



Washington State Office of Civil Legal Aid

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To: Judge David Estudillo, SCJA President
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From: Jim Bamberger, Director Office of Civil Legal Aid

Re: Clarifying Expectations Relating to Implementation of the Right to Counsel for Indigent Tenants in Washington State

Date: 6-14-21

This follows up on my prior two memoranda (April 16th and May 19th). The goal is to provide you a status update and address/clarify questions relating to implementation of the right to counsel (RTC) program assigned to the Office of Civil Legal Aid (OCLA) in Senate Bill 5160 (ch. 115, laws of 2021).

OCLA continues to work with the 5160 Implementation Work Group to develop the final implementation plan. The plan will outline OCLA's strategic approach to recruitment, training, support, coordination, and oversight of attorneys at legal aid providers contracted to provide RTC services. It will also cover the screening and assignment processes for RTC appointments, among other RTC-related issues. OCLA anticipates publishing this plan by July 7, 2021. Links will be made available on OCLA's website, and copies will be forward to you for further forwarding to your members.

In an effort to promote consistency of expectation and clarify OCLA's position as we move forward into the post-moratorium period and the period for operationalizing the right to counsel provisions of Senate Bill 5160, I thought it would be best to share the following points with you.

1. Under section 8, the duty appoint attorneys for indigent tenants attaches in unlawful detainer proceedings under chapters 59.18, 59.12, and 59.20 RCW. OCLA's position – and that echoed by the bill's prime sponsor in the attached letter – is that the duty attaches to cases that have been commenced through filing of a complaint with the court *and* cases commenced through service of a summons on the tenant defendant in accordance with RCW 4.28.020 (pocket served cases).

2. Sec. 9 assigns administration of the eviction defense program (known as Right to Counsel or RTC) to OCLA. OCLA has exclusive authority to contract with attorneys who will be able to accept orders of appointment from judicial officers in these cases once the RTC program becomes operational.
3. OCLA has provided authority for eleven legal aid programs to hire 60 dedicated RTC attorneys. Once hired and trained, these attorneys – and some private attorney contractors – will provide RTC services in all 37 judicial districts.
4. While Senate Bill 5160 was effective on the date of the Governor’s signature, OCLA was provided 90 days to develop an implementation plan and 12 months to implement the RTC provisions.
5. Given the heightened risks to tenants following termination of the eviction moratorium, OCLA is moving on an accelerated schedule to stand this program up, consistent with the implementation priorities outlined in section 9 of Senate Bill 5160.
6. The RTC provisions will not be operative in any individual judicial district *unless and until* OCLA certifies to the presiding judicial officer that there is sufficient capacity to accept appointments.
7. Courts that appoint attorneys who are not under contract with OCLA or prior to receipt of OCLA’s RTC capacity certification will do so at local county expense. OCLA will not reimburse courts for these services.
8. During the period between now and when the RTC program is implemented in any judicial district, legal aid programs and Housing Justice Projects will continue to provide legal information, advice, and assistance to tenants facing eviction. This help will fall short of the level of representation provided under the RTC model.
9. Once RTC services are available, the principal gateway for tenant eligibility screening and assignment to the OCLA-contracted RTC program is the Eviction Defense Screening Line (855-657-8387) established and maintained by the statewide Northwest Justice Project.
10. Courts will be advised of the legal aid entity(ies) contracted to receive and accept orders appointing counsel. Courts are encouraged to refer tenants who appear at show cause or other hearings without counsel to the ED Screening Line or to local OCLA-contracted legal aid providers for screening and assignment of an attorney. For tenants found eligible and assigned to a local provider, the attorney will submit a request for appointment pursuant to sec. 8 of Senate Bill 5160.
11. Following implementation of RTC, courts should not expect attorney presence at all unlawful detainer dockets; RTC attorneys will be focused on assisting tenants they have been appointed to represent. In some places, non-attorney HJP or legal aid staff may continue to be present (in person or virtually) to help in screening and assignment of attorneys to tenants eligible for RTC representation.

12. Landlord-tenant and eviction laws have changed markedly over the past three years. The area of practice is becoming extremely complex. Given the most recent changes – including but not limited to enactment of House Bill 1236 (just cause eviction) and Senate Bill 5160 (ERPP, payment plans, RTC) -- eviction cases will now be consistently law and fact intensive. Tenants will have a range of potential defenses to eviction.
13. Same day appointment/merits litigation will not happen. Courts do not appoint counsel in criminal or child welfare cases and expect them to provide same day representation on the merits of the charges/complaints. So too, RTC attorneys will need time to meet and confer with their clients, undertake informal discovery, meet and confer with the landlord or their counsel, and prepare a defense. RTC attorneys are expected to routinely request continuances to perform those tasks necessary for the effective representation of their clients consistent with the Rules of Professional Responsibility.
14. OCLA encourages courts to work directly with stakeholders to ensure smart and efficient implementation of the RTC program and create commonly understood expectations among both the landlord and tenant bar. Several courts (e.g., Spokane, Clark, King, Pierce, Snohomish, Thurston, Benton-Franklin) have already implemented regular stakeholder meetings.
15. An RTC deployment chart is below. Note that several counties (Whatcom, Skagit, Island, San Juan, Snohomish, Thurston, Mason, Grays Harbor, Pacific, Clark, Skamania, and Spokane) will be served by both NJP and the provider listed below. We are still working out the client service responsibilities in Chelan, Douglas, and Grant Counties. Where multiple providers are serving a common judicial district, courts will be advised which program should be the primary recipient of RTC screening assignments.

RTC Attorney Capacity Deployment by Program

Program Name	Counties	RTC Attorneys
Northwest Justice Project	Statewide with exception of King and Pierce Counties	24
KCBA Housing Justice Project	King	10
Tacomaprobono HJP	Pierce	9
LAW Advocates of Whatcom County	Whatcom, San Juan	1
Kitsap Legal Aid	Kitsap	2
Skagit Legal Aid	Skagit, Island	1
Snohomish County Legal Services	Snohomish	4
Thurston County VLS	Thurston, Mason, Grays Harbor, Pacific	3
Clark County VLP/HJP	Clark, Skamania	3
Yakima County VAS/HJP	Yakima Kittitas	1
Spokane County VLP/HJP		2
Total		60