

The Supreme Court
State of Washington

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MEMORANDUM

TO: David Schumacher, Director
Office of Financial Management Nona Snell, Assistant Director
Budget Division
Office of Financial Management

CC: Kathryn Leathers
Governor's General Counsel Keith Phillips
OFM Executive Policy Director

Jim Baumgart
OFM Senior Policy Advisor Lisa Brown, Director
Department of Commerce

FROM: Hon. Debra Stephens
Chief Justice
Washington State Supreme Court Dawn Marie Rubio
State Court Administrator
Admin. Office of the Courts

Hon. Judith Ramseyer, President
Superior Court Judges Association James Bamberger, Director
Office of Civil Legal Aid

DATE: September 9, 2020

RE: Emergency Supplemental Request for CARES Act and/or Other
Discretionary COVID-19 Emergency Funds

The Washington State Supreme Court, Administrative Office of the Courts (AOC), Superior Court Judges Association (SCJA), and Office of Civil Legal Aid (OCLA) (hereafter judicial branch agencies) jointly request your prompt consideration and approval of emergency funds to immediately establish and operate a pilot Eviction

Resolution Program (ERP) in seven counties¹ which, collectively, experience more than 80% of total eviction filings. As outlined below, the ERP is a collaborative effort bringing together the superior courts, local legal aid Housing Justice Projects (HJP's), community-based dispute resolution programs (DRCs), and entities administering federal, state, local, and philanthropic rent assistance funds.

The objective of the ERP is to resolve disputes involving the non-payment of rent during the COVID-19 pandemic in a manner that protects tenancies, facilitates payments to landlords, and mitigates the likelihood of an overwhelming demand on court resources at a time when courts are managing a substantial backlog of criminal, civil, child welfare, and juvenile cases stayed or delayed as result of COVID-19.

The judicial branch agencies seek \$976,000 in unobligated Coronavirus Fund (CRF) funding to allow the superior courts in the pilot counties to establish and begin operating ERPs from September 15, 2020 and December 31, 2020. Should there remain unobligated or reclaimed funding from the \$200M Disaster Response Account or other funds made available, we would like to work with you to carry pilot program operations into the balance of SFY 2021 so that tenants, landlords, and courts can address the crisis that they will collectively face upon expiration of the federal, state, and local eviction moratoria.

Judicial Branch ERP Contacts:

1. ERP Policy: King County Superior Court Judge Judith Ramseyer,
SCJA President
James Bamberger, Office of Civil Legal Aid
2. ERP Budget: Dawn Marie Rubio, State Court Administrator
Ramsey Radwan, AOC Management Services Director

Background

Beginning in February 2020, nearly one million people in Washington state lost their jobs or had employment hours severely curtailed because of the COVID-19 emergency. This mass loss of income coupled with substantial barriers in accessing state and pandemic unemployment insurance has made it impossible for many families and individuals (tenants) to keep current in rental payments.

¹ Pilot counties include Snohomish, King, Pierce, Thurston, Clark, Yakima, and Spokane.

Recognizing the risk of mass evictions flowing from the COVID-19 emergency, federal, state, and local governments began enacting moratoria on evictions. These moratoria continue to operate, effectively denying landlords access to the only legal means of removing tenants for failure to pay all or part of their rents – the unlawful detainer process. Some local moratoria (*e.g.*, City of Seattle) have been extended through December 31st, while the Governor’s most recent extension of the emergency moratorium is currently slated to expire October 15, 2020.² On September 4, 2020, the Centers for Disease Control and Prevention (CDC) – recognizing that evictions compound the health risks experienced by individuals and communities and the risk of mass virus transmission—issued a national moratorium on evictions through December 31, 2020.³

In recent months, state and local rent assistance programs – funded with emergency federal CRF and CDBG-CV funds, state, local, and philanthropic funds – have been established with the objective of preserving tenancies threatened due to the non-payment of rent and providing some level of relief to landlords for whom tenants have fallen farther and farther behind in their rental payments due to the COVID-19 emergency. The largest of these is the statewide Emergency Rental Assistance Program (ERAP) established by the Department of Commerce with the \$100M in CRF funds administered by local non-profit agencies throughout the state.⁴

Between April and July 2020, in accordance with various emergency orders promulgated by the Washington State Supreme Court and local court orders, and in compliance with state Department of Health (DOH) guidelines, trial courts ceased the majority of their in-court operations, stayed and delayed civil and criminal trials, established off-site virtual operational capacities and focused judicial functions on the most critical and emergent judicial proceedings. In virtually every trial court, the disruption of court processes created lengthy backlogs of civil, criminal, juvenile, and child welfare trials that will take months to clear.

The Residential Landlord-Tenant Act (RCW 50.18) and the Unlawful Detainer statute (RCW 50.12) set forth accelerated processes by which landlords can secure return of their property when tenants fail to pay their rent on time. These statutes employ compressed timelines designed to facilitate early review and determination by a judicial officer of a

² In the most recent Proclamation extending the moratorium through October 15th, Governor Inslee established an informal Eviction Moratorium Work Group comprised of legislators and stakeholders (a number of whom serve on the SCJA UD Work Group) which is scheduled to meet for the first time on September 4, 2020.

³ The CDC moratorium is found at <http://federalregister.gov/d/2020-19654>.

⁴ The list of Commerce/CRF-funded rent assistance programs is found at:

<https://deptofcommerce.app.box.com/s-bszltdq77zdid2d0yfqd5uq6k5ga07t3>.

landlord's claimed right to retake possession. In normal times, unlawful detainer proceedings are given priority status. The most recent extension of Governor Inslee's eviction moratorium ([Proclamation 20-19.3](#)) is scheduled to expire October 15, 2020.⁵ The CDC's federal moratorium will expire December 31, 2020.

Prior to the most recent extension of the state moratorium and issuance of the federal moratorium, courts recognized the imminent threat of mass unlawful detainer filings and their likely inability to timely process them while, at the same time, process the backlog of stayed trials. At the request of Chief Justice Stephens, the SCJA established an Unlawful Detainer Work Group (UD Work Group) in early June. The UD Work Group included representatives of statewide landlord associations, civil legal aid HJP's, local housing authorities, and the superior courts to (a) provide training for judicial officers on recent changes to the unlawful detainer process resulting from state and federal laws and emergency orders; and (b) develop tools, to facilitate the timely and fair resolution of unlawful detainer cases once the moratorium is lifted. The UD Work Group is chaired by Benton-Franklin Counties Superior Court Judge Jackie Shea-Brown.

During the course of its deliberations, Chief Justice Stephens and Judge Ramseyer invited the UD Work Group's members to consider the possibility of designing an eviction resolution program that might divert substantial numbers of cases away from overwhelmed, overburdened, and understaffed courts in ways that work to the *mutual* benefit of tenants and landlords. The UD Work Group quickly achieved consensus around the framework of a pilot Eviction Resolution Program that, if funded, would operate in the seven Washington State counties that collectively see more than 80% of annual unlawful detainer filings.

Components of the Pilot Eviction Resolution Program

Three components are critical to our state's success in avoiding thousands of unnecessary evictions and the resulting substantial increase in homelessness, risk of virus transmission, and potential loss of sizeable numbers of rental units due to foreclosure as a consequence of landlords' inability to service debt on their properties: (1) A robust tenant and landlord rent assistance program; (2) the availability of on-demand civil legal assistance for tenants unable to pay their rent and who will face eviction when the moratoria are lifted; and (3) a court-operated process that facilitates resolution of rent

⁵ That order created the Governor's Eviction Workgroup to help guide the development and implementation of successive orders as may be needed. The Governor's Eviction Work convened for the first time on September 4, 2020.

non-payment cases prior to an unlawful detainer being filed.⁶ OFM has funded the first with its allocation of \$100M in CRF funding to Commerce for its ERAP, and the second with its allocation of CRF and Disaster Response Account (DRA) funding to OCLA which used a portion of the funding to expand the capacity of ten (10) courthouse-based HJP's (including those serving in the seven pilot counties). This joint judicial branch request offers OFM the opportunity to underwrite the third leg of the stool: a court-operated process (including third party conciliation and mediation services) that facilitates resolution of non-payment cases prior to the filing of an unlawful detainer.

Pilot ERP Overview

Each pilot ERP will operate in accordance with (a) an enabling order from the Washington State Supreme Court, and (b) a standing order of the local superior court. These orders will require landlords to undertake efforts to engage tenants in pre-filing resolution efforts including direct negotiation, facilitated conciliation services, and, upon agreement of both parties, formal mediation. The objective is to bring all parties to the table, with the assistance of qualified and trained Eviction Resolution Specialists (ERSs), to determine the amount of rent arrears, the current and prospective circumstances of the tenant, the availability of rent and other assistance to cure or partially cure the arrearage, and the range of other terms that might resolve the matter in a way that allows the tenant to retain housing or (where continuation of the tenancy is not possible) the terms under which the tenant may vacate the housing without the need to file an unlawful detainer action.

Principal parties and their roles include:⁷

- **Washington State Supreme Court:** Issue an enabling order for the courts in the seven pilot counties.
- **Superior Courts** in each of the seven pilot counties: Adopt a standing order mandating that landlords comply with the Pilot ERP, including Tier 1 and Tier 2 notification and engagement processes prior to serving and/or filing a summons and complaint for non-payment of rent.
- **Local Dispute Resolution Centers (DRC's):** Receive landlord notices; engage tenants, HJP attorneys, administrators of local rent assistance programs, and others as necessary to commence early resolution of nonpayment of rent and related

⁶ The mere filing of an unlawful detainer has serious and long-lasting impacts on tenants, prejudicing their future ability to find rental units, corrupting their credit history, and adversely affecting their ability to secure employment.

⁷ Materials developed by the UD Work Group outlining the specific details of the ERP are attached.

issues; provide conciliation and, where agreed upon by both parties, mediation; and complete a DRC Certification, issuance of which is a condition precedent to the landlord's authority to serve and/or file a summons and complaint for non-payment of rent.

- **Civil Legal Aid Housing Justice Projects:** Receive notices from landlords, DRCs, or others; engage with and provide legal assistance to tenants participating in the pilot ERP; participate in DRC-hosted conciliation and mediation services.
- **Washington State Office of Civil Legal Aid:** Provide CRF/DRA funding to provide immediate civil legal assistance for tenants by HJP's in each of the pilot ERP counties.
- **Washington State Administrative Office of the Courts:** Contract and provide reimbursement for costs associated with the pilot ERP program.

Because the capacity and range of services offered by participating entities in each of the pilot counties differ, so too will the look and operation of the pilot ERPs. Nevertheless, all will use model forms and certifications developed by the UD Work Group and the functional range of evictions resolution services will be consistent.

Early resolution will help achieve better outcomes and should substantially reduce the anticipated demand on superior courts when these moratoria are lifted. Consequently, while the standing orders will establish mandatory conditions precedent to service and/or filing of a summons and complaint for non-payment of rent in the participating counties, the intent is that landlords and tenants engage the pilot ERP process even while eviction moratoria remain in place.

Looking Forward into CY 2021

The eviction crisis has not abated; it has simply been pushed forward into January 2021. Funding requested here focuses on the four-month period between September and December 2020, as current authorization to expend CRF funding expires at the end of the calendar year. Having now imposed a national moratorium on evictions, we trust that the current administration understands the need to continue support for rent assistance, civil legal aid, and other programs (including the ERP) into 2021. We look forward to continuing to work with the appropriate parties, and our pilot ERP partners to extend and expand the ERP to other counties and, ultimately, establish a permanent, state-wide ERP in each county.

Budget Components

Components of the emergency ERP budget are outlined below and in the attached documents:

DRC program costs:

Staff:	\$560,000
Operating:	\$341,000
Outreach/Translation/Interpreter/Research:	\$ 75,000
Total:	\$976,000

Attachments:

- Letter from Judge Shea-Brown to Chief Justice Stephens and Judge Ramseyer
- Commitment letter from Resolution Washington on behalf of pilot DRCs

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

7122 W. Okanogan Place, Building A, Kennewick, WA 99336

SUPERIOR COURT JUDGE
Jacqueline Shea-Brown

Benton County Justice Center
Franklin County Courthouse
Benton County Courthouse
Telephone (509) 736-3071
Fax (509) 736-3057

August 31, 2020

The Honorable Debra L. Stephens, Chief Justice
Washington State Supreme Court

The Honorable Judith Ramseyer, Judge
King County Superior Court
President, SCJA

Ms. Dawn Marie Rubio, J.D.
State Court Administrator
Administrative Office of the Courts

Re: SCJA Unlawful Detainer Work Group

Dear Chief Justice Stephens, Judge Ramseyer and Administrator Rubio –

On behalf of the SCJA Unlawful Detainer Work Group (UD WORK GROUP), I want to thank you for your joint letter of July 28, 2020 and for your sincere appreciation of the efforts by UD WORK GROUP to develop judicial resources for use in unlawful detainer cases.

It was and remains my honor to chair the UD WORK GROUP. The UD WORK GROUP members include landlord representatives and tenant representatives whose level of expertise, I would venture to say, makes them subject matter experts. Their respective expertise facilitated our valuable collaboration on the assigned action items.

Your request that the SCJA Unlawful Detainer Work Group develop a “court-house based unlawful detainer early resolution process” focused on cases where non-payment of rent¹ is the principal reason for the eviction was seen as a justice-oriented and fairness-focused endeavor by the UD WORK GROUP.

¹ It is believed that 90% of the unlawful detainer cases filed in Washington state are due to nonpayment of rent.

SCJA UD WORK GROUP

August 31, 2020

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The UD WORK GROUP appreciated and shared your serious concerns about how courts could handle and fairly consider the deluge of unlawful detainer cases, *post-moratorium*, given the ongoing challenges courts are facing due to COVID-19.

The UD WORK GROUP gladly accepted your request and worked in earnest these past several weeks to achieve consensus on a pilot Eviction Resolution Program (ERP) with the goal of diverting a significant amount of unlawful detainer cases from the courts when the state eviction moratorium expires on October 15th.² Given that the vast majority of unlawful detainer cases are filed in approximately six to seven counties in Washington, the ERP focuses on those counties that will likely have the most need.

With all due respect, and with sincere gratitude for extending the timeline for providing you with a response, the UD WORK GROUP makes the following recommendations for implementing the ERP *post-moratorium*: (1) that the Washington State Supreme Court issue an emergency order authorizing establishment of the ERP in each of the pilot counties with the goal of diverting a significant amount of unlawful detainer cases (due to nonpayment of rent) from the courts; (2) that the ERP be implemented in six to seven pilot counties, *i.e.* Clark, King, Pierce, Snohomish, Spokane, Thurston and Yakima counties³; (3) that on or before September 15, 2020, each pilot county notify AOC of the judicial officer(s) that will serve as the procedural point person(s) to work with relevant stakeholders on the implementation and ongoing administration of the ERP; (4) that AOC, in partnership with the Office of Civil Legal Aid (OCLA) allocate a portion of CARES Act funds to underwrite the technology and operational expenses in each pilot county for the ERP; (5) that the ERP incorporate a Tier 1 and Tier 2 process (see descriptions attached) that includes use of one or more mandatory forms; (6) that the superior courts in the pilot counties use a form standing order, which may be modified based on local-specific requirements/needs, mandating compliance with the ERP as a condition precedent to filing an unlawful detainer case (based on nonpayment of rent) or serving a summons and complaint in an unlawful detainer case (based on nonpayment of rent) in the court; (7) that the Administrative Office of the Courts (AOC) contract with one or more local state Dispute Resolution Centers (DRC) for each pilot county to recruit (where needed), train and deploy Eviction Resolution Specialists (ERS) to facilitate the ERP at both the Tier 1 and Tier 2 levels; (8) that the AOC use a form contract with the local DRC for each pilot county; (9) that the local DRC provide trained Eviction Resolution Specialists (ERS) to facilitate the ERP both at the Tier 1 and Tier 2 levels; (10) that AOC, OCLA, the local DRCs, and the local HJPs publish the ERP materials and forms on their respective websites, if available; (11) that the ERP include the use of AOC-funded and court-certified interpreters if and as needed and that the ERP Notice #1 and Notice #2 be translated into the languages deemed most useful, *e.g.* Chinese, Korean, Russian, Spanish and Vietnamese; and (12) that the ERP process be implemented through the current end of

² Or, if it is extended again, upon its ultimate expiration.

³ Each pilot county court has been contacted and, subject to further information, is willing to participate in the Pilot ERP.

SCJA UD WORK GROUP

August 31, 2020

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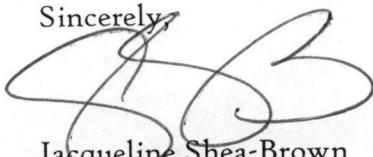
the CARES Act funding period (December 31, 2020), unless authority to expend such funding is extended or new COVID-19 emergency funding becomes available.

With recognition that there are a variety of stakeholders already taking action to address the eviction crisis in a variety of counties, as well as the legal constraints on the courts, it is further recommended that landlords and tenants in the pilot counties be encouraged to voluntarily engage with the ERP process *during* the continuing state and local moratoria. To that end, the UD WORK GROUP recommends that outreach and education be implemented to maximize the success of the ERP. However, the fiscal realities and the limited timeframe of the ERP narrow the viability of outreach and education options. In lieu of a website or digital advertisements on social media channels, the UD Work Group recommends creation and distribution of user-friendly, public service announcements for the purpose of informing landlords and tenants of the ERP process and encouraging voluntary participation in the ERP as of October 1, 2020. If resources and time allow, we recommend an even more aggressive effort to educate the public and promote the ERP employing social media and other relevant platforms.

Enclosed with this letter are the following documents relevant to the ERP process: (1) An overview of the SCJA Pilot ERP; (2) Tier 1 ERP process sheet; (3) Tier 2 ERP process sheet; (4) Notice #1 (to be used in the Tier 1 ERP process); (5) Notice #2 (to be used in the Tier 2 ERP process); (6) DRC Certification Form for use with Tier 1 and Tier 2 ERP processes; (7) a proposed standing order for each pilot county with Exhibit A; and (8) a proposed contract (for AOC to contract with the local DRCs);

In closing, while each member of the UD WORK GROUP meaningfully participated in numerous meetings, raised thoughtful questions, provided useful input and dedicated much time and effort to the UD-ERP, it is vital and important for me to recognize Jim Bamberger, the Director of the Office of Civil Legal Aid (OCLA), Edmund Witter of the King County Bar Association Housing Justice Project, Brett Waller, Director of Government Affairs at the Washington Multi-Family Housing Association, and LaDessa Croucher, Senior Director of the Dispute Resolution Center in Snohomish County (which is part of the Volunteers of America organization) for their invaluable contributions, exceptional work product and expert guidance as the UD WORK GROUP developed the ERP. Their respective imprimaturs of excellence are evident throughout all aspects, processes and forms of the ERP.

Sincerely,



Jacqueline Shea-Brown

Chair, UD WORK GROUP

Judge, Benton-Franklin Counties Superior Court

Encs.

cc: James Bamberger, OCLA



Washington's Association of Dispute Resolution Centers

September 9, 2020

David Schumacher, Director
Office of Financial Management

RE: Letter of Commitment for the Eviction Resolution Program

Dear Director,

We are writing to express our commitment and support for the Eviction Resolution Program (ERP) designed to address Washington's growing eviction crisis.

Our member Dispute Resolution Centers (DRCs) worked closely with the Superior Court Judges Association, Office of Civil Legal Aid, King County Bar Association, and landlord and tenant associations to design the ERP. We utilized the extensive experience of the DRCs, legal aid and other stakeholders to develop an approach to address the growing eviction crisis in a manner that is trauma-informed and effective in meeting the needs of tenants and landlords while reducing burdens on the courts.

On July 24th, Governor Inslee issued a proclamation extending the eviction moratorium and "strongly encouraged landlords and tenants to avail themselves of the services offered at existing DRCs to come to agreement on payment and repayment solutions." DRCs are answering the call, both individually to the best of their ability with limited resources, and collaboratively through the ERP.

As soon as funding is available we will prepare to launch direct services under the ERP in King, Pierce, Snohomish, Spokane, Clark, Thurston and Yakima Counties. We will offer the same online program participation training for all 21 DRCs, as many are responding locally to their community's eviction crisis. Our goal is to facilitate communication and resolution between landlords and tenants to prevent COVID-related evictions when the moratorium lifts. The program supports payment plans and behavior agreements that keep tenants in their homes and support landlord rent collection.

Resolution Washington, the statewide association of DRCs operating under RCW 7.75, affirms our commitment to implement the Eviction Resolution Program in collaboration with partnering agencies. Eviction risk is a statewide problem and we hope to have the opportunity to expand the program statewide soon. We hope support will be available in the near future to expand program planning not only for this quarter but into 2021. Resolution Washington will utilize our statewide network of DRCs to deliver critical eviction prevention support throughout Washington with your help.

Sincerely,

A handwritten signature in black ink.

Astrid Aveledo
Co-President, Resolution Washington
Executive Director, DRC of Grays Harbor & Pacific
Counties
astrid@drcghp.org (360) 532-8950

A handwritten signature in black ink.

Andrea Pacheco
Co-President, Resolution Washington
Washington Program Director, Six Rivers DRC
office@6rivers.org (541) 386-1283