Order

Michigan Supreme Court
Lansing, Michigan

September 7, 2023

ADM File No. 2020-08

Amendments of Administrative Order No. 2020-17 and Rules 2.408 and 4.201 of the Michigan Court Rules

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On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following amendments of Administrative Order No. 2020-17 and Rules 2.408 and 4.201 of the Michigan Court Rules are adopted, effective November 6, 2023. If good cause exists, a court may request from the State Court Administrative Office (SCAO) an extension to delay the effective date of this order for that court. Requests must be submitted pursuant to SCAO's guidance which will be finalized no later than October 9, 2023.

[Additions to the text are indicated in underlining and deleted text is shown by strikeover.]

Administrative Order No. 2020-17 – Continuation of Alternative Procedures for Landlord/Tenant Cases

~~The number of new COVID-19 cases in Michigan has dropped dramatically in recent weeks and m~~Many people believe that our state is finally at the end of the pandemic. Still, the court system will long be dealing with the effects brought about by the greatest health crisis in our generation. ~~One of those effects is a prolonged period of housing insecurity experienced by those most affected by the pandemic's nearly instantaneous and extensive job reductions – the 30 to 40 million people nationally who rent their housing.~~

Throughout the pandemic, f~~F~~ederal response to this problem has taken two forms: eviction moratoria and direct state aid. Several eviction moratoria were~~have been~~ imposed, both by Congress (Pub L. 116-136) and by the CDC (published at 85 FR 55292 and extended by Order dated March 28, 2021), prohibiting evictions for tenants in certain types of government-supported housing or who meet certain income restrictions. Those moratoria have since been lifted.~~The most recently-extended CDC order is slated to expire July 31, 2021 unless extended further. In addition, challenges to these CDC orders have been working their way through the courts, with conflicting opinions as a result.~~

~~However, t~~The second type of federal response – ~~continues to be relevant regardless of the status of the CDC order —~~direct aid to states to provide for rental assistance programs – is also coming to an end. ~~In 2021 PA 2, the Michigan Legislature appropriated $220 million (of the total of $600 million in federal money designated for Michigan) to provide rental assistance to tenants and landlords. Section 301(2) states that "[t]he department of labor and economic opportunity shall collaborate with the department of health and human services, the judiciary, local community action agencies, local nonprofit agencies, and legal aid organizations to create a rental and utility assistance program." This Court has done so in previous iterations of Administrative Order No. 2020-17 by working with those agencies to establish a procedure that ensures landlords and tenants are able to benefit from those dollars.~~However, t~~T~~he need for that programming continues, even assuming the health risks associated with the typical manner of processing eviction proceedings has eased.

The~~In addition, the mandate for courts to continue to~~ use of remote technology to the greatest extent possible is as important~~fully in place~~ today as it was three~~a~~ years ago. Now is~~We anticipate this fall will be~~ the appropriate time to consider what changes in procedure, adopted with as much speed and thought as possible in the midst of a pandemic, should be retained or changed before becoming permanent practices in our state courts. This effort has been~~will be~~ based on input from state court stakeholders, but even early data showed us that expanded use of technology has improved rates of participation and been a boon to issues related to access to justice. ~~We do not intend to squander the gains hard-won when all judges, court staff, attorneys, and individuals were forced to change their practices with little advance notice and training and in doing so, created a footprint for a new way to work that serves the needs of court users in novel and innovative ways.~~

Therefore, the Court adopts this administrative order under 1963 Const, Art VI, Sec 4, which provides for the Supreme Court's general superintending control over all state courts, directing that ~~courts to process landlord/tenant cases following the procedures outlined in this order.~~

~~(A)~~ ~~A~~all local court rules created~~administrative orders requiring a written answer~~ pursuant to MCL 600.5735(4), that in their implementation require a written answer, are temporarily suspended.[1] Unless otherwise provided by this order, a court must comply with MCR 4.201 with regard to summary proceedings.

[1] The courts with local court rules~~administrative orders~~ include: 1st District Court (Monroe County); 2A District Court (Lenawee County); 12th District Court (Jackson County); 18th District Court (City of Westland); 81st District Court (Alcona, Arenac, Iosco, and Oscoda Counties); 82nd District Court (Ogemaw County); and 95B District Court (Dickinson and Iron Counties).

~~(B) At the initial hearing noticed by the summons, the court must conduct a pretrial hearing consistent with SCAO guidance. At the pretrial hearing the parties must be verbally informed of all of the following:~~

~~(1) Defendant has the right to counsel. MCR 4.201(F)(2).~~

~~(2) The Michigan Department of Health and Human Services (MDHHS), the local Coordinated Entry Agency (CEA), Housing Assessment and Resource Agency (HARA), or the federal Help for Homeless Veterans program may be able to assist the parties with payment of some or all of the rent due.~~

~~(3) Defendants DO NOT need a judgment to receive assistance from MDHHS, the HARA, or the local CEA. The Summons and Complaint from the court case are sufficient for MDHHS.~~

~~(4) The availability of the Michigan Community Dispute Resolution Program (CDRP) and local CDRP Office as a possible source of case resolution. The court must contact the local CDRP to coordinate resources. The CDRP may be involved in the resolution of Summary Proceedings cases to the extent that the chief judge of each court determines, including conducting the pretrial hearing.~~

~~(5) The possibility of a Conditional Dismissal pursuant to MCR 2.602 if approved by all parties. The parties must be provided with a form to effectuate such Conditional Dismissal.~~

~~(C) The pretrial required under subsection (B) may be conducted by the assigned judge, a visiting judge appointed by SCAO, a magistrate (as long as that magistrate is a lawyer), or a CDRP mediator.~~

~~(D) Courts are authorized to proceed with these actions by way of remote participation tools, and encouraged to do so to the greatest extent possible. The court scheduling a remote hearing must "verify that all participants are able to proceed in this manner." Therefore, the summons for each case filed under the Summary Proceedings Act must provide the date and time for remote participation in the scheduled hearing, if applicable. In addition, the summons must be accompanied by any written information about the availability of counsel and housing assistance information as provided by legal aid or local funding agencies. If a remote hearing is scheduled for the first proceeding, the defendant received personal service pursuant to MCR 2.105(A), and the defendant fails to appear, a default may enter. If a remote hearing is scheduled for the first proceeding and the defendant fails to appear and has not been served under MCR 2.105(A), the court may not enter a default but must reschedule the hearing and mail notice for that rescheduled hearing~~

~~as an in-person proceeding. Under these conditions, a notice of rescheduled hearing mailed by the court within 24 hours after the initial hearing date is sufficient notice of the rescheduled hearing, notwithstanding any other court rule. Other parties or participants may proceed remotely.~~

~~(E) Except as provided below, all Summary Proceeding Act cases must be adjourned for seven days after the pretrial hearing in subsection (B) is conducted. Nothing in this order limits the statutory authority of a judge to adjourn for a longer period. MCL 600.5732. Any party who does not appear at the hearing scheduled for the adjourned date will be defaulted. Cases need not be adjourned for seven days if: the plaintiff dismisses the complaint, with or without prejudice, and without any conditions; if defendant was personally served under MCR 2.105(A) and fails to appear; if plaintiff pleads and proves, with notice, a complaint under MCL 600.5714(1)(b), (d), (e) or (f), sufficient to meet the statutory and court rule requirements and a judge is available to hear the proofs; or where both plaintiff and defendant are represented by counsel and a consent judgment or conditional dismissal is filed with the court. Where plaintiff and defendant are represented by counsel, the parties may submit a conditional dismissal or consent judgment in lieu of appearing personally at the second hearing. Nothing in this subsection supersedes the right to an attorney pursuant to 4.201(F)(2).~~

~~(F) The court may require remote participation in the second, and any subsequent, proceedings, and the court must verify that participants are able to proceed in that manner.~~

~~(G) In cases filed pursuant to MCL 600.5714(1)(a) for nonpayment of rent, a court must stay further proceedings after the pretrial hearing is conducted and not proceed to judgment if a defendant applies for COVID Emergency Rental Assistance (CERA) and notifies the court of the application. The stay is contingent upon the following events:~~

~~(1) An eligibility determination is made by the appropriate HARA within 30 days of the pretrial hearing;~~

~~(2) The defendant is eligible to receive rental assistance for all rent owed; and~~

~~(3) The plaintiff receives full payment from the CERA program within 45 days of the pretrial hearing.~~

~~If any of these events do not occur, excluding delays attributable to the plaintiff, the court must lift the stay and continue with proceedings. Nothing in this order limits the statutory authority of a judge to adjourn a Summary Proceedings case. MCL 600.5732.~~

~~(H) In cases filed before this administrative order was amended to include procedure related to the CERA program (i.e., before March 22, 2021), if a party notifies the court that it has applied for CERA at any point prior to issuance of a writ, the court shall stay the proceeding as provided under subsection (G) of this order.~~

~~(I) For cases that are subject to the moratorium under the CDC order, the court shall process the case through entry of judgment. A judgment issued in this type of case shall allow defendant to pay or move (under item 4 on DC 105 or similarly on non-SCAO forms) within the statutory period (MCL 600.5744) or after the expiration of the CDC order, whichever date is later. MCL 600.5744(5), which provides a 10 day minimum statutory period to pay or move, is tolled until expiration of the CDC order. MCR 4.201(L)(4)(a), which prohibits an order of eviction from being issued later than 56 days after the judgment enters unless a hearing is held, is suspended for cases subject to the CDC moratorium. The 56 day period in that rule shall commence on the first day after the expiration of the CDC order for those cases.~~

~~This order is effective immediately until further order of the Court.~~

Rule 2.408 Use of Videoconferencing Technology in Civil Cases

(A) Generally.

(1) [Unchanged.]

(2) Except as otherwise provided in this subrule, the use of videoconferencing technology shall not be used in bench or jury trials, or any civil proceeding wherein the testimony of witnesses or presentation of evidence may occur, except in the discretion of the court after all parties have had notice and opportunity to be heard on the use of videoconferencing technology. ~~While Administrative Order No. 2020-17 is in effect, it controls the mode of landlord-tenant proceedings.~~

(3) [Unchanged.]

(B)-(C) [Unchanged.]

Rule 4.201 Summary Proceedings to Recover Possession of Premises

(A) Applicable Rules; Forms. Except as provided by this rule and MCL 600.5701 *et seq.*, a summary proceeding to recover possession of premises from a person in possession as described in MCL 600.5714 is governed by the Michigan Court Rules. Forms available for public distribution at the court clerk's office and SCAO-

approved forms located online may be used in the proceeding.

(B) Complaint.

(1) [Unchanged.]

(2) Jury Demand. If the plaintiff wants a jury trial, the demand must be made on a form approved by the State Court Administrative Office and filed along with the complaint. The jury trial fee must be paid when the demand is made or within 5 days of being advised of the rights and information under subrule (K)(2)(a), unless payment of fees is waived under MCR 2.002~~filed~~.

(3) Specific Requirements.

(a)-(b) [Unchanged.]

(c) If the tenancy is of residential premises, the complaint must allege that the lessor or licensor has performed his or her covenants to keep the premises fit for the use intended, ~~and~~ in reasonable repair during the term of the lease or license, and in compliance with applicable state and local health and safety laws, except when the disrepair or violation has been caused by the tenant's willful or irresponsible conduct or lack of conduct, or~~unless~~ the parties to the lease or license have modified those obligations, as provided for by statute. Plaintiff must explain any defects in this allegation, for example local government's failure to inspect despite a request to do so. The relevant SCAO form must provide space for this explanation. A court may not refuse a filing based on anything in this subrule.

(d)-(e) [Unchanged.]

(C) Summons.

(1)-(2) [Unchanged.]

(3) The summons must also include the following advice to the defendant:

(a)-(c) [Unchanged.]

(d) The defendant has a right to a jury trial which will be lost unless it is demanded in accordance with subrule (G)(4)~~in the first defense response, written or oral~~. The jury trial fee must be paid when the demand is made or within 5 days of being advised of the rights and

information under subrule (K)(2)(a), unless payment of fees is waived under MCR 2.002.

(e) [Unchanged.]

(f) Written information attached to the summons regarding the local availability of rental and other housing assistance, including all information set forth in subrule (K)(2)(a).

(D) Service of Process. A copy of the summons and complaint and all attachments must be served on the defendant by mail. Unless the court does the mailing and keeps a record, the plaintiff must perfect the mail service by attaching a postal receipt to the proof of service. A plaintiff may also request the court mail a second copy of the summons and complaint and all attachments to the defendant in a court envelope – the same envelope as used for other court business which is clearly identified as coming from the court. This court mailing must be delivered to the US Post Office at least 7 days before the date of trial, and a record must be kept. The court may charge an additional fee as determined and published by the State Court Administrative Office. In addition to mailing, the defendant must be served in one of the following ways:

(1)-(3) [Unchanged.]

(E) Recording. All landlord-tenant summary proceedings conducted in open court, including advice of rights and information required under subrule (K)(2)(a), must be recorded by stenographic or mechanical means, and only a reporter or recorder certified under MCR 8.108(G) may file a transcript of the record in a Michigan court. This subsection does not apply to courts providing the advice of rights in accordance with subrule (K)(2)(b).

(F) Use of Videoconferencing Technology. For any hearing held under this subchapter, the court must allow the use of videoconferencing technology in accordance with MCR 2.407 and MCR 2.408. The use of videoconferencing technology is presumed when providing the advice of rights and information required under subrule (K)(2)(a).

(G~~F~~) Appearance and Answer; Default.

(1) [Unchanged.]

(2) Right to an Attorney. If either party appears ~~in person~~ without an attorney, the court must inform that party of the right to retain an attorney. The court must also inform the party about legal aid assistance when it is available.

(3) [Unchanged.]

(4) Jury Demand. If the defendant wants a jury trial, he or she must demand it orally at the first appearance or in writing within five days of being advised of the rights and information listed in subrule (K)(2)(a)~~in the first response, written or oral~~. The jury trial fee must be paid when the demand is made or within 5 days of being advised of the rights and information listed in subrule (K)(2)(a), unless payment of fees is waived under MCR 2.002.

(5) Default.

(a) If the defendant fails to appear on the date and time noticed by the summons, the court, on the plaintiff's motion, may enter a default and may hear the plaintiff's proofs in support of judgment if~~. If satisfied that the complaint is accurate, the court must enter a default judgment under MCL 600.5741, and in accord with subrule (K). The default judgment must be mailed to the defendant by the court clerk and must inform the defendant that (if applicable)~~

(i) personal service of process was made on the residential defendant under MCR 2.105, or service of process was made on the residential defendant under MCR 4.201(D) and the court mailed a second copy of the initial summons and complaint in a court envelope and a record was kept pursuant to subrule (D), or service of process was made on the commercial defendant under MCR 4.201(D); or

(ii) the plaintiff pleads and proves, with notice, a complaint under MCL 600.5714(1)(b), (d), (e), or (f) sufficient to meet statutory and court rule requirements; or

(iii) the defendant also fails to appear on the date and time in which the trial was adjourned under subrule (K)(1); or

(iv) the defendant appears on the date and time noticed by the summons but fails to appear on the date and time in which the trial was adjourned under subrule (K)(1).

(b) If satisfied that the complaint has met pleading and proof requirements and a default may enter under subrule (G)(5)(a), the court must enter a default judgment under MCL 600.5741 and in accordance with subrule (L). The default judgment must be mailed to

the defendant by the court clerk and must inform the defendant that, if applicable,

(i) he or she may be evicted from the premises;

(ii) he or she may be liable for a money judgment.

(b) [Relettered (c) but otherwise unchanged.]

(dc) If a default is not entered and the case is not otherwise resolvedparty fails to appear, the court mustmay adjourn the trialhearing for at leastup to 7 days but not more than 14 days, unless a jury demand is made under subrule (G)(4) or good cause is shown under subrule (K)(1)(c). If the trialhearing is adjourned, the court must mail notice of the new date to the party who failed to appear.

(6) Use of Videoconferencing Technology. For any hearing held under this subchapter, in accordance with MCR 2.407, the court may allow the use of videoconferencing technology by any participant as defined in MCR 2.407(A)(1).

(HG) Claims and Counterclaims.

(1) Joinder.

(a)-(b) [Unchanged.]

(c) A court with a territorial jurisdiction which has a population of more than 1,000,000 may provide, by local rule, that a money claim or counterclaim must be tried separately from a claim for possession unless joinder is allowed by leave of the court pursuant to subrule (HG)(1)(e).

(d) [Unchanged.]

(e) If adjudication of a money counterclaim will affect the amount the defendant must pay to prevent issuance of an order of eviction, that counterclaim must be tried at the same time as the claim for possession, subrules (HG)(1)(c) and (d) notwithstanding, unless it appears to the court that the counterclaim is without merit.

(2) [Unchanged.]

(I~~H~~) Interim Orders. On motion of either party, or by stipulation, for good cause, a court may issue such interim orders as are necessary, including, but not limited to the following:

(1) [Unchanged.]

(2) Escrow Orders.

(a) If trial is adjourned more than 14~~7~~ days and the plaintiff shows a clear need for protection, the court may order the defendant to pay a reasonable rent for the premises from the date the escrow order is entered, including a pro rata amount per day between the date of the order and the next date rent ordinarily would be due. In determining a reasonable rent, the court should consider evidence offered concerning the condition of the premises or other relevant factors. The order must provide that:

(i)-(iii) [Unchanged.]

(b) [Unchanged.]

(3) Stay of Proceedings.

(a) In cases filed pursuant to MCL 600.5714(1)(a) for nonpayment of rent due under a residential lease or agreement, the court must stay further proceedings after advising the defendant of the rights and information listed in subrule (K)(2)(a) and adjourning the trial under subrule (K). The court must not proceed to judgment if the defendant has applied for rental assistance from the Michigan Department of Health and Human Services, local Coordinated Entry Agency, Housing Assessment and Resource Agency or federal Help for Homeless Veterans program and provides written proof to the court that the application has been submitted for processing not later than five days after the defendant is verbally informed as provided in subrule (K)(2)(a) or (b). The State Court Administrative Office may provide a form to evidence this requirement.

(b) The initial stay is lifted after 14 days unless the defendant demonstrates to the court that the application is still pending or has been approved and rental assistance will be received. The total stay period under this subrule must not exceed 28 days and is automatically lifted 28 days from the date that the initial stay of the proceedings began.

(I) [Relettered (J) but otherwise unchanged.]

(K~~J~~) Trial.

(1) Time.

(a) If, after advising the defendant of the rights and information listed in subrule (K)(2)(a) the court adjourns the trial, it must be scheduled at least 7 days but not more than 14 days after the initial date and time set for trial noticed by the summons, unless a jury demand is made under subrule (G)(4) or good cause is shown under subrule (K)(1)(c).

(b) After advising the defendant of the rights and information listed in subrule (K)(2)(a), the court must decide remaining pretrial motions and determine if there is a triable issue. If there is no triable issue, the court must enter judgment.

(c) ~~When the defendant appears, t~~The court may try the action pursuant to subrule (K), or, if good cause is shown, may adjourn trial up to 56 days. If the court adjourns trial for more than 14~~7~~ days, an escrow order may be entered pursuant to subrule (I~~H~~)(2). The parties may adjourn trial by stipulation in writing or on the record, subject to the approval of the court.

(2) Conducting the Trial.

(a) Unless otherwise provided in subrule (K)(2), at the initial date and time set for trial noticed by the summons, the court must verbally inform the parties of the following rights and information:

(i) The right to an attorney under subrule (G)(2).

(ii) The right to proper venue under subrule (G)(3).

(iii) The right to demand a jury trial under subrule (G)(4).

(iv) In cases filed pursuant to MCL 600.5714(1)(a) for nonpayment of rent due under a residential lease or agreement, the Michigan Department of Health and Human Services, local Coordinated Entry Agency, Housing Assessment and Resource Agency, or federal Help for Homeless Veterans program may be able to assist with payment of some or all of the rent due. Within five

days of receiving the advice of rights and information under this subrule, the defendant must provide written proof to the court that an application for assistance has been submitted for processing under subrule (I)(3).

(v) In cases filed pursuant to MCL 600.5714(1)(a) for nonpayment of rent due under a residential lease or agreement, defendants do not need a judgment to receive assistance from the Michigan Department of Health and Human Services, local Coordinated Entry Agency, or Housing Assessment and Resource Agency. The summons and complaint from the court case are sufficient for help from the state.

(vi) The availability of the Michigan and local community dispute resolution program office as a possible source of case resolution.

(vii) The possibility of a conditional dismissal pursuant to MCR 2.602 if approved by all parties. The parties must be provided with a form to effectuate such conditional dismissal or direct the parties to the location of the SCAO approved form online.

If the defendant does not appear for trial on the date and time noticed by the summons and a default was not entered, the court must verbally inform the parties of the information in this subrule at the defendant's first appearance and allow the defendant time to make a jury demand under subrule (G)(4) and to retain an attorney under subrule (G)(2).

(b) Courts may provide advice of rights consistent with SCAO guidance to an individual or group of defendants via video, computer presentation, or other technological means so long as the court ensures that each defendant is present for the entire presentation. If a defendant was previously provided advice of rights by the court, whether via a group presentation or individually, the court is not required to again provide a full advice of rights but must, on the record, ensure that the defendant received a full advice of rights, understood the advice of rights, and ask if defendant has any questions about the advice of rights.

(c) If authorized by statutory amendment, a district court magistrate may advise the defendant of the rights and information in subrule (K)(2)(a).

(d) Unless otherwise provided in this rule, at the date and time set for trial and after verbally advising the parties of the rights and information under subrule (K)(2)(a), the court shall adjourn the trial as provided in subrule (K)(1).

(e) Unless otherwise provided in this rule, immediately following the advice of rights and information required by subrule (K)(2)(a), the court may resolve the case without adjourning the trial, if any of the following occur:

(i) The plaintiff dismisses the complaint, with or without prejudice, and without any conditions.

(ii) The residential defendant is personally served under MCR 2.105(A), service of process was made on the residential defendant under subrule (D) and the court mailed a second copy of the initial summons and complaint in a court envelope and a record was kept pursuant to subrule (D) and fails to appear at the date and time set for trial noticed by the summons under subrule (K)(2)(a), or the commercial defendant is served under subrule (D) and fails to appear at the date and time set for trial noticed by the summons under subrule (K)(2)(a).

(iii) Both plaintiff and defendant are represented by counsel, and a consent judgment or conditional dismissal is filed with the court.

(iv) The parties enter into a consent judgment or conditional dismissal on the record after knowingly and voluntarily waiving the rights identified in subrule (K)(2)(a) and the adjournment required by subrule (K)(2)(d). The court must review the defendant's waiver of rights and the terms of the consent judgment or conditional dismissal. After adequate inquiry, if the court determines that a valid waiver exists and the terms are fair, it may enter the consent judgment or conditional dismissal on the record. A defendant who has consulted with an attorney either in person or remotely after receiving the summons and who is waiving these rights is presumed to have knowingly and voluntarily waived the rights identified in subrule (K)(2)(a).

(v) any of the circumstances listed in subrule (G)(5)(a)(ii), except for an action in which MCL 600.5714(1)(b) applies, is pleaded

and proved, with notice, sufficient to meet the statutory requirements. Actions in which MCL 600.5714(1)(b) apply shall be heard pursuant to MCL 600.5735(7).

~~(2) Pretrial Action. At trial, the court must first decide pretrial motions and determine if there is a triable issue. If there is no triable issue, the court must enter judgment.~~

(3)-(4) [Unchanged.]

(K) [Relettered (L) but otherwise unchanged.]

(M~~L~~) Order of Eviction.

(1) [Unchanged.]

(2) Issuance of Order of Eviction and Delivery of Order. Subject to the provisions of subrule (M~~L~~)(4), the order of eviction shall be delivered to the person serving the order for service within 7 days after the order is filed.

(3)-(5) [Unchanged.]

(N~~M~~) Postjudgment Motions. Except as provided in MCR 2.612, any postjudgment motion must be filed no later than 10 days after judgment enters.

(1) Except as otherwise provided in this subrule, i~~I~~f the motion challenges a judgment for possession, the court may not grant a stay. ~~unless~~ The court shall grant a stay if

(a)-(b) [Unchanged.]

If a stay is granted, a hearing shall be held within 14 days after it is issued.

(2) If the judgment does not include an award of possession, the filing of the motion stays proceedings, but the plaintiff may move for an order requiring a bond to secure the stay. If the initial escrow deposit is believed inadequate, the plaintiff may apply for continuing adequate escrow payments in accord with subrule (I~~H~~)(2). The filing of a postjudgment motion together with a bond, bond order, or escrow deposit stays all proceedings, including an order of eviction issued but not executed.

(3) [Unchanged.]

(O~~N~~) Appeals From Possessory Judgments.

(1)-(2) [Unchanged.]

(3) Stay of Order of Eviction.

(a) Unless a stay is ordered by the trial court, an order of eviction must issue as provided in subrule (M~~L~~).

(b) [Unchanged.]

(4) Appeal Bond; Escrow.

(a) [Unchanged.]

(b) A defendant who appeals must file a bond providing that if the defendant loses, he or she will pay

(i)-(iii) [Unchanged.]

The court may waive the bond requirement of subrule (O~~N~~)(4)(b)(i) on the grounds stated in MCR 2.002(C) or (D).

(c) If the plaintiff won a possession judgment, the court shall enter an escrow order under subrule (I~~H~~)(2) and require the defendant to make payments while the appeal is pending. This escrow order may not be retroactive as to arrearages preceding the date of the posttrial escrow order unless there was a pretrial escrow order entered under subrule (I~~H~~)(2), in which case the total escrow amount may include the amount accrued between the time of the original escrow order and the filing of the appeal.

(d) [Unchanged.]

(O) [Relettered (P) but otherwise unchanged.]

Staff Comment (ADM File No. 2020-08): These amendments are the result of more than a decade of learned experience and continued innovation accelerated by unforeseen circumstances. They reflect what the Michigan judiciary has learned from the pandemic, including how to broadly conduct remote hearings, as well as what the judiciary has learned over the last 15 years from localized evictions diversion programs and over the last three years when scaling the concept of eviction diversion programs statewide.

The staff comment is not an authoritative construction by the Court. In addition, adoption of a new rule or amendment in no way reflects a substantive determination by this Court.

WELCH, J. (*concurring*).

I write to offer further explanation for why I believe the amendments to MCR 4.201 ensure fairness in our judicial proceedings. We first posted proposed revisions to these rules on August 10, 2022, about two years after Administrative Order 2020-17 was issued as part of the Court's response to a global pandemic. In response, we received hundreds of comments from landlords, tenants, attorneys, law school clinics, and other key stakeholders. A nearly three-hour remote public hearing was held on November 16, 2022, where we received extensive additional input. After that date, a work group was assembled that included judges, attorneys, landlords, and tenant representatives. Collectively, the justices and court staff have put in hundreds of hours of work reviewing comments and making modifications based upon the input received. The final rule is the result of revisions that were based upon that input.

As former Chief Justice MCCORMACK noted last year, "[t]he COVID-19 pandemic required us to think creatively about how to keep Michigan courts running safely." See Order Retaining and Further Amending the Michigan Court Rule Changes Adopted on July 26, 2021, 510 Mich ___ (August 10, 2022) (MCCORMACK, C.J., concurring). While this opportunity for creative thinking was forced upon us by factors beyond our control, we have used the time since the Court's initial response to consider innovative changes to how our courts operate with the goal of modernizing our court system and improving access to justice. See, e.g., Amended Administrative Order No. 2020-17, 510 Mich ___ (August 10, 2022) (adopting court rule amendments that made remote judicial proceedings the presumptive norm in most civil proceedings other than trials and evidentiary matters). It is clear from the data that remote proceedings have enabled more parties to show up for court and participate in legal proceedings. In fact, a majority of both the landlord and tenant comments we received in response to the proposed amendments enthusiastically supported the continued use of remote proceedings. Logically, the public is better served when it is easier to participate in legal proceedings. Our court rules now reflect that simple fact and a lesson learned during the pandemic.

We also learned many lessons during the pandemic about landlord-tenant summary proceedings. Because many Michiganders were required to stay home and unable to go work as the result of government orders issued in response to safety concerns, our Court had to quickly pivot to create a system to ensure a functioning judiciary and to account for the provision of government relief so that people who were unable to work would not face eviction in the midst of a public health crisis. See, e.g., Administrative Order No. 2020-8, 505 Mich cxxxv (2020); Administrative Order No. 2020-10, 505 Mich cxxxix (2020); Administrative Order No. 2020-11, 505 Mich cxl (2020); Administrative Order No. 2020-

16, 505 Mich cli (2020); Administrative Order No. 2020-18, 505 Mich clviii (2020); Amended Administrative Order No. 2020-17, 507 Mich ___ (July 2, 2021). While some would prefer that nonpayment-of-rent eviction proceedings return to "business as usual" under the prepandemic rules, the revisions offer a balanced approach between the business interests of landlords and the rights of tenants to receive proper notice of proceedings against them as well as access to resources that might be available to assist them. The amendments we adopt today also reflect lessons learned from eviction diversion programs operating in courts across the state for the past 15 years.

First, MCR 4.201(B)(3)(c) now requires that landlords attest in their complaint that the leased premises are "in compliance with applicable state and local health and safety laws . . . ." Prior to the new amendment, MCR 4.201(B)(3)(c) for many years required that a landlord's complaint state that the landlord had kept residential premises "fit for the use intended and in reasonable repair" unless the parties agreed to modify those obligations. The language that has been added simply mirrors more fully MCL 554.139(1), the statutory provision upon which the original language was based.[2] Further, based on input from landlords who shared concerns about backlogged city inspections where local ordinances require them, we modified the proposed rule to ensure that a landlord can "explain any defects" in its ability to fully comply with the attestation requirement. Specifically, the amended rule provides that a landlord can set forth a "local government's failure to inspect despite a request to do so." MCR 4.201(B)(3)(c).[3] Moreover, a district court is not permitted to reject a complaint seeking eviction based on noncompliance with MCR 4.201(B)(3)(c). Requiring landlords to attest that they are following the law, something

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[2] MCL 554.139 specifically requires that:

> (1) In every lease or license of residential premises, the lessor or licensor covenants:
>
> (a) That the premises and all common areas are fit for the use intended by the parties.
>
> (b) To keep the premises in reasonable repair during the term of the lease or license, and to comply with the applicable health and safety laws of the state and of the local unit of government where the premises are located, except when the disrepair or violation of the applicable health or safety laws has been caused by the tenants [sic] wilful or irresponsible conduct or lack of conduct.

[3] Additionally, directly reflecting the language of MCL 554.139(1), MCR 4.201(B)(3)(c) provides that a landlord is excepted from the attestation requirement when "the disrepair or violation has been caused by the tenant's willful or irresponsible conduct or lack of conduct . . . ."

expected of all landlords and which they had to do under the prior rule, does not constitute a new burden.[4]

Second, the amendments modernize service of process requirements for eviction proceedings and make modest changes to the requirements that must be met before a landlord can obtain a default judgment when a defendant fails to appear on the date and time noticed in the summons. Under the prior rule, to perfect service, the landlord's complaint and summons had to be mailed to the tenant and additional service was required pursuant to MCR 2.105 or via personal service. If personal service failed, the former MCR 4.201(D)(3) allowed a landlord to post a notice on the door of the tenant. The original proposed amendments would have required personal service upon a tenant in order to obtain a default judgment on the first noticed proceeding date.[5]

Extensive input was offered through comments and the public hearing that personal service accomplished by posting on a door was not effective and often resulted in evictions without notice because multiple people might live in a household, or a door might be shared by multiple units in a building. In contrast, concerns were also raised about a requirement of personal service given the ability of people to evade service for what is intended to be a fast-moving summary proceeding. We heard the extensive input and struck a balance. Like the prior rule, the amended rule still requires service of the summons and complaint

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[4] I disagree with Justice ZAHRA's claim that it is sufficient for a district court to determine whether a rental property has a valid certificate of occupancy. Such a certificate fails to meet the statutory requirement because it often is poor evidence that a rental premises is habitable at the time an eviction is requested. Certificates of occupancy for residential properties generally do not need to be renewed unless there is a change in ownership, a change in the type of occupancy or use of the premises, or a substantial modification to the premises that required discontinuance of the existing use of occupancy. See, e.g., MCL 125.1513; Detroit Code, §§ 50-4-49, 50-4-62; Taylor Code, Zoning Ordinance § 25.06. Absent an extended period of vacancy resulting in termination of water or electrical services or a prior violation of local health and safety ordinances that must be remedied, a change in residential tenants typically does not trigger the requirement that a landlord obtain a new certificate of occupancy. While some municipalities require registration of rental properties and a separate certificate of compliance for such properties, the rules for when such certificates can be issued, renewed, or revoked vary. See, e.g., Detroit Code, §§ 8-15-35, 8-15-36; Grand Rapids Code, §§ 5.555, 5.556; Lansing Code, §§ 1460.49, 1460.50. MCR 4.201(B)(3)(c) recognizes the challenge faced by a landlord who has sought but is unable to obtain an inspection.

[5] Under the proposed rule service by door posting was not eliminated, but such service would not have been sufficient to obtain a default judgment at the first hearing. There were also exceptions under the proposal, and those remain under the new amendment pursuant to MCL 600.5714(1)(b), (d), and (f). See MCR 4.201(G)(5)(a)(ii).

on the defendant by mail, as well as an additional form of service. But rather than allowing reliance upon just a door posting after personal service has failed to seek a default, a landlord may now also request that the court mail a second copy of the summons and complaint directly to the defendant.[6] This additional court mailing is now required when a landlord is seeking to evict a residential tenant, is unable to complete personal service, and is seeking a default judgment when a defendant fails to appear on the date and time noticed in the summons. MCR 4.201(G)(5). Of course, service can also be accomplished by all the other traditional methods available to parties in other litigation and that existed in the court rule before its amendment, see MCR 4.201(D)(1) through (3), but a door posting will no longer be sufficient to obtain a default judgment at the first hearing.

Third, the amended rule now requires that if the plaintiff elects to request eviction for nonpayment of rent, then the court must advise the residential defendant of certain legal rights under MCR 4.201(K)(2)(a), including the potential availability of rental assistance.[7] If a default is not entered and, subject to MCR 4.201(K)(1)(b) (no triable issue) and MCR 4.201(K)(2)(e) (setting forth list of reasons a court can resolve the case without adjournment), the court must adjourn the trial for at least 7 but not more than 14 days after providing the advice of rights.[8] MCR 4.201(G)(5)(d) (if a default is not entered, the court must adjourn "for at least 7 but not more than 14 days, unless a jury demand is made . . . or

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[6] Local courts will be permitted to charge a fee as determined by the State Court Administrative Office. MCR 4.201(D).

[7] Feedback was provided by judges that the advice of rights is often provided via a prerecorded video or computer presentation, that the presentation is often made to groups, and that having to record all these standard presentations would be time-consuming and onerous. The amended rules make clear that group advice-of-rights presentations are permitted, MCR 4.201(K)(2)(b), and that these standardized advice-of-rights presentations do not need to be recorded, MCR 4.201(E).

[8] This Court's authority to regulate the practice and procedure of trial courts through its rulemaking power has "been exclusively entrusted to the judiciary by the Constitution and may not be diminished, exercised by, nor interfered with by the other branches of government without constitutional authorization." *In re 1976 PA 267*, 400 Mich 660, 663 (1977). Requiring a stay of an initiated proceeding—a docket management tool—is a procedural requirement that is within the Court's exclusive constitutional authority to promulgate rules regulating the "practice and procedure" of the judiciary under Const 1963, art 6, § 5. The Legislature has acknowledged as much by enacting MCL 600.223 ("The supreme court *has authority to promulgate and amend general rules governing practices and procedure* in the supreme court and *all other courts of record, including but not limited to authority*: . . . (2) to prescribe the practices and procedure in the supreme court and other courts of record concerning: . . . (g) the *staying of proceedings* . . . and (k) *other matters at its discretion*[.]") (emphasis added).

good cause is shown"). A stay must also be put in place for no more than 14 days "unless the defendant demonstrates to the court that an application [for rental assistance] is still pending or has been approved and rental assistance will be received." MCR 4.201(I)(3)(b). While the adjournment and stay are in place, a tenant defendant must act quickly—within five days of receiving the advice of rights—to provide written proof to the court that an application for assistance has been submitted. MCR 4.201(K)(2)(a)(iv). Otherwise, the stay will be lifted. The total stay period is automatically lifted after 28 days. MCR 4.201(I)(3)(b).

When compared to the prior version of MCR 4.201, the amended version will result in most cases being resolved within 14 to 21 additional days. Some will extend to the stay maximum of 28 days.[9] Having a case resolved within two weeks to one month hardly writes the "summary" out of "summary proceedings" as the dissent suggests.[10] Moreover, if a trial is adjourned by more than 14 days and the landlord shows a "clear need for protection," then a court may order a tenant defendant to pay into an escrow account "a reasonable rent for the premises . . . including a pro rata amount per day between the date of the order and the next date rent ordinarily would be due." MCR 4.201(I)(2)(a). In summary, eviction proceedings seeking a judgment of eviction for nonpayment of rent will continue to move through the courts rapidly while offering protections to plaintiff landlords and defendant tenants.

We have thoughtfully considered the concerns of all stakeholders and attempted to strike a balance that protects the interests all members of the public who are likely to be affected by these amendments. Moreover, we know that our courts need time to adjust to rule changes. As a result, this rule will not go into effect until 60 days from today with further opportunity for extensions with good cause. Additional changes can be considered

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[9] The timeline will be determined by how the court manages the case. If a defendant appears on the date of the summons, most cases will be resolved within 14 days. Some nonpayment cases will extend to 28 days (the maximum stay period) for those defendants. Even if the defendant fails to appear on the summons date and is not defaulted at that time, the maximum time to resolve the matter pursuant to the rule will be less than 56 days as required by law. MCR 4.201(K)(1)(c).

[10] Proceedings may be delayed further if a defendant at risk of eviction demands a trial by jury. MCR 4.201(G)(4), (G)(5)(d). However, this right has long been held by all residential tenants in Michigan and is fundamental to our justice system. See Const 1963, art 1, § 14; MCR 4.002(D); MCR 4.201(C)(3)(d); MCR 4.201(G)(4). Moreover, the Legislature has long prohibited residential rental agreements from containing a waiver of the right to a trial by jury. MCL 554.633(1)(f). Two other potentials for delay include when the parties stipulate to adjournment of the trial and when the defendant shows "good cause" to adjourn the trial up to 56 days under MCR 4.201(K)(1)(c); such adjournments are unrelated to the automatic stay required by MCR 4.201(I)(3).

as needed after implementation of these amended rules, but all change begins with an initial step. I believe we have taken a step in the right direction, and accordingly, I fully concur with the Court's decision to repeal most of Administrative Order No. 2020-17 and to modernize the court rules governing eviction proceedings.

ZAHRA, J. (*dissenting*).

Contrary to the assertion in the staff comment, the Court adopts substantive changes to court rules concerning summary proceedings to recover the possession of premises; rules that have long formed the foundation for adjudicating landlord/tenant disputes in Michigan. These proposed changes were the subject of much scrutiny. This Court heard from an unprecedented number of speakers at our November 16, 2022 public hearing. We also received hundreds of written comments directed at these proposed changes. The majority of people who commented on these changes opposed them. The process effectuating these changes commenced during the COVID-19 pandemic, when the Court implemented these changes (and many more) as necessary to permit landlord/tenant courts to function during a state of emergency. More than three years have passed since this emergency order entered.

Today, the Court finally addresses this emergency administrative order. In so doing, the Court recognizes that "[m]any people believe that our state is finally at the end of the pandemic," that federal moratoria on evictions "have since been lifted," and that "direct [federal] aid to states to provide for rental assistance programs . . . is also coming to an end." Nonetheless, rather than vacate Administrative Order No. 2020-17 in its entirety and return Michigan's landlord/tenant practice to the efficient state in which it existed pre-pandemic, the Court elects to substantively change the law in ways that were entirely unnecessary during the pandemic and remain equally unnecessary today.

The amended administrative order is purportedly based on lessons learned from the pandemic, but these amendments have very little to do with the pandemic response. The only change that legitimately relates to the pandemic is the addition of MCR 4.201(F), pertaining to videoconferencing. Indeed, when the government for all intents and purposes shut down in-person human interaction, we learned a great deal about conducting video court proceedings.

Yet, instead of commending our trial courts for managing their dockets during a pandemic, this Court over the past year has seen fit to strip trial courts of discretion on whether and how to use remote court proceedings.[11] Now, this Court further enshrines by court rule that whether proceedings are to be conducted remotely is a matter left entirely to

[11] See Order Retaining and Further Amending the Michigan Court Rule Changes Adopted on July 26, 2021, 510 Mich ___ (August 10, 2022) (ZAHRA, J., dissenting; VIVIANO, J., dissenting; and BERNSTEIN, J., dissenting).

the discretion of the defendant.[12] A court that wants to proceed in person must now "state its decision and reasoning, either in writing or on the record[.]"[13] I would remove the presumption of videoconferencing adopted by this Court in MCR 2.407 and instead require a party desirous of proceeding via videoconferencing to provide the trial court with reasons why videoconferencing is necessary to the administration of justice. We should trust that the same trial courts who managed to operate through a pandemic will likewise effectuate the sound and efficient administration of justice when determining whether videoconferencing is appropriate.

Nonetheless, even though the balance of the proposed changes are ushered into our court rules under the false premise of lessons learned from the pandemic, not all of the changes today implemented by the Court are adverse to the sound administration of justice in the landlord/tenant context. Indeed, some of these changes may provide litigants greater access to justice; for these reasons, I do not oppose the mandatory administration of advice of rights and changes to the jury-demand process.

Other changes, however, unduly interfere with the efficient operation of the district courts and materially change landlord/tenant litigation. Such changes remove the "summary" from the Legislature's directive that landlord/tenant matters be "summary proceedings to recover possession of premises."[14] For example, stripping the district courts of the ability to implement a local rule requiring a written answer within five days or face default needlessly obstructs the functioning of courts that have such rules in place.

Changing MCR 4.201(B)(3)(c), the complaint rule, to require landlords to allege they are in compliance with all "applicable state and local health and safety laws" is also problematic. This change sounds innocent, but there are many building regulations at the state level that have nothing to do with whether the property is habitable. District courts currently have access to local records to determine whether a property obtained a certificate of occupancy. This is enough. Broadening this provision will needlessly delay the eviction process.

The automatic stay of proceedings found in MCR 4.201(I)(3)(a) will also cause unnecessary delay in summary eviction proceedings. This rule, which itself may be outside

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[12] *Id*. at ___ (ZAHRA, J., dissenting).

[13] MCR 2.407(B)(5)(b).

[14] See Chapter 57 of the Revised Judicature Act, MCL 600.5701 to MCL 600.5759.

of our constitutional authority to regulate "practice and procedure,"[15] requires landlords to wait to see if state agencies will subsidize a tenant's rental deficiency.[16] This sounds like an honorable objective, but not everyone who applies for assistance will receive it. Moreover, the state will soon run out of free money for such causes. I certainly do not object to informing litigants that financial-aid programs exist and asking the litigants whether they are interested in stipulating to a stay, but the automatic stay upon a request for funds by the tenant places the speed of the process in the hands of the government, which rarely acts with expediency. Many mom-and-pop landlords will go into default on their mortgages because of this stay provision.

Further, additional delay in the summary eviction process will result from stripping the trial courts of the ability to enter a default judgment upon the failure of a defendant to appear in court at the first trial date unless the plaintiff posts the summons and complaint on the residence and effectuates service by mail and the trial court also duplicates service by mailing "a second copy of the summons and complaint and all attachments to the defendant in a court envelope – the same envelope as used for other court business which is clearly identified as coming from the court." The rule further states that "[t]his court mailing must be delivered to the US Post Office at least 7 days before the date of trial, and a record must be kept." Like the other provisions, this sounds innocent. But why require duplicative service by mail in order to obtain a default judgment? Duplicating service by mail through required court action will unduly burden the courts and needlessly delay the eviction process, as courts must guarantee that the court's service by mail is sent to the post office at least 7 days prior to the scheduled trial date. When trial courts are unable to timely

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[15] See Amended Administrative Order No. 2020-17, 507 Mich ___ (March 22, 2021) (ZAHRA, J., dissenting), and Proposed Amendments of Administrative Order No. 2020-17 and MCR 4.201, 510 Mich 1201, 1213 (August 10, 2022) (VIVIANO, J., dissenting).

[16] It has been suggested that this stay is appropriate because the action brought by the landlord is for eviction for nonpayment of rent, which allows the tenant to remain in possession of the property upon prompt payment of past-due rent. But this argument is meritless. A tenant served with a complaint to recover possession of the premises has seven days to either pay the rent or evacuate the premises. MCL 600.5714(1)(a). Nothing in the summary-proceedings provisions of the Revised Judicature Act authorizes the landlord-tenant court to issue a stay to permit a tenant to pursue financial aid to pay past-due rent sometime in the future. Further, nothing in these statutory provisions supports the inference that landlords must accept payment of rent from third parties. A tenant who has failed to pay rent on or before the rent is due is in breach of the rental agreement. A landlord may choose to evict that tenant in favor of a tenant who will be more respectful of the contractual obligations between the parties.

send out service before the initial trial date, a second trial date will be required.[17] What purpose does this additional layer of court action serve? Perhaps it ensures that the landlord will not commit perjury by falsely claiming service by mail was effectuated. But no evidence was presented before, during, or after entry of this Court's emergency pandemic order that supports any inference that landlords were not adhering to the requirements of our court rules. This additional layer of protection is a solution in search of a problem. For more than 40 years, an affidavit from plaintiff showing that the landlord was unable to accomplish personal service and instead served defendant through the United States mail proved effective, efficient, and sufficient. There is absolutely no reason to not return to this original and functional process.

For all these reasons, I dissent from the failure of this Court to repeal in full each and every aspect of Administrative Order No. 2020-17.

VIVIANO, J., joins the statement of ZAHRA, J.

[17] Like Justice VIVIANO, "I fail to understand why a landlord or landlord's attorney should be forced to return to court a second time to secure a judgment of possession if the tenant was properly served by some method other than personal service yet fails to appear at the initial hearing." See Proposed Amendments of Administrative Order No. 2020-17 and MCR 4.201, 510 Mich at 1212 (VIVIANO, J., dissenting).