David Sutphin

October 25, 2022

Office of Administrative Counsel
PO Box 30052
Lansing, MI 48909

RE: Proposed Amendments of Administrative Order 2020-17 and Rule 4.201 of the Michigan Court Rules

Dear Office of Administrative Counsel:

The impact of Administrative Order 2020-17 (AO 2020-17) has adversely impacted the residential rental industry in Michigan in a manner that reduces the availability of affordable housing by allowing tenants to occupy property without paying rent for up to a year. Although we understand the Michigan Supreme Court's goal of showing empathy to those who could not afford to pay rent due to hardships related to COVID-19, residents have weaponized the new process to avoid contractual obligations even when they have the financial ability to pay rent. The Court should decline to make AO 2020-17 permanent and should instead follow the Summary Proceedings Act and Michigan Court Rules that have been in place for decades before AO 2020-17.

Specifically, the Court should reject the following proposed revisions:

1. MCR 4.201(B)(3)(c) appears designed to create a way for tenants to block a landlord's path to the courthouse doors by preventing a landlord from evicting tenants if they have any issue with rental registration or occupancy certificates, even if minor or is being disputed. This rule also **conflicts with MCL 125.530**.

2. MCR 4.201(G)(1) eliminates the requirement for tenants in eviction proceedings to answer a complaint at the first hearing. Given that defendants in most evictions for nonpayment have no defense for failing to fulfill their contractual obligation for using the plaintiff's property, this change appears to be designed merely to delay eviction proceedings and force property owners to forfeit the use of their property without compensation.

3. MCR 4.201(G)(4) also appears designed to delay proceedings by allowing defendants to request a jury trial up until two days before a trial date. It also places a significant administrative burden on district courts.

4. Rule 4.201 (G)(5)(a) and (b) would require personal service of process before a default judgement can be entered will further delay the court process. When you consider a defendant has already been provided with a written notice from the property owner, and the court has mailed the defendant a notice to appear, **this proposal is completely unnecessary and does not advance the goal of ensuring the parties proper review of their claims**.

5. MCR 4.201(G)(5)(d) similarly provides for an adjournment "for at least 7 days" and appears to be another stall tactic for defendants to continue using the plaintiff's property without paying. Additionally, it **infringes upon state law MCL 600.5735(2)** which requires landlord-tenant cases to be set for trial no more than 10 days after summons.

6. MCR 4.201(I)(3) again allows defendants to continue residing in the plaintiff's property without paying rent merely by indicating to the court that the defendant has requested third-party assistance. Perhaps that approach had merit when programs using COVID Emergency Rental Assistance had significant backlogs and took time to process many applications, but we are beyond that point. Most cases do not make it to court until a resident has been living rent free for 60 days or more. Accordingly, a resident who wants to seek third party assistance to pay rent has plenty of time obtain that assistance before a hearing. This approach has worked fine for decades.

7. MCR 4.201(K)(1)(c) creates another delay tactic for defendants refusing to pay rent by providing for an adjournment of up to 56 days in cases for "just cause," which is not defined.

8. MCR 4.201(K)(2)(a) effectively creates an advice of rights pretrial that will both cause delay and expense for plaintiffs.

9. MCR 4.201(K)(2)(c) requires personal service of a tenant before seeking a Judgment for failing to appear at a first hearing, which diverges from the service requirements for every other type of legal matter. Service by attachment, combined with first-class mailing and all the other means permissible under the Court Rules should have the same weight as personal service with regards to notification of hearings. Posting a notice of eviction on a resident's front door should be sufficient, and the reality is that tenants know when they are being evicted, even if they opt not to attend the hearing because they have no defense.

The Michigan Supreme Court should reject the proposed revisions to AO 2020-17 and MCR 4.201 because they adversely impact the residential rental industry, detrimentally delay the landlord-tenant process, and place an undue administrative burden upon our district court system. The prior process properly balanced parties' rights in a manner that ensured residents had sufficient notice of hearings while also returning property to owners when residents do not fulfill their contractual obligations. To ensure that Michigan returns affordable housing to the rental pool as quickly as possible, the Court should reject the proposed rule changes.

Thank you for your consideration of these comments.

Respectfully Submitted,

David Sutphin