# Order

**Michigan Supreme Court**
**Lansing, Michigan**

January 20, 2009

Marilyn Kelly,
Chief Justice

Michael F. Cavanagh
Elizabeth A. Weaver
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman
Diane M. Hathaway,
Justices

ADM File No. 2007-31

Amendment of Rule 4.201
of the Michigan Court Rules

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On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following amendment of Rule 4.201 of the Michigan Court Rules is adopted, effective May 1, 2009.

[Additions are indicated by underline, and deletions by strikethrough.]

Rule 4.201 Summary Proceedings to Recover Possession of Premises

(A)-(F)[Unchanged.]

(G) Claims and Counterclaims.

(1) Joinder.

(a) A party may join:

(i) A money claim or counterclaim described by MCL 600.5739. A money claim must be separately stated in the complaint. A money counterclaim must be labeled and separately stated in a written answer.

(ii) A claim or counterclaim for equitable relief.

(b) ~~If personal jurisdiction over the defendant was not obtained~~ Unless service of process under MCR 2.105 was made on the defendant, a money claim must be

(i) dismissed without prejudice ~~if the defendant does not answer or appear~~, or

(ii) adjourned until ~~personal jurisdiction over the defendant is obtained~~ service of process is complete

if the defendant does not appear or file an answer to the complaint.

(c) A court with a territorial jurisdiction which has a population of more than 1,000,000 may provide, by local rule, that a money claim or counterclaim must be tried separately from a claim for possession unless joinder is allowed by leave of the court pursuant to subrule (G)(1)(e).

(d) If trial of a money claim or counterclaim

(i) might substantially delay trial of the possession claim, or

(ii) requires that the premises be returned before damages can be determined, the court must adjourn the trial of the money claim or counterclaim to a date no later than 28 days after the time expires for issuing an order of eviction. A party may file and serve supplemental pleadings no later than 7 days before trial, except by leave of the court.

(e) If adjudication of a money counterclaim will affect the amount the defendant must pay to prevent issuance of an order of eviction, that counterclaim must be tried at the same time as the claim for possession, subrules (G)(1)(c) and (d) notwithstanding, unless it appears to the court that the counterclaim is without merit.

(2) Removal.

(a) A summary proceedings action need not be removed from the court in which it is filed because an equitable defense or counterclaim is interposed.

(b) If a money claim or counterclaim exceeding the court's jurisdiction is introduced, the court, on motion of either party or on its own initiative, shall order removal of that portion of the action to the circuit court, if the money claim or counterclaim is sufficiently shown to exceed the court's jurisdictional limit.

(H)-(O) [Unchanged.]

CORRIGAN, J. (*concurring*). I support the proposed amendment of MCR 4.201. I write separately to suggest that the Property Management Association of Michigan

(PMAM) first present to the Legislature its proposed changes to the existing statutes that govern service of process. I appreciate PMAM's sensible desire to reduce unnecessary and redundant court appearances by property managers. Nevertheless, PMAM should direct its efforts to consolidate existing service of process provisions to the Legislature before seeking a remedy in this Court.

Currently, service of process for possession of rented premises must be personal. MCL 600.5718. The Legislature also allows a party to bring a separate claim or counterclaim for a money judgment. MCL 600.5739. No statutory authority, however, permits service for a money judgment in the same manner as is allowed for possession of rented premises. Stated slightly differently, while statutory authority permits a landlord to file a claim for possession and a claim for a money judgment, no statutory authority allows service for possession of rented premises to be considered as service for a money judgment. Therefore, despite PMAM's proposed amendment of MCR 4.201, no existing statute states that service for possession is sufficient for purposes of service for a money judgment. Instead, our statutes require personal service for possession of rented premises, and PMAM's proposed amendment to simplify the existing requirements governing service for a money judgment would create inconsistency between current statutes and court rules.

Because of this inconsistency, I suggest that PMAM seek relief from the Legislature to amend the service provisions in our existing statutes.

Staff Comment: The amendment of MCR 4.201(G)(1)(b) clarifies that service of process for purposes of a money claim is sufficient if completed pursuant to MCR 2.105; otherwise, if the defendant does not appear or file an answer to the complaint, a money claim must be dismissed without prejudice, or adjourned until service of process is complete.

The staff comment is not an authoritative construction by the Court.

I, Corbin R. Davis, 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.

January 20, 2009

Corbin R. Davis
Clerk