

Order

**Michigan Supreme Court
Lansing, Michigan**

March 25, 2008

Clifford W. Taylor,
Chief Justice

ADM File No. 2007-31

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly

Proposed Amendment of
Rule 4.201 of the
Michigan Court Rules

Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman,
Justices

On order of the Court, this is to advise that the Court is considering an amendment of 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 also will be considered at a public hearing. The notices and schedules of public hearings are posted at www.courts.mi.gov/supremecourt.

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 are indicated in underlining and deletions are overstricken.]

Rule 4.201 Summary Proceedings to Recover Possession of Premises

(A)-(F)[Unchanged.]

(G) Claims and Counterclaims.

(1) Joinder.

(a) A party may join:

- (i) A money claim or counterclaim described by MCL 600.5739. A money claim must be separately stated in the complaint. A money counterclaim must be labeled and separately stated in a written answer.
- (ii) A claim or counterclaim for equitable relief.

(b) ~~If personal jurisdiction over the defendant was not obtained~~ Unless service of process under MCR 2.105 was made on the defendant, a money claim must be

(i) ~~dismissed without prejudice if the defendant does not answer or appear~~, or

(ii) ~~adjourned until personal jurisdiction over the defendant is obtained~~ service of process is complete

if the defendant does not appear or file an answer to the complaint.

(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 (G)(1)(e).

(d) If trial of a money claim or counterclaim

(i) might substantially delay trial of the possession claim, or

(ii) requires that the premises be returned before damages can be determined, the court must adjourn the trial of the money claim or counterclaim to a date no later than 28 days after the time expires for issuing an order of eviction. A party may file and serve supplemental pleadings no later than 7 days before trial, except by leave of the court.

(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 (G)(1)(c) and (d) notwithstanding, unless it appears to the court that the counterclaim is without merit.

(2) Removal.

(a) A summary proceedings action need not be removed from the court in which it is filed because an equitable defense or counterclaim is interposed.

- (b) If a money claim or counterclaim exceeding the court's jurisdiction is introduced, the court, on motion of either party or on its own initiative, shall order removal of that portion of the action to the circuit court, if the money claim or counterclaim is sufficiently shown to exceed the court's jurisdictional limit.

(H)-(O) [Unchanged.]

Staff Comment: The proposed amendment of MCR 4.201(G)(1)(b) would clarify that service of process for purposes of a money claim is sufficient if completed pursuant to MCR 2.105; otherwise, if the defendant does not appear or file an answer to the complaint, a money claim must be dismissed without prejudice, or adjourned until service of process is complete.

The staff comment is not an authoritative construction by the 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 this proposal may be sent to the Supreme Court Clerk in writing or electronically by July 1, 2008, at P.O. Box 30052, Lansing, MI 48909, or MSC_clerk@courts.mi.gov. Your comments and the comments of others will be posted at www.courts.mi.gov/supremecourt/resources/administrative/index.htm.



I, Corbin R. Davis, 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.

March 25, 2008

Corbin R. Davis
Clerk