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2021 AUG 25 PM 3:07
VIRGINIA LEACH, CLERK
PACIFIC COUNTY, WA
COPY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR PACIFIC COUNTY

Appointment of Counsel for Indigent Defendants in Unlawful Detainers	**ORDER 2021-1** **STANDING ORDER** 21-2-00001-25

I. Purpose

Pursuant to Ch. 115, Laws of 2021 (Senate Bill 5160), this Court must appoint an attorney for an indigent defendant in an unlawful detainer proceeding commenced under RCW 59.12, 59.18, 59.20. Administration and funding for attorney representation is assigned to the Office of Civil Legal Aid (OCLA), which has until April 22, 2022 to fully implement the right to counsel (RTC) program statewide. OCLA has entered into contracts with the Thurston County Volunteer Legal Services to recruit, train, and make available attorneys to accept appointments to represent indigent tenants against whom unlawful detainer proceedings have been commenced in accordance with RCW 4.28.020 and the statutes referenced above.

II. Process for Appointment in Unfiled Proceedings

In any proceeding commenced by service of a summons upon a defendant but not filed with the Court, and in which a defendant has been screened by the Eviction Defense Screening Line indicated on the Summons[1] or a by local qualified legal aid provider, the Court designates the Superior Court Administrator for Pacific County to accept applications for appointment of counsel in unfiled matters. Appointment of counsel shall occur by filing of an application by the local OCLA-contracted provider of eviction defense services with the Court Administrator. Such application shall indicate the parties, identify the tenant defendant represented by the contractor, date of service of the summons upon the defendant, affirmation that the tenant has been screened and found eligible for appointed counsel under the standards in sec. 8, ch. 115, laws of 2021, and the identity of the OCLA-contracted provider. Upon receipt of the application, the Court Administrator (or their designee) will approve the appointment of counsel to represent the tenant defendant in the proceeding.

[1] Sec. 10, ch. 115, laws of 2021 amends the required form for the unlawful detainer Summons and now includes the number for the Eviction Defense Screening Line.

III. Process for Appointment at Show Cause or other Court Hearings

After the filing of any unlawful detainer covered by this rule, or at any show cause hearing or trial where a tenant defendant appears unrepresented, the Court will advise the tenant of their right to appointed counsel if indigent and inquire whether they wish to assert that right. If the tenant defendant requests appointment of counsel, the Court shall refer them to (a) the entity identified by OCLA to receive referrals for tenant screening and assignment or, where OCLA has not identified an entity to receive referrals for tenant screening and assignment, (b) the Eviction Defense Screening Line by phone or online portal. The Court will inquire whether the defendant requires interpreter services to effectively participate in the proceeding, consult with counsel, or access the Eviction Defense Screening Line. The Court will also inquire whether the tenant defendant has a disability that may require accommodation to enable them to effectively participate in the proceeding and RTC eligibility screening.

If a tenant defendant is referred for appointment of counsel, the Court will continue the initial hearing for not less than one week to permit the tenant defendant time to be screened for eligibility and, if eligible, secure appointment of and consult with their counsel. Sufficient time shall be allowed for the appointed counsel to engage with plaintiff and their attorney, review pleadings, conduct informal discovery, attempt to negotiate a settlement, develop a defense to the claim for writ of restitution, and otherwise ensure fairness of the proceeding, After appointment of counsel and upon motion of either party, the Court may further continue the show cause or trial to permit the parties additional time to negotiate a resolution, refer the matter for mediation services with the local Eviction Resolution Pilot Program, or refer the matter for further settlement efforts. In determining whether to continue or refer a matter, the Court will consider (a) the availability of rental assistance in nonpayment of rent cases, (b) the likelihood that further mediation services will resolve the matter without need for a contested hearing, (c) the existence and reasonableness of any repayment plan offered by the plaintiff to the defendant as required by sec. 4, ch. 115, laws of 2021, or (d) other circumstances relevant to the determination of whether to proceed with the hearing.

IV. Effective Date/Suspension of Duty to Appoint

This Order shall take effect upon the Court's receipt of notification from OCLA that sufficient funding and attorney capacity is available to meet the demand for appointed attorneys in Pacific County Superior Court and shall continue in effect unless or until OCLA advises that insufficient funding and/or attorney capacity is available to continue accepting appointments, in which case the Court's duty to appoint under this Order shall be suspended. Appointments shall resume upon notification from OCLA that sufficient funding and attorney capacity has been restored.

DATED this 25 day of August, 2021.

Presiding Judge Donald J. Richter

Attachments:

1. Request for Administrative Appointment of Counsel in Unfiled Unlawful Detainer Case

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR PACIFIC COUNTY

Eviction Resolution Pilot Program (ERPP)[1]	**STANDING ORDER** with Exhs. A & B ***Effective July 28, 2021 through June 30, 2023***[2] 21-2-00001-25

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) expires 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

[1] ERP changed to ERPP given language in ch. 115, Laws of 2021, Sec. 7.
[2] Per ch. 115, Laws of 2021, Sec. 7(9).

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 current moratorium expires.

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.

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. 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. 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).

L. 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 both pre-filing and post-filing resolution of cases where the principle issue in context is non-payment of rent. The court designates that Judge Donald J. Richter 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) engage in conciliation services 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 attached as *Exhibit B* at the time of filing a summons and complaint with the court.

B. **DRC Certification of ERPP.** The local 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.

C. **DRC Reporting Obligations.** On a quarterly basis, the local DRC shall provide to the Court Administrator the ERPP data/information required by 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 Office of Civil Legal Aid (OCLA) for eligibility 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.

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 engage in conciliation services 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, redirecting the parties back to the DRC for attempted resolution, 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.[3] The court may continue the matter and redirect the parties back to the DRC for attempted resolution prior to conducting a hearing on the merits or grant a continuance 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, 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 25 day of August, 2021.

The Honorable Presiding Judge Donald J. Richter

[3] 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.

Superior Court of Washington For Pacific County	No.
In re: Waiver of Fees and Costs and Appointment of Counsel	**Petition and Order for Waiver of Fees and Costs and Appointment of Counsel** **(For use in unfiled unlawful detainers)** **CLERK'S ACTION REQUIRED**

I. Nature of Petition

Petitioner seeks appointment of counsel pursuant to section 8(1), ch. 115, laws of 2021 [RCW reference to be added when codified] for appointment of counsel. Petitioner hasbeen served a Summons in an unlawful detainer proceeding.

II. Basis for Indigency

The Petitioner is indigent and meets the standard for indigency under both GR 34 and sec. 8(2), ch. 115, laws of 2021 because:

2.1 Petitioner was screened by the [ ] Eviction Defense Screening Line [ref. sec. 11,ch. 115, laws of 2021] or [ ]_____(a qualified legal services provider) and:

[ ] Petitioner is 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

[ ] Petitioner has an annual household income of 200 percent or lessof the federal poverty guideline after taxes.

AND

[ ] Petitioner is represented by an attorney affiliated with a qualified legal services provider

III. Order

Based on the representations in Sec. II above, the court orders:

3.1 [ ] The petition for wavier of fees and costs under GR 34 is granted.

3.2 [ ] The petition for waiver of fees and costs under GR 34 is denied.

3.3 [ ] The petition for appointment of counsel is granted, and

[ ] The following is appointed to provide representation to the Defendant pursuant to sec. 8(1), ch. 115, laws of 2021:

_____

_____

_____

(address and phone).

[ ] other: _____

_____

_____

_____

3.4 [ ] The Clerk shall accept for filing and assign a civil case number to this matter.

3.5 [ ] The petition for appointment of counsel is denied.

Dated: _____ _____

Judge/Commissioner

Presented by:

_____

Signature of Party or Lawyer/WSBA No.

_____

Print or Type Name Date

***Important!* Landlords:** Fill out page 1 completely and correctly with all the information that you know. Your information and your attorney's information, if you have one, must be included. At the time of service or mailing of the pay or vacate notice and this form to the tenant, you must **also** send a copy to the local dispute resolution center serving the area where the property is located (see page 2). You should retain proof of service.

Behind on rent? Here is a chance to resolve the dispute with your landlord

Superior Court Eviction Resolution Pilot Program (ERPP)

Tenants: To participate see below and respond by (date):_____!

(14 days after this notice is given to tenant)

***Important!* Tenants: Failure to respond to this notice within 14 days may result in the filing of a summons and complaint for an unlawful detainer action with the court (eviction).**

To:	Tenant's Name:	
	Property Address:	
	Tenant's Phone:	Tenant's Email:

From:	Landlord's Name:	
	Landlord's service address:	
	Landlord's Phone:	Landlord's Email:
	Landlord's Lawyer (if any) Name:	
	Lawyer's Address:	
	Lawyer's Phone:	Lawyer's Email:

Your landlord is asking you to take part in the Eviction Resolution Pilot Program

Do not wait! You can get help.

What is the Eviction Resolution Pilot Program (ERPP)?

Your county's Superior Court uses this program. ERPP requires landlords to try to reach agreements with tenants about unpaid rent before they can ask for eviction in court. You may be eligible for **rent assistance** and **legal help** through the ERPP.

If you participate in the ERPP, your landlord must work with you and a specialist from your local **Dispute Resolution Center** (DRC). If that solves the problem, great! If not, the DRC will offer free mediation. Mediation is voluntary – it only happens if both sides agree to do it.

You have a right to negotiated **payment plan** that works for you.

Why should I participate?

If you get this notice and do **not** respond or try to reach an agreement, your landlord may file for eviction in court. You can get help from a **free lawyer** if you are not sure what to do.

- **Rent assistance**
- **Free mediation**
- **Free legal help**

What is mediation? It is when a trained person (a mediator) helps you solve a problem or reach an agreement with someone else. You can ask for mediation at your local **Dispute Resolution Center**. Mediators are impartial and help all participants reach resolution.

Get help now! Contact these free resources in Pacific County.

	Rent Assistance Rental & Utility Assistance – PACIFIC COUNTY HEALTH & HUMAN SERVICES COVID – 19 NEWS & RESOURCES (pacificcountycovid19.com) 360-214-9996 rentassistance@co.pacific.wa.us
	Dispute Resolution Centers Dispute Resolution Center of Grays Harbor & Pacific Counties erp@drcghp.org 360-532-8950 www.drcghp.org/erp Se habla español!
	Lawyers Thurston County Volunteer Legal Services (TCVLS) 360-705-8194 Eviction Defense Screening Line 1-855-657-8387
	Free interpreter services are available at all these programs The Washington State Office of the Attorney General has this notice in multiple languages on its website: www.atg.wa.gov/landlord-tenant. You will also find information there on how to find a lawyer or advocate at low or no cost and any available resources to help you pay your rent. Alternatively, you may find additional information to help you at www.washingtonlawhelp.org and www.courts.wa.gov.

I want to take part in the Eviction Resolution Pilot Program. What do I do now?

You can start the process by doing one of these things:

- Contact the Dispute Resolution Center in your county.
- Fill out and return this form to your landlord at the address on page 1. Keep a copy.

You can also get a lawyer, whether or not you participate in the ERPP.

✔ **Yes, I want help resolving my unpaid rent.** Contact me at:	
Tenant's Name:	
Tenant's Address:	
Tenant's Phone:	Tenant's Email:

IN THE SUPERIOR COURT OF STATE OF WASHINGTON, IN THE COUNTY OF PACIFIC

_____ Plaintiff vs. _____ Defendant(s)	NO. DISPUTE RESOLUTION CERTIFICATE (CR)

EVICTION RESOLUTION PROGRAM (ERP)

DRC CERTIFICATION: I declare under penalty of perjury under the laws of the State of Washington that the following is true and correct.

	DRC Certification Approved by Print name:	Sign name: Signed at (city/state): Date:		
	Date of DRC Certification	**DRC Case #**		
	Certification Delivery Type	Tenant: [ ] Email [ ] Postal mail Landlord: [ ] Email [ ] Postal mail		
	City & County of Property/Dwelling:			
	Landlord/Landlord Representative Name & Role (e.g. owner, property manager)			
	Property Name (if applicable)			
	Tenant Name			
	Did Landlord have counsel? [ ] YES [ ] NO **Counsel Name:**	**Did Tenant have counsel?** [ ] YES [ ] NO **Counsel Name:**		
	Counsel Referred? [ ] Tenant [ ] Landlord	**Date DRC received notice:**		
	DRC Tried to Contact Tenant on:	Date:	Date:	Date:
	Conciliation Occurred [ ] YES [ ] NO	Date:		
	Meet & Confer Occurred [ ] YES [ ] NO	Date:		
	Mediation Occurred [ ] YES [ ] NO	Date:		

Resolution Achieved [ ] Full Agreement [ ] Partial Agreement [ ] No Agreement

Additional Information:

NOTICE: *By certifying herein, the Dispute Resolution Center is not making any certification as to whether the parties acted in good faith.*

Exhibit B