

Name: Phillip Neuman

Date: 10/28/2022

ADM File Number: 2020-08

Comment:

I have represented landlords for nearly forty years, and I am very disheartened that the temporary rules imposed as a result of the COVID-19 pandemic are now sought to be made permanent. Numerous other commentators have highlighted the many flaws in this proposal. My biggest concern is that the proposed rule change would permit a tenant to obtain essentially a 30 day stay of proceedings merely by announcing that he or she has applied for some kind of public assistance. While proposed rule 4.201(l)(3) provides that the Court "may require reasonable verification" of the request for assistance, given how overworked the District Court clerks are already, it seems hardly likely that this option will be exercised by many District Courts. Thus, a tenant has an easy way to create a delay in the summary proceeding process.

The proposed rules also unfairly lump garden variety termination of tenancy cases with the nonpayment of rent cases in terms of requiring a pretrial hearing and then a subsequent adjournment. It has been my experience that in termination of tenancy cases where, for example, the lease has ended or is a month-to-month tenancy that can be terminated by either party on 30 days' notice, there is no genuine issue of fact to be tried by the Court and the parties typically will agree on a move-out date. Proposed Rule 4.201(k)(2)(c) makes it nearly impossible to get a consent judgment between landlord and tenant entered at the first hearing unless they are both represented by counsel or the Court makes an independent inquiry into the terms of the proposed consent judgment and "determines the terms fair." Again, this is creating additional delay in the process.

There is yet more opportunity for a tenant to delay the inevitable with the new proposed rule that permits a tenant to request a jury trial up to two days prior to an adjourned trial date. Any savvy tenant will wait until the last possible to throw a further monkey wrench into the proceedings. Furthermore, the existing court rule that obligated the Court to determine if there is a triable issue is slated to be removed, so even if the tenant has no defense to the case whatsoever, there is no ability to determine that the jury demand is unnecessary.

In sum, I believe these proposed rules run contrary to the Legislature's clear intent that the summary proceeding process be swift, and will only serve to further harm the landlords' ability to promptly pay their expenses incurred in operating the rental property. I urge the Supreme Court to reject the proposed changes to MCR 4.201.