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Comment:

TO: SCAO

Proposed Changes 2020-17 (amend 2020-08) and MCR 4.201

My law firm specializes in landlord tenant law and greatly concerned with some of the proposed changes and applauded others:

1. I would reiterate the comments from Arron Cox on 08/12/22, with regards to MCR 4.201 (B) (3)(c). Many of the evictions we do are because of failed safety inspection by a local municipality, where the Tenant has cause such damage to the premises as to render it uninhabitable. Forcing a landlord allege that they are in "compliance with applicable state and local health and safety laws" would asking them to either "lie" signed pleading just to have a trier of fact determine what or who was at fault.

2. MCR 4.201(f)(1) is currently causing issues at the SCAO 2020-08(C), and will cause issue with proposed MCR 4.201 (K)(2)(a). Many Courts are using mediators to conduct this pretrial hearing under the guidance of the SCAO Orders. NONE have taken an answer on the record, however, (f)(1) states "The defendant or the defendant's attorney must appear and answer the complaint by the date on the summons." If the defendants appears at the pretrial, yet does not speak or file and answer, under the proposed court rule and current (f)(1), a plaintiff would be able to default defendant for failure to answer the complaint at the pretrial. Does the pretrial count as the first hearing? Can a mediator take an answer on the record?

3. The proposed MCR 4.201(F)(5)(d) "for at least 7 days", will lead to absurd results. Currently the scheduling for an adjournment after the pretrial is taking closer to 3 to 4 weeks since Courts are unbound in this timeline SCAO 2020-08. Thankfully, most landlords do not file a complaint on the first month a tenant is behind in rent. However, even if they did consider the timeline from a start to finish standpoint:

Month 1, day 1, tenant fails to pay rent and has the standard 5 day grace period in their lease.

Month 1 day 5 landlord sends a 7 day demand.

Month 1 day 13, landlord files the complaint.

Month 1, day 29, pretrial hearing, assuming pretrial hearings are 2 weeks out.

Month 2, day 15 hearing date, assuming trial hearings are 2 weeks.

Month 2, day 26, request for an Order of eviction can be filed. Assumes 10 day judgment.

Month 3, day 1, Judge signs Order; sent to process server for eviction.

Currently this process takes 3 months with even no contest from the defendants, at best. It does not even include the mail box rule, weekend, or holidays. 3 months of no rent is 25% of the income for the landlord for the year. Now, because of the pretrial hearings landlords cannot even file a request for an escrow order, until month 2 of not being paid rent. If we are continuing with pretrials, there should be some definitive timeline for the plaintiff.

4. For the same reasons stated in 3, above, proposed MCR 4.201(I)(3) will lead to absurd results. There is zero verification other than the defendant stating "I put in an application" with the Court Clerk. Further, most Court Clerks would overburdened to verify every application stated in every proceeding.

5. For the same reasons stated in 3, above, proposed MCR 4.201(K)(1)(a) and (b) will lead to absurd results.

6. The proposed MCR 4.201(K)(2)(a)- 100% of this pretrial is really an advice of rights of the materials already provided and served on the defendant. Plaintiff should be excused from having to attend.

7. Under proposed MCR 4.201(K)(2)(c), the original option for Court to exercise its authority as the trier of fact and make a judgment, without there having to be compromise. This rule strips Judges from the power of determining judgment. I have faith that the trial courts normally make the right call. I would suggest adding as an option (vi) "At trial, the court must first decide pretrial motions and determine if there is a triable issue. If there is a triable issue, the court must decide the issue."