

## **Guidance Issued in Conjunction with Administrative Order No. 2020-17**

The Court adopted [Administrative Order No. 2020-17](#) in order to both protect public health and to protect rights while helping courts more efficiently handle the expected backlog of more than 75,000 landlord/tenant cases. First, in order to protect public health, the administrative order requires courts to set priorities in scheduling cases and to give each case a scheduled time. This approach will allow courts to maintain compliance with Return to Full Capacity Guidelines designed to protect litigants, staff, and the public. Second, the order requires that defendants in these cases be advised of their right to counsel and be made aware that they may be eligible for assistance in paying back rent. Representation and assistance not only help defendants but are also beneficial to plaintiffs. Therefore, the order requires the presiding official to conduct a pretrial at the initial hearing in all Summary Proceedings Act cases to advise defendants of various rights, and then to adjourn the hearing for one week, enabling the defendant to access those rights.

### **Details Regarding the Advisement**

The presiding judicial officer at the pretrial hearing must verbally inform the parties of all of the following:

- a. Defendant has the right to counsel. MCR 4.201(F)(2)
- b. The Michigan Department of Health and Human Services (MDHHS), the local Coordinated Entry Agency (CEA), or the federal Help for Homeless Veterans program, the Michigan State Housing Development Authority, and other community agencies may be able to assist the parties with payment of some or all of the rent due.
- c. Defendants DO NOT need a judgment to receive assistance from MDHHS or the local CEA. The Summons and Complaint from the court case are sufficient.
- d. 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.
- e. 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.

With regard to subsection a. (defendant's right to counsel), courts must advise defendants of the following:

- i. If the defendant does not have an attorney and is financially able to retain one, they might locate an attorney through the State Bar of Michigan or a local lawyer referral service.
- ii. If the defendant does not have an attorney and is not financially able to retain one, they might qualify for assistance through a local legal aid office. The court must provide contact information for the local legal aid offices in writing.

Each court is encouraged to have legal services available either in person or through remote technology at the same time as cases filed under the Summary Proceedings Act are scheduled for hearing to facilitate representation.

With regard to referral to an aid agency that may be able to assist defendant (MDHHS, CEA, etc.), the court advisement must include the following:

- i. If the defendant has a caseworker at MDHHS, they should contact their worker immediately.
- ii. If the defendant does not have a caseworker at MDHHS, the court must provide contact information for a housing specialist or assistance payment worker at the local MDHHS office and instruct defendant to contact that person immediately.

Each court is encouraged to have workers from the local MDHHS and/or the local CEA available either in person or through remote technology at the same time as cases filed under the Summary Proceedings Act are scheduled for hearing.

If a representative of the local MDHHS and/ or the local CEA is not available either in person or through remote technology, the court must provide contact information for the local MDHHS in writing. The court should work with the local MDHHS to provide this writing in as many languages as possible.

Assistance for veterans may be available through the National Call Center for Homeless Veterans at 1-877-4AID-VET (1-877-424-3838) or the [Department of Veterans Affairs Homeless Veterans homepage](#).

The person conducting the pretrial must make appropriate referrals to legal services and/or MDHHS, emphasizing that these services are free.

### **Case Initiation & Scheduling**

The procedure for bringing a Summary Proceedings case begins with service of the appropriate demand for possession or notice to quit.<sup>1</sup> This notice must be attached to the

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<sup>1</sup> SCAO Forms DC 100a & DC 100c, see MCR 4.201(B)(1)(c)

complaint and show when and how it was served. Until July 25, 2020, plaintiff must also file VERIFICATION OF COMPLIANCE WITH CARES ACT.<sup>2</sup>

Because courts are steadily expanding proceedings held in courtrooms and those expansion plans rely on continued limitation on large gatherings of individuals, landlord/tenant cases must be scheduled for a specific time and day. Courts may no longer schedule a large number of cases for a several-hour block of time and leave the litigants to collect in clusters waiting to be called. For the foreseeable future, each case will be scheduled at a specific time. Due to still existing social distancing rules within the court house, courts are strongly encouraged to not schedule more than a case or two for each available time slot.

### **Pretrial Hearing**

At the pretrial hearing the parties must be verbally informed of all of the information indicated in Administrative Order No. 2020-17. All Summary Proceeding Act cases must be adjourned for seven days after the pretrial hearing. The trial may be adjourned more than seven days, if stipulated to by the parties or, if good cause is shown. MCL 600.5735; MCR 2.401(J)(1). Cases do not need to be adjourned for seven days in limited circumstances outlined in Administrative Order No. 2020-17.

### **Presiding Officer**

In anticipation of a large number of cases to be disposed, the administrative order allows a broader group of persons to preside over the pretrial. The allowable people include judges, a visiting judge sitting by assignment of SCAO, a magistrate (as long as that magistrate is a lawyer) or a Community Dispute Resolution Program (CDRP) mediator. (Location and contact information for the [CDRP Mediation Centers](#))

In addition to advising defendant of defendant's rights, the presiding officer at the pretrial must identify the disputed issues in each case. The disputed issues can be used by the presiding officer at pretrial to emphasize specific referrals. For example, if the issue is clearly an inability by the defendant to pay, referral to MDHHS and MSHDA can be emphasized. If the presiding officer is a magistrate or judge other than the judge presiding over the case, that person must communicate the disputed issues to the judge in writing. The judge will use this information to begin the inquiry into the existence of a triable issue [MCR 4.201(J)(2)] when the hearing resumes in one week.

### **Recording**

Administrative Order No. 2020-17 requires the court (or other individual as approved by the court) to conduct a pretrial hearing "consistent with SCAO guidance." Because this pretrial hearing is purely advisory, there is no requirement to record the pretrial hearing.

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<sup>2</sup> SCAO Form DC 504, Rev. 7/20, see AO 2020-8