MICHIGAN STATE PLANNING BODY

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October 28, 2022

Clerk, Michigan Supreme Court
P.O. Box 30002
Lansing, MI 48909
<ADMcomment@court.mi.gov>

Re: Comments on ADM File No. 2020-08: Proposed Amendment of Administrative Order No. 2020-17 and MCR 4.201

Dear Clerk:

The Michigan State Planning Body is an association of leaders in the judiciary, the State Bar, and state and regional advocacy programs (including civil legal aid, indigent criminal defense, and hybrid programs). Many of the organizations that participate in the State Planning Body have submitted comments on the proposed court rule changes. The comments below are intended to elevate high-level themes that are shared and reiterated across the comments of those collective organizations and consistent with the objectives of the State Planning Body.

AO 2020-17 has enabled district courts to responsibly consider and manage eviction cases during the pandemic crisis. The proposed MCR changes will permanently enhance access to justice for tenants in eviction cases, especially low-income tenants. While the proposed changes won't significantly modify the eviction court case process, they would raise the likelihood of tenants getting genuine due process in housing cases. Eviction cases will still move quickly, especially as compared to other case types, but the proposed changes would ensure they are handled more methodically, carefully, and consistently, leading to more just outcomes.

The proposed changes are well within the Court's constitutional and statutory authority and are consistent and well aligned with the eviction case statute, MCL 600.5701 et seq. (see, for example, MCL 600.5735(6) – "Except as otherwise provided by court rule,"). Our specific comments are as follows:

I. MCR 4.201(B)(3)(c) Complaint

The State Planning Body (SPB) supports the proposal to add "…compliance with applicable state and local health and safety laws" to this section, as it merely 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. Incorporating what is already required under the law in eviction complaint pleadings is an important step in improving enforcement and compliance with laws that protect the safety and health of tenants. Additionally, it will benefit courts in reaching fair resolution of cases involving conditions issues because more of these issues will be identified and documented by a third party. Based on our experience in litigating thousands of cases, it is very challenging to reach a fair resolution on an eviction case where there are significant habitability problems that were ignored or hidden by the landlord. This is even harder for unrepresented tenants.

II. MCR 4.201(C) Summons and (E) Recording

The SPB supports both additions as they will increase access to justice and accountability, leading to litigants having greater trust in the judicial system. Providing tenants with information on how to access resources that may help them avoid eviction, both in writing and orally, as early on in the eviction process as possible, is a simple way to increase the likelihood of tenants making use of these resources, keeping them housed and landlords' rent paid, and increasing the chances that the case can be resolved with minimal court involvement.

III. MCR 4.201(F) Videoconferencing

The SPB generally supports this provision but remains concerned about tenants for whom remote participation might be a barrier, because of technology access (related to sophistication, equipment, or location) limitations, and other constraints, including their primary language. The proposed rule's deviation from the standard for civil bench (and jury) trials stated in MCR 2.408(A)(2) gives us some pause. We propose the Court further amend 4.201(F) to directly reference the full MCR 2.407 (rather than just MCR 2.407(B)(5)) to incorporate the protections for litigants (who may be either tenants or landlords) from the general remote proceedings rule, including the right to attend court in person even if the case is schedule for remote court, the right to confidential communications with counsel, the right to reasonable notice of time a mode of a proceeding, and a description of how court will proceed if there are technical failures during a remote proceeding.

IV. MCR 4.201(G)(4) Appearance and Answer: Default; Jury Demand

The SPB 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. However, we are concerned that requiring a demand 2 days before the adjourned/rescheduled trial will be difficult and impracticable, especially for an unrepresented tenant. We propose that the deadline be the adjourned trial date. Additionally, this unusual jury demand timing requirement, however the Court ultimately decides it, should be added to both the summons and the required information under the proposed modifications to (K)(2).

V. MCR 4.201(G)(5)(a)(ii) Appearance and Answer: Default; Default

The SPB supports the proposed changes to the default rule in that they provide additional protections against defaults at initial hearings for tenants who were not personally served, at adjourned trials for tenants who were served in ways other than personally, and in cases where the complaint has not met pleading and proof requirements.

VI. MCR 4.201(I)(3) Interim Order

The SPB supports the proposed changes to MCR 4.201(I)(3) that require a stay in proceedings in non-payment of rent cases where the tenant has applied for rental assistance and advised the court of the application. However, the SPB is concerned that the workability and logistics of the requirement that the tenant notify the court of the application within 5 days of the pretrial hearing, as well as the ambiguity of the phrase "reasonable verification of the application". Further, given the realities of rental assistance application processing, requiring a tenant to show within 14 days that an application has been approved is unrealistic and may undermine the intent of the stay, which is to give the tenant time to accomplish the rental assistance process which may prevent the eviction.

The better standard would be to ask the tenant to show after 14 days that the application is still pending and hasn't been rejected, and to extend the stay to 30 days if the application is still pending. An even better solution would be to require, allow, or encourage judges to exercise judicial discretion and their equitable powers to extend the stay even longer, when a rental assistance payment remains pending, or has been approved but is awaiting payout. Rental assistance organizations cannot be mandated to comply with these timelines, and the result of not giving these bureaucratic systems enough time to get needed aid to tenants can be devastating.

VII. MCR 4.201(K)(2)(b) Trial: Conducting the Trial

The SPB supports the proposed changes to MCR 4.201(K) related to preserving the pre-trial hearing, and delaying the trial for at least 7 days in order for tenants to avail themselves of the legal and financial assistance that may prevent an eviction and result in the landlord being fully compensated for back rent. The SPB believes that the pre-trial hearings required during the pandemic were critical in reducing default judgments, and that the information shared during these hearings resulted in more tenants participating in their cases and availing themselves of the available assistance. While on the whole these changes are improvements, the SPB urges the court to change the "**may**" in (K)(2)(b) to "**must**" as this subsection's "[u]nless otherwise provided" language covers the several circumstances, outlined in its (c), under which a court need not adjourn a trial. The SPB also applauds the rule's detailed description of which cases may be resolved at the pretrial hearing, as the SPB understands that there are some cases which can be resolved fairly at that time.

VIII. MCR 4.201(N) Postjudgment Motions

SPB suggests more straightforward phrasing in this section, "If the motion challenges a judgment for possession, the court shall grant a stay if".

IX. Proposed Amendment of AO 2020-17

The SPB supports the continued suspension of local administrative orders requiring a written answer under MCL 600.5735(4). That statutory provision does not authorize local rules that require a tenant to file a written answer to get a hearing. Additionally, the interpretation of this statutory provision as requiring a tenant to file a written answer within 5 days of service in order to get a hearing creates incredible barriers for tenants who are almost always unrepresented during the critical time period. It also creates barriers for legal aid programs who may later represent these tenants, who then have to engage in additional litigation to set aside a default and scramble to assist at the writ stage of the case, reducing their capacity to help other tenants. Finally, inconsistent court-by-court rules such as this one add confusion and uncertainty to a process that is already confusing.

General Commentary

In preparation of these comments, we had access to draft comments prepared by the Michigan Poverty Law Program and the Michigan Legal Help Program. We support the commentary in those submissions and reiterate 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 the Michigan Poverty Law Program, 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.

We appreciate that these are not easy questions to resolve and the State Planning Body stands ready to serve as a resource to the court as it considers these proposed rule changes. Please contact Angela Tripp at trippa@mplp.org if you have any questions or if the State Planning Body can be of any assistance.

Respectfully submitted,

Angela Tripp
Co-Chair, State Planning Body