

**Comment regarding ADM File No. 2020-08**

Lakeshore Legal Aid (Lakeshore) is a not-for-profit organization that represents low-income tenants in Oakland, Wayne, St. Clair, and Macomb Counties and also serves low-income individuals statewide on its Counsel & Advocacy Law Line with advice and brief legal services. At the time of writing this comment, since July 2020, Lakeshore Legal Aid opened 26,620 cases on behalf of Michigan tenants, 12,074 of those cases were for residents in the City of Detroit and 94% of those residents identified as Black, Indigenous, and people of color.

The landscape of eviction cases in Detroit is unique in the State of Michigan. Detroit is, by far, the most populated city in the state and has the highest number of evictions on an annual basis. Detroit's tenants face overwhelming challenges including 1) a lack of safe and affordable housing, 2) old housing stock with deplorable conditions and chronic compliance problems, 3) insufficient subsidized housing units, 4) high rent, 5) ownership scams, and 6) a lack of conventional mortgage lending that leads to predatory land contracts.

Detroit's history of redlining and housing discrimination, combined with the 2009 tax and mortgage foreclosure crisis, have contributed to these challenges, and changed the make-up of City residents from a majority owner-occupants to a majority tenant-renters. Despite the City of Detroit having a rental ordinance that states landlords may not collect rent unless they register their properties and obtain a Certificate of Compliance (CoC) from the Buildings, Safety, Engineering, and Environmental Department (BSEED), The University of Michigan Poverty Solutions found, as of March 15, 2022, only about 5,600 or 6% of Detroit's approximately 87,000 rental properties had a CoC. (See Crisis Before the Emergency: Evictions in Detroit Before and After the Onset of COVID-19, Alexa Eisenberg and Katlin Brantley, Research assistance from Laura Meyer, June 2022 at Page 12.

<https://sites.fordschool.umich.edu/poverty2021/files/2022/06/PovertySolutions-Covid-Evictions-PolicyBrief-r2-2.pdf>

Tenants in Detroit are at a severe disadvantage when defending evictions. Amending the court rules is a step in the right direction to provide fairness to tenants and to allow tenants to access resources, raise defenses and assert any counterclaims, particularly in a system that prioritized property over people.

Lakeshore Legal Aid supports the proposed amendments to AO 2020-17 and MCR 4.201- ADM File No. 2020-08. Simply put, the amendments expand access to justice in a reasonable and methodical fashion and ensure tenants have due process in housing cases, a right which should be afforded to all regardless of the city they live in or the color of their skin. As officers of the court, all attorneys should be interested in improving access to justice, increasing participation at court, and reducing default rates.

MCR 4.201(B)(3)(c): Adding "compliance with applicable state and local health and safety laws," adds a phrase from MCL 554.139, the basis for this subsection, that had been missing from (B)(3)(c). The court rule now more closely corresponds to the statute, making its requirements clear.

MCR 4.201(C)(3): Lakeshore supports providing tenants with specific contact information for any and all relevant rental assistance programs and legal aid services.

MCR 4.201(F): Lakeshore supports this provision.

MCR 4.201 (G)(4): Jury Demand. Lakeshore appreciates the prospect of a rule that reflects current practice in many courts: a jury demand need not be made at the first hearing/trial in all cases. We understand the rationale for requiring a demand two days before the adjourned/rescheduled trial, but it will be difficult and impracticable, especially for an unrepresented tenant, to make a demand by this deadline, rather than by an adjourned trial date deadline. At the least, this unusual jury demand timing requirement should be added to both the summons and the required information under the proposed (K)(2). Tenants should have the benefit of legal advice and counsel before making a jury demand.

MCR 4.201(5)(a)(ii): For consistency and fairness, a personally served tenant who does not appear for trial at the time noticed by the summons should not be subject to default unless that tenant does not appear at a rescheduled hearing/trial.

MCR 4.201(I): In a nonpayment of rent case where the plaintiff's objective is to get rent, this stay provision serves that objective. But, the workability and logistics of the five day court notification requirement are worrisome. Given the realities of rental assistance application processing, requiring a tenant to show within 14 days that an application has been approved is unrealistic. The better standard would be to ask that a tenant show that the application is pending and has not been rejected.

MCR 4.201(K)(2)(a)(i): Lakeshore also suggests that along with being notified of the right to counsel, tenants are also advised of the legal aid organizations available in their areas. Lakeshore also supports the use of a magistrate or dispute resolution center to aid in the administration of the pretrial.

MCR 4.201 (K)(2)(b): Lakeshore recommends changing "may" to "must."

MCR 4.201(N)(1): Lakeshore suggests using "If the motion challenges a judgment for possession, the court shall grant a stay if..."

Proposed Amendment of AO 2020-17: Lakeshore supports the retention of the suspension of local administrative orders requiring a written answer under MCL 600.5735(4).

The perspective that amendments to this court rule are not needed because the pandemic is over, fail to include the perspectives of tenants and fail to capitalize on the information we have learned as a profession to increase access to justice, making the court system better for all.

### General Commentary

In preparation of these comments, Lakeshore had access to draft comments prepared by the Michigan Poverty Law Program (MPLP) and the State Planning Body. Lakeshore supports the commentary in those submissions and reiterates that as the Court notes, the early evidence shows that since implementation of Admin Order 2020-17 participation by defendant-tenants in eviction cases has increased, which should be regarded as evidence of increased access to justice.

A case disposition model that relies on a high default rate, and that fails to give tenants adequate time to access available resources, is contrary to the goal of access to justice and a sound court system.

Measures taken to reduce the default judgment rate that are within the Court's authority over eviction cases, such as the ones here, should be lauded. The complaint of some that these measures would unduly burden district courts is more properly seen as a systems and funding issue rather than a process issue. We have no doubt that district courts need more resources but the trade-off for efficiency should not be a denial of just and fair process. The proposed changes help to ensure that eviction cases get the consideration they are due, in light of their enormous stakes for tenants in a very tight statewide housing market.

Common refrains in the landlord comments about the proposed changes are that they will give tenants free rent and unfairly extend the eviction case process. We echo the MPLP remarks that the tenants who the proposed changes are most likely to benefit are those who want to meet their rent obligations but struggle to do so. In our experience as attorneys who represent low-income Michiganders, the vast majority of tenants who struggle to pay rent do so because of a rent-income mismatch. More than 70 percent of extremely low-income renter households in Michigan pay more than 50% of their income towards housing costs. That level of rent burden is very hard to sustain and makes rental assistance programs critical to low-income families retaining their housing (by paying their landlords the rent they're due) and the stability it affords.

At the root of these realities is the extreme shortage of affordable rental housing. Steadily rising rents and declining vacancy rates that started during the pandemic and have continued have only exacerbated this market dysfunction. Neither landlords nor district courts are responsible for this shortage, but neither are they properly totally exempt from one of the consequences of this shortage – eviction cases and the catastrophic effects on families and their communities. The AO and the proposed MCR changes address these realities in a way that is within the Court's authority and serves the interests of landlords by facilitating payment of legitimate rent arrears to them.

As of late the AO has not deterred landlords from filing eviction cases. As reported by MPLP, eviction case filings in Michigan reported to the Judicial Data Warehouse in August 2022 (15,178) exceeded the monthly average reported in 2019 (15,120). Evictions are happening. By themselves, the provisions of the AO and the proposed MCR changes have and would only stretch evictions cases by a week or a few weeks. These changes don't at all prevent, but only slightly delay, landlords from legitimately recovering possession of rental properties.

Lakeshore employees have witnessed the systemic barriers Detroit renters face to obtain safe and affordable housing and have heard the stories of so many who are facing eviction. The proposed amendments will remove those barriers, improving the access to justice and promoting fairness in the legal system.

Sincerely,

Kellie Maki Foster  
Detroit Eviction Prevention Director  
Lakeshore Legal Aid