

Order

**Michigan Supreme Court
Lansing, Michigan**

July 2, 2021

Bridget M. McCormack,
Chief Justice

ADM File No. 2020-08

Amendment of Administrative
Order No. 2020-17

Continuation of Alternative
Procedures for Landlord/Tenant
Cases

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh
Elizabeth M. Welch,
Justices

On order of the Court, Administrative Order No. 2020-17 is hereby amended and replaced with the following new language, effective immediately.

The number of new COVID-19 cases in Michigan has dropped dramatically in recent weeks and 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.

Federal response to this problem has taken two forms: eviction moratoria and direct state aid. Several eviction moratoria 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. 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, 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. 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. The need for that programming continues, even assuming the health risks associated with the typical manner of processing eviction proceedings has eased.

In addition, the mandate for courts to continue to use remote technology to the greatest extent possible is as fully in place today as it was a year ago. 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 will be based on input from state court stakeholders, but early data shows 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 courts to process landlord/tenant cases following the procedures outlined in this order. Courts are expected to proceed with guidelines referenced in Administrative Order No. 2020-14 (Return to Full Capacity).

- (A) All local administrative orders requiring a written answer pursuant to MCL 600.5735(4) are temporarily suspended.¹ Unless otherwise provided by this 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.

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).

- (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. Administrative Order No. 2020-6 requires that 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. 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, 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.

- (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 under Administrative Order No. 2020-6.
- (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.

ZAHRA, J. (*dissenting*). I dissent from this Court's amended order that extends the mandatory stay of all actions for nonpayment of rent if a tenant applies for COVID Emergency Rental Assistance relief. For the reasons stated in my prior dissenting statement, I disagree that this Court's authority to exercise general superintending control over all state courts under Const 1963, art 6, § 4 permits it to modify the statutory framework set forth in the summary proceedings act, MCL 600.5701 *et seq.*, in which a landlord may obtain a judgment against a defaulting tenant. See Amended Administrative Order No. 2020-17, 507 Mich ____ (March 22, 2021) (ZAHRA, J., *dissenting*). That this Court extends these provisions despite the impending expiration of the eviction moratorium order issued by the Centers for Disease Control and Prevention, which itself was grounded on dubious constitutional authority, exacerbates this Court's abuse of authority and the separation-of-powers violation apparent in taking such action. While the majority no doubt has good intentions in extending this mandatory stay order, I would not further encroach on the Legislature's exclusive authority to enact laws that modify the statutory framework governing actions for nonpayment of rent. This is particularly true where the parties are perfectly capable of resolving their disputes without the need for mandatory judicial intervention. See *id.* at ____ ("Why must—and on what authority may—this Court strip litigants of their ability to resolve their disputes privately and force these delays in the process where none exist by statute?"). Because this Court continues to do so, I dissent.

VIVIANO, J. (*dissenting*). I dissent from the Court's decision to amend our previous order administratively suspending our state's laws governing landlord-tenant proceedings.¹ Today's amendments take some steps in the right direction, such as removing the prioritization of landlord-tenant cases. However, I would return all landlord-tenant cases to the procedures established by our statutes and court rules. Today's order continues to impose stay and adjournment requirements on many landlord-tenant cases. In doing so, the order continues to upend the statutory scheme that the Legislature created for summary landlord-tenant proceedings and deprives district court judges of discretion that they have been granted by the Legislature and this Court. As I have indicated previously, I believe that changes to our state's laws should be made by the Legislature, not this Court, and that amendments to the court rules and administrative

orders governing the procedural aspects of landlord/tenant proceedings should be made through our regular and public amendment process rather than by emergency orders.² For these reasons, I dissent.

¹ To the extent that this administrative order continues to rely on the eviction moratorium order issued by the Centers for Disease Control and Prevention (CDC), I continue to object for the reasons I have stated previously. Administrative Order No. 2020-17, 506 Mich ___ (October 22, 2020) (VIVIANO, J., dissenting) (questioning the constitutionality of the CDC's order and criticizing the Court's reliance on it as a basis to suspend the operation of certain laws governing summary landlord-tenant proceedings); Amendment of Administrative Order No. 2020-17, 507 Mich ___ (January 30, 2021) (VIVIANO, J., dissenting) (same); Amendment of Administrative Order No. 2020-17, 507 Mich ___ (March 22, 2021) (VIVIANO, J., dissenting); Amendment of Administrative Order No. 2020-17, 507 Mich ___ (April 9, 2021) (VIVIANO, J., dissenting).

² Amendment of Administrative Order No. 2020-17, 507 Mich ___ (March 22, 2021) (VIVIANO, J., dissenting).



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.

July 2, 2021

Clerk