

Agenda
Public Policy Committee
January 17, 2024 – 12:00 p.m. to 1:30 p.m.
Via Zoom Meetings

Public Policy Committee.....Joseph P. McGill, Chairperson

A. Reports

1. Approval of November 15, 2023 minutes
2. Public Policy Report

B. Courts

1. ADM File No. 2022-30: Proposed Amendments of MRE 702 and 804

The proposed amendment of MRE 702 would require the proponent of an expert witness's testimony to demonstrate that it is more likely than not that the factors for admission are satisfied and would clarify that it is the expert's opinion that must reflect a reliable application of principles and methods to the facts of the case. The proposed amendment of MRE 804 would require corroborating circumstances of trustworthiness for any statement against interest that exposes a declarant to criminal liability.

Status: 02/01/24 Comment Period Expires.
Referrals: 11/02/23 Civil Procedure & Courts Committee; All Sections.
Comments: Civil Procedure & Courts Committee.
Liaison: Thomas P. Murray, Jr.

2. ADM File No. 2022-45: Proposed Amendment of MCR 9.131

The proposed amendment of MCR 9.131 would require that the Supreme Court review requests for investigations involving allegations of attorney misconduct in instances where the Attorney Grievance Commission (AGC) administrator determines that an appearance of impropriety would arise if the AGC handled the investigation.

Status: 02/01/24 Comment Period Expires.
Referrals: 11/02/23 Civil Procedure & Courts Committee; Professional Ethics Committee.
Comments: Civil Procedure & Courts Committee.
Comment provided to the Court is included in materials.
Liaison: John W. Reiser III

C. Legislation

1. HB 5236 (Rheingans) Housing: landlord and tenants; form containing summary of tenant's rights; require state court administrative office to provide. Amends 1978 PA 454 (MCL 554.631 - 554.641) by adding sec. 4a.

Status: 10/25/23 Referred to House Committee on Economic Development & Small Business.
Referrals: 11/02/23 Access to Justice Policy Committee; Civil Procedure & Courts Committee; Justice Initiatives Committee; Consumer Law Section; Elder Law & Disability Rights Section; Litigation Section.
Comments: Access to Justice Policy Committee; Civil Procedure & Courts Committee; Justice Initiatives Committee.
Liaison: Aaron V. Burrell

2. HB 5237 (Dievendorf) Civil procedure: defenses; tenants right to counsel; provide for. Creates new act.
Status: 10/25/23 Referred to House Committee on Economic Development & Small Business.
Referrals: 11/02/23 Access to Justice Policy Committee; Civil Procedure & Courts Committee; Justice Initiatives Committee; Consumer Law Section; Elder Law & Disability Rights Section; Litigation Section.
Comments: Access to Justice Policy Committee; Civil Procedure & Courts Committee; Justice Initiatives Committee.
Liaison: Suzanne C. Larsen

3. HB 5238 (Wilson) Civil procedure: evictions; court records of evictions; require to be expunged. Amends sec. 8371 of 1961 PA 236 (MCL 600.8371) & adda sec. 5755.
Status: 10/25/23 Referred to House Committee on Economic Development & Small Business.
Referrals: 11/02/23 Access to Justice Policy Committee; Civil Procedure & Courts Committee; Justice Initiatives Committee; Consumer Law Section; Elder Law & Disability Rights Section; Litigation Section.
Comments: Access to Justice Policy Committee; Civil Procedure & Courts Committee; Justice Initiatives Committee.
Liaison: Joshua A. Lerner

4. HB 5326 (Aragona) Courts: district court; magistrate jurisdiction and duties; modify. Amends secs. 5735 & 8511 of 1961 PA 236 (MCL 600.5735 & 600.8511).
Status: 11/09/23 Referred to House Committee on Government Operations.
Referrals: 11/15/23 Access to Justice Policy Committee; Civil Procedure & Courts Committee; Justice Initiatives Committee.
Comments: Access to Justice Policy Committee; Civil Procedure & Courts Committee; Member Comment.
Liaison: Danielle Walton

MINUTES
Public Policy Committee
November 15, 2023 – 10:30 a.m. to 12:00 p.m.

Committee Members: Lori A. Buiteweg, Aaron V. Burrell, Suzanne C. Larsen, Joseph P. McGill, Thomas P. Murray, Jr., Valerie R. Newman, Takura N. Nyamfukudza, John W. Reiser, III
SBM Staff: Peter Cunningham, Nathan A. Triplett, Carrie Sharlow

A. Reports

1. Approval of September 18, 2023 minutes – The minutes were unanimously adopted with three abstentions.
2. Public Policy Report

B. Court Rule Amendments

1. ADM File No. 2020-08: Proposed Rescission of Administrative Order No. 2020-17 and Proposed Amendment of MCR 4.201

The proposed rescission of AO 2020-17 reflects the Court’s review of the public comments received in this same ADM File regarding additional amendments of MCR 4.201. The proposed amendment of MCR 4.201 would ensure that courts with a local court rule under MCL 600.5735(4) implement their local court rule in accordance with the other provisions of MCR 4.201.

The following recommendations were received and considered: Access to Justice Policy Committee; Civil Procedure & Courts Committee; Justice Initiatives Committee.

The Committee voted unanimously (8) to support the proposed rescission of AO 2020-17 and the proposed amendment to MCR 4.201.

2. ADM File No. 2022-19: Proposed Amendments of MRPC 1.15 and 1.15A and Proposed Additions of MRPC 1.15B and 1.15C

The proposed amendments of MRPC 1.15 and 1.15A and proposed additions of MRPC 1.15B and 1.15C would amend the rules governing IOLTA accounts to: modernize the rules, address gaps in the existing rules, and clarify attorneys’ ethical duties related to safekeeping client or third-party property and managing trust accounts.

The Committee voted unanimously (8) to support ADM File No. 2022-19.

3. ADM File No. 2023-24: Proposed Amendment of MCR 3.701 and Proposed Additions of MCR 3.715, 3.716, 3.717, 3.718, 3.719, 3.720, 3.721, and 3.722

The proposed amendments would offer procedural guidance to trial courts for implementing the Extreme Risk Protection Order (ERPO) Act, MCL 691.1801 et seq.

The following recommendations were received and considered: Civil Procedure & Courts Committee; Family Law Section.

The Committee voted unanimously (8) to support ADM File No. 2023-24 with the amendments jointly proposed by the Family Law Section and the Michigan Judges Association.

4. ADM File No. 2022-33: Proposed Amendment of MCR 4.303

The proposed amendment of MCR 4.303 would allow courts to dismiss small claims cases for lack of progress.

The following recommendations were received and considered: Access to Justice Policy Committee; Civil Procedure & Courts Committee.

The Committee voted unanimously (7) with 1 abstention to support ADM File No. 2022-33 with two additional amendments: (1) clarifying when “within 91 days” begins; and (2) including additional language, as follows: “Prior to a court dismissing a case for no progress on its own

initiative, the court shall serve notice on all parties that the case will be dismissed if no progress has been made within 14 days.”

5. ADM File No. 2022-24: Proposed Amendments of MCR 6.907, 6.909, and 6.933

As a condition for the State’s receipt of federal funds under the Prison Rape Elimination Act, 34 USC 30301 et seq., the conditions of confinement for juveniles must comply with federal regulations promulgated under that act, including the requirement that best efforts be made to avoid placing incarcerated youthful inmates in isolation. See 28 CFR 115.14. The proposed amendments clarify that youthful inmates should not be placed in isolation in order to keep them separate from adults.

The following recommendations were received and considered: Access to Justice Policy Committee; Children’s Law Section; Criminal Law Section.

The Committee voted unanimously (8) to support ADM File No. 2022-24 with the amendments proposed by the Access to Justice Policy Committee, Children’s Law Section, and Criminal Law Section.

C. Legislation

1. Fees for Transcripts

HB 5046 (Shannon) Civil procedure: costs and fees; fees for transcripts; increase. Amends sec. 2543 of 1961 PA 236 (MCL 600.2543).

SB 0514 (Irwin) Civil procedure: costs and fees; fees for transcripts; increase. Amends sec. 2543 of 1961 PA 236 (MCL 600.2543).

The following recommendations were received and considered: Access to Justice Policy Committee; Civil Procedure & Courts Committee; Criminal Jurisprudence & Practice Committee; Justice Initiatives Committee; Children’s Law Section; Criminal Law Section; Family Law Section; Negligence Law Section.

The Committee voted unanimously that the legislation is *Keller* permissible in affecting the functioning of the courts and the availability of legal services to society.

The Committee voted unanimously (8) to recommend that SBM remain neutral on the bills due to the absence of a fee waiver for indigent parties and parties represented by pro bono counsel in civil matters.

2. HB 5131 (Skaggs) Legislature: apportionment; redistricting of court of appeals; provide for. Amends secs. 301, 302 & 303d of 1961 PA 236 (MCL 600.301 et seq.); adds sec. 303e & repeals secs. 303a, 303b & 303c of 1961 PA 236 (MCL 600 et seq).

The Committee voted unanimously that to the extent HB 5131 addresses the question of aligning the number of judges on the Court of Appeals with the court’s caseload, House Bill 5131 is reasonably related to the functioning of the courts and therefore *Keller*-permissible.

The Committee voted unanimously (8) to oppose HB 5131 because additional Court of Appeals judges are not warranted based on the court’s existing or anticipated caseload, and to take no position on the proposed redistricting of Court of Appeals judicial districts.

3. HB 5271 (Hope) Criminal procedure: DNA; post-conviction DNA testing; modify. Amends sec. 16, ch. X of 1927 PA 175 (MCL 770.16).

The following recommendations were received and considered: Access to Justice Policy Committee; Criminal Jurisprudence & Practice Committee.

The Committee voted unanimously that the legislation is *Keller* permissible in affecting the functioning of the courts and the availability of legal services to society.

The committee voted 7 to 1 to support HB 5271 with the additional language:

The investigating law enforcement agency shall preserve any biological material identified during the investigation of a crime or crimes for which any person may file a petition for DNA testing under this section. The identified biological material must be preserved until

either (1) 25 years have passed from the date that the convicted person ceases to be in the custody of this state, under the jurisdiction of this state, including while serving a term of probation or parole, or required to register under the sex offender registration act, 1994 PA 295, MCL 28.721 to 28.730, or (2) the investigating law enforcement agency receives notice that the convicted person is deceased, whichever is sooner.

4. HB 5300 (Pohutsky) Probate: other; name change proceedings; modify.

The following recommendations were received and considered: Access to Justice Policy Committee; Civil Procedure & Courts Committee.

The Committee voted unanimously that the legislation is *Keller* permissible in affecting the functioning of the courts and the availability of legal services to society.

The Committee voted unanimously (8) to support HB 5300. In addition, the Committee voted to recommend that the Legislature consider legislation requiring that a custodial parent notify the Friend of the Court of a minor's last name change.

D. Consent Agenda

The Committee adopted the Consent Agenda to allow the Criminal Jurisprudence & Practice Committee and Criminal Law Section to submit their positions on each of the following items:

1. M Cim JI 5.16

The Committee proposes the following new model criminal jury instruction, M Crim JI 5.16, directing the jury to consider testimony provided through videoconferencing technology. MCR 6.006(A)(2), (B)(4), and (C)(4) authorize the use of videoconferencing technology to take trial testimony in criminal proceedings "in the discretion of the court after all parties have had notice and an opportunity to be heard on the use of videoconferencing technology." The language in the new instruction is based M Crim JI 2.13 (Notifying Court of Inability to Hear or See Witness or Evidence), M Crim JI 4.10 (Preliminary Examination Transcript), and M Civ JI 4.11 (Consideration of Deposition Evidence). This instruction is entirely new.

2. M Crim JI 16.5

The Committee proposes the following amendment to M Crim JI 16.5, for second-degree murder. In light of the Court of Appeals opinion in *People v Spears* (Docket No. 357848), holding that "without justification or excuse" is not an element of the offense of second-degree murder, it is proposed that paragraph (4) be deleted. Deletions are in strike-through. No new language was added.

3. M Crim JI 23.10a

The Committee proposes a new jury instruction, M Crim JI 23.10a (failure to return rental property), for the crime found at MCL 750.362a. This instruction is entirely new.

4. M Crim JI 25.8

The Committee proposes the following new model criminal jury instruction, M Crim JI 25.8, to cover criminal activity for trespassing at a key facility under MCL 750.552c. This instruction is entirely new.

5. M Crim JI 38.5

The Committee proposes the following new model criminal jury instruction, M Crim JI 38.5, to cover the crime of Using the Internet to Disrupt Government or Public Institutions under MCL 750.543p. This instruction is entirely new.

6. M Crim JI 40.12

The Committee proposes the following new model criminal jury instruction, M Crim JI 40.12, to address the crime of failing to report a dead body under MCL 333.2841. This instruction is entirely new.

Order

Michigan Supreme Court
Lansing, Michigan

October 25, 2023

Elizabeth T. Clement,
Chief Justice

ADM File No. 2022-30

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Megan K. Cavanagh
Elizabeth M. Welch
Kyra H. Bolden,
Justices

Proposed Amendments of
Rules 702 and 804 of the
Michigan Rules of Evidence

On order of the Court, this is to advise that the Court is considering amendments of Rules 702 and 804 of the Michigan Rules of Evidence. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter will also be considered at a public hearing. The notices and agendas for each public hearing are posted on the [Public Administrative Hearings](#) page.

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[Additions to the text are indicated in underlining and
deleted text is shown by strikeover.]

Rule 702. Testimony by Expert Witnesses

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the proponent demonstrates to the court that it is more likely than not that:

(a)-(c) [Unchanged.]

(d) the expert's opinion reflects a reliable application of~~has reliably~~
~~applied~~ the principles and methods to the facts of the case.

Rule 804. Exceptions to the Rule Against Hearsay – When the Declarant is Unavailable as a Witness

(a) [Unchanged.]

(b) The Exceptions. The following are not excluded by the rule against hearsay if the declarant is unavailable as a witness:

(1)-(3) [Unchanged.]

(4) Statement Against Interest. A statement that:

(A) [Unchanged.]

(B) if the statement tends to expose the declarant to criminal liability, ~~and is offered to exculpate the accused,~~ it must be supported by corroborating circumstances that clearly indicate its trustworthiness.

(5)-(6) [Unchanged.]

Staff Comment (ADM File No. 2022-30): The proposed amendment of MRE 702 would require the proponent of an expert witness’s testimony to demonstrate that it is more likely than not that the factors for admission are satisfied and would clarify that it is the expert’s opinion that must reflect a reliable application of principles and methods to the facts of the case. The proposed amendment of MRE 804 would require corroborating circumstances of trustworthiness for *any* statement against interest that exposes a declarant to criminal liability. **Please note that the unchanged language in these rules reflects the Court’s non-substantive amendments of the rules that become effective January 1, 2024. See [ADM File No. 2021-10, Order](#).**

The staff comment is not an authoritative construction by the Court. In addition, adoption of a new rule or amendment in no way reflects a substantive determination by this Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be submitted by February 1, 2024 by clicking on the “Comment on this Proposal” link under this proposal on the [Court’s Proposed & Adopted Orders on Administrative Matters](#) page. You may also submit a comment in writing at P.O. Box 30052, Lansing, MI 48909 or via email at ADMcomment@courts.mi.gov. When submitting a comment, please refer to ADM File No. 2022-30. Your comments and the comments of others will be posted under the chapter affected by this proposal.



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.

October 25, 2023

Clerk

Public Policy Position
ADM File No. 2022-30: Proposed Amendments of MRE 702 and 804

Support

Explanation

The Committee voted to support the proposed amendments of both MRE 702 and 804 as published by the Court.

Position Vote:

Voted For position: 14

Voted against position: 3

Abstained from vote: 0

Did not vote (absence): 13

Contact Person:

Daniel D. Quick dquick@dickinsonwright.com

Order

Michigan Supreme Court
Lansing, Michigan

October 25, 2023

Elizabeth T. Clement,
Chief Justice

ADM File No. 2022-45

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Megan K. Cavanagh
Elizabeth M. Welch
Kyra H. Bolden,
Justices

Proposed Amendment of
Rule 9.131 of the Michigan
Court Rules

On order of the Court, this is to advise that the Court is considering an amendment of Rule 9.131 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter will also be considered at a public hearing. The notices and agendas for each public hearing are posted on the [Public Administrative Hearings](#) page.

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[Additions to the text are indicated in underlining and
deleted text is shown by strikeover.]

Rule 9.131 Investigation of Member or Employee of Board or Commission, or Relative of Member or Employee of Board or Commission; Investigation of Attorney Representing Respondent or Witness; Other Investigations Creating the Appearance of Impropriety; Representation by Member or Employee of Board or Commission.

(A)-(C) [Unchanged.]

(D) Other Investigations Creating the Appearance of Impropriety. If the administrator determines that an appearance of impropriety would arise if a request for investigation is handled in the manner prescribed by MCR 9.112(C), the procedures in subrule (A) shall be followed.

(D) [Relettered (E) but otherwise unchanged.]

Staff Comment (ADM File No. 2022-45): The proposed amendment of MCR 9.131 would require that the Supreme Court review requests for investigations involving allegations of attorney misconduct in instances where the Attorney Grievance Commission (AGC) administrator determines that an appearance of impropriety would arise if the AGC handled the investigation.

The staff comment is not an authoritative construction by the Court. In addition, adoption of a new rule or amendment in no way reflects a substantive determination by this Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be submitted by February 1, 2024 by clicking on the “Comment on this Proposal” link under this proposal on the [Court’s Proposed & Adopted Orders on Administrative Matters](#) page. You may also submit a comment in writing at P.O. Box 30052, Lansing, MI 48909 or via email at ADMcomment@courts.mi.gov. When submitting a comment, please refer to ADM File No. 2022-45. Your comments and the comments of others will be posted under the chapter affected by this proposal.



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.

October 25, 2023

A handwritten signature in black ink, appearing to read "Larry S. Royster".

Clerk

Public Policy Position
ADM File No. 2022-45: Proposed Amendment of MCR 9.131

No Position

Explanation

The Committee reviewed the proposed amendment of MCR 9.131, but ultimately voted unanimously to take no position on ADM File No. 2022-45.

Position Vote:

Voted For position: 17

Voted against position: 0

Abstained from vote: 0

Did not vote (absence): 13

Contact Person:

Daniel D. Quick dquick@dickinsonwright.com

Name: Frances Rosinski

Date: 10/26/2023

ADM File Number: 2022-45

Comment:

The new language is too vague and leaves too much room for the grievance administrator to send requests for investigation to the Supreme Court. If this language is going to be used, it would be helpful for the comments to include at least two examples.



To: Members of the Public Policy Committee
Board of Commissioners

From: Nathan A. Triplett, Director of Governmental Relations

Date: January 11, 2024

Re: **HB 5236** (Rheingans) Housing: landlord and tenants; form containing summary of tenant's rights; require state court administrative office to provide. Amends 1978 PA 454 (MCL 554.631 - 554.641) by adding sec. 4a.

Background

House Bill 5236 is part of package of six tenant's rights bills. The bill would add Section 4a to the Truth in Renting Act, 1978 PA 454, to require the State Court Administrative Office ("SCAO") to create a form (1) summarizing tenant's rights under certain named state statutes, (2) listing legal resources that are available to tenants alleging violations of the named statutes, and (3) including an operating 2-1-1 telephone number. The form is to be developed after consultation with the Michigan State Housing Development Authority ("MSHDA") and no more than six months after the effective date of the bill. SCAO is required to make copies of the form available at "its office" and "easily accessible on its website."

The named statutes are the Truth in Renting Act (1978 PA 454), the Housing Law of Michigan (1917 PA 167), and the Revised Judicature Act (1961 PA 236).

Six months after the form's creation, the bill requires that the SCAO-created form be attached as an addendum to any lease agreement provided to a tenant in Michigan.

***Keller* Considerations**

The purpose of House Bill 5236 is to establish a mechanism by which tenants can be better informed about their legal rights and the legal resources that are available to them. In doing so the bill aims to assist tenants in better representing themselves or with obtaining legal counsel who can represent them in an eviction or other landlord-tenant proceeding. Generally speaking, proceedings involving clients represented by counsel who are familiar with court procedures and the relevant law are conducted more efficiently. An unrepresented client who is nevertheless aware of their rights is likewise better able to conduct themselves in court. Providing tenants with information about their rights and available legal resources is therefore germane (reasonably related) to improvement in the functioning of the courts. Moreover, the argument that the bill will impact the functioning of the courts is even stronger if the Board of Commissioners opts to support the amendments proposed by the Justice Initiatives Committee ("JI") and supported by the ATJ Policy Committee. Specifically, the recommendation that the bill be amended to require landlords to serve the SCAO-created form on tenants with the summons and complaint in eviction cases. While the bill as introduced only requires that the form be included with lease agreements, the proposed JI amendment makes the form an integral part of the pleadings and court proceeding itself.

Additionally, in so far as the bill makes tenants more aware of legal resources available to them and thereby increases the likelihood of them retaining counsel, it is also germane to the availability of legal services to society.

Because the bill is reasonably related to both improvement in functioning of the courts and availability of legal services, it is *Keller*-permissible.

Keller Quick Guide

THE TWO PERMISSIBLE SUBJECT-AREAS UNDER KELLER:

<i>As interpreted by AO 2004-1</i>	Regulation of Legal Profession	Improvement in Quality of Legal Services
	Regulation and discipline of attorneys	✓ Improvement in functioning of the courts
	Ethics	✓ Availability of legal services to society
	Lawyer competency	
	Integrity of the Legal Profession	
	Regulation of attorney trust accounts	

Staff Recommendation

House Bill 5236 is reasonably related to both improvement in functioning of the courts and availability of legal services to society. The bill is therefore *Keller*-permissible and may be considered on its merits.

HOUSE BILL NO. 5236

October 25, 2023, Introduced by Reps. Rheingans, Wilson, Hood, Dievendorf, Morgan and Tsernoglou and referred to the Committee on Economic Development and Small Business.

A bill to amend 1978 PA 454, entitled
"Truth in renting act,"
(MCL 554.631 to 554.641) by adding section 4a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 4a. (1) Not more than 6 months after the effective date
2 of the amendatory act that added this section, the state court
3 administrative office, after consultation with the Michigan state
4 housing development authority created under section 21 of the state
5 housing development authority act of 1966, 1966 PA 346, MCL
6 125.1421, shall create a form that contains all of the following

1 information:

2 (a) A summary of a tenant's rights under this act, 1972 PA
3 348, MCL 554.601 to 554.616, the housing law of Michigan, 1917 PA
4 167, MCL 125.401 to 125.543, and the revised judicature act of
5 1961, 1961 PA 236, MCL 600.101 to 600.9947.

6 (b) A list of legal resources that are available to a tenant
7 who alleges that a rental agreement violates this act, 1972 PA 348,
8 MCL 554.601 to 554.616, the housing law of Michigan, 1917 PA 167,
9 MCL 125.401 to 125.543, or the revised judicature act of 1961, 1961
10 PA 236, MCL 600.101 to 600.9947.

11 (c) An operating 2-1-1 system telephone number.

12 (2) The state court administrative office must have copies of
13 the form available in its office and make the form easily
14 accessible on its website.

15 (3) Beginning 6 months after the state court administrative
16 office creates the form under subsection (1), a form created
17 pursuant to subsection (1) must be attached as an addendum to a
18 lease agreement provided to a tenant in this state.

**Public Policy Position
HB 5236**

Support with Amendments

Explanation

The Committee voted unanimously to support House Bill 5236 with the amendments proposed by the Justice Initiatives Committee; namely:

- (1) amend Section (1)(c) to read: “Contact information for the statewide self-help website, the statewide legal aid hotline, and the 2-1-1 system telephone number.” And,
- (2) require landlords to serve the form on tenants with summons and complaint in eviction cases and provide enforcement remedies to tenants if landlords do not comply.

The Committee further voted to recommend that:

- (1) The Truth in Renting Act, 1978 PA 454, MCL 554.631 to 554.641 be added to the list of statutes enumerated in Section (1)(a) and (b).
- (2) The bill include a specific remedy for non-compliance with its provisions.

Position Vote:

Voted For position: 20

Voted against position: 0

Abstained from vote: 0

Did not vote (absence): 4

Keller Permissibility Explanation

The Committee concluded that House Bill 5236 is *Keller*-permissible because it will impact the functioning of the courts by helping tenants access resources and obtain legal knowledge prior to their initial court appearance, which will improve the efficiency and effectiveness of court proceedings. The bill will also improve availability of legal services as tenants may be better informed of legal resources and representation options available to them. As such, the bill is reasonably related to both the functioning of the courts and availability of legal services to society.

Contact Persons:

Daniel S. Korobkin dkorobkin@aclumich.org

Katherine L. Marcuz kmarcuz@sado.org

**Public Policy Position
HB 5236**

Not *Keller*, No Position

***Keller* Permissibility Explanation:**

The Committee concluded that House Bill 5236 is not Keller-permissible.

Contingent Position Explanation:

The Committee discussed adopting a contingent position in the event the Board of Commissioners concluded that the bill is *Keller*-permissible, but voted to adopt no position on the substance of the legislation.

Contact Person:

Daniel D. Quick dquick@dickinsonwright.com

**Public Policy Position
HB 5236 – HB 5238**

Support with Amendments

Explanation

The committee voted to:

1. Support HB 5236 with the following amendments:

- (a) amend Section (1)(c) to read: “Contact information for the statewide self-help website, the statewide legal aid hotline, and the 2-1-1 system telephone number.”
- (b) require landlords to serve the form on tenants with summons and complaint in eviction cases and provide enforcement remedies to tenants if landlords do not comply.

2. Support HB 5237 in concept.

The committee supports a right to counsel in eviction cases as a way to enhance access to justice, to improve the functioning of the courts; and to protect the rights of low-income tenants.

The committee supports the bill with the following amendments:

- (a) the program should be structured as a statewide program administered by MSHDA and the Michigan State Bar Foundation and coordinated with the current legal services delivery system;
- (b) the program should provide informational and educational materials for both landlords and tenants but the program should not provide representation for landlords; and
- (c) the program should include outreach and education to tenants and tenant-led community groups.

3. Support HB 5238 with the following amendments:

- (a) the bill should be amended to make it clear that it applies to both eviction filings (which should be sealed at the time of filing) and judgments;
- (b) confirm that “summary proceeding for termination of a tenancy of residential property” includes non-payment of rent cases;
- (c) the expungement of judgments should be automatic. If a person wants a specific judgment to remain public, that person may make a motion. Before retaining a landlord tenant judgment as a permanent public record, a court must determine that retaining the public record is clearly in the interests of justice; and
- (d) the period for automatic expungement should be reduced to 2 years.

Position Vote:

Voted For position: 15

Voted against position: 0

Abstained from vote: 1

Did not vote (absence): 2

Contact Persons:

Ashley E. Lowe

alowe@lakeshorelegalaid.org



To: Members of the Public Policy Committee
Board of Commissioners

From: Nathan A. Triplett, Director of Governmental Relations

Date: January 11, 2024

Re: **HB 5237** (Dievendorf) Civil procedure: defenses; tenants right to counsel; provide for. Creates new act.

Background

House Bill 5237 is part of a package of six tenant’s rights bills. The bill would create a new public act—the Eviction Legal Services Act—which would require each district court to establish a program to provide access to legal services to certain individuals in summary proceedings. The court must appoint legal counsel at public expense to provide legal services on the filing of a summary proceeding covered by the new act.

The bill sets forth minimum requirements for the new legal services programs, including: (1) establishing procedures for determining if a defendant in a summary proceeding is “income-eligible,”¹ (2) preparing one or more lists of legal counsel eligible to be appointed to represent eligible individuals, (3) establishing procedures for the appointment of counsel, and (4) establishing a method for educating income-eligible individuals about resources available to assist them.

The bill further specifies that all “covered individuals”² must receive “brief legal assistance”³ no later than their first scheduled appearance or as soon after the first appearance as practicable. All income-eligible individuals must receive access to “full legal representation”⁴ no later than their first scheduled appearance or as soon after the first appearance as practicable. In other words, all tenants leasing a residential premises who are defendants in summary proceedings would be eligible for a single, individualized legal consultation, regardless of their income. Only income-qualified tenant-defendants would receive full representation, as defined in the bill.

Landlords⁵ of residential premises would also be entitled to receive brief legal assistance, as defined in the bill, at any time “regarding landlord and tenant matters.”

¹ Annual gross household income 200% of the federal poverty guidelines published annually in the Federal Register by the U.S. Department of Health and Human Services.

² A “covered individual” is defined in the bill as “an individual who is a tenant of a leased residential premises and a defendant in a covered proceeding.” “Covered proceeding” is defined as “a summary proceeding . . . to evict an individual from the leased residential premises, including a summary proceeding to seek possession for the nonpayment of rent or from a holdover tenant” (citations omitted).

³ “Brief legal assistance” is defined as “individualized legal assistance provided in a single consultation to a covered individual in connection with a covered proceeding.”

⁴ “Full legal representation” means “ongoing legal representation provided to an income-eligible individual and all legal advice, advocacy, and assistance associated with the representation. Full legal representation includes, but is not limited to, the filing of an appearance in (sic) behalf of the income-eligible individual in a covered proceeding.”

⁵ Several of the members of the policy committees who reviewed House Bill 5237 noted that there are what appear to be drafting errors that make the landlord provision somewhat unclear. Landlords are entitled to brief legal assistance, but the

The bill would permit two or more district courts to join together to establish a joint program meeting the requirements of the new act and require that the court(s) consult with their funding unit(s) when establishing the required program.

The bill requires a court funding unit to provide funding for the required program, but states that the Legislature “shall” annually appropriate money to funding units “sufficient to provide funding for the programs established” under the new act.

Note that the Justice Initiatives, Access to Justice Policy, and Civil Procedure & Courts Committees all reviewed this bill and have reached a consensus position of recommending that the Bar support House Bill 5237 with three amendments. Namely that:

- (1) the program should be structured as a statewide program administered by MSHDA and the Michigan State Bar Foundation and coordinated with the current legal services delivery system;
- (2) the program should provide informational and educational materials for both landlords and tenants but the program should not provide representation for landlords; and
- (3) the program should include outreach and education to tenants and tenant-led community groups.

Keller Considerations

House Bill 5237 would impact the functioning of every district court in the state of Michigan and countless summary proceedings. It would require that district courts take on the administrative task of establishing and running new legal services lists/programs and of appointing counsel to eligible individuals. The bill is likely to significantly increase the number of tenant-defendants represented by counsel, which will also impact the flow of the courts’ summary proceedings docket. Implementation of the required programs will greatly impact court budgets and administration; as such, the bill is necessarily (and significantly) related to the functioning of the courts.

House Bill 5237 would also dramatically expand access to legal services to a class of defendants who more often than not are unrepresented today. The bill effectively creates a statutory right to counsel for certain income-qualified tenants. The bill is therefore necessarily (and, again, significantly) related to the availability of legal services to society.

Because House Bill 5236 is necessarily related to both improvement in functioning of the courts and availability of legal services, it is *Keller*-permissible.

definition of brief legal assistance references consultations provided to “covered individuals,” which are defined as tenants of leased residential premises in the bill.

Keller Quick Guide

THE TWO PERMISSIBLE SUBJECT-AREAS UNDER KELLER:

<i>As interpreted by AO 2004-1</i>	Regulation of Legal Profession	Improvement in Quality of Legal Services
	Regulation and discipline of attorneys	✓ Improvement in functioning of the courts
	Ethics	✓ Availability of legal services to society
	Lawyer competency	
	Integrity of the Legal Profession	
	Regulation of attorney trust accounts	

Staff Recommendation

House Bill 5237 is necessarily (and significantly) related to both improvement in functioning of the courts and availability of legal services to society. The bill is therefore *Keller*-permissible and may be considered on its merits.

HOUSE BILL NO. 5237

October 25, 2023, Introduced by Reps. Dievendorf, Wilson, Byrnes, Paiz, Rheingans, Hood, Morgan, Tsernoglou and Whitsett and referred to the Committee on Economic Development and Small Business.

A bill to provide legal services at public expense for individuals who are parties to civil actions and to landlords of residential premises; to provide for the powers and duties of state and local governmental officers and entities; and to require appropriations.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act may be cited as the "eviction legal services
2 act".

3 Sec. 2. As used in this act:

4 (a) "Brief legal assistance" means individualized legal
5 assistance provided in a single consultation to a covered

1 individual in connection with a covered proceeding.

2 (b) "Court funding unit" means that term as defined in section
3 151e of the revised judicature act of 1961, 1961 PA 236, MCL
4 600.151e.

5 (c) "Covered individual" means an individual who is a tenant
6 of a leased residential premises and a defendant in a covered
7 proceeding.

8 (d) "Covered proceeding" means a summary proceeding under
9 chapter 57 or 57a of the revised judicature act of 1961, 1961 PA
10 236, MCL 600.5701 to 600.5785, to evict an individual from the
11 leased residential premises, including a summary proceeding to seek
12 possession for the nonpayment of rent or from a holdover tenant.

13 (e) "Full legal representation" means ongoing legal
14 representation provided to an income-eligible individual and all
15 legal advice, advocacy, and assistance associated with the
16 representation. Full legal representation includes, but is not
17 limited to, the filing of an appearance in behalf of the income-
18 eligible individual in a covered proceeding.

19 (f) "Income-eligible individual" means a covered individual
20 whose annual gross household income is 200% of the federal poverty
21 guidelines published annually in the Federal Register by the United
22 States Department of Health and Human Services under its authority
23 to revise the poverty line under 42 USC 9902.

24 (g) "Legal services" means brief legal assistance or full
25 legal representation.

26 Sec. 3. (1) Subject to funding under section 4, by October 1,
27 2024, each district court shall establish a program to provide
28 access to legal services for covered individuals in covered
29 proceedings and to landlords of residential premises.

1 (2) The program required to be established under subsection
2 (1) must include all of the following:

3 (a) Procedures to determine whether a defendant in a covered
4 proceeding is an income-eligible individual.

5 (b) The preparation and maintenance of 1 or more lists of
6 legal counsel eligible to be appointed to represent covered
7 individuals in accordance with the plan and to provide legal advice
8 to landlords of residential premises relating to landlord and
9 tenant matters.

10 (c) Procedures for the appointment of legal counsel so that
11 all of the following are accomplished:

12 (i) All covered individuals receive access to brief legal
13 assistance not later than their first scheduled appearance in a
14 covered proceeding in the court, or as soon after the first
15 appearance as is practicable.

16 (ii) All income-eligible individuals receive access to full
17 legal representation not later than their first scheduled
18 appearance in a covered proceeding in the court, or as soon after
19 the first appearance as is practicable.

20 (iii) Landlords of residential premises receive brief legal
21 assistance at any time regarding landlord and tenant matters.

22 (d) A method for the education of income-eligible individuals
23 about resources available to assist the individuals from community
24 and government sources, and for the distribution of the resources
25 to the individuals.

26 (3) Two or more courts may join together to establish a joint
27 program under this section.

28 Sec. 4. (1) In establishing a program under section 3, a court
29 shall consult with the court funding unit for the court.

1 (2) A court funding unit shall provide funding for a program
2 under section 3 established by a court that is funded by the court
3 funding unit. The court funding unit may, but is not required to,
4 provide money for funding under this subsection in addition to
5 money received by the court funding unit under subsection (3).

6 (3) The legislature shall annually appropriate money to court
7 funding units in this state sufficient to provide funding for
8 programs established under section 3 in this state.

9 Sec. 5. On the filing of a covered proceeding, the court shall
10 appoint legal counsel at public expense to provide legal services
11 to the covered individual in accordance with the program under
12 section 3 established by the court.

**Public Policy Position
HB 5237**

Support with Amendments

Explanation

The Committee voted to support House Bill 5237 with the amendments proposed by the Justice Initiatives Committee; namely that:

- (1) the program should be structured as a statewide program administered by MSHDA and the Michigan State Bar Foundation and coordinated with the current legal services delivery system;
- (2) the program should provide informational and educational materials for both landlords and tenants but the program should not provide representation for landlords; and
- (3) the program should include outreach and education to tenants and tenant-led community groups.

The Committee believes that creating a right to counsel in qualified eviction cases will enhance access to justice, improve the functioning of the courts, and protect the rights of low-income tenants.

Position Vote:

Voted For position: 14

Voted against position: 3

Abstained from vote: 3

Did not vote (absence): 4

Keller Permissibility Explanation

The Committee concluded that House Bill 5237 is *Keller*-permissible because it would significantly and directly expand the availability of legal services to individuals in landlord/tenant proceedings. As such, the bill is necessarily related to availability of legal services to society.

Contact Persons:

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**Public Policy Position
HB 5237**

Support with Amendments

Explanation

The Committee voted to support House Bill 5237 with the amendments proposed by the Justice Initiatives Committee; namely that:

- (1) the program should be structured as a statewide program administered by MSHDA and the Michigan State Bar Foundation and coordinated with the current legal services delivery system;
- (2) the program should provide informational and educational materials for both landlords and tenants but the program should not provide representation for landlords; and
- (3) the program should include outreach and education to tenants and tenant-led community groups.

Position Vote:

Voted For position: 12

Voted against position: 3

Abstained from vote: 2

Did not vote (absence): 13

Keller Permissibility Explanation:

The Committee concluded that House Bill 5237 is *Keller*-permissible because it would significantly and directly expand the availability of legal services to individuals in landlord/tenant proceedings. As such, the bill is necessarily related to availability of legal services to society.

Contact Person:

Daniel D. Quick dquick@dickinsonwright.com

**Public Policy Position
HB 5236 – HB 5238**

Support with Amendments

Explanation

The committee voted to:

1. Support HB 5236 with the following amendments:

- (a) amend Section (1)(c) to read: “Contact information for the statewide self-help website, the statewide legal aid hotline, and the 2-1-1 system telephone number.”
- (b) require landlords to serve the form on tenants with summons and complaint in eviction cases and provide enforcement remedies to tenants if landlords do not comply.

2. Support HB 5237 in concept.

The committee supports a right to counsel in eviction cases as a way to enhance access to justice, to improve the functioning of the courts; and to protect the rights of low-income tenants.

The committee supports the bill with the following amendments:

- (a) the program should be structured as a statewide program administered by MSHDA and the Michigan State Bar Foundation and coordinated with the current legal services delivery system;
- (b) the program should provide informational and educational materials for both landlords and tenants but the program should not provide representation for landlords; and
- (c) the program should include outreach and education to tenants and tenant-led community groups.

3. Support HB 5238 with the following amendments:

- (a) the bill should be amended to make it clear that it applies to both eviction filings (which should be sealed at the time of filing) and judgments;
- (b) confirm that “summary proceeding for termination of a tenancy of residential property” includes non-payment of rent cases;
- (c) the expungement of judgments should be automatic. If a person wants a specific judgment to remain public, that person may make a motion. Before retaining a landlord tenant judgment as a permanent public record, a court must determine that retaining the public record is clearly in the interests of justice; and
- (d) the period for automatic expungement should be reduced to 2 years.

Position Vote:

Voted For position: 15

Voted against position: 0

Abstained from vote: 1

Did not vote (absence): 2

Contact Persons:

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THE EFFECT OF STATE & LOCAL LAWS ON EVICTIONS

January 2024

Leveling the Playing Field

The Importance of the Right to Counsel in Eviction Proceedings

Early data from Right to Counsel (RTC) initiatives provided promising results for tenants, the justice system, and communities... Since 2017, five states and 18 local jurisdictions have enacted legislation providing RTC in evictions.

At the direction of Congress, the Legal Services Corporation (LSC) launched the Effect of State & Local Laws on Evictions Study to investigate the unmet legal needs surrounding the eviction crisis in the United States. More than one in three renter households will experience a housing-related civil legal problem, such as eviction, in a year.¹

The COVID-19 pandemic exacerbated the eviction crisis, leading to state and local eviction moratoria, an influx of rental assistance funding, and innovative partnerships by legal services organizations to prevent evictions.² The crisis also brought new attention to right-to-counsel (RTC) initiatives as cities and states searched for tools to stem evictions.³ Early data from RTC initiatives provided promising results for tenants, the justice system, and communities. During the pandemic, the White House in 2021 urged jurisdictions to use American Rescue Plan State and Local Recovery Funds to support RTC initiatives.⁴ This brief describes RTC initiatives in eviction, highlights recent research findings, and examines the role of legal services organizations in implementing these efforts.

exacerbated the problem by causing widespread job loss and economic hardship, making it difficult for many tenants to pay rent and increasing the risk of eviction.⁶ In March 2020, protections were implemented to ensure tenants were not displaced. As protections expired, eviction filings returned to pre-pandemic levels and historic highs in other jurisdictions.⁷ At the end of 2022, as many as 20% of renter households were at risk of eviction.⁸

As detailed in prior briefs, the eviction process is complex, hyperlocal, and moves quickly.⁹ Nonpayment of rent is the most common cause of eviction, representing more than 80% of evictions filed each year.¹⁰ In many jurisdictions, tenants can be removed from a missed rent payment in a matter of weeks.¹¹ The consequences of eviction are far-reaching. If evicted, low-income families already struggling with the daily burdens of poverty face losing their homes, belongings, and housing subsidies.¹² The connection between eviction and employment challenges, decreased school performance for children, and adverse health and mental health outcomes are also well-documented.¹³

Eviction in America

Over the past two decades, eviction rates in the U.S. have steadily risen, with approximately 3.6 million evictions filed in 2018 alone.⁵ The COVID-19 pandemic

Leveling the Playing Field: The Importance of the Right to Counsel in Eviction Proceedings

Few tenants have access to legal representation in eviction proceedings. Research consistently demonstrates that while landlords have representation in more than 80% of cases, tenants have representation in less than 5% of cases.¹⁴ This impacts tenants and burdens local court systems—which are not set up to operate without legal representation on both sides.¹⁵ The barriers tenants face to participate in eviction proceedings are multifaceted—from poorly designed notices, forms, and processes to a lack of legal information and assistance.¹⁶ In some jurisdictions, defaults or failure to appear at an eviction hearing are standard—ranging from 35% to more than 70%.¹⁷

An Evidence-based Solution: Right to Counsel

The right to legal representation is a cornerstone of due process in criminal proceedings, as enshrined in the Sixth Amendment of the U.S. Constitution. This constitutional provision forms the basis for the funding and operation of state and federal public defenders in criminal cases. However, despite the profound repercussions of civil legal issues on essential aspects of life, such as housing and parental rights, there is no corresponding federal right to counsel in civil matters.

Notably, this absence extends to eviction cases, where individuals facing the potential loss of housing do not have a federally mandated right to legal representation in civil proceedings.¹⁸

Several state and local lawmakers have enacted civil RTC initiatives for eviction to address the legal representation disparity between landlords and tenants.¹⁹ Typically, these efforts cover a distinct group of tenants eligible for services, often based on income or threshold of the federal poverty level. Since 2017, five states and 18 local jurisdictions have enacted legislation providing RTC in evictions (see Figure 1).²⁰ Other jurisdictions have funded

FIGURE 1 ENACTED EVICTION RIGHT TO COUNSEL INITIATIVES



pilot RTC efforts or programs without codifying the initiative into law.²¹ The specific details of each program vary. Some programs provide legal representation to all tenants facing eviction, while others may be limited to tenants in a specific geographic area or tenants meeting other criteria. For example, in 15 jurisdictions, services are provided only to tenants with income below specific income guidelines.²² In Cleveland, the program represents tenants below 100% of the federal poverty guidelines and where at least one child resides in the home.²³ The funding sources and the type of legal services provided vary by program. The National Coalition for the Civil Right to Counsel (NCCRC) maintains a comprehensive map of proposed and enacted legislation across the country and a [comprehensive analysis](#) describing the components of each enacted measure.

In some jurisdictions, the legislation provides for other tenant protections or funding for related services. In recent RTC legislation, several jurisdictions require landlords to provide information on the right to legal assistance and how to access it with the eviction notice.²⁴ Other legislation dedicates funding for advocates and community organizations to provide education and outreach.²⁵ For example, the Baltimore City Council passed its RTC legislation in 2020, allowing community organizations to provide outreach and education to community members.²⁶

The Impact of Legal Representation

Research consistently demonstrates that providing tenants with legal representation in eviction cases is beneficial across several metrics, including increased access to justice, improved court processing, and a positive return on investment.²⁷

Access to Justice. Legal representation in eviction cases can greatly increase tenants' access to justice and procedural fairness outcomes. First, tenants with legal representation are more likely to appear in court, reducing the number of default or failure-to-appear judgments.²⁸ Tenants

Research consistently demonstrates that while landlords have representation in more than 80% of cases, tenants have representation in less than 5% of cases.

with representation are also more likely to raise defenses to the eviction, such as challenging the validity of the eviction notice, asserting their right to repairs, or disputing the amount of rent owed.²⁹ Finally, legal representation can also improve the tenant's ability to negotiate payment plans with landlords, which can help tenants stay in their homes.³⁰

Tenant Outcomes. Tenants with legal representation are more likely to avoid eviction or secure more favorable outcomes in their case.³¹ Most notably, with representation, tenants are more likely to stay housed and avoid eviction judgments. Findings from recent RTC evaluations show:

- In New York City, *84% of legal-represented renters remained in their homes.*³²
- In Cleveland, *93% of tenants with legal representation avoided an eviction judgment or involuntary move.*³³
- In Connecticut, *76% of tenants with representation avoided an eviction judgment.*³⁴
- In California, *tenants with representation are three times more likely to remain housed when compared to tenants receiving limited or no assistance.*³⁵

Legal representation can be crucial in determining the outcome of eviction cases and the well-being of tenants.

Court Processing. Research also indicates that providing tenants with legal representation in eviction proceedings can benefit the legal system. A study by the Eviction Lab at Princeton University found that providing legal representation to tenants in eviction cases could help to reduce the number of court hearings and appeals, leading to a more efficient and cost-effective system.³⁶ Studies have also shown that eviction cases with legal representation tend to move more quickly and efficiently through the court system, reducing the burden on judges and court staff.³⁷ Additionally, tenants with legal representation are more likely to understand their legal rights and responsibilities, which can help to prevent future legal disputes.³⁸ Moreover, providing legal representation to tenants can have positive ripple effects beyond the individual case, such as discouraging landlords from filing frivolous eviction cases and improving overall housing stability in communities.³⁹

Economic Benefits. Providing legal representation in eviction cases has significant economic benefits for communities. By helping tenants avoid eviction and remain in their homes, legal representation can help prevent the negative economic consequences of eviction, such as increased homelessness, decreased employment opportunities, and decreased economic activity.⁴⁰ For example, studies have found that eviction can negatively impact household income and employment. One study

Leveling the Playing Field: The Importance of the Right to Counsel in Eviction Proceedings

conducted in Milwaukee found that households that experienced eviction had an average income loss of \$5,000 and were more likely to experience job loss.⁴¹ Similarly, another study conducted in New York City found that evicted households were more likely to experience long-term job loss and earn lower incomes over time.⁴²

In addition to negative economic impacts for tenants and their families, eviction significantly impacts communities, including increased costs for social services. For example, a study conducted in Philadelphia found that each eviction in the city cost an average of \$8,000 in social service costs and lost tax revenue. Relatedly, a study conducted in Cleveland found that each eviction cost an average of \$4,000 in social service costs alone.⁴³ Stout, an economic firm, conducted several analyses to estimate the impact of RTC programs. They estimate:

- A \$5.7 million investment in Baltimore would result in a \$35.6 million return in Maryland.⁴⁴
- In Massachusetts, a cost savings of \$2.40 for every dollar spent on providing full legal representation to tenants in eviction.⁴⁵

- In Cleveland, Stout estimates a return on investment of between \$2.62 and \$3.11 per dollar invested in its RTC program.⁴⁶

Overall, studies provide strong evidence for the benefits of the RTC in eviction cases, including increased access to justice, improved outcomes, reduced homelessness, increased efficiency, and economic savings.

Legal Aid Organizations are Core Partners in RTC Initiatives

RTC legislation often describes the types of organizations that can provide legal assistance under the program. Most legislation allows assistance to be provided by non-profit organizations. For example, in San Francisco, the legislation established the Eviction Defense Collaborative, a group of more than ten non-profit legal services providers who provide legal services to low-income defendants facing eviction.⁴⁷ In Boulder, Colorado, where “No Evictions without Representation” (NEWRR) was passed in 2020, the city manager implements the program with non-profit legal services organizations, private law firms, and private

individual attorneys.⁴⁸ Similarly, Denver, which passed legislation in 2021, will allow private, for-profit organizations or individuals to participate in the program.⁴⁹ Louisville (2021) names the Legal Aid Society and Coalition for the Homeless to provide services.⁵⁰

Legal services organizations play a critical role in the implementation and success of RTC initiatives. Organizations are often involved in the following ways:

- **Providing legal representation:** Legal aid organizations provide free or low-cost legal representation to eligible tenants facing eviction.
- **Capacity building:** Legal aid organizations help build the capacity of RTC programs by providing training and technical assistance to participating attorneys and other program staff.
- **Outreach and education:** Legal aid organizations conduct outreach and education activities to raise awareness about the RTC and help tenants understand their rights. These activities help ensure that tenants know the legal services available to them and how to access them.
- **Advocacy:** Legal aid organizations advocate for expanding and improving RTC programs. Organizations often work with policymakers and other stakeholders to build support for the programs and ensure they are adequately funded.
- **Program evaluation:** Legal aid organizations help evaluate the effectiveness of RTC programs by gathering tenant feedback, analyzing case data, and participating in independent evaluations. Data is central to building the evidence base for RTC programs. These efforts help identify areas for improvement and ensure that the programs meet tenants’ needs.

Legal aid organizations are essential in successfully implementing RTC initiatives. Their expertise and experience in providing legal services to low-income individuals can help ensure tenants can access the legal services they need to stay in their homes and avoid eviction.

TABLE 1 Impact of Providing Access to Legal Assistance in Evictions

Access to Justice	<ul style="list-style-type: none"> – More likely to appear in court – More likely to raise defenses to eviction – Increased ability to negotiate payment plans – Improved court processing
Tenant Outcomes	<ul style="list-style-type: none"> – Tenants are more likely to remain housed – Tenants are more likely to have more time to move – Less court-ordered repayment of back rent – Tenants are more likely to avoid a record of eviction
Increased System Efficiencies	<ul style="list-style-type: none"> – Allows dockets to proceed more expeditiously – Decreases the number of motions and appeals – Decreased burden on the judge to explain legal rights or proceeding rules
Economic Impact	<ul style="list-style-type: none"> – Decreased social service demand – Increase in tax revenue – Estimated positive impact on net earnings

SPOTLIGHT

Role of Communities

Community organizations and tenant organizers play a critical role in the success of RTC initiatives.⁵¹ Organizers and community groups help raise awareness about RTC and its benefits. In many jurisdictions, communities have led efforts to bring RTC to fruition. In jurisdictions where ballot initiatives are available, tenant organizers have successfully raised awareness and introduced RTC initiatives.⁵² Communities help educate tenants about their rights in eviction proceedings and provide information about accessing legal services.

Importance of Communities and Tenant Organizers in RTC Initiatives

Advocacy

Communities work with elected officials and other stakeholders to build support for the programs and advocate for funding.

Outreach

Community organizations and tenant organizers help connect tenants with legal services by conducting outreach in communities most affected by eviction. They provide information about legal services and help tenants access them.

Community Support

Community organizations and tenant organizers support tenants facing eviction by organizing rallies and protests, providing emotional support, and connecting tenants with other resources such as emergency financial assistance.

Evidence & Accountability

Community organizations and tenant organizers can help evaluate the effectiveness of RTC programs by encouraging tenants to participate in evaluation efforts, gathering feedback, and identifying areas for improvement. Communities can help hold elected officials accountable for meeting tenants' needs and using data to improve the program over time.

Funding & Staffing Challenges for Legal Aid Organizations

RTC initiatives present opportunities for legal aid organizations to access stable funding for eviction. Legal aid organizations are historically underfunded and reliant on grant-making, private foundations, and individual donors to serve their communities. This often means, on an annual basis, organizations are trying to make the case that their work is innovative or fits into a funder's priorities. Stable funding for eviction representation allows organizations to consistently prioritize cases, learn from their work, improve workflows, and build staff expertise. Like most non-profit organizations, legal aid organizations' largest expense is staff salaries and benefits.⁵³ Annually, LSC grantees spend more than 80% of their total revenue on staff salaries and benefits.⁵⁴ However, legal aid staff have historically been the lowest-paid lawyers in the nation.⁵⁵ Increasing stable funding enables organizations to increase staff salaries and invest in recruitment and retention activities.

RTC funding structures and contracts may present challenges for legal services organizations. Contracts can cover multiple years without accounting for economic uncertainty, including a lack of adjustments for inflation, and structured as a fixed price per case that may not be based on how much time a case requires or requires a level of staffing that can be challenging to maintain.⁵⁶ Challenges meeting contractual demands in a highly unpredictable environment can strain relationships with the court, local stakeholders, and lawmakers.⁵⁷ Recently, it has become increasingly difficult for legal services organizations to recruit and retain staff. Without staff, organizations are unable to meet contractual demands.

Looking Forward

RTC programs are critical to ensuring fairness and justice in the eviction process, but they must be coupled with viable funding streams. With the increasing number of eviction cases and the complex legal procedures involved, individuals facing eviction are disadvantaged without proper legal representation. RTC programs, which provide legal aid to those facing eviction, established in several cities and states, have shown promising results in reducing eviction rates, helping individuals maintain their housing stability, and providing positive economic benefits to cities and states.

The COVID-19 pandemic has brought renewed attention to the urgent need for housing stability and highlighted the importance of the RTC in eviction cases. As a result, significant momentum has been gained in recent years toward implementing and expanding RTC programs in various cities across the United States. This momentum presents a unique opportunity to leverage the public's awareness and support for the RTC in eviction cases.

Legal aid organizations and community organizers play a central role in the success of RTC initiatives, as they provide crucial support to those facing eviction and advocate for policies that promote housing justice. As more states and cities consider implementing RTC programs, addressing challenges to ensure low-income tenants have access to legal assistance is essential.

The \$461 million funding request may come with sticker shock, but the upfront investment in eviction prevention will be offset by savings on shelter stays and homeless services. For now, tenants are forced to navigate the court system independently, with potentially disastrous consequences. “What we see coming out of cases where tenants don’t have lawyers is bad deal after bad deal after bad deal, where tenants’ rights are not recognized or acknowledged in the settlement,” he said.

Raun Rasmussen, the executive director of Legal Services NYC

Other Resources

[National Coalition for a Civil Right to Counsel: Tenant Right to Counsel](#)

[Stout Eviction Right to Counsel Resource Center](#)

[ACLU’s No Eviction without Representation](#)

[American Center for Progress’ A Right to Counsel is a Right to A Fighting Chance](#)

[National Low Income Housing Coalition’s E.R.A.S.E. Project—Tenant Protections Resource](#)

Acknowledgements

We gratefully acknowledge the time and efforts of the organizations and programs cited in this brief. We appreciate your assistance in the preparation of this brief. We also extend our sincere appreciation and gratitude to all organizations and programs working to prevent and reduce evictions. We appreciate their efforts and support in assisting individuals and families nationwide.

Suggested Citation

Legal Services Corporation. 2023. *Leveling the Playing Field: The Importance of the Right to Counsel in Eviction Proceedings*. Washington, D.C.

Leveling the Playing Field: The Importance of the Right to Counsel in Eviction Proceedings

Endnotes

- 1 Legal Services Corporation. 2022. The Justice Gap: The Unmet Legal Needs of Low-Income Americans. Prepared by Mary Slosar, Slosar Research, LLC. Retrieved from <https://justicegap.lsc.gov/the-report/>
- 2 Himmelstein, Grace and Desmond, Matthew. "Eviction And Health: A Vicious Cycle Exacerbated By A Pandemic," Health Affairs Health Policy Brief, April 1, 2021. Retrieved from: <https://www.healthaffairs.org/doi/10.1377/hpb20210315.747908/full/health-affairs-brief-housing-health-equity-himmelstein-1623959357704.pdf>
- 3 See National Coalition for a Civil Right to Counsel tracking of legislative efforts during the pandemic. Retrieved from: <http://civilrighttocounsel.org/map/>; Also, see White House materials from 2022 Summit on Eviction Prevention. Retrieved from: <https://www.whitehouse.gov/briefing-room/statements-releases/2022/08/02/fact-sheet-white-house-summit-on-building-lasting-eviction-prevention-reform/>
- 4 American Civil Liberties Union and National Coalition for a Civil Right to Counsel. 2022. No Eviction Without Representation: Evictions' Disproportionate Harms and the Promise of Right to Counsel. Retrieved from: https://www.aclu.org/wp-content/uploads/legal-documents/no_eviction_without_representation_research_brief_0.pdf
- 5 Hepburn, Peter, Jin, Olivia, Fish, Joe, Lemmerman, Emily, Alexander, Anne Kat, and Desmond, Matthew. 2022. Preliminary Analysis: Eviction Filing Patterns in 2021. Retrieved from: <https://evictionlab.org/us-eviction-filing-patterns-2021/>
- 6 See: Himmelstein, Grace and Desmond, Matthew. "Eviction And Health: A Vicious Cycle Exacerbated By A Pandemic," Health Affairs Health Policy Brief, April 1, 2021. Retrieved from: <https://www.healthaffairs.org/doi/10.1377/hpb20210315.747908/full/health-affairs-brief-housing-health-equity-himmelstein-1623959357704.pdf>; Versey HS. 2021. The Impending Eviction Cliff: Housing Insecurity During COVID-19. Am J Public Health. 2021 Aug;111(8):1423-1427. Retrieved from: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8489619/#:~:text=If%20and%20when%20tenants%20do,a%20risk%20of%20experiencing%20homelessness>
- 7 See resources available from National Low-Income Housing Coalition on moratoria, rental assistance and other renter protections, including: <https://nlhc.org/tenant-protections/>; <https://nlhc.org/sites/default/files/Overview-of-National-Eviction-Moratorium.pdf>, <https://nlhc.org/rental-assistance>
- 8 U.S. Census Bureau. 2022. U.S. Census Bureau Household Pulse Survey, Week 42. https://www2.census.gov/programs-surveys/demo/tables/hhp/2022/wk42/housing1b_week42.xlsx
- 9 See Abdelhadi, Sarah and Ahmed, Ranya. 2021. Fast and Cheap: The speed and cost of evicting tenants for nonpayment of rent. Retrieved from: <https://lsc-live.box.com/s/mwq50tpyqipk2sbawilghr99fydrb>; American Civil Liberties Union and National Coalition for a Civil Right to Counsel. 2022. No Eviction Without Representation: Evictions' Disproportionate Harms and the Promise of Right to Counsel. Retrieved from: https://www.aclu.org/wp-content/uploads/legal-documents/no_eviction_without_representation_research_brief_0.pdf; Annie Nova, 30 second trials. Judges muting tenants. The problems with virtual evictions, CNBC. Retrieved from <https://www.cnn.com/2021/05/01/virtual-eviction-hearings-often-deprive-renters-of-their-rights.html>
- 10 Desmond, Matthew. 2016. Evicted: Poverty and Profit in the American City. Penguin Random House LLC, New York, New York; Eviction Lab. 2018. Why eviction matters: Questions & answers about eviction. Retrieved from <https://evictionlab.org/why-eviction-matters/#why-do-people-get-evicted>.
- 11 Abdelhadi, Sarah and Ahmed, Ranya. 2021. Fast and Cheap: The speed and cost of evicting tenants for nonpayment of rent. Retrieved from: <https://lsc-live.box.com/s/mwq50tpyqipk2sbawilghr99fydrb>
- 12 See Desmond, Matthew. 2016. Evicted: Poverty and Profit in the American City. Penguin Random House LLC, New York, New York; Collinson, Rob and Davin Kristopher Reed. 2018. The Effects of Evictions on Low-Income Households. Retrieved from: <https://www.law.nyu.edu/>
- 13 See Desmond, Matthew and Kimbro, Rachel Tolbert. 2015. Eviction's Fallout: Housing, Hardship, and Health. Social Forces 94, no. 1: 295–324; Desmond, Matthew, An, Weihua, Winkler, Richelle, Ferriss, Thomas Ferriss. 2013. Evicting Children, Social Forces, Volume 92, Issue 1, September, Pages 303–327. Retrieved from: <https://doi.org/10.1093/sf/sot047>
- 14 See: National Coalition for a Civil Right to Counsel. NCCRC Eviction Representation Statistics for Landlords and Tenants Absent Special Intervention—last updated September 2023. http://civilrighttocounsel.org/uploaded_files/280/Landlord_and_tenant_eviction_rep_stats__NCCRC_.pdf
- 15 Carpenter, Anna E., Shanahan, Colleen F., Steinberg, Jessica K., Mark, Alyx. 2022. Judges in Lawyerless Courts, 110 Geo. L. J. 509. Available at: https://scholarship.law.columbia.edu/faculty_scholarship/2742; also: <https://legaltalknetwork.com/podcasts/talk-justice/>
- 16 Desmond, Matthew. 2016. Evicted: Poverty and Profit in the American City. Penguin Random House LLC, New York, New York; Zainulbhai, Sabiha and Daly, Nora. 2022. Informal Evictions: Measuring Displacement Outside the Courtroom. Retrieved from: <https://www.newamerica.org/future-land-housing/reports/informal-evictions-measuring-housing-displacement-outside-the-courtroom/#:~:text=Lack%20of%20access%20to%20information,before%20a%20filing%20has%20occurred>
- 17 See Emily Badger & Quoc Trung Bui, In 83 Million Eviction Records, A Sweeping and Intimate Look at Housing in America, N.Y. TIMES April 7, 2018, <https://www.nytimes.com/interactive/2018/04/07/upshot/millions-of-eviction-records-a-sweeping-new-look-at-housing-in-america.html>; Desmond, Matthew. 2016. Evicted: Poverty and Profit in the American City. Penguin Random House LLC, New York, New York; Stout. The Economic Impact of an Eviction Right to Counsel in Delaware.
- 18 See Turner v. Rogers, 564 U.S. 431, 435 (2011); Lassiter v. Dep't of Soc. Servs., 452 U.S. 18, 30–31 (1981).
- 19 National Coalition for a Civil Right to Counsel Status Map | NCCRC. Accessed February 9, 2022. <http://civilrighttocounsel.org/map>
- 20 National Coalition for a Civil Right to Counsel Status Map | NCCRC. Accessed February 9, 2022. <http://civilrighttocounsel.org/map/>; See the National Coalition for the Civil Right to Counsel. (2023). Right to Counsel Enacted Legislation in Eviction Proceedings for the the most recent list. Retrieved from http://civilrighttocounsel.org/uploaded_files/283/RTC_Enacted_Legislation_in_Eviction_Proceedings_FINAL.pdf Note the NCCRC does not include Delaware in its count of legislation because of certain restrictions on the provision of counsel. See: http://civilrighttocounsel.org/major_developments/1527
- 21 Many cities are introducing right to counsel pilot programs, including the District of Columbia (see: <https://www.legalaidcc.org/blogs/dc-legal-services-providers-announce-relaunch-housing-right-counsel-project-provide-free>). See Stout's Eviction Right to Counsel Resource Center—Pilot Impact Studies for more jurisdictions and information. <https://www.stout.com/en/services/transformation-change-consulting/eviction-right-to-counsel-resources>
- 22 National Coalition for the Civil Right to Counsel. (2023). Right to Counsel Enacted Legislation in Eviction Proceedings. Retrieved from http://civilrighttocounsel.org/uploaded_files/283/RTC_Enacted_Legislation_in_Eviction_Proceedings_FINAL.pdf; Income guidelines typically specify a percent of the federal poverty guidelines or income below the median income in geographic area. In other jurisdictions, specific types of housing are required. For example, in Minnesota tenants must reside in public housing. Also, see: <https://legiscan.com/DE/bill/SB1/2023> for details on Delaware's program which is limited to tenants with incomes at or below 200% federal poverty guidelines but is excluded from NCCRC's lists.
- 23 See Cleveland's Right to Counsel legislation. https://codeilibrary.amlegal.com/codes/cleveland/latest/cleveland_oh/0-0-0-49335
- 24 See the National Coalition for the Civil Right to Counsel. (2023). Right to Counsel Enacted Legislation in Eviction Proceedings for the the most recent list. Retrieved from http://civilrighttocounsel.org/uploaded_files/283/RTC_Enacted_Legislation_in_Eviction_Proceedings_FINAL.pdf
- 25 Ibid.
- 26 See 20-0625 Landlord-Tenant—Right to Counsel in Eviction Cases—Annual Report [https://dhcd.baltimorecity.gov/sites/default/files/Annual%20Report%20-%202020-0625%20Landlord-Tenant%20-%20Right%20to%20Counsel%20in%20Eviction%20Cases%20\(1\).pdf](https://dhcd.baltimorecity.gov/sites/default/files/Annual%20Report%20-%202020-0625%20Landlord-Tenant%20-%20Right%20to%20Counsel%20in%20Eviction%20Cases%20(1).pdf)
- 27 See Stout. 2023. Connecticut Eviction Right to Counsel Evaluation. Retrieved from: <https://www.stout.com/-/media/pdf/evictions/estimated-economic-impact-eviction-right-counsel-sc.pdf>; Stout. 2022. Cleveland Eviction Right to Counsel. Annual Independent Evaluation. Retrieved from: https://www.stout.com/-/media/pdf/evictions/stout-2022-independent-evaluation-rtc-c_final_2023-01-31.pdf; Samuelson, Martha, Brian Ellman, Ngoc Pham, Emma Dong, Samuel Goldsmith, and David Robinson. 2020. Investing in Fairness, Justice, and Housing Stability: Assessing the Benefit of Full Legal Representation in Eviction Cases. Boston Bar Association. Analysis Group. Retrieved from: <https://bostonbar.org/docs/default-document-library/rtc-report-for-web-or-email.pdf>; Grundman, Luke and Kruger, Martha. 2018. Legal Representation in Evictions—Comparative Study. Retrieved from: www.minnpost.com/wp-content/uploads/2018/11/2018-Eviction-Representation-Results-Study-with-logos.pdf
- 28 Stout. 2022. Cleveland Eviction Right to Counsel. Annual Independent Evaluation. Retrieved from: https://www.stout.com/-/media/pdf/evictions/stout-2022-independent-evaluation-rtc-c_final_2023-01-31.pdf
- 29 Stout. 2023. Connecticut Eviction Right to Counsel Evaluation. Retrieved from: <https://www.stout.com/-/media/pdf/evictions/estimated-economic-impact-eviction-right-counsel-sc.pdf>; Stout. 2022. Cleveland Eviction Right to Counsel. Annual Independent Evaluation. Retrieved from: https://www.stout.com/-/media/pdf/evictions/stout-2022-independent-evaluation-rtc-c_final_2023-01-31.pdf; Samuelson, Martha, Brian Ellman, Ngoc Pham, Emma Dong, Samuel Goldsmith, and David Robinson. 2020. Investing in Fairness, Justice, and Housing Stability: Assessing the Benefit of Full Legal Representation in Eviction Cases. Boston Bar Association. Analysis Group. Retrieved from: <https://bostonbar.org/docs/default-document-library/rtc-report-for-web-or-email.pdf>; Grundman, Luke and Kruger, Martha. 2018. Legal Representation in Evictions—Comparative Study. Retrieved from: www.minnpost.com/wp-content/uploads/2018/11/2018-Eviction-Representation-Results-Study-with-logos.pdf
- 30 Ibid.

Leveling the Playing Field: The Importance of the Right to Counsel in Eviction Proceedings

- 31 See Engler, Russel. 2010. Connecting Self-Representation to Civil Gideon: What Existing Data Reveal About When Counsel is Most Needed, 37 *FORDHAM URB. L.J.* 38, 47–49; Stout. 2023. Connecticut Eviction Right to Counsel Evaluation. Retrieved from: <https://www.stout.com/-/media/pdf/evictions/estimated-economic-impact-eviction-right-counsel-sc.pdf>; Stout. 2022. Cleveland Eviction Right to Counsel. Annual Independent Evaluation. Retrieved from: https://www.stout.com/-/media/pdf/evictions/stout-2022-independent-evaluation-rtc-c_final_2023-01-31.pdf; Samuelson, Martha, Brian Ellman, Ngoc Pham, Emma Dong, Samuel Goldsmith, and David Robinson. 2020. Investing in Fairness, Justice, and Housing Stability: Assessing the Benefit of Full Legal Representation in Eviction Cases. Boston Bar Association. Analysis Group. Retrieved from: <https://bostonbar.org/docs/default-document-library/rtc-report-for-web-or-email.pdf>; Grundman, Luke and Kruger, Martha. 2018. Legal Representation in Evictions—Comparative Study. Retrieved from: www.minnpost.com/wp-content/uploads/2018/11/2018-Eviction-Representation-Results-Study-with-logos.pdf
- 32 Ingrid Gould Ellen et al. 2020. Do Lawyers Matter? Early Evidence on Eviction Patterns After the Rollout of Universal Access to Counsel in New York City,” *Housing Policy Debate* 0, no. 0 (November 25): 1–22, <https://doi.org/10.1080/10511482.2020.1825009>; Stout. 2016. The Financial Cost and Benefits of Establishing a Right to Counsel in Eviction Proceedings Under Intro 214-A. Retrieved from: <https://cdn2.hubspot.net/hubfs/4408380/PDF/Cost-Benefit-Impact-Studies/SRR%20Report%20-%20Eviction%20Right%20to%20Counsel%20%203%2016%2016.pdf>
- 33 Stout. 2022. Cleveland Eviction Right to Counsel. Annual Independent Evaluation. Retrieved from: https://www.stout.com/-/media/pdf/evictions/stout-2022-independent-evaluation-rtc-c_final_2023-01-31.pdf
- 34 Stout. 2023. Connecticut Eviction Right to Counsel Evaluation. Retrieved from: <https://www.stout.com/-/media/pdf/evictions/estimated-economic-impact-eviction-right-counsel-sc.pdf>
- 35 See Engler, Russel. 2010. Connecting Self-Representation to Civil Gideon: What Existing Data Reveal About When Counsel is Most Needed, 37 *FORDHAM URB. L.J.* 38, 47–49; Stout. 2023. Connecticut Eviction Right to Counsel Evaluation. Retrieved from: <https://www.stout.com/-/media/pdf/evictions/estimated-economic-impact-eviction-right-counsel-sc.pdf>; Stout. 2022. Cleveland Eviction Right to Counsel. Annual Independent Evaluation. Retrieved from: https://www.stout.com/-/media/pdf/evictions/stout-2022-independent-evaluation-rtc-c_final_2023-01-31.pdf; Samuelson, Martha, Brian Ellman, Ngoc Pham, Emma Dong, Samuel Goldsmith, and David Robinson. 2020. Investing in Fairness, Justice, and Housing Stability: Assessing the Benefit of Full Legal Representation in Eviction Cases. Boston Bar Association. Analysis Group. Retrieved from: <https://bostonbar.org/docs/default-document-library/rtc-report-for-web-or-email.pdf>; Grundman, Luke and Kruger, Martha. 2018. Legal Representation in Evictions—Comparative Study. Retrieved from: www.minnpost.com/wp-content/uploads/2018/11/2018-Eviction-Representation-Results-Study-with-logos.pdf
- 36 Stout. 2022. Cleveland Eviction Right to Counsel. Annual Independent Evaluation. Retrieved from: https://www.stout.com/-/media/pdf/evictions/stout-2022-independent-evaluation-rtc-c_final_2023-01-31.pdf
- 37 Center for American Progress. A Right to Counsel Is a Right to a Fighting Chance: The Importance of Legal Representation in Eviction Proceedings. Retrieved from: <https://www.americanprogress.org/article/right-counsel-right-fighting-chance/>
- 38 See Engler, Russel. 2010. Connecting Self-Representation to Civil Gideon: What Existing Data Reveal About When Counsel is Most Needed, 37 *FORDHAM URB. L.J.* 38, 47–49; Stout. 2023. Connecticut Eviction Right to Counsel Evaluation. Retrieved from: <https://www.stout.com/-/media/pdf/evictions/estimated-economic-impact-eviction-right-counsel-sc.pdf>; Stout. 2022. Cleveland Eviction Right to Counsel. Annual Independent Evaluation. Retrieved from: https://www.stout.com/-/media/pdf/evictions/stout-2022-independent-evaluation-rtc-c_final_2023-01-31.pdf; Samuelson, Martha, Brian Ellman, Ngoc Pham, Emma Dong, Samuel Goldsmith, and David Robinson. 2020. Investing in Fairness, Justice, and Housing Stability: Assessing the Benefit of Full Legal Representation in Eviction Cases. Boston Bar Association. Analysis Group. Retrieved from: <https://bostonbar.org/docs/default-document-library/rtc-report-for-web-or-email.pdf>; Grundman, Luke and Kruger, Martha. 2018. Legal Representation in Evictions—Comparative Study. Retrieved from: www.minnpost.com/wp-content/uploads/2018/11/2018-Eviction-Representation-Results-Study-with-logos.pdf
- 39 Ibid.
- 40 Desmond, Matthew and Gershenson, Carl. 2016. Housing and Employment Insecurity among the Working Poor. *Social Problems*, 2016, 63, 46–67, Retrieved from: <https://scholar.harvard.edu/files/mdesmond/files/desmondgershenson.socprob.2016.pdf>
- 41 Ibid.
- 42 Ingrid Gould Ellen et al. 2020. Do Lawyers Matter? Early Evidence on Eviction Patterns After the Rollout of Universal Access to Counsel in New York City,” *Housing Policy Debate* 0, no. 0 (November 25): 1–22, <https://doi.org/10.1080/10511482.2020.1825009>
- 43 Stout. (2022. Cleveland Eviction Right to Counsel. Annual Independent Evaluation. Retrieved from: https://www.stout.com/-/media/pdf/evictions/stout-2022-independent-evaluation-rtc-c_final_2023-01-31.pdf
- 44 Stout. 2020. The Economic Impact of an Eviction Right to Counsel in Baltimore City. Retrieved from: <https://cdn2.hubspot.net/hubfs/4408380/PDF/Eviction-Reports-Cities-States/baltimore-rtc-report-final-5-8-2020.pdf>
- 45 Samuelson, Martha, Brian Ellman, Ngoc Pham, Emma Dong, Samuel Goldsmith, and David Robinson. 2020. Investing in Fairness, Justice, and Housing Stability: Assessing the Benefit of Full Legal Representation in Eviction Cases. Boston Bar Association. Analysis Group. Retrieved from: <https://bostonbar.org/docs/default-document-library/rtc-report-for-web-or-email.pdf>
- 46 Stout. (2022. Cleveland Eviction Right to Counsel. Annual Independent Evaluation. Retrieved from: https://www.stout.com/-/media/pdf/evictions/stout-2022-independent-evaluation-rtc-c_final_2023-01-31.pdf
- 47 See: Messamore, A. 2023. The Effect of Community Organizing on Landlords’ Use of Eviction Filing: Evidence from U.S. Cities. *Social Problems*, 70(3): 809-830. Also see: <https://truthout.org/articles/amid-eviction-crisis-organizers-win-right-to-legal-representation-for-tenants/>
- 48 For example, see PolicyLink. 2023. Housing Justice on the Ballot: Initiative Guide. Retrieved from: https://www.policylink.org/resources-tools/housing-justice-on-the-ballot_guide; National Coalition on a Civil Right to Counsel’s summary of San Francisco’s legislative journey. Available here: http://civilrighttocounsel.org/major_developments/1179
- 49 See summary of San Francisco’s right to counsel in eviction initiative: <https://www.sfbos.org/ftp/uploadedfiles/bdsupvrs/committees/materials/rls111189tdr.pdf> and <https://evictiondefense.org/services/right-to-counsel/>
- 50 See summary of Boulder’s right to counsel in eviction program: <https://bouldercolorado.gov/services/eviction-prevention-and-rental-assistance-services-program> and http://civilrighttocounsel.org/major_developments/1408#:~:text=On%20November%203%2C%202020%2C%20Boulder,as%20on%20the%20ACLU%20website
- 51 See summary of Denver’s right to counsel in eviction program http://civilrighttocounsel.org/major_developments/1515 and <https://theappeal.org/denver-city-council-members-propose-a-way-to-keep-tenants-in-their-homes/>
- 52 See summary of Louisville’s right to counsel in eviction program: https://louisville.legistar.com/LegislationDetail.aspx?ID=4922202&GUID=D60DDAD1-DF28-48A2-9C14-399D7B09086A&Options=&Search=and http://civilrighttocounsel.org/major_developments/1525#:~:text=In%20April%202021%2C%20Louisville%20KY,federal%20Emergency%20Rental%20Assistance%20funds
- 53 Legal Services Corporation. 2023. 2022 By the Numbers: The Data Underlying Legal Aid Programs. Retrieved from: <https://lsc-live.app.box.com/s/h2bajpr3gps4s4a1i06fwidthhmu1nwb>
- 54 Ibid
- 55 Cueto, Emma. 2019. All Work And Low Pay: Wage Gap Persists For Legal Aid Attys. Retrieved from: <https://www.law360.com/articles/1203780>
- 56 See: <https://nylag.org/lack-of-funding-continues-to-jeopardize-right-to-counsel-providers-ability-to-represent-low-income-tenants-in-nyc-housing-court>; <https://www.bloomberg.com/news/features/2023-04-27/as-renters-struggle-eviction-busting-lawyers-are-in-short-supply>; <https://comptroller.nyc.gov/reports/letter-to-the-office-of-civil-justice-on-halting-eviction-cases-to-protect-tenants-right-to-counsel/>
- 57 Ibid.



To: Members of the Public Policy Committee
Board of Commissioners

From: Nathan A. Triplett, Director of Governmental Relations

Date: January 11, 2024

Re: **HB 5238** (Wilson) Civil procedure: evictions; court records of evictions; require to be expunged. Amends sec. 8371 of 1961 PA 236 (MCL 600.8371) & adda sec. 5755.

Background

House Bill 5238 is part of a package of six tenant's rights bills. It would amend Section 8371 and add a new Section 5755 to the Revised Judicature Act ("RJA"), 1961 PA 236.

The new section provides two avenues for expungement. First, it permits a court to order that the records of a summary proceeding for the termination of tenancy of a residential property be expunged under specified circumstances. Second, the bill further provides that a tenant, manufactured home park resident, or landlord may move that the court order expungement under specified circumstances. The court is also permitted to take such action on its own motion.

If the court determines that the record should be expunged under either avenue, the court shall enter an appropriate order setting aside the judgement and expunging the official records of the action pertaining to the moving party. The bill specifies that, on entry of such an order, the judgment is deemed not to have been entered, and the moving party may answer accordingly any questions related to its occurrence.

The bill amends Section 8371 to exempt motions filed under the new Section 5755 from the civil motion filing fee of \$20.

Keller Considerations

The Bar's policy committees have reached different conclusions on the *Keller*-permissibility of House Bill 5238. The Justice Initiatives Committee concluded that the bill was sufficiently related to the functioning of the courts to satisfy *Keller*. The Committee discussed the impact that the bill would have on the functioning of the courts by expanding the authority of the court to order expungements and by authorizing a new motion for expungement of records under specified circumstances. In the same vein, they also discussed the impact of establishing the standards the court must apply when considering an expungement of a summary proceeding record.

The Access to Justice Policy Committee and Civil Procedure & Courts Committee reached the contrary conclusion that the bill was not *Keller*-permissible. These Committees believed that the bill is not germane to court functioning or procedure, but rather raises a substantive question of policy more akin to the Legislature establishing the elements of a criminal offense. While the bill might have certain elements that are *Keller*-permissible standing alone, those elements are, in these Committees' view, swamped by the primary thrust of the bill, which is the question of whether or not the Legislature should authorize the expungement of certain records related to summary proceedings.

Of the six bills in this tenant's rights package, staff referred the three with a nexus to the courts, including House Bill 5238. Now, with the benefit of the committee deliberations, staff concurs that there are provisions of this bill that are arguably *Keller*-permissible in being reasonably related to the functioning of the courts. Having said that, those provisions are a relatively small fraction of the bill in total and, as such, staff does not believe that it is advisable to adopt a public policy position and attempt to engage in advocacy on those portions alone. The Bar is better suited to engage on other bills in this package (i.e., HB 5236 and HB 5237) that fall more clearly within the constraints of *Keller* and on which the Bar has an important perspective to offer to the Legislature.

Keller Quick Guide

THE TWO PERMISSIBLE SUBJECT-AREAS UNDER KELLER:

<i>As interpreted by AO 2004-1</i>	Regulation of Legal Profession	Improvement in Quality of Legal Services
	Regulation and discipline of attorneys	Improvement in functioning of the courts
	Ethics	Availability of legal services to society
	Lawyer competency	
	Integrity of the Legal Profession	
	Regulation of attorney trust accounts	

Staff Recommendation

Staff recommends that the Board decline to make a *Keller* determination as to House Bill 5238 and to therefore refrain from adopting a public policy on the bill. Staff advises focusing the Bar's resources on the other bills (i.e., HB 5236 and HB 5237) in this package.

HOUSE BILL NO. 5238

October 25, 2023, Introduced by Reps. Wilson, Rheingans, Dievendorf, Hood, Morgan and Tsernoglou and referred to the Committee on Economic Development and Small Business.

A bill to amend 1961 PA 236, entitled "Revised judiciary act of 1961," by amending section 8371 (MCL 600.8371), as amended by 2005 PA 151, and by adding section 5755.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5755. (1) The court may order that the records of a
2 summary proceeding for termination of a tenancy of residential
3 property under this chapter or chapter 57a be expunged if 1 or more
4 of the following apply:

5 (a) The court determines that the plaintiff's action is

1 sufficiently without a basis in fact or law, which may include a
2 lack of jurisdiction.

3 (b) All of the following apply:

4 (i) Judgment for possession was entered in the summary
5 proceedings.

6 (ii) The judgment was entered 3 years or more before the motion
7 to expunge the records.

8 (iii) The court determines that expunging the records is clearly
9 in the interests of justice, and that those interests are not
10 outweighed by the public's interest in knowing about the records,
11 after having considered the following factors:

12 (A) Circumstances beyond the control of the tenant that led to
13 the eviction.

14 (B) Other extenuating circumstances under which the order of
15 eviction was granted.

16 (c) The summary proceedings were brought under section
17 5714(1) (a) or (c) and a judgment of possession was not entered.

18 (d) The judgment was a judgment by stipulation of the parties
19 and the moving party has complied with the terms of the stipulated
20 agreement.

21 (e) The judgment was a judgment or judgment of dismissal
22 entered in the moving party's favor.

23 (2) On the motion of a tenant, manufactured home park
24 resident, or landlord, or on the court's own motion, a court may
25 order that the records of summary proceedings under this chapter or
26 chapter 57a be expunged if 1 or more of the following apply:

27 (a) The premises was sold under the foreclosure of a mortgage
28 or land contract, the tenancy was terminated because the defendant
29 continued in possession of the premises after the time limited by

1 law for redemption of the premises, and either of the following
2 applies:

3 (i) The defendant vacated the premises before the summary
4 proceedings were filed.

5 (ii) The defendant did not receive a written demand for
6 possession 90 days or more before the summary proceedings were
7 filed.

8 (b) The summary proceedings were filed during the state of
9 emergency declared under Executive Order No. 2020-4 or any
10 extension of that order, including an order issued under section
11 2253 of the public health code, 1978 PA 368, MCL 333.2253.

12 (3) If under subsection (1) or subsection (2) the court
13 determines the record should be expunged, the court shall enter an
14 appropriate order setting aside the judgment and expunging the
15 official records of the action pertaining to the moving party. On
16 entry of the order, the judgment is deemed not to have been
17 entered, and the moving party may answer accordingly any questions
18 relating to its occurrence.

19 (4) As used in this section, "official records" means all
20 records relating to the summary proceedings that are maintained by
21 the court, including, but not limited to, the complaint, any other
22 pleadings, a proof of service, findings of the court, and all other
23 papers, records, documents, and evidence, including exhibits and
24 transcripts of testimony.

25 Sec. 8371. (1) In the district court, the fees prescribed in
26 this section ~~shall~~**must** be paid to the clerk of the court.

27 (2) Before a civil action is commenced in the district court,
28 the party commencing the action shall pay to the clerk ~~the sum of~~
29 \$150.00 if the amount in controversy exceeds \$10,000.00. For each

1 fee collected under this subsection, the clerk shall transmit
2 \$31.00 to the treasurer of the district funding unit in which the
3 action was commenced, and shall transmit the balance to the state
4 treasurer for deposit in the civil filing fee fund created by
5 section 171.

6 (3) Before a civil action is commenced in the district court,
7 the party commencing the action shall pay to the clerk ~~the sum of~~
8 \$65.00 if the amount in controversy exceeds \$1,750.00 but does not
9 exceed \$10,000.00. For each fee collected under this subsection,
10 the clerk shall transmit \$23.00 to the treasurer of the district
11 funding unit in which the action was commenced, of which not less
12 than \$5.00 ~~shall~~**must** be used by the district funding unit to fund
13 a drug treatment court if one is planned, established, or operated
14 in that judicial district. If the entire amount attributable to the
15 \$5.00 portion is not needed for the operation of a drug treatment
16 court, the balance that is not needed for that purpose ~~shall~~**must**
17 be used for the operation of the district court. If a drug
18 treatment court is not planned, established, or operated in that
19 judicial district, all \$23.00 ~~shall~~**must** be used for the operation
20 of the district court. The clerk of the district court shall
21 transmit the balance of the filing fee to the state treasurer for
22 deposit in the civil filing fee fund created by section 171.

23 (4) Before a civil action is commenced in the district court,
24 the party commencing the action shall pay to the clerk ~~the sum of~~
25 \$45.00 if the amount in controversy exceeds \$600.00 but does not
26 exceed \$1,750.00. For each fee collected under this subsection, the
27 clerk shall transmit \$17.00 to the treasurer of the district
28 funding unit in which the action was commenced, of which not less
29 than \$5.00 ~~shall~~**must** be used by the district funding unit to fund

1 a drug treatment court if one is planned, established, or operated
2 in that judicial district. If the entire amount attributable to the
3 \$5.00 portion is not needed for the operation of a drug treatment
4 court, the balance that is not needed for that purpose ~~shall~~**must**
5 be used for the operation of the district court. If a drug
6 treatment court is not planned, established, or operated in that
7 judicial district, all \$17.00 ~~shall~~**must** be used for the operation
8 of the district court. The clerk of the district court shall
9 transmit the balance of the filing fee to the state treasurer for
10 deposit in the civil filing fee fund created by section 171.

11 (5) Before a civil action is commenced in the district court,
12 the party commencing the action shall pay to the clerk ~~the sum of~~
13 \$25.00 if the amount in controversy does not exceed \$600.00. For
14 each fee collected under this subsection, the clerk shall transmit
15 \$11.00 to the treasurer of the district funding unit in which the
16 action was commenced, of which not less than \$5.00 ~~shall~~**must** be
17 used by the district funding unit to fund a drug treatment court if
18 one is planned, established, or operated in that judicial district.
19 If the entire amount attributable to the \$5.00 portion is not
20 needed for the operation of a drug treatment court, the balance
21 that is not needed for that purpose ~~shall~~**must** be used for the
22 operation of the district court. If a drug treatment court is not
23 planned, established, or operated in that judicial district, all
24 \$11.00 ~~shall~~**must** be used for the operation of the district court.
25 The clerk of the district court shall transmit the balance of the
26 filing fee to the state treasurer for deposit in the civil filing
27 fee fund created by section 171.

28 (6) The judge shall order payment of any statutory fees waived
29 or suspended if the person subject to the fee is receiving public

1 assistance or is determined by the court to be indigent.

2 (7) Neither this state nor a political subdivision of this
3 state ~~shall be~~ **is** required to pay a filing fee in a civil
4 infraction action.

5 (8) Except for civil actions filed for relief under chapter
6 43, 57, or 84, if a civil action is filed for relief other than
7 money damages, the filing fee ~~shall~~ **must** be equal to the filing fee
8 in actions for money damages in excess of \$1,750.00 but not in
9 excess of \$10,000.00 as provided in subsection (3) and ~~shall~~ **must**
10 be transmitted in the same manner as a fee under subsection (3) is
11 transmitted. If a claim for money damages is joined with a claim
12 for relief other than money damages, the plaintiff shall pay a
13 supplemental filing fee in the same amount as required under
14 subsections (2) to (5).

15 (9) If a trial by jury is demanded, the party making the
16 demand at the time shall pay ~~the sum of~~ \$50.00. Failure to pay the
17 fee at the time the demand is made constitutes a waiver of the
18 right to a jury trial. The ~~sum shall~~ **amount paid must** be taxed in
19 favor of the party paying the fee, ~~in case~~ **if** the party recovers a
20 judgment for costs. For each fee collected under this subsection,
21 the clerk shall transmit \$10.00 to the state treasurer for deposit
22 in the juror compensation reimbursement fund created in section
23 151d.

24 (10) A ~~sum~~ **fee** of \$20.00 ~~shall~~ **must** be assessed for all
25 motions filed in a civil action. A motion fee ~~shall~~ **must** not be
26 assessed in a civil infraction action **or for a motion under section**
27 **5755**. For each fee collected under this subsection, the clerk shall
28 transmit \$10.00 to the state treasurer for deposit in the state
29 court fund created in section 151a and **shall transmit** the balance

1 ~~shall be transmitted~~ to the treasurer of the district funding unit
2 for the district court in the district in which the action was
3 commenced.

**Public Policy Position
HB 5238**

Not Keller; Support with Amendments

Keller Permissibility Explanation

The Committee concluded that House Bill 5238 is not *Keller*-permissible (13-7-1).

Contingent Position Explanation

However, should the Board of Commissioners conclude that the bill is *Keller*-permissible, the Committee voted to support House Bill 5238 with the amendments and recommendations proposed by the Justice Initiatives Committee; namely that:

- (1) the bill should be amended to make it clear that it applies to both eviction filings (which should be sealed at the time of filing) and judgments;
- (2) the bill should confirm that "summary proceeding for termination of a tenancy of residential property" includes non-payment of rent cases;
- (3) the expungement of judgments should be automatic. If a person wants a specific judgment to remain public, that person may make a motion. Before retaining a landlord tenant judgment as a permanent public record, a court must determine that retaining the public record is clearly in the interests of justice. And,
- (4) the period for automatic expungement should be reduced to 2 years.

Position Vote:

Voted For position: 15

Voted against position: 3

Abstained from vote: 2

Did not vote (absence): 4

Contact Persons:

Daniel S. Korobkin dkorobkin@aclumich.org

Katherine L. Marcuz kmarcuz@sado.org

**Public Policy Position
HB 5238**

Not *Keller*, No Position

Keller Permissibility Explanation:

The Committee concluded that House Bill 5238 is not *Keller*-permissible.

Contingent Position Explanation:

The Committee discussed adopting a contingent position in the event the Board of Commissioners concluded that the bill is *Keller*-permissible, but voted to adopt no position on the substance of the legislation.

Contact Person:

Daniel D. Quick dquick@dickinsonwright.com

**Public Policy Position
HB 5236 – HB 5238**

Support with Amendments

Explanation

The committee voted to:

1. Support HB 5236 with the following amendments:

- (a) amend Section (1)(c) to read: “Contact information for the statewide self-help website, the statewide legal aid hotline, and the 2-1-1 system telephone number.”
- (b) require landlords to serve the form on tenants with summons and complaint in eviction cases and provide enforcement remedies to tenants if landlords do not comply.

2. Support HB 5237 in concept.

The committee supports a right to counsel in eviction cases as a way to enhance access to justice, to improve the functioning of the courts; and to protect the rights of low-income tenants.

The committee supports the bill with the following amendments:

- (a) the program should be structured as a statewide program administered by MSHDA and the Michigan State Bar Foundation and coordinated with the current legal services delivery system;
- (b) the program should provide informational and educational materials for both landlords and tenants but the program should not provide representation for landlords; and
- (c) the program should include outreach and education to tenants and tenant-led community groups.

3. Support HB 5238 with the following amendments:

- (a) the bill should be amended to make it clear that it applies to both eviction filings (which should be sealed at the time of filing) and judgments;
- (b) confirm that “summary proceeding for termination of a tenancy of residential property” includes non-payment of rent cases;
- (c) the expungement of judgments should be automatic. If a person wants a specific judgment to remain public, that person may make a motion. Before retaining a landlord tenant judgment as a permanent public record, a court must determine that retaining the public record is clearly in the interests of justice; and
- (d) the period for automatic expungement should be reduced to 2 years.

Position Vote:

Voted For position: 15

Voted against position: 0

Abstained from vote: 1

Did not vote (absence): 2

Contact Persons:

Ashley E. Lowe

alowe@lakeshorelegalaid.org

To: Members of the Public Policy Committee
Board of Commissioners

From: Nathan A. Triplett, Director of Governmental Relations

Date: January 11, 2024

Re: **HB 5326** (Aragona) Courts: district court; magistrate jurisdiction and duties; modify. Amends secs. 5735 & 8511 of 1961 PA 236 (MCL 600.5735 & 600.8511).

Background

House Bill 5326 would amend Sections 5735 of the Revised Judicature Act (“RJA”), 1961 PA 236, to permit district court magistrates to conduct pretrial hearings in summary proceedings to recover possession of a premises, including providing a verbal advice of rights to the parties. The bill would also amend Section 8511 of the RJA to permit district court magistrates to conduct trials under Section 5735, if authorized by the chief judge of the district court and if the magistrate is an attorney. Magistrates were permitted to conduct advice of rights hearings under the Michigan Supreme Court’s pandemic-related administrative orders, but that authority was revoked when the Court’s rescission of the relevant order became effective in November 2023. The bill is intended to restore this authority and promote judicial economy. The legislation is supported by the Michigan Association of District Court Magistrates.

Keller Considerations

House Bill 5326 would expand the jurisdiction and duties of certain district court magistrates. In doing so, it would permit these judicial officers to take on a portion of the district court’s docket that would otherwise need to be handled by a district court judge. Because the bill directly impacts both the allocation of authority within the district court and the management of the court’s docket, it is necessarily related to the functioning of the courts and therefore *Keller*-permissible.

Keller Quick Guide

THE TWO PERMISSIBLE SUBJECT-AREAS UNDER KELLER:

	Regulation of Legal Profession	Improvement in Quality of Legal Services
<i>As interpreted by AO 2004-1</i>	Regulation and discipline of attorneys	✓ Improvement in functioning of the courts
	Ethics	Availability of legal services to society
	Lawyer competency	
	Integrity of the Legal Profession	
	Regulation of attorney trust accounts	

Staff Recommendation

House Bill 5326 is necessarily related to the functioning of the courts and therefore *Keller*-permissible. It may be considered on its merits.

HOUSE BILL NO. 5326

November 09, 2023, Introduced by Reps. Aragona, Wozniak, BeGole, DeBoyer, Roth, St. Germaine, McKinney and Shannon and referred to the Committee on Government Operations.

A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
by amending sections 5735 and 8511 (MCL 600.5735 and 600.8511),
section 5735 as amended by 2004 PA 105 and section 8511 as amended
by 2014 PA 124.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5735. (1) The court in which a summary proceeding is
2 commenced shall issue a summons, which may be served on the
3 defendant by any officer or person authorized to serve process of
4 the court. The summons shall command the defendant to appear for
5 trial in accordance with ~~the provisions of~~ subsection (2) unless by

1 local court rule ~~the provisions of subsection (4) have been made~~
 2 ~~applicable.~~ **applies.**

3 (2) ~~A~~ **Except as provided in subsection (4),** a summons issued
 4 under this section ~~shall~~ **must** command the defendant to appear for
 5 trial as follows:

6 (a) Within 30 days ~~of~~ **after** the issuance date of the summons
 7 in proceedings under section 5726. ~~, in which event the~~ **A** summons
 8 ~~shall~~ **issued under this subdivision must** be served not ~~less~~ **later**
 9 than 10 days before the date set for trial.

10 (b) Within 10 days ~~of~~ **after** the issuance date of the summons
 11 in all other proceedings. ~~, in which event the~~ **A** summons ~~shall~~
 12 **issued under this subdivision must** be served not ~~less~~ **later** than 3
 13 days before the date set for trial.

14 (3) If a summons issued under this section is not served
 15 within the time ~~provided by~~ **required under** subsection (2),
 16 additional summons ~~shall~~ **must** be issued at the plaintiff's request
 17 in the same manner and with the same effect as the original
 18 summons.

19 (4) ~~Instead of the provisions of subsection (2),~~ **A** court by
 20 local rule may provide ~~for the application of~~ **that** this subsection
 21 **applies** to summary proceedings commenced in the court ~~, in which~~
 22 ~~event~~ **instead of subsection (2). If a court adopts a local rule**
 23 **under this subsection,** the summons ~~shall~~ **must** command the defendant
 24 to appear as follows:

25 (a) Within 10 days after service of the summons ~~upon~~ **on** the
 26 defendant in proceedings under section 5726.

27 (b) Within 5 days after service of the summons ~~upon~~ **on** the
 28 defendant in all other proceedings.

29 (5) A summons issued under subsection (4) remains in effect

1 until served or quashed or until the action is dismissed, but
 2 additional summons as needed for service may be issued at any time
 3 at the plaintiff's request.

4 **(6) At the trial noticed by the summons, the court, or as**
 5 **allowed under section 8511, a district court magistrate, must**
 6 **conduct a pretrial hearing consistent with guidance of the state**
 7 **court administrative office. At the pretrial hearing, the parties**
 8 **must be verbally informed of all the advice required by the**
 9 **Michigan court rules.**

10 **(7) ~~(6)~~—Except as otherwise provided by court rule, and**
 11 **subject to subsection (8), a summary proceeding shall—must** be heard
 12 within 7 days after the defendant's appearance or trial date and
 13 ~~shall—must~~ not be adjourned beyond that time other than by
 14 stipulation of the parties either in writing or on the record.

15 **(8) ~~(7)~~—An action to which section 5714(1)(b) applies shall**
 16 **must** be heard at the time of the defendant's appearance or trial
 17 date and ~~shall—must~~ not be adjourned beyond that time except for
 18 extraordinary reasons.

19 Sec. 8511. A district court magistrate has the following
 20 jurisdiction and duties:

21 (a) To arraign and sentence upon pleas of guilty or nolo
 22 contendere for violations of the following acts or parts of acts,
 23 or a local ordinance substantially corresponding to these acts or
 24 parts of acts, when authorized by the chief judge of the district
 25 court district, if the maximum permissible punishment does not
 26 exceed 90 days in jail or a fine, or both:

27 (i) Part 487 of the natural resources and environmental
 28 protection act, 1994 PA 451, MCL 324.48701 to 324.48740.

29 (ii) Part 401 of the natural resources and environmental

1 protection act, 1994 PA 451, MCL 324.40101 to 324.40120.

2 (iii) Part 801 of the natural resources and environmental
3 protection act, 1994 PA 451, MCL 324.80101 to 324.80199.

4 (iv) The motor carrier act, 1933 PA 254, MCL 475.1 to
5 ~~479.43.479.42~~.

6 (v) Motor carrier safety act of 1963, 1963 PA 181, MCL 480.11
7 to 480.25.

8 (vi) Dog law of 1919, 1919 PA 339, MCL 287.261 to 287.290.

9 (vii) Section 703 or 915 of the Michigan liquor control code of
10 1998, 1998 PA 58, MCL 436.1703 and 436.1915.

11 (viii) Part 5 of the natural resources and environmental
12 protection act, 1994 PA 451, MCL 324.501 to 324.513.

13 (ix) Part 89 of the natural resources and environmental
14 protection act, 1994 PA 451, MCL 324.8901 to 324.8907.

15 (x) Part 435 of the natural resources and environmental
16 protection act, 1994 PA 451, MCL 324.43501 to 324.43561.

17 (xi) Part 731 of the natural resources and environmental
18 protection act, 1994 PA 451, MCL 324.73101 to 324.73111.

19 (xii) Chapter LXXXV of the Michigan penal code, 1931 PA 328,
20 MCL ~~750.546~~ **750.552** to 750.552c.

21 (b) To arraign and sentence upon pleas of guilty or nolo
22 contendere for violations of the Michigan vehicle code, 1949 PA
23 300, MCL 257.1 to 257.923, or a local ordinance substantially
24 corresponding to a provision of the Michigan vehicle code, 1949 PA
25 300, MCL 257.1 to 257.923, except for violations of sections 625
26 and 625m of the Michigan vehicle code, 1949 PA 300, MCL 257.625 and
27 257.625m, or a local ordinance substantially corresponding to
28 section 625 or 625m of the Michigan vehicle code, 1949 PA 300, MCL
29 257.625 and 257.625m, if authorized by the chief judge of the

1 district court district and if the maximum permissible punishment
 2 does not exceed 93 days in jail or a fine, or both. However, the
 3 chief judge may authorize the magistrate to arraign defendants and
 4 set bond with regard to violations of sections 625 and 625m of the
 5 Michigan vehicle code, 1949 PA 300, MCL 257.625 and 257.625m, or a
 6 local ordinance substantially corresponding to section 625 or 625m
 7 of the Michigan vehicle code, 1949 PA 300, MCL 257.625 and
 8 257.625m.

9 (c) To arraign and sentence upon pleas of guilty or nolo
 10 contendere for violations of part 811 or 821 of the natural
 11 resources and environmental protection act, 1994 PA 451, MCL
 12 324.81101 to ~~324.81150~~ **324.81151** and 324.82101 to ~~324.82160,~~
 13 **324.82161**, or a local ordinance substantially corresponding to a
 14 provision of part 811 or 821 of the natural resources and
 15 environmental protection act, 1994 PA 451, MCL 324.81101 to
 16 ~~324.81150~~ **324.81151** and 324.82101 to ~~324.82160,~~ **324.82161**, except
 17 for violations of sections 81134, ~~81135,~~ 82128, and 82129 of the
 18 natural resources and environmental protection act, 1994 PA 451,
 19 MCL 324.81134, ~~324.81135,~~ 324.82128, and 324.82129, or a local
 20 ordinance substantially corresponding to sections 81134, ~~81135,~~
 21 82128, and 82129 of the natural resources and environmental
 22 protection act, 1994 PA 451, MCL 324.81134, ~~324.81135,~~ 324.82128,
 23 and 324.82129, if authorized by the chief judge of the district
 24 court district and if the maximum permissible punishment does not
 25 exceed 93 days in jail or a fine, or both. However, the chief judge
 26 may authorize the magistrate to arraign defendants and set bond
 27 with regard to violations of sections 81134, ~~81135,~~ 82128, and
 28 82129 of the natural resources and environmental protection act,
 29 1994 PA 451, MCL 324.81134, ~~324.81135,~~ 324.82128, and 324.82129.

1 (d) To arraign, if authorized by the chief judge of the
2 district court district, for a contempt violation or a violation of
3 a condition of probation if either arises directly out of a case
4 for which a judge or district court magistrate conducted the
5 arraignment under subdivision (a), (b), or (c), or the first
6 appearance under section 8513, involving the same defendant. This
7 subdivision applies only to offenses punishable by imprisonment for
8 not more than 1 year or a fine, or both. The district court
9 magistrate may set bond and accept a plea but shall not conduct a
10 violation hearing or sentencing.

11 (e) To issue warrants for the arrest of a person upon the
12 written authorization of the prosecuting or municipal attorney,
13 except written authorization is not required for a vehicle law or
14 ordinance violation within the jurisdiction of the magistrate if a
15 police officer issued a traffic citation under section 728 of the
16 Michigan vehicle code, 1949 PA 300, MCL 257.728, and the defendant
17 failed to appear.

18 (f) To fix bail and accept bond in all cases.

19 (g) To issue search warrants, if authorized to do so by a
20 district court judge.

21 (h) To conduct probable cause conferences and all matters
22 allowed at the probable cause conference, except for the taking of
23 pleas and sentencings, under section 4 of chapter VI of the code of
24 criminal procedure, 1927 PA 175, MCL 766.4, when authorized to do
25 so by the chief **judge of the** district court ~~judge-district~~.

26 **(i) To conduct a trial under section 5735, if authorized by**
27 **the chief judge of the district court district and if the**
28 **magistrate is an attorney at law.**

**Public Policy Position
HB 5326**

Support in Part; Oppose in Part

Explanation

The Committee voted to support the proposed change to MCL 600.5735 regarding advice of rights, but to oppose the proposed change to MCL 600.8511 regarding permit magistrates to conduct trials under Section 5735 of the Revised Judicature Act, if authorized by the Chief Judge of the District Court. In addition, the Committee believes that the bill should be amended to specify that advice of rights be given at the first responsive hearing.

Position Vote:

Voted For position: 19

Voted against position: 0

Abstained from vote: 1

Did not vote (absence): 4

Keller Permissibility Explanation

HB 5326 is *Keller* permissible because it is necessarily related to improving the functioning of the courts.

Contact Persons:

Daniel S. Korobkin dkorobkin@aclumich.org

Katherine L. Marcuz kmarcuz@sado.org

**Public Policy Position
HB 5326**

Support

Explanation

The Committee voted to support House Bill 5326, as it will promote both better informed litigants and judicial economy by more fully utilizing magistrates.

Position Vote:

Voted For position: 13

Voted against position: 4

Abstained from vote: 0

Did not vote (absence): 13

Keller Permissibility Explanation:

HB 5326 is *Keller*-permissible because it is necessarily related to improving the functioning of the courts.

Contact Person:

Daniel D. Quick dquick@dickinsonwright.com

From: [State Bar of Michigan](#)
To:
Subject:
Date: Public Policy Member Comments Tuesday, January 9, 2024 11:42:30 AM

Member Name: * Sheldon Larky

E-mail: * laskys@oakgov.com

Bill Number: HB 5326

Comment:

I am a part-time magistrate in the 52-4 District Court. I urge the State Bar to support HB 5326. As a magistrate, I have handled multiple first hearings in landlord-tenant cases. In addition, I have ruled on landlord-tenant disputes. The bill would codify the authority of magistrates to take care of first hearings in landlord-tenant cases. In addition, for magistrates who are attorneys, the bill would permit attorney-magistrates to adjudicate summary proceedings. By enacting this legislation, it will free up judges from these activities and permit magistrates to assist in more efficient use of court time and services. There will be better utilization of court resources.

May the State Bar post your comment Yes
on its website?

May a member of the State Bar contact Yes
you concerning this comment?
