MARICOPA COUNTY JUSTICE COURTS
BEST PRACTICES

SUBJECT: IMPLEMENTATION AND EXPIRATION OF
EXECUTIVE ORDER 2020-14 (SECOND AMENDED)
AND EXPIRATION OF THE CARES ACT

EFFECTIVE: 06/24/2020

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1. RATIONALE: Governor Ducey issued Executive Order 2020-14 entitled "Postponement of Eviction Actions" on March 24, 2020 and will expire on July 22, 2020, unless extended. The Federal Coronavirus Aid, Relief, and Economic Security (CARES) Act will expire on July 25, 2020.

2. PURPOSE: The purpose of any "best practice" is to foster excellence regarding case processing, form development and control, and other operating procedure throughout the Maricopa County Justice Court system ("MCJC"). Implementation of a "best practice" is strongly recommended to promote consistency and efficiency throughout the MCJC but is voluntary by any individual Justice of the Peace ("JP") Court.

3. ISSUE: The Executive Order directs constables and law enforcement officers to temporarily delay writs of restitution in certain circumstances and for certain individuals. The Executive Order does include necessary activity on the part of the courts, but as it did not go through the legislative or Supreme Court's rule-making process, it requires courts to substantively resolve certain issues. This Best Practice is offered to provide judicial officers points to consider in fulfilling their obligations under the Executive Order.

4. LEGAL AUTHORITY: Executive Order 2020-14 entitled "Postponement of Eviction Actions" on March 24, 2020; 15 U.S.C. § 9058 (the CARES Act).

5. BEST PRACTICES:

General Guidance

The Executive Order does not make substantive changes to Arizona eviction law. It directs constables and law enforcement officers (collectively "LEOs") to temporarily delay writs of restitution in certain circumstances and for certain individuals and then allows for an aggrieved party to file a motion to enforce a writ if the party does not agree with a LEO's decision not to enforce the writ.

The initial eviction proceeding and writ issuance process is unchanged as the Executive Order process is not triggered until after the writ is issued. The Executive Order highlights that a landlord shall not interpret a health and safety provision of a contract to include COVID-19 as a reason for termination of a lease.

Although the Executive Order does not impact whether an eviction judgment will be issued, due to apparent confusion concerning the Executive Order, at the time of the initial appearance, a justice of the peace should provide a general explanation of the Executive Order and how a tenant may seek relief under it prior to the enforcement of the writ.

The Executive Order relief process is triggered when the tenant provides the landlord with written documentation that they are seeking protection under the Executive Order by requesting a temporary delay of enforcement of the writ after it has been issued. The Committee has determined that this "written" documentation requirement may be satisfied by any form of notification, including emails and text messages. The Committee also recognizes that property managers are agents of the owners/landlords and therefore deem written documentation to the property manager as sufficient.

If the LEO has arrived to enforce a writ and the tenant believes they are qualified for relief but have not yet provided documentation to the landlord, the Committee has been informed that many LEOs will allow the tenant five business days to provide documentation to the landlord before enforcing the writ. The Committee recognizes this implements the intent of Executive Order. The Committee also notes that Maricopa County Constables have produced their own Best Practice, and it allows for an additional five days.

A landlord who disagrees with a LEO's action to delay enforcement of a writ may file a "Motion to Compel Enforcement of the Writ" with the court and

provide copies to the tenant. The LEO should keep the delayed writ and the court shall inform the constable of the outcome of all motions to compel. **No action is required by the court until or unless a Motion to Compel is filed.**

The Committee has determined that, while silent as to the definition of "tenant," the Executive Order should be interpreted to apply to residential tenants, including tenants subject to the Mobile Home Parks Residential Landlord and Tenant Act and/or the Recreational Vehicle Long-Term Rental Space Act.

The Committee encourages judges that, when entering judgment against a tenant, the court advise the tenant of the possible availability of a delay of the execution of the writ of restitution pursuant to the Executive Order and that a form can be found at www.azcourts.gov/eviction .

The Committee recognizes that Executive Order 2020-14 expires on July 22, 2020, unless extended, and may be a moving target. Any subsequent changes to it may require this Best Practice to be amended or vacated.

Motion to Compel Enforcement of the Writ

A tenant may allege that he or she has a qualifying condition under the Executive Order for events that occurred on any date in March 2020 or afterwards. A Motion to Compel should not be granted merely because the events in question occurred between March 1, 2020, and March 24, 2020.

Any Motion to Compel Enforcement of the Writ should be heard expeditiously (preferably within five business days) and may be heard telephonically; by video; or in person once any Administrative Order restricting access to our court buildings expires. The court should allow the tenant an opportunity to file a response in writing before ruling on a motion. A court is not required to set a Motion to Compel for a hearing if it is obvious from the text of the motion and from other information in the court's case file that the motion should be granted or denied but may wish to do so to address additional issues as to whether the judgment should be amended and/or to determine the date the writ may actually be enforced.

As part of the hearing on the motion process, the court shall determine whether enforcement of the writ is necessary in the interest of justice or is in accordance with § ARS 33-1368(A). The burden of proof is on the tenant to establish by a preponderance of the evidence that the tenant meets one or more criteria in paragraph one of the Executive Order. The Committee notes that the Executive Order puts no onus on the tenant to show they have applied for unemployment, are actively looking for work, or have

received the stimulus payment. If either party introduces information or arguments not raised in the motion or response, the court may continue the hearing in the interest of justice.

The court should instruct the tenant that rent continues to accrue while the tenant remains in possession and may provide further guidance to the parties on the length of an authorized delay of enforcement.

A delay of the execution of the writ of restitution remains in effect until the landlord files an additional motion to compel alleging a change in circumstances. (The parties may also resolve issues concerning possession outside of the legal process.) The delay cannot be extended beyond the date the Executive Order, or any extension thereto, expires.

If a defendant has vacated the premises prior to a court order enforcing the writ, the plaintiff may file an independent civil action for any damages accrued during the delay of the enforcement.

Legal Status of the Parties

The Best Practices Committee recognizes that the Governor's Executive Order is unprecedented in Arizona law and history. Traditionally, and unquestionably, an eviction judgment terminated a lease. However, that interpretation was based upon an expectation that a writ of restitution would be executed shortly after a judgment was issued or that the parties would voluntarily enter into a new agreement. If enforcement of a writ is delayed because of the Governor's Executive Order, that is no longer the case and the tenant is remaining on the premises without a legal agreement to do so.

The Committee recognizes that the Executive Order specifically requires the tenant to "acknowledge that the terms of the lease remain in effect" in order to invoke the protections of the Executive Order. It further requires all individuals to "pay rent or comply with any other obligation that an individual may have under a tenancy."

Accordingly, the Committee believes that it is a best practice to interpret the Executive Order as a temporary exception to Arizona law to allow that a lease is not terminated and remains in effect until a writ is actually executed or the tenant vacates the premises. Under this interpretation, the terms and obligations of the lease remain in effect and there is no need of a second judgment or to consider the tenant a holdover tenant, trespasser or squatter.

Tenants who remain in possession and have paid all amounts alleged to be owed may seek to quash the writ of restitution in accordance with Rule 14(c) of the Rules of Procedure for Eviction Actions.

Expiration of the Executive Order and CARES Act

Judges will have numerous challenges to face upon the expiration of the Executive Order, currently set to expire on July 22, 2020, and the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act, which prevented many landlords from filing new eviction actions for nonpayment of rent between March 27, 2020, and July 25, 2020 (unless extended). It is estimated that between 3,000 and 5,000 new evictions may be filed in Maricopa County when the protections end. In addition, there are many outstanding cases and writs to resolve.

Supreme Court AO 2020-79, at page 7, paragraph 1, suspends eviction timelines only through August 1. If the AO time exclusion is not granted another extension, courts will have to consider extraordinary measures to timely resolve these matters, including continuing most matters other than eviction, protective order, and in-custody criminal matters and double-booking calendars with pro tems working in hearing rooms or virtually.

Because of current Supreme and Superior Court administrative orders and social distancing requirements, courts must continue to carefully plan for the presence of people in the court buildings, so, to the greatest extent possible, courts should continue to conduct initial appearances and trials virtually. When scheduling, courts should also keep in mind that more tenants “appear” at virtual hearings and they take longer.

The committee also suggests that, in order to ensure that each of the parties receives the full benefit of their court experience, each telephonic initial calendar be limited to 25 cases per hour and three hours per day. It is also a better practice to separate the calendars per law firm so that parties do not have to wait as long for their hearing. Additional calendars can be created by double-calendaring with pro tems working in hearing rooms or virtually. When scheduling a pro tem for this purpose, the court should keep the pro tem’s experience with evictions in mind; pro tems with less experience may be better suited to handle lighter eviction trial calendars rather than initial calendars.

The committee foresees three categories of cases to consider: (1) New eviction cases that were not filed because of the pandemic or precluded by the CARES Act; (2) Cases where Landlords obtained judgments but did not obtain writs; and (3) Cases with judgments and writs but enforcement of the writ was delayed.

1. New Eviction Cases

A. Delayed by the Pandemic Only

New eviction cases will, for the most part, proceed with business as usual with the exception of the tremendous volume that many courts will have to process. As discussed above, courts must be conscious that the timeframes are complied with (unless the AO time exclusion is extended by a new Supreme Court AO), and that social distancing is complied with.

In addition to the standard checklist of items that judges must regularly review, courts will have to ensure that the total judgment, exclusive of costs, interest and attorney's fees, does not exceed $10,000 (it is likely that claims over $10,000 will still be filed in Justice Court with the plaintiff waiving the balance over $10,000).

Courts should also have a mechanism (the court could do their own iCIS search or have the plaintiff avow) to verify that there is not a prior eviction judgment for the same parties and property. If there was a prior judgment, the court must take that into consideration when considering a new judgment when determining the amount of damages.

Another issue will be the calculation of late charges, because landlords were either precluded from filing the eviction sooner by the CARES Act, or chose not to do so because of the pandemic. The Committee takes no position on how judges will choose to resolve this issue; but the judge should keep in mind that it was most likely not the plaintiff's choice to delay the filing of the eviction action. Please note that landlords who were precluded from filing eviction actions because of the CARES Act may NOT charge fees, penalties, or other charges to the tenant related to the nonpayment of rent. CARES Act, 15 U.S.C. § 9058(b)(2).

B. Delayed by the CARES Act

While the CARES Act expires on July 25, 2020, it actually requires that a THIRTY day notice to vacate be filed AFTER its expiration. Accordingly, those cases may not be filed sooner than August 26, 2020, and judges should ensure that the notice was thirty days. The Act provides as follows:

> (b) MORATORIUM.—During the 120-day period beginning on the date of enactment of this Act, the lessor of a covered dwelling may not—
> (1) make, or cause to be made, any filing with the court of jurisdiction

> to initiate a legal action to recover possession of the covered dwelling from the tenant for nonpayment of rent or other fees or charges; or
> (2) charge fees, penalties, or other charges to the tenant related to such nonpayment of rent.
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> (c) NOTICE.—The lessor of a covered dwelling unit—
> (1) may not require the tenant to vacate the covered dwelling unit before the date that is 30 days after the date on which the lessor provides the tenant with a notice to vacate; and
> (2) may not issue a notice to vacate under paragraph (1) until after the expiration of the period described in subsection (b).

CARES Act, 15 U.S.C. § 9058. Again, it also specifically prohibits late fees.

It is possible that the Supreme Court may require additional avowals by plaintiffs with respect to whether properties are subject to the CARES Act and that the plaintiff has complied with it. The court should be careful to ensure that any necessary requirements are satisfied.

2. Landlord Obtained Judgment But Did Not Request Writ

There may be some landlords who obtained a judgment but, for whatever reason, did not apply for a writ. Strictly speaking, the EO protections were never invoked because the constable did not delay the enforcement of a writ; a writ was never issued.

The first issue to address is the "45-day rule" regarding writs. A common misconception is that the writ "expires" 45 days after issuance. That is not the case: rather, a hearing is required if a writ is not applied for within 45 days of its issuance:

> If a party applies for a writ of restitution more than 45 days after the judgment, the party must also explain the reasons for the delay in making the application and shall certify that the tenancy has not been reinstated since the date of the judgment. If it is clear that the tenancy has not been reinstated, the court shall issue the writ. If it appears to the court that the tenancy has or may have been reinstated, the court shall schedule a hearing before granting the application. This hearing shall be scheduled no more than three business days after the application. The court shall attempt to contact the party in possession by telephone to provide notice of the hearing, and the applicant for the writ shall cause a notice of the date, time, place and purpose of the hearing to be delivered to the party in possession either personally or by posting the notice on the main entrance to the premises.

RPEA Rule 14(b)(2).

The aforementioned Supreme Court AO 2020-79, at page 7, paragraph 1, suspends eviction timelines from March 18, 2020 through August 1, 2020, for "rule provisions and statutory procedures that require court proceedings to be held within a specific period of time…" It is debatable whether the issuance of a writ within 45 days "requires a court proceeding." See RPEA Rule 14: "The court shall promptly issue a writ of restitution upon timely application of a party entitled to it if the application is accompanied by the appropriate fee and deposits."

In any event, the Committee believes it is a best practice to require a hearing to comply with Rule 14(b)(2) if the judgment is over 45 days old. Such a hearing could also address the second issue of amending the judgment to reflect the current amount of damages. Considering the writ and amending the judgment in one judicial proceeding promotes judicial economy and benefits the tenant by being subject to only one judgment.

If the judgment is fresher than 45 days, a court can require a hearing only if a tenant files a motion to stay the issuance of the writ pursuant to RPEA 14(c). If the court finds good cause to believe that the writ was "improperly or prematurely issued," the court can stay the writ and schedule a hearing within three court days. Good cause is defined in RPEA 18(d) to mean a "stated, substantial reason, the accommodation of which will serve the interests of fairness and justice, without also causing a significant delay or harm to another party."

3. Landlord Obtained Judgment and a Writ, But Enforcement of Writ Was Delayed

Unless a constable has returned a writ or the court has denied a Motion to Compel, the court may not be aware of how many writs have been issued but enforcement has been delayed by the constable pursuant to the EO.

The Committee is aware that, prior to the EO, a tenant knew (or had an opportunity to know) at least five days in advance before a writ of restitution was to be executed. With these writs, while the tenant may understand that the EO expires on July 22, 2020, they have no idea when a constable may appear to enforce the writ.

This issue is resolved if the landlord files a Motion to Compel and/or for an Amended Judgment to update the amount of rent. At such a hearing, if a writ is to be enforced, the court should advise the tenant of the approximate enforcement date.

The recommended best practice is for courts to allow landlords to file motions to amend judgments in eviction action cases. The alternative would require landlords to file a second eviction action against the same tenants who are living in the same property because the failure to pay subsequent rent would be a new breach of the tenancy. RPEA 15(c) and 15(d) allow for unspecified post judgment motions and therefore provide authority for a Motion to Amend Eviction Action Judgment. In addition, A.R.S. § 12-1178(A) requires a court to compensate a landlord for "all rent found to be due and unpaid through the periodic rental period."

Again, considering the writ and amending the judgment in one judicial proceeding promotes judicial economy and benefits the tenant by being subject to only one judgment.

If the landlord does not file any motion, the Committee encourages the constables, where practicable, to provide at least 48 hours' notice to a tenant before a postponed writ is executed.

If a constable has returned the writ to the court, the returned writ should be made a part of the record and the constable should have notified the landlord that a new writ needs to be applied for. The court should not collect a fee for this new filing. Again, if the judgment is more than 45 days old, or if a tenant files a motion to stay the issuance of the writ pursuant to RPEA 14(c), the court must hold a hearing.

6. IMPLEMENTATION: The above best practice was recommended on March 26, 2020, amended on April 29, 2020, and again on June 24, 2020. The practice may be implemented immediately and remain effective until superseded or abolished.