

March 19, 2020

Michael G. Heavican, Chief Justice
Nebraska Supreme Court
Room 2214, State Capitol
Lincoln, NE 68509

RE: Request for Statewide Moratorium on Eviction and Debt Collection Proceedings

Dear Chief Justice Heavican:

The below indicated legal and advocacy organizations, given our day-to-day role in directly representing low-income tenants and debtors in Nebraska courts, respectfully request that you, in your role as the Chief Justice of the Nebraska Supreme Court, impose an immediate statewide moratorium on eviction and consumer (non-family support) debt collection actions, due to the COVID-19 public health emergency. The sake of public health requires all to act swiftly and decisively to slow the spread of the virus and mitigate the devastation it will cause, and this action is both necessary and in the broader public interest.

In an attempt to slow the spread and mitigate harm to the public, the President of the United States of America declared a national emergency on March 13, 2020.¹ The Governor of the State of Nebraska followed suit later that day and proclaimed a state of emergency.² Since then multiple Nebraska cities, including but not limited to Omaha, Lincoln, Kearney, Plattsmouth, and Holdrege have also declared states of emergency. On March 16, 2020, the Nebraska Department of Health and Human Services issued a guidance urging that people limit public gatherings to 10 or less people as critical to reducing the transmission of COVID-19.³

Across the country, as of today at least nine states and multiple large cities have ordered moratoria or enacted similar measures to temporarily stop evictions,⁴ and the U.S Department of

¹ Proclamation No. 9994, 85 F.R. 15339 (March 13, 2020).

² Office of Governor Pete Ricketts, *Proclamation of State of Emergency* (Mar. 13, 2020), <https://www.dropbox.com/s/64xel8oha2gw22h/2020%20State%20of%20Emergency%20-%20Coronavirus%20.pdf?dl=0>.

³ Nebraska Dept. of Health and Human Services. *Novel Coronavirus: Events, Public Gatherings, and Schools Guidance*, <https://www.dropbox.com/s/xydt3l8je28fzox/DHHS%20Guidance%203.16.2020%207.40pm.pdf?dl=0> (accessed Mar. 18, 2020).

⁴ See, e.g., Executive Department of State of California, Exec. Order No. 28-20 (Mar. 16, 2020), <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.16.20-Executive-Order.pdf>; Judicial Branch of North Carolina, *Coronavirus Update for our Courts* (Mar. 15, 2020), <https://www.nccourts.gov/assets/inline-files/Coronavirus-Update-for-our-Courts-Memo-to-Judicial-Officials-3-15-20.pdf?Tuzuse0oAnyFyzogb4eejpcawxCrf4kl>; State of New York Unified Court System, *Memorandum of Chief Administrative Judge* (Mar. 15, 2020) <https://twitter.com/GeorgiaKromrei/status/1239277803482296321>; Massachusetts Housing Court, *Housing Court Standing Order 2-20: Temporary modifications to court operations arising from the coronavirus (COVID 19) outbreak* (Mar. 13, 2020), <https://www.mass.gov/housing-court-rules/housing-court-standing-order-2-20-temporary-modifications-to-court-operations>; Minnesota Judicial Branch, *COVID-19 Information* (Mar. 13, 2020), <http://www.mncourts.gov/Emergency.aspx>; Delaware Justice of Peace Court, *Standing Order Concerning COVID-19 Precautionary Measures* (Mar. 13, 2020), <https://courts.delaware.gov/rules/pdf/JPCourt-Standing-Order-Concerning-COVID19.pdf>; Executive Department of the State of Maryland, *Order Temporarily Prohibiting Evictions of Tenants Suffering Substantial Loss of Income*

Housing and Urban Development authorized the Federal Housing Administration to implement an immediate foreclosure and eviction moratorium for homeowners with FHA-insured mortgages for the next 60 days.⁵ Local courts in Nebraska are starting to restrict activity in their courtrooms—but not on evictions and debt collection actions. On March 18, 2020, Lancaster County Court judges continued for sixty days all criminal and traffic actions before it.⁶ In northeast Nebraska, the judges of the Seventh Judicial District have continued all jury trials (not affecting evictions and debt collections) for sixty days.⁷

It is imperative that the Nebraska Supreme Court act similarly to insure the safety and well-being of the general public and order a statewide temporary and immediate moratorium on evictions and debt collection actions. The below organizations have the utmost respect for the Nebraska courts and the Chief Justice of the Nebraska Supreme Court. We recognize that a moratorium, even for short time, is a drastic measure. However, in these unprecedented times, we ardently believe that the need to protect judges, attorneys, court staff, parties, witnesses, and the public at large outweighs the immediate necessity of these legal actions.

If evictions and debt collection cases proceed during this pandemic, people who should be social distancing or self-isolating will end up in courtrooms and courthouses in close proximity with numerous other people. The docket schedule for Friday, March 20, 2020 in both Douglas and Lancaster County Courts—“cattle calls” as they are informally referred—already lists hundreds of parties ordered to appear in the courthouses at the same time. If they do not appear, they lose their homes or lose their wages or savings to garnishments.

This is particularly troublesome in a time when many Nebraskans are unsure of their employment status as more businesses close. The shuttering of businesses across the state has compounded the already great risk of homelessness faced by low-income Nebraskans as their sources of income quickly evaporate. A moratoria on evictions and debt collection actions will greatly lessen this impact on public health during this emergency.

Open and accessible courts are fundamental to our government and justice system. However, unlike the criminal courts, there is no constitutional requirement that Nebraska courts must

Due to COVID-19 (Mar. 16, 2020), <https://governor.maryland.gov/wp-content/uploads/2020/03/Executive-Order-Temp-Evictions-Prohibiting.pdf>; Office of the Governor of the State of Washington, *Proclamation by the Governor Amending Proclamation 20-05* (Mar. 18, 2020), <https://www.governor.wa.gov/sites/default/files/proclamations/20-19%20-%20COVID-19%20Moratorium%20on%20Evictions%20%28tmp%29.pdf>; District of Columbia Court of Appeals, *Order* (Mar. 16, 2020), https://www.dccourts.gov/sites/default/files/2020-03/DCCA_Order-Operations_During_Coronavirus_Emergency-March_16_2020.pdf. In addition, numerous cities and counties nationwide have issued their own moratoria. See *Tenant Protection during the Novel Coronavirus Outbreak* (Augrented, Mar. 11, 2020), https://blog.augrented.com/renting-during-the-novel-coronavirus-outbreak/Virginia_Suspends_Evictions_During_Coronavirus_Crisis, <https://www.publicnewsservice.org/2020-03-18/housing-homelessness/virginia-suspends-evictions-during-coronavirus-crisis/a69601-1> (accessed Mar. 19, 2020).

⁵ UNITED STATES DEPARTMENT FOR HOUSING AND URBAN DEVELOPMENT, FORECLOSURE AND EVICTION MORATORIUM IN CONNECTION WITH THE PRESIDENTIALLY DECLARED COVID-19 NATIONAL EMERGENCY, Mortgagee Letter 2020-04 (March 18, 2020).

⁶ https://supremecourt.nebraska.gov/sites/default/files/Administration/emergency/ORDER_RE_COVID-19_FINDING_GOOD_CAUSE.pdf (accessed Mar. 18, 2020).

⁷ https://supremecourt.nebraska.gov/sites/default/files/Administration/emergency/Judicial_District_7_Coronavirus_order.pdf

continue with civil actions like evictions and debt collection cases during a public health emergency such as the current one. Such civil matters can be put on hold until the safety and well-being of the general public is no longer at risk. In Nebraska, almost all parties facing eviction or debt collection actions are low-income and represent themselves pro se. They are required to respond on short notice to great threats to their homes and assets.⁸ A moratoria on evictions and debt collection actions will keep these self-represented litigants from harm during this emergency.

Our healthcare systems are already straining to address the needs of those potentially exposed to and diagnosed with COVID-19. It is not necessary for the Nebraska courts to put these civil litigants at a heightened risk of transmission. The Nebraska Supreme Court needs to act to ensure the health and safety of the public.

We believe this Court has the authority to take this unusual but necessary action to implement an immediate statewide moratorium on evictions and debt collection actions during the pendency of the COVID-19 pandemic. In support of our belief, we direct the Court's attention to the Constitution of the State of Nebraska, the Nebraska statutes, and the Nebraska Supreme Court's own rules. The Constitution vests the judicial power of the State of Nebraska in a Supreme Court, and grants general administrative authority over all courts in the Supreme Court with the Chief Justice empowered as the executive head of all courts.⁹ The Nebraska Constitution requires uniformity in the practice and proceedings of all courts of the same class.¹⁰ It also permits this Court to promulgate rules of practice and procedure for all courts.¹¹ The Nebraska Legislature has authorized the Chief Justice of the Nebraska Supreme Court to order the closure of the courts.¹² The Nebraska Supreme Court Rules permit the Nebraska Supreme Court to enact rules or adopt orders as it deems necessary on an emergency basis.¹³

This is an emergency. A statewide moratorium on every aspect of the eviction and debt collection process is necessary to properly curtail the spread of the virus and comply with the Center for Disease Control and NDHHS guidelines. Without such a moratorium, low-income Nebraskans will continue to receive service of court summonses, travel to their county courthouse on very short notice to protect what little they have, and gather together with dozens if not hundreds facing the same crisis putting themselves—and their entire communities—at great risk. **Now is the time for the Court to act.**

The following provides further background to both the need and appropriateness of a statewide moratorium on evictions and debt collections actions until the state of emergency ends.

Low-income Nebraskans already grapple with a limited supply of affordable housing and high housing cost burdens. Housing cost burdens measure the portion of a household's income spent on the costs associated with housing – including rent and utilities. When a household spends

⁸ For evictions, Nebraska law requires the county or district court to hear the matter within 10–14 calendar days from the date of filing. Neb. Rev. Stat. § 76-1446.

⁹ NEB. CONST. art. V, § 1.

¹⁰ NEB. CONST. art. V, § 19.

¹¹ NEB. CONST. art. V, § 25.

¹² Neb. Rev. Stat. § 25-2221.

¹³ Neb. S. Ct. R. § 1-105.

more than 30% of its income on housing, it is cost burdened. In Nebraska, 41.4% of renters are cost burdened.¹⁴ Approximately one quarter of all children in Nebraska reside in households with a high cost burden, which amounts to about 105,000 children. Over half the children in this state live at or below 200% of the federal poverty guidelines, or about 85,000 children.¹⁵ When a cost burdened household suffers a decrease in income, that household is at risk of eviction and homelessness. In 2016, Nebraska landlords filed 7,325 actions for eviction statewide,¹⁶ which resulted in 5,615 evictions.¹⁷

Debt collectors file thousands of debt collection cases in Nebraska county courts each year. A 2016 ProPublica article reported that Nebraska has a disproportionately high number of collection lawsuits compared to other states.¹⁸ In 2013, debt collectors filed 79,000 collection cases in Nebraska.

In Douglas and Lancaster Counties alone, it is not unusual to have 20–50 eviction or debt collection hearings set for the same time in the same courtroom. Defendants usually sit all together in the gallery or hallways waiting for the court to call their case.

The Centers for Disease Control and the Nebraska Department of Health and Human Services have repeatedly iterated that the best defense against the COVID-19 virus is for people to stay at home as much as possible and practice social distancing. By allowing the courts to continue with unnecessary civil hearings, the risk of exposure and spread of the virus to parties, attorneys, court staff, and judges expands exponentially. This is in direct contradiction to the recommendations of the CDC and other medical experts.

Furthermore, the majority of defendants in eviction and debt collection cases represent themselves. The Nebraska State Bar Association reports that half of all civil litigants in district courts are pro se. At least 90% of all tenants in eviction actions are pro se.¹⁹ The National Consumer Law Center reports similar numbers for pro se debtors in collections cases.²⁰

Self-represented litigants cannot efile (file online) in Nebraska, which means that self-represented litigants must go to their county courthouse to file motions and responsive pleadings. Low-income Nebraskans are at a severe disadvantage since they often lack the equipment to

¹⁴ *Data by Location: Nebraska*, PROSPERITY NOW SCORECARD, <https://scorecard.prosperitynow.org/data-by-location#state/ne> (follow “Explore Outcome Measures” hyperlink, follow “Homeownership and Housing” hyperlink) (last visited Jan. 29, 2020).

¹⁵ *Children living in households with a high housing cost burden in the United States*, KIDS COUNT DATA CENTER, <https://datacenter.kidscount.org/data/tables/7244-children-living-in-households-with-a-high-housing-cost-burden> (follow “Refine This Indicator” hyperlink; then follow “By State” hyperlink; then select “Nebraska” option; then follow “Years” hyperlink; then select “2016” option) (last visited Jan. 29, 2020).

¹⁶ *Eviction Map & Data: Nebraska*, EVICTION LAB, <https://evictionlab.org/map/#/2016?> (follow “Nebraska” option) (last visited Jan. 29, 2020).

¹⁷ *Id.*

¹⁸ Paul Kiel, *For Nebraska’s Poor, Get Sick and Get Sued*, Lincoln Journal Star, Apr. 28, 2016, http://journalstar.com/news/state-and-regional/nebraska/for-nebraska-s-poor-get-sick-and-get-sued/article_6d0e9fae-3158-585c-85d2-f6ef4c4b65c5.html

¹⁹ Steinberg, Jessica, Demand Side Reform in the Poor People’s Court (2015). 47 CONN. L. REV. 741, 750.

²⁰ *Consumer Debt Collection Facts*, National Consumer Law Center (Feb. 2018), <https://www.nclc.org/issues/consumer-debt-collection-facts.html>

appear by telephone or videoconference and the community sources that could provide such technology are closed to the public. Further, pro se litigants often lack the access to knowledge that they should refrain from entering the courthouse if they are showing any symptoms of the COVID-19 virus. Because of this, their presence in courthouses will increase the chance of contamination for litigants, court personnel, and anyone at or around the courthouse.

Given the public health emergency impacting our state and nation, this Court should issue an order suspending any pending writs of restitution or execution and implement a moratorium on eviction and debt collection cases until such time that the Governor rescinds the state of emergency. A moratorium on every aspect of the eviction process is essential to properly curtailing the spread of the virus and comply with the CDC established guidelines.

Across the county, this pandemic has upended daily life for every person. Businesses and schools have closed their doors indefinitely. All major sporting, concert, and social events have canceled. And yet, Defendants who receive a summons for an eviction or debt collection action and are immunocompromised, live with someone who is immunocompromised, have minor children, or elderly relatives must choose between the health and safety of their family or participating in their defense.

In actions for restitution of premises, service of a writ of restitution can commence immediately after issuance.²¹ The pre-existing deficit of affordable housing combined with landlord and property managers limiting their exposure with the public create a situation that puts our most vulnerable citizens at risk of homelessness. It drives the most vulnerable to seek housing in homeless shelters or in the homes of relatives. It forces children to fall behind in their schoolwork and prevents people from obtaining meaningful employment. Some individuals and families will end up turned away from shelters as the numbers grow and lead to them living in their vehicles.

Similarly, debt collection actions also move swiftly. If a debtor does not file an answer in their debt collection case within 30 days, the creditor can request the court to issue an order for judgment without any further notice to the debtor and without further hearing. Neb. Ct. R. § 6-1432 allows plaintiffs to obtain a default judgment upon a verified petition, affidavit, or sworn testimony about a claim. In post-judgment collection proceedings, debtors have a more limited timeframe to request a hearing. When a creditor garnishes a debtor's bank account or paycheck, the debtor must request a hearing within three days to object to the garnishment when there is an incorrect determination of head of household status or to claim exemption for a bank account.

Those are the most common reasons for debtors to request hearing and is absolutely devastating for a low income debtor whose very limited funds are frozen by the bank. The courts must schedule wage garnishment hearings within ten days of the request for hearing.²² A debtor must file a claim of exemption and request for hearing concerning a personal property execution with the court within 20 days and the court must hold a hearing within 10 days.²³ Additionally, courts

²¹ Neb. Rev. Stat. § 76-1446.

²² Neb. Rev. Stat. § 25-1010.

²³ Neb. Rev. Stat. § 25-1516.

may order debtors to appear in court for a debtor's examination to allow creditors to ask questions concerning the debtor's assets. A debtor's failure to appear at a debtor's examination may result in the court issuing an order to show cause and an arrest warrant.²⁴

Eviction and debt collection actions may require service by law enforcement, which is not a responsible use of department resources during a state of emergency.²⁵ These actions require those who are able to work to take time off from work to attend court, which can put their income and employment at risk. If childcare is an issue, defendants may have to leave their children with someone outside the household or bring their children to the courthouse with them.

As discussed above, attending and participating in court hearings, especially the "cattle call" type hearings with potentially upwards of fifty cases at a time, elevates the risk of exposure and spread of COVID-19. These hearings also put the most vulnerable at risk of losing their income, funds, and housing due to circumstances beyond their control.

Tenants and debtors may try and appear at their hearings due to the grave risk if they don't, even if they are suffering from mild COVID-19 symptoms. Because civil defendants have no right to counsel, they end up in closer proximity to court personnel and opposing counsel, which increases the risk of exposure for the community at large.

If this Court implements moratoria on eviction and debt collection actions, it will assist our state tremendously in its efforts to "flatten the curve" of infection and reduce the overall burden on our healthcare resources in a time of the greatest need. These moratoria will help avoid placing undue burdens on our judicial system and will help free law enforcement of the administrative burdens associated with enforcing writs of restitution and dispossession, so that they are able to focus efforts and manpower to higher priority tasks.

Therefore, the below organizations respectfully hope the Chief Justice will consider our request and wisely use your powers granted by the Constitution, the laws of the State of Nebraska, and the Supreme Court's own rules to impose and implement moratoria on eviction and debt collection actions, and toll the short deadlines in these proceedings, during Nebraska's state of emergency.

Sincerely,

Legal Aid of Nebraska
Nebraska College of Law Civil Clinic
Creighton University School of Law Milton R. Abrahams Legal Clinic
Nebraska Appleseed
Family Housing Advisory Services
Immigrant Legal Center
Lincoln Commission on Human Rights

²⁴ Neb. Rev. Stat. § 25-1565.

²⁵ See Neb. Rev. Stat. § 25-1516 and Neb. Rev. Stat. § 76-1446.