

LEGAL SERVICES ASSOCIATION OF MICHIGAN

Pam Hoekwater

February 28, 2019

Co-Chair

25 Division Ave S Ste 300
Grand Rapids MI 49503

Clerk
Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48909

Ann Routt

Co-Chair

15 S. Washington St.
Ypsilanti, MI 48197

Re: Administrative File 2018-19. Discovery Court Rules.

Dear Clerk,

We're writing to comment on these proposed rules. We are commenting on behalf of the Legal Services Association of Michigan (LSAM)—a non-profit organization created in 1982. LSAM's members are the largest 13 civil legal aid programs in the state of Michigan. LSAM's members collectively provide legal services to over 50,000 Michigan residents each year.

We appreciate the work of the State Bar committee and are generally supportive of most of the Bar's proposed amendments. The main focus of the proposed rules—as well as the federal rules on which they are based—is general civil litigation. In the Michigan system, this means civil litigation in Circuit Court. We believe the proposed rules reflect a well thought out effort to modernize discovery rules as applied to circuit court civil litigation.

However, we note that the focus of these rules—general civil litigation—is not the principal area of practice for legal aid programs. Legal services programs focus on family law cases, district court cases, and administrative matters in both state and federal administrative hearing structures.

We're writing to express our strong disagreement with the proposed MCR 2.301(A)(2).

While the proposed rules dramatically change almost every aspect of circuit court discovery, the proposed rules leave the current district court discovery process—effectively no discovery—unchanged. The rule continues to preclude discovery in district court cases “except by leave of the court or on stipulation of all parties.” In addition the rules create procedural barriers to even filing a motion for discovery.

Matters heard in district court include cases that determine critical rights of low income people. District Court cases include eviction cases, land-contract disputes, post-foreclosure evictions, and federally-subsidized housing rights. District Court cases also include collection cases that seek to seize the ongoing income of low and moderate income families. Under the rule, a tenant who disputes the amount of rent owing has no right to review the landlord's rent ledger. Under the rule, a defendant in a collection suit by a third party debt collector has no right to inspect the underlying documents relating to the debt.

The denial of discovery in District Court cases creates a significant barrier to access to justice for low income and pro se litigants and undermine the fairness of our courts. How can low income litigants, especially those

Since the Bar report was issued, there has been a great deal of national attention to the eviction crisis. See, for example, the New York Times' article from April 7, 2018 reporting on research regarding 83 million US evictions. <https://www.nytimes.com/interactive/2018/04/07/upshot/millions-of-eviction-records-a-sweeping-new-look-at-housing-in-america.html>

See also the publicly available research collected by Princeton's Eviction Lab project. <https://evictionlab.org/>

A review of the Eviction Lab data indicates that Michigan's eviction rate is 40% higher than the national rate. Several Michigan cities are among those with the highest rates nationally.

In response to the Eviction Lab materials, many communities across the country and in Michigan are taking action to assure basic fairness to tenants facing eviction—up to and including providing a right to counsel in eviction suits. The current Michigan rule is at odds with national trends that are recognizing the critical importance of full and fair procedural protections for tenants in eviction cases.

We urge the Court to adopt a rule that discovery should be freely granted in any case involving the possession of residential housing and in any case seeking to seize household income.

The Court could achieve this goal through a general rule permitting discovery in district court—i.e., the Court could revise proposed MCR 2.301(A)(2) to state that “The discovery procedures in these rules apply to actions in the district court.”

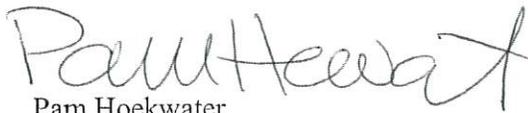
In the alternative, the Court could adopt a more limited amendment: “In actions in the district court, discovery is not generally permitted before entry of judgment except by leave of the court or on the stipulation of all parties. However, a tenant defending an eviction action under the Summary Proceedings Act, MCL 600.5701, et seq., has a right to discovery. In addition, a defendant in a collection action has a right to discovery. In all other cases where there is a request for discovery, leave shall be freely granted.”

We would also suggest that the Court add a new subsection to MCR 4.201(H) (the Summary Proceedings Court Rule) entitled “Discovery” and providing that “upon the request of either party, reasonable discovery shall be provided”.

In conclusion, we believe that the work of the Bar Committee, while admirable, was focused on circuit court processes. We urge the Court to assure that the needs of low income litigants—whose cases tend to be filed in district court but still involve critical rights—are considered in its review of the proposed rule.

Respectfully submitted,


Ann L. Rouff
Co-Chair


Pam Hoekwater
Co-Chair