

MARICOPA COUNTY JUSTICE COURTS:



PODCAST: MCJC AMENDED BEST PRACTICE: EXECUTIVE ORDER 2020-14

May 4, 2020

Materials:

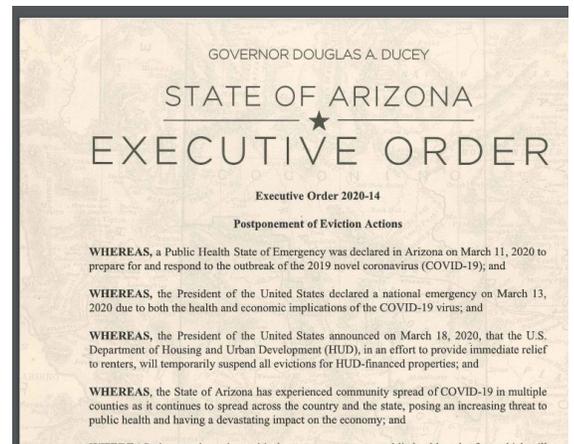
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Faculty:

Hon. Anna Huberman
Country Meadows Justice Court

Hon. Gerald Williams
North Valley Justice Court

Charles J. Adornetto
MCJC Judicial Education Officer

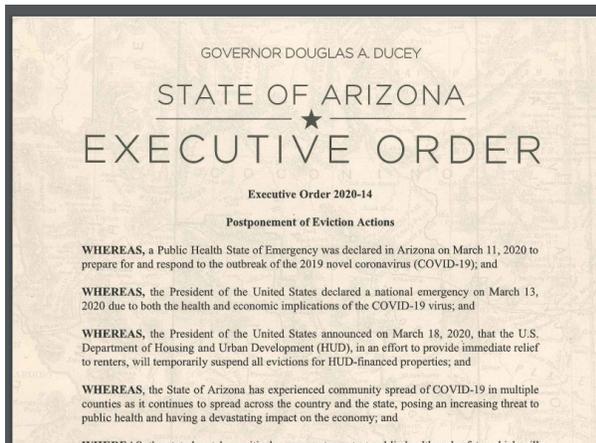


Updated 5/1/2020

MAY QUALIFY FOR UP TO 0.75 HOURS OF COJET/CLE



MCJC Amended Best Practice: Executive Order 2020-14



Biographies

HON. ANNA HUBERMAN is the Justice of the Peace of the Country Meadows precinct in the West Valley and the recipient of the 2019 Sherry Geisler Justice of the Peace Award by the Arizona Justice of the Peace Association.

Anna was born and raised in the Midwest but moved with her parents to Argentina as a teenager where she finished high school and obtained a JD degree from the Universidad de Buenos Aires. As an adult she moved back to the United States with her husband and children.

Her love of language and law came together in her 15 year career as a court interpreter with the Maricopa County Superior Court. Highly regarded in her field, she taught skills classes for the Master's Program in Court Interpretation at the College of Charleston and mentored and trained new interpreters.

In 2012 a new justice court precinct was created in the West Valley. Drawing on her knowledge of the law and her 15 years of experience in the courts in Maricopa County Anna decided to run for the position. She was re-elected to her second term in 2016.

Judge Huberman is chair of the Pro Tem Committee and member of the Best Practices Committee of the Maricopa County Justice Court Bench. As a member of the

Supreme Court's Access to Justice Committee, Anna chairs the Self-represented Litigants workgroup. And having participated in the Judicial Conference Planning Committee she has now been appointed to the Judicial College of Arizona (JCA). Chief Justice Bales has also appointed her to the Arizona Court Interpreter Program Advisory Committee.

In her role as a Justice of the Peace Anna continues to teach. She has presented as faculty in New Judge Orientation, the Judicial Conference, the Justice of the Peace Conference, Maricopa County Justice Courts Staff Conference and Judicial Officer trainings. She also serves as a mentor judge.

Judge Huberman remains active in her community helping on charities and community projects. She is a volunteer interpreter and wish granter with Make a Wish Arizona.

HON. GERALD WILLIAMS is the recipient of the 2019 Justice Michael D. Ryan Award for Judicial Excellence from the Public Lawyer Section of the Arizona State Bar and he received a Strategic Agenda Award from the Arizona Supreme Court for Enhancing Professionalism within Arizona's Courts in 2015.

He was appointed in April 2004 to the North Valley Justice Court. He was then elected to his current position in the fall of 2004, and was re-elected in 2006, 2010, and 2014. He is a former Associate Presiding Justice of the Peace of the Maricopa County Justice Courts.

Prior to his appointment, Judge Williams was the staff attorney for the Arizona Commission on Judicial Conduct. While there he represented the commission in seven formal public cases against judges and helped review more than 500 ethics complaints against judges throughout the state of Arizona. He has also served as a staff attorney for the Department of Veterans Affairs Regional Counsel's Office in Phoenix.

Judge Williams received an undergraduate degree from Oklahoma State University and earned his law degree from the University Of Oklahoma College Of Law. While in law school, he served as managing editor of Oklahoma Law Review.

Judge Williams began his legal career in the United States Air Force, where he served as a Judge Advocate General or "JAG." As an Air Force attorney, he prosecuted and defended criminal cases and served as a medical law consultant. Judge Williams retired from the Air Force Reserve as a Lieutenant Colonel.

Judge Williams is actively involved in efforts to improve the judicial branch. He served on committees that wrote the Justice Court Rules of Civil Procedure, the Rules of Procedure for Eviction Actions, and the rules for the Constable Ethics, Standards, and Training Board. Judge Williams is a faculty member for the Arizona New Judge Orientation Course and also served on the Arizona Supreme Court's DUI Case

Processing Committee. He was named the 2013 Arizona Justice of the Peace of the Year.

He has also been involved in community activities for several years and is active in First United Methodist Church of Glendale. Judge Williams volunteers as a trial judge for the high school Arizona Mock Trial Tournament and as a Law Merit Badge Counselor for the Boy Scouts. His articles have appeared in various legal publications, including the Arizona Attorney magazine. He also writes a monthly newspaper column.

CHARLES J. ADORNETTO is the Judicial Education Officer for the Maricopa County Justice Courts and a Judge Pro Tempore in several courts. In his many years of legal practice, Mr. Adornetto has been the Wickenburg Town Magistrate, the Chief Hearing Officer at the Arizona Department of Juvenile Corrections, the Chief Hearing Officer/Assistant Director of the Arizona Health Care Cost Containment System, and an Assistant Chief Administrative Law Judge at the Arizona Department of Transportation.

Mr. Adornetto graduated from Stanford Law School and has a B.S. in Political Science from Arizona State University. He has also attended the Judicial College of Arizona; the National Judicial College in Reno, Nevada, the Arizona College of Trial Advocacy, the Certified Public Manager program, and the State University of New York at Buffalo.

Mr. Adornetto is a past Chair of the Executive Council of Arizona State Bar Public Lawyer Section and of the Juvenile Law Section. He also serves on the State Bar Fee Arbitration Committee and has served on the Unauthorized Practice of Law Advisory Committee and Peer Review Committee. He has also been a substitute teacher in our public schools and is the past president of A Stepping Stone Foundation, a charity providing preschool and family literacy services, along with college scholarships, to at-risk youth in Arizona.

Mr. Adornetto received a Strategic Agenda Award from the Arizona Supreme Court for Enhancing Professionalism within Arizona's Courts in 2015 and was a Supervisor of the Year at the Arizona Department of Juvenile Corrections in 2006. Mr. Adornetto served as a Table Mentor at the Supreme Court's Limited Jurisdiction New Judge Orientation in 2019 and 2020.

GOVERNOR DOUGLAS A. DUCEY

STATE OF ARIZONA

★

EXECUTIVE ORDER

Executive Order 2020-14

Postponement of Eviction Actions

WHEREAS, a Public Health State of Emergency was declared in Arizona on March 11, 2020 to prepare for and respond to the outbreak of the 2019 novel coronavirus (COVID-19); and

WHEREAS, the President of the United States declared a national emergency on March 13, 2020 due to both the health and economic implications of the COVID-19 virus; and

WHEREAS, the President of the United States announced on March 18, 2020, that the U.S. Department of Housing and Urban Development (HUD), in an effort to provide immediate relief to renters, will temporarily suspend all evictions for HUD-financed properties; and

WHEREAS, the State of Arizona has experienced community spread of COVID-19 in multiple counties as it continues to spread across the country and the state, posing an increasing threat to public health and having a devastating impact on the economy; and

WHEREAS, the state has taken critical measures to protect public health and safety, which will result in direct economic consequences for businesses across the State of Arizona that provide employment for many Arizonans; and

WHEREAS, in order to prevent the spread of COVID-19 and protect citizens from individuals who may become infected, the Centers for Disease Control and Prevention have recommended that people self-isolate if they have been exposed to COVID-19 or if they have a condition that puts them at risk for serious harm by the disease; and

WHEREAS, it may become medically necessary for Arizonans to remain in their rental properties to stay isolated and separated from the general public; and

WHEREAS, those who must self-isolate or who are unable to work, may experience a decrease in income and thus their ability to pay for regular living expenses; and

WHEREAS, the anticipated loss of work and income for Arizonans and their families may impact their ability to pay for their rental housing, resulting in landlords initiating eviction proceedings to remove them from their residences; and

WHEREAS, to further protect public health, it is necessary to to avoid the serious consequence of Arizonans losing their rental housing.

NOW, THEREFORE I, Douglas A. Ducey, Governor of the State of Arizona, by virtue of the authority vested in me by the Constitution and laws of this state, hereby order as follows:

1. 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:
 - a. The individual is required to be quarantined based on their diagnosis of COVID-19.
 - b. The individual is ordered by a licensed medical professional to self-quarantine based on their demonstration of symptoms as defined by the Centers for Disease Control and Prevention.
 - c. The individual is required to be quarantined based on someone in the home being diagnosed with COVID-19.
 - d. The individual demonstrates that they have a health condition, as defined by the Centers for Disease Control and Prevention, that makes them more at risk for COVID-19 than the average person.
 - e. The individual suffered a substantial loss of income resulting from COVID-19, including:
 - i. Job loss;
 - ii. Reduction in compensation;
 - iii. Closure of place of employment;
 - iv. Obligation to be absent from work to care for a home-bound school-age child; or
 - v. Other pertinent circumstances.
2. If a tenant, lessee or resident is suffering any of the above circumstances and seeks relief from or delay in eviction, they shall notify the landlord or property owner in writing with any available supporting documentation of their temporary financial hardship or state of quarantine as a result of COVID-19 and acknowledge that contractual terms of the lease remain in effect.
3. 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 or rental agreement; nor shall a landlord terminate a lease or rental agreement solely based on information provided by the tenant to satisfy a notice requirement under paragraph 2.

4. No provision contained in this Executive Order shall be construed as relieving any individual of the obligation to pay rent or comply with any other obligation that an individual may have under a tenancy.
5. This Executive Order shall remain in effect for 120 days.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Arizona.



Douglas R. Ducey

GOVERNOR

DONE at the Capitol in Phoenix on this Twenty-Fourth day of March in the Year Two Thousand and Twenty and of the Independence of the United States of America the Two Hundred and Forty-Fourth.

ATTEST:

[Signature]

Secretary of State



MARICOPA COUNTY JUSTICE COURTS
BEST PRACTICES

SUBJECT: IMPLEMENTATION OF EXECUTIVE ORDER 2020-14 (AMENDED)

EFFECTIVE: 04/29/2020

1. RATIONALE: Governor Ducey issued Executive Order 2020-14 entitled "Postponement of Eviction Actions" on March 24, 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.
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 23, 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.

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



MARICOPA COUNTY
JUSTICE COURTS

A handwritten signature in black ink, appearing to read "C. Adornetto", is written over a white rectangular background.

Charles J. Adornetto
MCJC Judicial
Education Officer

Judicial Resources:
<https://spaces.hightail.com/space/tOuRfKkxm6>

Podcasts:
<https://anchor.fm/charles-adornetto>

Return to:

Ester.Mendoza@jbazmc.maricopa.gov

CERTIFICATE OF ATTENDANCE

**PODCAST: MCJC
AMENDED BEST PRACTICE:
EXECUTIVE ORDER 2020-14**

May 4, 2020

Eligible for up to 0.75 hours of COJET/CLE

0 hours of Ethics

I claim _____ hours

Name:

Signature:
