Order

Michigan Supreme Court
Lansing, Michigan

June 9, 2020

ADM File No. 2020-08

Administrative Order No. 2020-17

Priority Treatment and New Procedure for Landlord/Tenant Cases

Bridget M. McCormack,
Chief Justice

David F. Viviano,
Chief Justice Pro Tem

Stephen J. Markman
Brian K. Zahra
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh,
Justices

Since the early days of the pandemic, state and national authorities have imposed restrictions on the filing of many landlord/tenant cases. As those restrictions are lifted and courts return to full capacity and reopen facilities to the public, many will experience a large influx of landlord/tenant case filings. Traditionally, the way most courts processed these types of cases relied heavily on many cases being called at the same time in the same place, resulting in large congregations of individuals in enclosed spaces. That procedure is inconsistent with the restrictions that will be in place in many courts over the coming weeks and months as a way to limit the possibility of transmission of COVID-19. In addition, courts are required to comply with a phased expansion of operations as provided under Administrative Order No. 2020-14, which may also impose limits on the number of individuals that may congregate in public court spaces.

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 using a prioritization approach. This approach will help limit the possibility of further infection while ensuring that landlord/tenant cases are able to be filed and adjudicated efficiently. All courts having jurisdiction over landlord/tenant cases must follow policy guidelines established by the State Court Administrative Office. Courts should be mindful of the limitations imposed by federal law (under the CARES Act) as these cases are filed and processed, and follow the guidance in Administrative Order No. 2020-8 in determining the appropriate timing for beginning to consider these cases.

For courts that are able to begin conducting proceedings, the following provisions apply to landlord/tenant actions.

(1) Each Trial Court with jurisdiction over cases filed under the Summary Proceedings Act, MCL 600.5701, *et seq*., may accept new filings and begin to schedule hearings as follows:

a. In a manner that is consistent with the Return to Full Capacity (RTFC) guidelines referenced in Administrative Order No. 2020-14,

b. In a manner that is consistent with each court's most recently-approved local administrative order regarding Return to Full Capacity.

(2) When a trial court resumes scheduling hearings for recovery of possession of premises under MCL 600.5714 and MCL 600.5775, the following operational priorities apply:

a. First priority: complaints alleging illegal activity under MCL 600.5714(1)(b) and complaints alleging extensive and continuing physical injury to the premises under MCL 600.5714(1)(d).

b. Second priority: complaints alleging nonpayment of rent for 120 days or more.

c. Third priority: complaints alleging nonpayment of rent for 90 days or more.

d. Fourth priority: complaints alleging nonpayment of rent for 60 days or more.

e. Fifth priority: complaints alleging nonpayment of rent for 30 days or more.

f. Courts should proceed to a subsequent priority when all cases in the higher priority have been scheduled for hearing.

g. Instead of setting many cases for one hearing time as has traditionally been common, each case must be scheduled for a particular date and time (whether held in-person or remotely) to allow in-person proceedings to be held safely.

h. A filer who filed a case before April 16, 2020 (the date Administrative Order No. 2020-8 entered) must update the factual allegations in the complaint and file the verification form required by Administrative Order No. 2020-8 before a hearing will be scheduled. The court shall not require an additional filing fee.

(3) Trial Courts must schedule cases filed for an alleged termination of tenancy (as opposed to cases for nonpayment of rent) pursuant to MCL 600.5714 during or after the fifth level of priority described above or after the statutorily-required notice period has elapsed, whichever comes later.

(4) 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. 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 is sufficient notice of the rescheduled hearing, notwithstanding any other court rule. Other parties or participants may proceed remotely.

(5) All local administrative orders requiring a written answer pursuant to MCL 600.5735(4) are suspended.[1] Unless otherwise provided by this order, a court must comply with MCR 4.201 with regard to summary proceedings.

(6) 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:

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 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.[2]

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.

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[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).

[2] See State Emergency Relief Manual, Relocation Services, ERM 303, ERB 2019-005, Page 3 of 7.

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.

(7) The pretrial required under this subsection 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.

(8) Except as provided below, all Summary Proceeding Act cases must be adjourned for seven days after the pretrial hearing is conducted. MCL 600.5732. Any party who does not appear at the adjourned date will be defaulted. Cases need not be adjourned for seven days if: the plaintiff dismisses the complaint, with or without prejudice, without any conditions, or if defendant was personally served under MCR 2.105(A) and fails to appear.

(9) 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. If a party cannot appear remotely, in-person proceedings must be scheduled that provide for the safety of all parties.

(10) MCR 4.201(F)(3) is temporarily suspended to the extent that a jury demand must be made in the first response. Instead, if the defendant wants a jury trial, he or she must demand it within seven days of the first response. The jury trial fee, if not waived by the court, must be paid when the demand is made.

This order is effective until further order of the Court.

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.

June 9, 2020

Clerk