE:** April 26, 2002

**TO:** Chief Circuit and District Court Judges  
**cc:** Judges, Court Administrators, and Clerks of Court

**FROM:** John D. Ferry, Jr.

**SUBJ:** SCAO Administrative Memorandum 2002-04  
Appointment of Court Officers

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MCR 3.106; Procedures Regarding Orders for the Seizure of Property and Orders of Eviction, provides that the State Court Administrative Office (SCAO) shall develop a procedure for the appointment and supervision of court officers. Below are links to the appointment procedures for both court employee and independent contractor court officers, including application forms, a model independent contractor agreement, an order for appointment, and a sample identification card.

The new appointment procedures apply to appointments that occur on or after May 1, 2002. Court officers may be appointed by the court for a term not to exceed two years. Courts must post, in a public place at the court, a list of persons who are serving as court officers or bailiffs (MCR 3.106(B)(2)). Further, courts must provide a copy of the list to the SCAO. Any changes to the list must also be provided to the SCAO. Lists and changes should be directed to: SCAO, Attn: Court Officers, P.O. Box 30048, Lansing, MI 48909.

Also below is a link to the revised schedule of surety bond requirements that replaces pages 13-02-01 and 13-02-02 in Volume 2, Section 13 of the Court Administration Reference Guide. Please note that the amount of bond for magistrates, clerks, and those serving process under MCR 3.106(B)(1)(a) has increased to \$50,000.

Questions can be directed to John Ross at 517-373-9526 or [rossj@jud.state.mi.us](mailto:rossj@jud.state.mi.us).

Get [employee procedures](#)

Get [independent contractor procedures](#)

Get [sample identification card](#)

Get [performance bond requirements](#)

Get [court rule](#) (page 20)

**COURT OFFICER**  
**APPOINTMENT PROCEDURES**  
(MCR 3.106)

**COURT OFFICER  
EMPLOYMENT PROCEDURES**

## **PROCEDURES FOR APPOINTMENT OF COURT OFFICERS**

Because of different issues associated with employee and independent contractor classifications, separate procedures for appointing court officers as employees and appointing court officers as independent contractors have been developed. The first set of procedures apply to appointing court officers as employees. The second set of procedures apply to court officers who are appointed as independent contractors.

A model independent contractor agreement is included. If any changes are made to this form, courts should have labor counsel review those changes.

In addition to the model independent contractor agreement form, both sets of procedures include model application and other forms associated with the appointment processes. The forms can be formatted to allow courts to enter the appropriate court number, funding unit(s) and court letterhead, where appropriate. Courts may use locally developed forms that solicit and provide the same information as the model forms. Courts should ensure that local forms are in compliance with applicable state and federal statutes and regulations.

Access to applications for employment as a court officer is subject to trial court or funding unit policy for applications for court employment..

## **COURT OFFICER - EMPLOYEE**

### **Employment Forms:**

The following model forms are attached in the sequence in which they are discussed in steps of the employment procedures:

- Employment Application Form
- Reference Check Form
- Consent Form: Conviction/Criminal History Background Check
- Credit Report Authorization Form-Employee
- Certification to Consumer Reporting Agency Form
- Arrest Authorization Form
- Order of Appointment-Employee

## **EMPLOYMENT PROCEDURES**

### **1. Employment Opportunity Announcement:**

As an equal employment opportunity employer, it is important that the court announce the Court Officer employment opportunity.

A Court Officer job opening announcement should include the essential job functions to be performed, minimum employment qualifications, rate of pay, and deadline for submitting applications. Employment qualifications should be commensurate with the job duties and responsibilities assigned. The deadline for submitting applications should allow reasonable time for the potential applicants to view the announcement. Generally, three weeks after the announcement appears in all publication and posting resources is a reasonable deadline.

The job opening announcement should be posted conspicuously in court offices and the funding unit/county courthouse. The announcement should also be sent to courts, colleges, professional organizations, community outreach organizations, newspapers, and other individuals, organizations and media to provide qualified applicants notice and an opportunity to compete for the employment opportunity.

### **2. Application:**

All applicants should be required to complete and sign the Employment Application Form before being considered for employment. Resumes should not be substituted for a completed application form, but may be attached to the application form as a supplement.

### **3. Screening Applications:**

All applications should be reviewed prior to scheduling interviews to ensure that all questions have been answered, the form has been properly signed and dated, and to determine which applicants meet or exceed minimum bona fide employment qualifications.

### **4. Interviews:**

Only applicants whose qualifications meet or exceed the minimum bona fide employment qualifications should be offered an invitation to interview. It is recommended that at least two individuals serve on a court interview team.

It is recommended that an interview guide be developed to solicit information from applicants about experience, education, and job related knowledge during interviews. Interview guides should be followed in all interviews. However, use of the interview guide should not prevent interviewers from asking additional follow-up questions about knowledge, abilities, qualifications, an applicant's answers and other relevant job related questions. All questions should **not** contain illegal and/or inappropriate inquiries.

Each member of the interview team should be given a copy of the Pre-Employment Inquiry Guide, which is prepared by the Michigan Department of Civil Rights and is available on its website ([www.mdcr.state.mi.us](http://www.mdcr.state.mi.us)) at the Online Pamphlet location. Prior to interviews, interview team members should determine which team member will ask which questions, and should carefully review and become thoroughly familiar with the interview guide and the Pre-Employment Inquiry Guide.

### **5. Reference Checks:**

Professional reference checks should be conducted **before** making an employment offer. The Reference Check Form should be completed for each reference check conducted. Where possible, at least two former employers should be contacted. For an applicant who has recently completed some phase of an educational or certification process, instructors, professors, or certification officials should be contacted for verification.

### **6. Criminal Record Check:**

A criminal record check should be conducted **after** the applicant completes the Consent Form: Conviction/Criminal History Background Check. Criminal history information may be obtained directly from a court's LIEN terminal or, in the absence of a LEIN terminal, from the State Police or local police or sheriff department.

## 7. Credit Reports:

Because of the nature of work that court officers perform, courts should consider requesting credit reports on applicants for employment and current court officers, if deemed necessary. The Fair Credit Reporting Act (FCRA) requires that specific procedures be followed when requesting credit reports.

Courts must comply with the following steps when requesting the credit report of any applicant or when using any non-court employee to screen, interview, perform background checks or otherwise investigate a current or prospective employee:

### A. **Obtain written permission from the consumer (applicant) before ordering a consumer report.**

Before obtaining a consumer report (**even if voluntarily provided by an applicant**), courts must notify the consumer that it may ask for a report and get his or her written permission. The written permission cannot be part of an employment application or employee handbook. Courts must therefore ask prospective employees to fill out and sign a fair credit authorization form. A Credit Report Authorization Form-Employee has been provided for that purpose.

Courts must comply with additional requirements if they hire a third party, such as a private investigator or a firm that conducts employee background checks, to conduct a background investigation that will involve, even in a small part, information about the consumer's "character, general reputation, personal characteristics, or mode of living ... obtained through personal interviews with neighbors, friends, or associates." Because such an investigation fits into the definition of an "investigative consumer report," Courts must, in addition to the steps outlined above, give the consumer (i) written advance notice that an investigative consumer report may be obtained; (ii) a copy of the Federal Trade Commission's summary of his or her rights as a consumer;<sup>1</sup> and (iii) notification that he or she may request "a complete and accurate disclosure of the nature and scope of the investigation requested." Such notice must be made in a written statement that is mailed, or otherwise delivered, to the consumer no later than 5 days after the date on which the request was received from the consumer or the report was first requested, whichever is later.

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<sup>1</sup> A *Summary of Your Rights Under the Fair Credit Reporting Act* may be downloaded from the FTC's web site at [www.ftc.gov/bcp/online-edcams/fcra/summary.html](http://www.ftc.gov/bcp/online-edcams/fcra/summary.html). The summary describes the consumer's rights to (i) access his or her file; (ii) dispute the accuracy of the information in the file; (iii) correct or delete inaccurate information; (iv) prevent the release of outdated information; (v) consent before information is released; and (vi) sue violators.

Courts must certify to any “consumer reporting agency” that it has taken these steps. A Certification to Consumer Reporting Agency Form has been provided for that purpose.

**B. Notice requirement before taking adverse action on the basis of a report.**

At least five days before taking adverse action (such as denying someone a job, a promotion or a reassignment) based in whole or in part on a consumer report (or an investigative consumer report), courts must: (i) notify the consumer of the action it plans to take; (ii) give the consumer a copy of the FTC’s summary or rights.

**C. Notice requirements after taking adverse action on the basis of a report.**

Within a reasonable time after making an adverse employment decision on the basis of a consumer report, courts must (i) give the consumer (applicant) notice of the adverse decision; (ii) provide the name, address and phone number of the credit reporting agency that provided the report the court relied upon, in whole or in part; (iii) provide a statement explaining that the consumer reporting agency simply provided the report and that it is not the one that made the adverse decision; (iv) explain that he or she can get a free copy of the report from the consumer reporting agency within sixty days; and (vii) explain to the consumer that he or she has a right to dispute the accuracy or completeness of the report with the consumer reporting agency.

**8. Valid Driver’s License:**

The court should verify that an applicant has a valid driver’s license, issued by the State of Michigan, and check the applicant’s driving record.

**9. Employment Offer:**

Applicants whose experience and other qualifications meet the court’s criteria are eligible for an offer of employment. When making an employment offer, it is important to tell the applicant that the offer is conditioned on an employment physical examination (if required). **Court officers may be appointed for a term not to exceed two (2) years [MCR 3.106 (C)], and a court shall, in its sole and complete discretion, have the option to offer an additional term of appointment for a period of time up to two (2) years. During the term of appointment, employment is at will, which means that the court has the right to discharge or lay off a court officer at any time, with or without cause, and with or without notice for any reason or no reason at all.**

**10. Employment Physical Examination:**

Because of the duties typically assigned to court officers, courts should require an employment physical examination **following the job offer and acceptance**. If the court chooses to require a post offer employment physical examination, the court must make arrangements for an examination



**at court expense.** The examining physician must receive a description of assigned job duties and responsibilities prior to the examination, and limit the examination to an assessment of the individual's ability to perform the assigned job duties.

The Americans with Disabilities Act (ADA) and the Michigan Persons with Disabilities Civil Rights Act (MPDCRA) are applicable to employees and job applicants who are deemed to have a physical or mental impairment that substantially limits one or more of the major life activities; have a record of such an impairment; or are regarded as having such an impairment. The ADA permits qualified individuals to request accommodations, and requires employers to make reasonable accommodations, subject to specific conditions and circumstances, on a case-by-case basis. While not required by the ADA, the MPDCRA requires employees to request accommodations in writing within 182 days of the time they knew or reasonably should have known of their need for an accommodation. For assistance with requests for accommodations and other ADA/MPDCRA related matters, contact the State Court Administrative Office Trial Court Services Division (517/373-0130).

### **11. Arrest Authorization:**

It is important for courts to confirm in writing if arrest powers pursuant to MCR 2.103 (D) **have** or **have not** been delegated. The Arrest Authorization Form can be used for this purpose, but may not be necessary if the Order of Appointment-Employee is used (see 12. Confirming Appointment).

### **12. Confirming Appointment**

Courts should confirm the appointment of a Court Officer as an employee with an Order or letter. A model Order of Appointment-Employee has been provided for that purpose. Courts can convert the Order to a letter format, if desired.

### **13. Personnel Files:**

It is recommended that courts establish a primary personnel file, a confidential personnel file, and a medical personnel file for each court officer hired by the court.

The primary personnel file should consist of:

- Basic employee data
- Employee status changes
- Employee selection (personnel requisition, resume, application for employment, authorization for former employers to release information, offer/acceptance letter, etc.)
- Employee development
- Performance documentation
- Miscellaneous and separation data (employee handbook receipt, requests to inspect personnel file, attendance records, written voluntary resignations, exit interviews, etc.)

The principal purpose of a confidential personnel file is to protect the privacy of the employee, and should contain employee information that is not job related and should not be seen by supervisors and others. Examples of file content would be:

- Interview evaluation forms
- Pre-employment reference checks (employees and supervisors do not need to see reference checks after an employee has been hired)
- EEO/affirmative action data (including pictures)
- Dependent and beneficiary information
- Credit checks and reports

The medical information personnel file should contain medical exams, drug tests and other medical information that must be protected. Examples of file content would be:

- Post-offer medical information
- Injury reports
- Health care provider certifications
- Doctors' notes and reports
- Fitness for duty results
- Workers' compensation injury forms and reports
- Drug and alcohol test results
- Disability leave documentation
- Benefit claim forms
- Reimbursement request for medical expenses
- Disability self-identification form
- Any voluntary medical information from an employee health program
- Medical insurance claim forms
- Requests for reasonable accommodations
- Benefit plan choices/enrollments

Access to confidential employee information should be limited to the chief judge or designee. The designee typically would be another judge, the court administrator or court personnel/human resources director.

#### **14. Record Retention:**

Personnel files of current employees must be kept while employed, and for 10 years after employment ends (inactive employees). Applications and resumes, and all recruitment related records, such as advertising, recruitment summaries, interview schedules, background information, acknowledgment letters, interview guides, interview notes, and related correspondence or documents must be retained for 3 years.

**COURT OFFICER  
EMPLOYMENT APPLICATION  
EQUAL OPPORTUNITY EMPLOYER**

( _____ Judicial District Court	_____ Judicial Circuit Court	_____ County Probate Court )
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**ALL QUESTIONS MUST BE ANSWERED**

**PLEASE PRINT**

**GENERAL INFORMATION**

DATE: \_\_\_\_\_

Name: \_\_\_\_\_ Soc. Sec. No.: \_\_\_\_\_  
Last First Middle

Home Address: \_\_\_\_\_  
Street City State Zip

Phone No.: \_\_\_\_\_ Fax No.: \_\_\_\_\_

Pager No.: \_\_\_\_\_ Cellular No.: \_\_\_\_\_

1. Are you authorized to work in the United States? [ ] Yes [ ] No  
Please submit copies of your driver's license, I-9 form and social security card.
2. Are you a resident of the State of Michigan? [ ] Yes [ ] No
3. Are you over 18 years of age? [ ] Yes [ ] No
4. Did you graduate high school or obtain a G.E.D. certificate? [ ] Yes [ ] No
5. List all courts in which you are currently appointed to serve process under MCR 3.106. Include the name of the court, the date(s) of appointment, the approximate expiration date of the appointment, and the nature of services you performed, are performing or are authorized to perform.

<u>Court</u>	<u>Appointment</u> From:      To:	<u>Services Performed</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

(Use Separate Sheet, If Needed)

6. List all counties in which you are currently deputized to serve process under MCR 3.106. Include the name of the department, the date(s) of appointment, the expiration date of the appointment, and the nature of services you performed, are performing or are authorized to perform.

<u>Court</u>	<u>Appointment</u> From:      To:	<u>Services Performed</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

(Use Separate Sheet, If Needed)

7. List all previous court appointments where you were appointed to serve process under MCR 3.106 (excluding current court appointments). Include the name of the court, the dates of appointment and the services you performed.

<u>Court</u>	<u>Appointment</u> From:      To:	<u>Services Performed</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

(Use Separate Sheet, If Needed)

8. List all previous counties that you were deputized to serve process under MCR 3.106 (excluding current counties where you are deputized). Include the name of the department, the dates of appointment and the services you performed.

<u>Court</u>	<u>Appointment</u> From:      To:	<u>Services Performed</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

(Use Separate Sheet, If Needed)

9. Have you ever been denied appointment or re-appointment as a court officer or had your appointment or employment revoked or terminated by any court?  Yes  No  
(If yes, provide details on a separate sheet).

10. Have you ever been convicted of a felony (or misdemeanor within the last 10 years)?  
 Yes  No  
 (If yes, provide details on a separate sheet).
11. Have you had a civil judgment (excluding civil infractions) entered against you in the past ten years?  
 Yes  No (If yes, provide details on a separate sheet).
12. Are any lawsuits pending or have there been any lawsuits or judgments filed against you as result of your duties as a Court Officer, Bailiff or Deputy?  Yes  No (If yes, provide details on a separate sheet).
13. Have you ever filed for bankruptcy?  Yes  No  
 (If yes, provide the date of filing, name of court, case number and other relevant details).
14. Do you have a permit to carry a concealed weapon?  Yes  No  
 If yes, (a) attach a copy of your CCW Permit.  
 (b) do you or would you carry a weapon in the course of your duties as a Court Officer?  Yes  No
15. Have you ever had a complaint filed against you with a court or a law enforcement agency regarding the use of your weapon during the performance of your duties as a Court Officer  
 Yes  No If yes, provide the date and circumstances on an additional sheet.
16. Have you ever had your license to carry a concealed weapon revoked?  
 If yes, please state the date and describe the circumstances of the incident(s).  
 \_\_\_\_\_  
 \_\_\_\_\_
17. List any special skills, training or certifications you have that are related to this position:  
 \_\_\_\_\_  
 \_\_\_\_\_
18. List any professional organizations to which you belong that are related to this position:  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
19. Were you in active U.S. Military Service  Yes  No  
 If yes, type of separation: \_\_\_\_\_
20. When are you available to begin working for the court?  
 Immediately  Need notice, time required: \_\_\_\_\_
21. Why do you want to be employed by the court?  
 \_\_\_\_\_  
 \_\_\_\_\_

**22. EDUCATION**

School	Name of School	Location City/state	Highest Yr. Completed	Major, Degree, Credential(s)	Graduate?
High School			1 2 3 4		
College					Yes [ ] No [ ]
Post-Graduate					Yes [ ] No [ ]

**23. EMPLOYMENT HISTORY (last 5 years)**

Name of Employer: \_\_\_\_\_

Address: \_\_\_\_\_ Phone No.: \_\_\_\_\_

Start Date: \_\_\_\_\_ End Date : \_\_\_\_\_

Supervisor/Contact Person: \_\_\_\_\_

Position Held: \_\_\_\_\_ List Main Duties: \_\_\_\_\_

If no longer employed, reason for leaving? \_\_\_\_\_

Name of Employer: \_\_\_\_\_

Address: \_\_\_\_\_ Phone No.: \_\_\_\_\_

Start Date: \_\_\_\_\_ End Date : \_\_\_\_\_

Supervisor/Contact Person: \_\_\_\_\_

Position Held: \_\_\_\_\_ List Main Duties: \_\_\_\_\_

If no longer employed, reason for leaving? \_\_\_\_\_

Name of Employer: \_\_\_\_\_

Address: \_\_\_\_\_ Phone No.: \_\_\_\_\_

Start Date: \_\_\_\_\_ End Date : \_\_\_\_\_

Supervisor/Contact Person: \_\_\_\_\_

Position Held: \_\_\_\_\_ List Main Duties: \_\_\_\_\_

If no longer employed, reason for leaving? \_\_\_\_\_

Name of Employer: \_\_\_\_\_

Address: \_\_\_\_\_ Phone No.: \_\_\_\_\_

Start Date: \_\_\_\_\_ End Date : \_\_\_\_\_

Supervisor/Contact Person: \_\_\_\_\_

Position Held: \_\_\_\_\_ List Main Duties: \_\_\_\_\_

If no longer employed, reason for leaving? \_\_\_\_\_

24. Give the name, address and telephone numbers of three references and explain your relationship with each individual. If possible, each reference should be from courts or law firms for which you have served process or worked as a court officer.

1. \_\_\_\_\_  
\_\_\_\_\_

2. \_\_\_\_\_  
\_\_\_\_\_

3. \_\_\_\_\_  
\_\_\_\_\_

25. If currently employed by or under appointment with another Court(s), may we contact the Court(s) with which you are under appointment or are employed? Yes [ ] No [ ]

26. Do you have a reliable means of transportation? Yes [ ] No [ ]

27. Name of relative(s) employed with the court, if applicable: \_\_\_\_\_  
\_\_\_\_\_

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**PLEASE READ BEFORE SIGNING THE CERTIFICATION AND AGREEMENT.  
IF YOU HAVE ANY QUESTIONS, CONSULT THE COURT OR YOUR ATTORNEY.**

**AT WILL EMPLOYMENT**

**In consideration of any employment of me by the court, I understand and agree that my employment is at the will of the court, which means that the court has the right to discharge me or lay me off at any time, with or without cause, and with or without notice.**

**It is expressly agreed and understood that this is the entire agreement between the court and myself on the subject of discharge, termination, and/or layoff, and that this agreement may be changed only by an agreement in writing signed by the chief judge of the court and myself.**

**LIMITATIONS PERIOD**

**I further recognize that if employed by the court, I agree, in partial consideration for my employment, that I shall not commence any action or other legal proceeding relating to my employment or the termination thereof more than one year after the termination of such employment and agree to waive any statute of limitations to the contrary.**

**AUTHENTICITY**

**I certify that all information submitted by me in this application is true and correct and understand that if any such information is found to be false or otherwise incorrect or incomplete, it may result in disciplinary action against me up to and including termination from employment at the sole discretion of the court.**

**AUTHORIZATION**

**I hereby authorize an investigation of my past employment/contract activities and statements contained in this application and specifically authorize the court to consult with all third parties with whom or which I have been associated concerning my qualifications, or with any third parties who may have information bearing thereon and to receive and utilize any information which may be material to my qualifications; and I hereby release all third parties who provide information to the court with or without notice to me, from any and all liability for the transmittal of any information bearing on my qualifications, in connection with any such request. I further authorize the court to secure a copy of any criminal, driving, court or credit record about me or any of my employees or subcontractors at any time before or during any appointment as a court officer and to conduct whatever investigation the court deems appropriate.**

**I authorize and release the court from all liability for forwarding to any other entity to which I may apply for employment, any information concerning me or my qualifications as the court has at the time of my application or hereafter acquires. I release from all liability any and all third parties**



**for any statements made or any action taken in connection with this application, or in connection with any other form of review of my qualifications. I hereby waive on behalf of the court and any and all third parties any and all notice(s) to which I would otherwise be entitled.**

**ACCOMMODATION**

**I understand that I am applying for a position located in the state of Michigan and that if I have a disability I must tell the court in writing of my need for accommodation within 182 days after I know or reasonably should know that accommodation is needed. I further understand that my failure to do so prevents me from alleging a violation of the accommodation requirement of the persons with disabilities civil rights act.**

**I hereby acknowledge that I have read the above statements and understand same.**

**I further recognize that if I am employed by the court, I will receive compensation and benefits and be subject to rules and regulations, but I agree that such compensation, benefits, rules and regulations are subject to change by the court. I acknowledge that my assigned work hours and place of work may be modified by the court. I recognize I will be required to work overtime, as needed.**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Signed**

**FOR DEPARTMENT USE ONLY**

INTERVIEWED BY \_\_\_\_\_ POSITION \_\_\_\_\_ DATE \_\_\_\_\_

**APPLICATION APPROVED:** \_\_\_\_\_ DATE \_\_\_\_\_

HIRED: YES  NO  POSITION \_\_\_\_\_ DEPT. \_\_\_\_\_

DATE REPORTING TO WORK \_\_\_\_\_ NORM HOURS \_\_\_\_\_ SALARY/WAGE \_\_\_\_\_

**APPROVED FOR HIRE:** \_\_\_\_\_ DATE: \_\_\_\_\_

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EMPLOYMENT PHYSICAL

DRIVING RECORD CHECK

CRIMINAL RECORD CHECK

CREDIT REPORT (IF REQUIRED)

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**COURT OFFICER  
TELEPHONE REFERENCE CHECK**

Name of Applicant: \_\_\_\_\_

Name of Employer/Client: \_\_\_\_\_ Phone #: \_\_\_\_\_

Contact Person (Name and Title): \_\_\_\_\_

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1. What was the title and general description of the position that the applicant occupied?
  
2. The applicant indicates having worked for you from: \_\_\_\_\_ to: \_\_\_\_\_ .  
Is that correct?
  
3. How would you characterize the professional/technical skills of the applicant?
  
4. Describe the applicant's interpersonal communication skills.
  
5. Would you rehire the individual?
  
6. In your opinion, is there any reason we should not consider this applicant for employment/appointment with the court?
  
7. Are there other comments you would care to add?

\_\_\_\_\_  
Name of person conducting reference check

\_\_\_\_\_  
Date



**CREDIT REPORT AUTHORIZATION - EMPLOYEE**

I acknowledge that the Court may, in considering my application for employment as a Court Officer, or at any time during the existence of my employment with the Court, if any, request, obtain, review and consider a copy of my credit report. I hereby authorize the Court to, from this date until the termination of my employment as a Court Officer, if any, request, obtain, review and consider my credit report.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signed)

**CERTIFICATION TO CONSUMER REPORTING AGENCY**

Re: Certification to Consumer Reporting Agency

Dear Consumer Reporting Agency:

\_\_\_\_\_ is requesting a consumer report regarding \_\_\_\_\_.

Pursuant to Section 604(b) of the Fair Credit Reporting Act, as amended, \_\_\_\_\_ hereby certifies the following:

1. \_\_\_\_\_ has provided \_\_\_\_\_ with a clear and conspicuous written disclosure, in a document that consists solely of the disclosure, that a consumer report is being obtained for appointment purposes;
2. \_\_\_\_\_ has authorized in writing the procurement of a consumer report by \_\_\_\_\_; a copy of same is attached;
3. Before taking any adverse action based in whole or in part on the consumer report, \_\_\_\_\_ shall provide to \_\_\_\_\_, a copy of the consumer report and a summary description in writing of the rights of the consumer.
4. \_\_\_\_\_ will not use the information from the consumer report on \_\_\_\_\_ in violation of any Federal or State equal employment opportunity law or regulation.

In light of the above certification, please process a consumer report regarding \_\_\_\_\_ concerning \_\_\_\_\_. Should you have any questions regarding the above certification or the enclosed authorization form, please contact the undersigned.

Sincerely,

\_\_\_\_\_

**ARREST AUTHORIZATION**

The ( \_\_\_\_\_ Judicial District Court/ \_\_\_\_\_ Judicial Circuit Court/ \_\_\_\_\_  
County Probate Court)

Does

Does not

Authorize \_\_\_\_\_ to serve process that requires  
making arrests pursuant to MCR 2.103 (D).

\_\_\_\_\_  
Court

\_\_\_\_\_  
Court Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

## ORDER OF APPOINTMENT - EMPLOYEE

Order (year) - (number)

IT IS HEREBY ORDERED:

That [full name of Court Officer] is hereby appointed to be a Court Officer for [name of the Court] in a manner consistent with the terms and conditions of MCR 3.106. [Name of Court Officer] is expected to perform [his or her] assigned job duties effectively, efficiently and in full compliance with any and all applicable statutes, regulations, administrative orders, court rules and directives from this Court.

This appointment is for a period commencing [month/day/year]; and not to exceed two (2) years pursuant to MCR 3.106.

This appointment means that the Court Officer may be requested, on an as needed basis, to perform the following duties:

- Orders of Eviction
- Orders for the Seizure or Attachment of Property
- Orders requiring Arrest authority pursuant to MCR 2.103(D)
- Other services the Court may require

[Name of Court Officer] is and will be employed at will, meaning that the Court has a right to discharge [him or her] at any time, with or without cause and with or without notice.

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**Chief Judge**

---

**Date**



**COURT OFFICER**  
**APPOINTMENT PROCEDURES**  
(MCR 3.106)

## **PROCEDURES FOR APPOINTMENT OF COURT OFFICERS**

Because of different issues associated with employee and independent contractor classifications, separate procedures for appointing court officers as employees and appointing court officers as independent contractors have been developed. The first set of procedures apply to appointing court officers as employees. The second set of procedures apply to court officers who are appointed as independent contractors.

A model independent contractor agreement is included. If any changes are made to this form, courts should have labor counsel review those changes.

In addition to the model independent contractor agreement form, both sets of procedures include model application and other forms associated with the appointment processes. The forms can be formatted to allow courts to enter the appropriate court number, funding unit(s) and court letterhead, where appropriate. Courts may use locally developed forms that solicit and provide the same information as the model forms. Courts should ensure that local forms are in compliance with applicable state and federal statutes and regulations.

Access to applications for employment as an independent contractor is subject to trial court or funding unit policy for applications for court employment..

**COURT OFFICER**

**INDEPENDENT CONTRACTOR  
APPOINTMENT PROCEDURES**

## COURT OFFICER - INDEPENDENT CONTRACTOR

### Independent Contractor Forms:

The following forms are attached in the sequence in which they are discussed in steps of the appointment procedures:

- Request for Appointment as Court Officer Form
- Reference Check Form
- Consent Form: Conviction/Criminal History Background Check
- Credit Report Authorization Form-Independent Contractor
- Certification to Consumer Reporting Agency Form
- Independent Contractor Agreement for Court Officer
- Order of Appointment-Independent Contractor
- Arrest Authorization Form

### APPOINTMENT PROCEDURES

#### **1. Request for Appointment:**

All individuals requesting appointment as an independent contractor should be required to complete and sign the Request for Appointment as Court Officer Form. Resumes should not be substituted for a completed appointment form, but may be attached to the appointment form as a supplement.

#### **2. Reference Checks:**

Professional reference checks should be conducted **before** offering appointment as an independent contractor. The Reference Check Form should be completed for each reference check conducted.

Where possible, at least two former employers/contractors should be contacted. For an individual who has recently completed some phase of an educational or certification process, instructors, professors, or certification officials should be contacted for verification.

#### **3. Criminal Record Check:**

A criminal record check should be conducted **after** the applicant completes the Consent Form: Conviction/Criminal History Background Check. Criminal history information may be obtained directly from a court's LIEN terminal or, in the absence of a LEIN terminal, from the State Police or local police or sheriff department.

#### 4. Credit Reports:

Because of the nature of the work that court officers perform, courts should consider requesting credit reports on applicants for appointment and current contractual court officers, if deemed necessary. The Fair Credit Reporting Act (FCRA) requires that specific procedures be followed when requesting credit reports.

Courts must comply with the following steps when requesting the credit report of any applicant or when using any non-court employee to screen, interview, perform background checks or otherwise investigate a current or prospective independent contractor:

**A. Obtain written permission from the consumer (applicant) before ordering a consumer report.**

Before obtaining a consumer report (**even if voluntarily provided by an applicant**), courts must notify the consumer that it may ask for a report and get his or her written permission. The written permission cannot be part of an employment application or employee handbook. Courts must therefore ask prospective independent contractors to fill out and sign a fair credit authorization form. A Credit Report Authorization Form-Independent Contractor has been provided for that purpose.

Courts must comply with additional requirements if they hire a third party, such as a private investigator or a firm that conducts employee background checks, to conduct a background investigation that will involve, even in a small part, information about the consumer's "character, general reputation, personal characteristics, or mode of living ... obtained through personal interviews with neighbors, friends, or associates." Because such an investigation fits into the definition of an "investigative consumer report," Courts must, in addition to the steps outlined above, give the consumer (i) written advance notice that an investigative consumer report may be obtained; (ii) a copy of the Federal Trade Commission's summary of his or her rights as a consumer;<sup>1</sup> and (iii) notification that he or she may request "a complete and accurate disclosure of the nature and scope of the investigation requested." Such notice must be made in a written statement that is mailed, or otherwise delivered, to the consumer no later than 5 days after the date on which the request was received from the consumer or the report was first requested, whichever is later.

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<sup>1</sup> A *Summary of Your Rights Under the Fair Credit Reporting Act* may be downloaded from the FTC's web site at [www.ftc.gov/bcp/online-edcams/fcra/summary.html](http://www.ftc.gov/bcp/online-edcams/fcra/summary.html). The summary describes the consumer's rights to (i) access his or her file; (ii) dispute the accuracy of the information in the file; (iii) correct or delete inaccurate information; (iv) prevent the release of outdated information; (v) consent before information is released; and (vi) sue violators.

Courts must certify to any “consumer reporting agency” that it has taken these steps. A Certification to Consumer Reporting Agency Form has been provided for that purpose.

**B. Notice requirement before taking adverse action on the basis of a report.**

At least five days before taking adverse action (such as denying someone a job, a promotion or a reassignment) based in whole or in part on a consumer report (or an investigative consumer report), courts must: (i) notify the consumer of the action it plans to take; (ii) give the consumer a copy of the FTC’s summary or rights.

**C. Notice requirements after taking adverse action on the basis of a report.**

Within a reasonable time after making an adverse employment or appointment decision on the basis of a consumer report, courts must (i) give the consumer (applicant) notice of the adverse decision; (ii) provide the name, address and phone number of the credit reporting agency that provided the report the court relied upon, in whole or in part; (iii) provide a statement explaining that the consumer reporting agency simply provided the report and that it is not the one that made the adverse decision; (iv) explain that he or she can get a free copy of the report from the consumer reporting agency within sixty days; and (vii) explain to the consumer that he or she has a right to dispute the accuracy or completeness of the report with the consumer reporting agency.

**5. Independent Contractor Appointment:**

Following reference checks, a criminal record check and a credit report (if required), applicants whose experience and other qualifications meet the court’s criteria are eligible for appointment as an independent contractor. **Court officers may be appointed for a term not to exceed two (2) years [MCR 3.106 (C)], and the court shall, in its sole and complete discretion, have the option to reappoint the independent contractor for a period of time up to two (2) years.**

The State Court Administrative Office has provided the Independent Contractor Agreement for Court Officer. We strongly recommend that courts use the enclosed model agreement, and make sure individuals or businesses sign the agreement before performing court officer services. Should a court decide to change the agreement, use a different agreement, or choose not to use the agreement, the court should consult with legal counsel with expertise in employment law before doing so.

Courts should confirm the appointment of a Court Officer as an independent contractor with an Order or letter. The model Order of Appointment-Independent Contractor has been provided for that purpose. Courts can convert the Order to letter format, if desired.

## **6. Arrest Authorization:**

It is important for courts to confirm in writing if arrest powers pursuant to MCR 2.103 (D) **have** or **have not** been delegated. The Arrest Authorization Form can be used for this purpose, but may not be necessary if the Order of Appointment-Independent Contractor is used (see 5. Independent Contractor Appointment).

## **7. Appointment Records and Record Retention:**

The application for appointment, independent contractor agreement, and other general appointment related information should be kept in an appointment record file. The results of criminal record checks, credit reports, reference checks and other confidential information should be kept in a confidential records file.

Appointment records for current independent contractors must be kept while under contract with the court, and for 10 years following termination of the contractual relationship. Applications for appointment and other records related to the appointment process must be retained for 3 years.

Access to confidential information should be limited to the chief judge, or designee. The designee would typically be another judge, the court administrator or court personnel/human resources director.

EQUAL OPPORTUNITY

<input type="checkbox"/> Judicial District <input type="checkbox"/> Judicial Circuit <input type="checkbox"/> County Probate	<b>REQUEST FOR APPOINTMENT AS COURT OFFICER PURSUANT TO MCR 3.106 (INDEPENDENT CONTRACTOR)</b>	Appointment Period: _____ to _____ (Not to exceed 2 years) Renewal Application? <input type="checkbox"/> Yes <input type="checkbox"/> No
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ALL QUESTIONS MUST BE ANSWERED

PLEASE PRINT

**GENERAL INFORMATION**

DATE: \_\_\_\_\_

Name: \_\_\_\_\_ Soc. Sec. No.: \_\_\_\_\_  
Last First Middle

Home Address: \_\_\_\_\_  
Street City State Zip

Phone No.: \_\_\_\_\_ Fax No.: \_\_\_\_\_

Pager No.: \_\_\_\_\_ Cellular No.: \_\_\_\_\_

Business Address: \_\_\_\_\_  
Street City State Zip

Phone No.: \_\_\_\_\_ Fax No.: \_\_\_\_\_

1. Are you authorized to work in the United States? [ ] Yes [ ] No  
Please submit copies of your driver's license and social security card.
2. Are you a resident of the State of Michigan? [ ] Yes [ ] No
3. Are you over 18 years of age? [ ] Yes [ ] No
4. Did you graduate high school or obtain a G.E.D. certificate? [ ] Yes [ ] No
5. Specify the types of service you are requesting:  
 General Process  
 Orders for Seizure of Property  
 Orders of Eviction  
 Arrest Authority [Pursuant to MCR 2.103(D)]



6. List all courts in which you are currently appointed to serve process under MCR 3.106. Include the name of the court, the date(s) of appointment, the approximate expiration date of the appointment, and the nature of services you performed, are performing or are authorized to perform.

<u>Court</u>	<u>Appointment</u> From:      To:	<u>Services Performed</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

(Use Separate Sheet, If Needed)

7. List all counties in which you are currently deputized to serve process under MCR 3.106. Include the name of the department, the date(s) of appointment, the expiration date of the appointment, and the nature of services you performed, are performing or are authorized to perform.

<u>Court</u>	<u>Appointment</u> From:      To:	<u>Services Performed</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

(Use Separate Sheet, If Needed)

8. List all previous court appointments where you were appointed to serve process under MCR 3.106 (excluding current court appointments). Include the name of the court, the dates of appointment and the services you performed.

<u>Court</u>	<u>Appointment</u> From:      To:	<u>Services Performed</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

(Use Separate Sheet, If Needed)

9. List all previous counties that you were deputized to serve process under MCR 3.106 (excluding current counties where you are deputized). Include the name of the department, the dates of appointment and the services you performed.

<u>Court</u>	<u>Appointment</u> From:            To:	<u>Services Performed</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

(Use Separate Sheet, If Needed)

10. Have you ever been denied appointment or re-appointment as a court officer or had your appointment or employment revoked or terminated by any court?  Yes  No  
(If yes, provide details on a separate sheet).
11. Have you ever been convicted of a felony (or misdemeanor within the last 10 years)?  
 Yes  No (If yes, provide details on a separate sheet).
12. Have you had a civil judgment (excluding civil infractions) entered against you in the past ten years?  Yes  No  
(If yes, provide details on a separate sheet).
13. Are any lawsuits pending or have there been any lawsuits or judgments filed against you as result of your duties as a Court Officer, Bailiff or Deputy?  Yes  No  
(If yes, provide details on a separate sheet).
14. Have you ever filed for bankruptcy?  Yes  No  
(If yes, provide the date of filing, name of court, case number and other relevant details).
15. Do you have a permit to carry a concealed weapon?  Yes  No  
If yes,  
(a) attach a copy of your CCW Permit.  
(b) do you or would you carry a weapon in the course of your duties as a Court Officer?  
 Yes  No
16. Have you ever had a complaint against you filed with a court or a law enforcement agency regarding the use of your weapon during the performance of your duties as a Court Officer?  
 Yes  No If yes, provide the date and circumstances on an additional sheet of paper.
17. Have you ever had your license to carry a concealed weapon revoked?  
If yes, please state the date and describe the circumstances of the incident(s).

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18. List any special skills, training or certifications that are related to this appointment:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

19. List any professional organizations to which you belong that are related to this appointment:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

20. Were you in active U.S. Military Service  Yes  No  
If yes, type of separation: \_\_\_\_\_

21. When are you available to begin an appointment as a Court Officer?  
 Immediately  Need notice, time required \_\_\_\_\_

22. Why do you want to enter into an agreement to perform the services of a Court Officer?

\_\_\_\_\_  
\_\_\_\_\_

**23. EDUCATION**

School	Name of School	Location City/state	Highest Yr. Completed	Major, Degree, Credential(s)	Graduate?
High School			1 2 3 4		
College					Yes <input type="checkbox"/> No <input type="checkbox"/>
Post-Graduate					Yes <input type="checkbox"/> No <input type="checkbox"/>

**24. EMPLOYMENT HISTORY (Last 5 years)**

Name of Employer: \_\_\_\_\_

Address: \_\_\_\_\_ Phone No.: \_\_\_\_\_

Start Date: \_\_\_\_\_ End Date: \_\_\_\_\_

Supervisor/Contact Person: \_\_\_\_\_

Position Held: \_\_\_\_\_ List Main Duties: \_\_\_\_\_

If no longer employed, reason for leaving? \_\_\_\_\_

Name of Employer: \_\_\_\_\_

Address: \_\_\_\_\_ Phone No.: \_\_\_\_\_

Start Date: \_\_\_\_\_ End Date: \_\_\_\_\_

Supervisor/Contact Person: \_\_\_\_\_

Position Held: \_\_\_\_\_ List Main Duties: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
If no longer employed, reason for leaving? \_\_\_\_\_

Name of Employer: \_\_\_\_\_

Address: \_\_\_\_\_ Phone No.: \_\_\_\_\_

Start Date: \_\_\_\_\_ End Date: \_\_\_\_\_

Supervisor/Contact Person: \_\_\_\_\_

Position Held: \_\_\_\_\_ List Main Duties: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
If no longer employed, reason for leaving? \_\_\_\_\_

Name of Employer: \_\_\_\_\_

Address: \_\_\_\_\_ Phone No.: \_\_\_\_\_

Start Date: \_\_\_\_\_ End Date: \_\_\_\_\_

Supervisor/Contact Person: \_\_\_\_\_

Position Held: \_\_\_\_\_ List Main Duties: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
If no longer employed, reason for leaving? \_\_\_\_\_

25. Give the name, address and telephone numbers of three references and explain your relationship with each individual. If possible, each reference should be from courts or law firms for which you have served process or worked as a court officer.

1. \_\_\_\_\_  
\_\_\_\_\_

2. \_\_\_\_\_  
\_\_\_\_\_

3. \_\_\_\_\_  
\_\_\_\_\_

26. Give the name and address of any individual or entity who regularly performs Court Officer-related services for you.

1. \_\_\_\_\_  
\_\_\_\_\_

2. \_\_\_\_\_  
\_\_\_\_\_

3. \_\_\_\_\_  
\_\_\_\_\_

27. For each item listed below. Provide the name and address of the individual or entity you use or will use most often on orders for the seizure of property or evictions issued out of this court.

Towing: \_\_\_\_\_  
\_\_\_\_\_

Storage: \_\_\_\_\_  
\_\_\_\_\_

Locksmith: \_\_\_\_\_  
\_\_\_\_\_

28. If currently under appointment with another Court(s), may we contact the Court(s) with which you are under appointment? Yes [ ] No [ ]

29. Name of relative(s) employed with this court, if applicable: \_\_\_\_\_  
\_\_\_\_\_

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**PLEASE READ BEFORE SIGNING THE CERTIFICATION AND AGREEMENT.  
IF YOU HAVE ANY QUESTIONS,  
CONSULT THE COURT OR YOUR ATTORNEY.**

**APPLICANT'S CERTIFICATION AND AGREEMENT**

**I hereby authorize an investigation of my past employment/contract activities and statements contained in this application and specifically authorize the Court to consult with all third parties with whom or which I have been associated concerning my qualifications, or with any third parties who may have information bearing thereon and to receive and utilize any information which may be material to my qualifications; and I hereby release all third parties who provide information to the Court with or without notice to me, from any and all liability for the transmittal of any information bearing on my qualifications, in connection with any such request. I further authorize the Court to secure a copy of any criminal, driving, court or credit record about me at any time before or during any appointment as a Court Officer and to conduct whatever investigation the Court deems appropriate.**

**I further authorize and release the Court from all liability for forwarding to any other entity to which I may apply for employment, any information concerning me or my qualifications as the Court has at the time of my application for appointment or hereafter acquires. I further release from all liability any and all third parties for any statements made or any action taken in connection with this application or any other applications made simultaneously herewith, or in connection with any other form of review of my qualifications. I hereby waive on behalf of the Court and any and all third parties any and all notice(s) to which I would otherwise be entitled.**

**I certify that all information submitted by me in this application is true and correct and understand if any such information is found to be false or otherwise incorrect or incomplete, it may result in termination of the independent contractor relationship I wish to establish with the Court, at the sole discretion of the Court.**

**I certify and agree that if I am chosen to provide Court Officer services for the Court, I will not be an employee of the Court, but will be an independent contractor.**

**I hereby acknowledge that I have read the above state and understand same.**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Signed**

**COURT OFFICER  
TELEPHONE REFERENCE CHECK**

Name of Applicant: \_\_\_\_\_

Name of Employer/Client: \_\_\_\_\_ Phone #: \_\_\_\_\_

Contact Person (Name and Title): \_\_\_\_\_

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1. What was the title and general description of the position that the applicant occupied?
  
2. The applicant indicates having worked for you from: \_\_\_\_\_ to: \_\_\_\_\_ .  
Is that correct?
  
3. How would you characterize the professional/technical skills of the applicant?
  
4. Describe the applicant's interpersonal communication skills.
  
5. Would you rehire the individual?
  
6. In your opinion, is there any reason we should not consider this applicant for employment/appointment with the court?
  
7. Are there other comments you would care to add?

\_\_\_\_\_  
Name of person conducting reference check

\_\_\_\_\_  
Date





**CREDIT REPORT AUTHORIZATION - INDEPENDENT CONTRACTOR**

I acknowledge that the Court may, in considering my request for appointment as Court Officer or at any time during the existence of my appointment with the Court, if any, request, obtain, review and consider a copy of my credit report. I hereby authorize the Court to, from this date until the termination of my appointment as a Court Officer, if any, request, obtain, review and consider my credit report.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signed

**CERTIFICATION TO CONSUMER REPORTING AGENCY**

Re: Certification to Consumer Reporting Agency

Dear Consumer Reporting Agency:

\_\_\_\_\_ is requesting a consumer report regarding \_\_\_\_\_.

Pursuant to Section 604(b) of the Fair Credit Reporting Act, as amended, \_\_\_\_\_ hereby certifies the following:

1. \_\_\_\_\_ has provided \_\_\_\_\_ with a clear and conspicuous written disclosure, in a document that consists solely of the disclosure, that a consumer report is being obtained for appointment purposes;
2. \_\_\_\_\_ has authorized in writing the procurement of a consumer report by \_\_\_\_\_; a copy of same is attached;
3. Before taking any adverse action based in whole or in part on the consumer report, \_\_\_\_\_ shall provide to \_\_\_\_\_, a copy of the consumer report and a summary description in writing of the rights of the consumer.
4. \_\_\_\_\_ will not use the information from the consumer report on \_\_\_\_\_ in violation of any Federal or State equal employment opportunity law or regulation.

In light of the above certification, please process a consumer report regarding \_\_\_\_\_ concerning \_\_\_\_\_. Should you have any questions regarding the above certification or the enclosed authorization form, please contact the undersigned.

Sincerely,

\_\_\_\_\_

**INDEPENDENT CONTRACTOR AGREEMENT FOR COURT OFFICER**

This Independent Contractor Agreement for Court Officers (hereinafter “AGREEMENT”)

is made between

_____	(full name)
_____	(d/b/a)
_____	(business address)
_____	(city/state/zip)
_____	(business telephone number)
_____	(cell telephone number)
_____	(pager number)
_____	(business fax number)
_____	(home address)
_____	(city/state/zip)
_____	(home telephone number)
_____	(home fax number)
_____	(tax identification number)

(hereinafter “INDEPENDENT CONTRACTOR”) and \_\_\_\_\_ (hereinafter “COURT”).

**RECITALS**

**WHEREAS**, the COURT is organized under the Michigan Constitution of 1963, the Michigan Public Acts and/or the Michigan Rules of Court for the performance of judicial/governmental functions;

**WHEREAS**, a series of Michigan statutes and court rules, including but not limited to MCL600.1908, MCL600.8321 and MCR 3.106, have authorized the COURT to appoint Court

Officers to perform certain services for the COURT, including but not limited to execution on writs of garnishment pursuant to MCR 4.201, and execution on judgments pursuant to MCL600.6001, et al.;

**WHEREAS**, INDEPENDENT CONTRACTOR wishes to conduct business by performing or employing suitable individuals to perform services for the COURT on an as-needed basis and in conformity with the Michigan Constitution, all applicable Michigan statutes and court rules and any rules or guidelines promulgated or set forth by the COURT, as same may be modified from time to time;

**WHEREAS**, the parties hereto wish to enter into an agreement for INDEPENDENT CONTRACTOR to provide the COURT services as a Court Officer, as set forth, explained, defined and established by the Michigan Compiled Laws and the Michigan Court Rules, as well as any other additional rules or procedural requirements promulgated or set forth by the COURT, which rules, statutes and court rules may be amended from time to time, and;

**WHEREAS**, the parties hereto deem it essential, as well as mutually beneficial to their respective interests to establish and maintain an independent contractor relationship;

**NOW, THEREFORE**, it is agreed as follows:

**1. TERM OF AGREEMENT**

**1.1** This Agreement shall commence at 12:01 a.m. on \_\_\_\_\_, 20\_\_ and shall end at 12:00 midnight on \_\_\_\_\_, 20\_\_.

**1.2** This Agreement will not automatically be renewed upon completion of the term of this Agreement. The COURT shall, in its sole and complete discretion, have the option to offer INDEPENDENT CONTRACTOR a chance to renew this Agreement for a period of time up to two years.

**2. INDEPENDENT CONTRACTOR**

**2.1** INDEPENDENT CONTRACTOR is an independent contractor, not an employee of the COURT. The COURT is interested only in the results obtained by INDEPENDENT CONTRACTOR; provided INDEPENDENT CONTRACTOR operates within the requirements and constraints of Michigan and federal law, including by way of example and not by limitation MCR 3.105 and MCR 3.106. INDEPENDENT CONTRACTOR shall have sole control of the manner and means of performance under this Agreement. Unless the COURT terminates the relationship altogether by exercising its right to terminate this Agreement, the COURT shall not have the right to require INDEPENDENT CONTRACTOR or INDEPENDENT CONTRACTOR'S employees, agents or subcontractors to do anything that would jeopardize the relationship or status of INDEPENDENT CONTRACTOR.

**2.2** INDEPENDENT CONTRACTOR and its employees, agents or subcontractors are prohibited from representing him/her or itself as an employee of the COURT.

**2.3** The COURT does not accept responsibility for and shall not be liable for the acts of either INDEPENDENT CONTRACTOR or INDEPENDENT CONTRACTOR'S officers, agents, employees or subcontractors. INDEPENDENT CONTRACTOR agrees to hold the COURT harmless for all acts of INDEPENDENT CONTRACTOR and its officers, agents, employees and subcontractors.

**2.4** INDEPENDENT CONTRACTOR does not have, nor shall INDEPENDENT CONTRACTOR hold itself out as having, any right, power or authority to create any contract or obligation, expressed or implied, on behalf of, in the nature of, or binding upon the COURT unless the COURT shall specifically consent thereto in writing. However, INDEPENDENT

CONTRACTOR is authorized under this Agreement to perform the services of a Court Officer for the COURT on an as-needed basis.

**2.5** INDEPENDENT CONTRACTOR covenants that he/she/it desires to be an INDEPENDENT CONTRACTOR and specifically waives any and all statutory and common law rights that he/she/it would be provided if he/she/it were considered an employee or prospective employee under local, state or federal law.

**2.6** Nothing in this Agreement shall be construed as preventing INDEPENDENT CONTRACTOR from working for, providing services to or entering into service contracts with other entities, courts, litigants, lawyers, businesses, sheriff's offices, state or local governments, corporations or the general public. The COURT shall not be a party to, and expressly disclaims any interest in any contract made by INDEPENDENT CONTRACTOR to which the COURT is not a signatory.

**3. SERVICES PROVIDED**

**3.1** INDEPENDENT CONTRACTOR, for the period of this Agreement, shall have the opportunity to provide the COURT, on an as-needed basis, the services of a Court Officer as such services are set forth and defined by Michigan statutes and court rules.

**4. COMPENSATION**

**4.1** INDEPENDENT CONTRACTOR shall receive no salary or wage from the COURT. Compensation for the services provided by INDEPENDENT CONTRACTOR will be paid pursuant to MCL 552.23; MCL 600.2555; MCL 600.2559; as same may be amended from time to time. In order to receive statutory fees, INDEPENDENT CONTRACTOR must, upon request, produce a particularized accounting of all the fees claimed, specifying for what they respectfully accrued. INDEPENDENT CONTRACTOR shall further provide receipts for all expenses claimed.

INDEPENDENT CONTRACTOR, and not the COURT, is responsible for all expenses not referred to in the above mentioned statutes.

**4.2** Provided such contracts are consistent with Michigan law, INDEPENDENT CONTRACTOR may make individual contracts with litigants, attorneys, businesses, corporations or members of the general public. The COURT shall not be made a party to, and shall have no interest in, any contract INDEPENDENT CONTRACTOR may make with any other individual or entity.

**4.3** To the extent the COURT pays INDEPENDENT CONTRACTOR statutory or other fees for any services INDEPENDENT CONTRACTOR may perform under this Agreement, the COURT shall not withhold any federal, state or local income taxes, social security taxes, or other deductions required by either local, state or federal governments from the statutory fees remitted to INDEPENDENT CONTRACTOR. INDEPENDENT CONTRACTOR bears the sole responsibility for reporting and sending to the appropriate entity any required federal, state or local income tax. The COURT shall provide INDEPENDENT CONTRACTOR with an Internal Revenue Service Form 1099, MISC at the end of each calendar year. In light of INDEPENDENT CONTRACTOR'S status as an independent contractor, the COURT cannot and does not provide workers' compensation or unemployment insurance for INDEPENDENT CONTRACTOR or its employees, agents or subcontractors. INDEPENDENT CONTRACTOR shall bear sole responsibility to provide workers' compensation and unemployment insurance for its employees and agents.

## **5. POWERS AND DUTIES OF THE COURT**

**5.1** Provided that INDEPENDENT CONTRACTOR shall comply with all applicable laws and court rules, including by way of illustration, and not by limitation, MCR 3.105, MCR 3.106; MCL 600.1422; MCL 600.1910; MCL 600.2525, MCL 600.6002 and MCL 600.6010,

as same may be amended from time to time, the COURT does not retain the right to control or direct INDEPENDENT CONTRACTOR'S activities or the performance of any service undertaken for the COURT by INDEPENDENT CONTRACTOR.

**5.2** The COURT is not responsible for training INDEPENDENT CONTRACTOR or any employee of INDEPENDENT CONTRACTOR.

**5.3** The COURT shall not provide INDEPENDENT CONTRACTOR with the tools, vehicles or equipment INDEPENDENT CONTRACTOR may need to perform the services of a Court Officer. INDEPENDENT CONTRACTOR shall bear sole responsibility for providing any and all tools, vehicles or equipment needed to perform the services of a Court Officer. The COURT shall, however, provide INDEPENDENT CONTRACTOR with a badge or card certifying that INDEPENDENT CONTRACTOR is vested with authority to serve process or seize property pursuant to MCL 600.8321.

**5.4** The COURT shall not have authority to require INDEPENDENT CONTRACTOR and INDEPENDENT CONTRACTOR is not obliged to devote his/her/its efforts to the Court on a full-time basis.

**5.5** The COURT shall not provide INDEPENDENT CONTRACTOR with an office or with work space.

**5.6** Provided that INDEPENDENT CONTRACTOR shall comply with applicable law, including by way of illustration and not by limitation MCR 3.105 and MCR 3.106, the COURT shall not have authority to order INDEPENDENT CONTRACTOR to perform his/her/its services in any particular order or sequence.

**5.7** The COURT shall not require INDEPENDENT CONTRACTOR to prepare or submit reports to the COURT, provided, however, that INDEPENDENT CONTRACTOR shall



be required to comply with applicable laws and court rules, including by way of illustration and not by limitation MCL 3.106, MCL 600.6001; MCR 8.204, MCR 3.106, MCL 600.6001; MCR 8.204, MCR 2.104, MCL 600.1910 and MCL 600.2525. The COURT shall also have the right to require INDEPENDENT CONTRACTOR to comply with the sections of this Agreement requiring the submission of documentation concerning INDEPENDENT CONTRACTOR'S employees, subcontractors, surety, bank or depository accounts and the basis for his/her/its claimed fees.

**5.8** The COURT shall have the right to audit the records INDEPENDENT CONTRACTOR must keep pursuant to Section 6.6 of this Agreement.

## **6. POWERS AND DUTIES OF INDEPENDENT CONTRACTOR**

**6.1** INDEPENDENT CONTRACTOR shall use his/her/its best efforts to perform any and all services for the COURT in an efficient, diligent and responsible manner that complies with all applicable statutes, court rules or constitutional provisions.

**6.2** INDEPENDENT CONTRACTOR is not required to perform services under this Agreement personally. INDEPENDENT CONTRACTOR may hire employees, agents or subcontractors that INDEPENDENT CONTRACTOR deems necessary, provided (a) INDEPENDENT CONTRACTOR trains, supervises and pays his/her/its employees, agents and subcontractors; (b) all INDEPENDENT CONTRACTOR'S agents, subcontractors and employees meet the requirements set by the COURT, and (c) that INDEPENDENT CONTRACTOR provide the COURT with lists of each and every one of INDEPENDENT CONTRACTOR'S employees, agents and subcontractors and promptly notifies the COURT when he/she/it commences or terminates his/her/its working relationship with any employee, agent or subcontractor. INDEPENDENT CONTRACTOR warrants that all services under this Agreement will be performed by qualified personnel and in a manner consistent with good professional practices and up-to-date

skills. The COURT shall not be responsible for the training, supervision or payment of any of INDEPENDENT CONTRACTOR'S employees, agents or subcontractors.

**6.3** INDEPENDENT CONTRACTOR and all of INDEPENDENT CONTRACTOR'S employees, agents and subcontractors is/are obligated under this Agreement to strictly adhere to and otherwise obey all local, state and federal laws, ordinances, codes, regulations, orders and other legal obligations.

**6.4** INDEPENDENT CONTRACTOR must possess and be able to display and produce his/her/its COURT-authorized identification at all times while performing services as a Court Officer.

**6.5** INDEPENDENT CONTRACTOR shall keep a written record of the date, amount and nature of each financial transaction conducted by either INDEPENDENT CONTRACTOR or his/her/its employees, agents or subcontractors in the course of any task performed under or pursuant to the authority obtained through this Agreement.

**6.6** INDEPENDENT CONTRACTOR must provide the courts with the names and addresses of each and every financial institution in which INDEPENDENT CONTRACTOR or INDEPENDENT CONTRACTOR'S employees, agents or subcontractors deposits money or stores property collected while acting as a Court Officer. INDEPENDENT CONTRACTOR shall also provide the Court with a list identifying each and every account number, locker, deposit box or other account or storage unit that INDEPENDENT CONTRACTOR or INDEPENDENT CONTRACTOR'S employees, agents or subcontractors have or use in each said facility or financial institution.

**7. INCOME TAX**

**7.1** INDEPENDENT CONTRACTOR acknowledges that he/she/it shall be responsible for all federal, state and local payroll taxes on all monies earned by INDEPENDENT CONTRACTOR as a result of this Agreement and shall pay any taxes due to any governmental authority, including but not limited to the Internal Revenue Service, the State of Michigan and local government, on account of any and all income earned in connection with or as a result of this Agreement.

**7.2** INDEPENDENT CONTRACTOR acknowledges that any employee, agent, or subcontractor of INDEPENDENT CONTRACTOR that provides services in connection with this Agreement shall be responsible to pay taxes on any income earned in connection with this Agreement. INDEPENDENT CONTRACTOR further agrees to withhold taxes from any agent, employee or subcontractor of INDEPENDENT CONTRACTOR where appropriate or required by law.

**7.3** INDEPENDENT CONTRACTOR shall and does hereby indemnify and hold the COURT and the State of Michigan harmless from any claim by any taxing authority on any income earned by INDEPENDENT CONTRACTOR or any agent or employee of INDEPENDENT CONTRACTOR.

**7.4** INDEPENDENT CONTRACTOR agrees to provide the COURT, upon request, with proof that appropriate measures have been taken to notify appropriate local, state and federal authorities of any income earned by INDEPENDENT CONTRACTOR, or by any agent, employees or subcontractors of INDEPENDENT CONTRACTOR in accordance with this Agreement.

7.5 If INDEPENDENT CONTRACTOR is a corporation, INDEPENDENT CONTRACTOR agrees to file an assumed name certificate with the Michigan Corporation Securities and Loan Development Bureau, Corporation Division and with any other entity that requires such or a similar filing. INDEPENDENT CONTRACTOR, if a corporation, further agrees that it will secure a federal tax identification number from the Internal Revenue Service.

**8. WORKERS' COMPENSATION INSURANCE**

8.1 INDEPENDENT CONTRACTOR shall maintain, throughout the performance of his/her/its obligations under this Agreement, a policy or policies of unemployment compensation and workers' compensation insurance with such limits as shall be required by law.

8.2 Promptly upon written request of the Court, INDEPENDENT CONTRACTOR shall furnish the COURT with a written certificate or certificates from its insurers or their agents, addressed to the COURT, indicating the existence of INDEPENDENT CONTRACTOR'S coverage, the amount and nature of such coverage, and the expiration date or dates of each applicable policy. In the alternative, INDEPENDENT CONTRACTOR may be a self-insurer upon meeting those requirements of the applicable regulatory authorities for any or all of the areas set forth above for which INDEPENDENT CONTRACTOR customarily self insures.

**9. INDEMNIFICATION**

9.1 INDEPENDENT CONTRACTOR shall be liable for damages which result from his/her/its own negligent or intentional acts or omissions or the negligent or intentional acts or omissions of his/her/its employees, agents or subcontractors.

9.2 INDEPENDENT CONTRACTOR assumes full and complete responsibility for all injuries to, or death of, any person including his/her/its employees, agents or subcontractors and for damages to property, including property of the COURT, arising from or associated with

INDEPENDENT CONTRACTOR'S work or the work of INDEPENDENT CONTRACTOR'S employees or agents in connection with this Agreement, while acting as a Court Officer, under the auspices of acting as a Court Officer, or on the COURT'S premises.

**9.3** INDEPENDENT CONTRACTOR shall indemnify, defend and hold the COURT harmless from all claims, losses and expenses, including reasonable attorneys' fees, for such injuries or damages, whether or not such claims are valid. Neither INDEPENDENT CONTRACTOR nor its employees, agents or subcontractors are liable for damages which may be caused by the sole negligence of the COURT.

**10. SURETY**

**10.1** INDEPENDENT CONTRACTOR must file with the Chief Judge of the COURT a bond approved by the Chief Judge in a penal sum determined by the State Court Administrator, that INDEPENDENT CONTRACTOR will account for and pay over all money and property which may be received by INDEPENDENT CONTRACTOR to the person or persons lawfully entitled to the money or property. The bond shall protect against fraud and dishonesty and shall satisfy the requirements of MCR 8.204, as amended. If requested by the COURT, INDEPENDENT CONTRACTOR shall produce documentation proving the existence and sufficiency of said bond within ten days of request.

**11. TERMINATION**

**11.1** This Agreement may be terminated by either party on 30 days written notice to the other party at the above listed addresses of the parties, with or without cause.

**11.2** By way of illustration and not by limitation, the COURT may immediately terminate this Agreement if, in the COURT'S sole and complete discretion, INDEPENDENT CONTRACTOR:

- (a) fails to perform any obligations imposed on him/her/it by this Agreement;
- (b) fails to report or account for any money or property seized in connection with INDEPENDENT CONTRACTOR'S duties as a Court Officer;
- (c) embezzles or converts any of the money or property obtained or seized pursuant to INDEPENDENT CONTRACTOR'S authority under this Agreement;
- (d) fails to perform his/her/its duties as Court Officer in a manner consistent with Michigan or federal laws;
- (e) is convicted of any felony or misdemeanor;
- (f) creates for the COURT, as determined by the COURT in its sole and complete discretion, an unfavorable impression in the public mind;
- (g) owes any indebtedness owed to the COURT that is more than thirty (30) days past due; or
- (h) violates any court rules or statutes.

**11.3** The right of termination under this Agreement pursuant to this section is absolute and the COURT shall not incur any liability by reason thereof. INDEPENDENT CONTRACTOR releases the COURT from any claim of any nature (including, but not limited to damages sustained on account of loss of prospective profits or investments, contracts, leases, or other commitments) resulting from or arising out of such termination, provided, however, that nothing in this section shall be construed as a release of any obligation that shall have accrued prior to the effective date of such termination.

**11.4** At the time of termination, INDEPENDENT CONTRACTOR must immediately return any and all property of the COURT which INDEPENDENT CONTRACTOR possesses or controls, including, but not limited to, any and all identification cards and badges issued by the COURT.

**12. MISCELLANEOUS GENERAL PROVISIONS**

**12.1** The COURT, in its sole and complete discretion, shall have sole, complete and absolute authority to determine whether INDEPENDENT CONTRACTOR satisfied, has fulfilled or is in compliance with any term, condition or section of this Agreement.

**12.2** If any part of this Agreement is held by a court or administrative agency of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions in this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

**12.3** INDEPENDENT CONTRACTOR agrees and deems that none of the provisions or covenants contained herein shall render this Agreement or any of its provisions invalid or unenforceable for lack of mutuality of obligation or remedy and INDEPENDENT CONTRACTOR further agrees and deems that the consideration exchanged for various covenants, agreements, and provisions herein is sufficient, apportionable and proportionate.

**12.4** INDEPENDENT CONTRACTOR has considered, understands and agrees to each and every provision of this Agreement. INDEPENDENT CONTRACTOR enters into this Agreement knowingly and voluntarily, and has not received, nor is he/she/it relying on any representations by the COURT, its employees, their agents or attorneys. INDEPENDENT CONTRACTOR agrees that he/she/it was provided the opportunity to have this Agreement reviewed by an attorney prior to signing this Agreement.

**12.5** This Agreement constitutes the sole and entire agreement between INDEPENDENT CONTRACTOR and the COURT.

**12.6** This Agreement shall enure to the benefit of and be binding upon, heirs and assigns, and shall be interpreted according to the laws of the State of Michigan.

**12.7** This Agreement supersedes all prior and contemporaneous statements, promises, understandings or agreements. This Agreement cannot be modified by verbal promises or agreements. Any modification of this Agreement or additional obligations assumed by either party in connection with this Agreement shall be binding only if evidenced in a writing signed by INDEPENDENT CONTRACTOR and the then acting Chief Judge of the COURT.

**12.8** The failure of either party to this Agreement to insist upon performance of any of the terms and conditions of this Agreement, or the waiver of any breach of any of the terms and conditions of this Agreement, shall not be construed as a future waiver of any such terms and conditions, but same shall constitute and remain in full force and effect as if no such forbearance or waiver occurred.

**12.9** The titles of the sections or paragraphs of this Agreement are solely for the convenience of the parties and shall not be used to explain, modify, simplify or aid in their interpretation.

\_\_\_\_\_  
INDEPENDENT CONTRACTOR

\_\_\_\_\_  
COURT

\_\_\_\_\_  
WITNESS

Subscribed and sworn to before me this  
\_\_\_\_ day of \_\_\_\_\_, 2000.

\_\_\_\_\_  
Notary Public,  
\_\_\_\_\_ County, Michigan  
My Commission Expires:



**ORDER OF APPOINTMENT – INDEPENDENT CONTRACTOR**

Order (year) - (number)

**IT IS HEREBY ORDERED:**

That [full name of Court Officer] is hereby appointed to be a Court Officer for [name of the Court] in conformity with MCR 3.106. Consistent with the [title of the governing court officer contract], the terms and conditions of which are incorporated herein, [name of Court Officer] is and will remain an independent contractor, having the option of performing services for the Court on an as needed basis for a fee.

This appointment is for a period commencing [month/day/year]; and not to exceed two (2) years pursuant to MCR 3.106.

This appointment means that the Court Officer may be requested, on an as needed basis, to perform the following duties:

- Orders of Eviction
- Orders for the Seizure or Attachment of Property
- Orders requiring Arrest authority pursuant to MCR 2.103(D)
- Other services the Court may require

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**Chief Judge**

---

**Date**

**ARREST AUTHORIZATION**

The ( \_\_\_\_\_ Judicial District Court/ \_\_\_\_\_ Judicial Circuit Court/ \_\_\_\_\_  
County Probate Court)

Does

Does not

Authorize \_\_\_\_\_ to serve process that requires  
making arrests pursuant to MCR 2.103 (D).

\_\_\_\_\_  
Court

\_\_\_\_\_  
Court Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date



[ ] COUNTY  
[ ] COURT

[ ], MICHIGAN  
THIS IS TO CERTIFY THAT



---

Whose photograph and description appears hereon, is a court officer for the [ ] Court and is vested the authority of a court officer pursuant to MCR 3.106.

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[name] [ ] Judge

Expires: [ ]

## 13-02 SURETY BOND REQUIREMENTS

### A. Bonds Required for Court Personnel

COURT	POSITION TITLE	BLANKET OR INDIVIDUAL	AMOUNT	FOR BENEFIT OF OR GIVEN TO	APPROVED BY	FILED WITH	CITATION
District	Magistrate	Individual	\$50,000 Amount set by State Court Administrator	District Court and State of Michigan	Chief Judge	County Treasurer and Chief Judge	MCL 600.8507, MCR 8.204
District	Clerk or Deputy Clerk	Blanket or Individual	\$50,000 Amount set by State Court Administrator	District Court and State of Michigan	Chief Judge	Chief Judge	MCR 8.204
District	Process Server acting under MCR 2.103(A) (Appointed by court)	Blanket or Individual	\$10,000 Amount set by State Court Administrator	District Court and State of Michigan	Chief Judge	Chief Judge	MCR 8.204
District	Process Server acting under MCR 3.106(B)(1)(a) (Appointed by court)	Individual	\$50,000 Amount set by State Court Administrator	District Court and State of Michigan	Chief Judge	Chief Judge	MCR 8.204
Probate	Probate Register	Individual	\$1,000	Chief Judge	Chief Judge	County Clerk	MCL 600.833
Circuit	Circuit Court Clerk (County Clerk)	Blanket or Individual determined by Board of Commissioner	\$2,000	People of State of Michigan	Chief Judge	County Treasurer	MCL 50.61
Circuit	Friend of the Court	*	*	*	*	*	*

\*See Notes, item 9.

### B. Notes

- Where the court rules and statutes cited are silent or vague, specifications indicated above represent the position of the State Court Administrator.

2. The amounts stated are the minimum amounts. A higher amount may be appropriate depending upon individual court circumstances.
3. All positions require faithful performance and honesty bond coverage which should be effective before assuming and/or performing the duties of office.
4. "Boiler Plate" language in some blanket bonds appears to exclude performance and/or honesty bond coverage for the very people for whom it is required: therefore, it is strongly recommended that each court obtain a copy of all documents, including riders relating to its bond coverage and review them carefully to insure satisfactory compliance.
5. If the magistrate is covered by a blanket bond, the bond should explicitly indicate that the district court magistrate is covered and that the bond amount is at least \$50,000. Language in the blanket bond which excludes employees required to give statutory bonds should be modified to allow coverage for the district court magistrate (see Section 4-09, page 4-09-01 and Section 6-05, page 6-05-02).
6. MCL 600.8507 requires that the bond for magistrates shall apply to temporary service in another county as described in this statute (see Section 4-09, page 4-09-01).
7. MCL 700.585 requires the county treasurer to post bonds with the judge of probate under certain circumstances; it is recommended that probate judges review this statute.
8. MCL 600.572b requires the court clerk to file a bond with the county treasurer conditioned that the clerk shall, in all respects comply with the requirements of law and the court rules in the handling and management of such funds, and to faithfully account for same (see Section 4-02, page 4-02-01).
9. The friend of the court surety bond requirements are covered in the Code of Federal Regulations. Child and Family Services, in the Michigan Department of Social Services, must have and use written procedures for compliance with 45 CFR 302.19. Within these procedures are regulations requiring that every person who has access to child support collections is covered by a bond against loss resulting from employee dishonesty. This provision applies to state and local IV-D agency employees. Individual counties can have self-bonding/insuring provisions. (see also Section 4-04, Item E8, page 4-04-06) [45 CFR 302.19]

**Michigan Supreme Court**  
State Court Administrative Office  
309 N. Washington Square, P. O. Box 30048  
Lansing, Michigan 48909  
(517) 373-4835  
John D. Ferry, Jr., State Court Administrator

**M E M O R A N D U M**

**DATE:** May 28, 2002

**TO:** Chief Circuit and District Court Judges  
cc: Judges, Court Administrators, and Clerks of Court

**FROM:** John D. Ferry, Jr.

**SUBJ:** Appointment of Court Officers re: SCAO Administrative Memorandum 2002-04

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On April 26, 2002, appointment procedures for both court employee and independent contractor court officers were sent to you as SCAO Administrative Memorandum 2002-04 (<http://courts.michigan.gov/scao/resources/other/scaoadm/2002/2002-04.pdf>). Enclosed is important information regarding the inherent risks and issues associated with employee and independent contractor classifications which courts should carefully consider before determining which option is in their best interest.

Questions can be directed to John Ross at 517-373-9525 or [rossj@jud.state.mi.us](mailto:rossj@jud.state.mi.us).

JOHN F. BRADY  
THOMAS M.J. HATHAWAY  
THOMAS P. BRADY  
DANIEL J. BRETZ  
CONNIE M. CESSANTE  
DAVID A. HARDESTY  
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April 30, 2002

**PRIVILEGED AND CONFIDENTIAL  
ATTORNEY CLIENT PRIVILEGE**

John D. Ferry, Jr.  
State Court Administrator  
309 N. Washington Square  
P.O. Box 30048  
Lansing, MI 48909

Re: Court Officer Status

Dear Mr. Ferry:

MCR3.106 provides that Court Officers may be employees or independent contractors. The decision whether to classify Court Officers as employees or independent contractors is an important one that courts should consider carefully. Courts that retain the services of Court Officers without treating them as employees do not need to provide the Court Officers certain employment-related protections, such as workers' compensation or unemployment insurance. While these are attractive incentives for many businesses, there is a tremendous downside if a court or administrative agency concludes that Court Officers were improperly classified as independent contractors. Such a finding could result in orders requiring the employer to pay, *inter alia*, back wages, overtime pay, back taxes, workers' compensation benefits and/or substantial penalties. Moreover, because independent contractor status presumes a large degree independence, crafting a sustainable independent contractor relationship involves the loss of several of the controls an employer would otherwise be able to exercise over an employee.

The following discussion should assist you and each individual Court in making the difficult decision whether to classify Court Officers as employees or independent contractors.

The assumption underlying an independent contractor relationship is that two entities, in this case the court and a Court Officer, are separate businesses operating at arms length. The relationship between a court and an independent contractor is and must remain task specific and episodic. Independent contractors can agree to perform or refuse to perform each requested assignment, meaning that the court cannot count on or require the independent contractor to be there to perform any specific task he or she has not specifically agreed to perform. Moreover, while the court does have control over the outcome of the independent contractor's work, the court's ability to control the manner and means by which that work is performed is limited.

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Courts wishing to establish specific rules with which Court Officers must comply or require Court Officers to be available for duty at given times are therefore advised to establish an employer-employee relationship, not an independent contractor relationship.

In exchange for giving up control over and the ability to count on the continued presence of a specific Court Officer, courts establishing legitimate independent contractor relationships do not need to withhold payroll taxes from or provide certain employment-related benefits to independent contractors. For example, independent contractors need not be paid overtime, a minimum wage and are ineligible for workers compensation or unemployment benefits. A true independent contractor relationship also reduces the risk that a court will be found vicariously liable for a Court Officer's negligence. *Janice v Hondzinski*, 176 Mich App 49, 53 (1989).

Avoidance of these and other employment-related laws and regulations is risky. There are numerous opportunities to challenge, and several state and federal agencies have an incentive to challenge independent contractor status. The IRS, for example, issued a news release in 1995 announcing that it would focus future enforcement efforts on employers that misclassify employees as independent contractors. Similar challenges can and often do come from federal and state agencies charged with enforcing wage and hour laws. Other entrees for challenge include employees seeking workers' compensation or unemployment benefits, disgruntled workers seeking to claim employment discrimination or overtime compensation, plaintiffs seeking to pursue "deep pockets" under a vicarious liability theory, and unions seeking to include putative independent contractors in their bargaining units. *See, e.g., In Re Detroit Judicial Counsel*, Case No. C99 B-24 (December 16, 1999) (The Michigan Employment Relations Commission agreed with a union's position that Court Officers were employees, not Independent Contractors, and could be included in the bargaining unit). Courts that are found to have misclassified employees as independent contractors could face, *inter alia*, back wages, overtime, taxes, workers' compensation benefits and substantial penalties.

Unfortunately, there is no clear test for determining whether individuals are employees or independent contractors. Courts and administrative agencies have devised different, sometimes inconsistent multi-factor balancing tests to guide the determination. The common thread that is included in almost all of these tests is control. The more control a court has over the Court Officers, the more likely it is that they will be found to be employees. It is not simply the control an entity actually exercises over an individual that matters; it is the control a court retains the right to exercise. *26 CFR §§ 31.3121(d)-1(c); 31.3306(i)-1; and 31.3401(c)-1.*

The following factors, though not used by every court and agency, should be closely evaluated in determining whether an individual is an independent contractor or an employee:

1. **Instructions.** Retaining the right to require the Court Officers to comply with specific instructions or rules not set forth in a statute or Court Rule is an indication of an employer-employee relationship.



## BRADY HATHAWAY

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2. **Training.** Training Court Officers, teaching them how to perform their tasks, counseling Court Officers on how to improve their performance or disciplining Court Officers are all indications of an employer-employee relationship.
3. **Integration.** If the Court Officer's services are deemed essential to the court's business, it is an indication of an employer-employee relationship. If the tasks they perform are deemed ancillary to the court's business, it is an indication of an independent contractor relationship.
4. **Services rendered personally.** If the services must be rendered by the Court Officer him or herself, as opposed to being performed by someone the Court Officer hires to perform the task, it is an indication of an employer-employee relationship.
5. **Hiring, supervising and paying assistants.** It is an indication of an independent contractor relationship if the Court Officer can hire, supervise and pay assistants.
6. **Continuing relationship.** If a continuing relationship exists between the Court Officer and the court, if the court requires Court Officers to be available to perform work at any given time, or if the Court Officer's contract is automatically renewed, it is an indication of an employer-employee relationship.
7. **Setting work hours.** If the court can or does set the Court Officer's work hours, it is a strong indication of an employer-employee relationship.
8. **Full time requirements.** Requiring Court Officers to work full time or devote his or her services exclusively to the court is an indication of an employer-employee relationship.
9. **Doing work on business premises.** Requiring Court Officers to work on the court's premises is an indication of an employer-employee relationship.
10. **Establishing the order or sequence of work.** If the court directs or retains the right to direct or sequence or order of the Court Officer's work or duties, it is an indication of an employer-employee relationship.
11. **Oral or written reports.** If the Court Officer is required to give oral or written reports to the court, it is an indication of an employer-employee relationship.
12. **Payment by hour, week or month.** Paying a Court Officer by the hour, week or month is a strong indication of an employer-employee relationship. Payment by the job indicates an independent contractor relationship.

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13. **Payment of business and/or traveling expenses.** Paying for a Court Officer's travel, parking or business expenses is an indication of an employer-employee relationship.
14. **Furnishing tools.** Supplying Court Officers with tools or equipment is an indication of an employer-employee relationship.
15. **Significant investment.** If Court Officers have to personally invest in the tools, equipment or facilities used to perform their tasks, it is an indication of an independent contractor relationship.
16. **Realization of profit or loss.** If Court Officers may recognize a profit or loss, other than a wage loss, it is an indication of an independent contractor relationship.
17. **Working for more than one firm or court.** If the Court Officer performs more than *de minimis* services for a multiple of unrelated persons, courts or firms, it is an indication of an independent contractor relationship.
18. **Making services available to the general public.** If the Court Officer makes his or her services available to the general public, it is an indication of an independent contractor relationship.
19. **Right to discharge.** If the court has the right to terminate the relationship without liability, it is an indication of an employer-employee relationship.
20. **Right to quit.** If the Court Officer can terminate the relationship without liability, it is an indication of an employer-employee relationship.
21. **Economic Reality.** It will indicate an employer-employee relationship if the Court Officers rely exclusively on one court for the income they need to live.
22. **Degree of Skill and Independent Judgment Required.** The more skill and independent judgment Court Officers must use, or are permitted to use, the more likely it is that the relationship will be considered an independent contractor relationship.

*See, e.g., Nationwide Mutual Ins Co v Darden*, 503 US 318 (1992); *Oxley v Dept of Military Affairs*, 460 Mich 536, (1999); *Simpson v Ernst & Young*, 100 F3d 436 (CA 6, 1996); *Sanderson, III v United States*, 862 F Supp 196, 200 (WD Ohio, 1994); *IRS Revenue Rule 87-41*.

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Although the ability to control is the most important factor, no element is given decisive weight. See *NLRB v United Ins Co of America*, 390 US 254, 258 (1968); *Broussard v LH Bossier, Inc*, 789 F2d 1158, 1160-1161 (CA 5, 1986). See also *Kidder v Miller-Davis Co*, 455 Mich 25 (1997); *Tucker v Newaygo Co*, 189 Mich App 637, 639-640 (1991).

Courts have deemed it *probative of an employer-employee relationship* if the entity involved retains the right to (1) hire and fire; (2) control the time and place the worker reported to work; (3) train workers; (4) cancel an individual's contract; (5) require the worker to work exclusively for one entity; (6) control who works for the individual; (7) require specific billing procedures; or (7) discipline an individual. Other factors suggesting an employer-employee relationship are if the worker (1) does not own the equipment necessary to do the job; (2) is required to maintain radio contact with the entity; (3) depends on the job in question to earn a living; (4) provides a service that is integral to the entity; or (5) is paid by the hour. See, e.g., *Henderson v Inter-Chem Coal Co, Inc*, 2 WH Cases 695 (CA 10, 1995); *Burry v National Trailer Convoy, Inc*, 16 WH Cases 713 (CA 6, 1964); *Detroit v Salaried Physicians Professional Association, UAW*, 165 Mich App 142 (1987) (physicians were employees even though the city did not oversee their work because the city set the doctors' hours, controlled the number of patients they saw and where the doctors' work was integral to the city's work of providing a hospital); *White v Central Transport, Inc*, 150 Mich 129 (1986) (despite an independent contractor agreement, truck drivers were employees because the business controlled the drivers' routes, scheduling, rates and retained the power to designate any driver as unacceptable).

Federal and state courts found it *probative of an independent contractor relationship* where workers: (1) own and maintain their own equipment or vehicles; (2) hold themselves out as free-lance workers that use their skills for a variety of businesses; (3) conduct their own advertising and pay their own expenses; (4) are responsible for paying their own insurance premiums and taxes; (5) can supply their own assistants and work for other companies; (6) are permitted to choose their own routes and destinations; (7) have a high degree of skill; and (8) where the worker is taking a financial risk in performing a particular job. *Henderson, supra*; *Everman v Mary Kay Cosmetics, Inc*, 967 F2d 1158 (CA 6, 1992); *Broussard v LH Bossier, Inc*, 789 F2d 1158 (CA 5, 1986). See, e.g., *Amerisure v Time Auto*, 196 Mich App 569, 575 (1992) (transport drivers that own their own equipment, set their own hours and could refuse loads were independent contractors); *Williams v Cleveland Cliffs*, 190 Mich App 624, 628 (1991) (driver who owned and maintained his own truck, paid his own insurance, paid for his own advertising and published his own rates was an independent contractor).

The model independent contractor agreement that is enclosed in this package gives courts a great degree of control over the *Agreement* itself. The *Agreement* gives the court the right to decide how the *Agreement* is construed, whether to offer an extension, whether a Court Officer has violated it and whether to terminate it. However, mindful of the legal principles outlined above, and also fearful that a court or administrative agency may believe that Court Officers perform a service essential to the courts' function, the model *Agreement* has been drafted in a manner that minimizes the control the individual courts have over the Court Officers themselves.

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Thus, for example, the Agreement specifically provides that Court Officers may choose their own hours, hire their own employees, determine their own operating procedure, work for other courts, make contracts with or provide services to other entities and train their own employees, agents and subcontractors. The Agreement also requires Court Officers to pay their own taxes, pay their own workers' compensation and unemployment insurance, buy their own tools and provide their own insurance.

Any alteration of these terms, whether they are explicitly written into the Agreement or simply appear in practice, could cause a court or administrative agency to determine that the relationship is really an employer-employee relationship. Courts should consult an attorney before making any change to the Agreement. It should also be clear that the Agreement will not, by itself, guarantee that a court or administrative agency will conclude that an independent contractor relationship truly exists. Nor will the Agreement be the only criterion a court or administrative agency will use in making this determination. The analysis is decidedly fact-based, such that the *actual practices* of each individual relationship will be reviewed. That means that each individual court should beware of imposing (or permitting court employees to impose) more requirements or controls than the Agreement creates. Thus, for example, requiring Court Officers to check in every day, creating a schedule for Court Officers, giving preference to Court Officers due to their loyalty to a particular court or length of service, *et. cetera*, could defeat the goal of the Agreement and inspire a ruling that the Court Officers are really employees. Courts should also make it clear to the Court Officers that they are absolutely forbidden from representing themselves as employees or conducting themselves in a manner that would make them appear like they are employees.

The foregoing discussion is designed to provide an overview of the issues surrounding the decision whether to classify Court Officers as employees or independent contractors. Courts that have questions whether their unique circumstances support the independent contractor classification should contact me or another employment attorney to discuss the matter. I also advise that Courts contact me or another employment attorney before making any alterations to the model forms, agreements and documents that have been sent under separate cover.

Very truly yours,

**BRADY HATHAWAY BRADY & BRETZ, P.C.**

/s/

Jeffrey A. Steele

JAS/jr

**Implementation of SCAO Administrative Memorandum 2002-04  
MCR 3.106, Appointment of Court Officers  
Amended 5/15/06**

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The following information addresses implementation questions which have arisen since AM 2002-04 and MCR 3.106 took effect.

- Q** If the court does not designate who may seize property or conduct evictions, can the plaintiff give the papers to any court officer in the state appointed for that purpose?
- A** No. If no one is designated by the court for such purposes, MCR 2.103 provides that only a sheriff or deputy sheriff, an officer of the Department of State Police in an action in which the state is a party, or a police officer of an incorporated city or village in an action in which the city or village is a party may serve such process.
- Q** How long must applications be kept?
- A** General Schedule No. 16, Records Retention and Disposal Schedule for Michigan Trial Courts, should be followed. The current schedule provides for retention of job applications for three years after filling the position.
- Q** Is an individual bond required if the court officer is a court employee?
- A** No, if the bond is for \$50,000. See the enclosed revised bond chart. This chart replaces page 13-02-01 of Volume II, Section 13, of the Court Administration Reference Guide.
- Q** Who determines whether a bonding agency is valid, and how?
- A** Each chief judge ultimately makes this decision. The court may contact the Office of Financial and Insurance Services, a division of Consumer and Industry Services, to determine whether the agency is licensed and authorized to write such bonds. The toll free number is 877-999-6442.
- Q** Will SCAO distribute a master list of persons appointed as court officers or post a current list on the SCAO web site?
- A** Beginning in August, SCAO will post a list of persons appointed as court officers to its web site. The list will be categorized by court of appointment and will be updated monthly.
- Q** Will SCAO alert courts if someone's appointment as a court officer is rescinded?
- A** Upon receiving notice that an appointment has been rescinded, SCAO will send e-mail notification to the chief judge and court administrator of any other court for which that person is appointed. Notification will identify the court that made the rescission.

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**Q** Is there a requirement that a court officer take an oath of office?

**A** Government employees are required to take an oath of office pursuant to MCL 15.151. There is no such requirement for an independent contractor, although courts may choose to do so.

**Q** May courts obtain criminal history information from a court's LEIN terminal or from local law enforcement?

**A** The appointment procedures provided in AM 2002-04 discussed conducting a criminal record check. Procedures for conducting a background check differ dependent upon whether the applicant will be an employee of the court or an independent contractor. If the applicant will be appointed as an employee of the court, the criminal history information may be obtained directly from a court's LEIN terminal or from local law enforcement.

If the applicant will be appointed as an independent contractor, the court may not obtain the information from the court's LEIN terminal or request the information from local law enforcement. Obtaining information in this fashion is a violation of LEIN administrative rules and would be a misdemeanor punishable by 90 days in jail and a \$500 fine, pursuant to MCL 28.214(3). Michigan conviction information may be obtained via the internet through the Internet Criminal History Access Tool (ICHAT). To establish a no-fee account for ICHAT, contact the Michigan State Police, Criminal Justice Information Center, at 517-322-1377.

In the alternative, the court may require the applicant to obtain a copy of their conviction criminal history and provide it to the court.

Links:

SCAO Administrative Memorandum 2002-04:

<http://courts.michigan.gov/scao/resources/other/scaoadm/2002/2002-04.pdf>

Supplement: <http://courts.michigan.gov/scao/resources/other/scaoadm/2002/2002-04supplement.pdf>

