



Michigan Supreme Court

State Court Administrative Office

Friend of the Court Bureau

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Director

MEMORANDUM

DATE: October 1, 2020

TO: Chief Circuit Judges
Presiding Family Division Judges
Circuit Court Administrators
Family Division Administrators
Friends of the Court

FROM: Steven D. Capps, Director

RE: Landlord-Tenant Filings and Providing Essential Services to Michigan Families

The [Coronavirus Aid, Relief, and Economic Security \(CARES\) Act](#) and [Governor Whitmer's Executive Order 2020-85](#) established moratoriums on evictions for Michigan citizens financially impacted by the global pandemic. The State Court Administrative Office (SCAO) believes that once the CARES Act and the Executive Order restrictions on evictions expire and Michigan courts return to full capacity service ([AO 2020-14](#)), there will be a significant number of landlord-tenant cases filed in Michigan district courts. SCAO's statistical analysis indicates that many defendants involved in landlord-tenant litigation also have other court cases such as domestic relations cases and/or neglect and abuse cases.

This memorandum provides recommendations for coordinating friend of the court (FOC) and district court services to assist families facing eviction. This memorandum's recommendations are a range of activity that each court and FOC can implement based on local staff and resources.

If judges, court administrators, or staff have any questions, or would like additional information or clarification regarding this memorandum, please contact Elizabeth West at WestE@courts.mi.gov or 517-373-5975.

A. Summary of problem

On March 27, 2020, The [Coronavirus Aid, Relief, and Economic Security \(CARES\) Act](#) became law. Within the CARES Act, there were multiple eviction and foreclosure moratoriums to protect those financially impacted by the global pandemic. The moratoriums stated that landlords who owned federally-backed rental properties are unable to file eviction or foreclosure proceedings until July 25, 2020.

Governor Whitmer's [Executive Order 2020-118 \(COVID-19\) \(June 11, 2020\)](#), placed a moratorium on all eviction and foreclosure proceedings, preventing the filing of any eviction or foreclosure action until July 15, 2020.¹ This includes privately owned premises that do not receive any federal funding or subsidy. The Michigan Supreme Court also provided direction to the local trial courts suspending eviction and foreclosure filings in [Administrative Order 2020-08](#).

The federal and state moratoriums do not eliminate a tenant's responsibility to pay rent and fees. Rent will have to be paid in full, or payment arrangements must be made with the landlords before the respective filing dates, or tenants could face eviction proceedings.

It is anticipated that as the moratorium on eviction and foreclosure filings expire, there will be a significant number of landlord-tenant filings; approximately 75,000 cases in Michigan district courts in the summer and fall of 2020.² The large influx of landlord-tenant cases could potentially cause problems for FOC cases, such as:

- the FOC having a bad or outdated addresses for parties,
- temporary changes to custody and parenting time or requests to enforce custody or parenting-time violations when the parent with primary custody does not have an established residence,
- a parent unable to exercise shared custody or parenting time due to lack of housing, and
- lack of family financial resources to pay support because of large payments of back rent and payments to secure future housing,

Michigan Supreme Court [Administrative Order 2020-14, Return to Full Capacity- COVID-19 Guidelines for Michigan's Judiciary](#) directs courts how to safely reopen their doors and resume all hearings, including landlord-tenant and domestic relations proceedings. Recognizing the pending influx of landlord-tenant cases, the Michigan Supreme Court further issued [Administrative Order 2020-17](#) that triages eviction and foreclosure cases based on priority levels for issues leading to the proceedings.

Administrative Order 2020-14, in conjunction with Governor Whitmer's [Executive Order 2020-134](#), provided for the creation and duties of an optional Eviction Diversion Program (EDP) in the state's district courts. The EDP will provide financial assistance and a connection to state and local resources for tenants who are at risk of losing housing due to the COVID-19 pandemic. Each court will distribute information about legal, housing, and food assistance programs available in the court's community.

¹ [Executive Order 2020-134](#) extended the date of the eviction moratorium until July 15, 2020, while simultaneously providing for an Eviction Diversion Program or other similar county or state established relief fund for COVID-19-relate debtors.

² [Michigan Supreme Court Administrative Order 2020-17](#)

Many parties involved in eviction proceedings also have other court cases. Based on a review of the counties with the 6 largest domestic relations case filings (excluding Wayne County), an average of 25 percent of families with domestic relations cases also have had landlord-tenant cases, and an average 34 percent with neglect and abuse cases also have landlord-tenant cases.

This overlap in caseloads presents Michigan courts with an opportunity to assist parties by engaging families early in the court process to address multiple issues simultaneously. The following recommendations suggest ways to do that, recognizing that any court action is subject to the courts' resources and structure.

B. Friend of the Court (FOC) Involvement

The FOC should develop an action plan to identify cases that overlap between the district court's landlord-tenant docket and the FOC's caseload. The action plan should be developed in coordination with the FOC, the district court's court administrator, the EDP coordinator (if the court chose to create an EDP), and approved by the chief judges of both the circuit court's family division and the district court. The plan should address how courts can avoid duplication of services on cases that are in both courts.

Sections C-H are options the FOC can include in its action plan.

C. Disseminating information.

We recommend courts post written information in the courthouse and on the court's website, about counsel and housing assistance available to the parties.³

- (a) The FOC can develop a brochure⁴, resource guide, or informational pamphlet to explain how the eviction case can affect the FOC case and what to do about it.
- (b) Distribute FOC-developed brochure, resource guide, or informational pamphlet to local bar associations about services available to assist families facing eviction.
- (c) Make the district court and FOC brochures available at FOC offices.
- (d) Provide a script or other information concerning the FOC for district court and EDP staff to use when talking to a party who has an FOC case.

D. Coordinating Court Hearings⁵

- (a) FOC staff can review the landlord-tenant docket and schedule enforcement hearings or meetings to discuss nonpayment of support or denial of parenting time on the same date as the landlord-tenant hearings. This will require FOC staff to coordinate with district court staff to schedule the hearings. Parties with FOC and landlord-tenant

³ Under [Administrative Order 2020-14](#), the EDPs are required to provide written information about the availability of counsel and housing assistance information to all parties. The district courts in each county are tasked with creating or identifying a list of resources that the EDP can use to meet the Administrative Order's requirement.

⁴ A brochure template with editable fields is attached to this memorandum.

⁵ According to SCAO guidance, attorney magistrates may conduct pretrial eviction hearings. There may be circumstances in which the courts may wish to consider cross-assigning referees and magistrates to address multiple issues concerning the same parties simultaneously (for example a district court magistrate might be cross-assigned as a referee for the purpose of approving a consent order for change of custody, parenting time, support, or domicile or a referee might be cross-assigned to assist with volume). Any cross-assignment would need to take into consideration the needs and resources of the courts and whether they would improve outcomes.

cases will benefit if their court proceedings are scheduled on the same day⁶ so the parents can address all court matters without having to take multiple days off from work, arrange for childcare, or reschedule other matters. If the district and circuit courthouses are near each other, the hearings can both take place in person. Otherwise, the FOC can explore the option of holding its hearing on the same day as the landlord-tenant hearing remotely. During the FOC enforcement hearing or meeting, the FOC can:

- i. attempt to work out a payment agreement (not changing amount, but payments to prevent enforcement), taking the rental amount and other information into account, and
 - ii. have the parties meet to discuss a temporary consent custody or parenting time order or make-up parenting time.
- (b) If the FOC would like to coordinate court hearings for parties with cases in both courts by adjusting the FOC's schedule, the FOC should address the proposal with judges of both benches, possibly at a countywide judicial council meeting.
- i. The FOC and the district court could schedule a time each week to discuss scheduling and other issues related to parties who have both a landlord-tenant and FOC case. FOC setting a designated time each week will help the FOC staff to be available to assist the parties.
 - ii. The FOC could request that the designated weekly period for the overlapping landlord-tenant and FOC cases are heard on the same day as staff from state assistance offices or EDP staff are available. This will give the family access to all the services the family may need at the same time.

E. FOC Staff Contacting Parents Before Landlord-Tenant Hearings

The FOC can obtain a copy of a district court's weekly landlord-tenant docket. The FOC should ask the district court for the preferred method of obtaining a copy of the docket.⁷ Once FOC staff reviews the docket to identify FOC cases, staff can reach out to the parties via phone, email, or MiChildSupport Two-Way Communication. The FOC can advise the parent to update his or her address if necessary and determine if further resources would benefit the parent before the parent's landlord-tenant hearing, such as information about the county's Housing Assessment and Resource Agency (HARA)⁸. Staff can provide assistance and resources to help the parent with underlying problems, such as substance abuse, education, job training, etc.

F. FOC Staff Attend In-Person Landlord-Tenant Hearings.⁹

- (a) Docket Request: The FOC can obtain a weekly copy of the district court landlord-tenant docket as outlined above.

⁶ Court proceedings should be scheduled on the same day when feasible, but should not result in the adjournment of the landlord-tenant proceeding in order to hold both hearings on the same day.

⁷ The method of obtaining the docket will vary by jurisdiction. The docket may be available online through the district court's website. Other jurisdictions may opt to give FOC court staff access to the district court case management system to directly access the necessary dockets, and some jurisdictions may be willing to provide a copy of the docket to the FOC staff via email, mail, or fax.

⁸ Michigan HARA online: <https://www.michigan.gov/mcteh/0,8782,7-349-78543-516887--,00.html>

⁹ SCAO recommends that before FOC staff attend landlord-tenant hearings, the FOC notify the district court judge's office of the FOC's attendance as a matter of courtesy.

- (b) Hearing Attendance: An FOC staff member can attend district court landlord-tenant hearings and distribute information about the local FOC office, such as SCAO-published brochures,¹⁰ local resource information, and court forms. FOC staff can also arrange to meet with the parent and the FOC staff member. The FOC staff member and the party can meet before or after the landlord-tenant hearing, depending on the availability of the party and the district court’s docket.¹¹ Depending on what issues the party has, the FOC employee may discuss:
 - i. custody and parenting time issues, [FOC mediation](#), or [joint meetings](#), and/or
 - ii. child support and [support review](#) eligibility.
- (c) The FOC could make a domestic relations referee, domestic relations mediator, or other staff member available on landlord-tenant days in case both of the parents on the FOC case want to have an issue immediately addressed, on the same day as the landlord-tenant hearing. The FOC staff member can be available remotely or in-person, at a specified time on landlord-tenant day, at the court’s discretion.
- (d) To assist the FOC in speaking with the parents, the district court could refer the parent to the FOC staff member, who is available at the landlord-tenant hearing. If the hearing is remote, the district court can refer the parent directly to a Zoom waiting room for FOC assistance. The FOC staff member can either be logged into a Zoom waiting room at the designated time and speak to the parties as they “walk in,” or the district court can contact the FOC and ask the FOC staff member to join the Zoom waiting room immediately after the district court refers the parent to the FOC.

G. FOC Staff Attending Remote Landlord-Tenant Hearings

The FOC can be available to speak with people who have both an eviction proceeding and an FOC case.

- (a) The FOC should ask if the district court judges in their county are willing to ask parties to remain online after the eviction hearing to speak to an FOC representative.
- (b) FOC staff can coordinate with the district court clerk’s office or view the court’s online system for future landlord-tenant dockets. FOC staff would screen the docket for parties who are also on the FOC’s caseload.
- (c) Before the landlord-tenant hearing date, the FOC can provide a list of parties that the FOC would like to speak to after the landlord-tenant hearing.
- (d) Before the hearing, district court staff can create a “breakout room” where the FOC staff member will wait for the parties.
- (e) As the eviction proceeding comes to a close, the district court judge can advise the party that an FOC staff member would like to speak to the party for information gathering purposes only. The judge can then place the parties in the FOC’s breakout room.

¹⁰ <https://courts.michigan.gov/Administration/SCAO/OfficesPrograms/FOC/Pages/Resources.aspx>

¹¹ If FOC staff intends to meet with parties before landlord-tenant hearings, the FOC staff person notify the district court clerk of the intent and location of the meeting. This will prevent the court from determining that the party failed to appear for the hearing when the person was meeting with the FOC staff member.

H. FOC Involvement When Parties Fail to Appear for Landlord-Tenant Hearings.

FOC staff may attend a landlord-tenant hearing only to find out that the tenant with an FOC case failed to appear. The FOC may still want to reach out to the parent and offer information and assistance.

- (a) When FOC staff contacts parties who failed to appear for their landlord-tenant hearing, the FOC may consider discussing the following FOC services:
 - i. [joint meetings or facilitative and information gathering conferences](#),
 - ii. [FOC mediation](#),
 - iii. [support reviews](#),
 - iv. information about [FOC office operations](#).
- (b) The FOC can choose any of the following contact methods to reach the parent:
 - i. mailing resources to the parent's current legal address,¹²
 - ii. mailing resources to the parent at the address listed on the landlord-tenant file,
 - iii. sending a message to the parent via the MiChildSupport account,
 - iv. sending an email to a verified email address listed in MiCSES or MiFile.

When speaking with the parent, the FOC should encourage the parent to attend the next landlord-tenant hearing, which will be held seven (7) days after the hearing the parent failed to attend. The FOC should also advise the parent of additional landlord-tenant assistance that may be available at the next hearing.

¹² Before sending a resource sheet or other information, the FOC should verify the parent's address listed in the landlord-tenant filing by using the National Change of Address (NCOA) database. If the address listed in the landlord-tenant case is verified and is different than the address listed in MiCSES, the FOC staff member should update the MiCSES address record to reflect the new address.