

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR BENTON AND FRANKLIN COUNTIES

STANDING ORDER – with Ex. A & Ex. B

Eviction Resolution Pilot Program (ERPP)¹

Effective October 7, 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 June 30, 2021. Governor Inslee issued a Bridge Proclamation 21-09 on June 29, 2021 and an extension thereto on September 30, 2021, *i.e.* Emergency Proclamation 21-09.2 (aka Bridge Proclamation extension).
- 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 also identified herein as E2SSB 5160.

² Per ch. 115, Laws of 2021, Sec. 7(9).

specialists employed by community-based dispute resolution centers. The pre-E2SSB 5160 SCJA Pilot Eviction Resolution Programs (ERPs) and related operating protocols were established in King, Snohomish, Pierce, Thurston, Clark, and Spokane Counties, and conciliation and/or mediation services commenced in November 2020.

- D. Current estimates indicate that more than 220,000³ 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 (*i.e.* ch.115, Laws of 2021) 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 and/or modify various operations, delay criminal and civil trials, and establish other procedures that have had a profound impact on how and when this court considers and renders judgment in cases in virtually all dockets. This has resulted in a continuing

³ Surveys from July 5th, 2021 suggest that approximately 16% of Washington's renters are behind on rent, or 220,059 households. (<https://www.census.gov/data/tables/2021/demo/hhp/hhp33.html#tables>; see Housing Tables 1b).

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 Emergency Proclamation 21-09.2 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 to divert not-yet-filed cases away from the contested unlawful detainer process in court to the Eviction Resolution Pilot Program where there is a reasonable likelihood of a just resolution. This order is necessary for the fair administration of justice.
- J. Sec. 4(2) of ch. 115, Laws of 2021 states: "If a tenant has remaining unpaid rent that accrued between March 1, 2020, and six months following the expiration of the eviction moratorium or the end of the public health emergency, whichever is greater, the landlord must offer the tenant a reasonable schedule for repayment of the unpaid rent that does not exceed monthly payments equal to one-third of the monthly rental charges during the period of accrued debt. If a tenant fails to accept the terms of a reasonable repayment plan within 14 days of the landlord's offer, the landlord may proceed with an unlawful detainer action as set forth in RCW 59.12.030(3) but subject to any requirements under the eviction resolution pilot program established under section 7 of this act."⁴
- K. Sec. 7(2) of ch. 115, Laws of 2021 requires that, where an ERPP is established in a county, landlords use that program before filing an unlawful detainer action based on nonpayment of rent. Section 7(3) of ch. 115, Laws of 2021 requires that the landlord provide an ERPP-approved notice to the tenant with the 14-day notice to pay or vacate

⁴ Sec. 4(4) of ch. 115, Laws of 2021 states: "It is a defense to an eviction under RCW 59.12.030(3) that a landlord did not offer a repayment plan in conformity with this section."

- prior to filing an unlawful detainer action. The Court adopts and requires landlords to use the form ERPP Notice developed by AOC in collaboration with the Office of the Attorney General. *See Exhibit A.*
- L. Governor Inslee issued Emergency Proclamation 21-09.2 on September 30, 2021 which is in effect through October 31, 2021. The Emergency Proclamation is not an extension of the Governor's Eviction Moratorium Proclamation (20-19) which expired on June 30, 2021. All evictions typically allowed under the law, with the exception of non-payment of rent, may resume July 1st.
 - M. The local rental assistance program is operational and has attested to being operational and the Dispute Resolution Center (DRC) providing ERPP services in this county is operational and has attested to being operational.
 - N. The necessity of an effective and meaningful ERPP is key to successful diversion of cases from the court. The Court recognizes the local Housing Justice Project (HJP) and the local DRC do not have unlimited human and other resources such that it may be a challenge to handle the anticipated massive influx of nonpayment of rent cases requiring ERPP. The Court recognizes the local DRC may implement ERPP intake and processing protocols, for example, requiring one e-mail per each ERPP notice related to one tenant and scheduling ERPP meet and confer appointments on a first come-first serve basis as well as other protocols.
 - O. This Court acknowledges the position of some stakeholders that Sec. 8 of ch. 115, Laws of 2021, as interpreted by the Attorney General of Washington pursuant to a letter issued on July 9, 2021, means indigent tenants in unlawful detainer actions/proceedings have a right to counsel notwithstanding that OCLA's full implementation of the right-to-counsel plan has not yet occurred. Given the terms of the Emergency Proclamation 21-09.2 and excepting unlawful detainer cases based on nonpayment of rent, this Court acknowledges the position of some stakeholders that the Court has the discretion to delay or not to delay unlawful detainer proceedings involving indigent tenants who have requested counsel until OCLA certifies that the conditions precedent to operationalizing the right-to-counsel plan have been met and such certification has been transmitted to this Court. Because this court is located in a county that has a HJP or a Volunteer Lawyer Program (VLP)

acting as the HJP provider, the Court shall determine whether the tenant is indigent and, upon finding that the tenant is indigent, may continue the case to allow the tenant to access HJP or other pro bono services which may include but not be limited to appearance by a HJP or other pro bono attorney on behalf of the tenant in the pending case

- P. It is understood that, pending certification of the right-to-counsel program's availability and subject to the caveat detailed in Para. O hereinabove, the local Dispute Resolution Center (DRC) and local Housing Justice Project (HJP) or Volunteer Lawyer Program acting as a HJP provider 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).
- Q. 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 court's docket and facilitate pre-filing resolution of cases where the principal issue is non-payment of rent. The Court designates that Judge Jacqueline Shea-Brown will serve as the procedural point person 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 the landlord or landlord's counsel shall:

(i) strictly comply with the notice, service, and certification requirements of Sec. 7(3), and the requirements of Sec. (4) of ch. 115, Laws of 2021, if and as applicable, as well as the Emergency Proclamation 21-09.2 if and as applicable⁵;

⁵ The Court adopts and requires the Landlord to use the form ERPP Notice developed by AOC in collaboration with the Office of the Attorney General. *See Exhibit A.*

(ii) meet and confer with the local DRC, the tenant and the tenant's attorney to facilitate the resolution of the issue of nonpayment of rent, *e.g.* accessing rental assistance as well as entering reasonable payment plans within the timeframes provided by law; and

(iii) file the ERPP DRC Certification Form (prepared by and received from the DRC) at the time of filing a summons and complaint with the court. *See* Exhibit B.

B. **Tenant's Obligations regarding Eviction Resolution.** Tenants are expected to respond to landlords regarding establishing reasonable repayment plans and participate in the Court's Eviction Resolution Pilot Program pursuant to the timelines established in E2SSB 5160 and the Emergency Proclamation 21-09.2 if and as applicable.

C. **DRC Scheduling and Certification of ERPP.**

(1) It is expected that the local DRC shall schedule and complete ERPP as well as issue DRC certification pursuant to ch. 115, Laws of 2021, *i.e.* E2SSB 5160 and the Emergency Proclamation 21-09.2, if and as applicable.

(2) A landlord and tenant may agree to extend the timeframes for scheduling and completing the ERPP.

(3) If a landlord files a nonpayment of rent unlawful detainer case without DRC certification, this Court may address whether the landlord complied with the ERPP process as contemplated by E2SSB 5160 and all conditions precedent to suit. Should the Court find that the landlord was entitled to DRC certification notwithstanding DRC's failure to certify, the Court may proceed with the show cause hearing or trial.

(4) 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 at this time), the date the DRC received the ERPP notice and the date on the ERPP notice, whether the tenant participated in ERPP efforts, whether the tenant had counsel during ERPP and whether the DRC was able to conduct conciliation efforts.

D. **DRC Reporting Obligations** In order to comply with the requirements of ch. 115, Laws of 2021, Sec. 7(7) related to ERPP data collection, the Court acknowledges that the local DRC (by and through Resolution Washington, *i.e.* ResWA) has agreed to provide and will provide ERPP data as detailed in Sec. 7(7)(b)-(d) to AOC through an AOC-

designated portal. It is understood that AOC will collect, analyze, and organize the data provided by the DRC and provide an ERPP data report to the legislature as required by ch. 115, Laws of 2021 Sec. 7 (8) on the dates identified therein.

E. Initial Hearing Procedures for Unlawful Detainer Cases.

(1) 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 by sharing the name and contact number for said entity as well as the number for the free Eviction Defense Screening Line, *i.e.* 855-657-8387. 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.

(2) In non-payment of rent cases in which a DRC Certification was issued *after expiration* of the Governor's Eviction Moratorium (*i.e.* after June 30, 2021):

(a) At the first hearing, the Court shall determine whether the landlord has complied with the notice, service, participation, and certification filing requirements of Sec. 7 of ch. 115, Laws of 2021, with Sec. 4 of ch. 115, Laws of 2021, as well as the Emergency Proclamation 21-09.2 issued on September 30, 2021, if and as applicable.

(b) If the tenant fails to appear at the first hearing, and the Court finds the landlord has demonstrated compliance with the applicable law, the Court may issue an order of default at the request of the landlord;

(c) 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.

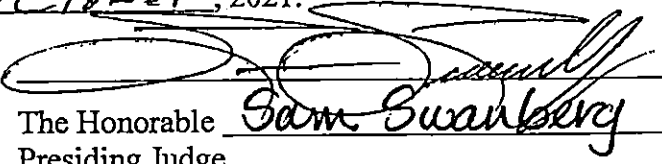
(3) In non-payment of rent cases in which a DRC Certification was issued *during* the Governor's eviction moratorium: At the first hearing, the Court may inquire as to the

circumstances surrounding the issuance of the DRC Certification.⁶ The Court may continue the matter or consider and grant other relief as allowed by law and/or court rule.

(4) 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.

F. **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 7 day of October, 2021.


The Honorable Sam Swanberg
Presiding Judge

⁶E.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 and whether DRC was able to conduct conciliation efforts.

ERPP Standing Order

Exhibit "A"

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 your county.

	<p>Rent Assistance Housing Resource Center 7102 W. Okanogan Place, Suite 201, Kennewick, WA Phone: (509)737-3946</p>
	<p>Dispute Resolution Center of Tri-Cities 5219 W. Clearwater Avenue – Suite 11 Kennewick, WA 99336 Phone: (509)783-1043 Email: erpspecialist@drctc.org</p>
	<p>Lawyers Benton-Franklin Legal Aid Telephone: (509) 221-1824 Email: bflegalaid1@ymail.com Call line: Monday-Thursday 9:00 a.m. to 2:00 p.m.</p>
	<p>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.</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:

ERPP Standing Order

Exhibit "B"

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

_____	CASE NO. _____
Plaintiff/Landlord, vs.	DISPUTE RESOLUTION CERTIFICATE (CR)
_____	EVICITION RESOLUTION PILOT PROGRAM (ERPP)
Defendant(s)/Tenant(s).	(DRC Case #: _____)

Certification Delivery Type:	Landlord: <input checked="" type="checkbox"/> Email <input type="checkbox"/> Postal mail <input type="checkbox"/> In Person
	Tenant: <input checked="" type="checkbox"/> Email <input type="checkbox"/> Postal mail <input type="checkbox"/> In Person
City & County of Property/Dwelling:	
Landlord/Landlord Representative Name & Role (e.g., owner, property manager):	
Property Name, Address, or Legal Description (if applicable):	
Tenant Name(s):	
Did Landlord have counsel? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	Did Tenant have counsel? <input type="checkbox"/> YES <input type="checkbox"/> NO
Counsel Name:	Counsel Name:
Counsel Referred? <input checked="" type="checkbox"/> Landlord <input type="checkbox"/> Tenant	Date DRC received notice:
DRC Tried to Contact Tenant on:	Date: _____ Date: _____ Date: _____
Conciliation Occurred <input type="checkbox"/> YES <input type="checkbox"/> NO	Date: _____
Meet & Confer Occurred <input type="checkbox"/> YES <input type="checkbox"/> NO	Date: _____
Mediation Occurred <input type="checkbox"/> YES <input type="checkbox"/> NO	Date: _____

Resolution Achieved NO Check if Additional Information Attached (Page 2 is optional. If this box is not checked, there is no second page.)

I declare under penalty of perjury under the laws of the state of Washington that the statements on this form are true and correct. By certifying herein, the Dispute Resolution Center (DRC) is not making any certification as to whether the parties acted in good faith.

Signed at _____, Washington. Date: _____

Signature of DRC Representative

Printed name

Additional Information:

Rental Assistance

- Rental assistance was not available in the county at the time of the engagement
- Tenant did not qualify for rental assistance
- Rental assistance application remained pending throughout the engagement
- Landlord declined to accept available rental assistance

ERPP Process - Notice & Intake

- DRC received the ERPP Notice on _____ (date) while the Tenant response date on the ERPP notice was _____ (date)
- ERPP Notice did not include a valid ____ phone or ____ email address for Tenant; signed certified USPS mail attempt to contact Tenant ____ was ____ was not received by the DRC
- Tenant did not respond to DRC's attempts to contact
- Tenant declined to participate in ERPP services or withdrew from further participation
- Upon conversation with the Tenant, the DRC determined the case is infeasible for ERPP services

ERPP Process - Conciliation

- DRC did not receive necessary information from the parties to facilitate conciliation (e.g., rental assistance availability, lease, ledger, or repayment plan offer) during conciliation stage

ERPP Process - Meet-and-Confer/Mediation

- Tenant did not appear at the meet-and-confer/mediation
- Landlord appeared only through counsel at the meet-and-confer/mediation
- DRC did not receive necessary information to facilitate negotiation (e.g., rental assistance availability, lease, ledger, or repayment offer) at the meet-and-confer/mediation

Other: _____

