M. RANDALL JURRENS
DISTRICT JUDGE

STATE OF MICHIGAN
70TH DISTRICT COURT

SAGINAW COUNTY COURTHOUSE
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October 11, 2022

via email to ADMcomment@courts.mi.gov

Ms. Sarah E. Roth,
Administrative Counsel
Michigan Supreme Court
PO Box 30052
Lansing, Michigan 48909

Re: ADM File No. 2020-08
Proposed Amendment of MCR 4.201

Dear Ms. Roth:

I have reviewed the proposed amendments of MCR 4.201 and respectfully offer the following comments for the Court's consideration.

1. Procedure vs. Substance

Summary proceedings to recover possession of premises are substantively governed by MCL 600.5701 et seq. Of particular import here, MCL 600.5735(2) states that summons in landlord-tenant cases "shall" command defendants to appear for "**trial**" within 10 days; and, continuing, MCL 600.5735(6) provides that "a summary proceeding shall be heard within 7 days after the [ ] trial date **and shall not be adjourned beyond that time other than by stipulation** of the parties".

Soon after the COVID pandemic hit Michigan in March 2020, the Supreme Court adopted AO 2020-17 that, among other things, generally required courts to treat statutory "trial" dates as pre-trial conferences and then adjourn the case for 7 days (without regard to whether the parties stipulated to adjourn). This mandatory postponement of trial is to be continued under proposed MCR 4.201(K)(1)(a), albeit now "for **at least** 7 days".

Subsequent amendments to AO 2020-17 imposed an automatic stay in non-payment cases that further delayed statutory timelines up to 45 days following the initial hearing. A similar automatic stay is found in proposed MCR 4.201(I)(3), albeit for up to only 30 days.

Although I certainly defer to the Court, it is presently unclear how these judicial modifications of statutory law comport with separation of powers principles, Const. 1963, art. 3, § 2.

Specifically, while authority to determine rules of practice and procedure rests exclusively with the Supreme Court, Const 1963, art 6, § 5; *McDougall v Schanz,* 461 Mich. 15, 26; 597 NW2d 148 (1999), it is not authorized to enact court rules that establish, abrogate, or modify substantive law, *Id.* at 27.

So, given the apparent conflict between the statute and the proposed rule amendments (a conflict already existing under AO 2020-17), there needs to be a determination whether a mandated postponement of trial and/or automatic stay of proceedings is procedural or substantive. If the latter, I respectfully submit that any change must come from the Legislature.

2. Judicial Resources

(A) Docket Multiplication

Historically, summary proceedings in our court were generally resolved on the day of trial noticed on the summons (subject to adjournments by stipulation, MCL 600.5735(6), or to afford defendants reasonable opportunity to seek legal counsel, MCR 4.201(F)(2); *Wykoff v Winisky*, 9 Mich App 662, 669; 158 NW2d 55 (1968)).

The multi-step process ushered in with AO 2020-17 on its face effectively doubled our landlord-tenant docket by requiring every hearing to be preceded seven days by a pretrial conference. This administratively-mandated additional step is now to be folded into proposed MCR 2.401(G)(5)(d) and, redundantly, MCR 2.401(K)(1)(a). While the expanded timelines do not necessarily implicate case flow management guidelines, AO 2013-12, it nonetheless represents an increased burden on judges without any corresponding credit for what is effectively a doubling (or more, given multiple adjournments now commonplace) of caseload; and a resulting added burden on staff to prepare and process successive notices not required under prior practice.

(B) Default Requirements

Under proposed MCR 4.201(G)(5(a)(ii) (similar to existing AO 2020-17), the 7-day adjournment requirement otherwise imposed by proposed MCR 4.201(K)(1)(a) does not apply if the defendant was personally served; but the 7-day delay does apply if there is otherwise legitimate service by posting and mailing, MCR 4.201(D). At least for possession judgments — not supplemental complaints for money that require personal service (i.e. proposed MCR 4.201(G)(1)(b) — why can't a plaintiff proceed without further delay if the defendant fails to appear. Why the distinction? Particularly when proposed MCR 4.201(G)(5)(a)(iii) (similar to recently amended AO 2020-17) recognizes new exceptions for cases involving manufacturing or sale of narcotics on the property, *MCL 600.5714(1)(b)*, health hazards or physical injury to the property, *MCL 600.6714(1)(d)*, threats of or actual physical injury to an individual, *MCL 600.5714(1)(e)*, and taking or holding possession of the property by force or trespass, *MCL 600.5714(1)(f)*?

Again, if personal service is not required for possession judgments, why should courts be precluded from promptly proceeding by default when a defendant fails to appear and there is proof of proper service by posting and mailing?

(C) Verbal vs. Written Information

Added to the scheduling burden on court dockets and staff, the proposed amendments (similar to existing AO 2020-17) require judges "verbally" inform defendants of various matters, including the availability of legal assistance, rent assistance, a dispute resolution program, and a conditional dismissal, MCR 2.401(K)(2)(a). Why must this information be conveyed verbally? Since adoption of AO 2020-17 our court developed and has attached to each summons/complaint a "Tenants Advice of Rights" form that provides defendants the requisite information, in writing, for handy future reference, and before the hearing (i.e. so defendants can begin the process of contacting Legal Services of Eastern Michigan, the United Way, MDHHS, MSHDA, etc. sooner than later). For some reason, this is insufficient, unlike criminal advice of rights that are allowed to be given in writing, MCR 6.610(F)(4)(b).

3. Content Issues

(A) Agency Requirements

Under MCR 4.201(K)(2)(iv) (similar to existing AO 2020-17), courts are required to inform defendants that they do not need a judgment to receive assistance from various agencies. However, tenants regularly inform me that MDHHS in particular instructs them that judgments **are required** for financial assistance. Without taking sides, this prompts threshold concerns whether court rules are conducive to communicating third-party policies.

And even if the proposed court rule is correct that judgments are not presently required, one or more of the identified agencies may change requirements from time to time but, if the court rule is adopted as is, our obligation to inform defendants of something that may no longer be true will continue.

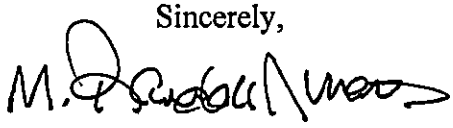
(B) Internal Inconsistency

Proposed MCR 4.201(G)(5)(a) seems to conflict with MCR 4.201(K)(2)(c), the former authorizing entry of default and immediately proceeding to judgment in certain circumstances, while the latter contemplates resolution only "following the pretrial hearing". If a defendant has not appeared and the landlord is otherwise entitled to proceed directly to judgment by default, is a pretrial hearing a necessary antecedent?

In conclusion, while I recognize and commend the proposed amendments' good intentions, I respectfully submit that there are legitimate legal and practical concerns that deserve the Court's serious review before adoption.

Thank you for your consideration.

Sincerely,



M. Randall Jurrens

copy: Chief Justice Bridget M. McCormack
Justice Richard H. Bernstein
Justice Megan K. Cavanagh
Justice Elizabeth T. Clement
Justice David F. Viviano
Justice Elizabeth M. Welch
Justice Brian K. Zahra

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