

November 5, 2021

Via Email: Jaclyn.Daumerie@txcourts.gov

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Jackie:

As requested, we are writing to give the Court comments and suggestions with respect to its next emergency orders. Below we have expressed thoughts with respect to the 2 existing emergency orders, the Forty-Second Emergency Order regarding the Texas Eviction Diversion Program and the Forty-Third Emergency Order relating to the modification or suspension of certain deadlines and procedures.

Forty-Second Emergency Order relating to the Texas Eviction Division Program

We support the Texas Rent Relief (TRRP) and Eviction Diversion programs (TEDP), which have helped more 210,000 households meet their obligations and stay in their homes. However, as a result of programs' tremendous success, demand appears to have outstripped the program's current capacity. With the Texas Department of Housing and Community Affairs announcement earlier this week that it will not be accepting applications for either TRRP or TEDP after 5 pm on November 5, we respectfully request that the Supreme Court reassess and limit the scope of the Forty-Second Emergency Order.

While some communities still have local rental assistance programs that are accepting applications and there may be assistance through non-profits or other sources, we are not aware of any comprehensive data indicating how much capacity these programs have and it is our understanding that some major programs in the state may also soon expend their federal allocations.

As a result, having a blanket statewide rule that requires a 60-day abatement of cases does not make practical sense. There is no need to have a statewide rule that Justices of the Peace provide information about the TEDP or mandate a 60-day abatement of cases when there is no ability for the parties to apply for participation in the program. We urge the courts to go back to business as we are extremely concerned that cases will continue to be delayed as debt for tenants continues to accumulate and landlords do not have income necessary to meet obligations, such as paying taxes, maintaining their property, providing services, paying vendors and staff, or paying lenders.

JP courts should be required to rule on eviction proceedings pursuant to the applicable statutes and Rules of Civil Procedure without the mandates imposed by the 42nd Emergency Order. The content of the Order as it appeared in the 27th Emergency Order (the original TEDP Order) had its place; however, the protective measures taken by the Court are no longer warranted. *We would submit to the Court that there is no longer a need for the Court's*

involvement in the rental assistance business because as a practical matter, no applications will be allowed to be submitted as of 5pm on November 5 and, even if additional rental assistance funds become available, the TRRP including the TEDP could and should continue without court intervention. TDHCA has shown to be more than capable of administering a statewide rental assistance program and the agreement a landlord and tenant make when participating in it achieves the same or similar result in a less burdensome and confusing manner.

The Forty-Second Emergency Order should expire because:

1. The TRRP (which includes the TEDP) addresses evictions during rental assistance. Pursuant to paragraph 11 of the current Landlord Certification (revised October 12, 2021), the landlord may not evict the tenant for any reason that predates the acceptance of the funds or for any reason related to rent or fees during the time period covered by the funds and will not evict a tenant for a nonmonetary default during the time period covered by the rental assistance actually received, except for actions or breaches of the lease that are related to criminal activity, property damage or physical harm to others.
2. There is no need for the Court to mandate an abatement if the parties cannot apply for assistance. There is no need for the Court to mandate abatement even if the parties are waiting for funds through the TRRP because it imposes similar contractual constraints on evictions. The parties will proceed or not with the eviction action based upon their separate contractual agreements with each other and the agency that runs the program.
3. The TEDP has provided a burdensome process for landlords to obtain rental assistance during the eviction process. Many evictions in the JP courts are prosecuted by landlords who are not represented by attorneys. The process established by the 27th Emergency Order and its successor orders is time-consuming, complicated, and overly burdensome for pro se landlords. Pro se landlords often do not understand the concepts of abatement, reinstatement, and dismissal with prejudice. The requirement to abate a case for 60 days and automatically dismiss with prejudice unless a reinstatement is filed prior to the 60-day period (which has often been contemporaneous with rental assistance and court delays) has caused many landlords to choose not to participate in the Texas Eviction Diversion Program.

Forty-Third Emergency Order relating to the modification or suspension of certain deadlines and procedures.

Section 4 of the Forty-Third Emergency Order gives justice courts the flexibility to, without a participant's consent, modify or suspend deadlines and procedures relating to trials and pretrial hearings for a stated period ending no later than April 1, 2022. **We would suggest that this unilateral discretion given to justice courts to delay eviction proceedings be suspended indefinitely.** Please consider the following:

- The eviction proceeding has historically been characterized as a summary, speedy, inexpensive remedy for a landlord of real property to regain possession of their property. As you know, the Texas Rules of Civil Procedure (Rule 510.4(a)(10))

provides that the citation in an eviction must state the day the tenant must appear in person for trial at the court issuing the citation, which must not be less than *10 nor more than 21 days* after the petition is filed.

- The emergency orders allowing the justice courts flexibility with respect to trials and pretrial hearings have created a vast diversity of justice court interpretations (from judges who are mostly nonlawyers), immense confusion and a substantial backlog of evictions in many courts. The deadline for eviction trials in the Rules was created after considering the position of various stakeholders and the longstanding Texas policy of allowing landlords to regain possession of their property in an expedited proceeding. The COVID-related flexibility given to justice courts through the Court's emergency orders was never intended to be a permanent change to this requirement. It is time justice courts get back to business and be required to resume compliance with the Rules.
- While many landlords have participated in both the TEDP and TRRP, we are aware of landlords who continue to experience issues with some tenants either refusing to cooperate with the application process or failing to remit funds received from TRRP for rent to their landlord.
- However, we are still experiencing situations where tenants have failed to pay and have not cooperated with the application process associated with rental assistance. Consequently, some tenants have accumulated substantial delinquencies, which comes from months of ignoring rental obligations. This emphasizes the importance of a timely eviction process.
- From a COVID-related perspective, there is no need to allow courts the flexibility of modifying or suspending deadlines and procedures. Remote proceedings have become common place for those courts that desire to limit appearances in the courtroom. Section 3 of the Forty-Third Emergency Order provides that all courts in Texas may allow or require anyone involved in any hearing, deposition, or other proceeding of any kind to participate remotely. This requirement should give courts enough flexibility to operate their courts safely and responsibly and in a timely manner, and we support the Remote Hearing's Task Force's recommendation to permanently change the Rules to provide for such remote hearings.
- The Governor in Executive Order GA-38 ordered that legal proceedings are free to proceed without COVID-19-related limitations imposed by local governmental entities or officials. While we appreciate the Court's authority to establish emergency orders during the pandemic, the Governor is phasing back to a sense of normalcy and the Court should do the same.
- Based upon the foregoing, we respectfully request that the Court allow its Forty-Second Emergency Order to expire December 1, 2021, and omit from any future order a justice court's authority to modify or suspend deadlines and procedures relating to trials and hearings.

We appreciate the opportunity to provide input. If you or the Court have any questions regarding our position, we will be happy to provide further input.

Sincerely,

Sandy Hoy, TAA General Counsel

Howard Bookstaff, Hoover Slovacek LLP

George Christian, Texas Civil Justice League President

Lee Parsley, Texans For Lawsuit Reform