October 24, 2022

State Court Administrative Office
Hall of Justice
P.O. Box 30052
Lansing, MI 48909

Attn: Hon. Thomas P. Boyd, Administrator
Ms. Sarah E. Roth, Administrative Counsel

Re: ADM file 2020-08

Dear Judge Boyd:

On behalf of the Michigan District Judges Association, I am pleased to offer the following comments on behalf of our membership regarding the proposed amendments to MCR 4.201. As the District Court is the primary jurisdiction wherein Summary Proceedings are conducted, the MDJA members have unique and valuable insight into the scheduling, processing, and disposition of these cases across the State. I hope therefore, that these comments will be helpful and will receive the Court's attention and due consideration.

Like the Covid-19 pandemic itself, the Michigan Judiciary's response to the pandemic's challenges was unprecedented. The pandemic brought many changes to the legal landscape in Michigan, with every court turning to more extensive use of remote proceedings and adjusting to changes in the way we offer public participation and viewing of court proceedings. And nowhere was there more of an impact than in the Summary Proceedings arena. The complexities of the situation were unique, often tied to various pieces of Federal legislation. Considering this legislation and the rapidly evolving Supreme Court Administrative Orders, District Courts were asked repeatedly to modify and adjust management of the landlord-tenant dockets. As a group we accepted the challenges that came with the emergency circumstances and made changes to adapt to the new requirements. Many district courts essentially developed eviction diversion programs in the midst of the pandemic and worked tirelessly to create relationships with community organizations to ensure that the needs of the communities were met during the crisis. We recognize both the need that existed to temporarily substitute regular order and practice with extraordinary measures, and we appreciate this Court's decisive leadership and response during the crisis.

However, the question now turns on whether to make permanent many, if not most, of those temporary and extraordinary rules and procedures by amendment of MCR 4.201. As the Court now considers the proposal, it is important to first determine if rule modification is the best way to effectuate change in the area of summary proceedings.

As a primary concern, the proposed amendment permanently enshrines irreconcilable conflicts between the court rule and the governing statute, MCL 600.5701. Indeed, the proposed MCR 4.201(K) (mandating an adjournment for at least seven days from the first appearance date) *mandates* that courts do exactly that which the statute, MCL 600.5735(6)(prohibiting adjournments beyond 7 days of the first appearance date absent the stipulation of the parties) *expressly prohibits*.

Were the Court to adopt these changes, District Court judges would be forced to choose between violating the clear express terms of the statute or the equally clear commands of the Rule. For courts and judges, whose primary role is to uphold the law, and whose legitimacy is derived from the public's confidence that the court is actually doing so, this position is untenable.

We acknowledge that as a basic premise, the proposed amendment and the Administrative Order which preceded it, are clearly based on good and compassionate ideals. However well intended, the practical effect of the proposal is to create procedural delays in Summary Proceedings and make them far less "summary" in nature. It appears that the changes invade the province of the Legislature, which has had two years to make revisions to the statute and has chosen not to do so. We would like to avoid Constitutional issues relative to separation of powers at the outset.

There are also practical issues with making many of the changes in Administrative Order 2020-17 a permanent part of the Court Rules. Docket management and lack of resources remain a considerable concern. The additional hearings that could be required per the proposed rule will likely ensure that three to four hearings could be necessary before resolution. These changes will have a ripple effect on other types of cases and their scheduling at the courts. Although most courts have found a way to do this on a temporary basis, often with the assistance of magistrates presiding over pre-trials, going forward these requirements would necessitate significantly more work for current staff levels, and further strain already limited resources.

Therefore, the MDJA respectfully opposes the proposed amendment to MCR 4.201 for the reasons stated above.

Respectfully,

Raymond P. Voet
President MDJA