Washington State Office of Civil Legal Aid

1220 Main St, Ste 400
Vancouver, WA 98660
(360) 280-8784 (mobile)

Philippe Knab
Eviction Defense Program Manager
Philippe.Knab@ocla.wa.gov

To: Hon. Jennifer Forbes, President SCJA
Ashley Callan, President AWSCA
Tammy Ownbey, President WSACC

From: Philippe A. Knab, Eviction Defense Program Manager
Jim Bamberger, OCLA Director

Re: RCW 59.18.640 -- Court-Appointed Tenant Defense Program

Date: January 23, 2023

Monday, January 18, 2023, marked the first anniversary of full statewide implementation of the new legislative mandate for court-appointed attorneys to represent indigent tenants in unlawful detainer cases. We wanted to take this moment to (a) reflect on the monumental change in unlawful detainer practice, procedure, and outcomes resulting from the new mandate, and (b) express our gratitude for the collaborative support we have received from the Superior Court Judges' Association, Court Administrators, and Court Clerks as we navigated the uncharted waters of standing up the nation's first – and still only – mandate that courts appoint attorneys to defend indigent tenants in judicial eviction proceedings.

To understand the sea-change driven by the new mandate, it is important to revisit the pre-existing status quo. Historically, landlords were represented in more than 90% of residential unlawful detainer cases. Tenants were represented in less than 10%. Applications for writs of restitution were rarely challenged and default rates were extraordinarily high, leading to systemic displacement of tenants from their homes – large percentages of whom experience now tells us never should have been.

During the first year of this program, more than 6,500 indigent tenants were appointed well-trained and competent defense attorneys. Data[1] generated unequivocally demonstrates the efficacy of the appointed counsel model in terms of protecting housing stability and achieving other positive outcomes for tenants. While still too high, we are noting some reduction in tenant default rates – a trend we expect to continue as more and more tenants understand that they are entitled to a civil public defender to represent them in their eviction cases.

[1] OCLA's implementation is data driven. Appointed counsel providers are required to track many data points from initial contact through case closing on a common case management system. These data are pushed to OCLA on a quarterly basis and loaded into an interactive data dashboard.

Moreover, the fact that tenants are now represented by counsel in these cases changed the cost-benefit analysis for landlords and their attorneys. This change drives a greater interest and willingness on the part of landlords and counsel to negotiate mutually acceptable settlements in these cases. Finally, recognition that these cases will now be litigated by competent defense counsel (along with other recent changes in eviction law and procedure (*e.g.*, just cause eviction)) has contributed to a significant reduction in the number of unlawful detainer filings in the post-moratorium period. During 2016-19, the average statewide number of UD filings ranged between 16,000 and 18,000 per year. Current data reported by AOC show an average monthly filing level of about 900 UDs. This leads us to project a "new normal" of about 12,000 UD filings per year.

OCLA's ability to timely and properly implement this program was greatly assisted by our judicial branch partners at SCJA and AWSCA, and our executive branch partners at WSACC. SCJA coordinated and led an inclusive work group that, among other things, generated the first bench card for unlawful detainer practice. It also hosted a series of trainings for judicial officers.[2] Courts and court administrators in every judicial district worked with OCLA and our tenant defense contractors to develop and adopt procedures to inform unrepresented tenants of their potential right to an eviction defense attorney and where to go to be screened for eligibility. They also established procedures for the appointment of attorneys for tenants who meet financial eligibility requirements. Individual judicial officers across the state have been open and inviting when we have asked to meet with them. They have shared observations and ideas and offered critique when and where they felt it was needed. Court clerks have made themselves available to help troubleshoot implementation issues relating to filing and access to court documents, waiver of court fees, and other matters.

Implementation of the new and untested requirement for court appointment of tenant defense attorneys has neither been simple nor uniform across the state. Judicial interpretation of the requirements of the law and the processes needed to effectively implement the same have varied. Defense counsel frequently file motions challenging landlord attorney and sometimes judicial practices as being at odds with the requirements of RCW 59.18.640 and recent changes in underlying state and federal landlord tenant laws. Several decisions have been appealed. As they have already begun to do,[3] we anticipate that the appellate courts will provide additional clarity and guidance in the coming years, leading to greater consistency of UD practice and procedure across the state moving forward.

OCLA's court-appointed tenant defense program remains a work in progress. We receive and review monthly case filing reports from AOC and caseload reports from our providers. We continue to assess and revise the allocation of tenant defense attorneys in specific judicial districts – adding capacity in some and reducing it in others. In some cases, we have changed providers. We have and are continuing to add capacity to ensure continuity of defense services

[2] Given experience to date, we suggest the need for additional training for judicial officers (including pro tem judicial officers) and hope to work with the SCJA Education Committee to make this happen soon.
[3] *See, e.g.*, Sherwood Auburn v. Pinzon (Div. I, No. 84119-0 (12/5/2022)) holding that the CARES Act 30-day notice requirement and not the RLTA's 14-day requirement applies in certain federally supported housing.

where they might have otherwise been interrupted because of demand or where one or more local attorneys is unavailable due to caseload, personal reasons, or turnover. In many cases, this requires the appearance of eviction defense attorneys from outside the jurisdiction. Where this occurs, they require the ability appear and participate virtually and submit materials electronically. We and our contracted tenant defense providers look forward to working with judicial officers, clerks, and court administrators to ensure such accommodations are routinely made.

When on January 18, 2021, we certified the final counties ready to go, we made a commitment to the courts, the rental housing industry, and most importantly tenant defendants that we would do our best to avoid disruption of normal operations that would be caused by suspension of the same. We have kept that commitment. Despite significant challenges including higher than anticipated time/case and turnover rates, OCLA has not yet suspended certification in any judicial district. We have asked the Legislature for funding necessary to ensure that we have sufficient tenant defense capacity and redundancy for the balance of this fiscal year and in the coming biennium.

In closing, we again thank you and your colleagues for your assistance and support as we designed and implemented this untested model. We recognize that the change driven by the Legislature's mandate for court-appointed tenant defense counsel disrupted pre-existing norms of practice and court operations in unlawful detainer cases. A year out, we trust you will agree that the benefits – greater fairness and due process in these unlawful detainer cases and greater housing stability for tenants – have been worth it.