



May 6, 2020

The Honorable Patrick L. Carroll III  
Chief Court Administrator  
Connecticut Judicial Branch  
231 Capitol Avenue  
Hartford, CT 06106

Dear Judge Carroll,

Thank you for suspending service of outstanding executions for possession in summary process actions, as well as executions of ejection in foreclosure actions, until June 1, 2020. We also thank the Branch for enforcing the Governor's eviction moratorium through *sua sponte* dismissals of improperly commenced evictions.

We write to follow up on our March 13, 2020 letter asking for suspension of eviction and foreclosure hearings, judgments, executions for possession and ejections in foreclosure actions until at least July 1, 2020. We recognize the complexities of resuming court operations consistent with protecting the health and safety of court personnel, litigants, and the public and wish to highlight some of these issues from the perspective of our clients as you make these plans. We ask that: 1) Housing Court operations remain on hold until July 1, 2020; 2) individual notices be provided to summary process defendants at least 30 days before court operations resume; 3) Housing Court operations do not resume until all court locations, law libraries, and clerks offices are open and available to pro se litigants; and 4) dockets are reduced and social distancing measures are put in place.

In addition to the many cases pending when the Governor declared a public health emergency on March 11, landlords filed over 800 summary process cases after that date, until April 10 when the Governor issued an Executive Order prohibiting new filings. The tenants in these actions are largely poor and unrepresented.<sup>1</sup> While legal services and law school clinics were never able to

---

<sup>1</sup> It is estimated that 90% of tenants in eviction actions nationally are unrepresented while 90% of landlords have attorneys. Matthew Desmond, "Unaffordable America: Poverty, housing, and eviction," *Fast Focus* 22 (2015): 1–6, available at <https://www.irp.wisc.edu/publications/fastfocus/pdfs/FF22-2015.pdf>. This estimate is consistent with the first-hand experience of housing attorneys in our programs who are the ones providing representation to most, if not all, of the tenants who *are* represented.

represent more than a small percentage of the tenants in summary process actions, we are even more challenged as we work remotely and tenant access to our offices is restricted as we protect our staff and clients' health.

These unrepresented tenants are disproportionately people of color and, in particular, Black women with children.<sup>2</sup> Existing disparities in the healthcare system and a disproportionate lack of employer-provided healthcare and other health insurance contribute to a lack of treatment for COVID-19 risk factors and lack of access to COVID-19 testing. Tenants who are elderly and/or disabled are also at high risk from the virus. The Judicial Branch should take special care not only to ensure the legal rights of tenants but also to ensure that tenants are not forced to compromise their health— and risk death – to protect their housing in Connecticut's housing courts.

As the Judicial Branch plans for the resumption of court operations, we urge that it take the following measures to protect the legal rights, the health, and the housing needs of these tenants during a public health crisis that is likely to require special protections, including social distancing, into the next calendar year and beyond:

**1. Court operations should not resume until at least July 1.**

At the present time, there is no specific moratorium suspending action on summary process cases. However, we urge the Judicial Branch to continue its practice of not acting on these cases or scheduling hearings or rendering judgments until at least July 1. We further urge the Branch to extend its moratorium on the service of outstanding summary process executions until at least July 1. Because of Executive Order 7X, most landlords and tenants already believe that court operations are suspended until July 1. That date is the earliest one could expect the Judicial Branch to have reopened all the housing courts and to have taken the necessary measures to ensure the health and safety of people needing physically to return to court outlined below. To the extent that it becomes apparent that extra time is needed or appropriate, we urge the Judicial Branch to extend suspension of action on summary process cases beyond July 1.<sup>3</sup>

---

<sup>2</sup> <https://www.aclu.org/news/racial-justice/clearing-the-record-how-eviction-sealing-laws-can-advance-housing-access-for-women-of-color/>.

<sup>3</sup> Although not addressed in this letter, there are also concerns about cases filed on behalf of federally-subsidized landlords and landlords with federally-backed mortgages. These landlords have many restrictions placed on their ability to file eviction proceedings by the federal CARES Act, including a moratorium which became effective on March 27, 2020. They may not file evictions for nonpayment rent until August 24 at the earliest after providing tenants with a 30-day written notice. Landlords, tenants, and the courts will all need to become familiar with the requirements of these laws. Of particular concern will be identifying summary process filings that are prohibited by Act. We will be separately writing with respect to these concerns and proposals as to how the Judicial Branch can ensure that no tenants are evicted in violation of the protections of the CARES Act.

**2. Clear and adequate individual notice should be provided to every housing court defendant no less than 30 days before the resumption of court operations.**

Because the defendants who appear in summary process cases are largely self-represented parties, there are special concerns to be considered in the reopening of the housing sessions. Courts last notified litigants in mid-April that scheduled court dates were continued indefinitely, and tenants who received eviction papers between March 11 and April 10 were told to await further instructions. Those summonses have stale return dates (and in some cases, plaintiff attorneys have filed motions for default, although a pro se tenant would not reasonably have known how to file an appearance). Between the federal and state moratoria and the Judicial Branch's policies, there is considerable confusion about the status of court proceedings.

The Judicial Branch should not resume the processing of eviction cases – and certainly not act on motions, enter judgments, or issue executions – without first assuring that tenants are adequately informed in all pending cases, individually in writing, about what they must do to avoid default (whether by failing to appear, to plead, or to attend rescheduled hearings) and to avoid losing their homes to a judgment for possession. The notice should be simple and written in language understandable to pro se litigants, should list the address of the housing court at which the papers are filed, and should provide information on the availability of free legal services (we can provide a list of programs). It necessarily needs to be in both English and Spanish.

Special care should be taken to ensure that this information is received. Many tenants in pending cases may be hospitalized, quarantined, or away from home to care for others, unable to return home due to disruptions in transportation or otherwise not present in the rental property when the notice is delivered. To rectify this unique COVID-related problem, we ask these notices be provided at least 30 days in advance of any rescheduled hearing or deadlines for filing. In addition, to be doubly sure this critical information is received, we urge that public service announcements be issued so as to increase the likelihood that self-represented litigants will learn, at least in a general way, that eviction cases are being reactivated so they can check for the individualized notice. Further, the opening of default judgments should be liberally approved for any COVID-19 related reason.

Advance notice is also essential because much has happened in the months since the Governor's declared emergency order, and landlords and tenants will need an adequate opportunity to avail themselves of programs and services designed to assist them with unpaid rent. The legal services programs are actively working on such proposals, to be funded by money the state will receive from the federal legislation addressing the economic fallout of the pandemic. Our strong belief is that an adequately funded renter's assistance program will facilitate the resolution of pending cases and eliminate the need for filings when the public health emergency is lifted and courts are fully operational.

**3. Summary process court operations should not resume until all the housing court locations, including law libraries, are open and the clerk’s office is available to assist pro se litigants.**

Even with clear notice to every tenant with a pending case, unrepresented low-income tenants face additional barriers to asserting and protecting their rights. Without access to computers, printers, fax machines, scanners or copiers, and with libraries and commercial copying places closed, they cannot access or remotely file documents.<sup>4</sup> They will face challenges dropping off documents in lockboxes at remote courthouses with which they may not be familiar and to which they may not have reliable transportation. Low-income *pro se* tenants rely on obtaining appearances, answers, other forms, and the critical information and assistance from the clerks in reading and understanding the forms they must complete to avoid default and to open default judgments. Tenants with disabilities and tenants with limited English proficiency face compounded barriers when accessing the courts. Because of these myriad hurdles, summary process cases should not resume until all the courts and attendant services are fully open and functioning. It is critical that tenant not be forced to file papers in lock boxes at remote locations when they face these myriad hurdles.

**4. Dockets should be reduced and social distancing guidelines implemented to protect court personnel, litigants, attorneys, and the public when matters are assigned for hearings and trials.**

It will be necessary to have reconfigured courtrooms and reduced dockets to ensure that litigants – landlords as well as tenants – are not forced to risk serious harm to their health to be heard in an eviction case. Prior to this public health emergency it was not unusual for the courts in the state’s largest cities to have 50 or more cases on the court calendar, involving hundreds of tenants, witnesses, landlords, attorneys, judges, mediators, and other court personnel. After the court starts the morning session, litigants would swarm the hallways outside courtrooms to discuss resolution while waiting to meet with the court mediators in small offices. Dockets will necessarily need to be significantly reduced and procedures put into place to ensure appropriate social distancing between landlords, tenants, attorneys, and court staff, including mediators whose offices are usually no larger than a supply closet. It will also be important to have a process by which tenants can report to the court that the tenant is in quarantine due to exposure or has tested positive or is in the hospital and have such cases automatically continued. Similarly,

---

<sup>4</sup> The Judicial Branch apparently has taken action to facilitate enrollment in e-filing by self-represented litigants. We assume that e-filing by pro se litigants remains optional. It must be optional for low income tenants who generally lack access to smartphones, tablets and computers and have literacy or language barriers that make such enrollment highly problematic. In our collective experience representing tenants, as many as half of the tenants we represent do not have email addresses.

as already referenced, defaults for failure to appear at a hearing should be liberally opened for any COVID-related reason.

Technology alone will not be the answer for most of these concerns. Summary process cases involve issues of fact requiring resolution through a judicial fact-finding process that often involves the giving of testimony, presentation of witnesses, and other physical evidence. The burden is on landlords to prove their allegations and the credibility of people testifying is critical. Housing mediations and hearings involving individuals facing the loss of their homes, most of whom are self-represented, do not lend themselves to hearings conducted by telephone or video technology such as Zoom.

First and most important is the well-recognized digital divide that exists in this country. While the use of smartphones, tablets, and personal or laptop computers is ubiquitous among higher income families, “roughly three-in-ten adults with household incomes below \$30,000 a year (29%) don’t own a smartphone. More than four-in-ten don’t have home broadband services (44%) or a traditional computer (46%). And a majority of lower-income Americans are not tablet owners.”<sup>5</sup> Even when families own such devices, their access to internet services necessary to connect those devices is both unequal and sporadic. Even if the courthouses supply the technology, tenants with significant health risks will still need to come to the courthouse and require assistance from court personnel to use the equipment.

The use of technology will also pose due process concerns including, the inability of litigants to see adverse parties and witnesses and assess non-verbal cues and demeanor. Remote technology also poses challenges for transmitting evidence from remote devices, spotty internet service causing videos to freeze and audio sounds to diminish, and the ever-present threat of disconnections. Technology will likely even impact tenants who have representation, because their attorney will be participating from another location, making consultation between the tenant and their attorney difficult, if not impossible. Finally, the use of remote hearings will impact the ability of the public to attend and watch court proceedings, a constitutional protection that is vital to our democracy.

Given the technological—and likely due process—barriers to the use of audio and video technology by low-income tenants in this context, the Judicial Branch should recognize that no housing matters, particularly those requiring testimony from the tenant, be conducted by telephone and/or a videoconferencing device.

While we understand the desire to reopen the housing sessions sooner rather than later, we think it is very important that the Branch recognize the unique aspects of the handling of housing cases that present both health-related and practicality issues – some of which touch on due process.

---

<sup>5</sup> <https://www.pewresearch.org/fact-tank/2019/05/07/digital-divide-persists-even-as-lower-income-americans-make-gains-in-tech-adoption/>

As discussed above, the extensive involvement of self-represented parties in housing cases, combined with a mediation system and a large trial and motion practice, requires special consideration of housing procedures and courthouse needs. The consequences for defendants of inappropriate default judgments can have particularly severe consequences. We appreciate the fact that the Judicial Branch has proceeded cautiously in resuming the processing of eviction cases, and we urge the Branch to be cautious and to continue to be sensitive to maintaining a fair housing session system in the face of a health pandemic.

We very much appreciate your attention to the concerns raised in this letter.

Respectfully,

Nilda R. Havrilla, Litigation and Advocacy Director  
Connecticut Legal Services, Inc.

Giovanna Shay, Litigation Director  
Greater Hartford Legal Aid

Shelley White, Litigation Director  
New Haven Legal Assistance Association, Inc.

Erin Kemple, Executive Director  
Connecticut Fair Housing Center

Kathy Flaherty, Executive Director  
Connecticut Legal Rights Project

Liam Brennan, Executive Director  
Connecticut Veterans Legal Center

Cc: Hon. Richard Robinson, Chief Justice, Connecticut Supreme Court  
Hon. James Abrams, Chief Administrative Judge for Civil Matters