

OCT 05 2021

8:55am

JEAN BOOHER

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR FERRY/STEVENS/PEND OREILLE COUNTY

IN THE MATTER OF:)
)
EVICITION RESOLUTION PILOT)
PROGRAM (ERPP))
)
)
_____)

STANDING ORDER
WITH EXHIBIT A

Effective 09/01/21 through 06/30/23

20-2-00001-10

1. **Findings. It is recognized that:**

- A. Since late February 2020, the COVID-19 public health and economic crisis have combined to cause great health, social and economic harm to the people of the state of Washington, rendering many thousands unable to meet basic living expenses, including but not limited to rent expenses.
- B. Responding to the public health and economic emergency, on March 18, 2020, Governor Inslee issued Proclamation No. 20-19 imposing a moratorium on most residential evictions in Washington State. This Proclamation was renewed and the eviction moratorium was extended on multiple occasions. The most recent extension (Proclamation 20-19.6) expired on June 30, 2021 pursuant to ch.115, Laws of 2021, sec. 4(1).
- C. Anticipating significant numbers of unlawful detainer filings upon anticipated expiration of the Governor’s eviction moratorium, the Superior Court Judges’ Association asked its Unlawful Detainer Work Group to develop a means of diverting nonpayment of rent cases away from the Courts and into a collaborative resolution process that brings together landlords and their attorneys, tenants, legal aid and housing justice projects, administrators of state and local rent assistance programs, and trained eviction resolution specialists employed by community-based dispute resolution centers. The pre-5160 SCJA Pilot Eviction Resolution Programs (ERPs) and related operating protocols were

- established in King, Snohomish, Pierce, Thurston, Clark, and Spokane Counties, and conciliation/mediation services commenced in November 2020.
- D. Current estimates indicate that more than 160,000 individual households are currently in rent arrears and face the prospect of potential eviction after the expiration of the moratorium.
- E. On April 22, 2021, Governor Inslee signed Engrossed Second Substitute Senate Bill 5160 into law (ch.115, Laws of 2021, sec. 4(1)) which took effect that day. This legislation substantially changes the law governing landlord-tenant relations, generally prevents eviction for failure to pay unpaid rents accrued during the Governor's eviction moratorium, changes unlawful detainer practice and procedure, provides statewide authorization and support for Court-established Eviction Resolution Pilot Programs (ERPPs) beyond the initial six pilot programs established pre-5160 by the SCJA and establishes a right to counsel for indigent tenants in unlawful detainer proceedings.
- F. The final FY 2021-23 operating budget enacted by the Washington State Legislature provides funding to underwrite ERPP operations, implement the right to counsel program for indigent tenants, and includes \$658,000,000 for rent assistance payments to tenants and landlords, offering landlords and tenants significantly expanded opportunities to resolve rent related disputes that might otherwise lead to the filing of an unlawful detainer action following expiration of the eviction moratorium.
- G. Court operations have been substantially curtailed since April 2020 due to the COVID-19 pandemic. Mandatory orders issued by the Washington Supreme Court and the need to comply with essential public health and safety protocols have caused this Court to suspend a range of operations, delay criminal and civil trials, and establish other procedures that have had profound negative impact on this Court's ability to provide timely consideration and render judgments in cases in virtually all dockets. This has resulted in a continuing substantial backlog of civil, criminal, juvenile, and child welfare matters. The COVID-19 challenges have been compounded by the anticipated new demands on this Court resulting from *State v. Blake*, 197 Wash.2d 170, 481 P.3d 521 (2021).

- H. Given the administrative backlog this Court is facing, the anticipated deluge of unlawful detainer filings following expiration of the eviction moratorium presents a continuing threat to the ability of this Court to timely hear and fairly decide such cases consistent with statutory deadlines, due process and mandated procedures.
- I. State and local rent-assistance programs offer the opportunity for immediate assistance in addressing rent arrearages (or portions thereof) and avoiding the need to seek recourse through the unlawful detainer process. Even in unlawful detainer cases that are filed, it is in this Court's interest in managing its docket, facilitating just outcomes, and wisely utilizing scarce judicial resources and capacity to divert cases away from the contested unlawful detainer process where there is a reasonable likelihood of a just resolution. This order is necessary for the fair administration of justice.
- J. Sec. 7(2) of ch. 115, Laws of 2021 requires that, where an ERPP is established under authority of a standing judicial order, landlords use that program before filing an unlawful detainer action based on nonpayment of rent. Section 7(3) requires that the landlord provide an ERPP-approved notice to the tenant of the eviction resolution program prior to filing an unlawful detainer action. The Court adopts and requires the landlord to use the form Notice developed by AOC in collaboration with the Office of the Attorney General. See *Exhibit A* hereto.
- K. Governor Inslee issued a Bridge Proclamation 21-09 on June 29, 2021, which is effective from July 1 – September 30, 2021. The Bridge Proclamation is not an extension of the Governor's Eviction Moratorium Proclamation. All evictions typically allowed under the law, with the exception of non-payment of rent, may resume July 1st.
- L. As required by the Bridge Proclamation: (1) Rental assistance programs are operational in both counties and (2) the Dispute Resolution Center providing ERPP services is operational in both counties. See Northwest Mediation Center:
<https://www.nwmediationcenter>.
- M. As required by Engrossed Second Substitute Senate Bill 5160, as interpreted by the Attorney General of Washington pursuant to an Opinion issued on July 9, 2021, each county must have in place the right-to-counsel provision of E2SSB 5160 before unlawful detainer actions may be commenced against indigent tenants in each county. Pending full implementation of the right-to-counsel provisions of E2SSB 5160 no unlawful detainer
- STANDING ORDER – SB 5160 *Eviction Resolution Pilot Program (ERPP)*

may proceed without the appointment of counsel for any indigent tenant subject to any ruling referenced in the below paragraph contained within this section.

Nothing in section M prevents a party from litigating, in good faith, the provisions contained within section M related to the Attorney General's opinion letter regarding the interaction of Governor's Proclamation 21-09 and ESSB 5160 and their effect on the timing of the requirement for Right to Counsel. The Court directs that the provisions contained within this section M are reserved for formal litigation and a proper determination by a judicial officer.

- N. It is understood that the local Dispute Resolution Center (DRC) and local Housing Justice Project (HJP) or legal aid program are prepared to assist tenants facing the threat of eviction and help tenants resolve that threat through non-judicial processes including the Eviction Resolution Program (ERPP).
- O. This Court has determined it appropriate to issue this standing order to establish an eviction resolution pilot program to divert unlawful detainer cases from the docket and facilitate pre-filing resolution of cases where the principle issue in context is non-payment of rent. The Court designates that the Honorable Judge Lech Radzinski will serve as the procedural point person(s) to work with relevant stakeholders on the implementation and ongoing administration of the ERPP and such designation has been provided to the Administrative Office of the Courts.

2. **Order:**

- A. **Landlord/Landlord Counsel's Obligations Regarding Eviction Resolution.** Prior to serving and/or filing a summons and complaint for nonpayment of rent *post-moratoria* the landlord or landlord's counsel shall: (i) ***strictly comply with*** the notice, service, and certification requirements of Sec. 7(3), (4), and (5) of Chapter 115, Laws of 2021, (ii) meet and confer with the local DRC and the tenant and tenant's attorney to facilitate the resolution of the issue of nonpayment of rent; and (iii) file the ERPP DRC Certification Form, issued by the DRCs, at the time of filing a summons and complaint with the Court.

B. DRC Scheduling and Certification of ERPP. The local DRC has finite resources and scheduling capacity for ERPP and will schedule conciliation meetings to occur as soon as possible. Should a tenant not engage within the first 14 days, DRC Certification shall be issued. The DRC may add relevant language to a certificate of ERPP participation prior to its issuance to a landlord that details: whether rent assistance was available at the time of the engagement (*for example*, did the tenant qualify for rent assistance and was rent assistance available in the relevant locality at this time), the date the DRC received the notice and the date on the notice, whether the tenant participated in ERPP efforts, whether the tenant had counsel during ERPP, whether the DRC was able to conduct conciliation efforts, and any other relevant information to help the Court determine whether the matter is ripe for adjudication. If a landlord files a nonpayment unlawful detainer case without DRC certification, the Court may consider whether the landlord complied with the ERPP and all conditions precedent to suit. Should the Court find that the landlord was entitled to DRC certification, the Court may proceed with the show cause hearing or trial and may afford any appropriate relief authorized by law including the issuance of a writ of restitution. The Court also retains its discretion to impose costs, sanctions, and or any other remedies available at law against landlords for any improper filings.

C. DRC Reporting Obligations. On a quarterly basis, the local DRC shall provide to the Court Administrator the ERPP data/information required by ch. 115, Laws of 2021, Sec. 7 (b)-(f) in a useable and readable format.

D. Initial Hearing Procedures for Unlawful Detainer Cases.

i. *Upon implementation of the right to counsel plan for this Court by OCLA pursuant to Secs. 8 and 9 of Chapter 115, Laws of 2021, the following provision will take effect:*

At the first hearing, the Court will advise the tenant of their right to appointed counsel if indigent and inquire whether they wish to assert that right. If so, the Court shall refer the tenant to the county-specific entity designated by the court or the Office of Civil Legal Aid (OCLA) screening and/or appointment of counsel (*e.g.* Eviction Defense Hotline or legal aid program) by sharing the name and contact number for said entity, unless counsel

has previously been appointed for the tenant prior to filing of the case with the Court. If a tenant is referred for appointment of counsel, the Court will continue the initial hearing as appropriate to allow the litigant to receive assistance from assigned counsel within appropriate timeframes as allowed by law and/or Court rule. If a properly served tenant fails to appear for hearing or otherwise fails to answer, nothing in this section modifies the requirements and remedies available per Civil Court Rule 55. Prior to the full implementation of the right counsel plan for this court by OCLA, no unlawful detainer matters shall move forward on any indigent tenant(s) appearing in court, without the court first appointing counsel and subject to the provisions and reservations contained within section M within this order.

ii. *In non-payment of rent cases in which a DRC Certification was issued after expiration of the Governor's eviction moratorium:* At the first hearing, the Court shall determine: (a) whether the landlord has complied with the notice, service, participation, and certification filing requirements of Sec. 7 of Chapter 115, laws of 2021, and (b) whether the landlord and tenant met and conferred with the local DRC for purposes of resolving the issue of nonpayment of rent. Sanctions available for the landlord's noncompliance with notice, service, or certification filing requirements include but are not limited to: awarding attorney's fees and costs, granting a continuance, and any other relief as allowed by law and/or Court rule;

iii. *In non-payment of rent cases in which a DRC Certification was issued during the Governor's eviction moratorium:* At the first hearing, the Court will inquire as to the circumstances surrounding the issuance of the DRC Certification.¹ The Court may continue the matter and or consider and grant other relief as allowed by law and/or Court rule.


iv. In non-payment of rent cases where a DRC Certification was issued along with an agreement between the parties, the Court reserves its ability to enforce such agreements,

¹ E.g., whether rent assistance was available at the time of the engagement (*for example*, did the tenant qualify for rent assistance and was rent assistance available in the relevant locality at this time), the date the DRC received the notice and the date on the notice, whether the tenant participated in ERPP efforts, whether tenant had counsel during ERPP, whether DRC was able to conduct conciliation efforts, and any other relevant information to help the court determine whether the matter is ripe for adjudication.

including those that reached agreement on matters addressed by the rental agreement beyond nonpayment of rent.

E. **Superseding Effect.** This order supersedes all prior standing orders issued with respect to the practice and procedure relating to the pilot Eviction Resolution Program, if any.

DATED this 4th day of October, 2021.



JESSICA T. REEVES
Presiding Judge

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**Superior Court of Washington
For Ferry/Stevens/Pend Oreille County**

In re: Application of _____ for
Appointment of Counsel in an Unfiled
Unlawful Detainer Case

No. _____
**Request for Administrative
Appointment of Counsel in Unfiled
Unlawful Detainer Case**

I. Nature of Petition

The undersigned is an attorney employed by or under contract with a legal aid provider that has been engaged by the Office of Civil Legal Aid to provide eviction defense services. In accordance with Administrative Order _____, attorney seeks appointment of counsel pursuant to RCW 59.18.640(1) in an unlawful detainer proceeding. Petitioner has been served a Summons in an unlawful detainer proceeding a copy of which is attached.

II. Basis for Indigency

The tenant represented by the undersigned attorney is indigent and meets the standard for indigency under sec. 8(2), ch. 115, laws of 2021 because:

2.1 The tenant represented by the undersigned was screened by the Eviction Defense Screening Line or _____ (Name of OCLA-Contracted Legal Aid Provider) and:

Is a recipient of Temporary assistance for needy families, aged, blind, or disabled assistance benefits, medical care services under RCW 74.09.035, pregnant women assistance benefits, poverty-related veterans' benefits, food stamps or food stamp benefits transferred electronically, refugee resettlement benefits, Medicaid, or supplemental security income;

OR

Application for Administrative Appointment of
Counsel in Unfiled Unlawful Detainer Case

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2 [] Has an annual household income of 200 percent or less of the
federal poverty guideline after taxes.

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4 I declare under penalty of perjury that the foregoing is true and correct to
the best of my knowledge.

5 DATED this ___ day of _____, 202__.

6
7 _____
Attorney for RTC Provider

8
9 **ADMINISTRATIVE APPOINTMENT OF COUNSEL**

- 10 1. In accordance with Administrative Order No. _____, the Ferry/Pend
11 Oreille/Stevens County Superior Court has delegated authority to the Superior
12 Court Administrator to receive, review, and approve applications for appointment
of counsel in unlawful detainer cases that have been commenced through
service of a summons without filing of the Complaint with the Superior Court.
- 13 2. Pursuant to RCW 59.18.640(1), _____ has requested
14 that an attorney be appointed to represent _____ in an
unlawful detainer case that has been commenced through service of a summons.
- 15 3. Upon review, it is determined that:
- 16 [] The tenant applicant has received a summons in an unlawful
17 detainer that has not yet been filed with the court.
- 18 [] The tenant applicant has been screened and determined to be
19 indigent and entitled to appointment of counsel in accordance with
the indigency standards in RCW 59.18.640(2).
- 20 [] The Court Administrator has been granted authority to appoint an
attorney to represent the tenant applicant.
- 21 4. _____ (name of attorney or law firm) is hereby appointed
to represent the tenant applicant in the above referenced unlawful detainer case.
- 22 5. Upon filing of a complaint for unlawful detainer with the Superior Court,
23 _____ (name of attorney or law firm) shall file a notice of

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appearance and continue to represent the tenant applicant through the duration of the case.

Date: _____

FERRY/PEND OREILLE/STEVENS COUNTY

Superior Court Administrator