

December 31, 2023

Dear Clerk,

I fully support the pending proposed change to MCR 4.201(C)(1).

The Summary Proceedings Act at MCL 600.5701 and Michigan Court Rule 4.201 provide an accelerated timeline for the adjudication of landlord tenant cases. Landlord tenant cases are more quickly adjudicated than any other civil suit in Michigan. Recognizing the fast processing of evictions, the Summary Proceedings Act allows a Defendant to orally answer and defend the allegations in the complaint for eviction. MCR 4.201(G)(1)(b).

In 2020, this Court issued temporary amendments to the Summary Proceeding Court rules by administrative order. After careful deliberation, most of the changes were made permanent.

The so called '5 day court rule' is authorized by local court rules adopted pursuant to MCL 6000.5735(4). This proposal would make the suspension of '5 day rule' permanent.

The '5 day rule' protocol requires a tenant defendant to file a written answer within 5 days of service of the complaint for eviction. If the tenant does not file a written answer, a Default Judgment is entered against them. The Default Judgment is entered without an inquiry into the merits of the case or proof that the Plaintiff is entitled to the relief they are seeking. An eviction Judgment on a tenant's 'record' makes it difficult to find new safe, habitual, and affordable housing. A 'record' of eviction is a permissible disqualifier to subsidized housing admission.

The proposed change will facilitate access to justice and protects the due process rights of tenants. The burden placed on renters in 5 day rule jurisdictions unfairly puts the onerous for the lawsuit on the tenant defendant. Absent the 5 day rule, a tenant may appear at their first hearing and can assert all defenses orally.

To avoid a default, tenants in 5 day jurisdictions must:

1. Understand the allegations in the complaint.
2. Understand that absent a written answer, the court will enter a Default Judgement against them.
3. Write the answer.
4. File the answer at the court. The burden of this requirement should not be overlooked. Most District Courts do not have E-filing and court filings must be done in person. This is particularly difficult for those in rural communities, areas with no or poor public

transportation, and specifically in Detroit where litigants must pay for parking in the middle of the entertainment district.

5. Serve the Plaintiff with the answer.
6. Appear at the first hearing.

There are many reasons why a defendant may not file a written answer. Including:

- The complaint is lost or delayed in the mail.
- The tenant is absent from the property for medical, family, or vacation reasons.
- The tenant is confused by the paperwork. There is a summons with a location, hearing date and time.
- They have language or literacy barriers.
- They have mental or physical disabilities.
- The tenant relies on assurances by the Plaintiff that their participation is not necessary.
- The tenant relies on misleading assurances that the tenant needs a judgment to get financial rental assistance.

Once a Default Judgment is entered, the burden on the tenant to get in front of a Judge is high. The tenant must file a Motion to Set Aside the Default pursuant MCR 2.603(D). Again, the tenant must know that is the next required step, write the motion, file the motion in person, serve the motion, and appear at the court for the motion hearing. The standard required in a successful Motion to Set Aside the Default is much more burdensome than a tenant's ability in a non 5 day rule court to simply appear at the first hearing. The tenant must properly allege good cause for their failure to participate and demonstrate they have a meritorious defense. MCR 2.603(D).

Adoption of the proposed rule change would put tenants in all jurisdictions in the same position with the same standard and ability to assert their rights. Over the last three years, with the temporary suspension of the 5 day rule, Plaintiff landlords have demonstrated that their rights are protected. The impact of eviction is devastating to a family and the community.

The fair administration of justice should not be determined by zip code.

Kellie Maki Foster

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