

Frequently Asked Questions on [Administrative Order No. 2020-17](#)

Q1. Under Administrative Order No. 2020-17, if a tenant is served pursuant to MCR 4.201(D) (mailing plus another method allowed under MCR 4.201(D), such as delivery to a member of the tenant’s family), and the initial hearing is in person, can the landlord obtain a default judgment at the initial hearing if the defendant fails to appear?

A1. No. This is prohibited by [AO No. 2020-17\(8\)](#).

Except as provided below, all Summary Proceeding Act cases must be adjourned for seven days after the pretrial hearing is conducted. MCL 600.5732. Any party who does not appear at the adjourned date will be defaulted. Cases need not be adjourned for seven days if: the plaintiff dismisses the complaint, with or without prejudice, without any conditions; if defendant was personally served under MCR 2.105(A) and fails to appear; or where both plaintiff and defendant are represented by counsel and a consent judgment or conditional dismissal is filed with the court.

In all other situations, the court is required to adjourn the matter for seven days.

Q2. Administrative Order No. 2020-17(2) requires courts to prioritize cases first by whether the complaint alleges illegal activity or extensive and continuing physical injury to the premises, and then by the number of days of nonpayment alleged in the complaint (e.g., 120, 90, 60, and 30 days). Can courts request filers to identify the number of days of delinquency on new filings to accommodate more efficient scheduling?

A2. In an effort to assist the clerk’s office, filers are encouraged to indicate the number of days delinquent on the initial or amended filing. Otherwise, the clerk will need to calculate the number of days delinquent in order to determine the proper priority. Alternatively, each day a clerk, supervisor, or court administrator may list the dates 30, 60, 90, and 120 days earlier. So, if the date is July 22, 2020, 30 days earlier was June 22, 2020; 60 days earlier was May 23, 2020; 90 days earlier was April 23, 2020; and 120 days earlier was March 24, 2020. The complaint includes the plaintiff’s assertion that the rent is paid through a specific date ([DC 102A](#), line 5c.). Comparing the plaintiff’s allegation with the list should make it relatively easy to determine priority.

Q3. Will SCAO be creating an advice of rights form or checklist specific to landlord tenant cases? If so, can the rights required to be given be done in a writing that is made part of the file as is done in misdemeanor cases?

A3. Paragraph 6 requires that “the parties must be verbally informed of all of the following...” so the SCAO will not be creating a written advice of rights form

Q4. Administrative Order No. 2020-17(2)(g) indicates that “each case must be scheduled for a particular date and time (whether held in person or remotely) to allow in-person proceedings to be held safely.” Does this prevent the court from scheduling more than one virtual hearing at the same time?

A4. This does not prevent the court from scheduling more than one case for a hearing at the same date and time. The limitation on case scheduling is social distancing. You must not

schedule more cases than will be consistent with your court's phase in the Return to Full Capacity. Review the [Return to Full Capacity Guidelines](#) before deciding how many cases to schedule at any given time. Several cases may be scheduled remotely for the same time to enable cases to move more quickly.

Q5. Are courts required to hold pretrials on the record in every landlord/tenant case?

A5. No, [AO No. 2020-17\(6\)](#) provides that “the court must conduct a pretrial hearing consistent with SCAO guidance.” SCAO published an updated [Guidance Document Issued in Conjunction with Administrative Order No. 2020-17](#), which clarifies that “[b]ecause this pretrial hearing is purely advisory, there is no requirement to record the pretrial hearing.”

Q6. Is the first pretrial required by AO No. 2020-17(6) something that needs to be scheduled by the court, or is the court allowed to simply refer parties to the CDRP for a first “pretrial” off the record, then set a hearing with the court seven days after that date?

A6. [AO No. 2020-17\(6\)](#) provides that the initial pretrial hearing should be noticed by the summons and conducted by the court. While the pretrial may be conducted by the assigned judge, a visiting judge appointed by SCAO, a magistrate, or a CDRP mediator, the pretrial should be coordinated through the court.

Q7. If the court already refers cases to a mediator, is it required to also use the CDRP?

A7. The AO provides that parties must be informed of the availability of CDRP, not that they are required to use CDRP. The right to legal services is a primary consideration under [AO No. 2020-17](#) and the general rule – MCR 4.201. The need for actual mediation, as opposed to connection to COVID-19-specific services, will be limited.

Q8. Our jurisdiction has an extremely high poverty rate and will likely have difficulty securing participation by Zoom. Will we have to conduct all proceedings in person?

A8. While remote participation is strongly encouraged, there will be instances where parties may not have necessary resources to participate virtually. In these cases, proceedings must be conducted in person. However, social distancing consistent with your court's phase in the [Return to Full Capacity Guidelines](#) is mandatory. Courts that plan to process all or most LT cases in person must follow the guidance in Question 4 above. As a result, it may be a lengthy process. This is why remote participation is strongly encouraged.

Q9. Administrative Order No. 2020-17(7) permits the pretrial to be conducted by a magistrate “as long as the magistrate is a lawyer.” Does that mean non-attorney magistrates are excluded from handling the verbal instruction?

A9. Yes, only an attorney magistrate can conduct the pretrial and provide the verbal advice of rights and information.

Q10. Administrative Order No. 2020-17(7) indicates that an attorney magistrate can conduct the pretrial required. In reading the model local administrative order for the appointment of the attorney magistrate, LT pretrials are not listed as a permitted hearing type. Will courts be required to amend the LAO?

A10. No, courts will not be required to amend the attorney magistrate LAOs. [AO No. 2020-17](#) is the authority for attorney magistrates to perform these duties at this time.

Q11. Is the court required to mail the verification form to the landlords that filed cases before April 16, 2020?

A11. No. The court may mail the verification to the landlord if they choose, or advise the landlord that the form needs to be submitted, but is not required to mail the verification form. [AO No. 2020-08](#) provides that a plaintiff who files a summary proceeding action before July 25, 2020, for nonpayment of rent must submit verification indicating whether the property is exempt from the moratorium provided for under the CARES Act. Additionally, [AO No. 2020-17\(2\)\(i\)](#) provides that a filer who filed a case before April 16, 2020, must update the factual allegations in the complaint and file the verification form before a hearing will be scheduled.

Q12. Can the amended factual allegations and information required by the verification form be put on the record rather than requiring amended complaints and verification forms be filed in each case that was filed before April 16, 2020?

A12. No. [AO No. 2020-17\(2\)\(i\)](#) requires that the factual allegations be updated and that the verification form be filed **before** a hearing will be scheduled.

Q13. If the parties reach agreement and want to waive their right to appear at a second hearing, can a conditional dismissal or consent judgment be entered at the initial hearing?

A13. Yes but only if both parties are represented by counsel. Where plaintiff and defendant are represented by counsel, the parties may submit a conditional dismissal or consent judgment in lieu of appearing at the second hearing. [AO No. 2020-17\(8\)](#). At the initial pretrial hearing, the court is only permitted to provide verbal advice of rights and information regarding housing assistance and mediation. The only circumstances that would not require an adjournment for seven days are: if the plaintiff dismisses the complaint with or without prejudice and without any conditions; if the defendant was personally served under MCR 2.105(A) and fails to appear; or where both plaintiff and defendant are represented by counsel and a consent judgment or conditional dismissal is filed with the court.

Q14. We have LT cases where the judgment was entered but the redemption period expired during the temporary suspension on evictions. Do you know when we can issue the eviction?

A14. This is a judicial determination to be made in each case. SCAO suggests you review:

- (1) [Executive Order 2020-134](#), issued June 26, 2020, extending the temporary suspension of evictions until July 15, 2020.
- (2) EO 2020-134(6) “Any statutory limits on the court of this state to adjourn any proceedings, toll any redemption periods or limitations periods, or extend any deadlines are suspended through July 31, 2020 at 11:59 pm.”

Q15. Will the CARES Act verification form be amended to allow filers to indicate that the CARES Act moratorium does not apply so the case can proceed?

A15. The Verification of Compliance with CARES Act ([DC 504](#)) has been revised to include cases that are covered by the CARES Act but can proceed. The most common example of a covered property that may proceed will be cases filed before the moratorium. However, other provisions of the CARES Act may apply (e.g. prohibition on collection of late fees). The updated form is designed to capture and convey all relevant information.

Q16. If the original amount demanded has not been paid, and more rent has accrued, may the landlord file the complaint for nonpayment of rent case based on the amount due or only the original amount noted in the demand for possession?

A16. A person is not entitled to file a summary proceeding action until seven days from the service of a written demand for possession for nonpayment for the rent due. MCL 600.5714(1)(a). Once the demand is made, the complaint should include the total amount of rent due. If the landlord files an amended complaint, the total amount of rent due will be amended and served pursuant to court rule.

Q17. How long will it take for courts to address priority 6 cases?

A17. The priority periods will be different at each court. For example, it will depend on: the volume of LT cases at the court; the number of days the court designates for LT cases; the number of officers (judges, visiting judges, magistrates, CDRP) that are presiding over LT dockets; the number of tenants who are able to participate remotely; and what phase of Return to Full Capacity the individual court is in, which may control how many cases can be scheduled for in-person hearings at one time. Each court is encouraged to take steps to increase capacity to schedule and resolve LT cases. The use of remote hearings is encouraged wherever possible to maximize capacity, while at the same time ensuring that the number of people present remains low.

Q18. How does the court handle writs of eviction that expired when they could not be executed by the Sheriff's department due to the Governor's Executive Order? Are they still valid because the 56 days tolled during the Governor's Executive Order; or should we issue new writs with a new 56-day time frame?

A18. This is a judicial determination to be made in each case. SCAO suggests you review MCR 4.201(L)(4) provides that "unless a hearing is held after the defendant has been given notice and an opportunity to appear, an order of eviction may not...be executed later than 56 days after it was entered."

Q19. What if a plaintiff/landlord has a termination case that is not scheduled until the fifth priority, but he or she wants the court to consider it sooner?

A19. A court may consider a termination case before the fifth level of priority upon motion by plaintiff alleging that there is good cause to consider the case earlier for reason of public safety or other just cause, including but not limited to matters brought under MCL 600.5775. [AO No. 2020-17\(3\)](#).

Q20. Can the court provide the defendant with written advice of rights in lieu of addressing those rights at the pretrial?

A20. No. The advice of rights must be provided verbally to the defendant at the pretrial hearing.

Additionally, 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. [AO No. 2020-17\(4\)](#).

Q21. Is Administrative Order No. 2020-17 temporary?

A21. Yes. A court may discontinue compliance with [AO No. 2020-17](#) when it has proceeded through all priority phases and no longer has any landlord/tenant filings that allege a breach of contract for the time period between March 20 and June 30, 2020. A court may notify the regional administrator of its completion of the process and will not be required to return to the procedure even if a subsequent case is filed that alleges rent owing during the period of the eviction moratorium. AO No. 2020-17(11).

Q22. Is the seven-day adjournment flexible? Can we adjourn for more than seven days?

A22. No. This seven-day adjournment is not flexible. AO No. 2020-17(8). However, [AO No. 2020-17](#) has not divested the presiding judge of the authority conveyed by rule. See MCR 4.201(H)(2).

Q23. Can the court begin hearing landlord/tenant cases that do not pose a substantial risk to another person or an imminent and severe risk to property?

A23. Under the Governor's Executive Order 2020-134, the moratorium on evictions is temporarily extended and will remain in effect through July 15, 2020.

Q24. Do landlords have to enter into conditional dismissals or participate in statewide Eviction Diversion Programs (EDP)?

A24. No, the landlord does not have to enter into a conditional dismissal or participate in any rental assistance program, including EDP. A conditional dismissal is authorized by MCR 2.602(C) and may be used as part of a rental assistance agreement or independently. If the landlord elects to proceed without rental assistance and declines the use of a conditional dismissal, the case is handled exactly how it would have been handled pre-pandemic. However, access to rental assistance from the government will be conditioned on participation in the EDP and use of a conditional dismissal.

Q25. Are land contract forfeiture cases sixth priority? The AO is silent as to them.

A25. Yes, all cases not expressly included under any other priority, fall under the sixth priority.

Q26. Are commercial properties covered by AO No. 2020-17?

A26. Yes, commercial properties are LT cases for purposes of priority level. However, the MSHDA rental assistance program does not apply to commercial properties.

Q27. If we are working on third priority (90 day cases) and someone files a case with second priority, do we process that case since it is a higher priority or does it become sixth priority?

A27. It would become a sixth priority case, but within the sixth priority cases, you would reprioritize those cases based on the original priority. First priority cases should be brought to the assigned judges' attention as soon as possible. The AO states “[c]ases filed in a lower numerical priority designation (e.g., a second priority case filed during a court’s priority five period) shall be given first consideration in order of priority”.

Q28. How is scheduling effected if the building where the court is located isn’t open to the public? Does the public need to be able to have the option to appear in person for scheduling to begin?

A28. The court must provide a meaningful opportunity for the parties to participate. [AO No. 2020-06](#) and [AO No. 2020-19](#) require the court to verify that parties can appear remotely. Those Administrative Orders also provide cases that cannot be heard remotely may be adjourned. [AO No. 2020-17](#) also requires the court to provide an in-person option if defendant fails to appear for the pretrial hearing. [AO No. 2020-06](#)

Q29. Do you start each day with moving through the priorities or do you pick up where you left off the previous day?

A29. Courts should proceed to a subsequent priority when all cases in the higher priority have been scheduled for hearing. The goal is to estimate how many priority two cases you are going to have and leave those spaces available until they can be completed. The judges and CA’s need to talk about how many LT days each judge can have, how many case slots per day, then estimate how many cases you might have for each priority.

Q30. Is the priority level within AO No. 2020-17 determined based on the court caseload or by judge’s docket? In other words, can a judge move to the next priority case if another judge within the court is still on a previous priority level?

A30. The priority level is determined based on each judge’s docket. Each judge should determine their own docket allowances and move onto the next priority level accordingly.

Q31. What effect does the moratorium have on cases that were filed on April 16 and thereafter but before the first eviction moratorium?

A31. With regard to the CARES Act, [DC 504](#) was recently amended to allow for covered property that may proceed because they were filed before the moratorium. However, April 16, 2020, may not be the appropriate date to focus on. Consider the following; the temporary suspension on evictions began March 20, 2020 ([EO 2020-19](#)) and the Court’s suspension of the computation of time for case initiation was issued on March 23, 2020 ([AO No. 2020-3](#)). Cases involving covered property filed before the CARES Act moratorium may still be subject to limitations on late fees and other charges.

Q32. Does every case require a Verification of Compliance With CARES Act (DC 504)? If not, which cases are required to have this?

A32. Yes, every case requires a Verification of Compliance With CARES Act. [AO No. 2020-8](#) states “a complainant who files **a summary proceeding action** before July 25, 2020 under MCR 4.201 for possession of premises for nonpayment of rent also **must submit verification**

indicating whether the property is exempt from the moratorium provided for under the CARES Act.”

Q33. Is it legal for the landlord(s) to assess and attempt collection of late fees during Covid19?

A33. The legality of this needs to be decided by a judge. The CARES Act does have specific limits for covered properties about assessing fees and costs.

Q34. AO 2020-17 (2) (h) states: “...must update the factual allegations in the complaint...” Does the plaintiff have to file an amended complaint? If so, do they need to serve the defendant and by which method and time frame?

A34. If the plaintiff files an amendment to their complaint, they have to serve the amended complaint according to court rule. The AO does not require the plaintiff to file an amended complaint, only an update to the original allegations. The allegations are not to provide more notice to the defendant, the update is to provide the court with information on how to prioritize the case. The courts need to know where this case fits in to the priority.

Q35. What if there is service by posting, the defendant fails to appear, the case is rescheduled and the defendant fails to appear for the second hearing?

A35. The second hearing is just like the normal first hearing (before [AO No. 2020-17](#) was released). If there is service by posting, and if the defendant does not appear for the pretrial hearing either remotely or in person, the court must, within 24 hours, mail the defendant a new notice of the adjourned hearing date. If after the posting, the notice being mailed out, the defendant fails to appear, then they can be defaulted.

Q36. If the defendant is not personally served and fails to appear at the remote pretrial hearing, does the second scheduled hearing have to be in person?

A36. According to AO No. 2020-17(4), 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 inperson proceeding.

Q37. What if the court is not doing any in person hearings?

A37. Provided that the court is in at least phase one of return to full capacity, the court should find a way to accommodate an in-person hearing, limited to no more than 10 people. Pursuant to [AO No. 2020-6](#) and [AO No. 2020-19](#), any hearing that cannot be accommodated in-person or held remotely may be adjourned. If a party cannot appear remotely, the case should be scheduled for an in-person hearing as soon as possible. This might be at a later date due to the court not being able to make accommodations due to social distancing or not being in the RTFC phase that would allow for parties to be present in the courthouse.”

Q38. How are area median income (AMI) guidelines determined, where can defendants find this information, and where can courts and judicial staff obtain the charts?

A38. This information can be found on the [Michigan State Housing Development Authority \(MSHDA\) website](#). There is also a [chart](#) available which lists this information by county.

Q39. If a defendant had already been served a summons prior to COVID, why can't they just send the defendant a notice to appear?

A39. If defendant has been served, the appropriate way to bring them to court is a Notice to Appear (NTA). Plaintiff must first file the CARES Verification and updated allegations to determine when the court will have them appear.

Q40. Is the court required to provide EDP information on existing cases where the summons was already served?

A40. Every case that is heard during the period post-moratorium has to use the procedures within [AO No. 2020-17](#). Any case where the summons was previously served must have a new date because the original summons included a previous date (long since past). In each case, review the updated allegations and the CARES Act Verification to determine priority and schedule for pretrial hearing. The EDP information should be included with the NTA that is provided to the defendant.

Q41. Who develops the notice that the courts are required to provide to each defendant that contains information regarding the HARA and EDP?

A41. The court should reach out to legal aid and the HARA within their community to find out if they have any information that the court can provide to parties (e.g., pamphlets/brochures). At the very least, the court needs to provide contact information for the HARA, legal aid, and Michigan Community Dispute Resolution Program (CDRP).

Q42. How do we know who our HARA is?

A42. [MSHDA](#) has a [spreadsheet](#) available that lists every HARA by county.

Q43. How long will it take for the landlords to receive the money if they participate in this program?

A43. According to MSHDA, it may take up to two weeks. The payments are negotiated as part of the conditional dismissal.

Q44. Is there a deadline for a plaintiff to update the pleading on cases that were filed before April 16th? What should the court do if the pleading is never updated, can the court administratively dismiss?

A44. It is the plaintiff's responsibility to update the allegations and file the Verification of Compliance With CARES Act (DC 504) prior to the court scheduling a hearing. If the plaintiff never files the necessary documents, the court could use its discretion and consider the case for dismissal for lack of progress under MCR 2.502.

Q45. Could you provide a list of websites relevant to this subject matter?

A45. There are many great resources available to the courts and the general public. Please see the following:

- [Michigan Legal Help](#) has a page dedicated to evictions and the COVID-19 pandemic.
- [Michigan State Housing Development Authority](#) has an eviction diversion webpage, also within this website are links to the following:
 - Housing Assessment and Resource Agency (HARA) [contact list](#)
- [AO No. 2020-17](#), which also has supporting documents, including this FAQ and the following: ○ AO No. 2020-17 [guidance document](#)
- The SCAO has a webpage dedicated to the [judiciary's response to COVID-19](#).