Order

Michigan Supreme Court
Lansing, Michigan

August 10, 2022

ADM File No. 2020-08

Proposed Amendments of
Administrative Order No.
2020-17 and Rule 4.201
of the Michigan Court Rules

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On order of the Court, this is to advise that the Court is considering amendments of Administrative Order No. 2020-17 and Rule 4.201 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter will also be considered at a public hearing. The notices and agendas for each public hearing are posted on the Public Administrative Hearings page.

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[Additions to the text are indicated in underlining
and deleted text is shown by strikeover.]

Administrative Order No. 2020-17 – Continuation of Alternative Procedures for Landlord/Tenant Cases

[Entered June 9, 2020; language as amended by orders entered June 24, 2020, October 22, 2020, December 29, 2020, January 30, 2021, March 22, 2021, April 9, 2021, July 2, 2021, July 26, 2021, ~~and~~ August 10, 2022, and [Date TBD].]

~~The number of new COVID-19 cases in Michigan has dropped dramatically in recent weeks and m~~Many people believe that our state is finally at the end of the pandemic. Still, the court system will long be dealing with the effects brought about by the greatest health crisis in our generation. ~~One of those effects is a prolonged period of housing insecurity experienced by those most affected by the pandemic's nearly instantaneous and extensive job reductions – the 30 to 40 million people nationally who rent their housing.~~

Throughout the pandemic, f~~F~~ederal response to this problem has taken two forms: eviction moratoria and direct state aid. Several eviction moratoria were~~have been~~ imposed, both by Congress (Pub L. 116-136) and by the CDC (published at 85 FR 55292 and extended by Order dated March 28, 2021), prohibiting evictions for tenants in certain types

of government-supported housing or who meet certain income restrictions. Those moratoria have since been lifted.~~The most recently-extended CDC order is slated to expire July 31, 2021 unless extended further. In addition, challenges to these CDC orders have been working their way through the courts, with conflicting opinions as a result.~~

~~However, t~~The second type of federal response~~- continues to be relevant regardless of the status of the CDC order~~—direct aid to states to provide for rental assistance programs is also coming to an end. ~~In 2021 PA 2, the Michigan Legislature appropriated $220 million (of the total of $600 million in federal money designated for Michigan) to provide rental assistance to tenants and landlords. Section 301(2) states that "[t]he department of labor and economic opportunity shall collaborate with the department of health and human services, the judiciary, local community action agencies, local nonprofit agencies, and legal aid organizations to create a rental and utility assistance program." This Court has done so in previous iterations of Administrative Order No. 2020-17 by working with those agencies to establish a procedure that ensures landlords and tenants are able to benefit from those dollars.~~However, t~~T~~he need for that programming continues, even assuming the health risks associated with the typical manner of processing eviction proceedings has eased.

The~~In addition, the mandate for courts to continue to~~ use of remote technology to the greatest extent possible is as important~~fully in place~~ today as it was two~~a~~ years ago. Now is~~We anticipate this fall will be~~ the appropriate time to consider what changes in procedure, adopted with as much speed and thought as possible in the midst of a pandemic, should be retained or changed before becoming permanent practices in our state courts. This effort has been~~will be~~ based on input from state court stakeholders, but even ~~e~~early data showed us that expanded use of technology has improved rates of participation and been a boon to issues related to access to justice. We do not intend to squander the gains hard-won when all judges, court staff, attorneys, and individuals were forced to change their practices with little advance notice and training and in doing so, created a footprint for a new way to work that serves the needs of court users in novel and innovative ways.

Therefore, the Court adopts this administrative order under 1963 Const, Art VI, Sec 4, which provides for the Supreme Court's general superintending control over all state courts, directing that ~~courts to process landlord/tenant cases following the procedures outlined in this order.~~

~~(A)~~ ~~A~~a~~a~~ll local administrative orders requiring a written answer pursuant to MCL 600.5735(4) be~~are~~ temporarily suspended.[1] Unless otherwise provided by this

[1] The local administrative orders include: 1st District Court (Monroe County); 2A District Court (Lenawee County); 12th District Court (Jackson County); 18th District Court (City of Westland); 81st District Court (Alcona, Arenac, Iosco, and Oscoda Counties); 82nd District (Ogemaw County); and 95B District Court (Dickinson and Iron Counties).

order, a court must comply with MCR 4.201 with regard to summary proceedings.

~~(B) At the initial hearing noticed by the summons, the court must conduct a pretrial hearing consistent with SCAO guidance. At the pretrial hearing the parties must be verbally informed of all of the following:~~

~~(1) Defendant has the right to counsel. MCR 4.201(F)(2).~~

~~(2) The Michigan Department of Health and Human Services (MDHHS), the local Coordinated Entry Agency (CEA), Housing Assessment and Resource Agency (HARA), or the federal Help for Homeless Veterans program may be able to assist the parties with payment of some or all of the rent due.~~

~~(3) Defendants DO NOT need a judgment to receive assistance from MDHHS, the HARA, or the local CEA. The Summons and Complaint from the court case are sufficient for MDHHS.~~

~~(4) The availability of the Michigan Community Dispute Resolution Program (CDRP) and local CDRP Office as a possible source of case resolution. The court must contact the local CDRP to coordinate resources. The CDRP may be involved in the resolution of Summary Proceedings cases to the extent that the chief judge of each court determines, including conducting the pretrial hearing.~~

~~(5) The possibility of a Conditional Dismissal pursuant to MCR 2.602 if approved by all parties. The parties must be provided with a form to effectuate such Conditional Dismissal.~~

~~(C) The pretrial required under subsection (B) may be conducted by the assigned judge, a visiting judge appointed by SCAO, a magistrate (as long as that magistrate is a lawyer), or a CDRP mediator.~~

~~(D) Courts are authorized to proceed with these actions by way of remote participation tools, and encouraged to do so to the greatest extent possible. The court scheduling a remote hearing must "verify that all participants are able to proceed in this manner." Therefore, the summons for each case filed under the Summary Proceedings Act must provide the date and time for remote participation in the scheduled hearing, if applicable. In addition, the summons must be accompanied by any written information about the availability of counsel and housing assistance information as provided by legal aid or local funding agencies. If a remote hearing is scheduled for the first proceeding, the defendant received personal service pursuant to MCR 2.105(A), and the defendant fails to appear, a default may enter. If a remote hearing is scheduled for the first proceeding and the defendant fails to~~

~~appear and has not been served under MCR 2.105(A), the court may not enter a default but must reschedule the hearing and mail notice for that rescheduled hearing as an in-person proceeding. Under these conditions, a notice of rescheduled hearing mailed by the court within 24 hours after the initial hearing date is sufficient notice of the rescheduled hearing, notwithstanding any other court rule. Other parties or participants may proceed remotely.~~

~~(E) Except as provided below, all Summary Proceeding Act cases must be adjourned for seven days after the pretrial hearing in subsection (B) is conducted. Nothing in this order limits the statutory authority of a judge to adjourn for a longer period. MCL 600.5732. Any party who does not appear at the hearing scheduled for the adjourned date will be defaulted. Cases need not be adjourned for seven days if: the plaintiff dismisses the complaint, with or without prejudice, and without any conditions; if defendant was personally served under MCR 2.105(A) and fails to appear; if plaintiff pleads and proves, with notice, a complaint under MCL 600.5714(1)(b), (d), (e) or (f), sufficient to meet the statutory and court rule requirements and a judge is available to hear the proofs; or where both plaintiff and defendant are represented by counsel and a consent judgment or conditional dismissal is filed with the court. Where plaintiff and defendant are represented by counsel, the parties may submit a conditional dismissal or consent judgment in lieu of appearing personally at the second hearing. Nothing in this subsection supersedes the right to an attorney pursuant to 4.201(F)(2).~~

~~(F) The court may require remote participation in the second, and any subsequent, proceedings, and the court must verify that participants are able to proceed in that manner.~~

~~(G) In cases filed pursuant to MCL 600.5714(1)(a) for nonpayment of rent, a court must stay further proceedings after the pretrial hearing is conducted and not proceed to judgment if a defendant applies for COVID Emergency Rental Assistance (CERA) and notifies the court of the application. The stay is contingent upon the following events:~~

~~(1) An eligibility determination is made by the appropriate HARA within 30 days of the pretrial hearing;~~

~~(2) The defendant is eligible to receive rental assistance for all rent owed; and~~

~~(3) The plaintiff receives full payment from the CERA program within 45 days of the pretrial hearing.~~

~~If any of these events do not occur, excluding delays attributable to the plaintiff, the court must lift the stay and continue with proceedings. Nothing in this order limits~~

~~the statutory authority of a judge to adjourn a Summary Proceedings case. MCL 600.5732.~~

~~(H) In cases filed before this administrative order was amended to include procedure related to the CERA program (i.e., before March 22, 2021), if a party notifies the court that it has applied for CERA at any point prior to issuance of a writ, the court shall stay the proceeding as provided under subsection (G) of this order.~~

~~(I) For cases that are subject to the moratorium under the CDC order, the court shall process the case through entry of judgment. A judgment issued in this type of case shall allow defendant to pay or move (under item 4 on DC 105 or similarly on non-SCAO forms) within the statutory period (MCL 600.5744) or after the expiration of the CDC order, whichever date is later. MCL 600.5744(5), which provides a 10 day minimum statutory period to pay or move, is tolled until expiration of the CDC order. MCR 4.201(L)(4)(a), which prohibits an order of eviction from being issued later than 56 days after the judgment enters unless a hearing is held, is suspended for cases subject to the CDC moratorium. The 56 day period in that rule shall commence on the first day after the expiration of the CDC order for those cases.~~

This order is effective immediately until further order of the Court.

Rule 4.201 Summary Proceedings to Recover Possession of Premises

(A) Applicable Rules; Forms. Except as provided by this rule and MCL 600.5701 *et seq.*, a summary proceeding to recover possession of premises from a person in possession as described in MCL 600.5714 is governed by the Michigan Court Rules. Forms available for public distribution at the court clerk's office and SCAO-approved forms located online may be used in the proceeding.

(B) Complaint.

(1)-(2) [Unchanged.]

(3) Specific Requirements.

(a)-(b) [Unchanged.]

(c) If the tenancy is of residential premises, the complaint must allege that the lessor or licensor has performed his or her covenants to keep the premises fit for the use intended, ~~and~~ in reasonable repair during the term of the lease or license, and in compliance with applicable state and local health and safety laws, unless the parties to the lease or license have modified those obligations, as provided for by statute.

(d)-(e) [Unchanged.]

(C) Summons.

(1)-(2) [Unchanged.]

(3) The summons must also include the following advice to the defendant:

(a)-(e) [Unchanged.]

(f) Pursuant to SCAO guidelines, written information attached to the summons regarding the availability of rental and other housing assistance provided by legal aid or local funding agencies.

(D) [Unchanged.]

(E) Recording. All landlord-tenant summary proceedings conducted in open court, including the pretrial hearing held under subrule (K), must be recorded by stenographic or mechanical means, and only a reporter or recorder certified under MCR 8.108(G) may file a transcript of the record in a Michigan court.

(F) Use of Videoconferencing Technology. For any hearing held under this subchapter, the court must allow the use of videoconferencing technology in accordance with MCR 2.407.

(1) The use of videoconferencing technology shall be presumed for all pretrial hearings, subject to MCR 2.407(B)(5).

(2) Unless the court determines that the use of videoconferencing technology is inappropriate for a particular case under MCR 2.407(C), the use of videoconferencing technology may be used in bench trials and other proceedings if the court has consulted with the parties and counsel.

(3) The use of videoconferencing technology shall not be used in jury trials, except in the discretion of the court after all parties have had notice and opportunity to be heard on the use of videoconferencing technology.

(G~~F~~) Appearance and Answer; Default.

(1)-(3) [Unchanged.]

(4) Jury Demand. If the defendant wants a jury trial, he or she must demand it

at least two days before the adjourned trial is scheduled to begin or at the defendant's first appearance, whichever is later~~in the first response, written or oral~~. If the trial is adjourned under subrule (K) and no jury demand has been made, the defendant must demand it at least two days before the rescheduled date. The jury trial fee must be paid when the demand is made.

(5) Default.

(a) If the defendant fails to appear on the date and time noticed by the summons, the court, on the plaintiff's motion, may enter a default and may hear the plaintiff's proofs in support of judgment if~~. If satisfied that the complaint is accurate, the court must enter a default judgment under MCL 600.5741, and in accord with subrule (K). The default judgment must be mailed to the defendant by the court clerk and must inform the defendant that (if applicable)~~

(i) the defendant fails to appear on the date and time noticed by the summons and on the date and time in which trial was adjourned under subrule (K)(1)~~he or she may be evicted from the premises~~;

(ii) personal service of process was made on the defendant under MCR 2.105(A); or~~he or she may be liable for a money judgment.~~

(iii) the plaintiff pleads and proves, with notice, a complaint under MCL 600.5714(1)(b), (d), (e), or (f) sufficient to meet the statutory and court rule requirements.

(b) If satisfied that the complaint has met pleading and proof requirements and a default may enter, the court may enter a default judgment under MCL 600.5741 and in accordance with subrule (L). The default judgment must be mailed to the defendant by the court clerk and must inform the defendant that (if applicable)

(i) he or she may be evicted from the premises;

(ii) he or she may be liable for a money judgment.

(b) [Relettered (c) but otherwise unchanged.]

(d~~c~~) If a default is not entered~~party fails to appear~~, the court must~~may~~ adjourn the trial~~hearing~~ for at least~~up to~~ 7 days. If the trial~~hearing~~ is

adjourned, the court must mail notice of the new date to the party who failed to appear.

~~(6) Use of Videoconferencing Technology. For any hearing held under this subchapter, in accordance with MCR 2.407, the court may allow the use of videoconferencing technology by any participant as defined in MCR 2.407(A)(1).~~

(H~~G~~) Claims and Counterclaims.

(1) Joinder.

(a)-(b) [Unchanged.]

(c) A court with a territorial jurisdiction which has a population of more than 1,000,000 may provide, by local rule, that a money claim or counterclaim must be tried separately from a claim for possession unless joinder is allowed by leave of the court pursuant to subrule (H~~G~~)(1)(e).

(d) [Unchanged.]

(e) If adjudication of a money counterclaim will affect the amount the defendant must pay to prevent issuance of an order of eviction, that counterclaim must be tried at the same time as the claim for possession, subrules (H~~G~~)(1)(c) and (d) notwithstanding, unless it appears to the court that the counterclaim is without merit.

(2) [Unchanged.]

(I~~H~~) Interim Orders. On motion of either party, or by stipulation, for good cause, a court may issue such interim orders as are necessary, including, but not limited to the following:

(1)-(2) [Unchanged.]

(3) Stay of Proceedings. In cases filed pursuant to MCL 600.5714(1)(a) for nonpayment of rent, the court must stay further proceedings after conducting the pretrial hearing under subrule (K) and not proceed to judgment if, as described in SCAO guidelines, a defendant applies for rental assistance from a designated funding source or rental assistance agency and notifies the court of that application not later than five days after the defendant is verbally informed as provided in subrule (K)(2). The court may require reasonable

verification of the application. The initial stay is lifted after 14 days unless the defendant demonstrates to the court that the application has been approved and rental assistance will be received. The total stay period under this subrule must not exceed 30 days and is automatically lifted 30 days from the date that the initial stay of the proceedings began.

(I) [Relettered (J) but otherwise unchanged.]

(K~~J~~) Trial.

(1) Time.

(a) If after conducting the pretrial hearing under subrule (K)(2)(a) the court adjourns the trial, it must be scheduled at least 7 days after the pretrial hearing.

(b) When trial begins, the court must first decide pretrial motions and determine if there is a triable issue. If there is no triable issue, the court must enter judgment.

(c) ~~When the defendant appears, t~~The court may try the action pursuant to this subrule, or, if good cause is shown, may adjourn trial up to 56 days. If the court adjourns trial for more than 7 days, an escrow order may be entered pursuant to subrule (I~~H~~)(2). The parties may adjourn trial by stipulation in writing or on the record, subject to the approval of the court.

(2) Conducting the Trial.

(a) At the initial date and time set for trial noticed by the summons, the court must conduct a pretrial hearing consistent with SCAO guidance. At the pretrial the parties must be verbally informed of all of the following:

(i) The right to counsel under subrule (G)(2).

(ii) The right to proper venue under subrule (G)(3).

(iii) The Michigan Department of Health and Human Services, local Coordinated Entry Agency, Housing Assessment and Resource Agency, or federal Help for Homeless Veterans program may be able to assist with payment of some or all of the rent due.

(iv) Defendants do not need a judgment to receive assistance from the Michigan Department of Health and Human Services, local Coordinated Entry Agency, or Housing Assessment and Resource Agency. The summons and complaint from the court case are sufficient for help from the state.

(v) The availability of the Michigan and local community dispute resolution program office as a possible source of case resolution.

(vi) The possibility of a conditional dismissal pursuant to MCR 2.602 if approved by all parties. The parties must be provided with a form to effectuate such conditional dismissal.

If the defendant does not appear for trial on the date and time noticed by the summons and a default was not entered, the court must verbally inform the defendant of the information in this subrule at his or her first appearance before trial begins and allow, upon request, adequate time to retain counsel.

(b) Unless otherwise provided in this rule, after conducting the pretrial, the court may adjourn the trial as provided in subrule (K)(1).

(c) Immediately following the pretrial hearing, the court may resolve the case without adjourning the trial, if

(i) the plaintiff dismisses the complaint, with or without prejudice, and without any conditions;

(ii) the defendant is personally served under MCR 2.105(A) and fails to appear at the date and time set for trial noticed by the summons under subrule (K)(2)(a);

(iii) both plaintiff and defendant are represented by counsel and a consent judgment or conditional dismissal is filed with the court;

(iv) the defendant has been advised of his or her rights under subrule (K)(2)(a), has knowingly waived the option of having the trial adjourned, and upon judicial review of the terms after adequate inquiry determines the terms fair and enters into a consent judgment or conditional dismissal on the record; or

(v) any of the circumstances listed in subrule (G)(5)(a)(iii) is pleaded and proved, with notice, sufficient to meet the statutory requirements.

~~(2) Pretrial Action. At trial, the court must first decide pretrial motions and determine if there is a triable issue. If there is no triable issue, the court must enter judgment.~~

(3)-(4) [Unchanged.]

(K) [Relettered (L) but otherwise unchanged.]

(M~~L~~) Order of Eviction.

(1) [Unchanged.]

(2) Issuance of Order of Eviction and Delivery of Order. Subject to the provisions of subrule (M~~L~~)(4), the order of eviction shall be delivered to the person serving the order for service within 7 days after the order is filed.

(3)-(5) [Unchanged.]

(N~~M~~) Postjudgment Motions. Except as provided in MCR 2.612, any postjudgment motion must be filed no later than 10 days after judgment enters.

(1) Except as otherwise provided in this subrule, i~~I~~f the motion challenges a judgment for possession, the court may not grant a stay.~~unless~~ The court shall grant a stay if

(a)-(b) [Unchanged.]

If a stay is granted, a hearing shall be held within 14 days after it is issued.

(2) If the judgment does not include an award of possession, the filing of the motion stays proceedings, but the plaintiff may move for an order requiring a bond to secure the stay. If the initial escrow deposit is believed inadequate, the plaintiff may apply for continuing adequate escrow payments in accord with subrule (I~~H~~)(2). The filing of a postjudgment motion together with a bond, bond order, or escrow deposit stays all proceedings, including an order of eviction issued but not executed.

(3) [Unchanged.]

(O~~N~~) Appeals From Possessory Judgments.

(1)-(2) [Unchanged.]

(3) Stay of Order of Eviction.

(a) Unless a stay is ordered by the trial court, an order of eviction must issue as provided in subrule (M~~L~~).

(b) [Unchanged.]

(4) Appeal Bond; Escrow.

(a) [Unchanged.]

(b) A defendant who appeals must file a bond providing that if the defendant loses, he or she will pay

(i)-(iii) [Unchanged.]

The court may waive the bond requirement of subrule (O~~N~~)(4)(b)(i) on the grounds stated in MCR 2.002(C) or (D).

(c) If the plaintiff won a possession judgment, the court shall enter an escrow order under subrule (I~~H~~)(2) and require the defendant to make payments while the appeal is pending. This escrow order may not be retroactive as to arrearages preceding the date of the post-trial escrow order unless there was a pretrial escrow order entered under subrule (I~~H~~)(2), in which case the total escrow amount may include the amount accrued between the time of the original escrow order and the filing of the appeal.

(d) [Unchanged.]

(O) [Relettered (P) but otherwise unchanged.]

Staff Comment (ADM File No. 2020-08): The proposed amendments would permanently incorporate certain provisions from Administrative Order No. 2020-17 into court rule format under MCR 4.201 and would make a number of minor changes due to a relettering of the rule. The proposed amendments would also incorporate public comment received at the public hearing on March 16, 2022 and via email, as well as additional recommendations and input received from other stakeholders including the JFAC and the

MDJA. Finally, the proposed amendments in this order reference MCR 2.407, which is amended effective September 9, 2022. Readers should refer to the amended version of that rule when reviewing the proposed amendments in this order.

Note that the comment period for this proposal is slightly shorter than the typical three-month period so that this issue can be considered by the Court at its November 2022 public hearing.

The staff comment is not an authoritative construction by the Court. In addition, adoption of a new rule or amendment in no way reflects a substantive determination by this Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be submitted by November 1, 2022 by clicking on the "Comment on this Proposal" link under this proposal on the Court's Proposed & Adopted Orders on Administrative Matters page. You may also submit a comment in writing at P.O. Box 30052, Lansing, MI 48909 or via email at ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2020-08. Your comments and the comments of others will be posted under the chapter affected by this proposal.

VIVIANO, J. (*dissenting*).

Today the Court publishes for comment a proposal that would permanently incorporate some of the provisions of Administrative Order No. 2020-17, the emergency order initially issued in July 2021 to respond to the relatively early developments of the COVID-19 pandemic, into MCR 4.201, the court rule governing summary proceedings to recover possession of premises, and make other permanent changes to that court rule. I write to explain why I would rescind AO 2020-17 in its entirety and why I would not make significant changes to MCR 4.201.

Now that it has been well over two years since the beginning of the COVID-19 pandemic, there is no need to retain Administrative Order No. 2020-17.[1] Only one

[1] Although I initially voted to adopt AO 2020-17 at the beginning of the pandemic, I quickly changed course once it became clear to me that the order was being used to facilitate an eviction moratorium that appeared to me unconstitutional and indeed was later declared as such. See *Alabama Ass'n of Realtors v Dep't of Health & Human Servs*, 594 US ___; 141 S Ct 2485 (2021). In addition to its legal shortcomings, there are reasons to question the policy merits of the eviction moratorium as well, since it has likely caused (or significantly contributed to) major increases in rents, which are a key driver of inflation. See, e.g., Krafcik, *Rising Rents, Lack of Housing Still an Issue in West Michigan Despite Eviction Moratorium*, WWMT (August 16, 2021) <https://wwmt.com/news/i-team/rising-

provision would be retained under the proposal: the suspension of local court rules requiring a written answer pursuant to MCL 600.5735(4).[2] The order purports to justify this continued suspension on the fact that the court system is still dealing with the effects of the COVID-19 pandemic. It is not clear to me why suspension of local court rules otherwise allowed by MCL 600.5735(4) is necessary or beneficial. The proposed revision to AO 2020-17 would continue to characterize this suspension as "temporary." But the suspension has been in place for over two years now with no end in sight. If not now, when is the appropriate time to remove this provision?

I am also not convinced of the need for additional changes to MCR 4.201. To the extent that the COVID-19 pandemic has revealed ways in which we can improve landlord-tenant proceedings, I take no issue with considering such improvements. For example, I agree that it would be helpful to provide defendants with information about housing and rental assistance with the summons, which may obviate the need for a trial and save the parties and the court time and resources. But, as explained below, the proposal would go far beyond these types of common-sense reforms.

First, I would not create a presumption that videoconferencing technology be used for pretrial hearings in landlord-tenant proceedings. As I have expressed previously, there are numerous reasons why individual courts and judges should retain full discretion as to whether to use remote technology for a particular proceeding. See Rescission of Pandemic-Related Administrative Orders, 507 Mich ___ (2021) (VIVIANO and BERNSTEIN, JJ.,

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rents-lack-of-housing-still-an-issue-in-west-michigan-despite-eviction-moratorium> (accessed August 1, 2022) [https://perma.cc/43R3-AT2L]; Rico, *Rents Reach 'Insane' Levels Across US as Eviction Moratorium Ends*, Detroit News (February 20, 2022) <https://www.detroitnews.com/story/news/nation/2022/02/20/apartment-rents-eviction-moratorium-pandemic/49839435/> (accessed August 1, 2022) [https://perma.cc/Y3LP-XDCK]. Unfortunately, this has had a detrimental effect on the very people the moratorium was intended to help. See Schanz, *As Rent Rises in Metro Detroit, Families are Forced to Cut Back in Other Ways*, WXYZ (March 4, 2022) <https://www.wxyz.com/news/as-rent-rises-in-metro-detroit-families-are-forced-to-cut-back-in-other-ways> (accessed August 1, 2022) [https://perma.cc/2PEX-DUGU].

[2] Since initially being issued, this provision in the administrative order has referred to local administrative orders, not local court rules. But the courts referenced in footnote 1 of the administrative order have all issued local court rules, not local administrative orders, governing landlord-tenant proceedings. Furthermore, MCL 600.5735(4) refers to local court rules, not local administrative orders. This makes sense, as a local administrative order can govern "only internal court management." MCR 8.112(B)(1). Mistakes such as this in an emergency order may be understandable, but the fact that this mistake has lingered for over two years underscores the importance of going through the normal notice and comment procedure before making changes to how our trial courts operate.

concurring in part and dissenting in part). Furthermore, proposed MCR 4.201(F)(2) would provide for a different standard for using videoconferencing technology in landlord-tenant bench trials than the general standard for bench trials in other civil proceedings found in MCR 2.408(A)(2). Applying a different standard only to landlord-tenant bench trials is likely to cause confusion.[3]

Second, although I do not necessarily oppose requiring district courts to conduct a pretrial hearing at the initial date and time set for trial, I have concerns about the specifics of the proposed changes.[4] It is true that, for landlord-tenant cases that proceed to an actual trial, proposed MCR 4.201(K)(2)(b) purports to give district court judges the option of adjourning the matter or immediately proceeding to trial. But I am concerned that the presumption for holding pretrials via videoconference will operate as a de facto adjournment requirement. Unless the district court wishes to hold the bench trial via videoconference, and I suspect that many district court judges will not, the court will be forced to adjourn the trial because the parties will not be physically present at the courthouse for the initial hearing.

Third, I see no reason to change the conditions under which a district court may enter a default judgment. Proposed MCR 4.201(G)(5) would no longer allow a default judgment to be entered in a case involving nonpayment of rent if the defendant fails to appear at the initial court date unless he or she was personally served. I fail to understand why a landlord or landlord's attorney should be forced to return to court a second time to secure a judgment of possession if the tenant was properly served by some method other than personal service yet fails to appear at the initial hearing.[5]

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[3] It is also unclear to me what the practical difference is between "consult[ing] with the parties and counsel," which is the language used in proposed MCR 4.201(F)(2), and providing "all parties [with] notice and opportunity to be heard," which is the language used in the recently amended MCR 2.408(A)(2) and proposed MCR 4.201(F)(3).

[4] Holding a pretrial may lead to a resolution of the case without the necessity of a trial, which would benefit the parties and the court. Some of our district courts are undoubtedly already conducting pretrial hearings even though they are not currently required by the court rules.

[5] Additionally, proposed MCR 4.201(G)(5)(a)(i) is confusing in that it appears not to contemplate the possibility of the pretrial and trial both being held on the same date.

Finally, I question the constitutionality of adding a provision requiring a stay in nonpayment-of-rent cases if the defendant has applied for rental assistance from a designated funding source. This blanket-rule requirement would strip district court judges of their discretion over whether to adjourn landlord-tenant proceedings granted to them by MCL 600.5732. As I have noted previously, our Legislature established a scheme for summary proceedings to recover possession of premises that allows a landlord to recover possession quicker in nonpayment-of-rent cases than in certain other cases. See Amendment of Administrative Order No. 2020-17, 507 Mich ___, ___ (2021) (VIVIANO, J., dissenting). Automatic-stay requirements such as the one in the proposal published for comment do not respect the Legislature's choices and will force landlords wishing to exercise their statutory right to recover possession of their premises to wait until the stay is lifted. See *id.* at ___. There is arguably a "clear legislative policy reflecting considerations other than judicial dispatch of litigation"—allowing a property owner to quickly recover possession of his or her property. *McDougall v Schanz*, 461 Mich 15, 30 (1999) (quotation marks and citations omitted). Thus, I question whether proposed MCR 4.201(I)(3) is within our constitutional authority to regulate "practice and procedure" or whether it wades into the Legislature's authority to amend substantive law. *McDougall*, 461 Mich at 30-31.

I am glad that the Court has returned to its normal process of publishing proposed changes to the court rules for comment before it makes a decision whether to adopt the changes. See Amendment of Administrative Order No. 2020-17, 507 Mich at ___ (VIVIANO, J., dissenting) (lamenting the Court's continued departure from our normal, transparent amendment processes and use of emergency orders to make substantive changes to landlord-tenant procedures). However, I have serious concerns about the proposed amendments the Court is currently considering. For these reasons, I respectfully dissent.

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

August 10, 2022

Clerk