

ADMINISTRATIVE ORDER 2021-06

**RE: DISTRICT COURT EVICTION PROTOCOL**

Pursuant to the Center for Disease Control and Prevention’s (CDC) issuance of its Order entitled *Temporary Halt in Residential Evictions in Communities with Substantial or High Levels of Community Transmission of Covid-19 to Prevent the Further Spread of Covid-19* this Court implements the following protocol for pending and new eviction matters.

This order is effective immediately and will remain in effect until the expiration of the CDC eviction moratorium order dated, August 3, 2021 (presently set to expire October 3, 2021.) Upon expiration of this moratorium this Court’s Administrative Order 2021-05 will be reinstated.

In recognition of the ongoing public health crisis, the Court will continue to maintain control of the eviction calendars and will schedule all hearings based upon availability and capacity limits. At this time, all Rhode Island counties are deemed to be “substantial” or “high risk” by the Rhode Island Department of Health (RIDOH) and are therefore, subject to this Order.

## **New Evictions for “Criminal Activity” per the CDC order –**

*“Under this Order, covered persons may be evicted for engaging in criminal activity while on the premises. But covered persons may not be evicted on the sole basis that they are alleged to have committed the crime of trespass (or similar state – law offense) where the underlying activity is a covered person remaining in a residential property for non-payment of rent. Permitting such evictions would result in substantially more evictions overall, thus increasing the risk of disease, transmission, as otherwise covered persons move into congregate settings or experience homelessness. This result would be contrary to the stated objectives of this Order, and therefore would diminish their effectiveness. Moreover, to the extent such criminal trespass laws are invoked to establish criminal activity solely based on a tenant, lessee, or resident of a residential property remaining in a residential property despite the non-payment of rent, such invocation conflicts with this Order and is pre-empted pursuant to 42 USC 264(e) pp 13-14 CDC Order dated August 3, 2021.”*

Such filings are discouraged. Determinations as to the legitimacy/qualifications of any such eviction action will be determined in the sole discretion of the Hearing Judge.

## **New Eviction Filings in Cases for Non-Payment of Rent –**

New eviction filings for non-payment of rent may continue to be filed and may be heard in the normal course on a date to be scheduled by the Clerk’s Office.

Affidavit and Receipt of a Declaration by the Landlord must still be filed with the Court. Forms and Affidavit are available on website.

Judgments may enter at the time of hearing or after hearing, but no judgment will be enforceable, and no Execution shall issue until the expiration of the CDC Order or until further Order of this Court.

Judgments may include court costs, but no attorneys' fees will be awarded until further order of this Court.

### **Declarations and Challenges Thereto –**

Any Motions for Challenges on Declarations which were previously scheduled but removed by the Court due to the expiration of the moratorium will be rescheduled by the Court with priority and notice to all parties.

Limited Challenges by Landlords to Declarations filed by Tenants may again be scheduled for hearing under the following protocol:

- Challenges may address the veracity to the following assertions:
  1. Loss of income, resulting in inability to pay full rent.
  2. Application for a Rental Assistance Program and timely efforts to provide documentation for qualification.
  3. Good faith efforts by Tenant to communicate with Landlord and to make timely partial payments.

4. The failure of a Tenant to apply for Rental Assistance may be considered by a judge in determining the good faith efforts of the tenant.
- Landlord must present a good faith basis to Challenge the Declaration.
  - The Burden of Proof rests with the Landlord to establish the validity of their challenge by a preponderance of the evidence.
  - This process is limited to District Court procedure and is in addition to, but not in lieu of any Federal Court remedies identified in the CDC Order.
  - If a Challenge is successful, the Court shall impose an **automatic stay of execution for 15 days** to allow Tenant time to find alternate housing. This stay may be extended by the Court upon a showing of good cause.
  - No Execution can issue in a case where a Declaration has been filed until the expiration of the moratorium unless a Challenge to the Declaration has been successful.

### **BIFURCATED HEARINGS**

- Eviction Hearings will be scheduled in accordance with District Court protocol determined by safety, capacity, and calendars.
- Challenges to Declarations will be scheduled for hearing **only** after a judgment enters.

- New language has been added to the Hearing Notice, advising Tenant that they may be cross-examined on the Declaration and advising both parties of their need to appear with any evidence they intend to offer.
- Appeal period runs 5 days from the date of Entry of Judgment. If a case is appealed, any Challenge Hearing scheduled on a Declaration will be cancelled as jurisdiction on appeal rests with the Superior Court.

### **MOTIONS TO CHALLENGE**

- Motions must be in writing and must set forth in writing a good faith basis for the Challenge.
- Upon receipt of a Motion and after Judgment enters, the Court will schedule a hearing. All parties should bring any evidence to the hearing which they intend to offer at the hearing. Continuances for introduction of additional evidence may not be routinely granted.
- Time slots will be reserved for Challenges and the Court will continue to make every effort to schedule these Challenges expeditiously. These may be scheduled in afternoon sessions.
- If Defendant fails to appear at Hearing on Challenge of Declaration, the Challenge will be heard in Defendant's absence, but Landlord must still meet its Burden of Proof.

- If Challenge is successful, the Court will enter an automatic 15 day stay of Execution.
- If a Challenge is not successful, the Execution will be stayed until expiration of the moratorium.

### **STIPULATED JUDGMENTS**

- Regardless of non-compliance with a stipulation, if a Declaration has been filed, no Execution will issue unless there is a successful Challenge to the Declaration. Without a successful Challenge, no Execution will issue in a Non-Payment case until the expiration of the moratorium.

### **MOTIONS TO STAY & MOTIONS TO RECONSIDER**

- Upon a showing of good cause, excusable neglect, or a change of circumstances, Motions to Stay and Motions to Reconsider may be filed. The basis must be set forth in the motion. After Judicial Review, the matter may be assigned by the Court for hearing.

#### **Motions to Stay –**

- If an ex parte Motion to Stay is granted, the Court will assign the Motion for hearing with notice.
- If a Motion to Stay is successful, Execution will be stayed until further order of the Court or until the expiration of the Moratorium.

### **Motions to Reconsider –**

- Upon receipt of a Motion to Reconsider, the Clerk’s Office will set it down for Judicial Review.
- If a good faith basis is established, the Court will mail a Notice of Hearing to all parties.

### **Electronic Filing of Motions –**

- The motions indicated below are to be filed electronically in the Court’s Odyssey Electronic Filing System (OFS) using the following events:
  - **Motion to Stay**
  - **Motion to Reconsider**
  - **Motion on Challenge of Declaration**

### **PENDING EVICTION FILINGS –**

Any matter presently scheduled for hearing will be heard as scheduled, with the exception of Motions for Issuance of Executions, which will not be heard until the CDC moratorium ends. These cases will not be reassigned.

### **Motions for Execution**

If a Motion for Issuance of Execution is presently scheduled for hearing, the Court will continue the motion with notice of new date given to all parties. No additional motion needs to be filed. No new

Motions for Issuance of Execution will be accepted until the expiration of the CDC order.

**EXECUTIONS –**

No Executions shall issue and no Motions to Enforce Judgment shall be entertained on any non-payment of rent case in which a Declaration has been filed, until the CDC Order shall expire or until further order of this Court. No Execution shall be served in any case where a Declaration has been filed until the CDC Order is terminated or until there is a further Order of the Court.

Motions to amend the monetary amount of a judgment before the Execution is issued may be filed when the moratorium is lifted or by future Order of the Court. Said Motions will be scheduled for hearing by the Court.

**HEARINGS –**

There are limited time slots available for Eviction matters. If you have a matter scheduled which has either been resolved or will be continued, please contact the clerk's office immediately to have the case removed from the calendar. This will allow the Court to efficiently utilize those time slots. If a matter is scheduled for hearing, ALL parties must appear, or the case will be defaulted or dismissed.



**APPEALS –**

The appeal period for all non-payment of rent cases shall run five (5) days from the date of Entry of Judgment.

Upon expiration of the CDC moratorium this Court's Administrative Order 2021-05 will be reinstated.

Entered as an Order of this Court on this 5th day of August 2021.

Enter:

/s/

---

Jeanne E. LaFazia  
Chief Judge

By Order:

/s/

---

Stephen Waluk  
Administrator