To: State Court Office of Administrative Counsel
From: Gromer Butchart, PLC; Attorneys James R. Gromer and Brian Butchart
Re: Opposition to proposed rule changes to MCR 4.201 *et. seq.*
Date October 27, 2022

Our law firm represents landlords throughout the state, with a majority of those landlords being affordable housing providers (Section 8 and Low Income Housing Tax Credit). We have 40 years of collective experience, specializing in landlord/tenant law—with some of those years on the defense side. Ten years ago, with the input of then-presiding landlord tenant Judge Millender, we *started* the eviction diversion program in the 36th District Court in Detroit, which continued with great success until the pandemic. The program significantly reduced evictions. We file approximately 400 cases per month and appear in as many as 50 different district courts across the state on behalf of our clients. We are compassionate practitioners who are actually "on the ground" doing this work on a daily basis and we believe this gives us a unique perspective on the issue at hand. **Please accept these comments in opposition to the proposed rule changes to MCR 4.201 et. seq.**

First and foremost, it is not entirely clear to us what ongoing problems the proposed rule changes are intended to correct. We accept that the onset of a once-in-a-lifetime global pandemic necessitated drastic, *temporary* measures in order to allow courts to function. What we cannot accept is that those drastic measures should be made permanent. Supreme Court Administrative Order 2020-17 (AO 2020-17) was initially promulgated with the *express* intent and purpose "to limit the possibility of further infection" (Preamble to AO 2020-17; June 9, 2020). Read another way, "to keep tenants in place, no matter what, in order to prevent the spread of COVID-19." The Order was subsequently amended 4 times but maintained the same expressed intention of limiting transmission of COVID-19. With nearly all landlord tenant hearings now being conducted virtually and the express concern for the *temporary* rule satisfied, it is entirely unclear to us why the *temporary* order remains in place. We are dumbfounded that those extraordinary changes, many of which reach beyond the bounds of the Courts stated express purpose and are obviously intended to tip the scales of justice in favor of one party at the expense of the other, are being proposed as permanent changes. We have seen no empirical evidence gathered by disinterested researchers that a massive overhaul of the court rule framework that existed for decades pre-pandemic is warranted—particularly as vaccinations and advancing COVID-19 therapies have significantly abated the "crisis" status of the pandemic.

Secondly, we know first-hand the temporary rule changes have caused significant harm to landlords, and that making them permanent will continue to do so. We also know they will harm tenants in the long-term. In two years, we have already seen rent prices increase, while the availability of affordable housing stock declines. As others have commented, AO 2020-17 and the proposed changes created a framework which significantly increases both the time and expense of bringing a landlord tenant case to conclusion. It literally doubles the caseloads for the courts, but also effectively doubles the legal expenses for landlords who now have to pay attorneys like us to appear on their behalf at least twice (and frequently much more than that) on virtually every case. While these increased legal fees are not directly recoverable, by stretching out a court process that was never broken, they will inevitably be passed on to tenants in the form of increased rental rates, increased scrutiny on admissions, and decreased willingness to attempt informal resolutions before rushing cases to the court for filing in an attempt to mitigate the damage caused by these proposed permanent delays.

Prior to the pandemic, the *vast* majority of non-payment of rent cases were low-balance cases against struggling tenants who benefitted from a simple payment plan to help them get caught up. Filing the cases while rent balances are low gives residents a fighting chance to keep their housing by getting assistance, borrowing from friends/family, etc. Delaying the process while rents continue to accrue will turn a small arrearage into a large one and will increase the likelihood of eviction, as small loans and small offers of assistance will be denied unless it can resolve the tenant's issue in the entirety. Those who do not actually work in this industry have the mistaken belief that court delays benefit the tenant when in fact, the longer a court proceeding takes, the more likely that the tenant will not be able pay accruing rents to keep their home. We can guarantee that when CERA expires there will be a great increase in the number of evictions. It will be the direct result of the well-intended, but misguided *temporary* rules promulgated by AO 2020-17, which stretch cases out and result in insurmountable rent balances. We're already seeing evidence of it as various locations have already run out of CERA funds and more and more continue to do so. Making these rules permanent will only exacerbate the problem.

Furthermore, Plaintiff landlords are experiencing the same inexplicable delays for termination of tenancy cases. These cases are typically necessitated by the lease-violating and often illegal activities of a tenant. When we file a case to terminate a tenancy, the goal is not punishment of the offender. Rather, it's the protection of the surrounding tenants who are abiding by the laws and by the terms of their own leases. The intentional delays caused by AO 2020-17, and that are assured to continue by permanent adoption of these proposed changes, have and will cause undue stress for countless residents who just want a safe, peaceful place to live. It is also important to remember that Property Managers, Leasing Agents, Maintenance Technicians and all support staff are entitled to a safe and peaceful work environment. Needlessly delaying termination cases has increased stress and safety concerns for all of them as well.

Although we appear statewide, our highest concentration of cases is in the City of Detroit in the 36th District Court. It cannot be left unsaid that these temporary changes have thrown some high-volume courts into chaos. None are more high-volume or chaotic than 36th District Court. There, cases are not being adjourned once for 7 days, as dictated by AO 2020-17. Instead, they are adjourned for 2, 3, and in many cases, 4 months at a time. The adjournments are multiple, with cases often pending for more than a year. Our office sadly just learned of the death of a tenant whose case was filed more than 1 year ago when he owed only $637. He passed away having accrued over $8000 in unpaid rent. The case adjourned from October 25, 2021 to January 26, 2022 (3 months) and again to April 6 (2 ½ months) and again to July 11 (3 months) and again to September 26 (2 ½ months) and finally to October 31 (1 month). This is not an isolated case, but rather the new norm in one of the busiest courts in the nation. As I finish drafting this document, I am preparing to appear for first hearings in 50th District Court in Pontiac, for cases we sent to court for processing 5 months ago in May! In one these cases, the resident's balance at submission was $974. Today at the first hearing her balance is now more than $5500. It will grow higher still, as the mandatory adjournment will bring us back after yet another month accrues. This is all happening in the wake of AO 2020-17, for the benefit of one side at the expense of the other.

Lastly, we are lawyers. It is beyond comprehension that the Court would propose, much less seriously consider rule changes which are in direct contradiction to statute and in violation of the Separation of Powers clause of the State Constitution, Article 3, Section 2. For example, the required disclosure of proposed 4.201(B)(3)(c) contradicts MCL 125.530. Proposed MCR 4.201(K) contradicts MCL 600.5735(6). MCL 600.5708 expressly requires the deference of court rules to the statute. In many respects the question is not whether the Court *should* adopt these changes. Rather, the question is *can* the Court do so. We believe it cannot.

The proposed rule changes are a purported solution in search of a problem. The truth is, MCR 4.201 *et. seq.* is not broken and does not need to be fixed. There is *nothing* in the existing rules that prevents a tenant with legitimate legal defenses from having his/her issues heard in court. Tenants are and have always been advised of their rights in the requisite notices they receive prior to cases even being filed. They are also advised of their right to counsel and the existence of free legal services (and contact information) should they want/need them. It's already in the SCAO-approved forms. Moreover, the proposed "fixes" will do more to harm both landlords and tenants, while continuing to increase the administrative burden on courts, as well as the law offices representing landlords and tenants. Moreover, adoption of the proposed rules will introduce Constitutional issues into a process which was always intended to move quickly, while adequately protecting the due process rights of *both* parties. We implore you to consider the *overwhelming* comments in opposition to these unnecessary and harmful proposed changes, including but not limited to the comments of the State Bar of Michigan Board of Commissioners, numerous landlords and property owners, attorneys who practice landlord/tenant law, individual District Court Judges and the Michigan District Judges Association, who are also "on the ground" doing the work, and even a few tenants. Please reject the adoption of these needless, harmful proposed changes.

Thank you for your consideration.

Respectfully Submitted,

James R. Gromer and Brian Butchart
Attorneys and Counselors at Law