

**MICHIGAN STATE
UNIVERSITY
COLLEGE OF LAW**

November 1, 2022

Larry S. Royster
Clerk of the Court
Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48909
via email: ADMcomment@courts.mi.gov

**Re: ADM File No. 2020-08 – Comments in Support of Proposed
Amendments of Administrative Order No. 2020-17 and Rule
4.201 of the Michigan Court Rules**

Dear Clerk Royster:

The Michigan State University College of Law Housing Justice Clinic (HJC) submits this comment in support of the proposed amendments to Administrative Order No. 2020-17 and Rule 4.201 of the Michigan Court Rules.



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The HJC is an in-house, semester-long legal clinic where student attorneys receive academic credit to work on cases and projects under the supervision of clinic faculty. The HJC's work is focused on the following areas of housing law: eviction defense, challenges to discrimination under the Fair Housing Act and other federal law, and advocacy for people with criminal backgrounds who are facing housing issues.¹ Through its eviction defense work, the HJC hopes to help level the playing field for tenants in Michigan who are facing eviction. According to the American Civil Liberties Union, 90% of landlords throughout the United States have legal representation in eviction proceedings, while fewer than 10% of tenants can secure access to the same type of representation.² The disparity in representation in eviction

¹ This semester, the HJC's work has been focused on claims arising under federal law, but that work will expand to matters arising under state law in the coming semesters.

² Sandra Park & John Pollock, *Tenants' Right to Counsel is Critical to Fight Mass Evictions and Advance Race Equity During the Pandemic and Beyond*, AM. C.L. UNION (Jan. 12, 2021), <https://www.aclu.org/news/racial-justice/tenants-right-to-counsel-is-critical-to-fight-mass-evictions-and-advance-race-equity-during-the-pandemic-and-beyond>.

proceedings is similarly seen in Michigan: between 2014-2018, 83% of landlords had legal representation in Michigan’s eviction proceedings, but under 5% of tenants had counsel.³ Moreover, a significant percentage of tenants are low income: the National Low Income Housing Coalition classified 28% of Michigan renters in 2020 as extremely low income.⁴ This means that those households are at or below 30% of their respective area median income.⁵ Many of these households spend more than half of their income on their housing, leaving little to no money available for acquiring legal help or dealing with economic emergencies.⁶ Because of this disparity in resources, tenants struggle to adequately advocate for their rights in court. The HJC strives to support and zealously advocate for tenants while also working to increase access to the justice.

It is no secret that “[e]viction is costly and damaging for all parties involved.”⁷ Before the COVID-19 pandemic, “more than 2.3 million evictions were filed annually, equating to about *four evictions per minute*.”⁸ In Detroit between 2000 and 2018, landlords filed about 30,000 evictions, which is equivalent to 1 in 5 rental households.⁹ Recognizing that non-traditional approaches were necessary to address this crisis, some jurisdictions in Michigan have long been leaders in seeking innovative solutions to the eviction crisis.¹⁰ For example, the City of Kalamazoo adopted an “innovative Eviction Diversion Program in partnership with the Department of Housing and Urban Development (“HUD”), a local tenant screening service, and the local trial court” in 2010 that has “been widely celebrated and is now emulated by other jurisdictions around the country.”¹¹ Within a couple of years, similar programs spread to other Michigan jurisdictions.¹² While these efforts are certainly to be applauded, eviction diversion programs alone are “not a panacea”¹³ to the eviction crisis, as the COVID-19 pandemic made obvious.

³ Robert Goodspeed, Margaret Dewar, & Jim Schaafsma, *Michigan’s Eviction Crisis*, UNIV. OF MICH. POVERTY SOLUTIONS 1 (May 2020), <https://poverty.umich.edu/files/2020/05/Michigan-Eviction-Project-policy-brief.pdf>.

⁴ NAT. LOW INCOME HOUS. COALITION, *Housing Needs by State: Michigan*, <https://nlihc.org/housing-needs-by-state/michigan> (hereinafter Michigan Housing Needs).

⁵ *Id.*

⁶ *See, e.g., id.* (referring to the shortage of affordable rental homes in Michigan for extremely low-income households).

⁷ THE NETWORK FOR PUBLIC HEALTH LAW, *Series: Preventing Housing Instability Fact Sheet—Eviction Diversion and Prevention Programs*, 1 (May 2021), <https://www.networkforphl.org/wp-content/uploads/2021/05/Fact-Sheet-Eviction-Diversion.pdf>.

⁸ Deborah Thompson Eisenberg, Toby Guerin, & David Spinosa, *The Role of Mediation in an Integrated System of Eviction Prevention*, 2 NO. 2 MD. B.J. 112, 112 (2020) (emphasis in original).

⁹ Alexa Eisenberg & Katlin Brantley, *Crisis Before the Emergency: Evictions in Detroit Before and After the Onset of COVID-19*, UNIV. OF MICH. POVERTY SOLUTIONS 3 (June 2022), <https://sites.fordschool.umich.edu/poverty2021/files/2022/PovertySolutions-Covid-Evictions-PolicyBrief-r2-2.pdf>.

¹⁰ *Id.* at 2 (highlighting the City of Kalamazoo’s innovative Eviction Diversion Program).

¹¹ *Id.*

¹² Sam Inglot, *Eviction diversion*, CITYPULSE (Sept. 19, 2012, 12:00 a.m.), <https://lansingcitypulse.com/stories/eviction-diversion,8519>.

¹³ Eisenberg, Guerin, & Spinosa, *supra* note 8 at 114.

In response to the pandemic, the Court adopted Administrative Order No. 2020-17 to temporarily address the health crisis's impact on the Michigan court system.¹⁴ The order included, among other things, a requirement that Michigan eviction courts conduct pretrial hearings to verbally inform parties of rental assistance agencies and the possibility of mediation services that could lead to a conditional dismissal, an authorization to use videoconferencing and other remote participation tools, and a requirement that Michigan courts adjourn eviction proceedings for 7 days after the pretrial hearing before proceeding to trial.¹⁵ Shortly after the Court issued Administrative Order No. 2020-17, it, along with collaborators the Michigan State Housing Development Authority (MSHDA) and the Michigan Department of Health and Human Services (MDHHS), announced the creation of a statewide Eviction Diversion Program (EDP).¹⁶ The EDP meant to help tenants who had fallen behind on rent and landlords who needed to collect back rent caused by the COVID-19 pandemic.¹⁷ Both Administrative Order No. 2020-17 and the EDP helped tenants and landlords across Michigan, providing \$474 million in funding to be used toward rent payments to landlords as of January 2022¹⁸ and lowering eviction rates across the state.¹⁹

While these measures helped to protect tenants' from being evicted during the pandemic, the measures did not significantly alter the imbalance of power and resources inherent to the landlord-tenant relationship.²⁰ For example, landlords can take advantage of tenants who are low-income

¹⁴ MICH. SUP. COURT, *Administrative Orders*, “AO No. 2020-17—Continuation of Alternative Procedures for Landlord/Tenant Cases, 406 (Entered June 9, 2010; language as amended by orders entered Jun. 24, 2020, Oct. 22, 2020, Dec. 29, 2020, Jan. 30, 2021, Mar. 22, 2021, Apr. 9, 2021, Jul. 2, 2021, Jul. 26, 2021, and Aug. 10, 2022),

<https://www.courts.michigan.gov/4a8168/siteassets/rules-instructions-administrative-orders/administrative-orders/administrative-orders.pdf>

¹⁵ *Id.* at 407-08.

¹⁶ *New Eviction Diversion Program offers \$50 million in relief for renters, landlords*, MICH. STATE HOUS. DEV. AUTH. (Jul. 16, 2020), <https://www.michigan.gov/mshda/about/press-releases/2020/07/16/new-eviction-diversion-program-offers-50-million-in-relief-for-renters-landlords>.

¹⁷ *Id.*

¹⁸ Nushrat Rahman, *173K applied for rent aid in Michigan. About half got help so far*, DETROIT FREE PRESS (Jan. 9, 2022), <https://www.freep.com/story/news/local/michigan/2022/01/09/rent-utility-assistance-high-michigan-eviction/9091578002/>.

¹⁹ *See, e.g.*, Eisenberg & Brantley, *supra* note 9 at 3 (recounting drop in eviction rates in Detroit).

²⁰ Eviction courts are, by their nature, built to favor the rights of the socially powerful landlord over the socially powerless tenant. Barbara Bezdek, *Silence in the Court: Participation and Subordination of Poor Tenants' Voices in Legal Process*, 20 HOFSTRA L. REV. 533, 540 (1992) (explaining that eviction court “is an expression of centuries of culture regarding landowning and its centrality to “worth,” as well as an expression of judges’ class-related assignments of parties credibility” and recounting that tenants “must challenge these powerful underlying premises held by the power-wielding figures in the room—the judge and the landlord” in order to be successful). “In other words, in the absence of evidence produced by either party, the court uniformly awards judgment to the landlord.” *Id.* The fact that “[t]he great majority of defendants in [eviction] actions are members of groups that are, relatively speaking, socially powerless”

and desperate for housing by providing poor housing at a high rental rate.²¹ Also, many tenants cannot avail themselves of their habitability rights they because they have no leverage against the landlords.²² Unfortunately, tenants often find themselves evicted for enforcing their habitability rights.²³

Considering the above, the HJC thanks and commends the Court for seeking to codify in the Michigan Court Rules the changes it temporarily enacted with Administrative Order 2020-17. While the proposed changes do not significantly change the rules governing eviction proceedings, the changes will help to protect the due process rights of tenants and increase access to justice for low-income people facing eviction. Overall, the HJC supports the proposed amendments and believes they will help level the playing field between landlords and tenants in eviction proceedings.

A note on methodology: To write an informed comment on the proposed amendments, the HJC reached out to people who worked in the area of tenant advocacy in Michigan and asked for their insight on how the proposed amendments may affect tenants’ access to justice. Because these advocates are attorneys and other interested parties who work within the field, we were eager to learn how they anticipated the amendments may or may not impact a tenant’s access to the justice system. In addition to seeking these firsthand perspectives, we also researched how eviction procedures impact tenants’ rights across the country. As you will see below, we do not provide commentary on every proposed change. Rather, we focused on those changes we found to be either more controversial or impactful; in particular, we focused our comments on the proposed changes that seem to have the most potential to protect tenants’ rights.

I. The proposed amendment to Rule 4.201(B)(3)(c) regarding complaints adds an additional layer of protection aimed at ensuring safe living environments for tenants.

The HJC supports the proposed amendment to Rule 4.201(B)(3)(c) that would require landlords to attest in the complaint that they not only kept the premises fit for the use intended and in reasonable repair during the term of the lease or license, but that the dwelling is also in compliance with applicable state and local health and safety laws. Adding this pleading burden on landlords should require landlords to consider habitability defenses prior to proceeding with an eviction action and help ensure more robust compliance with local ordinances seeking to ensure property within a local jurisdiction is properly maintained. Because habitability defenses are often hard to

exacerbates the power imbalance inherent to the landlord-tenant action. *Id.* (recounting that tenants in eviction proceedings are “mostly women, mostly black, [and] almost all poor”).

²¹ Lisa T. Alexander, *Evicted: The Socio-Legal Case for the Right to Housing*, 126:2 YALE L. J. FORUM 431, 435 (Apr. 12, 2017), <https://www.yalelawjournal.org/forum/the-socio-legal-case-for-the-right-to-housing> (recounting that “[l]andlords can often capitalize on their tenants’ poverty, lack of choices, and desperation by charging very low-income renters high rates for substandard housing”).

²² *Id.* at 434-35 (explaining that “unsubsidized low-income tenants have virtually no leverage to complaint about substandard conditions”).

²³ *Id.* at 435.

prove, shifting the burden to landlords to affirmatively plead and prove that their properties comply with local health and safety laws should urge lower courts to take habitability defenses seriously when tenants raise them and help restore a balance of power between landlords and tenants.

Today, in theory, “the legal relationship between a landlord and tenant is a two-way obligation: a tenant pays rent in exchange for a landlord providing a safe and decent place to live.”²⁴ However, when the obligations of one party are enforced while the duties of the other are not, a power imbalance exists. Too often, we can see this type of power imbalance playing out between tenants and landlords in Michigan. For example, an ordinance in the City of Detroit requires that “landlords may not occupy rental units or collect rent unless they register their properties and obtain a Certificate of Compliance (CoC) from the Buildings, Safety, Engineering, and Environmental Department (BSEED).”²⁵ However, as of March 15, 2022, only “about 5,600 (6%) of Detroit’s approximately 87,000 rental properties had a CoC,”²⁶ and 89% of Detroit eviction cases involved properties that lacked a CoC.²⁷

While a robust analysis of these statistics is beyond the scope of these comments, presumably, landlords have been able to avoid compliance with this ordinance for two reasons: first, the vagueness of the current pleading requirements in Rule 4.201(B)(3)(c) allows landlords to avoid affirming that their properties are duly in compliance with local ordinances. Second, lower courts are generally not enforcing landlord compliance with local ordinances requiring registration of rental properties.²⁸ According to *No Time for Justice*, a study of Chicago’s eviction court conducted by Chicago-Kent College of Law Class of 2004 Honors Scholar, “[w]hen tenants raised defenses to the eviction action. . . [a defense related to the] condition of apartment was asserted in almost 23% of the cases,” but the defense always failed.²⁹ But habitability defenses are almost certainly not always meritless, particularly in jurisdictions with a large number of properties that are not complying with local registration and inspection requirements.³⁰

Thus, if landlords are required to plead and prove compliance with local laws, habitability-based defenses may be less frequently necessary and should be taken seriously when raised. By requiring landlords to attest that applicable state and local health and safety laws are being followed and to

²⁴ Eisenberg & Brantley, *supra* note 9 at 12.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.* at 14.

²⁹ Chicago-Kent College of Law Class of 2004 Honors Scholar, *No Time for Justice: A Study of Chicago’s Eviction Court*, LAWYERS’ COMMITTEE FOR BETTER HOUSING 16 (Dec. 2003), <https://www.lcbh.org/sites/default/files/resources/2003-lcbh-chicago-eviction-court-study.pdf>.

³⁰ *See, e.g.*, Todd Heywood, *Uninspected rentals a thorny problem for Lansing*, CITY PULSE (Jul. 14, 2022), <https://www.lansingcitypulse.com/stories/uninspected-rentals-a-thorny-problem-for-lansing,21743> (estimating that nearly 10% of Lansing’s rental properties are not in compliance with local registration and inspection requirements).

demonstrate proof of such compliance, the power imbalance between landlords and tenants all-too-often inherent to summary eviction proceedings may begin to shift.³¹

II. The proposed amendment to Rule 4.201(C)(3)(f) regarding summons promotes a more efficient way of settling landlord-tenant matters as well as increasing equitable outcomes for tenants.

The HJC supports the proposed amendment to Rule 4.201(C)(3)(f) that would add language to every summons issued in a landlord-tenant matter to apprise the tenant of the availability of rental assistance and other housing assistance provided by local funding agencies and legal aid.

Commendably, Rule 4.201(C)(3)(f) already contains provisions requiring that the summons apprise tenants of the right to seek counsel and the various ways to do so. As described above, statistics show that there is significant difference in the outcome of eviction proceedings where a tenant is represented when compared to those where a tenant does not have counsel. After analyzing 30,000 eviction cases from Michigan’s 36th District Court in a February 2022 study, Stout Risius Ross, LLC (Stout), “a global investment bank and advisory firm specializing in corporate finance, valuation, financial disputes, and investigations,” discovered that “approximately 4 percent of tenants were represented, and 83 percent of landlords were represented”³² in eviction proceedings. Moreover, Stout found that access to counsel minimizes the potential of disruptive displacement, a phrase used to “capture outcomes of cases beyond ‘winning’ and ‘losing’” by looking at the degree of disruption to tenants’ lives caused by the eviction proceeding.³³ Stout found that represented tenants experience disruptive displacement just 3 percent of the time, while unrepresented tenants experience it in approximately 53 percent of eviction proceedings.³⁴ These statistics demonstrate an obvious advantage to having counsel; tenants need to be made aware of the right to seek counsel on that premise alone.³⁵

³¹ Of course, this shift can only occur in those jurisdictions that actually *have* local health and safety ordinances to enforce. A legal aid staff attorney reported to HJC that many rural localities of northern Michigan do not have local health and safety laws with the exception of building codes that would give effect to this proposed rule change.

³² Stout Risius Ross, LLC, *The Estimated Impact of an Eviction Right to Counsel in Detroit* 6, 10 (Feb. 9, 2022), <https://qlcf.app.box.com/s/qz9d8nqe2aha75klodigf81rsrphpbnj>.

³³ *Id.* at 52.

³⁴ *Id.* at 10-11.

³⁵ Other jurisdictions have also recently recognized the importance of a right to counsel in landlord-tenant proceedings. In 2017, New York City Mayor Bill de Blasio signed into law an act that guarantees legal representation to any low-income resident facing eviction. *See* Kriston Capps, *New York City Guarantees a Lawyer to Every Resident Facing Eviction*, BLOOMBERG (Aug., 14, 2017), <https://www.bloomberg.com/news/articles/2017-08-14/new-york-ensures-right-to-counsel-for-all-eviction-cases>. For context, at the time Mayor de Blasio signed the law, New York City faced a similar disparity in representation as Michigan: landlords appeared with counsel in more than 90 percent of cases, but tenants had lawyers in just 1 to 10 percent of cases. *Id.* John Pollock, coordinator for the National Coalition of the Civil Right to Counsel, perfectly captures the effect of such a vast difference in representation percentages between tenants and landlords: “*When you have that kind of imbalance, not occasionally but almost guaranteed in*

But tenants are not the only beneficiaries of an increased access to counsel. According to Stout, “for every dollar invested in a right to counsel for low-income tenants facing eviction in Detroit,” the city will see an economic benefit of at least \$3.52.³⁶ On a yearly scale, Stout estimates that “an annual investment of approximately \$16.7 million in a right to counsel” will lead to “economic benefits of at least an estimated \$58.8 million” for the city.³⁷

The reason cities like Detroit may benefit economically from providing counsel is tied to the nationwide struggle with homelessness. Providing counsel to tenants facing eviction would lower transitional homelessness, which costs cities like Detroit millions of dollars per year; this is a struggle shared by tenants and cities alike.³⁸

Here, of course, the Court is not proposing the creation of an absolute right to counsel through the proposed amendments. But an understanding of the important difference counsel can make on outcomes in landlord-tenant proceedings helps underscore the importance of increasing tenants’ *awareness* that counsel is available to them. In response to HJC’s inquiries, a legal aid attorney at reported that tenants often don’t realize that they can seek counsel because the mode in which the information is delivered on the summons as currently issued “is too packed with words for most people to read.” Thus, we ask the court to consider the way in which the information required by Rule 4.201(c)(3)(f) is conveyed to tenants; namely, we suggest that the summons be expanded so that the information is conveyed in a font-size that can easily be read and understood by tenant.

This change to how the information required by Rule 4.201(c)(3)(f) is conveyed to tenants is even more important in light of the proposed change to include information about rental assistance program on the summons, too. Making tenants more aware of ways in which to receive funds to maintain their rental housing is a win for both tenants and landlords. Renters in Michigan are faced with especially harsh financial conditions. 28% (or 319,644) of renter households in Michigan are extremely low income; of that 28% of households, 70.9% spend more than half of their yearly income on housing.³⁹ This means that when unexpected economic downturns occur, these households are the most vulnerable, as we can see when we examine the impacts of the last two years.⁴⁰

Yet rental assistance programs like COVID Emergency Rental Assistance (CERA) can help. The CERA program in 2021 distributed \$72,000,000 to landlords in Detroit.⁴¹ Moreover, judgments against tenants for non-payment of rent decreased by 71% after implementation of the provision allowing stays of proceedings for tenants to seek rental assistance.⁴² While CERA funds may no longer be available, by making tenants aware of other rental assistance funds, landlords are able to

every case, it starts to change the entire way that the court works and the entire way that the justice system works.” Id. (emphasis added).

³⁶ Stout, *supra* note 32 at 8.

³⁷ *Id.* at 11.

³⁸ Capps, *supra* note 35.

³⁹ Michigan Housing Needs, *supra* note 4.

⁴⁰ *Id.*

⁴¹ Eisenburg & Brantley, *supra* note 9 at 2.

⁴² *Id.* at 10.

receive missed rent payments while tenants can seek to avoid disruptive displacement. Thus, making tenants aware of such programs benefits both tenants and landlords, and the HJC supports this proposed change to Rule 4.201(c)(3)(f).

III. The proposed amendment to Rule 4.201 regarding videoconferencing, which would create a new Rule 4.201(F), increases tenants' access to justice in landlord-tenant proceedings.

The HJC supports the new provision of Rule 4.201 that would create a presumption of videoconferencing for all pre-trial hearings, allow for videoconferencing during bench trials at the judge's discretion, and provide for videoconferencing in jury trials only where all parties have had notice and opportunity to be heard on the use of videoconferencing.

Allowing remote participation in eviction proceedings increases tenants' access to justice. During the pandemic, "the proportion of [Detroit] cases ending in default judgement declined by 40% [after] the court began holding eviction hearings online."⁴³ Default judgments are inherently problematic because they allow judgment to be entered against a party without a hearing concerning the validity of the landlord's claim or the tenant's defenses.⁴⁴ Moreover, "[t]he desirability of trying to reduce the rate of default judgments thus seems obvious: fewer defaults may mean fewer evictions."⁴⁵

The Sheller Center for Social Justice at Temple University Beasley School of Law found that the five most common reasons a default judgment is entered against a tenant are (1) a lack of notice, (2) medical issues, (3) childcare problems, (4) lateness, and (5) difficulty in finding the courthouse or courtroom.⁴⁶ If tenants are able to appear in court remotely, many of these reasons may be eliminated. For example, if tenants have medical issues that make in-person attendance difficult, they can attend their hearing from home. Similarly, a tenant can attend a court proceeding while still at home with their children instead of arranging childcare. Lastly, because remote appearances allow tenants to log into their proceeding from wherever they are at the proscribed time, tenants who may otherwise run late because of traffic or work conflicts or who have trouble finding the courthouse or courtroom can appear wherever is most convenient to them.

As a legal intern for Legal Services of South-Central Michigan, one of us experienced first-hand the beneficial effects of videoconferencing. On several occasions, tenants expressed that without video conferencing, they would have had to miss even more work and get further behind on bills if they had to appear in-person. For example, one person was able to appear from the kitchen of a local Buffalo Wild Wings restaurant. This rule change would undoubtedly have a very significant and tangible effect for the betterment of tenants' access to justice.

⁴³ *Id.* at 11.

⁴⁴ See Sarah Kim Eisenhard, Alice Elmer, Kevin Kulesza, Xavier O'Connor, Ranjani Sarode, & Julia Sheppard, *Reducing Default Judgements in Philadelphia's Landlord-Tenant Court*, SHELLER CENTER FOR SOCIAL JUSTICE, TEMPLE UNIV. BEASLEY SCHOOL OF LAW 4 (Jun. 2020).

⁴⁵ *Id.* at 5.

⁴⁶ *Id.* at 6.

One issue that this rule may create, however, relates to tenants who may have limited internet access. Statistically, 14% of Michigan residents do not have internet access of any kind.⁴⁷ For these people, it may be impossible to attend a court hearing remotely. In these instances, the Court should make clear that lower court judges must not impose undue burdens on a party seeking to proceed in-person even where the general practice of the court is to proceed remotely. Without some sort of safeguard, tenants without internet access may be disadvantaged by the presumption of videoconferencing.

Nevertheless, overall, the HJC supports the integration of videoconferencing into the Michigan Court Rules in a permanent fashion. It is evident that videoconferencing can be a critical tool in increasing tenants' access to justice.

IV. The proposed amendment regarding when and how a tenant must make a jury demand provides tenants with more time to make informed decisions on their case.

The HJC supports this proposed amendment allowing defendants to demand a jury trial at least two days before the adjourned trial begins or the defendant's first appearance, whichever comes later. By allowing more time for a tenant to demand a jury trial, tenants are given more time to understand their case and make an informed decision on whether they should ask for a jury.

Most tenants who appear in court in Michigan for eviction cases are not being represented by legal counsel.⁴⁸ Therefore, tenants may not have a comprehensive understanding of their case or their defenses. They may not even be aware at the first proceeding that they must demand a jury trial, and, if they do not do so, they forfeit the opportunity to ask for a jury later. By extending the time in which a jury demand needs to be made, tenants are given more of an opportunity to seek legal assistance. A legal aid attorney who practices in northern Michigan also supports this amendment, believing that it will positively affect tenants by giving them more time during the eviction process to better understand their case and decide how to strategically proceed. Whether a tenant decides to seek out legal representation or must proceed pro se for their representation, this proposed amendment will give them more time to review their case and decide what is best for their situation.

The HJC is concerned that the amendment is unclear on how a tenant needs to make such a jury demand—whether it be verbal or written—and when it should be done. We would appreciate the Court clarifying this aspect of the amendment to avoid issues arising in the lower courts. Overall, the HJC support this amendment, though, because it gives tenants' time to review their case and available defenses to decide if a jury trial is ultimately what is best for them.

⁴⁷ BROADBAND NOW, *Michigan Internet Coverage and Availability in 2022*, <https://broadbandnow.com/Michigan>,

⁴⁸ Goodspeed, Dewar, & Schaafsma, *supra* note 3 at 1.

V. The proposed amendment regarding default judgments will decrease the overall number of default judgments on tenants and ensure that tenants can participate in the legal process.

The HJC supports the proposed changes to Rule 4.201 concerning default judgments, which will appear as Rule 4.201(G)(5) if adopted. Default judgments are yet another example of how tenants can be disadvantaged compared to the landlord in eviction proceedings. Prior to the COVID-19 pandemic and the introduction of Administrative Order No. 2020-17, 43% of eviction cases in Detroit ended in a default judgment.⁴⁹ This means that nearly half of tenants did not get their day in court or have an opportunity to be heard before getting evicted.

As discussed above, there are many barriers that tenants face that make it difficult to appear in court, thereby causing default judgments; these barriers include a lack of transportation and lack of childcare.⁵⁰ Because of these barriers, tenants never have the chance to appear in court and fairly fight the eviction proceeding. When tenants cannot appear in court to raise any defenses, landlords will win cases in situations where the tenant may have had a valid defense.⁵¹

Enacting the proposed new Rule 4.201(G)(5) will unfortunately not put an end to the barriers described above that often lead to default judgments. However, requiring personal service will provide a protection for tenants against automatic default judgments. By compelling landlords to personally serve a tenant that they want to evict, it ensures that the tenant has been notified and is not missing the hearing because of a misplaced or lost notice. With the initiation of Administrative Order No. 2020-17, the number of default judgments decreased by about 40%.⁵² Although the other barriers associated with default judgments may exist, this amendment will likely continue to improve the number of tenants who are able to appear in court, exercise their right to due process, and withstand default judgments.

Moreover, this proposed amendment should not be viewed as only benefiting tenants or being one-sided. Landlords will still be able to personally serve tenants if they want to bypass the possibility of a default judgment. Again, the amendment simply provides a tenant with protection against an automatic default judgment. Landlords will not be losing any rights, and the amendment only makes the process fairer to tenants by giving them the chance to appear in court before losing their home.

VI. The proposed amendment allowing for stays of proceedings will allow for more tenants to stay in their home by giving them the time needed to secure rental assistance.

The HJC supports the proposed amendment that will allow for a stay of proceedings to allow a tenant time to seek rental assistance, which will appear as Rule 4.201(I)(3) if adopted. By allowing tenants in nonpayment of rent cases to have time to search for and obtain rental assistance, they

⁴⁹ Eisenberg & Brantley, *supra* note 9 at 11.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

can stay in their homes and avoid the type of disruptive displacement discussed above.⁵³ During the COVID-19 pandemic, the Michigan State Housing Development Authority (MSHDA) distributed \$1.1 billion in federal pandemic rental assistance to tenants through programs like CERA.⁵⁴ For people like Nateeta Morris in Redford, Michigan, the CERA assistance made it possible for her to stay in the home that she had been in for over a decade by helping her pay the back rent she owed.⁵⁵ Again, while CERA assistance may no longer be available, affording tenants like Ms. Morris the time to seek rental assistance from other funding sources can help avoid unnecessary evictions for non-payment of rent.⁵⁶

To put in perspective why the need for eviction diversion programs is so crucial: Nonpayment of rent cases led to 92% of evictions in Washtenaw County in 2018.⁵⁷ With eviction diversion programs, tenants have resources to turn to that will assist with rent, ultimately allowing them to stay in their home and decreasing evictions in Michigan. Once rental assistance programs began assisting tenants during the pandemic, there was a 71% reduction in judgments for tenants in nonpayment of rent cases facing eviction.⁵⁸

Many of the other comments on the proposed amendments to Rule 4.201 are from landlords who are concerned that these changes will allow tenants to live in their property “rent-free.” The reality is that the changes reflected in proposed Rule 4.201(I)(3) also benefit landlords. By giving tenants time to find funding for the rent that they owe, landlords are given the opportunity to recover past money owed. If a tenant is evicted without the chance to ever get rental assistance, the landlord is not guaranteed to recover any of the back rent owed. There are also rental assistance programs that may be able to cover future rent as well. To oppose a rule allowing lower courts to stay proceedings to allow a tenant to seek rental assistance is to oppose recovering rent that is owed. Eviction diversion programs, such as Kalamazoo’s homeless prevention program, try to reach out to landlords and their attorneys to explain how to program works and encourage participation.⁵⁹

The HJC is concerned that lower courts may lift the 14-day stay if tenants have applied for rental assistance but not yet received an update on their application. Throughout the course of the pandemic, the average statewide wait time was 35-40 days between the time that a person applied

⁵³ See *supra* at 6-7 (discussing disruptive displacement impacts on both tenant and surrounding community).

⁵⁴ Nushrat Rahman, *Michigan tenants with active eviction cases can still apply for pandemic rent assistance*, DETROIT FREE PRESS (Jul. 11, 2022), <https://www.freep.com/story/news/local/michigan/2022/07/11/michigan-renters-facing-eviction-pandemic-rent-aid/10029528002/>.

⁵⁵ Nushrat Rahman, *Millions of dollars in rental assistance drying up – and could bring eviction sin Michigan*, DETROIT FREE PRESS (Jul. 31, 2022), <https://www.freep.com/story/news/local/michigan/detroit/2022/07/31/eviction-michigan-covid-emergency-rental-assistance-cera/7767071001/>.

⁵⁶ *Id.*

⁵⁷ Goodspeed, Dewar, & Schaafsma, *supra* note 3 at 5.

⁵⁸ Eisenberg & Brantley, *supra* note 9 at 10.

⁵⁹ *Kalamazoo, MI, HPRP-Funded Prevention Program* at 221.

for funding and when it got approved.⁶⁰ For Wayne County, the processing time could take three to ten weeks.⁶¹ This could potentially be problematic for tenants who did their due diligence by applying for funding and properly notifying the court, but who are simply waiting for processing that is out of their control. It would be unjust to punish tenants for an application that is processing due to no fault of their own. The Court may need to make clear that lower courts should extend the stay as necessary to meaningfully help tenants' who have applied to funding and are awaiting approval.

Overall, though, the HJC supports this proposed amendment because of the additional time it gives tenants to apply and get approved for funding. When tenants can get rental assistance, they can stay in their homes, therefore decreasing eviction rates across Michigan.

VII. The proposed amendment regarding trial gives tenants the information and time needed to prepare for their matter properly and fairly.

The HJC supports the proposed amendment that would require the court to adjourn for at least 7 days after the pretrial hearing before proceeding to trial and to provide certain information to both parties at the pretrial hearing, which would appear in Rule 4.201(K) if amended. Tenants who are facing eviction may have very limited, if any, resources to properly fight the eviction.⁶² They may also not be aware of their rights or what options they have upon the initiation of an eviction proceeding.⁶³ As mentioned above, 90% of landlords in the U.S. have legal representation in eviction proceedings while less than 10% of tenants are represented in the same proceedings.⁶⁴ Because most tenants are entering the legal system without representation, they may not have any knowledge regarding the process or the resources available to them. By mandating a pretrial hearing before trial and verbally informing tenants of their right to counsel, of rental assistance resources, that a judgment is not required for assistance from state programs, of the Michigan Community Dispute Resolution Program, and of the possibility of a conditional dismissal, tenants will be better prepared to handle their eviction.

First, by conducting a pretrial hearing before the trial, tenants will have more time to prepare and plan for the case. Since most tenants do not have legal counsel at their first appearance in an eviction, they may not understand the process, their rights, or the potential outcomes. If the trial is at the first appearance, then the tenant has no way to properly prepare or defend themselves.

Second, tenants may not always be aware that they have the right to obtain counsel in an eviction proceeding, as discussed above. While the right to obtain counsel does not mean that they will be appointed a lawyer like in criminal matters, it is still crucial for tenants who may not be familiar with the legal system to know their rights. Tenants should also be reminded that they have the right

⁶⁰ Nushrat Rahman, *173K applied for rent aid in Michigan. About half got help so far*, DETROIT FREE PRESS (Jan. 9, 2022), <https://www.freep.com/story/news/local/michigan/2022/01/09/rent-utility-assistance-high-michigan-eviction/9091578002/>.

⁶¹ *Id.*

⁶² See discussion *supra* at 6-8.

⁶³ See generally *id.*

⁶⁴ Park & Pollock, *supra* note 2.

to obtain counsel because tenants who have attorneys are more likely to avoid judgments in evictions than tenants who are unrepresented.⁶⁵ Landlords will also benefit from tenants being made aware of their right to counsel.⁶⁶ When tenants are represented, in-court time where the judge must explain rights and court processes to tenants is lessened, resolutions are more fair, and landlords are more likely to receive money owed without having to turn to costly collection efforts.⁶⁷

Third, tenants should be advised of rental assistance programs that exist so that they can apply for those programs and potentially get funding to keep them housed. As of October 2021, the COVID Emergency Rental Assistance (CERA) program had helped more than 36,000 Michiganders.⁶⁸ While CERA may no longer be available, if a tenant is being evicted for nonpayment of rent, they may not be aware that there are other programs like CERA that can assist them with rent. If the court can advise tenants of these programs at the pretrial hearing, tenants can apply to those funding sources to pay back the rent owed. This allows for tenants to remain housed in their rental property, while landlords will also get repaid for the back rent owed.

Fourth, the court should advise tenants that a judgment is not necessary for assistance from state programs. This advisement is important because this may be information that is not widely known and could unintentionally preclude tenants in need from applying to such programs since they do not have a judgment and do not think they qualify. While working as a summer intern at Lakeshore Legal Aid, one of us encountered tenants who were behind on rent but had not applied to any relief programs because they assumed they would not qualify for such programs. If a tenant is aware that a judgment is not necessary, they can begin the process of applying to programs that will help them.

Fifth, notifying tenants of the Michigan Community Dispute Resolution Program can keep both parties out of court and assist them in resolving the matter more efficiently. Resolving landlord-tenant disputes in mediation can preserve relationships as well, without the nastiness that can sometimes flow from court proceedings. Because the mediators are a third party, they help create options to resolve the problem that will best benefit the landlord and the tenant. The program assists about 30,000 Michiganders every year in resolving issues.⁶⁹

⁶⁵ D. James Greiner, Cassandra Wolos Pattanayak, & Jonathan Hennessy, *The Limits of Unbundled Legal Assistance: A Randomized Study in a Massachusetts District Court and Prospects for the Future*, 126 HARV. L. REV. 901, 928 (2013) (finding that “data demonstrate that an offer of representation from a [legal aid] staff attorney caused substantively large and statistically significant alterations in possession outcomes that favor occupants).

⁶⁶ See *supra* at 6-8.

⁶⁷ *Id.*

⁶⁸ *More than 36,000 Michigan renter households helped through CERA program*, MICH. STATE HOUS. DEV. AUTH. (Oct. 1, 2021), <https://www.michigan.gov/mshda/about/press-releases/2021/10/01/more-than-36000-michigan-renter-households-helped-through-cera-program>.

⁶⁹ MICH. COURTS, *Community Dispute Resolution Program (CDRP)*, <https://www.courts.michigan.gov/administration/offices/office-of-dispute-resolution/CDRP/>.

Lastly, tenants need to be advised that a conditional dismissal is a possibility in their situation. If tenants are not aware of potentially resolving the case with a conditional dismissal, the tenant may be led by the opposing party into believing that they can only resolve the case with a consent judgment. One of our student attorneys frequently observed this in their intern experience in courts throughout Wayne County while working with Lakeshore Legal Aid. For unrepresented tenants, it was easy for the landlord's attorney to assure them that the problem would be resolved by a consent judgment. Consent judgments, however, have a negative impact on tenants' futures. These judgments will appear on tenants' credit reports and will also appear on checks by future landlords, potentially making it very difficult for the tenant to rent from another property in the future. This remains true even if the tenant pays the balance they owe by the date agreed upon by the landlord's attorney. Conditional dismissals have the same effect as a consent judgment without causing the tenant future harm.

We are concerned about the language used in Rule 4.201(K)(2)(b). Under this subrule, it is stated that "the court may adjourn the pretrial under subrule (K)(1) unless otherwise provided in this rule. By using the word "may," this leaves the decision to adjourn to the court's discretion, taking away the fortified protection of an adjournment for the tenant. If the decision for an adjournment is left to the court to decide, it could potentially be unhelpful to many Michigan tenants.

Overall, however, HJC supports this amendment as it will help ensure that tenants are adequately informed of the resources available to them to help avoid eviction and increase access to justice.

CONCLUSION

The proposed amendments to Administrative Order No. 2020-17 and Rule 4.201 of the Michigan Court Rules advance the interest of Michigan tenants overall; therefore, the HJC overwhelmingly supports the adoption of these changes by the Supreme Court of Michigan. The adoption of these changes by will strengthen the integrity of landlord-tenant proceedings in two key aspects: (1) increasing tenants' access to justice, and (2) promoting efficiency in the resolution of landlord-tenant proceedings. Fortunately, both aspects serve the interests of landlord *and* tenants in the long run. For tenants, access to justice can mean they are encouraged to participate in their hearings and are appraised of the various rights they have. This can often lead to landlords receiving past due arrearages they rightfully deserve but that also reflect the fair amount a tenant may owe. It can also lead to the repair of unsafe living conditions, more consistent tenancies, and other fair outcomes. As for efficiency, both sides can benefit from outcomes that result from a tenant being made aware of rental assistance and their right to seek counsel.

As the HJC, we are primarily concerned with advocating for changes that support tenants' best interest; however, we encourage the Court to recognize that the proposed rule amendments, while strongly bolstering tenants' interests, do not solely benefit tenants. Therefore, these changes will simply enhance the fairness to all parties involved in a landlord-tenant matter.

The HJC appreciates the opportunity to share our views on these proposed changes.

Respectfully submitted,

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