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2
3 **KITSAP COUNTY SUPERIOR COURT**
4 **STATE OF WASHINGTON**

5
6 IN RE THE MATTER OF THE RESPONSE BY THE
7 KITSAP COUNTY SUPERIOR COURT TO THE
8 PANDEMIC OUTBREAK OF THE CORONAVIRUS
9 DISEASE 2019 (COVID-19)

10 **STANDING ADMINISTRATIVE ORDER**
11 **REGARDING UNLAWFUL DETAINER**
12 **ACTIONS AND THE EVICTION**
13 **RESOLUTION PILOT PROGRAM**
14 **(ERPP)**

15 *EFFECTIVE AUGUST 20, 2021 THROUGH JUNE 30, 2023.¹*

16 THIS ADMINISTRATIVE ORDER is being issued in response to the current pandemic outbreak of the
17 Coronavirus Disease 2019 (COVID-19).² Incorporated by reference are all Kitsap County Superior
18 Court Emergency Orders, Supreme Court Orders related to public health emergency and court
19 operations (**specifically including Order No. 25700-B-639 authorizing the Eviction Resolution**
20 **Pilot Program in Superior Courts, dated and filed on September 9, 2020**), Revised Code of
21 Washington 59.18, Washington State Department of Health orders, Kitsap County Public Health
22 District orders and directives that may impact Court operations, as well as any relevant Proclamations
23 by Governor Jay Inslee.

24 WHEREAS, the Court makes the following findings:

- 25 A. Since late February 2020, the COVID-19 public health and economic crisis have combined to
26 cause great health, social and economic harm to the people of the state of Washington,
27 rendering many thousands unable to meet basic living expenses, including but not limited to
28 rent expenses.
- 29 B. Responding to the public health and economic emergency, on March 18, 2020, Governor
30 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

¹ Per ch. 115, Laws of 2021, Sec. 7(9).

² Hereafter "disease."

1 extended on multiple occasions. The most recent extension (Proclamation 20-19.6) expired
2 June 30, 2021. Governor Inslee issued a Bridge Proclamation 21-09 on June 29, 2021.

- 3 C. Anticipating significant numbers of unlawful detainer filings upon anticipated expiration of
4 the Governor's eviction moratorium, the Superior Court Judges' Association asked its
5 Unlawful Detainer Work Group to develop a means of diverting nonpayment of rent cases
6 away from the courts and into a collaborative resolution process that brings together
7 landlords and their attorneys, tenants, legal aid and housing justice projects, administrators of
8 state and local rent assistance programs, and trained eviction resolution specialists employed
9 by community-based dispute resolution centers. The pre-5160 SCJA Pilot Eviction
10 Resolution Programs (ERPs) and related operating protocols were established in King,
11 Snohomish, Pierce, Thurston, Clark, and Spokane Counties, and conciliation/mediation
12 services commenced in November 2020.
- 13 D. Current estimates indicate that more than 220,000³ individual households are currently in
14 rent arrears and face potential eviction after the current moratorium expires.
- 15 E. On April 22, 2021, Governor Inslee signed Engrossed Second Substitute Senate Bill 5160
16 into law (ch.115, Laws of 2021, sec. 4(1)) which took effect that day. This legislation
17 substantially changes the law governing landlord-tenant procedures, generally prevents
18 eviction for failure to pay unpaid rents accrued during the Governor's eviction
19 moratorium, changes unlawful detainer practice and procedure, provides statewide
20 authorization and support for court-established Eviction Resolution Pilot Programs
21 (ERPPs) beyond the initial six pilot programs established pre-5160 by the SCJA and
22 establishes a right to counsel for indigent tenants in unlawful detainer proceedings.
- 23 F. The final FY 2021-23 operating budget enacted by the Washington State Legislature
24 provides funding to underwrite ERPP operations, implement the right to counsel program for
25 indigent tenants, and includes \$658,000,000 for rent assistance payments to tenants and
26 landlords, offering landlords and tenants significantly expanded opportunities to resolve rent
27

28
29 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).

1 related disputes that might otherwise lead to the filing of an unlawful detainer action
2 following expiration of the eviction moratorium.

- 3 G. Court operations have been substantially curtailed since April 2020 due to the COVID-19
4 pandemic. Mandatory orders issued by the Washington Supreme Court and the need to
5 comply with essential public health and safety protocols have caused this court to suspend
6 and/or modify various operations, delay criminal and civil trials, and establish other
7 procedures that have had a profound negative impact on how and when this court considers
8 and renders judgments in all cases. This has resulted in a substantial backlog of civil,
9 criminal, juvenile, and child welfare matters. The COVID-19 challenges have been
10 compounded by the anticipated new demands on this court resulting from *State v. Blake*, 197
11 Wn.2d 170, 481 P.3d 521 (2021).
- 12 H. Given the administrative backlog this court is facing, the anticipated deluge of unlawful
13 detainer filings following expiration of the Bridge Proclamation 21-09 after September 30,
14 2021, and implementation of OCLA's right to counsel for indigent tenants in unlawful
15 detainer actions (aka proceedings) presents a continuing threat to the ability of this court to
16 timely hear and fairly decide such cases consistent with statutory deadlines, due process and
17 mandated procedures.
- 18 I. State and local rent-assistance programs offer the opportunity for immediate assistance in
19 addressing rent arrearages (or portions thereof) and avoiding the need to seek recourse
20 through the unlawful detainer process. It is in this court's interest in managing its docket,
21 facilitating just outcomes, and wisely utilizing scarce judicial resources to divert not-yet-filed
22 cases away from the contested unlawful detainer process in court to where there is a
23 reasonable likelihood of a just resolution.
- 24 J. Sec. 7(2) of ch. 115, Laws of 2021 requires that, where an ERPP is established under
25 authority of a standing judicial order, landlords use that program before filing an unlawful
26 detainer action based on nonpayment of rent. Section 7(3) requires that the landlord provide
27 an ERPP-approved notice to the tenant of the eviction resolution program along with the 14-
28 day notice to pay or vacate prior to filing an unlawful detainer action. The Court adopts and
29 requires the Landlord to use the form Notice developed by AOC in collaboration with the
30 Office of the Attorney General. See *Exhibit A* hereto.

- 1 K. Governor Inslee issued Bridge Proclamation [21-09](#) on June 29, 2021, which is effective from
2 July 1 – September 30, 2021. The Bridge Proclamation is not an extension of the Governor’s
3 Eviction Moratorium Proclamation (20-19). All evictions typically allowed under the law,
4 with the exception of non-payment of rent, may resume July 1st, provided any applicable,
5 statutory right to counsel requirements are fulfilled.
- 6 L. As required by the Bridge Proclamation: (1) The local rental assistance program submitted an
7 attestation to the appropriate entity/entities affirming that it is operational in this county; and
8 (2) the local dispute resolution center has submitted an attestation to the appropriate
9 entity/entities affirming ERPP is operational in this county.
- 10 M. *Exhibit A* hereto suffices as the ERPP Notice required by the Bridge Proclamation that the
11 landlord must give to the tenant providing an opportunity to participate in an operational
12 rental assistance program and an operational ERPP.
- 13 N. The necessity of an effective and meaningful ERPP is key to successful diversion of cases
14 from the court. The court recognizes the local HJP and local DRC do not have unlimited
15 human and other resources to handle the anticipated massive influx of nonpayment of rent
16 cases requiring ERPP. The court also recognizes that an effective ERPP requires the local
17 DRC to implement ERPP intake and processing protocols, for example, requiring one e-mail
18 per each ERPP notice related to one tenant and scheduling ERPP meet and confer
19 appointments on a first come-first serve basis as well as other protocols.
- 20 O. As required by Sec. 8 of ch. 115, Laws of 2021 and as interpreted by the Attorney General of
21 Washington pursuant to a letter issued on July 9, 2021, indigent tenants in unlawful detainer
22 actions (aka proceedings) have a right to counsel. Accordingly, unlawful detainer actions
23 (aka proceedings) involving indigent tenants who have requested counsel will be delayed
24 until OCLA certifies that the conditions precedent to operationalizing the right-to-counsel
25 plan have been met and such certification has been transmitted to this court. Because this
26 court is located in a county that has a HJP (or a VLP acting as the HJP provider), the court
27 shall determine whether the tenant is indigent and upon finding that the tenant is indigent,
28 continue the case to allow the tenant to access HJP or other *pro bono* services which may
29 include but not be limited to appearance by a HJP or other *pro bono* attorney on behalf of the
30 tenant in the pending case.

1 P. It is understood that, pending the right-to-counsel program’s availability and subject to the
2 caveat detailed in Para. N, the local Dispute Resolution Center (DRC), the local Housing
3 Justice Project (HJP), or Volunteer Lawyer Program acting as a HJP provider are prepared to
4 assist tenants facing the threat of eviction and help tenants resolve that threat through non-
5 judicial processes including the Eviction Resolution Program (ERPP).

6 Q. This court finds it appropriate to issue this standing order to establish an eviction resolution
7 pilot program to divert unlawful detainer cases from the docket and facilitate both pre-filing
8 and post-filing resolution of cases where the principle issue in context is non-payment of
9 rent. The court designates that Kitsap County Superior Court Judge Kevin D. Hull will serve
10 as the procedural point person(s) to work with relevant stakeholders on the implementation
11 and ongoing administration of the ERPP and such designation has been provided to the
12 Administrative Office of the Courts.

13 **NOW, THEREFORE ORDERED:**

14 A. **Landlord/Landlord counsel’s Obligations regarding Eviction Resolution.** Prior to
15 serving and/or filing a summons and complaint for nonpayment of rent *post-moratoria* the
16 landlord or landlord’s counsel shall:

- 17 (i) *strictly comply with* the notice, service, and certification requirements of Sec. 7(3), (4),
18 and (5) of Chapter 115, Laws of 2021;
- 19 (ii) meet and confer with the local DRC and the tenant and tenant’s attorney to facilitate the
20 resolution of the issue of nonpayment of rent, e.g. accessing rental assistance as well as
21 entering reasonable payment plans; and,
- 22 (iii) file the ERPP DRC Certification Form at the time of filing a summons and complaint
23 with the court.

24 B. **Tenant’s Obligations regarding Eviction Resolution.** Tenants must respond to landlords
25 regarding establishing reasonable repayment plans and participate in eviction resolution
26 programs per the timelines established in E2SSB 5160. (*See Governor’s Bridge*
27 *Proclamation – Page 4.*)

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

2 (1) During the effective period of the Bridge Proclamation, the local DRC shall make every
3 effort to schedule the meet and confer for the landlord and the tenant (and their respective
4 counsel) within 28 days of receipt of the ERPP Notice;

5 (2) Once the Bridge Proclamation expires, the local DRC shall make every effort to schedule
6 the meet and confer for the landlord and tenant (and their respective counsel) within 14 days
7 of receipt of the ERPP Notice;

8 (3) during and after the expiration of the Bridge Proclamation, the parties may agree to
9 extend the timeframe (as detailed in this section) for scheduling the meet and confer;

10 (4) the local DRC shall implement processes to meet all anticipated scheduling timeframes;

11 (5) During the effective time period of the Bridge Proclamation, should a tenant not engage
12 in the first 28 days (after the landlord has issued/served the ERPP notice and, subsequently
13 the 14-day notice to pay or vacate), DRC Certification that the landlord has satisfied the
14 requirements of Sec. 7 of Chapter 115, Laws of 2021 shall issue;

15 (6) After the Bridge Proclamation has expired, should a tenant not engage in the first 14 days
16 (pursuant to the ERPP Notice and the 14-day notice to pay or vacate), DRC Certification that
17 the landlord has satisfied the requirements of Sec. 7 of Chapter 115, Laws of 2021 shall
18 issue;

19 (7) If a landlord files a nonpayment of rent unlawful detainer case without DRC certification,
20 this Court may address whether the landlord complied with the ERPP and all conditions
21 precedent to filing. Should the court find that the landlord was entitled to DRC certification
22 notwithstanding DRC's failure to certify, the court may proceed with the show cause hearing
23 or trial;

24 (8) The DRC may add relevant language to a certificate of ERPP participation prior to its
25 issuance to a landlord that details: whether rent assistance was available at the time of the
26 engagement (*for example*, did the tenant qualify for rent assistance and was rent assistance
27 available in the relevant locality at this time), the date the DRC received the ERPP notice and
28 the date on the ERPP notice, whether the tenant participated in ERPP efforts, whether the
29 tenant had counsel during ERPP, whether the DRC was able to conduct conciliation efforts,
30

1 and any other relevant information to help the court determine whether the matter is ripe for
2 adjudication.

3 D. **DRC Reporting Obligations** In order to comply with the requirements of ch. 115, Laws of
4 2021, Sec. 7(7) related to ERPP data collection, the Court acknowledges that the local DRC
5 (by and through Resolution Washington, *i.e.* ResWA) has agreed to provide and will provide
6 ERPP data as detailed in Sec. 7(7)(b)-(d) to AOC through an AOC-designated portal. It is
7 understood that AOC will collect, analyze, and organize the data provided by the DRC and
8 provide an ERPP data report to the legislature as required by ch. 115, Laws of 2021 Sec. 7
9 (8) on the dates identified therein.

10 E. **Initial Hearing Procedures for Unlawful Detainer Cases.**

11 *(1) Upon implementation of the right to counsel plan for this court by OCLA pursuant to*
12 *Secs. 8 and 9 of Chapter 115, Laws of 2021, the following provision will take effect:* At the
13 first hearing, the court will advise the tenant of their right to appointed counsel if indigent and
14 inquire whether they wish to assert that right. If so, the court shall refer the tenant to the
15 county-specific entity designated by the Office of Civil Legal Aid (OCLA) for eligibility
16 screening and/or appointment of counsel (*e.g.* Eviction Defense Hotline or legal aid program)
17 by sharing the name and contact number for said entity, unless counsel was previously
18 appointed for the tenant prior to filing of the case with the court. If a tenant is referred for
19 appointment of counsel, the Court will continue the initial hearing as appropriate to allow the
20 litigant to receive assistance from assigned counsel within appropriate timeframes as allowed
21 by law and/or court rule.

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

24 (a) At the first hearing, the court shall determine:

25 (i) whether the landlord has complied with the notice, service, participation,
26 and certification filing requirements of Sec. 7 of Chapter 115, laws of
27 2021, and the Governor's Bridge Proclamation 21-09 issued on June 29,
28 2021 as applicable; and

29 (ii) whether the landlord and tenant met and conferred with the local DRC
30 for purposes of resolving the issue of nonpayment of rent;

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

4 (c) Sanctions available for the landlord's noncompliance with notice, service, or
5 certification filing requirements include but are not limited to: awarding attorney's
6 fees and costs, granting a continuance, and any other relief as allowed by law and/or
7 court rule;

8 (3) *In non-payment of rent cases in which a DRC Certification was issued during the*
9 *Governor's eviction moratorium:* At the first hearing, the court will inquire as to the
10 circumstances surrounding the issuance of the DRC Certification.⁴ The court may continue
11 the matter or consider and grant other relief as allowed by law and/or court rule.

12 (4) In non-payment of rent cases where a DRC Certification was issued along with an
13 agreement between the parties, the court reserves its ability to enforce such agreements,
14 including those that reached agreement on matters addressed by the rental agreement beyond
15 nonpayment of rent.

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

18 DATED this 18th day of August, 2021.

19
20
21 
22 _____
23 The Honorable KEVIN D. HULL
24 Presiding Judge

25
26 _____
27 ⁴ E.g., whether rent assistance was available at the time of the engagement (*for example*, did the tenant qualify for rent
28 assistance and was rent assistance available in the relevant locality at this time), the date the DRC received the notice
29 and the date on the notice, whether the tenant participated in ERPP efforts, whether tenant had counsel during ERPP,
30 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.

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 may qualify to 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 <i>Kitsap Community Resources</i> 1201 Park Avenue Bremerton, WA 98337 (360) 473-2035</p>
	<p>Dispute Resolution Centers <i>Dispute Resolution Center of Kitsap County</i> 9004 Washington Ave Silverdale, WA 98383 Phone: (360) 698-0968</p>
	<p>Lawyers <i>Kitsap Legal Services</i> PO Box 1446 Bremerton, WA 98337 Phone: (360) 479-6125</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 may also qualify for a free 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: