



MEMORANDUM

Date: June 23, 2020

To: The Honorable Chairman and Members
Pima County Board of Supervisors

From: C.H. Huckelberry
County Administrator

A handwritten signature in black ink, appearing to read "CHH", is written over the printed name "C.H. Huckelberry".

Re: **Additional Information Regarding Eviction and Housing**

Our Community Services staff reviewed the communication from The Honorable Adam Watters, Presiding Justice of the Peace to the Board of Supervisors on June 17, 2020 (Attachment 1) and, in response, provides the attached observations. (Attachment 2)

I believe our staff has made some salient points that deal primarily with the perspective of the individual being evicted. The information brings into concern the quality control process used by the Courts to monitor the evictions process.

The attached report will be provided to Superior Court Presiding Judge Kyle Bryson for his consideration as well as to Judge Watters and Chief Administrative Justice of the Peace Charlene Pesquiera for their review and action.

What is clear from Messrs. Palacios and Ysmael's report is that quality control processes should be implemented and monitored for all eviction proceedings occurring in Pima County's Consolidated Justice Court.

Attachments

c: Jan Leshner, Chief Deputy County Administrator
Francisco García, MD, MPH, Deputy County Administrator & Chief Medical Officer,
Health and Community Services
Arnold Palacios, Director, Community Services, Employment and Training
Marcos Ysmael, Housing Program Manager

ATTACHMENT 1

Pima County
Consolidated Justice Court
TUCSON, ARIZONA 85701-1199

HONORABLE ADAM WATTERS
PIMA COUNTY PRESIDING JUDGE
PRESIDING JUDGE, DOMESTIC VIOLENCE COURT
PRECINCT NUMBER ONE

240 NORTH STONE AVENUE
TELEPHONE (520) 724-3505
FAX: (520) 222-1842

Date: June 17, 2020

To: The Honorable Chairman and Members of the Pima County Board of Supervisors

Re: **Information Presented to the Board Regarding Evictions by the County Administrator**

From: Adam Watters, Presiding Justice of the Peace, Pima County

As the Presiding Judge of the Pima County Consolidated Justice Court, I appreciate the opportunity to address the Memorandum sent to you by Mr. Huckelberry on June 15, 2020 regarding evictions.

The memorandum states that "Clearly, there are inconsistent applications of the (Governor's) Executive Order or varying interest in the eviction process." I beg to differ. The EO has been followed by this court and if there were conflicts with that order and the AO issued by the Arizona Supreme Court both have been followed so as to best serve the public. If this Court has not been perfect in handling the COVID19 shutdown and associated concerns, it is certainly due to the fluid situation in which we all find ourselves. Indeed, yesterday afternoon, the Administrative Office of the Courts held a teleconference with various courts from around the nation to share insight on how to handle court business during the pandemic. Courts around the nation are trying to meet the crushing backlog of cases, respect the rights of all the parties and victims, follow the rules of procedure, conduct hearings via various communications and maintain a healthy, safe place for litigants and employees. There is a great deal of discussion regarding businesses returning to normal – rarely do you hear discussion regarding the business of the courts wherein under normal circumstances thousands of Pima County residents enter our structure every day.

The Memorandum makes several bullet points, which I will now address. It states that evictions have been heard since June 1 by pro tem judges. That is true. The two judges who handled evictions for the first two weeks were pro tems, both with over a decade of experience handling evictions in this court. No one, perhaps in the entire State of Arizona, has handled more evictions than judges Newman and Monroe. Their integrity, ability and knowledge of the law is unquestioned. Regardless, as of June 15, 2020 the elected Justices of the Peace will rotate hearing evictions.

The next bullet point states that a training program offered by Judge Newman was attended by just three of the Justices of the Peace. That is true. However, Judge Pesquiera specifically requested that special training because she was scheduled to conduct eviction hearings the following week and had never done so. The judges who did not feel the need for this special training were either familiar with the process or confident in their knowledge of the law regarding evictions.

Yes, some members of the public might not have phones, yet if they did appear at court, access to a phone or computer was provided by the Court. The Court, when setting the eviction hearings provides information on how and when to call in to all parties. If parties show up at court they are given access to communication devices. Part of the report implies that tenants might not have had access to phones or computers, etc. None of the cases/circumstances in which that was alleged to occur was provided to the court. If such did occur we would immediately address those situations, but the report offers no information.

The eviction caseloads are high. That is because most types of cases have not been heard in months. This Court does not control the number of cases filed. The Court is being questioned for using pro tems, yet that is the best solution to resolving the high caseload. In fact, as mentioned in the letter sent to the Board regarding the proposed evisceration of our pro tem budget, the Administrative Office of the Courts suggests that pro tems be used to help alleviate what will obviously be an increased caseload of all types once the EO ends.

The Memorandum asks why the Court does not issue uniform, consistent judgments. "The total judgements (sic) of 53 sample cases range from \$750 to \$7,946." This is purely a function of the Legislature, not the Court. This Court cannot engage in rent control. That would be unethical. It is the Court's job to follow the strictures of the EO and the Arizona Landlord Tenant Act, dispassionately weigh the evidence before it and issue a judgment for the amount proven by the prevailing party. Under Arizona law, the prevailing party in a civil action *must* be awarded its costs and may be awarded its attorney's fees. In awarding such fees, a judge must be as dispassionate and fair as regards any other matter. An unfair denial or excessive award of attorney fees subjects a judge to judicial review and possible reprimand.

The Memorandum also criticizes the administrative process as being "cumbersome." That process is established by statute.

It is difficult to understand what the real criticism is that starts out "Page 4" but it seems to imply that Justices of the Peace are pre-judging cases. What I think this is referring to is the fact that some evictions are mandated – again by statute – and are exempt from the EO when they fall under certain circumstances or facts. These are called immediate evictions. For example, a landlord appeared in court two weeks ago and testified that her tenant had broken the toilet off the floor looking for, as he admitted to her, the stash of drugs he accidentally flushed down the commode. She became aware of this situation because he then threw the toilet out the front door of the domicile. When she went to replace the toilet, she discovered that because the toilet was no longer in place, the tenant had been defecating in the living room. Yes, he was immediately evicted at the "request of the landlord's attorney." In general, such cases reflect a small portion of evictions, but tenants who commit crimes, fraudulently fill out their applications, invite others to live with them in violation of the lease and commit various other acts were never protected by the EO. These immediate eviction cases are just that - immediate - as opposed to non-payment of rent eviction cases where there is a delay of five days to permit the tenant time to move or appeal.

It is difficult to address the additional concerns listed in the June 12, 2020 memorandum written by the Community Services, Employment and Training Director because none of it is specific. However, the Court has had no requests for press coverage of the evictions. No specific cases or case numbers are cited so responding to anecdotal information is difficult.

It is likely, however, that anyone who tested positive for COVID 19 and showed up with a fever was denied access to the court, but they would be directed on how to call in for their hearing by staff.

If I can address any further concerns, please let me know.

AW/dmm

c: C.H. Huckelberry, County Administrator
The Honorable Chairman and Members, Pima County Board of Supervisors
The Honorable Kyle Bryson, Presiding Judge, Pima County Superior Court
The Honorable Justices of the Peace, Pima County Consolidated Justice Court

ATTACHMENT 2

Date: June 22, 2020

To: C.H. Huckelberry, County Administrator

From: Arnold Palacios, ^{CP.} Community Services, Employment and Training Director and Marcos ^{my} Ysmael, Housing Program Manager

Via: Dr. Francisco Garcia, Deputy County Administrator and Chief Medical Officer

Re: Response to Memo from the Honorable Judge Adam Watters, Presiding Justice of the Peace, Pima County

Below are our responses to the Honorable Judge Watters June 17th memo, "Information Presented to the Board Regarding Evictions by the County Administrator."

Governor Ducey's Executive Order and CARES Act as efforts to reduce evictions:

State and Federal governments have responded to the pandemic crisis with protections for vulnerable renters. The stated purpose of Governor Ducey's Executive Order 2020-14 titled, "Postponement of Eviction Actions" is to avoid the serious consequence of Arizonans losing their rental housing and to protect public health. This EO covers any renter who has covid19 related circumstances for nonpayment of rent and extends until July 22. As written, the burden of the EO protection falls not on the courts, so the process of eviction filings, hearings, or issuing of writs continue as normal. Rather it puts the full enforcement of the EO at the discretion of the Constables who "may not remove from the residence a tenant who has provided the required notice of a qualifying circumstance." It expects that the tenant has notified in writing to the landlord that they have a covid19 related reason for nonpayment.

Further, for roughly 25% of tenants living in federally funded properties or covered by Section 8 and other federal housing programs, the CARES Act provides even stricter protections that prevent the eviction hearings from proceeding or for fees or costs to be levied until the protection lifts on July 25.¹ However, it is clear the intent of both EO and CARES Act moratorium to keep people who are negatively impacted by the coronavirus housed until they can return to work.

On the issue of backlog:

As noted in the June 17th memo, there is a historic and crushing backlog of eviction cases that the Court is facing. Similarly, unemployment insurance and rent assistance programs have also experienced a crushing backlog of applications and both are intended to provide considerable remedy for evictions. For example, over 7000 people have applied for rent assistance in Pima County, more than triple the number of applications seen in a normal year. The problem is that these programs would provide critical financial relief and address the nonpayment of rent if they were able to keep up with the number of eviction cases happening in the Justice Court. CSET is

¹ Urban Institute. *The CARES Act Eviction Moratorium Covers All Federally Financed Rentals—That's One in Four US Rental Units*. April 2, 2020. <https://www.urban.org/urban-wire/cares-act-eviction-moratorium-covers-all-federally-financed-rentals-thats-one-four-us-rental-units>

working on significantly scaling up our staff to support the Community Action Agency and meet the need for rent assistance, but these processes take time.

Under normal conditions, most court proceedings are unfamiliar, confusing, and stressful to the average citizen, which is not true for lawyers. In eviction hearings, landlords have legal representation the vast majority of the time, and the inverse is true for defendants, who generally fail to appear or if they do so, have no legal counsel. As a result, many eviction hearings are over in one minute.² This pattern continues for these pandemic eviction hearings.

In the interest of public health, the Courts have made adjustments for virtual or telephonic access to hearings, but there is growing concern that these measures are complicating the access to the Courts and a fair hearing as noted in the June 12 CSET report and below.

In the matter of fees and costs:

In the matter of fees and costs, the Memorandum was not asking why the Court does not issue uniform, consistent judgments nor was there any expectation that the Court engage in rent control. Rather, the point was made to focus on whether the Court should have greater surveillance over excessive fees and costs that are allowed in certain cases. In the most extreme case, CV20-009998-EA heard on June 2 was fined \$4010 for a notice fee, which was almost twice her rent of \$2025. Additionally, a \$405 late fee was allowed, and including her court and attorney's fees, the total judgment came to \$6665. In the case of CV20-009867-EA, his rent was \$1650 and his late fees were \$630, almost 40% of his rent. Even with rent assistance, the burden of these fees may grow to the point where they are beyond the tenant's ability to pay and, as a consequence, they could still end up losing their housing.

Concerns for enforcement of the federal CARES Act Moratorium:

In the case of CV20-008110-EA heard on 6.4.2020, a fine of \$970 with an additional \$160 for court and attorney costs were added to her late rent of \$6716. This tenant lives in a property financed by Fannie Mae and covered under the federal CARES Act moratorium. This case should never have been heard, nor should any fees or costs been allowed. The same applies to CV20-009122-EA who was evicted from a residence covered by the CARES Act and fined \$170 in violation of the protections under this legislation. The presiding judge did note in this case that "none of the circumstances pertaining to the COVID-19 virus and set forth in Executive Order 2020- 14 exist or do not apply." Unfortunately, no steps were taken to investigate if the CARES Act protections applied.

The Urban Institute estimated that the federal eviction moratorium protects more than 1 in 4 rental units. A review of 483 Justice Court cases found that 93 were for tenants living in properties covered under the CARES Act. (It should be noted that 59 were filed before the March 27 passage of the CARES Act, but heard in June. It is unclear if they are therefore protected.) At least eight were dismissed, but it can be assumed that most ended in an eviction writ. Under the CARES Act, evictions can still proceed if they're not related to a tenant's ability to pay rent — such as

² William E Morris Institute for Justice, *What's Justice Got to Do With It? The Experience of Tenants in Maricopa County Justice Courts*. May 2020. Pg. 13.

criminal activity or other lease violations and perhaps a few reflect these violations, but the minutes fail to note. In at least 34 cases, it appears there should not have been a hearing and therefore no writ and no eviction. Without either the Courts or the Constables reviewing these cases, similar cases will in all likelihood result in an eviction.

These cases represent a concern not just for the impacted Pima County residents, but for Pima County as a whole if families are being burdened with extreme fees and costs, or worse, being wrongfully evicted. Like the EO, the CARES Act places the burden of documentation on the tenant, but it is reasonable to assume that the majority of residents are not familiar with the details of the EO or the CARES Act and how it relates to them personally. While Michigan is the only state where the courts are compelled to review each case to see if it falls under the CARES Act protection, this could be considered a best practice that could be voluntarily instituted in Pima County's Justice Court.

Clarification on the list of ten concerns:

Further clarification on the list of ten concerns noted on page 4 of the CSET response is attached with attribution.

The increasing use of pre-compel orders:

Judge Watters gave an example of what he termed "pre-judging cases." We understand that certain eviction hearings address dangerous breaches of a lease unrelated to covid19 and they will move forward. The Constables report that 10 to 15% of their evictions fall into this category. What has been brought into question by legal groups and housing advocates is the increasing use of pre-compel or pre-ordering of cases that attempt to force the Constables to execute the writ regardless of whether they determine there are covid19 related issues for nonpayment of rent and therefore covered under the EO. For a more detailed explanation of these concerns, please see Addendum 2.

Constable Kristen Randall, Pima County's Presiding Constable, reviewed this week's orders and found 16 out of 22 cases on Monday, June 15, were pre-ordered by just one judge (Judge Roberts). This circumvents the role of the Constable to review and it potentially undermines the intent and effect of the Executive Order.

Background from Chief Administrative Justice of the Peace, Judge Pesquiera:

As the Chief Administrative Judge, Judge Pesquiera shared with us her efforts to both prepare the Court for eviction hearings in light of the covid19 pandemic and respond to procedural issues that raised questions of access and fairness. In April, Judge Pesquiera requested that training be provided for all sitting Judges both because historically eviction cases have been heard by pro temp judges and because she knew there would be new considerations required with the covid19 situation and Executive Order. While it was an excellent training, only three Judges attended. Because of the importance of the training and the low attendance, Judge Pesquiera has recently recommended to Judge Bryson to call for another training.

In regards to the CARES ACT Judge Pesquiera goes on the record to reference if in fact the case is a CARES ACT/Federal Funded/Section 8 matter. If the Plaintiff is asked and unaware, then the case gets reset, creating a check and balance regarding the verification of the Federally Funded Housing. Resetting the hearing to verify is acceptable and follows due diligence to avoid a wrongful eviction. Because each Judge is different, the minute entry or ruling may vary.

She noted her support for the Constables in informing people that they can request reconsideration of the eviction and ask for another hearing, and she has presided over a number of these cases. These cases were cases due to the defendant not having access to a phone or zoom, or in some case individuals who were waiting on medical documentation/COVID related.

Judge Pesquiera agreed that in the interest of justice, slowing down eviction hearings is a good idea. Important questions like whether properties fall under the CARES Act moratorium, need to be asked and given careful consideration, and additionally should be reflected in the minutes.

The short and long term costs of evictions:

The potential impact of continued evictions is hundreds or thousands of Pima County residents losing their home which, in addition to their own personal and family suffering, risks the increased spread of the virus and taxes our overloaded homeless shelter system, Princeton University's Eviction Lab warns that evictions could "lead to a resurgence of the virus, after stay-at-home measures 'bend the curve' of infection."

Evictions make it more difficult for people to return to work and further disrupts children's education. It also makes finding the next home more difficult, placing the eviction on the renter's record which understandably makes the next landlord more leery to rent to them. Studies have shown persistent negative effects of evictions on mental and physical health for adults and children and there is concern for a rise in substance abuse and suicide rates, increasing the need for mental health services.

As noted in the UA Law School's Policy Brief, the downstream costs of eviction are significant. Using their eviction calculator, they estimate the average eviction to eventually cost \$19,455 based on shelter, medical costs, child welfare and child delinquency costs. To ensure our community has the greatest chance at economic recovery, we need to consider these downstream costs end that will end up requiring the need for other, more expensive County services.

Attachments:

1. Addendum #1: Attribution of sources for eviction concerns
2. Addendum #2: Explanation of pre-compel concerns

CC: Jan Leshar, Chief Deputy County Administrator

Addendum #1: Attribution of sources for eviction concerns:

- | | |
|--|---|
| Constable Joe Ferguson | Tenants allegedly tested positive for covid19 and went to JP court for their hearing. Tenants were denied entry because they had fevers. |
| Constable Kristen Randall | Tenant allegedly was directed by court security to a public computer for a Zoom hearing and the computer did not work. |
| Constable Kristen Randall | Tenants were told that they could appear in person or on Zoom, but were not informed that they could attend via telephone. |
| Constable Bennett Bernal | Tenant attended hearing via telephone and was not able to submit documentary evidence to the court. |
| Peggy Hutchison, CEO of Primavera | Tenant on the telephone could not identify who was speaking during the hearing—judge or landlord’s lawyer—and did not know at the end if s/he had been evicted or not.

(Ms. Hutchison also reported that one tenant said she provided the required covid19 documents to the rental agency but they did not present them at the hearing and the judge would not let her present anything.) |
| National Lawyer’s Guild | No public or press access to eviction hearings. |
| Constables and CSET Staff | Minute orders signed by JP with no printed name so there is no way to identify the JP |
| Southern Arizona Legal Aid | No documentary or testamentary proof being required by the court for the amount of the rent, costs, and fees. |
| Case # CV20-009998-EA heard on June 2nd | Evidence of exorbitant fees, including a \$4010 fee for giving the tenant notice of eviction. |
| Southern Arizona Legal Aid | Lack of public access to the court’s calendar, except for printed daily calendar on the court’s door the afternoon before; |
| Southern Arizona Legal Aid has found four covid19 related pre-compel cases and has filed an emergency motion to quash on at least one. | JPs pre-ordering eviction enforcement at the initial eviction hearing, with no notice to tenant that such a motion has been made or order would be filed. In several cases, at the request of the landlord’s attorney, the JP entered an order that the eviction be carried out “in the interest of justice” notwithstanding any claim by the tenant of protection under the governor’s EO 2020-14. This relies upon the sentence in the EO that states: “1. Unless a court determines on motion of the parties that enforcement is necessary in the interest of justice . . .” |

Addendum #2: Explanation of pre-compel concerns:

The Governor's Executive Order states:

Unless a court determines on motion of the parties that enforcement is necessary *in the interest of justice* or is in accordance with A.R.S. § 33-1368(A), pursuant to A.R.S. §§26-303 et al, 36-787, all Arizona Peace Officer Standards and Training Board certified law enforcement officers and any person subject to the jurisdiction of the Constable Ethics Standards and Training Board, *shall temporarily delay enforcement of eviction action orders for residential premises when one of the following circumstances exist and are documented to the landlord or property owner [if one of five conditions is met.]* (Emphasis added.)

Government Affairs Director of the Arizona Administrative Office of Courts, the appropriate process for making a determination about the applicability of the EO is as follows:

1. An eviction order is issued
2. The constable serves the order
3. The tenant reports COVID-19 issues and states that notice has been given pursuant to the EO
4. The constable does not evict tenant pursuant to the EO
5. The landlord files a motion for an order to enforce the eviction
6. A hearing on the motion is set
7. The tenant served with notice of that hearing

However, legal and housing organizations are questioning whether a writ can be "pre-compelled" which sets into motion the eviction from the first (and not a subsequent) hearing and requires the Constable to enforce an eviction regardless of evidence of covid19 related issues.

This provides no opportunity for the plaintiff to present evidence of covid19 related reasons for staying in residence since the EO states a tenant's notice of circumstances "will not be considered by the court or delay the proceedings except upon agreement of the parties" and it is unlikely that a landlord will agree to such consideration if they are attempting to pre-compel the enforcement of a writ. It therefore strips the Constable of his/her ability to determine if the tenant is protected under the EO and compels them to execute the writ.