

FILED

AUG 04 2021

TIMOTHY W. FITZGERALD
SPOKANE COUNTY CLERK

No. 94-2-06940-8

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

MODEL STANDING ORDER – with Exhs. A & B

Eviction Resolution Pilot Program (ERPP)¹

Effective August 4, 2021 through June 30, 2023².

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

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).

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. NEW: 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 this county and (2) the Dispute Resolution Center providing ERPP services is operational in this county. See [Northwest Mediation Center: <https://www.nwmediationcenter.com/> ; and Fulcrum Institute Dispute Resolution Clinic: <https://www.fulcrumdispute.com/>]
- 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, the

county must have in place the right-to-counsel provision of E2SSB 5160 before unlawful detainer actions may be commenced against indigent tenants in this county. Pending full implementation of the right-to-counsel provisions of E2SSB 5160 by the Office of Civil Legal Aid, this Court has received certification that the right-to-counsel agreement between the county and OCLA has been approved.

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. The Court directs that the provisions contained within this section M are reserved for formal litigation and a proper determination by the assigned Unlawful Detainer Judge, Judge Tony Hazel, Dept. #6, subject to a properly filed motion. Parties are encouraged to check on the status of any such ruling by contacting Judge Hazel's JA prior to filing any duplicative motions. No such motions are pending at the time of this order's entry.

- 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 Tony Hazel 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 attached as *Exhibit B* 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 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. 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.

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;

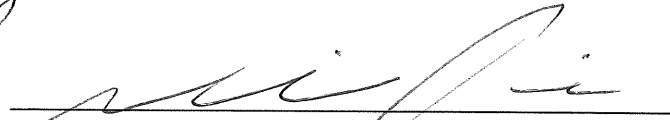
iii. *In non-payment of rent cases in which a DRC Certification was issued during the Governor's eviction moratorium:* At the first hearing, the Court will inquire as to the circumstances surrounding the issuance of the DRC Certification.³ The Court may continue the matter and or consider and grant other 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, including those that reached agreement on matters addressed by the rental agreement beyond nonpayment of rent.

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.

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 4 day of August, 2021.



The Honorable Michael P. Price
Acting Presiding Judge

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. You must provide a copy of this notice to the tenant and **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 your county.

	<p>Rent Assistance</p> <p>www.snapwa.org Call 509-456-7627</p>
	<p>Dispute Resolution Centers</p> <p>(509) 456-0103 ext. 3, info@nwmediationcenter.com, NW Mediation (509) 838-2799, housing@fulcrumdispute.com, Fulcrum DRC</p>
	<p>Lawyers</p> <p>Statewide Eviction Defense Screening Line 1-855-657-8387 (free) (509) 477-2674, Spokane Bar Association VLP, HJP</p>
	<p>Free interpreter services are available at all these programs</p> <p>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.</p>

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.

<input checked="" type="checkbox"/> Yes, I want help resolving my unpaid rent. Contact me at:	
Tenant's Name:	
Tenant's Address:	
Tenant's Phone:	Tenant's Email: