

## The Formal Hearing

A formal hearing will be held when the defendant expressly requests one, or when the decision of an informal hearing is appealed. MCR 4.101(E)(2)(a) and 4.101(G)(2).

- If a hearing date is specified in the citation, that date is for an informal hearing. The defendant or defendant's counsel must contact the court at least 10 days before that date, in person, by representation, by mail, or by phone, to request a formal hearing. (If by phone, the court should mail the defendant a confirming notice.)
- If a hearing date is not specified in the citation, the defendant or defendant's counsel must contact the court, in person, by representation, by mail, or by phone, to obtain a scheduled date and time and expressly request a formal hearing. (If by phone, the court should mail the defendant a confirming notice.)

If the decision of an informal hearing is appealed, the Court shall schedule a formal hearing. The formal hearing is held de novo, meaning that the judge will hear the case as if for the first time; no consideration is given to the earlier hearing. MCR 4.101(G)(2).

A formal hearing must be conducted by a District Court Judge and takes place under rules more closely resembling those of a trial. A formal hearing is bound by the basic substantive law, the statutory provisions or rules of practice, procedure, pleading, and the rules of evidence. MCL 257.747(1) and (3); MSA 9.2447(1) and (3).

The defendant must testify when called as a witness and can only invoke the Fifth Amendment right against self-incrimination when his or her testimony will in fact tend to incriminate him or her. *People v Ferency*, 133 Mich App 526, 533—35 (1984).

- "There shall not be a jury trial at a formal hearing." MCL 257.747(4); MSA 9.2447(4).
- A verbatim record of a formal hearing is required. A record is needed because an appeal from a formal hearing is heard by a judge in circuit court, but the appeal is not heard de novo.
- "[T]he person cited may be represented by an attorney, but is not entitled to appointed counsel at public expense." The defendant may subpoena witnesses. MCL 257.747(2) and (3); MSA 9.2447(2) AND (3).
- "[The prosecuting attorney or attorney for the political subdivision... represents the plaintiff." That attorney may subpoena witness[es] for the plaintiff. MCL 257.747(3); MSA 9.2447(3).
- As in a civil proceeding, the court must determine that the defendant is responsible for violating a civil infraction by a preponderance of the evidence. MCL 257.747(5); MSA 9.2447(5).
- An appeal is a matter of right for both parties. MCR 4.101(G)(1).