



August 17, 2020

via email

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

Dear Judge Carroll:

On July 29, 2020, the Judicial Branch issued notice that it is working on a process for remote mediation of pending summary process cases. We would very much appreciate the opportunity to meet with you or your staff to discuss this process. As tenant advocates who practice in housing court, we are acutely aware of the challenges of remote mediation for defendants without attorneys; however, remote mediation in a pandemic presents additional challenges because stable housing is critical to controlling the virus until a vaccine is in place.

Since March, the Judicial Branch has properly kept summary process cases on hold and the Governor has issued two moratoriums on filing eviction actions. These actions to ensure that people had stable housing during the public health crisis were essential to our state's successful effort to flatten the curve and control the virus. But, the public health crisis has not gone away. The virus is still with us, and public health experts unanimously expect a second wave this fall, if not sooner, given the unpredictability of this crisis. As the Judicial Branch starts to move eviction cases forward, through the process of mediation, it will be critical to continue to protect the public health of our state by avoiding displacement, doubling up of households, and other actions which puts evicted residents into close contact with others.

A post-moratorium eviction surge, on top of processing the thousands of already-pending summary process cases, threatens the hard-won gains that Connecticut has made in controlling the novel coronavirus. The eviction moratorium, coupled with the efforts to get people experiencing homelessness into hotels and new permanent housing, contributed to the State's success. A mediation system that does not ensure that families either stay in their present housing or move deliberately and voluntarily to new permanent housing is destined not only to elevate

the virus in Connecticut, but also to force the state to expend significant resources to recreate the same efforts to get people out of overcrowded and congregate housing.

We are particularly concerned because, while approximately 90% of landlords have attorneys, the same percentage of tenants are unrepresented. Pre-pandemic, the vast majority of cases ended at mediation, with tenants agreeing to move out and/or to repay rent, attorney's fees and court costs. However, when the tenant defaults in the slightest way ("a day late or a dollar short"), the landlord files an Affidavit of Noncompliance and executions issue automatically, making many families homeless. Without changes to the mediation process, the eviction process will simply create a new population of homeless families, exacerbating the public health issues that the State spent millions to reduce.

The mediation system must be accessible to tenants who do not have access to or capacity to use digital technology. Critical to keeping the success of mediation in these extraordinary times is the need for mediators to have a direct link to available public and private funds to pay back rent. The remote mediation process should provide tenants with the opportunity to access counsel and provide court review to ensure that mediated agreements are fair and will not simply result in an execution within a few weeks. The mediators will need training on the CARES Act and other legal protections to ensure that they can refer defendants with cases that present issues of subject matter jurisdiction to the legal services programs.

We have a number of constructive suggestions that balance the interests of both landlords and tenants in fair and reasonable resolutions of these cases, while also ensuring that the mediation process does not result in the involuntary displacement of vulnerable families with children at a time when such displacement poses serious public health concerns. These suggestions are outlined below and we ask to talk with you about these possible protections including:

- Deferring the process for mediation until computers are placed in the courthouses.
- Training for mediators. In these extraordinary times, mediators will need specialized training to ensure that mediations are both fair and reasonable. This should include training on managing remote meetings with unrepresented parties who may have little or no prior experience with technology; training around spotting legal issues that, along with significant factual disputes and viable defenses, necessitate referral of the tenant to legal services or other outside counsel; and training around the process for accessing outside funding. Mediators should be trained to consider settlements in which all or a portion of the back balance is waived in return for landlord receipt of state rent program funding, as well as in other creative ways to resolve cases, such as assisting tenants who had

issues applying for unemployment benefits or landlords in obtaining mortgage forbearance. The goal must be agreements that strive to keep tenants in their housing or enabling them to voluntarily move to new permanent housing

- Ensuring the availability of sufficient funding for rental assistance,¹ which will be essential for tenants who have lost their jobs and for landlords who need money to avoid foreclosure and pay property taxes. Without this funding, mediation will simply result in tenants losing their housing, at a far greater cost to public health and taxpayer dollars.
- Mailing remote mediation notices sufficiently in advance to account for current delays in mailing.
- Providing attorney referral information at every opportunity, e.g., in the notices sent about the scheduling of remote mediations, in the links sent with the invite to the remote mediation itself, at the time the self-represented joins the remote mediation, and when the mediation ends whether with an agreement or a decision to proceed to hearing.
- Prohibiting remote mediation where the tenant can only access the mediation by audio, i.e., where the phone does not enable the tenant to see other parties or be seen since Housing Court mediations effectively serve as the one opportunity tenants have to make their case as to how much money is owed, whether they have defenses and so forth.
- Ensuring that sufficient time is allocated for each mediation. Tenants must be able to challenge the accuracy of rent ledgers and raise issues around conditions and for mediators to determine if a case requires the assistance of counsel

¹ While the Governor's office and the Department of Housing have allocated approximately \$17 million for rental assistance to date, that amount is not sufficient to meet the current need [the Aspen Institute's recent analysis projects that 33-45% of Connecticut households are at risk of eviction. <https://www.aspeninstitute.org/blog-posts/the-covid-19-eviction-crisis-an-estimated-30-40-million-people-in-america-are-at-risk/>] and those programs have not been directed specifically at tenants with pending court cases. It will be important for the Judicial Branch to link parties to available money (either within the amounts presently allocated or new allocations) that are specifically targeted at people with pending court cases with a financial need for rental assistance to resolve their case. The mediators will need direct access to those programs to successfully mediate cases and preserve housing.

- If mediation fails to produce an agreement, not holding a trial on the same day. It is essential to a fair process that an unrepresented tenant have the opportunity to seek legal help. Effective participation in a remote hearing will be especially difficult for self-represented parties.
- Canvassing of all judgments, whether mediated or agreed to “out of court,” by a judge interacting remotely with the tenant.
- Providing tenants with the opportunity for a court hearing on all affidavits of noncompliance before any execution can be issued.
- Reviewing the standard language that some mediators use in form stipulated agreements. Some mediation forms contain language that raises issues for both fairness and consistency with public policy goals related to the pandemic and the difficulties for self-represented tenants generated by remote procedures.

We believe the Judicial Branch shares the goal of keeping tenants safely housed while ensuring fair and reasonable resolutions based on the availability of public funds to pay landlords. We would very much appreciate the opportunity to speak with you or your staff as soon as possible.

Thank you very much.

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

J.L. Pottenger, Jr.
Housing Clinic,
Jerome N. Frank Legal Services Organization at Yale Law School²

² This letter does not represent the institutional views of Yale University or Yale Law School.

CC: Hon. Elizabeth Bozzuto, Deputy Chief Court Administrator
Hon. James Abrams, Chief Administrative Judge for Civil Matters
Tais Ericson, Executive Director, Court Operations
Krista Hess, Director, Court Operations
Nancy McGann, Deputy Director, Civil Matters, Court Operations
Alexandra Buenaventura Gillett, Program Manager, Court Operations