



Michigan Supreme Court

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State Court Administrator

MEMORANDUM

DATE: April 14, 2020
TO: District Court Judges and Court Administrators
FROM: Tom Boyd, State Court Administrator
SUBJECT: Summary Proceedings

SCAO Regional Administrators and other staff have received many calls about summary proceedings (otherwise known as “LT” cases). Our goal is to encourage courts to do all essential work and all other work that they can using remote technology consistent with Governor Whitmer’s orders and the public health of the community. We have provided authority, guidance, and technology to support the greatest level of continued work possible.

However, in spite of our best efforts, there will be some cases that wait until the current emergency passes. Each court and judge is deciding what matters can be heard remotely as allowed by Administrative Order Nos. 2020-2, 2020-3, and 2020-6. I strongly urge you to consider the following potential impediments before processing summary proceedings cases. You must be satisfied that you have considered and accommodated each of the following before proceeding.

1. Administrative Order No. 2020-3

The Supreme Court has halted the computation of time as it relates to commencement and reply in civil actions.¹ The Court did this by declaring that “any day that falls during the state of emergency declared by the Governor related to COVID-19 is not included for purposes of MCR 1.108(1).” MCR 1.108(1) provides:

¹ The Supreme Court’s Administrative Orders must be read together. You must consider whether the problem presented is an emergency as described in AO No. 2020-3(II)(D) and/or poses a substantial risk to another person or an imminent and severe risk to property under Executive Order 2020-19(1).

In computing a period of time prescribed or allowed by these rules, by court order, or by statute, the following rules apply:

(1) The day of the act, event, or default after which the designated period of time begins to run is not included. The last day of the period is included, unless it is a Saturday, Sunday, legal holiday, or day on which the court is closed pursuant to court order; in that event the period runs until the end of the next day that is not a Saturday, Sunday, legal holiday, or day on which the court is closed pursuant to court order.

The AO states, “[t]his order is intended to extend all deadlines pertaining to case initiation and the filing of initial responsive pleadings in civil and probate matters during the state of emergency declared by the Governor related to COVID-19.”

a. Statutory Prerequisites

AO No. 2020-3 also applies to “any statutory prerequisites” to filing of a pleading under MCR 2.110. As you well know, the district court’s jurisdiction in landlord/tenant disputes is found in the Summary Proceedings Act (the “Act”). A person entitled to possession of premises may recover possession by summary proceedings in the following circumstances:

When a person holds over premises after failing or refusing to pay rent due under the lease or agreement by which the person holds the premises within 7 days from the service of a written demand for possession for nonpayment of the rent due. For the purpose of this subdivision, rent due does not include any accelerated indebtedness because of a breach of the lease under which the premises are held. MCL 600.5714(1)(a).

Has a summary proceedings plaintiff satisfied the statutory prerequisite that their tenant has failed to pay within 7 days of written notice if the computation of time has stopped? Can any plaintiff meet this statutory prerequisite without the passage of time? Does the district court have jurisdiction if this statutory prerequisite is not (cannot) be met?

b. Alternative Summary Proceedings Process under MCL 600.5735(4)

MCL 600.5735(4) provides a court may, by local administrative order, adopt an alternative method of proceeding. This alternative requires a defendant to appear within 5 days (10 days if involving the forfeiture of an executory contract).

In addition to the issue of any day during the state of emergency possibly not counting for the statutory prerequisite 7 or 30 day notice, it is pretty clear that no

day may be counted in determining compliance with the 5 or 10 day deadline for defendant's appearance. If you conclude that the statutory prerequisite in MCL 600.5714(1)(a) has been met for the filing of a complaint under the Act, a defendant may appear by filing a responsive pleading. However, can a defendant be defaulted if the days during which they are required to respond do not count?

2. Executive Order 2020-19

Governor Whitmer has prohibited evictions through April 17, 2020.² The order includes:

. . . no person shall remove or exclude from leased residential premises or residential premises held under a forfeited executory contract a tenant, a vendee of a forfeited executory contract, or a person holding under a tenant or vendee, except when the tenant, vendee, or person holding under them poses a substantial risk to another person or an imminent and severe risk to property. This order should be broadly construed to effectuate that purpose.

This moratorium on evictions does not affect courts or case processing directly. However, you should consider all of the Governor's orders before proceeding with cases which may eventually result in issuance of a Writ of Eviction.

a. Service of Process under "Stay Home. Stay Safe. Save Lives."

Governor Whitmer has ordered nonessential workers to stay home. (EO 2020-21 and EO 2020-42). This mandate is in effect today and continues through April 30, 2020, at 11:59 p.m.

Executive Order 2020-42 orders "all individuals currently living within the State of Michigan . . .to stay at home or at their place of residence" with limited exceptions. It further orders that its provisions "must be construed broadly to prohibit in-person work that is not necessary to sustain or protect life." This order prohibits work and travel outside of the home unless it is specifically exempted. Is there an exception for service of civil process?

Specific to the issue of summary proceedings, Executive Order 2020-19 specifically prohibits a sheriff, under-sheriff or constable, deputy, or other officer from serving process requiring forfeiture of leased residential premises or residential premises held under a forfeited executory contract.

² Keep an eye out for possible extension of this date.

The Michigan Supreme Court's orders have included the following mandates and acknowledgement of the need to cooperate with Governor Whitmer and local public health officials on combating the spread of COVID-19.

AO No. 2020-1 The Court encourages trial courts to cooperate as much as possible with the efforts of the Governor and other state and local officials to mitigate the spread of COVID-19, consistent with our duty to provide essential court services, protect public safety, and remain accessible to the public.

AO No. 2020-2 Courts should limit in-person court activity to only essential functions. This order listed essential functions for each of the trial courts. For each court, this order provides that all other matters may proceed but must be conducted remotely using two-way interactive video technology or other remote participation tools or they must be adjourned until after April 3, 2020.³

AO No. 2020-3 halts the computation of time in an effort to preserve the rights of all parties regarding case initiation and initial responsive pleadings. While this order clearly allows cases to be filed, it stops the clock on the need to file and to respond for the period of time in the state of emergency.

AO No. 2020-6 clarifies that "all judges in Michigan are required to make a good faith effort to conduct proceedings remotely whenever possible." This instruction does not contradict or disagree with the Governor's stay at home orders. In fact, AO No. 2020-6 clearly states, "[a]lthough adjournments are permitted when necessary, courts are directed to implement measures to ensure all matters may proceed as expeditiously as possible under the circumstances, given the particular public health conditions in each locality and the technology resources and staffing situations in place at each court."

MCR 4.201(D) requires personal service, pursuant to MCR 2.105, upon defendant, another member of defendant's household, or, after failing diligent attempts at personal service, posting on the property. MCR 2.105 also allows registered or certified mail, return receipt requested, and delivery restricted to the addressee.

While summary proceedings cases are often begun with posting on the premises, this can only be completed after diligent attempts at personal delivery. Can a

³ This date has been extended to April 14, 2020, by Administrative Order No. 2020-5 and to April 30, 2020 by Administrative Order No. 2020-7.

process server diligently attempt delivery during the state of emergency and while the stay at home order is in place?⁴

3. CARES Act

The federal CARES Act (“Coronavirus Aid, Relief, and Economic Security Act,” Public Law No. 116-136) bars the filing of some judicial eviction cases. Section 4024 of the CARES Act (“TEMPORARY MORATORIUM ON EVICTION FILINGS”) prohibits filings of judicial eviction complaints for “nonpayment of rent or other fees or charges” for federally related tenancies.

Section 4024 of the CARES Act includes, “the lessor of a covered dwelling may not” file (or cause to be filed) “a legal action to recover possession of the covered dwelling from the tenant for nonpayment of rent or other fees or charges” until July 25, 2020 (120 days after enactment of CARES). Sec 4024(b)(1). A “covered dwelling” is a rental unit occupied by a tenant in a “covered property.” Sec 4024(a)(1).

A “covered property” is broadly defined, and includes any property that “participates” in a federally “covered housing program,” as defined by 34 USC 12491(a)(part of the Violence Against Women Act), or that has a “federally backed” mortgage. Sec 4024(a)(2). The list of federally “covered housing program[s]” is extensive, and includes all HUD and USDA Rural Housing low-income rental housing assistance programs, and the Low Income Housing Tax Credit program. These include the HUD Section 8, Public Housing, and Continuum of Care (homeless assistance) programs, among many others. Similarly, the scope of “federally backed” mortgages is very broad, and encompasses any federally connected residential mortgage.

What will you do to ensure that your court does not accept for filing any complaint for nonpayment of rent (or other charges) for premises in a CARES Act “covered property”? I strongly recommend that you adopt measures within your court clerks’ office to determine the possible applicability of the CARES Act in each summary proceedings case filing.

4. Right to Counsel

MCR 4.201(F)(2) provides “[i]f either party appears in person without an attorney, the court must inform that party of the right to retain an attorney. The court must also inform the party about legal aid assistance when it is available.” The right to representation by legal counsel in a civil case is also provided in our Michigan Constitution and provides “[a] suitor in any court of this state has the right to prosecute or defend his suit, either in his own proper person or by an attorney.” [Const.1963, art 1 § 13](#).

⁴ Be mindful of the prohibition on service requiring forfeiture of leased residential premises in Executive Order 2020-19, currently expiring at the end of the day on April 17, 2020.

This right contemplates the allowance of a reasonable opportunity to obtain counsel. Generally, where an unrepresented party desires the assistance of an attorney, the court must adjourn the proceedings to allow the party to obtain counsel. In [Wykoff v Winisky](#), 9 Mich App 662, 669 (1968), this right is not unlimited. The *Wykoff* court stated that “[t]he right to representation by counsel contemplates the allowance of a reasonable opportunity to obtain counsel.” However, “a litigant [who] does not choose to exercise that right [with reasonable diligence], . . . can be forced to proceed to trial without counsel.” *Id.*

Failure to afford a party sufficient time to find counsel “ ‘will in appropriate circumstances’ ” constitute an abuse of discretion, the propriety of the circumstances again turning on some showing that the party made good-faith efforts. See [People v Stinson](#), 6 Mich App 648, 653-656 (1967). Critically, the reasonableness of the time allotted may depend on unique characteristics specific to the party. “[A party] must have an opportunity to fairly and intelligently present [his or] her side of the controversy,” and the court must allow a party a reasonable amount of time to obtain counsel. See [Percy v Percy](#), 227 Mich 407 (1924) (allowing a party only two hours to obtain substitute counsel “was equivalent to denying [the party the] right [to be represented by counsel]”).

Generally, three factors should be considered in determining whether to grant or deny a motion for an adjournment: (1) numerous past continuances, (2) failure of the movant to exercise due diligence, and (3) the lack of any injustice to the movant. [Rosselott v. Muskegon Co](#), 123 Mich App 361, 371 (1983); see also [Tisbury v. Armstrong](#), 194 Mich App 19, 20 (1991); [Hackett v. Conner](#), 58 Mich App 202, 206 (1975).

Every continuance must be determined on a case-by-case basis. Can a defendant/tenant, acting with reasonable diligence, secure representation in your community? Does the state of emergency and associated Stay at Home Executive Orders create an insurmountable level of difficulty in retaining counsel? Do attorneys working remotely meet the demands of unrepresented tenants? Try calling your local legal services offices, the usual tenant counsel, and pro bono attorneys practicing in your court. Does the response you receive cause you to believe that a tenant truly has a reasonable opportunity to obtain counsel as required by law?

Please review each of these issues carefully before you decide when and how to proceed with your LT docket.

Do not hesitate to reach out to your Regional Administrator if you have questions, concerns, or comments on this memo.