

Order

**Michigan Supreme Court
Lansing, Michigan**

December 29, 2020

Bridget M. McCormack,
Chief Justice

ADM File No. 2020-08

David F. Viviano,
Chief Justice Pro Tem

Amendment of Administrative
Order No. 2020-17

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

Priority Treatment and New
Procedure for Landlord/Tenant
Cases

Administrative Order No. 2020-17 – Priority Treatment and New Procedure for
Landlord/Tenant Cases

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)-(5) [Unchanged.]

- (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), 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.
 - c. 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.¹
 - 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.

(7)-(10) [Unchanged.]

- (11) A court shall discontinue prioritization of cases when it has proceeded through all priority phases and no longer has any landlord/tenant filings that allege a breach of contract for the time period between March 20, 2020, and July 15, 2020 (the period in which there was a statewide moratorium on evictions). At that point, the court may notify the regional administrator of its completion of the prioritization process and will not be required to return to the procedure even if a subsequent case is filed that alleges rent owing during the period of the eviction moratorium. A court must continue compliance with all other aspects of this order while the Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19, ~~issued by the Centers for Disease Control and Prevention; and published at 85 FR 55292; and extended under the Consolidated Appropriations Act, 2021 (HR 133), Division N, §502,~~ is in effect.

¹ See [State Emergency Relief Manual](#), Relocation Services, ERM 303, ERB 2019-005, Page 3 of 7.

- (12) In complying with the provisions of the CDC order referenced above and during the pendency of the order, trial courts must:
- a. Require a plaintiff filing a LT case to also file a verification form indicating whether a declaration has been submitted by defendant or whether the case may proceed because it is not subject to the CDC order's moratorium. The verification shall be made on a SCAO-approved form, and a plaintiff shall have a continuing obligation to inform the court if a declaration has been submitted by defendant; in addition, a court may accept a declaration prepared pursuant to the CDC order from plaintiff or defendant.
 - b. Accept filings related to LT cases and proceed as follows:
 - (i) For cases that are not subject to the moratorium under the CDC order, the court shall proceed as provided in this order and MCR 4.201.
 - (ii) 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 by ~~December 31, 2020~~the first day after the expiration of the CDC order, whichever date is later. 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 ~~January 1, 2021~~on the first day after the expiration of the CDC order for those cases.
- (13) Each chief judge of a district court shall hold a meeting before January 31, 2021, to evaluate the efficacy of the procedures set out in this order and discuss proposed changes that might improve the process. The meeting invitation must be extended to individuals involved in the local landlord/tenant process, including the following:
- the Michigan Department of Health and Human Services
 - local legal aid associations and other tenant advocacy associations
 - attorneys who appear on behalf of local landlords
 - the local HARA (Housing Assessment and Resource Agency)

The chief judge shall submit a summary of the discussion and proposed recommendations to the regional administrator within two weeks following the meeting.

This order is effective until further order of the Court.

VIVIANO, J. (*concurring*). I concur with the administrative order issued today, which continues to administratively suspend statutes concerning summary landlord-tenant proceedings in court. When the Court last extended this order, I dissented because the extension was premised solely on an order from the Centers for Disease Control and Prevention (CDC) that attempted to prevent landlords from evicting tenants in certain circumstances. Centers for Disease Control and Prevention, *Temporary Halt in Residential Evictions*, 85 Fed Reg 55,292 (Sept 4, 2020). At the time, I questioned whether that CDC order was authorized by regulation, statute, or the Constitution, and since the order rested on a shaky legal foundation, I believed it to be an inadequate authority on which to justify the Court's action. Administrative Order No. 2020-17, as amended by order entered October 22, 2020, 506 Mich ___ (2020) (VIVIANO, J., dissenting).

Today, however, our administrative order now rests on a statute duly enacted by Congress and signed by the President that specifically references and extends the CDC order through January 31, 2021. Consolidated Appropriations Act, 2021 (HR 133), Division N, § 502. To be sure, questions remain concerning the validity of the CDC order and whether our state law governing landlord-tenant evictions has been preempted. But the new statute manifests Congress's intent for the substance of the CDC order to apply through the end of January 2021. The legislation thus provides more substantial legal authority for our administrative order, which I continue to believe should not rely on the CDC order alone. Given this new authority, I believe we are justified in issuing the order and that any challenges to it can be resolved in the normal course of litigation. I therefore concur.



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.

December 29, 2020

A handwritten signature in black ink, appearing to read "Larry S. Royster", is written over a horizontal line.

Clerk