

Frequently Asked Questions
[Administrative Order No. 2020-17](#)

Q1. Under Administrative Order No. 2020-17, if a tenant is served pursuant to MCR 4.201(D) (mailing plus another method allowed under MCR 4.201(D), such as delivery to a member of the tenant’s family), and the initial hearing is in person, can the landlord obtain a default judgment at the initial hearing if the defendant fails to appear?

A1. No. This is prohibited by [AO No.2020-17\(E\)](#). “Except as provided below, all Summary Proceeding Act cases must be adjourned for seven days after the pretrial hearing is conducted. Nothing in AO No. 2020-17 limits the statutory authority of a judge to adjourn for a longer period. MCL 600.5732. Any party who does not appear at the hearing scheduled for 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; if defendant was personally served under MCR 2.105(A) and fails to appear; or where both plaintiff and defendant are represented by counsel and a consent judgment or conditional dismissal is filed with the court.” In all other situations, the court is required to adjourn the matter for seven days.

Q2. Will SCAO be creating an advice of rights form or checklist specific to landlord tenant cases? If so, can the rights that are required to be given, be done in a writing that is made part of the file, as is done in misdemeanor cases?

A2. [AO No. 2020-17\(B\)](#) requires that “the parties must be verbally informed of all of the following...” so SCAO will not be creating a written advice of rights form.

Q3. Can the court provide the defendant with written advice of rights in lieu of addressing those rights at the pretrial?

A3. No. While a court may and is encouraged to provide a written advice of rights document, the advice of rights must **always** be provided verbally to the defendant at the pretrial hearing. Additionally, the summons must be accompanied by any written information about the availability of counsel and housing assistance information as provided by legal aid or local funding agencies. [AO No. 2020-17\(B\) and \(D\)](#).

Q4. Are courts required to hold pretrials on the record in every landlord/tenant case?

A4. No, [AO No. 2020-17\(B\)](#) provides that “the court must conduct a pretrial hearing consistent with SCAO guidance.” SCAO published an updated [Guidance Document Issued in Conjunction with Administrative Order No. 2020-17](#), which clarifies that “[b]ecause this pretrial hearing is purely advisory, there is no requirement to record the pretrial hearing.”

Q5. Is the first pretrial required by AO No. 2020-17(B) something that needs to be scheduled by the court, or is the court allowed to simply refer parties to the CDRP for a first “pretrial” off the record, then set a hearing with the court seven days after that date?

A5. [AO No. 2020-17\(B\)](#) provides that the initial pretrial hearing should be noticed by the summons and conducted by the court. While the pretrial may be conducted by the assigned judge, a visiting judge appointed by SCAO, a magistrate, or a CDRP mediator, the pretrial must be coordinated through the court. [AO No. 2020-17\(C\)](#).

Q6. If the court already refers cases to a mediator, is it required to also use the CDRP?

A6. The AO provides that parties must be informed of the availability of CDRP, not that they are required to use CDRP. [AO No. 2020-17\(B\)\(4\)](#).

Q7. Administrative Order No. 2020-17(C) permits the pretrial to be conducted by a magistrate “as long as the magistrate is a lawyer.” Does that mean non-attorney magistrates are excluded from handling the verbal instruction?

A7. Yes, only an attorney magistrate can conduct the pretrial and provide the verbal advice of rights and information.

Q8. Administrative Order No. 2020-17(C) indicates that an attorney magistrate can conduct the pretrial required. In reading the model local administrative order for the appointment of the attorney magistrate, LT pretrials are not listed as a permitted hearing type. Will courts be required to amend the LAO?

A8. No, courts will not be required to amend the attorney magistrate LAOs . [AO No. 2020-17\(C\)](#) is the authority for attorney magistrates to perform these duties at this time.

Q9. If the parties reach agreement and want to waive their right to appear at a second hearing, can a conditional dismissal, consent judgment, or other dispositive order be entered at the initial hearing?

A9. Yes, but only if both parties are represented by counsel. “Where plaintiff and defendant are represented by counsel, the parties may submit a conditional dismissal or consent judgment, in lieu of appearing at the second hearing.” [AO No. 2020-17\(E\)](#). At the initial pretrial hearing, the court is only permitted to provide verbal advice of rights and information regarding housing assistance and mediation. The only circumstances that would not require an adjournment for seven days are: if the plaintiff dismisses the complaint with or without prejudice and without any conditions; if the defendant was personally served under MCR 2.105(A) and fails to appear; or where both plaintiff and defendant are represented by counsel and a consent judgment or conditional dismissal is filed with the court.

Q10. If the original amount demanded has not been paid, and more rent has accrued, may the landlord file the complaint for nonpayment of rent case based on the amount due or only the original amount noted in the demand for possession?

A10. A plaintiff is not entitled to file a summary proceeding action until seven days from the service date of a written demand for possession for nonpayment of rent due. [MCL 600.5714\(1\)\(a\)](#). Once the demand is made, the complaint should include the total amount of rent due at the time of filing. If the plaintiff subsequently files an amended complaint, the total amount of rent due will be amended and the amended complaint will be served pursuant to court rule.

Q11. Is Administrative Order No. 2020-17 temporary?

A11. Yes. Courts must continue with compliance of all aspects of the order until further order of the Court. [AO No. 2020-17](#).

Q12. Do landlords have to enter into conditional dismissals or participate in the COVID Emergency Rental Assistance (CERA) program?

A12. No, the landlord does not have to enter into a conditional dismissal, or participate in any rental assistance program, including CERA. A conditional dismissal is authorized by [MCR 2.602\(C\)](#) and may be used as part of a rental assistance agreement or independently. The landlord does not have to apply for CERA funding, nor do they have to agree to participate. If the landlord refuses to participate in the CERA program, the funds are not sent to the landlord directly, but instead they are sent to the tenant/CERA applicant for payment to the landlord.

Q13: After the pretrial is conducted [on cases filed pursuant to MCL 600.5714(1)(a) for nonpayment of rent] and after the tenant notifies the court of a CERA application, for how long is the court required to stay proceedings?

A13: The court must stay proceedings after the pretrial and not proceed to judgment if the tenant has applied for CERA funds and has notified the court of the application. The stay is contingent upon the following events:

- An eligibility determination is made by the appropriate HARA within 30 days of the pretrial hearing;
- The tenant is eligible to receive rental assistance for all rent owed; and
- The plaintiff receives full payment from the CERA program within 45 days of the pretrial hearing.

If any of these events do not occur, excluding delays attributable to the plaintiff, the court must lift the stay and continue with proceedings. [AO No. 2020-17\(G\)](#). If the court determines any delay is attributable to the plaintiff, the stay must continue.

Q14. What constitutes a “delay attributable to plaintiff” pursuant to AO No. 2020-17 (G)?

A14. When determining whether an action constitutes a “delay attributable to plaintiff” pursuant to AO No. 2020-17(G), courts should consider if any action on the part of the plaintiff caused the eligibility determination or payment to the plaintiff to take longer than it would have if the plaintiff had not taken such action. A plaintiff’s choice not to complete and submit a CERA application is a delay attributable to plaintiff. Once CERA payment is made to either plaintiff or defendant any previous delay caused is moot and the stay should be lifted and the case should proceed.

Q15: What moratorium is currently in effect and what impact does it have on eviction cases?

A15: Although the eviction moratorium in the CARES ACT expired, the 30-day eviction notice requirement remains in effect for federally-related (“covered”) properties ([HUD](#), Q25, pg 18, and [White House](#) guidance). The CDC order has been extended several times (see 1/31/21 [order](#) and 4/1/21 [order](#)) and now does not expire until July 31, 2021 (see 7/1/21 [order](#)).

Q16. What if there is service by posting, the defendant fails to appear, the case is rescheduled, and the defendant fails to appear for the second hearing?

A16. If a defendant fails to appear for the first hearing either remotely or in person, the court must, within 24 hours, mail the defendant a new notice of the adjourned hearing date. If after initial service by posting and notice mailed to defendant after failure to appear at the first hearing (pretrial), the defendant fails to appear at the second hearing as well, the defendant may be defaulted. [AO No. 2020-17\(D\)](#).

Q17. If the defendant is not personally served and fails to appear at the remote pretrial hearing, does the second scheduled hearing have to be in person?

A17. According to [AO No. 2020-17\(D\)](#), 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.

Q18. Who develops the notice that the courts are required to provide to each defendant that contains information regarding CERA and the Housing Assessment and Resource Agency (HARA) or local agency administering the CERA Program, etc.?

A18. The court should reach out to legal aid and the HARA within their community to find out if they have any information that the court can provide to parties (e.g., pamphlets/brochures). At the very least, the court needs to provide contact information for the HARA, legal aid, and Michigan Community Dispute Resolution Program (CDRP).

Q19. How do we know who our HARA is?

A19. The Michigan State Housing Development Authority (MSHDA) created a [spreadsheet](#) listing each HARA by county.

Q20: Does SCAO plan to develop a CDC Eviction Moratorium Declaration form that can be filled out by tenants?

A20: No. There is currently a form available for use that was developed by the federal government. It is titled [Eviction Protection Declaration](#) and is filled out by the tenant. SCAO DC 511 remains an active form.

Q21. For cases in which a CDC declaration has been filed but has proceeded to entry of judgement, can the plaintiff file an application for a writ of eviction the day after the CDC Eviction Moratorium expires?

A21. No. [AO No. 2020-17\(I\)](#) tolls the 10-day period pursuant to MCL 600.5744(5) until the expiration of the CDC Eviction Moratorium. The soonest a plaintiff would be able to execute a writ pursuant to MCL 600.5744(5) is 10 days after the expiration of the CDC Eviction Moratorium.

Q22. Since courts have moved to Phase 4 in the RTFC guidelines and the governor lifted COVID restrictions, can we go back to primarily in-person summary proceedings hearings?

A22. No, remote hearings must continue. While all courts have been moved to Phase 4 in the RTFC guidelines, AO No. 2020-17 requires remote proceedings to the greatest extent possible. If a party cannot appear remotely, the case should be scheduled for an in-person hearing as soon as possible.

Q23: Who is administering the CERA program?

A23: MSHDA will administer the COVID CERA program through its [network](#) of HARAs and local nonprofit agencies starting March 15, 2021.

Q24: How long will CERA funds be available?

A24: According to the United States Department of Treasury, who is the grantor of funds to the state of Michigan, this program will remain active until September 30, 2022. Information is available on their [website](#).

Q25: Can a tenant receive assistance for rental and utility arrears?

A25: Yes, but not for the time period before March 13 2020, the date of the emergency declaration pursuant to section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5191(b).

Q26. Could you provide a list of websites relevant to this subject matter?

A26. There are many great resources available to the courts and the public. Please see the following:

- [Michigan Legal Help](#) has a page dedicated to evictions and the COVID-19 pandemic.
- [Michigan State Housing Development Authority\(MSHDA\)](#) has a COVID Emergency Rental Assistance (CERA) website , also within this website are links to the following:
 - Housing Assessment and Resource Agency (HARA) [contact list](#).
 - Area median income (AMI) by county can be can be located [here](#).
 - [CERA FAQs](#).
 - [CERA Income Limits](#).
- The SCAO has a webpage dedicated to the [judiciary's response to COVID-19](#).
- The United States Department of Treasury Emergency Rental Assistance Program can be located [here](#).
- [Frequently asked questions](#) prepared by the United States Department of Treasury for Emergency Rental Assistance.
- [White House Fact Sheet](#).
- [AAG Letter](#).