COVID-Related Evictions Information and Scenarios

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RESOURCES

- Coronavirus Page!
  - tjctc.org/coronavirus
- New Forms Page!
  - tjctc.org/tjctc-resources/forms

BROAD AUTHORITY TO ADDRESS COVID

- The Supreme Court has extended its broad order allowing courts to modify procedures, suspend deadlines, and otherwise address the spread of COVID-19 via the issuance of its 38th Emergency Order.

- This Order expires **August 1**.

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RULES FOR IN-PERSON PROCEEDINGS

Courts may allow or require all persons to participate in proceedings remotely.

Subject only to constitutional limitations, courts must honor requests from participants (other than jurors) to appear remotely, if good cause is shown.

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RULES FOR IN-PERSON PROCEEDINGS

- In order to hold in-person proceedings, the local administrative district judge **must** have adopted minimum standard health protocols for court proceedings and the public attending court proceedings, including masking, social distancing or both; as well as an in-person proceeding schedule for all judges in the court building.

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RULES FOR JURY TRIALS

- The court must obtain prior approval for the proceeding from the local administrative district judge.
- The court must consider any objection or motion related to holding the in-person jury proceeding at least 7 days before the proceeding, or as soon as practicable if the motion is made within 7 days of the proceeding.
- The court must establish communication protocols to ensure no participants have tested positive for COVID or experienced COVID symptoms in the previous 10 days or have been exposed to COVID in the previous 14 days.
- The court must include with the jury summons information on the health and safety protocol and procedures in place to protect prospective jurors and a COVID questionnaire that asks the jurors about their exposure or vulnerability to COVID.
- The court must excuse or reschedule prospective jurors who provide information confirming their infection or exposure or particular vulnerability to COVID and request to be excused or rescheduled.

FACE COVERINGS AND OTHER OCA GUIDANCE

- The Supreme Court's 38th Emergency Order, along with AG Opinion KP-0322, states that a judge may require all persons who enter his or her courtroom or any other area of the building or facility to conduct or participate in a court proceeding to wear a face covering, practice social distancing, or both.
- OCA, in its best practices, recommends that cloth face coverings, at a minimum, should be encouraged of unvaccinated court participants or individuals planning to enter courtrooms or court-related offices while in the courthouse.

CDC Moratorium

- The CDC has extended its moratorium on evictions until June 30, 2021.
- Here is a link to the CDC Order: CDC-Eviction-Moratorium-03292021.pdf

Expiration of 34th Emergency Order

- But the Texas Supreme Court allowed the 34th Emergency Order, which implemented the CDC Moratorium in justice courts, to expire on March 31, 2021.
- Previously, justice courts have operated under the Supreme Court Emergency Orders to implement the CDC Moratorium.
- That authority and direction is now gone.

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Does the CDC Order Directly Apply to Justice Courts?

- The CDC Order directs **landlords** not to evict tenants who are covered by the moratorium.
- It provides civil and criminal penalties for landlords who violate the moratorium.
- TJCTC believes that is a matter between the tenant, the landlord and potentially a federal prosecutor.
- Therefore, it is primarily up to the landlord to decide whether they wish to proceed with an eviction case or not.

Does the CDC Order Directly Apply to Justice Courts?

- It is not a matter that a justice court can or should enforce in the absence of authority from the Texas Supreme Court.
- A CDC FAQ dated Jan. 29. 2021 states: “As indicated in the Order, courts should take into account the Order’s instruction not to evict a covered person from rental properties where the Order applies.”

Does the CDC Order Directly Apply to Justice Courts?

- But we believe courts may only do this to the extent that it is allowed by state law, as explained by the CDC here: “The judicial process will be carried out according to state and local laws and rules. The Order is not intended to terminate or suspend the operations of any state or local court."
- It is the state law, as expressed in the 34th Emergency Order, that justice courts were applying prior to April 1 but that is no longer in effect.

Does the CDC Order Directly Apply to Justice Courts?

The rules applicable to eviction cases in justice court are set forth primarily in Rule 510 of the Texas Rules of Civil Procedure.

The Texas Supreme Court had issued a series of emergency orders modifying those rules to accommodate the CDC Moratorium.

The Supreme Court decided not to extend the current emergency order.

Therefore, eviction cases are again governed by Rule 510 (with suggested best practices discussed below).

Another Point of View

- Certain Legal Aid Providers and Tenant Advocacy Groups disagree with TJCTC's position and have provided a statement to TJCTC and the media expressing their views.
- TJCTC has responded to this statement explaining further our position.
- We have posted the statement and our response on the coronavirus page of our website.
- A judge is free to come to their own conclusion concerning which position is correct.

DC Circuit Federal Opinion

On May 5, a federal judge in the DC circuit ruled that the CDC did not have authority to issue the moratorium.

Why is this different from previous court rulings on the moratorium?

The order vacating the moratorium is currently ON HOLD pending an appeal.

How To Handle a Case that has been on Hold

- TJCTC recommends setting a status hearing to determine if a landlord wishes to proceed with a case that was abated due to the CDC Moratorium.
  - The landlord may decide to wait until the moratorium expires on June 30.
  - Or they may wish to move forward with the case because they don't believe the moratorium applies to their case or they are not concerned with the potential consequences.

How To Handle a Case that has been on Hold

- TJCTC has prepared a hearing notice, script and order form for courts to use:
  - These are located at tjctc.org/coronavirus > CDC Moratorium FAQ and Forms > Documents and Forms Related to the CDC Moratorium
- If the landlord wishes to consult an attorney before deciding whether to proceed or not, the court should reasonably accommodate that request.

What if No One Appears at the Status Hearing?

- The court may include a warning on the hearing notice that failure to appear at the status hearing may result in the case being dismissed for want of prosecution.
- If the court doesn't include such a warning, the court could reset for another status hearing, could keep the case abated, or could send the plaintiff a show cause notice to appear at a dismissal docket hearing to show cause why the case should not be dismissed.

What if a Tenant Files a Declaration with the Court?

Justice courts no longer have authority from the Texas Supreme Court to place a case on hold based on the CDC Moratorium.

Therefore, there are no actions for the court to take if a tenant provides a Declaration to the court.

TJCTC has developed a script for the court to use in this situation.

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What if a Tenant Notifies a Constable of a Declaration?

- If a tenant notifies a Constable of a Declaration when a writ of possession is being executed, the Constable should notify the landlord of the Declaration and ask for instructions concerning execution of the writ of possession.
- There is no longer any role for the court in this matter and no need for the Constable to notify the court.

Must a Landlord Still File an Affidavit with the Petition?

- No.
- The Texas Supreme Court no longer requires a landlord to include in an eviction petition information concerning whether they have received a Declaration, whether the premises are a covered property under the CARES Act or if a 30-day notice to vacate was given.
- The petition does still require information concerning the Eviction Diversion Program (discussed below).

What About the Notice to Vacate?

- As always, the plaintiff must prove that they have given the proper notice to vacate in order to receive a judgment of possession.
- If the premises are a "covered property" and the eviction is based on nonpayment of rent or other amounts due under a lease, the plaintiff is still required to give a 30-day notice to vacate.
  - This requirement of the CARES Act did not expire on March 31!

What About the Notice to Vacate?

- If a petition describes the notice to vacate given as well as the reason why that notice to vacate is proper, and the defendant does not appear or answer, the petition **must** be taken as true. This means that the plaintiff would have proven proper notice to vacate.

What About the Notice to Vacate?

- If instead the petition does not describe the notice given and why it is proper, or the defendant answers or appears, the petition is not sufficient to prove proper notice to vacate.
  - Rule 500.6 makes clear that justice courts may develop the facts of the case at trial to determine whether a proper notice to vacate was given.

Should the Court Still Send a Declaration Form with the Citation?

- No.
- There is no longer any authority from the Texas Supreme Court for a justice court to send a Declaration with a citation in an eviction case.
- That is a matter between the tenant and the landlord (and potentially a federal prosecutor).

May a Landlord Still Request a Contest Hearing on a Declaration?

- No.
- Justice courts no longer have any authority from the Texas Supreme Court to determine whether or not a Declaration is valid.
- This is a matter between the tenant and the landlord.
- If a landlord is not certain what to do, they may consult an attorney.

Eviction Diversion Program

- This program remains in effect under the 37th Emergency Order.
- That order currently expires on July 27.

Eviction Diversion Program

- Courts must include information about the program with the citation and ask the parties if they wish to participate in the program at trial.
- If both the landlord and tenant indicate they are interested in the program, the judge must stay the case for 60 days, and make the record confidential.

Eviction Diversion Program

- The landlord may request an extension of the hold (up to 60 days at a time) or may file a motion to reinstate the case at any time within the 60-day period.
- Upon request, the judge must reinstate the case and set it for trial within 21 days.
    - The case is no longer confidential.

Eviction Diversion Program

- If the landlord does not file a motion to reinstate the case within the 60-day period, then the judge is required to dismiss the case with prejudice.
    - All records remain confidential.

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Eviction Diversion Program

- Forms for all phases of the Eviction Diversion program are on our website.
- OCA webinar concerning the statewide rollout of the program may be accessed on our website: www.tjctc.org/coronavirus > Texas Eviction Diversion Program

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DISCUSSION 1

- What is one thing you are struggling with right now in your court because of the pandemic?
- What is one solution you have found to an issue you were having before?

DISCUSSION 2

- What is the most useful tip you've discovered for conducting virtual hearings?

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DISCUSSION 3

- How do you think a court should handle an eviction case where the defendant tests positive for COVID-19?

DISCUSSION 4

- A landlord is evicting a tenant for selling drugs out of their apartment and threatening the other tenants. The tenant requests a jury trial. How should the court proceed?
  - Deny the request for a jury trial and hold a virtual bench trial.
  - Set the case for a jury trial once in person jury trials can happen again.
  - Work with OCA to hold a virtual jury trial.

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DISCUSSION 5

- An eviction was filed on May 15. The tenant has a Section 8 voucher and is being evicted for failing to pay late fees that are due to the landlord.

- What notice to vacate period is required?

DISCUSSION 6

- An eviction was filed on Sep. 15. The tenant has a Section 8 voucher and is being evicted for having an unauthorized pet.

- What notice to vacate period is required?

DISCUSSION 7

- After rendering a judgment for possession, but before issuing the writ, you receive notice that both parties want to participate in the TEDP.
- What should happen now?