

Evictions by Default Judgment in Washington State

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Introduction

With the passage of Senate Bill 5160 in 2021, Washington became the first state in the country to provide all low-income individuals with access to attorneys during unlawful detainer (eviction) cases. The appointed counsel program created by S.B. 5160 is a significant intervention in the routine processes of eviction. The program targets several common reasons why people may not avail themselves of legal representation, such as cost, lack of information, or unavailability of attorneys. Instead, at the beginning of the legal proceedings that could lead to an eviction, people across the state now receive notice that an attorney is available to them – free of charge.

However, the impact of this and any similar program is attenuated by the fact that many tenants facing eviction do not engage in the legal process at all. Rather than responding to a summons and appearing in court for their hearing, many tenants receive a “default judgment” because they do not participate in the legal process. If tenants facing an eviction case do not respond to court documents and attend required hearings, then they can neither receive nor benefit from legal representation.

In Washington, default judgments in eviction cases occur “When the defendant fails to appear and plead at the time specified in the notice, or within one hour thereafter”.¹ In unlawful detainer cases, a default judgment against the tenant is the result of one of three occurrences:

1. Non-response to summons: occurs when a tenant fails to respond to the notice that an unlawful detainer case has been initiated against them;
2. Non-appearance at show cause hearing: occurs when a tenant does not attend court at the time and day when their case is being heard by a judge or commissioner; or
3. Default on the terms of a negotiated agreement: occurs when a tenant fails to comply with the terms determined during a hearing, such as paying a certain amount of rent within a specified timeframe, engaging in disruptive activity (e.g. a noise complaint), or failing to vacate the property within a specified timeframe.

Although evidence from across the country suggests that default judgments are a widespread phenomenon, determining precisely how common they are in Washington is a complicated task. While several studies have measured default judgments in Washington, these studies are limited in scope and were published prior to the implementation of the appointed counsel program. In order to provide an initial empirical assessment of the prevalence of default judgments, this report examines 1,870 unlawful detainer cases across six Washington counties in the first two months of 2024.

¹Revised Code of Washington, 12.20.020

The goal of this report is to provide insight into the extent and context of default judgments after the implementation of the appointed counsel program. To do so, this report starts by determining the overall rates of defaults by county. We collected data on all cases filed in January and February 2024 in the following counties: Clark, Kitsap, Pierce, Skagit, Snohomish, and Spokane.

For each case, we examined case documents to measure several aspects of the case that are potentially relevant to the likelihood of default judgments, including: whether the case was filed at the time the summons was served, whether the tenant answered the summons, and whether there was a default judgment against the tenant. We further categorized default judgments as occurring sometime after filing without having a show cause set (*ex parte* default) or after a show cause hearing (hearing default). Although some default judgments are issued after a tenant does not uphold the terms of a negotiated agreement, this report focuses on *ex parte* and hearing defaults because tenants are rarely able to access a court-appointed attorney in these cases.

When a summons is served to a tenant prior to being filed with the court, the case does not exist on the tenant's civil court record but they are still responsible for submitting an answer to the court. Although more research is needed in this area, an unfiled summons could lead to meaningfully different case dynamics if it results in different tenant response patterns. We examine whether cases where unfiled summonses were served appear to be related to default judgments in general, and whether they appear to be related to default evictions at certain stages of the eviction process.

Because defaults are handled differently across jurisdictions, we also collected information about the formal rules and informal practices regarding defaults in each county. Previous studies of the eviction process in Washington reveal that default rates vary widely across the state.² For this study we therefore sought to document what factors could be important factors in the rate of default judgment decisions in the selected counties. Finally, because the default decision ultimately comes down to the judge hearing the case, we also collected information about judicial officer rotation practices across the selected counties. The key findings of this analysis are:

- 37.5% of all cases filed in the six study counties resulted in default judgments
- Default judgment rates varied significantly by county, from 20.9% in Clark County to 48% in Snohomish County
- Cases in which eviction summonses were served prior to cases being filed in court lead to disproportionate share of *ex parte* defaults
- Evidence suggests that formal policies and informal practices influence the prevalence and type of default judgments

² Thomas, T. A., Toomet, O., Kennedy, I., & Ramiller, A. (2019). The state of evictions: Results from the University of Washington evictions project.

Data and Analysis

Unlawful detainer case filing numbers were provided by the Washington State Administrative Office of the Courts (AOC) for all cases filed in January and February 2024. Using online court document viewing platforms in the six counties of interest, we collected data directly from court documents. Commercial eviction cases and ejectment cases (12) were removed from the data set before the collection of case documents. One case which had not concluded by June 30, 2024 was also removed from the data set before analysis.

Each summons was reviewed to understand whether the document had been served to the tenant(s) after the case had been filed with the court. We then also documented whether the tenant filed an answer in court prior to a hearing, and whether a show cause hearing occurred at which both parties are typically expected to attend. We documented any instances of default judgments caused by a tenant's non-response to an eviction summons (*ex parte* default) or a tenant's absence at a show cause hearing (hearing default). Table 1 shows the significant variation in default rates across the counties included in this analysis.

Table 1: Default Rates and Types by County

County	Total Unlawful Detainer Filings	<i>Ex parte</i> default judgments (%)	Hearing defaults (%)	Total default judgments (%)
Clark	374	2 (0.5%)	76 (27.2%)	78 (20.9%)
Kitsap	83	30 (36.1%)	6 (15.8%)	36 (43.4%)
Pierce	566	135 (23.9%)	88 (23.0%)	223 (39.4%)
Skagit	59	0 (0.0%)	16 (30.8%)	16 (27.1%)
Snohomish	370	135 (36.5%)	48 (29.3%)	178 (48.0%)
Spokane	418	83 (19.9%)	82 (29.1%)	165 (39.5%)
Total	1,870	385 (20.6%)	316 (26.4%)	701 (37.5%)

Note: in the Hearing defaults column, the percentage represents the number of hearing defaults divided by the number of show cause hearings which were held.

Our analysis of eviction summonses also yielded a clear pattern, visible in Table 2 below. Unfiled summonses, in which courts are typically not notified of the eviction when the summons is sent, were responsible for a disproportionate share of *ex parte* defaults. Because show cause hearings are

not scheduled after an *ex parte* default has been issued, these cases were less likely to include show cause hearings and resulted in a lower hearing default rate.

Table 2: Summons Type and Default Rates

	Unfiled summons served	Filed summons served
<i>Ex parte</i> default judgments	350 (32.5%)	35 (0.4%)
Show cause hearing held	603 (56.0%)	595 (75.0%)
Hearing defaults	136 (12.6%)	181 (22.8%)
Total case filings	1,077	793

Note: In this table, percentages represent the number of cases divided by the total case filing number at the bottom of the same column.

County-Level Variation in Rules and Practices

A number of county-level rules and practices can potentially affect the prevalence and type of default judgments in local courts. These rules and procedures – both formal and informal – may meaningfully affect case proceedings and outcomes. Although the effects of such rules and practices is not well understood, this study describes judicial officer rotation practices and several procedural aspects of the eviction process that vary across jurisdictions. We also provide county-level breakdowns of default evictions across the case characteristics that we examined.

Clark County

Clark County has the lowest default rate among study counties. A significant majority of cases in Clark County are reviewed by one judge, although cases are sometimes assigned to other judges when additional capacity is needed. Hearings take place during two regular dockets which occur each week. While Clark does allow for both *ex parte* and hearing defaults, a unique local requirement appears to limit the incidence of *ex parte* default judgments (less than one percent of all cases).

In November 2022, the court announced that *ex parte* default judgments would not be granted in cases where a show cause hearing had been scheduled. This change was implemented in order to reduce confusion among tenants about the summons response deadline. The change was fully implemented beginning on January 1, 2023. Notably, only two *ex parte* default judgments were issued during the study period.

Another noteworthy practice in Clark County is the lack of eviction summonses served with previously unfiled summonses. Unlike other counties in this study, review of summonses in Clark

County showed that every summons served to a tenant in January and February 2024 had been previously filed in Clark County Superior Court.

Table 3a: Default judgments in Clark County, January - February 2024

	Unfiled summons served	Filed summons served
<i>Ex parte</i> default judgments	0	2
Hearing defaults	0	76
Total default judgments	0	78
Total case filings	0	374

Kitsap County

Unlawful detainer cases in Kitsap County are heard in one weekly docket by a rotation of several judges. Unlike most counties in this study, nearly three-quarters of eviction summons are served prior to being filed. While 74.6% of summonses in Kitsap County during the study period were served without being filed, these cases represented 93.3% of *ex parte* default judgments.

The initial Kitsap County RTC Standing Order³ – like those in other counties – created a procedure by which evicted tenants who were deemed eligible for the appointed counsel program could receive legal aid after receiving an unfiled summons. In March 2022, this Standing Order was updated to require that the plaintiff (landlord) email a copy of the summons and tenant’s latest known contact information to the local appointed counsel eviction defense provider, Kitsap Legal Services. This update allowed for the possibility that tenants facing eviction could receive support from legal aid providers without having an eviction documented in their civil court records.

Despite this change, however, the overall default rate in Kitsap County remained above 40% during the study period and unfiled summonses continued to lead to *ex parte* default evictions at a high rate. The significant majority of case filings showed that summonses were served prior to a case being filed, and nearly 80% (28 of 36) of default judgments in Kitsap County resulted from *ex parte* defaults where unfiled summonses were sent to tenants.

³ Kitsap County Superior Court Standing Administrative Order Regarding Appointment of Counsel for Indigent Defendants in Unlawful Detainers (RTC): https://www.kitsap.gov/sc/Documents/RTC_Standing_Order_110321.pdf

Table 3b: Default judgments in Kitsap County, January - February 2024

	Unfiled summons served	Filed summons served
<i>Ex parte</i> default judgments	28	2
Post-hearing default judgments	4	2
Total default judgments	32	4
Total case filings	62	21

Pierce County

During the study period, there were nearly 200 more eviction filings in Pierce County Superior Court than in any other county. Nearly ninety percent of eviction summonses were served without being filed, and these summonses resulted in a disproportionate share of *ex parte* defaults (94.8%). Like other counties where the majority of cases were initiated with an unfiled summons, *ex parte* default evictions were much more prevalent than post-hearing default judgments.

Along with Snohomish County, Pierce County is different from most study counties in that commissioners (rather than judges) oversee eviction proceedings. In Washington, Superior Court judges can appoint commissioners to assist in hearing and deciding cases. They have the same “power, authority, and jurisdiction” as superior court judges in all matters referred to them by the superior court.⁴ Cases during the study period were overseen by numerous commissioners on a rotating schedule during Pierce County Superior Court’s daily unlawful detainer dockets.

Table 3c: Default judgments in Pierce County, January - February 2024

	Unfiled summons served	Filed summons served
<i>Ex parte</i> default judgments	128	7
Post-hearing default judgments	74	14
Total default judgments	202	21
Total case filings	492	74

⁴Revised Code of Washington, 2.24.010

Skagit County

Skagit County was the site of the fewest eviction filings and the fewest default judgments among the counties analyzed. There are four judges in Skagit County who are assigned to the single weekly eviction case docket on a rotating basis, each overseeing the docket for a quarter of the calendar year. Skagit County has a unique local policy governing the issuance of default judgments in eviction proceedings, and our data analysis suggests that this rule may influence the frequency and nature of default judgments in the county.

Skagit County Local Rule 8(a)(2)⁵ states that landlords must schedule a show cause hearing prior to obtaining a writ of restitution (eviction judgment) against a tenant. With this rule in place, our analysis indicates that Skagit County Superior Court did not issue any *ex parte* defaults prior to a show cause hearing being set. In comparison with other study counties, Skagit County had no *ex parte* default judgments and the second lowest rate of overall default judgments, but the highest proportion of hearing defaults (30.8%). Only two summonses were served prior to the case being filed, and these cases did not result in any default judgments.

Table 3d: Default judgments in Skagit County, January - February 2024

	Unfiled summons served	Filed summons served
<i>Ex parte</i> default judgments	0	0
Post-hearing default judgments	0	16
Total default judgments	0	16
Total case filings	2	57

Snohomish County

Eviction cases in Snohomish County Superior Court are heard in daily civil dockets. While one commissioner is primarily assigned to these dockets, numerous other commissioners also serve as judicial officers as needed. A significant majority of cases are initiated through the service of unfiled summonses, and more than three-quarters of all default judgments stem from *ex parte* defaults in these cases. Although the hearing default rate at show cause hearings in Snohomish County was comparable to that of other counties, the high rate of unfiled summonses and *ex parte* defaults led to the highest overall county-wide default rate (48.0%).

⁵ This rule was adopted on September 1st, 2020:

https://www.courts.wa.gov/court_rules/pdf/LCR/29/SUP/LCR_Skagit_SUP.pdf

Table 3e: Default judgments in Snohomish County, January - February 2024

	Unfiled summons served	Filed summons served
<i>Ex parte</i> default judgments	122	13
Post-hearing default judgments	38	10
Total default judgments	160	23
Total case filings	309	61

Spokane County

In Spokane County Superior Court, the majority of all cases are heard in four weekly Superior Court dockets, with one judge who rotates at the beginning of each year. Unlike other counties, the share of eviction cases stemming from previously filed summonses is very close to the share of cases initiated with an unfiled summons. Table 3f shows that *ex parte* default judgments are much more common in cases with unfiled summons (34.0% compared to 5.3% of cases where summonses were served after filing).

Table 3f: Default judgments in Spokane County, January - February 2024

	Unfiled summons served	Filed summons served
<i>Ex parte</i> default judgments	72	11
Post-hearing default judgments	20	62
Total default judgments	92	73
Total case filings	212	206

Implications

Default judgments occurred in nearly 40% of all cases analyzed for this report. Two counties included had particularly strong policies in place which essentially eliminated *ex parte* default judgments, and this overall rate is therefore likely to be lower than the statewide rate of default judgments. Regardless, this finding suggests that thousands of tenants facing eviction in Washington in 2024 will do so without the support of a court-appointed attorney. Although research on default judgments in eviction cases is relatively scarce, our data analysis suggests that default rates have not significantly decreased since the advent of the appointed counsel program.

Prior research on this subject points to several other aspects of this phenomenon. One report⁶ examines cases in Philadelphia and found that Black and Hispanic individuals had the lowest rates of appearing for court dates and were more likely to receive default judgments. Another study⁷ of around 200,000 eviction cases in Philadelphia found that 40% of all tenants had to vacate their residence due to failing to appear in court to contest the case against them. This study also found that a longer mass transit travel time was associated with a higher likelihood of a default judgment – and further, that the significance of travel time disappeared when virtual appearances were allowed.

Because research on the civil court processes of eviction remain limited, analogous research on criminal legal systems in the U.S. may be useful in understanding the phenomenon of default evictions. Many people who are involved in the civil or criminal legal systems may also either be involved in the other, or not be clear on the differences between the two.⁸ This blurred boundary and conflation is important because people may, for example, erroneously believe that they are at risk of jail when they are not or have a right to counsel when they do not. This finding also suggests that research on individual behaviors and decision-making processes in criminal court settings may be relevant in the context of eviction court.

Previously documented obstacles to defendants' participation⁹ in criminal court, such as fear and expectations of unfairness, lack of clarity about court processes and appearance obligations, lack of childcare, lack of transportation, and inflexible work schedules likely play a similar role in the civil legal system. Behavioral science research from the criminal context, for example, has found that changing the layout of a summons and sending text message reminders can reduce failures to appear by

⁶ Dowdall, E., Rosch, J., Simmons, J., & Schmitt. (2021). Debt Collection in Philadelphia. Reinvestment Fund. https://clsphila.org/wp-content/uploads/2021/03/ReinvestmentFund_2021_PHL-Debt-Collection-Final-report.pdf

⁷ Hoffman, D., & Strezhnev, A. (2023). Longer trips to court cause evictions. *Proceedings of the National Academy of Sciences*, 120(2), e2210467120.

⁸ See: Greene, S. S. (2016). Race, class, and access to civil justice. *Iowa L. Rev.*, 101, 1263; Martin, K. D. (2022). Monetary Sanctions Thwart Access to Justice. *Stan. L. Rev. Online*, 75, 89.

⁹ McAuliffe, S., Hammer, S., Fishbane, A., & Wilk, A. (2023). *National Guide to Improving Court Appearances*. <https://www.ideas42.org/wp-content/uploads/2023/05/national-guide-improving-court-appearance.pdf>

13%-21%¹⁰. Future research on the subject of default evictions may benefit from analysis of how similar individual-level interventions can be implemented alongside structural interventions including the local court rules and practices outlined above.

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¹⁰ Fishbane, A., Ouss, A., & Shah, A. K. (2020). Behavioral nudges reduce failure to appear for court. *Science*, 370(6517), eabb6591.