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# MEMORANDUM

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Date: June 15, 2020

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

From: C.H. Huckelberry  
County Administrator *CH*

Re: **Response to Information Requested by the Board Regarding Evictions**

Please see the attached June 12, 2020 memorandum from our Community Services, Employment and Training Director and the Housing Program Manager (Attachment 1) and the June 12, 2020 memorandum from the Chief Administrative Justice of the Peace Charlene Pesquiera and Presiding Justice of the Peace Adam Watters (Attachment 2).

As you will recall, there were a number of concerns raised by members of the Board regarding evictions. I requested specific information regarding the eviction policies being carried out by the Justice Court and the Justices of the Peace in relationship to the Governor's Executive Order 2020-14 providing protection from eviction for individuals impacted by the COVID-19 pandemic.

The attached report highlights a number of issues that require further information and appropriate investigation not only by the County Attorney, but potentially the Arizona Office of the Courts if the Governor's Executive Order is not being uniformly enforced or actively considered in eviction proceedings.

In addition, the Constables Ethics and Training Board may also need to become involved in this issues if some Constables are following the Executive Order and others are not. It appears some Constables are taking a proactive approach to COVID-19 evictions while others are simply waiting for a Justice Court Order.

Clearly, there are inconsistent applications of the Executive Order or varying interest in the eviction process. My concerns are as follows:

- Given the restart of evictions which occurred June 1, 2020, these evictions were only conducted by pro tem judges, not any member of the elected Justice of the Peace Bench participated in an eviction based on the attached memorandum.
- I understand, in discussions with the Chief Administrative Justice of the Peace, Charlene Pesquiera, a training program was offered by Pro Tem Newman who has the most experience in conducting trainings. Only three members out of eight of the elected Justice of the Peace Bench attended this training.
- The cases heard since June 1, 2020 were only heard by telephone or other electronic applications such as Zoom or Microsoft Teams. Obviously, individuals who are in the process of being evicted may not have the best access to this electronic information to effectively participate in their eviction hearing. They often do not even have access to a phone or know where and who to call.

The Honorable Chairman and Members, Pima County Board of Supervisors

Re: **Response to Information Requested by the Board Regarding Evictions**

June 15, 2020

Page 2

- The caseloads identified on Page 2 of the attached memorandum appear to be extremely high and exceed the typical average daily cases by several orders of magnitude even though the numbers may be historically low during the COVID-19 pandemic.
- There appears to be unequal administrative eviction process being advanced by Constables. Some Constables are reporting that if a tenant can provide proof of COVID-19 related reasons, they will not evict, while others are evicting as long as there is an order to do so regardless of the circumstances.
- The fees and fines dramatically vary. The total judgements of 53 sample cases range from \$750 to \$7,946. I had previously been concerned over the award of attorney's and late fees that appear to be pile-ons on a tenant who is arrears in rent payments.
- Administrative processing for the to be evicted tenant also appears to be cumbersome and designed to have the individual being evicted fail administrative correctness; hence, being evicted for a number of technical related reasons.
- On Page 4 of the attached memorandum, lists a number of concerns. Some of the most concerning are, 1) Justices of the Peace pre-ordering eviction enforcement and in some cases at the request of the landlord's attorney; 2) No documentation or testimony proof being required by the Court for the amount of rent costs and fees, particularly as it relates to exorbitant fees; and, 3) minute orders signed by a Justice of the Peace with no printed name so there is no way to identify the Justice of the Peace. These concerns should be individually addressed by the Justice Court and addressed or explained.

The report also summarizes Federal and State programs for eviction relief and is quite concerning. I have also forwarded a concern expressed in a report dated May 22, 2020 from Innovation for Justice Program, James E. Rogers College of Law about illegal eviction. I have asked the County Attorney to review this issue.

CHH/anc

Attachments

- c:
- The Honorable Kyle Bryson, Presiding Judge, Pima County Superior Courts
  - The Honorable Barbara LaWall, Pima County Attorney
  - The Honorable Adam Watters, Presiding Justice of the Peace, Pima County Consolidated Justice Court
  - The Honorable Charlene Pesquiera, Chief Administrative Justice of the Peace, Pima County Consolidated Justice Court
  - The Honorable Kristen Randall, Associate Presiding Constable

# ATTACHMENT 1

Date: June 12, 2020

To: C.H. Huckelberry, County Administrator

From: Arnold Palacios, <sup>A.P.</sup> Community Services, Employment and Training Director and Marcos <sup>my</sup> Ysmael, Housing Program Manager

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

Re: Response to COVID-19 Eviction Policy Brief from the University of Arizona

The Governor's Executive Order 2020-14 provides protection for eviction enforcement if tenants are impacted by covid19 related circumstances in three primary areas: loss of income, high-risk health factors, or staying at home for care of children or vulnerable adults. This EO is in place until through July 22. However, it does not prohibit eviction hearings. Starting June 1, the Pima County Justice Court reopened and in the first three weeks of June, 783 eviction cases have been scheduled for hearings. To address concerns for public safety, restrictions were put in place that did not allow defendants to enter the courtroom, but instead shifted court hearings to telephonic or zoom based hearings. There is anecdotal evidence that this has likely caused complications for defendants who may want to provide a defense.

Constables are the agents for eviction enforcement. Some Constables are interpreting the EO as a protection against enforcement until July 23rd as long as the tenant can show some evidence of covid19 related circumstances. Other Constables are enforcing writs as though no protections are in place. Evictions that are not related to covid19 have proceeded as normal.

A variety of concerns have been brought forward by legal aid organizations, nonprofits, and others attempting to monitor the situation, which are listed in this report.

Please also find attached the list of programs and funding levels for eviction prevention.

### **1. Which Justices of the Peace are conducting eviction hearings?**

During the first week of renewed eviction hearings, the Court reports that only two Pro Temps, Newman and Monroe, were on the bench, during which 288 cases were heard. Over the course of the first two weeks, over 500 cases were heard. Starting on June 15, Justice Roberts will conduct all evictions hearings for the week of June 15; thereafter the eviction hearings will rotate weekly between the Justices, with one handling all the cases for that week.

## **2. How many evictions have occurred?**

To respond to this question, we need to review both the number of eviction hearings and the number of eviction enforcements.

During the period of June 1st to 10th there were 474 eviction hearings. For the period of June 11 to June 19, there are 309 eviction hearings scheduled, for a total of 783 cases in the first three weeks of June or 261 cases per week or 52 cases per day. Constables report that this is in contrast to a normal period when 10 to 30 cases are heard per day. In a sampling of 53 cases from the first two weeks of June, only four cases were dismissed, which would indicate that 75% of all cases result in a writ for eviction.

On the enforcement side, this is a difficult question to answer because there is a lag time of six days or more between the hearing and the issuance of the writ. Therefore, this can be answered better in a week or two. The expectation is that this will soon become hundreds per week. Some Constables are reporting that if the tenant can prove covid19 related reasons they will not evict until July 23<sup>rd</sup>. However, other Constables are reporting that they will evict as long as there is a judgment regardless of circumstances.

Evictions that are a breach of lease other than nonpayment have been going forward. For two of the highest eviction areas, Constables report 10 to 15 of these evictions per week.

## **3. What is the outcome of any proceedings before the Justice Court regarding evictions?**

In the 53 sample cases reviewed by staff, judgment was entered for the plaintiff in all of the cases except four, which were not indicated as covid19 related. In this sampling of cases, the total judgment ranged from \$750 to \$7946 with an average of \$3332. The late fees ranged from 0 to \$970 with an average of \$380. The daily fees were listed from 0 to \$56 with an average of \$23. Frequently, the late fees are 20 to 25% of the total costs of the judgment. Other fees are often attached as well. In one extreme case, a \$4010 fee was approved for giving the tenant notice of eviction.

Only five cases in this sample indicated in the court documents that were covid19 related and in all five of the cases, the defendants represented themselves, likely telephonically or by zoom. In four cases, they presented evidence that they were in temporary hardship for covid19 reasons. The judge ruled in favor of the plaintiff and stated:

*Tenant has been advised by the Court that Tenants who notify their Landlord of a qualifying COVID-19 related circumstance may remain in the residence even though the Landlord has received an eviction judgment until a court orders enforcement of the eviction judgment or the Governor's order has expired (July 22, 2020 unless extended), whichever occurs sooner.*

It went on to say that in order to delay removal, the defendant must meet four criteria:

- 1. Notifying the landlord in writing of the qualifying COVID-19 circumstances including temporary financial hardship caused by COVID-19 related circumstances;*
- 2. Providing any available supporting documentation, and;*
- 3. Acknowledging that contract terms of the lease or rental agreement remain in effect as soon as the qualifying circumstance occurs the tenant should send notice of the circumstance to the landlord or property manager by e-mail, regular mail, or electronic written means and ask for a confirmation of receipt.*
- 4. Also, the tenant should provide the notice to the court as early as possible in the eviction proceeding. This will not be considered by the court or delay the proceeding except upon agreement by the parties. The tenant should keep a copy/ photo of the dated notice to provide to the constable or law enforcement officer, if needed, or for a court hearing.*

The Constables have found that most tenants were not aware of the requirement of giving their landlord a letter explaining their temporary hardship due to covid19. This mirrors what was found in a sample of 27 tenants in which 88% said they had communicated with their landlord verbally, half of which have discussed a payment plan, but only 28% had given a written letter.

Finally, in 27 of the reviewed cases, the judge specifically notes that there is no evidence of covid19 related reasons for nonpayment. However, in none of these cases did the tenant appear, so there is concern that the lack of evidence does not accurately reflect whether the tenant does indeed have a covid19 related reason for nonpayment.

**4. Are there any claims made by those being evicted of any COVID-19 related circumstances that would justify postponement of the eviction?**

There is concern new burdens have been placed on defendants who may want to represent themselves in court because of complications due to covid19. For example, those defendants who do represent themselves telephonically or by zoom, there is concern that presenting

paperwork that proves covid19 hardship or written communication with the landlord is made much harder.

Several legal organizations including Southern Arizona Legal Aid and Step Up To Justice, along with several Constables and some nonprofits have been attempting to monitor the Justice Court eviction hearings since they reopened on June 1st. Some of the concerns include:

- Tenants allegedly tested positive for covid19 and went to JP court for their hearing. Tenants were denied entry because they had fevers.
- Tenant allegedly was directed by court security to a public computer for a Zoom hearing and the computer did not work.
- Tenants were told that they could appear in person or on Zoom, but were not informed that they could attend via telephone.
- Tenant attended hearing via telephone and was not able to submit documentary evidence to the court.
- 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.
- No public or press access to eviction hearings.
- Minute orders signed by JP with no printed name so there is no way to identify the JP
- No documentary or testamentary proof being required by the court for the amount of the rent, costs, and fees. Evidence of exorbitant fees, including a \$4010 fee for giving the tenant notice of eviction.
- Lack of public access to the court’s calendar, except for printed daily calendar on the court’s door the afternoon before;
- 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 . . .”

Note that a motion to vacate has been filed on behalf of one or more tenants whose order included immediate enforcement.

Additionally, under the CARES Act Eviction Moratorium passed by Congress, all federally financed rentals must halt eviction hearings during the 120 day period (until July 25th) of renters living in financed properties. They are also prohibited from charging late fees or penalties. However, after a partial review of the plaintiffs for the first three weeks of June, we found 19 defendants living in properties that fall under the CARES Act moratorium. One property owner, Equilibrium, is listed for 33 eviction hearings between June 1 and June 17. Another company sent notice to their tenants that the Governor's Executive Order expires June 1.

It has been reported that the Justice Court would review the plaintiffs to ensure that they are not renting in properties financed by Fannie Mae or Freddie Mac, which makes those properties compliant under the CARES Act Moratorium. Apparently, this is not the case.

ATTACHMENT: Programs and funding levels for eviction prevention

## **Programs and funding levels for eviction prevention**

### **Arizona Department of Housing (ADOH) – Eviction Prevention Pilot Program State Housing Trust Fund \$575,000**

- Must reside in one of the targeted zip codes
- Households eligible must have received a formal five-day non-payment of rent notice from the property manager/landlord.
- Participant eligibility will be based on an Eviction Prevention Assessment, which is administered at the initial contact with participant.
- Total household income (from last 30 days) must be at or below sixty percent (60%) of Area Median Income (AMI).
- Eligible Participants must demonstrate a 60-day rental sustainability window in order to receive financial assistance and agree to be contacted every 30/60 days.
- Household must have experienced an acceptable crisis reason, which must be documented, e.g. car repairs must have receipts, missed hours at work must be reflected on employment check stubs or documentation from employer, etc.

Maximum allowable payment: \$1,500 per household. - Special cases may be elevated to ADOH. If approved, Case Manager may pay the higher approved amount for multiple months.

### **Arizona Department of Housing (ADOH) – COVID-19 Eviction Prevention & Rental Assistance State Funds \$600,000**

- Households eligible to receive assistance must be able to document that their current financial hardship is due to COVID-19.
- Total household income must be at/or below 100% of Area Median Income during the month for which they are seeking assistance.
- Household will be required to pay 30% of their gross income for the month directly to their landlord/property owner.

Maximum allowable payment: \$2,000 per household per month, can apply each month.

### **Emergency Eviction Intervention Prevention (EEIP) Pima County General Funds \$101,000**

- A household may be assisted only once in a 12-month period.

- Household income for the most recent 30 days, including date of application, must be at or below 125% of the Federal Poverty Level (FPL) or at or below 150% of the (FPL) if person(s) is over 60 and/or disabled.
- Household must have experienced an acceptable crisis reason, which must be documented, e.g. car repairs must have receipts, missed hours at work must be reflected on employment check stubs or documentation from employer, etc.
- Delinquent rent; must be after the due date
- First month's rent may be paid up to 30 days prior to move-in date.

Maximum allowable payment: One month's rent.

**Emergency Solutions Grant – CARES ACT funding (ESG-CV)**

**ESG-CV1 = \$892,426 (4/2/20); plus ESG-CV2 = \$2,284,682 (6/9/20)**

- **HUD funds** Total household income (from last 30 days) must be at or below 50% of Area Median Income limits.
- Applicant must provide a rental agreement or note from the property manager/landlord.
- Meet HUD habitability standards for all dwellings and rental units as defined in the Housing Habitability Standards Inspection Checklist.

**HUD Home Investment Partnership Program (HOME Program): \$195,000 has been set aside for a pilot Tenant-Based Rental Assistance (TBRA) program**

- Tenant must be referred by Sullivan-Jackson Employment/Training Ctr, CAA, or another County CSET Program or Safety/Justice Challenge Program.
- Tenant pays 30% of Income, HOME TBRA pays balance of rent;
- Can pay up to 12 months, with option to extend add'tl 12 mo's
- This is a pilot program – expected to start July 1.

# ATTACHMENT 2

# MEMORANDUM

PIMA COUNTY JUSTICE COURT  
240 N. Stone Avenue  
Tucson, AZ 85701

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To: Chuck Huckleberry, County Administrator  
From: Judge Charlene Pesquiera, Chief Administrative Judge  
Judge Adam Watters, Presiding Judge  
Cc: Judge Kyle Bryson, Presiding Judge of Superior Court  
Steve Christy, Board of Supervisor  
Sharon Bronson, Board of Supervisor  
Alley Miller, Board of Supervisor  
Ramon Valadez, Board of Supervisor  
Betty Villegas, Board of Supervisor

Re: Pima County Justice Court Eviction Process  
Date: June 12, 2020

1. Are there ways to preempt the Executive Order offering eviction delays to qualify tenants facing eviction? The answer in large part is “no” but the answer is more complex. We recently held a judges’ meeting wherein we determined that it was necessary for us to follow the AO of the Supreme Court where conflicting orders exist. Under the guidance of the Chief Justice of the Supreme Court there is no legal basis for delaying evictions, as long as we remain compliant with the EO. None of the PCCJC justices of the peace is delaying evictions at this time. Indeed, we have contacted courts throughout the state and it appears all justice courts are holding evictions. However, we are informing defendant/tenants that if they fall under Covid-19 protections, they have the right to bring that to the attention of the court or the process servers and may also work out a solution with their landlord.
2. Are all Justices doing this? Each Judge is responsible for following procedure and statute.
3. How many evictions have occurred through this mechanism? Below are the Eviction trends from 2018 to present. The number of filings since COVID-19 were reduced significantly. Please refer to eviction chart.

**Pima County Justice Court Evictions 2018 thru 2019**

Jan 2018	Feb 2018	Mar 2018	Apr 2018	May 2018	June 2018	July 2018	August 2018	Sept 2018	Oct 2018	Nov 2018	Dec 2018
1,182	954	893	884	1,097	1,120	1,086	1,223	1,069	1,179	1,039	966

Jan 2019	Feb 2019	Mar 2019	Apr 2019	May 2019	June 2019	July 2019	August 2019	Sept 2019	Oct 2019	Nov 2019	Dec 2019
1,271	929	754	916	1,027	940	1,158	1,079	1,066	1,228	1,006	1,055

Jan 2020	Feb 2020	Mar 2020	Apr 2020	May 2020
1,092	984	631	244	338

What is the average civil judgement against a tenant? This is unknown as the dollar amount varies. It is impossible – without actually having staff dredge through the court files – to provide an average amount for eviction judgments. That is because the rent amounts owed vary extensively. Remember, we conduct commercial evictions as well as residential evictions. Sometimes landlords do not ask for back rent, sometimes they ask for high late fees. Under the CARES Act commercial evictions of small businesses were delayed for months. That portion of the Act expired May 31, so we may see a jump in business evictions soon. Commercial evictions are also heard in Superior Court as well.

4. Has technology such as using Zoom been implemented to reduce traffic inside the court? If so how well has this worked?

The court is taking every precaution necessary to prevent the spread of the COVID-19 virus. To that end we are limiting in person hearings to the greatest extent. The following are ways that for individuals to have access to the court and the third option is for individuals that may not be comfortable using technology. The first week of hearing evictions by zoom had some minor technical setbacks, but were quickly resolved. Individuals using zoom sometimes required additional technical guidance, but overall the court staff have been able to provide guidance.

**Option 1 - To join the hearing via-zoom video:**

Please go to: [www.zoom.us/j](http://www.zoom.us/j) and type in the meeting ID. For example:

<https://zoom.us/j/1234567890>

To appear via video conference on Zoom, you must have an internet connection. You can use a smart phone, iPad/tablet, or computer/laptop that has sound & video capability. You will also need to install the Zoom App ([www.zoom.us](http://www.zoom.us)) before the time of hearing.

Upon connecting to the Zoom hearing, you will be placed in a “waiting room.” Do not hang up or close the Zoom application.

**Option 2 - To join the hearing via-telephone:** *You do not need the ZOOM application to appear by telephone.*

Dial 1-669-900-6833 (toll free) and type in the meeting ID.

Upon connecting to the meeting, you will be placed in a "waiting room" until staff can speak with you.

**Option 3 - If you do not have the ability to appear remotely:**

The court will have phones available if you do not have the ability to appear remotely.

A face mask must be worn when entering the building. If you do not have one the court will provide a mask for you. A temperature check must be conducted upon entering the building. Please notify security personnel once you enter the building and you will be directed to the designated phone area.

**Exhibits:**

Must be received in time for the hearing and a court case number must be referenced

Exhibits can be submitted to the court:

1. By mail at 240 N. Stone Ave. Tucson, AZ 85701

2. Electronically by following the instructions on our webpage at: <https://jp.pima.gov/exhibits/>

5. How many applicants are there for rental assistance? The court does not distribute applications for rental assistance, however the court does provide a list of Emergency Eviction Resources for Tenants, as well as Landlord/Tenant Law Brochures and pamphlets upon request. How much is available? This does not apply to the courts.
6. When does the Executive Order expire? Is there plan in place to reduce evictions after the Order expires? The Executive Order was put into place on March 24 and expires 120 days later.
7. When does the CARES ACT eviction moratorium expire? July 31<sup>st</sup> 2020.
8. How do we identify some needs/concerns about the time period following the eviction moratoriums? It is possible that a trend from July and August may peak in the number of eviction filings. Some landlords did not file an eviction action under the Governors Order.

## Monica Perez

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**From:** Sharon Bronson  
**Sent:** Tuesday, June 9, 2020 4:03 PM  
**To:** Chuck Huckelberry; Jan Leshner  
**Cc:** Monica Perez; Maria Klucarova  
**Subject:** Eviction questions

Chuck  
Would you ask staff to respond to these questions.  
Thanks  
Sharon

Are there ways to preempt the Executive Order offering eviction delays to qualifying tenants facing eviction? How is this done? Are all justices doing this? How many evictions have occurred through this mechanism?

How many evictions are expected to occur in the next few weeks (eviction judgements and also eviction enforcements)?

What is the average civil judgement against a tenant? (This can help determine assistance needs to prevent evictions and keep families in their homes). Has the Justice Court been able to adequately meet the needs of the increased caseload as well as maintain proper social distancing efforts? Has technology such as using Zoom been implemented to reduce traffic inside of the court? If so, how well has this worked?

How many applicants are there for rental assistance? How much money is available? How much has been disbursed? If there are bottlenecks, please identify.

When does the Executive Order expire? Are there plans in place to reduce evictions after the Order expires? When does the CARES Act eviction moratorium expire? How were these two eviction moratoriums similar and how were they different?

How do we identify some needs/concerns about the time period following the expiration of the eviction moratoriums?