

**CIVIL LEGAL AID
OVERSIGHT COMMITTEE**

**MEETING OF
SEPTEMBER 25, 2020**

MATERIALS

**CIVIL LEGAL AID OVERSIGHT COMMITTEE
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MEETING MATERIALS

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Legal Aid (with attachments)**

TAB 1

CIVIL LEGAL AID OVERSIGHT COMMITTEE

September 25, 2020

11:00 a.m. – 1:00 p.m.

Via Zoom Link

AGENDA

1. Introductions of Members and Guests (11:00-11:10)
2. Approval of June 19, 2020 Virtual Meeting Minutes (11:10 – 11:15)
3. Election of Vice-Chair/Chair-Elect (11:15 – 11:20)
4. Race Equity Discussion – Next steps for OCLA and the Oversight Committee following issuance of the July 16, 2020 Statement (11:20 – 12:00)
 - a. Comments to be shared by KJ Williams
 - b. Review and discussion of how the Oversight Committee and OCLA turn words into action
5. OCLA COVID-19 Emergency Civil Legal Aid Programs Update (12:00 – 12:20)
6. FY 2021 and FY 2021-23 Biennial Budget Request (extending COVID-19 emergency service; offering operational savings) (12:20 – 12:40)
7. Development of Process for Oversight Committee Consideration and Review of Contractor Complaints Relating to Extraordinary OCLA Staff Action (12:40 – 12:55)
8. Other Business
9. Adjourn

TAB 2

**CIVIL LEGAL AID OVERSIGHT COMMITTEE
MEETING OF JUNE 19, 2020
DRAFT MINUTES**

Pursuant to notice duly provided in advance and in response to the COVID-19 Public Health Emergency, the spring quarterly meeting of the Civil Legal Aid Oversight Committee was held virtually through Zoom.us Friday, June 19, 2020.

Members Participating: Chair Taylor Wonhoff, Justice G. Helen Whitener, Judge Rebecca Pennell, Chalia Stallings-Ala'ilima, Judge Faye Chess, Rep. Christine Kilduff; Ted Grammount

Members Not Participating: Vice-Chair Sarah Augustine, Senator Ann Rivers, Rep. Drew Stokesbary

OCLA Staff: James Bamberger, Director, Office of Civil Legal Aid (OCLA); Hope Hough, Senior Administrative Assistant (OCLA); Dana Boales (OCLA)

Other Participants: Linda Inagawa (IFJC), Andy Simons (AG), David Henken (Law Advocates), Will Livesley-O'Neil (LFW), Michael Terasaki (Pro Bono Council), Kirsten Baron (EJC), Randy Pepple (Pepple Communications), Chief Justice Debra Stephens, Grete Schultz

Mr. Wonhoff called the meeting to order at 11:35 a.m.

1. Welcome and Introductions

Mr. Wonhoff thanked members and guests for taking the time to participate in the meeting despite their very busy schedules and heightened responsibilities during the current public health emergency. He invited members and guests to introduce themselves.

Mr. Wonhoff introduced Sen. June Robinson a new appointee who takes the place of Sen. Frockt as the Senate Democratic Caucus representative on the Committee. He invited Sen. Robinson to introduce herself and share a few words with the Committee. Sen. Robinson introduced herself and expressed her pleasure at having been appointed to represent the Senate Democratic Caucus on the Oversight Committee and told members she looked forward to working with them and OCLA staff to continue a strong civil legal aid program in the coming period.

Mr. Wonhoff noted that this is a public meeting and that it will be recorded and made part of the Oversight Committee's permanent record.

Mr. Bamberger explained the Zoom meeting protocols, noting that all members and guests would be muted, and that people should use the chat box or raised hand tool before they spoke.

Finally, Mr. Wonhoff advised that there had been a revision to the sequence of the agenda, and that the revised agenda was sent out to Oversight Committee members earlier this morning.

2. Recognition of Juneteenth; Committee Member Reflections on George Floyd's Murder and National Response; Implications for Our Work

Mr. Wonhoff noted that it is Juneteenth, the holiday often associated with the end of slavery in the United States. He invited Mr. Bamberger to share a few words about the day.

Mr. Bamberger noted that it was especially important that the Oversight Committee note and pay respect to Juneteenth this year, given the extraordinary circumstances arising from the murders of George Floyd, Breonna Taylor, Rayshard Brooks, Ahmaud Arbery, Manuel Ellis, Charleena Lyles, and so many others. Most people explain the day as commemorating the abolition of slavery in the United States. It was not. It is the day that Union soldiers marched into Galveston, Texas, and informed the Black slaves there that they had been freed by President Lincoln's Emancipation Proclamation of 1863, fully two years earlier. While the Emancipation Proclamation was an exercise of President Lincoln's war powers and only extended freedom to slaves in states involved in the insurrection, abolition of slavery in the United States would not be accomplished until December 6, 1865, with ratification of the 13th amendment.

Mr. Wonhoff shared his thoughts about Juneteenth and its relationship to the current national, state, and local movements and conversations about race in the United States and invited other members to share. Judge Chess, Justice Whitener, Ms. Stallings-Ala'ilima, and Rep. Kilduff each shared their thoughts.

Mr. Bamberger advised that many justice system related entities – from the Washington State Supreme Court to the Access to Justice Board to individual legal aid programs – issued statements related to the current moment and the commitments they make to ensure race consciousness, racial justice, and to identify and dismantle or eliminate systems and practices that disproportionately affect Black and African Americans, Native Americans, and other racial minorities. He inquired whether, in light of its declared commitment to race equity through the adoption of the Race Equity and Justice Initiative's Commitments, the Oversight Committee wished to develop and issue a statement. If so, he suggested that a small group be charged with developing a draft statement for circulation, editing, and approval. Members agreed that it is important that the Oversight Committee speak in this moment. Mr. Wonhoff offered to work with Mr. Bamberger to originate a draft for circulation to all Oversight Committee members for review, editing, and possible adoption.

3. Comments from Chief Justice Debra Stephens

Chief Justice Debra Stephens joined the meeting. She thanked members for their service and commitment to civil legal aid and their support for OCLA. She shared her personal reflections on the Juneteenth moment. She then offered brief remarks about the courts' response to the COVID emergency, lessons being learned about how courts can operate more efficiently and in a more user-friendly manner, and provided an update on efforts that will be taken to gradually restore the courts to more normal operations.

4. Review and Adopt Minutes of March 27, 2020

Mr. Wonhoff asked if there were any suggested changes to the draft minutes of the March 27, 2020 Zoom Oversight Committee meeting.

Motion: By Judge Pennell to approve the minutes of the March 27, 2020 meeting.

Second: By Ted Grammount

Action: Approved unanimously

5. Executive Session (Update on OCLA Director Performance Review)

Mr. Wonhoff advised meeting participants that the Oversight Committee would move into Executive Session during which leadership would report to the membership on the recently completed review of the OCLA Director's performance. He asked Mr. Bamberger to walk members and guests through the process.

Mr. Bamberger advised that he would assign members to a separate, secure Zoom breakout room. When they have completed their deliberations, each member will have the means of leaving that room and returning to the main Zoom meeting room. Should members have difficulty, they should leave the Zoom meeting all together and then log back in.

Members retired to the Zoom breakout room at 12:35 p.m. On return at 12:54 p.m., Mr. Wonhoff reported that, after some deliberation, it was decided that members should all have a chance to look at the full text of the performance review report in order to make an informed decision before voting to formally adopt it. Mr. Wonhoff advised that he will send a copy of the full report to all members and ask them to vote by email.

6. OCLA COVID-19 Emergency Civil Legal Aid Programs Update

Mr. Bamberger provided an update on OCLA's implementation of the emergency Eviction Defense and Unemployment Insurance Claimant Representation programs. He also advised the Committee that an additional \$2.3 million had been approved to expand COVID-19 related work to include individual and family safety assistance and support, and expanded assistance for COVID-19 affected individuals with employment related problems.

Mr. Bamberger directed members' attention to pages 28-30, where agency efforts to secure emergency funding for four core emergency programs are outlined:

- Eviction Defense
- Unemployment Insurance Claimant Representation
- Individual and Family Safety
- COVID-19 Employment Related Legal Assistance

He advised members that, following legislative review of OFM recommendations, OCLA has been advised that its request for \$2.3M in CARES Act funding had been approved. OCLA is awaiting a final letter confirming that approval, but in the meantime is working with client service providers to stand up both the individual and family safety and employment related legal assistance projects.

7. FY 2021 and FY 2021-23 Biennial Budget Planning in Light of the State Fiscal Crisis

Mr. Bamberger advised that the Revenue Forecast for FY 2021 and FY 2021-23 projects a \$8.8B shortfall between now and June 30, 2023. He noted that Governor Inslee had suspended 3%

salary increases and imposed mandatory furloughs for exempt state executive branch employees whose incomes exceed \$53,000 per year. He noted further that each executive branch agency was required to develop budget scenarios for FY 2021 and the FY 2021-23 biennial budget, incorporating 15% reductions in state general fund support.

Mr. Bamberger updated members on conversations convened by the Chief Justice to develop realistic responses to the budget crisis while protecting core constitutional and statutory functions. The judicial branch agency heads have met once and will be meeting again on Monday, June 22nd. He explained that the judicial branch leaders are looking to their common efforts during the 2010 and 2014 budget crises and will likely develop an approach common to all judicial branch agencies.

There being no further business, the meeting concluded at 1:05 p.m.

Note: The full recording of the June 19, 2021 Civil Legal Aid Oversight Committee meeting is found at:

https://zoom.us/rec/share/tedHKK2v111LX5WRxEHgVJUjGJz8T6a8hCUe_6VfmU2Zjrv9CqpbqpoWueB1V-al Password: 5x+K*33

TAB 3

CIVIL LEGAL AID OVERSIGHT COMMITTEE

MISSION STATEMENT

To ensure that all people in Washington share in the fundamental right to civil justice, the Civil Legal Aid Oversight Committee, consistent with its statutory authority, shall oversee and support the Office of Civil Legal Aid and shall periodically make recommendations to the Supreme Court, the Access to Justice Board and the Legislature as to the most efficient and effective use of state-appropriated civil legal aid funds on behalf of low-income people.

TAB 4

CIVIL LEGAL AID OVERSIGHT COMMITTEE ROSTER
(July 2020)

Position 1 (BJA 1):

Name: Hon. Rebecca Pennell
Address: Court of Appeals, Div. 3
500 N Cedar St
Spokane, WA 99201-1905
Phone: 509-456-3920
E-mail: j_r.pennell@courts.wa.gov
Appointing Entity: Board for Judicial Administration
Term Expires: June 30, 2021; eligible for reappointment

Position 2 (BJA 2):

Name: Hon. Faye Chess
Address: Seattle Municipal Court
600 5th Ave.
Seattle, WA 98104
Phone: 206-684-5600
E-mail: faye.chess@seattle.gov
Appointing Entity: Board for Judicial Administration
Term Expires: June 30, 2022; eligible for reappointment

Position 3 (Supreme Court 1):

Name: Hon. G. Helen Whitener
Address: Washington State Supreme Court
Temple of Justice
415 12th Ave SW
Olympia, WA 98501-2314
Phone: 360-357-2025
E-mail: helen.whitener@courts.wa.gov
Appointing Entity: Supreme Court (on recommendation of the Access to Justice Board)
Term Expires: June 30, 2020; eligible for reappointment

Position 4 (Supreme Court 2):

Name: Sarah Augustine, Chair
Address: 132 North 1st Ave.
Yakima, WA 98902
Phone: 509-453-8949
E-mail: director@drcyakima.org
Appointing Entity: Supreme Court (on recommendation of the Access to Justice Board)
Term Expires: June 30, 2020; eligible for reappointment

Position 5 (Supreme Court 3 – Client Eligible):

Name: Theodore Grammount
Address: 2345 Beach Street
Longview, WA 98632
Phone: 360-355-4628
E-mail: theodoregrammount@rocketmail.com;
grammount@gmail.com
Appointing Entity: Supreme Court (on recommendation of the Access to Justice Board)
Term Expires: June 30, 2022; not eligible for reappointment

Position 6 (Senate Republican Caucus):

Name: Senator Ann Rivers
Address: 204 Newhouse Legislative Building
Olympia, WA 98504
Phone: 360-786-7634
E-mail: ann.rivers@leg.wa.gov
Appointing Entity: Senate Republican Caucus
Term Expires: June 30, 2020; eligible for reappointment

Position 7 (Senate Democratic Caucus):

Name: Senator June Robinson (Appt. Pending)
Address: 236 John Cherberg Building
PO Box 40433
Olympia, WA 98504-0443
Phone: 360-786-7674
E-mail: june.robinson@leg.wa.gov
Appointing Entity: Senate Democratic Caucus
Term Expires: June 30, 2021; eligible for reappointment

Position 8 (House Republican Caucus):

Name: Representative Drew Stokesbary
Address: 426 John L. O'Brien Building
PO Box 40600
Olympia, WA 98504-0600
Phone: 360-786-7846
E-mail: drew.stokesbary@leg.wa.gov
Appointing Entity: House Republican Caucus
Term Expires: June 30, 2019; request for reappointment pending

Position 9 (House Democratic Caucus):

Name: Representative Christine Kilduff
Address: 334 John L. O'Brien Building
PO Box 40600
Olympia, WA 98504-0600
Phone: 360-786-7958
E-mail: christine.kilduff@leg.wa.gov
Appointing Entity: House Democratic Caucus
Term Expires: June 30, 2020; (completing term of Speaker Jenkins; eligible for reappointment)

Position 10 (Office of the Governor):

Name: Taylor (“Tip”) Wonhoff
Address: Office of the Governor
PO Box 40002
Olympia, WA 98504-0002
Phone: 360-902-4132
E-mail: taylor.wonhoff@gov.wa.gov
Appointing Entity: Office of the Governor
Term Expires: June 30, 2021; not eligible for reappointment

Position 11 (Washington State Bar Association):

Name: Chalia Stallings-Ala’ilima
Address: Office of the Attorney General
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
Phone: 206-326-5480
E-mail: chalia.stallingsalailima@atg.wa.gov
Appointing Entity: Washington State Bar Association
Term Expires: June 30, 2021; eligible for reappointment

TAB 5

CIVIL LEGAL AID OVERSIGHT COMMITTEE OPERATING RULES AND PROCEDURES

(Revised 4-23-07)

I. Name

The name of this body shall be the Civil Legal Aid Oversight Committee (hereafter Oversight Committee)

II. Membership

The membership of the Committee is established by RCW 2.53.010 and includes:

- (a) Three persons appointed by the supreme court from a list of nominees submitted by the access to justice board, one of whom at the time of appointment is income eligible to receive state-funded civil legal aid;
- (b) Two persons appointed by the board for judicial administration;
- (c) Two senators, one from each of the two largest caucuses, appointed by the president of the senate; and two members of the house of representatives, one from each of the two largest caucuses, appointed by the speaker of the house of representatives;
- (d) One person appointed by the Washington state bar association; and
- (e) One person appointed by the governor.

III. Terms of Membership

Pursuant to RCW 2.53.010, the terms of membership of the Oversight Committee shall be staggered so that, after the first three years of the committee's existence, the terms of one-third of the members expire each year. To this end, a term of membership shall be allocated to each position as follows:

A. Judicial Branch

BJA 1	Initial term -- 1 year, expiring June 30, 2006 Eligible for two full additional terms (through June 30, 2012)
BJA 2	Initial term -- 2 years, expiring June 30, 2007 Eligible for one full additional term (through June 30, 2010)
Supreme Court 1 (attorney)	Initial term -- 3 years, expiring June 30, 2008 Eligible for one full additional term (through June 30, 2011)

Supreme Court 2 (attorney) Initial term -- 1 year, expiring June 30, 2006
Eligible for two full additional terms (through June 30, 2012)

Supreme Court 3 (client eligible) Initial term -- 2 years, expiring June 30, 2007
Eligible for one full additional term (through June 30, 2010)

B. Legislative Branch

Senate Republican Caucus Initial term -- 3 years, expiring June 30, 2008
Eligible for one full additional term (through June 30, 2011)

Senate Democratic Caucus Initial term -- 1 year, expiring June 30, 2006
Eligible for two full additional terms (through June 30, 2012)

House Republican Caucus Initial term -- 2 years, expiring June 30, 2007
Eligible for one full additional term (through June 30, 2010)

House Democratic Caucus Initial term -- 3 years, expiring June 30, 2008
Eligible for one full additional term (through June 30, 2011)

C. Other

WSBA Initial term -- 1 year, expiring June 30, 2006
Eligible for two full additional terms (through June 30, 2012)

Office of the Governor Initial term -- 2 years, expiring June 30, 2007
Eligible for one full additional term (through June 30, 2010)

IV. Officers

There shall be a Chair and a Vice-Chair/Chair-Elect. The Chair and Vice-Chair/Chair-Elect shall be selected by the full membership of the oversight committee.

A. Term

The term of the Chair and Vice-Chair/Chair-Elect shall run commensurate with the state fiscal calendar, commencing on July 1st of the odd numbered year and ending on June 30th of the succeeding odd numbered year. The Chair and Vice-Chair/Chair-Elect shall not be eligible to serve more than one biennial term, *provided that*, the initial Chair and Vice-Chair/Chair Elect may serve up to one additional biennial term.

B. Authority/Responsibility of Officers

1. Chair

The Chair shall preside over all meetings of the Civil Legal Aid Oversight Committee. The Chair shall also serve as the spokesperson for the Oversight Committee, execute official documents (including, but not limited to, statutorily required reports) and represent the Oversight Committee on matters relevant to the Oversight Committee's work as circumstances require. The Chair shall be the primary point of contact for the Director of the Office of Civil Legal Aid. The Chair shall serve as the chair of the Executive Committee.

2. Vice-Chair/Chair-Elect

In the event of the Chair's absence or unavailability, the Vice-Chair/Chair-Elect shall perform all functions of the chair on an as-needed basis. The Vice-Chair/Chair-Elect shall serve as a member of the Executive Committee.

V. Committees

There shall be an Executive Committee. The Executive Committee shall consist of three members, the Chair, the Vice-Chair/Chair-Elect and one of the Oversight Committee's legislative members.

A. Appointment of Legislative Member; Succession

The legislative member of the Executive Committee shall be selected by the four legislative members of the Oversight Committee. The first legislative member shall serve from the date of the first meeting through June 30, 2007. In the event that a legislative member is no longer eligible to serve on the Civil Legal Aid Oversight Committee by reason that he or she no longer serves as an elected state senator or representative, such legislator shall submit his or her resignation to the Chair of the

Oversight Committee and the legislative caucus that appointed him or her to the Oversight Committee. Upon appointment of a successor by the appropriate legislative caucus, the legislative members shall meet and select a member to serve on the Executive Committee.

B. Responsibilities

The Executive Committee shall develop procedures and criteria to review the performance of the Director of the Office of Civil Legal Aid and perform such other responsibilities as the Oversight Committee deems appropriate.

The Oversight Committee may establish such other committees as it determines appropriate to perform its statutory functions.

VI. Staffing

The Oversight Committee, the Executive Committee and any other committees established by the Oversight Committee shall be staffed by the Director of the Office of Civil Legal Aid.

VII. Regular and Special Meetings, Notice, Committee Member Attendance

The Oversight Committee shall meet not less than quarterly at dates and times determined in advance by the Committee. Notice of regular meetings of the Oversight Committee shall be provided to the Supreme Court, the Access to Justice Board, the Chairs of the judiciary committees of the Washington State Legislature, the Office of the Governor and the Washington State Bar Association, and shall also be published in the State Register in manner that substantially conforms to the requirements of RCW 42.30.075.

A special meeting may be called at any time by the Chair or by a majority of the members of the Oversight Committee by delivering personally or by mail written notice to each member of the Oversight Committee. Such notice must be delivered personally or by mail at least twenty-four hours before the time of such meeting as specified in the notice. Notice of a special meeting may be supplemented by an electronic notice transmitted via e-mail to all members of the Oversight Committee. Such notice shall not be deemed a substitute for the personal notice or mailed notice otherwise required by this section. The call and notice shall specify the time and place of the special meeting and the business to be transacted. The Oversight Committee shall limit its business in any special meeting to those matters included in the call and notice.

Regular meetings of the Oversight Committee shall be open and public and all persons shall be permitted to attend any meeting of the Oversight Committee. The Oversight Committee may adjourn to executive session for the following purposes:

- A. To receive and evaluate complaints or charges brought against the Director of the Office of Civil Legal Aid. However, upon the request of the Director of the Office of

- Civil Legal Aid, a public hearing or a meeting open to the public shall be conducted upon such complaint or charge;
- B. To review the performance of the Director of the Office of Civil Legal Aid; or
 - C. To review the status of investigations carried out by the Director of the Office of Civil Legal Aid which involve matters protected by the attorney-client privilege and where public disclosure could substantially prejudice the interests of client(s) being represented by a legal aid provider that receives funding from the Office of Civil Legal Aid; and
 - D. To discuss with legal counsel representing the Oversight Committee or the Office of Civil Legal Aid matters relating to litigation or potential litigation to which the Oversight Committee or the Office of Civil Legal Aid or a member acting in an official capacity is, or is likely to become, a party, when public knowledge regarding the discussion is likely to result in an adverse legal or financial consequence to the Oversight Committee or the Office of Civil Legal Aid.

All members are expected to attend regular meetings of the Civil Legal Aid Oversight Committee unless they have good cause not to attend and have been excused from attendance by the Chair. In the event that a member misses two consecutive meetings without sufficient cause, the Chair shall discuss the member's lack of attendance directly with the member. If the Chair determines that the member is not likely to meaningfully and regularly participate in the work of the Oversight Committee, the Chair may notify the appointing entity of the member's lack of attendance and request the appointment of a replacement member.

VIII. Quorum

The presence of six (6) voting members of the Oversight Committee shall constitute a quorum for the purpose of enabling the Oversight Committee to take official action. Upon establishment of a quorum, the Oversight Committee shall have full power to conduct the scheduled business of the meeting even if a member whose presence was necessary to establish the quorum in the first instance subsequently becomes unavailable.

IX. Voting

Each member of the Oversight Committee shall have one vote. All decisions of the Oversight Committee shall be made by majority vote of those present and voting. Telephonic or electronic attendance shall be permitted but no member shall be allowed to cast a vote by proxy.

X. Amendment or Repeal

Amendments and/or repeal of any or all of these Operating Rules and Procedures shall be made by majority vote at a regular or special meeting of the Oversight Committee. The notice of the meeting shall include a statement of proposed action to amend or repeal these Operating Rules and Procedures and shall include an interlineated version of the full text of any section subject to proposed amendment or repeal.

TAB 6

CIVIL LEGAL AID OVERSIGHT COMMITTEE RESOLUTIONS

Number	Date	Subject Matter	Status	Further Action Required
2008-01	18-Jan-08	Regarding Recommendations Relating to the Provision of State Funded Civil Legal Aid	approved	
2008-02	21-Feb-08	Acceptance of Tull Report and Related Recommendations	approved	
2009-01	27-Mar-09	Endorsing Temporary Surcharge on Attorney License Fees	approved	
2009-02	11-Dec-09	Endorsing ATJ Board Performance Standards	approved	
2009-03	11-Dec-09	Endorsing JusticeNet	approved	
2010-01	10-May-10	Endorsing Judicial Branch Whistleblower Policy	approved	
2010-02	3-Dec-10	Relating to Oversight Committee Meeting Expenditures	approved	
2010-03	3-Dec-10	Resolution Urging Adequate Funding of the Judicial Branch	approved	
2010-04	10-Dec-10	Regarding the Importance of the Office of Civil Legal Aid and Funding for Essential Civil Legal Aid Services in Washington	approved	
2011-01	7-Sep-11	Regarding Funding for the Federal Legal Services Corporation	approved	
2011-02	7-Oct-11	Affirming the Authority of the Director of the Office of Civil Legal Aid to Engage in Travel Necessary or Appropriate to the Discharge of the Director's Official Responsibilities	approved	Annual Report to the Oversight Committee detailing destination, costs, and purpose of each trip taken in the prior fiscal year the total cost of which exceeded \$100 and which was incurred at agency
2015-01	12-Jun-15	Regarding Funding for the Federal Legal Services Corporation	approved	
2016-01	25-Mar-16	Resolution Re: OCLA Director's Travel -- Revising Resolution 2011-02	approved	Increased threshold for reporting from \$100 per travel event to \$500 per travel event
2016-02	30-Sep-16	Endorsing the Civil Justice Reinvestment Plan and Recommending Legislative Funding of the Same	approved	Encourages Legislature to establish tax or surcharge to generate dedicated funding for civil legal aid
2016-03	28-Dec-16	Endorsing the Civil Justice Reinvestment Plan and Recommending Legislative Funding of the Same -- Revised	approved	Encourages Legislature to fund the Civil Justice Reinvestment Plan, recommends state general fund, proposes alternative of tax or surcharge if general funds not available.
2017-01	5-Apr-17	Opposing Elimination of federal Legal Services Corporation and asking Congress to maintain funding	approved	Requests state congressional delegation to oppose administration's proposal to eliminate LSC effective FFY 2018
Policy Directions and Statements				
	8-Jun-12	Policy Regarding OCLA Involvement in Promoting or Opposing Bills Before the Washington State Legislature	approved	Notice to OC before taking positions on policy bills not directly affecting OCLA or judicial branch budgets or statutes
	18-Apr-13	Endorsing Policy on Use of State Owned Mobile Telecommunications Devices	endorsed via e-mail	
	15-Dec-17	Embracing the Race Equity and Justice Initiative Acknowledgments and Commitments and directing that race equity discussions be a standing agenda item in future meetings	Approved by motion in open meeting	Requires a standard agenda item for discussion and/or training

TAB 7

Note to Public: In order to maintain focus on the dialogue and to protect the identity of the judicial officer involved, the dialogue below has been redacted to remove the name of the judge and any information that might identify the county in which the judge serves.

From: Bamberger, James (OCLA) <jim.bamberger@ocla.wa.gov>
Sent: Monday, July 27, 2020 12:21 PM
To: (Judge)
Subject: RE: July 20, 2020 Civil Legal Aid Oversight Committee Statement

Dear Judge (last name redacted),

Thank you for reaching out and raising the questions you did in your e-mail. Especially in this moment, I respect your courage to critically question your own behavior and ask the various questions you raised. Because of the gravity of the issues you raise and my respect for you as a judicial officer, I have taken a few days to collect my thoughts. I hope that you will accept the discussion below in the same manner that I have accepted your inquiry – with an open mind and respect. I also hope that your initial e-mail and this response create space for a deeper consideration of race, racism, and white supremacy at the personal, professional, and institutional levels. I welcome the opportunity to continue the dialogue.

Please remember that the statement which gives rise to your questions originated from the bipartisan Civil Legal Aid Oversight Committee, not the Office of Civil Legal Aid. As such, I am including both Taylor Wonhoff (immediate past Chair and acting Chair) and Yakima DRC Exec. Director Sarah Augustine (comment redacted) who will assume the Chair once she returns from medical leave.

I could easily write an entire book in response to your questions, and maybe when I retire I will write “How White Silence and Complicity With Racist Law and Justice Systems Is Itself Racist Behavior”. But I will try to keep this response to a manageable length, offering you additional relevant reading that I think could deepen your understanding of some of the issues discussed in the following paragraphs.

The Oversight Committee’s statement speaks in terms of the impact of racism and white supremacy on civil society, with emphasis on law and justice, educational, economic and other systems. Your e-mail translates the systemic indictment to a possible personal indictment – and allows you to pivot to the question of your complicity in the systemic indictment. You focus not on the system but ask whether you, as a long-time judicial officer, have engaged in specific racist behaviors. The short answer is, I don’t know. I’ve never practiced before you. But allow me to suggest there are deeper issues and dynamics that must be understood – beyond the specifics of your personal conduct.

Your internalization of the systemic message into a possible personal accusation is neither surprising nor unusual for people who are well intended and happen to have the same skin color we do. It is, in fact, the norm. It is a function our “fight or flight” impulse which originates in the amygdala, buried in the lower part of our brain. We find such messages threatening to our identity of self (which reaction itself is a culturally programmed defense of the privilege we enjoy as white people); and we respond accordingly to protect ourselves from the perceived attack.

Implicit throughout the text of your e-mail and the many questions you raise appears to be an assumption that racism and racist behavior requires intentionality (or conceivably gross racial/social negligence); and that to be a racist requires a level of animus. To help explain why I believe neither is true, allow me to use myself as an example.

I am a white, Jewish, professional, cis gendered male and who has spent all 40 years of my legal career working for race equity and justice. I (like all of us) have and fight my implicit biases (embedded at an early age and reinforced by societal norms (see [Justice Whitener's TEDx Talk](#) on this subject)). But I do not believe that I carry intentional racial bias or animus. Nevertheless, I am, by definition, a racist. I am not proud of this fact; but I cannot deny it. Why? Because every day I quietly experience and accept the full spectrum of advantages and privileges that accompany my skin color and gender. And when I reflect on my entire life, I see that, at every critical juncture (where I grew up, the K-12 system I attended, college, law school, job opportunities and professional advancement, etc.), I received and accepted a benefit of the doubt, presumption of competency, and educational, social, and professional advantage over Black, brown, Indigenous and other people of color (so many of whom had greater intrinsic gifts but not the free pass that came with white skin). It cannot be denied that I hold the position I do (and, with respect, you do too) in substantial part because I am (and you are) white.

I don't wear the term "racist" as a badge of courage or honor, but as a reminder of the work I need to do personally, professionally, and systemically to achieve authentic allyship with those who have been and continue to be victimized by racism, white privilege, and white supremacy. It is hard, lifelong work. I cannot take a red or blue pill to overcome it (with apologies to *The Matrix*). And I cannot ignore it – because to ignore it is to confirm my complicity with systemic racism; and this in turn reinforces my racism.

As noted above, the Oversight Committee's statement does not direct itself to you in a personal way, but it does indict the system within which you and every other judicial officer works. Our system undeniably bears the stain and institutionalizes the legacy of our histories (macro and micro) grounded in slavery, white supremacy, and genocide. The Supreme Court, both in its recent jurisprudence and in its June 4th Statement to the Legal Community, recognizes this and commits all of us to working collectively to understand how racism infects the legal system (including the bench) and how each of us individually and collectively must work together to eradicate it.

You grew up and went to school in (redacted) County, practiced most of your pre-judicial career, and later served as a judicial officer (District and Superior courts) in (redacted) County. [A substantial percentage] of (redacted) County is non-white (redacted). In contrast, the (redacted) County Superior Court bench is entirely white. I don't have access to the most recent statistics, but I have little doubt those who appear before you – in criminal, child welfare, and juvenile matters -- are disproportionately people (and children) of color (many of whom are limited English proficient). (further comment redacted).

(paragraph discussing and identifying the county in which the judicial officer serves is redacted)

In recent years many groups and organizations have come to recognize the impact of structurally racialized systems – law and justice, education, economic, environmental, etc. – and the collective responsibility of dominant society norms in perpetuating the same. In so doing, these norm-based systems result in disparate treatment of Black, brown, Indigenous and other people of color (redacted); and this disparate treatment manifests in an untold and nearly unquantifiable range of disproportionately negative outcomes for members of the same groups.

So, if you are still with me, the next question you might ask is what you might do? One easy suggestion I have to offer is to look closely at the [Washington State Race Equity and Justice Initiative's](#) (REJI)

[Acknowledgments and Commitments](#) and the [Access to Justice Board's statement](#) referenced in the Oversight Committee's statement, as well as the Supreme Court's June 4th letter. The REJI Acknowledgments and Commitments recognize the need for personal and institutional reckoning before we can begin to move the needle on racism and race equity. You (and your colleagues on the bench) might also benefit from the recently published, and soon to be updated, [Race Equity Organizational Toolkit](#) developed by JustLead Washington, a non-profit that provides resources, technical support, and training for law and justice related organizations in our state.

Finally, and as promised, here are a couple of books you might want to read, if you have not already done so:

Robin Diangelo's [White Fragility](#).
Ta-Nehisi Coates' [Between the World and Me](#)
Ijeoma Oluo's [So You Want to Talk About Race?](#)
Ibram X. Kendi's [Stamped From the Beginning](#)
James Baldwin's [The Fire This Time](#)

Former Chief Justice Fairhurst consistently reminded us that we (lawyers and judges) are "Stewards of Justice". If we are to truly exercise our stewardship, we must acknowledge, expose, and dismantle the racism and white supremacy inherent in our law and justice system. It takes commitment and hard work. I welcome your collaboration in this effort.

With very best regards and hope that this is not the end of our conversation.

Jim Bamberger

Jim Bamberger, Director
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I prefer he/him

From: Name of Judge
Sent: Friday, July 24, 2020 10:26 AM
To: Bamberger, James (OCLA)
Subject: July 20, 2020 Civil Legal Aid Oversight Committee Statement

Good morning,

I just read, and reread the "Bipartisan Civil Legal Aid Oversight Committee" Statement circulated by AOC.

It begins with this statement: "Racism and white supremacy currently plague **every** . . . governmental and legal system in our state . . . "

As a judge, I am part of the governmental and legal system – and when the accusation is against “every” that includes me, personally.

It begs a question for me “personally” as follows:

As a sitting (redacted level of court) Judge, now in my (redacted) year on the bench, am I saying anything, or treating any person who has come before me in a racist fashion, or speaking in a way that advances a white supremacist agenda?

I cannot read the statement in a way such that the accusation in the Oversight Committee’s Statement – against me personally – isn’t implied.

I would appreciate hearing from you clarifying whether I personally am being accused of acting or speaking in a racist way, or supportive of “white supremacy”.

If so – how, specifically? If not, I would welcome the clarification.

This is very disconcerting to me, and it is critical to me personally that I understand it on an individual level, starting with myself. I am open-minded, and am open to the possibility that I may have acted or spoken either in my personal life or in my capacity as a (redacted level of court) Judge in a racist way – or advancing white supremacy; however, I don’t recall an instance. That of course doesn’t mean I didn’t, and I would welcome any specific example of such an action on my part to which you might be referring. Reflecting over the last ten years on the bench, I cannot recall a single discretionary action I took, or a statement that I made personally that was racist, or advanced the cause of white supremacy. But I admit my memory could be poor.

I take these issues very seriously, and can only begin to assist in the requested change by changing myself personally before I would be so bold as to start trying to change anyone else. I trust you will receive this request in the spirit in which it is sent – a serious concern to address my personal statements and actions, and ascertain if I have acted or spoken in a racist way toward anyone – ever. If so, then I need to address my actions and / or statements first. I am opposed to both racism and white supremacy as I understand those concepts. And, I will be glad to assist in any way I can to opposed instances of racism and white supremacy, starting with myself.

Thank you for your time and attention to addressing my concern, as I know you are very busy.

(closing sentiments redacted)

Name of Judge

My Season Has Ended

My season at JustLead Washington has ended. I wanted to take the time to share a few words of gratitude, lessons learned and encouragement for the future.

As many of you know I spent 9 years at the Washington State Bar Association (WSBA) as the Diversity Programs Manager. It was a proving ground for me. I developed a deeper racial analysis spurred by the overt use of power and positionality to both prevent and advocate for equity and justice. I learned how to stand in my truth in the face of very powerful individuals and groups. I learned how to stand and speak my truth from the core of who I am and the values which govern my life. It was not an easy journey and it cost me something at every turn. I certainly didn't facilitate the work perfectly but I showed up consistently as a fierce advocate on behalf of treating people fairly and with respect, even when I fundamentally disagreed with someone's perception, beliefs and actions; BUT as a black, queer woman I learned painfully that I would not be treated in the same manner. I navigated many instances of personal attack, outright disrespect and overtly racist comments, these assaults were meant to demean, demoralize and question my integrity, motivation and competency; they were not successful.

I worked with a diverse team of women who are BADASSES in each of their own unique ways. These were the people who lifted me with strength, encouragement and honest friendship. I could not have survived my time there without them. There were others who came and left, and I am grateful for them, but I want to say a specific thank you to Dana, Laura, Tyler, Paige, Diana and Margaret M. Your presence, commitment and friendship are the reason I succeeded. By the time I chose to leave the WSBA I was emotionally decimated. That last year serving under a board of directors (governors), reporting to an executive team and working alongside DEI professionals who supported openly racist, homophobic and sexist behavior and language finally took its toll on me. I had to honestly evaluate the lack of congruency and alignment with WSBA values, mission and strategic goals and ask myself why I continued to stay. First it was because of my undying, perpetual belief that people, and institutions CAN change. I had hope and I believed in our ability to participate in the change needed. Then it was my economic dependency on the income. Economic stability is a fundamental need we all have, and I am no exception. Then it was because of the team I worked with. I am a deeply loyal person and our team was "home" away from home for me. My last year at the WSBA taught me an immeasurable truth; working from the "Inside-Out" requires a leader who has done their own personal and individual work. If not, they will be unable to stand beneath the onslaught of attacks against equity, justice and fairness. Instead, they will deflect responsibility, waffle in decision making and straddle the fence when race and other marginalized identities are being discussed. I had to leave in order to rebuild myself, to live, breathe and laugh in authenticity again. JustLead Washington (JL) created the space necessary for me to begin the healing process.

I cannot express the full depth of my gratitude to Jennifer Werdell. In full transparency, it is because of her that I am now able to trust in white women in power again. This is a painful truth to tell but it is my truth. When I came to JL I was discouraged, hurt, disillusioned and exhausted. Jen and I have known each other for seven years. I am a JL Academy, 3rd Cohort alumni and through that process we have had easy and challenging conversations. She has

My Season Has Ended

consistently stood strong in the face of those conversations and gained my respect and admiration along the journey. I landed at JL because of her willingness to see the gifts and talents I could bring; even with my infuriating ADHD behaviors (smile here).

I've walked with Jen as she's had to navigate a multitude of challenges as a white woman with a full team of people of color. She is human and socialized as a white, heterosexual woman; the challenges were real. What I watched was her willingness and ability to STAY engaged in hard, painful conversations and to look first at herself instead of projecting and assigning blame and negativity onto her team. These are critical behaviors for any white person leading people of color. Make no mistake, it did not always go well for her, but that's the beautiful mess of this work. We all screw up, misstep, and fall short of our lofty goals but the response to that seeming failure is what matters. Jen continued to show up and that created the environment necessary for me to stay in the game. Her leadership was a clear example to me and now informs the characteristics I look for when considering what clients to say yes to.

Coming to JL also put me consistently in the presence of Ada Shen-Jaffe, need I say more? Ada turns my world upside down every time she speaks. It's literally like working with a live encyclopedia on the legal profession but it's also something else, Ada speaks her truth and can hear the truth of others without becoming unmoored from her own fundamental truth. For me, her wisdom and leadership in this work has been unmatched. I needed this example and the mentorship she provided. She and Jen have worked tirelessly over the last five years to usher JL more fully into its mission and I am deeply grateful to have been invited to participate in the journey. I will miss my brother Omid Bagheri-Garakani as we have worked so closely together and developed an honest bond built in mutual trust and respect. Mostly I will miss his fire, powerful analysis and ability to make me laugh with dry sarcasm. I have real respect and love for you Omid thank you for the talks, reflection and honesty- #Goabolotionist! (Big smile here). I would be amiss if I didn't mention Tara Ramos. I am grateful for our connection and even though we never worked on a project together your presence made a difference and I will miss you.

Why do I share all of this? Because I can finally breathe again without pain, anger and fear. I hadn't realized the depth of my hurt when I left WSBA but being at JL kept triggering and activating terrible memories and feelings of betrayal. My year at JL allowed me to separate the WSBA experience from the legal profession as a whole, differentiate between an authentic and intentional commitment to justice, equity and fairness versus lip service and superficial, empty gestures and actions and to examine my place in the movement. This past year has helped me find my voice again, and though it is emerging much more slowly than I would like, I realize that slow and steady wins the race. JL has been the vehicle used to help me accept and respond to the truth that white women can be trusted but that trust must be earned. After seven years, Jen has earned that trust from me and I am grateful for the journey.

So, I leave JL not because I am unhappy or feeling any level of oppression, it's the exact opposite, I am filled with freedom and joy (no pun intended) and because it's my season to go. My healing from the time at the WSBA is far from over, but the role of JL in that process has

My Season Has Ended

been fulfilled. I don't have another position that I am transitioning in to. I am stepping out in full confidence of who I am, my competencies and skills and a belief that my consulting work will blossom, I will finally, finally write this damn book and somehow, find time to continue painting. I have no idea if I will ever work in the legal profession again but I am forever grateful for the beautiful, powerful community of legal professionals and advocates who have helped to facilitate change and my belief in the power of the law to transform society. I am excited for the future and wish my JL family nothing but peace, power and wisdom.

If there were any final words for our community, they would be this:

1. Authentic, sustainable change requires a CHOICE. It takes courage to stand for racial equity.
2. All other marginalized identities are important but let's be real here. Race is the fundamental problem in this country and until you are willing to accept and address that truth in your organization and within yourself DEI efforts will consistently fall short and represent empty platitudes.
3. If you care more about the power, safety and positionality you occupy as a white person, be honest with yourself and move the hell out of the way for those who are authentically challenging the privilege of their white skin and all it engenders. You say you ARE serious? Consider this, how do you respond when confronted with; your privilege, BIPOC challenging your decisions, being questioned about your own racial analysis, your ability to make money from and take credit for the work of BIPOC?
4. Put your money where your mouth is. BIPOC cannot afford to work within a toxic climate, attempting to facilitate racial equity and organizational change while being systematically overlooked for promotions, while being underpaid and over-worked.
5. Choose to pursue transformation instead of change by working from the INSIDE-OUT both personally and professionally; any other approach will keep you and those in your sphere of influence stuck, uninspired and exhausted.
6. Believe in your own ability to facilitate the transformation you want to see. You got this!

"Where you see wrong or inequality or injustice, speak out, because this is your country. This is your democracy. Make it. Protect it. Pass it on." – Thurgood Marshall

TAB 8



Washington State Office of Civil Legal Aid

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James A. Bamberger, Director
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To: Civil Legal Aid Oversight Committee

From: Jim Bamberger, Director

Re: September 2020 Quarterly Director's Report

Date: September 15, 2020

Consistent with the requirement of RCW 2.53.020(3)(c), I submit this memo highlighting the principal areas of OCLA engagement during the period since the June 17, 2020 meeting. As you will see, the vast majority of my activities have been focused on COVID-19 related issues.

1. Implementation of COVID-19 Emergency Civil Legal Aid Programs

OCLA received emergency COVID-19 legal aid funding from three sources: (1) \$3M through an allocation from the Office of Financial Management (OFM) from the state's Disaster Relief Account (DRA), (2) \$2.13M from the state's discretionary share of federal Coronavirus Relief Fund (CRF) dollars (through an allocation from OFM), and (3) \$250,000 in CRF funds for foreclosure related legal assistance through an interagency agreement between the Department of Commerce and OCLA.

COVID-19 funding was allocated by OCLA to support services in each of the core areas of targeted focus:

- Unemployment Insurance (UI)
- Employment/Worker Health and Safety
- Economic Security
- Eviction Defense
- Foreclosure Defense
- Income Security

As outlined in more detail in the Revised Interim Report (Attachment 1), contracts were issued to the following non-profit legal aid and related organizations:

- Unemployment Law Project (for UI claimant representation)
- 10 volunteer attorney programs providing eviction defense services through their Housing Justice Projects (HJP's)
- Fair Work Center (for COVID-19 related employment legal assistance)

- QLaw Foundation (for training, technical assistance, and support for programs providing COVID-19 related services to LGBTQ+ individuals)
- Colectiva Legal del Pueblo in its capacity as fiscal agent for the Washington Immigrant Solidarity Network (to provide COVID-19 legal information and referral to undocumented individuals statewide)
- Eastside Legal Assistance Program (for expanded assistance to domestic violence victims)
- Legal Voice Sexual Violence Law project (for expanded assistance to victims of sexual violence)
- Tacomaprobono (for expanded assistance to domestic violence victims)
- Thurston County Volunteer Legal Services (for expanded assistance to domestic violence victims)
- Snohomish County Legal Services (for expanded assistance to domestic violence victims)
- Northwest Justice Project (for eviction defense; foreclosure defense; expanded services to domestic violence victims; expansion of CLEAR*NA/CV (COVID-19 services to crime victims and Native Americans); COVID-19 legal services to urban Native Americans in Spokane and King County; employment-related services; media, outreach, translation, and related services to ensure equity of access for hard-to-serve populations)

In addition, OCLA entered into contracts with more than 60 private attorneys each of whom agreed to accept up to 20 referrals of UI claimants in need of legal representation in hearings before the Office of Administrative Hearings (OAH).

With the exception of the foreclosure related services for which CRF funding was made available to NJP, all services will be funded through a mix of federal CRF funds and state DRA funds. Unless and until Congress changes the law, CRF funding must be expended by December 31, 2020. Consequently, we are using those funds first. State DRA funding will be used to cover expenses incurred between January 1st and June 30th of 2021.

2. Other COVID-19 Related Activities

a. Addressing Unemployment Insurance Appeal Delays

Throughout the summer, the Employment Security Department was failing in its responsibility to timely process and refer claimant appeals from denial of UI benefits to OAH. A recent Seattle Times article describing the problem can be found [here](#). At last count, there were more than 20,000 appeals still awaiting referral to OAH. Few have found their way to ULP, and even fewer to the panel of private attorneys recruited and trained by OCLA.

OCLA has been working with the Unemployment Law Project (ULP), NJP, policy staff in the Governor's office, and leadership at both ESD and OAH to find ways to break the logjam of appeals awaiting referral to OAH. While there has been some progress in recent weeks, there are still tens of thousands of people waiting to have their appeals heard, many of whom have been waiting months and have not seen a single penny. ULP staff describe a sense of desperation among many of the callers to their hotline.

b. Joint Superior Court Judges Association (SCJA)/OCLA Efforts to Prepare for the End of the Eviction Moratorium

Over the past three months, OCLA has worked closely with the leadership of the Superior Court Judges Association (SCJA) to prepare for the deluge of unlawful detainer cases that will occur when the state (and now federal) eviction moratoria are lifted. These efforts include:

i. SCJA Unlawful Detainer Training Program

OCLA worked with the SCJA Education Committee to develop deliver a series of 75-minute weekly webinars in July to judicial officers who will preside over unlawful detainer (eviction) proceedings once local, state, and national moratoria are lifted. These trainings included information about the demographics and racial disparities in the rental housing population and those subject to unlawful detainer proceedings; recent changes in state substantive landlord-tenant laws and the role of judicial officers in unlawful detainer proceedings; and COVID-19 related changes resulting from local and state eviction moratoria, and federal legislation (CARES Act).

ii. SCJA Unlawful Detainer Work Group/Eviction Resolution Program

Complementing the training effort and acting on the suggestion of Chief Justice Debra Stephens, SCJA President Judge Judith Ramseyer convened a small, representative work group to develop tools for judicial officers who will preside over unlawful detainer proceedings. At the time, all anticipated that the state moratorium would expire on August 1st (it has since been extended to October 15th).

Working closely with OCLA, Judge Ramseyer invited representatives from the rental housing industry, civil legal aid programs, and judicial officers to serve on an Unlawful Detainer (UD) Work Group that would develop objective information, tools, bench cards, and other materials needed by judicial officers to fairly administer justice in thousands of unlawful detainer cases that would be filed when eviction moratoria are inevitably lifted. Anticipating that the state moratorium would be lifted August 1st, the UD Work Group was asked to complete its work by the end of July.

Judge Ramseyer and I served as joint conveners of the UD Work Group. Members include:

- Kyle Woodring (Rental Housing Association of Washington)
- Brett Waller (Washington Multi-Family Housing Association)
- Michael Mirra (Tacoma Housing Authority)
- Mark Morzol (Tacomaprobono Housing Justice Project)
- Edmund Witter (King County Bar Association Housing Justice Project)
- Scott Crain (Northwest Justice Project)
- Baine Wilson (Deputy Clerk, Clark County)
- Commissioner Craig Adams (Pierce County Superior Court)
- Commissioner Henry Judson (King County Superior Court)
- Judge Jackie Shea-Brown (Benton-Franklin County Superior Court)

Judge Shea-Brown served as Chair. Under her leadership, the UD Work Group worked together to produce the materials included in Attachment 2 of this report.

During the course of the UD Work Group's efforts, Chief Justice Stephens, Judge Ramseyer, and I felt there might be an opportunity to explore the possibility of developing a program designed to divert cases involving non-payment of rent away from the courts and into community-based eviction resolution programs. Accordingly, the Chief and Judge Ramseyer invited the UD Work Group to consider and report back on whether such a program might work, and, if so, what it might look like.

Over the course of three weeks, the UD Work Group achieved consensus on a pilot Eviction Resolution Program (ERP) and forwarded the same, along with a range of supporting materials outlining how it would work; the parties involved; new procedural requirements; draft standing orders; etc. Materials developed for the pilot ERP are attached (Attachment 3). The ERP contemplates early engagement with community-based dispute resolution centers, landlords, tenant attorneys (at the HJP's in each of the pilot counties¹), and entities administering local, state, federal, and philanthropic rent assistance funds. The objective is to achieve early resolution through mandatory pre-filing conciliation and voluntary mediation services.

On September 8th, the Supreme Court, SCJA, OCLA, and the Administrative Office of the Court jointly submitted an emergency request for CRF funds to the Office of Financial Management. The objective is for the pilot ERP's to be up and running by October 1st at the latest.

c. Governor's Work Group on the State Eviction Moratorium

In his proclamation most recently extending the state moratorium, Governor Inslee directed his policy staff to convene a work group to consider whether and, if so, under what terms the moratorium should be extended. Recognizing the overlap between our work in developing the ERP and the issues under consideration in the work group, I was asked to join the work group. The group met initially on September 4th and has been meeting regularly since, with the objective of providing Governor Inslee with its recommendations well before the October 15th expiration of the current order.

3. FY 2021 Supplemental Budget and FY 2022-23 Biennial Budget Requests

As a result of the COVID-19 recession and the corresponding precipitous drop in state tax revenues, Washington State faces a deep budget deficit. Correspondence received from OFM earlier this year indicated that the total aggregate shortfall could be as high as \$8.8 billion between June 2020 and June 30, 2023. Accordingly, OFM issued a number of directives to executive branch agencies and requests of judicial branch agencies to identify savings that can be achieved within current appropriations, and reductions of expenditures that might be realized by reducing or eliminating programs that fall outside of core agency mission and policy objectives.

¹ Pilot counties include Snohomish, King, Pierce, Thurston, Clark, Yakima, and Spokane.

a. FY 2021 Budget Reductions

In the current fiscal year, OCLA identified two principal sources of budget savings: (1) reduction of contract expenditures in the Children’s Representation Program due to unanticipated caseload reductions; and (2) early termination of a client service contract with the International Families Justice Coalition (IFJC). In addition, OCLA asked the Northwest Justice Project (NJP) to identify administrative savings that might be realized without compromising either its baseline client service capacity or its capacity to provide the COVID-19 related services for which it is under contract with OCLA.

In other far less significant (but symbolically important) actions, OCLA froze salaries at current levels, foregoing 3% increases that would have taken effect July 1, 2020, and imposed mandatory furlough days for full-time state-funded staff through the end of the calendar year.

i. Children’s Representation Program (FY 2021 Supplemental and FY 2022-23 Biennial)

The quarterly rolling six-month average of cases in which OCLA contract attorneys must be appointed has declined from a high of 1100 during the last six months of 2019 to the current level of 970 for the period April through July 2020. At an average of \$1500 per case, the projected savings is anticipated to be a little more than \$200,000 per fiscal year. We expect the new normal to continue around the 970 figure through the balance of FY 2021 and likely into FY 2022-23. We will continue to closely monitor and timely report any changes (increases or continuing decreases). A FY 2021 supplemental budget decision package (Attachment 4) will be submitted that reduces the state appropriation by \$165,000 which represents the state’s share of a \$200,000 expenditure savings (the balance is reduced reimbursement from federal Title IV-E funds). We will carry these annual savings into the FY 2022-23 biennium (Attachment 5).

ii. International Families Justice Coalition (IFJC) (FY 2021 Supplemental and FY 2022-23 Biennial)

Immediately following receipt of the first OFM budget reduction request, OCLA engaged in conversations with IFJC leadership about how the program might be reduced, recognizing that it had substantially underspent and underperformed relative to both budget and client service objectives in FY 2020. These conversations were strained but continued sporadically throughout June and July. By this time, OCLA had suggested that IFJC explore an organizational “incubator” relationship with the King County Bar Association’s Pro Bono Services Program (KCBA PBS) pursuant to which IFJC’s only staff member could receive space, technical assistance and support, and mentorship from the highly regarded team at KCBA PBS. These efforts were not well received, and IFJC declined the opportunity offered.

In early August, OCLA learned that IFJC’s executive director had to leave her position for urgent personal reasons. We also received IFJC’s semi-annual report that showed continued client service performance well below the level contemplated in the work plan that is part of IFJC’s contract with OCLA. After extensive consultation with counsel and considering that (1)

the services provided through IFJC fall outside of OCLA's core legal aid program and, in some ways, duplicate services provided by OCLA-funded legal aid entities, (2) IFJC would not be able to meet contracted performance expectations during FY 2021, and (3) the state is facing a fiscal emergency that requires reduction of expenditures on non-performing programs, a Notice to Terminate IFJC's contract was issued on August 12, 2020. Because the funding for IFJC's contract originated in a legislative budget proviso, copies of the Notice were sent to legislative leaders, policy committee chairs and ranking members, and budget chairs and ranking members in both the House and Senate. To date, I have received requests from two House members to discuss the action taken and received a note of appreciation from the Senate Ways and Means Chair.

In order for the state to reclaim these funds, OCLA will submit decision packages for the FY 2021 supplemental budget and the FY 2022-23 operating budget (removing the funds from OCLA's carryforward funding level) (Attachment 6).

b. FY 2022-23 Biennial Budget Request

OCLA proposes to submit two requests for new state funding—the first to continue and augment COVID-19 related emergency legal aid services, and the second to re-appropriate and repurpose the funding that was appropriated for the now-terminated Eviction Representation Study.

i. Maintain COVID-19 Emergency Services

Recognized early on as a core component of the state's front-line response to the COVID-19 emergency, OFM, with the support and approval of state legislative budget writers, allocated \$5.3M in emergency funding to address critical COVID-19 emergency needs between June 2020 and June 30, 2021. Since the pandemic and its social, health, and economic echoes will not quickly recede, it is critical that our COVID-19 efforts continue into and throughout the coming biennium. As outlined in the attached decision package, OCLA is seeking \$10.5M to continue and then begin to ramp down COVID-19 emergency services to a level that is commensurate with the urgency of the moment and the reality that the poverty population will substantially increase as a long-term economic and social consequence of the pandemic. An outline of the areas of current and anticipated COVID-19 related needs is included in the decision package.

ii. Re-appropriate and Repurpose Eviction Representation Study Funding

In FY 2019, the Legislature appropriated funds for a research-based controlled comparative study of the differences in outcomes for tenants facing eviction who receive legal representation and tenants facing eviction without legal representation in unlawful detainer cases. OCLA engaged the researchers at the University of Washington's Evans School of Public Policy and Governance to conduct the study in four counties. Protocols were developed, agreements reached with each of the study counties, contracts with attorneys signed, and the study officially commenced in January 2020. The pandemic hit in February. On recommendation of the research team, the Advisory Committee suspended the study through May 31st. By then the entire context for the study had changed, eviction moratoria had been enacted and extended, and

the courts were not hearing eviction cases. On direction of the legislative sponsors of the study proviso (Sen. Patty Kuderer and Rep. Nicole Macri) the study was discontinued.

Of the \$625,000 appropriated for the study, only \$57,000 was spent before the study was terminated. The balance will revert back to the state treasury.

At the request of Sen. Kuderer, OCLA has drafted a budget decision package (Attachment 7) that will re-appropriate the remaining funds for use in FY 2022 to help ensure continuity of emergency eviction defense services as part of our overall continuing COVID-19 response effort.

At the September 25, 2020 meeting, I will request that the Oversight Committee review and formally endorse each of the decision packages developed for submission to OFM as part of the consolidated judicial branch budget submission.

4. Other Matters

a. Extension of VOCA Interagency Agreement and Execution of FY 2021 VOCA Subcontracts

I am pleased report that on August 27th, we received new interagency agreement (IAA) with the Department of Commerce, Office of Crime Victims Advocacy (OCVA) making \$4.83M available in VOCA funding for agency administrative operations and sub-grant agreements. Dana Boales completed necessary changes in sub-grant agreements with our six VOCA subgrantees. Changes were required by changes in the master IAA with Commerce/OCVA and changes to our practices informed by recent state and federal audits. Sub-grant agreements have been issued to all six programs.²

b. US Department of Justice – Office of Inspector General (US DOJ-OIG) Audit

Over the past year, OCLA has been working with US DOJ-OIG auditors as part of a comprehensive review of the Department of Commerce's administration of VOCA funding between FY 2016 and FY 2019. Initial findings received confirm that OCLA's approach to administering, investing, and overseeing the use of these funds is sound. Some questions arose leading to audit findings and some small questioned costs incurred by one of OCLA's sub-recipients. In comments submitted to the auditors, OCLA questioned and contested most of the findings. At the same time, we engaged a highly respected (MBWE certified) accounting firm with substantial federal governmental contracting expertise to assist the program in question to develop and document relevant cost accounting, time keeping/certification, match valuation, and other practices relating to the DOJ-OIG findings. This assistance will also help OCLA develop best practices for the other five VOCA-funded programs.

² VOCA-funded programs include NJP, Northwest Immigrant Rights Program, Tacomaprobono, King County Bar Association, Legal Voice Sexual Violence Law, and Eastside Legal Assistance Program

c. Developing a Position Description for a Deputy Director

With completion of the Director's performance review, we (both OCLA and the Oversight Committee) must turn to the next step in the leadership development and succession planning effort developed by Marcella Fleming Reed and Dr. Lori Homer. This involves defining the core functions of a Deputy Director position and a corresponding job description, recruitment strategy, and timeline. I will be meeting with Ms. Reed in October to sketch out the DD functions and update our timelines. Information will be provided to Oversight Committee leadership as we make progress.

ATTACHMENT 1



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COVID-19 EMERGENCY CIVIL LEGAL AID SERVICES INTERIM REPORT SEPTEMBER 2020

The COVID-19 pandemic and resulting economic calamity have caused disproportionate harm to low-income people in Washington State, with special hardships experienced by low-wage workers (“essential” and displaced workers) and communities of color. The Governor issued (and extended) a range of emergency Proclamations intended to mitigate or forestall the worst of the hardships, including, among others:

1. Waiving the one-week waiting period and work search requirements for unemployment insurance benefits;
2. Establishing and extending a statewide moratorium on evictions – which now runs through October 15, 2020;
3. Preventing debt collection actions, including garnishments of bank accounts to collect judgments for consumer debt;
4. Dispensing with personal service requirements for domestic violence protection orders; and
5. Regarding health and safety conditions for workers engaged in food production and agricultural industries.¹

Anticipating the spectrum of crises that low-income people in Washington State would experience as a result of the pandemic and resulting economic dislocation, the Office of Civil Legal Aid (OCLA) developed a strategic initiative to identify and secure funding to help address the first waves of civil legal problems they would experience. In addition, OCLA monitored existing and potential sources of state and federal disaster response funding, including resources made available through federal stimulus legislation.

On April 9, 2020, OCLA filed its initial request with the Office of Financial Management (OFM) for emergency civil legal aid funding to set up programs to assist unemployment insurance claimants and individuals facing eviction or foreclosure due to the COVID-19 emergency. This request was supplemented and expanded on April 24, 2020 to include requests for emergency

¹ The Governor’s Proclamations and extensions are found at <https://www.governor.wa.gov/sites/default/files/proclamations/20-49.4%20-%20COVID-19%20Garnishment%20Ext%20%28tmp%29.pdf>

funding to help low-income people throughout the state facing the following COVID-19 related civil legal problems:

1. Employment (including health and safety conditions of employment for workers during the emergency), unemployment, and reemployment needs;
2. Shelter preservation including, but not limited to eviction defense, foreclosure avoidance, access to local and state rent assistance, and other homelessness prevention related legal problems;
3. Family safety and security including but not limited to civil protection of victims of domestic violence and sexual assault who are much more vulnerable as a result of the family and economic stresses associated with the emergency and mandatory social distancing Stay Home Stay Healthy orders; and
4. Economic security for families and individuals who have lost employment and must replace income by looking to federal and state income and food assistance.

On April 30, 2020, OFM allocated \$3 million of legislatively appropriated Disaster Response Account (DRA) funding for civil legal assistance for individuals in need of legal assistance with respect to their unemployment insurance claims and to prevent the threat of eviction.

On May 3, 2020, OCLA supplemented its request to seek an additional \$3.17 million in federal Coronavirus Relief Fund (CRF) funding to address the full spectrum of needs outlined in the April 24th memo.² After consultation with legislative budget leaders, OFM allocated \$2.3 million of CRF funding and granted authority to use both state and federal funding for the comprehensive emergency civil legal aid program outlined in OCLA's April 24th request. This program will run from the dates of authorization through June 30, 2021.

OUTLINE OF OCLA'S EMERGENCY COVID-19 CIVIL LEGAL AID PROGRAM

In just a few short weeks, OCLA obligated the bulk of the DRA/CRF funding allocated for emergency COVID-19 legal assistance. Below you will find a brief outline of the focus, scope, strategic approach and partners that will provide emergency civil legal assistance to individuals facing COVID-19 civil legal problems in each of the authorized areas of service.

1. Unemployment Insurance and Employment

Emergency COVID-19 Unemployment Claimant Representation Program (UI Claimant Representation Program). The program consists of two primary components: (a) a statewide contract representation program with more than sixty (60) private attorneys who have agreed to take no less than 20 referrals at below-market rates³ to represent claimants in unemployment hearings before the Office of Administrative Hearings; and (b) a contract with the statewide Unemployment Law Project (ULP) pursuant to which it will (i) develop and deliver training to the private attorneys who have signed up for the UI Claimant Representation Program, (ii)

² This request was later downsized to \$2.3 million.

³ Contract attorneys will provide services at the rate of \$100/hr.

review, prioritize, and refer cases to UI Claimant Representation Program Attorneys, (iii) provide expanded representation to unemployment insurance claimants across the state, and (iv) expand community based training resources focused on claimants who experience significant barriers to effective presentation of their claims, develop self-navigation tools for unemployment insurance claimants, and otherwise provide statewide support to legal aid program staff and private (compensated and pro bono) attorneys representing unemployment insurance claimants. OCLA sponsored and delivered mandatory substantive law and skills training for its private attorney contractors.

The UI Claimant Representation Program became operational on June 15, 2020.

DRA/CRF Investment: \$1.2 million

Emergency COVID-19 Employment/Economic Security Legal Aid Program. Workers in agriculture, fruit and meat packing, orchards, fisheries, and dairies were immediately labeled as essential. COVID-19 has been spreading significantly in these workplaces, in part due to unclear standards or inconsistent compliance with health and safety standards. In addition, many low-wage workers, including farmworkers in rural communities and Native Americans in rural and urban areas, have not received accessible information about the different pandemic-related paid leave programs and expanded unemployment benefits.

OCLA established and funded an emergency legal aid program designed to assist individuals with employment related civil legal problems arising from or related to the COVID-19 emergency. Special emphasis will be focused on essential workers and displaced workers who experience the gravest problems and face the most significant barriers to accessing civil legal assistance. These include, but are not limited to, (a) workers in rural areas of Washington State, (b) agricultural industry and food production/service workers, and (c) immigrant workers.

OCLA has contracted with the statewide Northwest Justice Project (NJP) and the non-profit Fair Work Center (FWC) to provide targeted legal assistance to individuals with COVID-19 related employment problems that give rise to needs for civil legal assistance, and for expanded statewide information, self-help materials and media, and other resources designed to help those most in need and least able to access information and related services, including immigrants, people who are limited English proficient, Native Americans and others.

DRA/CRF Investment: \$1 million

2. Tenant Information, Assistance, and Eviction Defense

Throughout Washington State, tenants are falling increasingly behind in arrears and face an increasing prospect of eviction once federal and state eviction moratoria are lifted. At the same time, and despite the existence of these moratoria, many tenants continue to be threatened with eviction; especially those who are perceived to be most vulnerable and subject to exploitation – immigrants, refugees, LEP individuals, households of color.

Emergency Support for and Expansion of Housing Justice Projects. In recent years, local volunteer programs have developed and operated “Housing Justice Project” (HJP’s) to provide courthouse-based legal assistance to tenants facing eviction. Even before the pandemic, these HJP’s (which have historically been understaffed) were not able to meet the demand for assistance. In anticipation of a wave of new need,⁴ OCLA directed DRA/CRF funding to upgrade and expand eviction defense services of 10 local HJP’s:

- Law Advocates of Whatcom County
- Snohomish County Legal Services
- Tacomaprobono
- Thurston County Volunteer Legal Services
- Kitsap Legal Services
- Clark County Volunteer Lawyer Program
- Yakima County Volunteer Attorney Services
- Benton-Franklin Legal Aid
- Chelan-Douglas Volunteer Attorney Services
- Spokane County Bar Association Volunteer Lawyers Program

These programs will provide individualized legal information, advice, limited assistance, and direct legal representation of tenants who because of the COVID-19 crisis, have fallen behind in rent and will face eviction once moratoria are lifted.

DRA/CRF Investment: \$1.36 million

NJP Direct and Contract Attorney Representation. To complement the HJP efforts and ensure equity of access to legal assistance in the mostly rural areas of the state where HJP services are unavailable, OCLA contracted with NJP to provide legal information, advice, limited assistance, and direct legal representation to COVID-19 affected tenants. NJP will deliver these services through a mix of in-house and subcontracted below-market rate services with qualified attorneys.

DRA/CRF Investment: \$275,000

3. Individual and Family Safety

The Pandemic has caused great harm to individuals and families where violence and abuse are prevalent. It is now well documented that the economic, social, psychological stresses associated with the economic crisis and mandatory social distancing rules (including stay-at-home directives) has resulted in both an increase in domestic violence and sexual assault, but the gravity of offenses being perpetrated. To address this component of the crisis, OCLA invested in several programs that, together, will substantially increase the availability and responsiveness of OCLA’s existing Crime Victims Legal Assistance program funded through the federal Victims of Crime Act. As with other components of the emergency COVID-19 response, services are

⁴ According to the Census Bureau, more than 265,000 households in WA are at risk of eviction when the moratoria are lifted.

designed to ensure outreach to and meaningful access for victims who have the greatest level of risk and the most barriers to overcome in accessing services. Components of the Individual and Family Safety effort include:

Expansion of Targeted Services to Victims of Sexual Assault: OCLA supplemented its Victims of Crime Act (VOCA) contract with the Sexual Violence Law program at Legal Voice to expand services to victims who experience sexual assault during the pandemic or because of COVID-19 related complications and court restrictions.

DRA/CRF Investment: \$150,000

Services to Urban Native American Victims: Native Americans experience the greatest level of domestic violence, sexual violence, and related crimes than any other demographic cohort. OCLA contracted with NJP to provide expanded and targeted services to Native American victims in King and Spokane Counties.

DRA/CRF Investment: \$250,000

Expanded Access to Statewide Crime Victims Legal Aid Referral Line (CLEAR NA/CV). To expand capacity to accept victim referrals from community based advocates, NJP will add an additional COVID-19 staff attorney to the statewide referral line.

DRA/CRF Investment: \$150,000

Expanded Services to DV/SA Victims Affected by COVID-19. OCLA contracted with four volunteer attorney programs to expand their capacity to provide trauma-informed civil legal assistance to domestic violence and sexual assault victims. These include:

- Tacomaprobono (Pierce County)
- Eastside Legal Assistance Program (East King County)
- Thurston County Volunteer Legal Services (Thurston, Mason, Pacific, Lewis Counties)
- Snohomish County Legal Services (Snohomish County)

DRA/CRF Investment: \$205,000

Expanded Victims Services to Communities of Color and Immigrants. OCLA provided additional funding to enable NJP to expand its VOCA-funded capacity to provide civil legal assistance to victims of sexual assault, domestic violence, human trafficking, and other crimes, with special emphasis on victims who are members of communities of color or are immigrants.

DRA/CRF Investment: \$300,000

Expansion of Self-Help and Media Resources for Victims. NJP will expand and accelerate the development of a range of self-help and media resources including:

- Accelerate completion of and translate into Spanish the Domestic Violence Protection Order module of the state-funded automated document assembly project.
- Develop and translate into Spanish a new Sexual Assault Protection Order module.
- Develop and translate additional on-line media productions and information relating to COVID-19 problems, support providers, and self-help resources; and expand education and outreach services to members of targeted communities who are less likely to seek out legal help.

DRA/CRF Investment: \$50,000

Training, Technical Support, and Resource to Ensure Equity of Access for LGBTQ+ Victims.

Funding was provided to QLaw Foundation, a non-profit organization dedicated to ensuring equity and fair treatment for individuals who identify as LGBTQ+, to develop training materials and provide technical support and assistance for legal aid and pro bono attorneys so they can provide culturally competent assistance to LGBTQ+ people who experience disproportionately higher rates of victimization than the general population.

DRA/CRF Investment: \$50,000

4. Trusted and Safe Legal Information and Referral for Immigrants

In the current environment, immigrants (whether in the US legally) are fearful of accessing services from organizations that require disclosure of legal status as a condition of service. Applicable federal rules require staff working on NJP's statewide CLEAR hotline to inquire into the caller's immigration status. This effectively operates to dissuade many immigrants with critical COVID-19 legal problems from accessing necessary civil legal aid services. OCLA is working with the Washington Immigration Solidarity Network (WAISN) to expand the capacity of its [statewide hotline](#) to provide informed information and referral for immigrants presenting COVID-19 legal problems. Contract negotiations are continuing, with the goal of standing up this additional I&R capacity by mid-August 2020.

DRA/CRF Investment: \$80,000

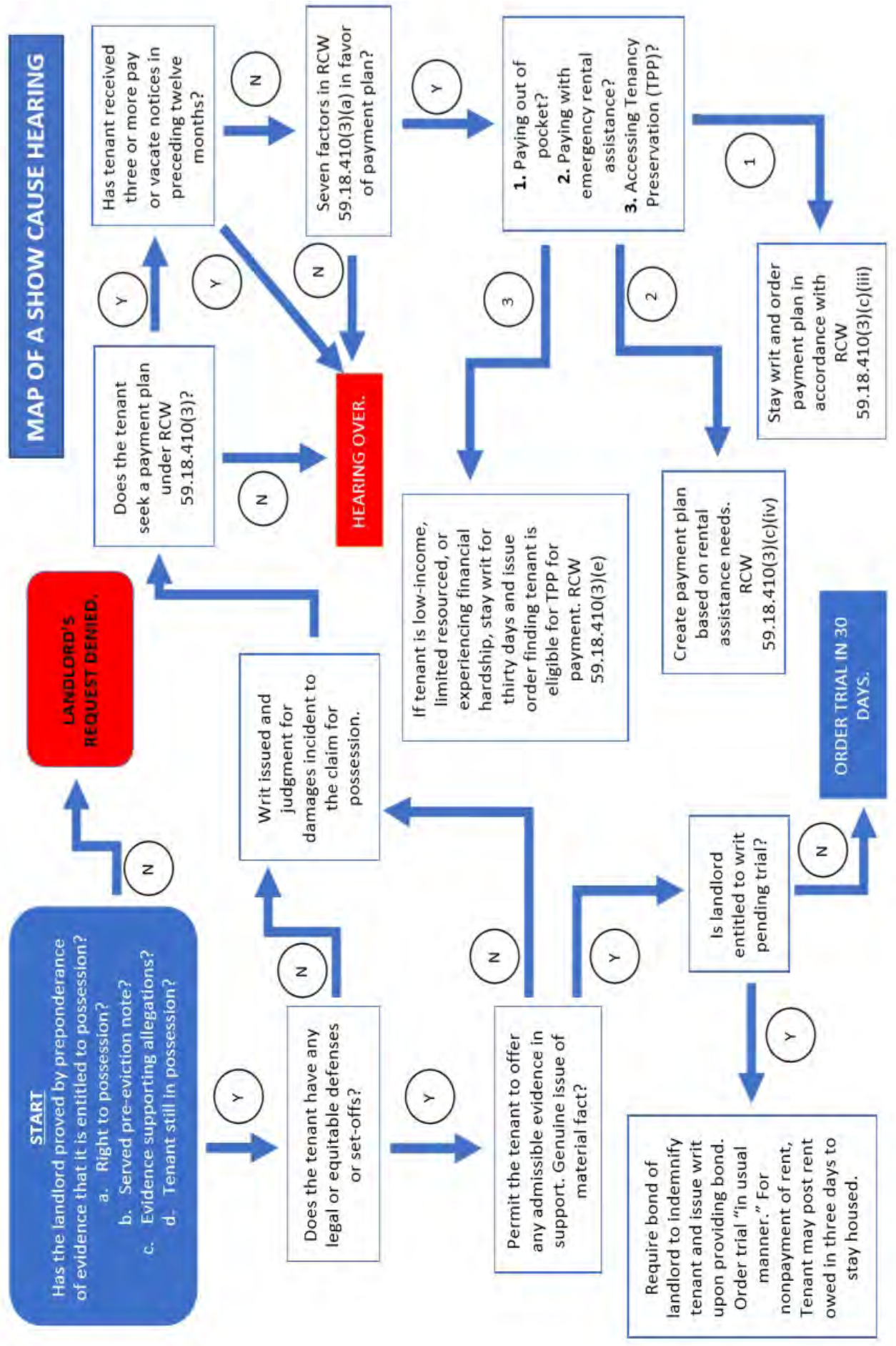
5. OCLA Administration, Support, and Reserves

OCLA engaged a retired legal aid attorney on a 1/3 FTE basis to administer the UI Claimant Representation Program. OCLA has contracted with Language Line to provide interpreter services for attorneys and program staff without access to the same. OCLA has maintained a small reserve of unallocated funding pending review of COVID-19 related civil legal needs and additional related services between now and June 30, 2021.

DRA/CRF Investment: \$150,000

ATTACHMENT 2

The Show Cause Hearing



PRE-EVICTION NOTICES and SUMMONS

IN GENERAL: Service of the pre-eviction notice is a jurisdictional condition precedent to an unlawful detainer. Landlord must *a)* strictly comply with time and manner in serving the notice and *b)* substantially comply with the required contents of the notice. *Cnty. Investments, Ltd. v. Safeway Stores, Inc.*, 36 Wn. App. 34 (1983). Service is prescribed by RCW 59.12.040 for residential tenants.

14-Day Notice to Pay or Vacate: 1. Must substantially comply with form in RCW 59.18.057
2. May only include rent, utilities, and recurring charges contemplated in the lease. RCW 59.18.283
3. May not include non-rent charges such as late fees, attorney's fees, or court costs. RCW 59.18.283
4. Tenant may reinstate tenancy after 14 days by tendering rent, late fee up to \$75, court costs incurred at time of payment, and attorney's fees if awarded after judgment. RCW 59.18.410(2).

Notice to Comply or Vacate: 1. Covers breaches of duties or lease covenants per RCW 59.18.130, .140. RCW 59.18.180.
2. If breach may be remedied and affects safety of other tenants, landlord must provide 30 days to remedy breach before commencing eviction RCW 59.18.180(1).
3. All other bases only require 10 days' notice to cure breach before action. RCW 59.18.180(2); 59.12.030(4).
4. May not be used for monetary breaches. RCW 59.12.030(4); RCW 59.18.283(2).

20-Day "No-Cause" Notice: 1. Terminates month-to-month tenancies. RCW 59.12.030(2).
2. Not required for expiring leases unless lease provides for notice. RCW 59.18.220(1).
3. Must provide termination date at end of the period or term. RCW 59.12.030(2); RCW 59.18.200.

3 Day Notice for Waste or Nuisance: 1. Tenant may not cure a three-day notice for waste/nuisance.

3 Day Notice for Entry w/o Permission 1. For tenants without owner's permission. RCW 59.12.030(6). 2. May not be used to oust Tenants at Will. *Turner v. White, 20 Wash.App. 290 (1978)*.

FORECLOSURE/DEED OF TRUST: 1. Tenants must be given 90 days' notice or until end of term, whichever is longer. Protecting Tenants from Foreclosure Sec. 702 (federal law, 2019).
2. Prior owners may be evicted after 20 days after deed of trust sale. RCW 61.24.060.

CARES Act: 1. Covers federally-subsidized properties and properties insured or backed by the Federal Government. *CARES Act Sec. 4024(a)*.
2. Requires landlord to provide 30 days' notice before asking the tenant to vacate. *CARES Act Sec. 4024(c)*.
3. Requires longer period of time than local law for covered properties.

SUMMONS AND COMPLAINT: 1. LL must substantially comply with form in RCW 59.18.365.
2. Must provide response date. RCW 59.18.365.
3. Service is by Civil Rules except Alternative Service is under RCW 59.18.055 and does not permit monetary judgment.

SHOW CAUSE HEARINGS

OBJECTIVE OF THE HEARING:

1. Determine if landlord has met burden of proof.
2. Determine if the tenant has defenses to the complaint.
3. Determine if there are material issues of fact for trial.
4. Determine if landlord should be in possession pending trial. *RCW 59.18.380*.

CONDUCT OF HEARING:

1. Court may conduct examination in lieu of litigants. *Carlstrom v. Hanline*, 990 P.2d 986, 990 (2000)
2. Must allow tenant to present evidence in support of defenses. *Leda v. Whisnand*, 207 P.3d 468 (2009)

LANDLORD'S BURDEN OF PROOF

1. By preponderance of evidence, show compliance with Unlawful Detainer statutes. *FPA Crescent Associates, LLC v. Jamie's, LLC*, 360 P.3d 934 (2015)
2. Strict compliance with time, place, and manner of pre-eviction notice. *Christensen v. Ellsworth*, 162 Wash.2d 365 (2007)
3. Substantial compliance with notice form. *Provident Mut. Life Ins. Co. of Philadelphia v. Thrower*, 155 Wash. 613 (1930)
4. Admissible evidence in support of allegations in notice. *Hous. Auth. of City of Pasco & Franklin Cty. v. Pleasant*, 126 Wn. App. 382, 392, 109 P.3d 422, 427 (2005)
5. Tenant is still in possession. *Munden v. Hazelrigg*, 711 P.2d 295 (1985)

TENANT DEFENSES:

1. Tenant may assert any legal or equitable defense or other set-off. Substantive defenses must be "based on facts that would excuse a tenant's breach." *Barr v. Young*, 187 Wn. App. 105, 109 (2015)
2. If dispute over breach of lease, summary judgment may be improper. *Housing Authority v. Pleasant*, 126 Wn. App. 382 (2005)

➔ **IF TENANT DEFENSE IS DISPOSITIVE, DENY LANDLORD'S REQUEST FOR RELIEF. OR...**

A) IF ISSUE OF MATERIAL FACT, SEND TO TRIAL and DETERMINE IF WRIT SHOULD ISSUE PENDING TRIAL:

1. If it appears landlord has right to possession, may issue writ pending trial. *RCW 59.18.380*.
2. If writ is to be issued, require bond to be posted by Plaintiff. *RCW 59.18.380*.
3. Tenant may stay writ within 3 days by posting rent owed. *RCW 59.18.380*.

B) IF NO ISSUE OF MATERIAL FACT, THEN ORDER WRIT and, IF NO ALTERNATIVE SERVICE, JUDGMENT FOR PLAINTIFF. *RCW 59.18.380*.

1. No monetary judgment if alternative service was used. *RCW 59.18.055*.
2. Judgment may only include rent, a late fee up to \$75 if lease provides for it, court costs, and attorney's fees. *RCW 59.18.410(1)*.
3. Attorney's fees may not be awarded if: 1) tenant failed to appear; 2) total rent owed is \$1,200.00 or less; or 3) total rent owed is two months or less of the contract rent. *RCW 59.18.290(3)*.

PAYMENT PLAN:

Tenant may seek payment plan under *RCW 59.18.410(3)* at Show Cause Hearing or before writ executes.

COMMON TENANT DEFENSES

IN GENERAL:

1. Tenant may assert defenses orally or in writing at Show Cause Hearing. RCW 59.18.380
2. Tenant may assert legal or equitable defenses and any set-offs. RCW 59.18.380
3. Tenant may raise defenses “based on facts that would excuse a tenant’s breach.” *Barr v. Young*, 187 Wn. App. 105, 109 (2015)

PROCEDURAL DEFENSES:

1. No Landlord-Tenant relationship.
2. Tenant vacated. *Munden v. Hazelrigg*, 711 P.2d 295 (1985)
3. Improper service of pre-eviction notice. *Christensen v. Ellsworth*, 162 Wash.2d 365 (2007)
4. Failure to abide by Federal or local rules regarding evictions pertaining to tenant’s housing.
5. Tenant is tenant-at-will. *Turner v. White*, 20 Wash.App. 290 (1978)
6. Improper Summons. *Truly v. Heuft*, 158 P.3d 1276 (2007)
7. Failure to substantially comply with notice content requirements. *Provident Mut. Life Ins. Co. of Philadelphia v. Thrower*, 155 Wash. 613, 617 (1930)
8. Corporate entity does not have attorney or no capacity to sue. *Dutch Vill. Mall v. Pelletti*, 162 Wn. App. 531, 535 (2011); *Reese Sales Co., Inc. v. Gier*, 16 Wn. App. 664, 667 (1977)

EQUITABLE DEFENSES

1. Waiver of prior breaches or termination notice by acceptance of rent. *Wilson v. Daniels*, 198 P.2d 496, 503 (1948)
2. Acceptance of rent after commencing unlawful detainer. *Hous. Auth. of Grant Cty. v. Newbigging*, 105 Wn. App. 178, 187, 19 P.3d 1081, 1086 (2001)

SUBSTANTIVE DEFENSES:

1. Warranty of habitability. *Foisy v. Wyman*, 515 P.2d 160 (1973)
2. Relocation assistance. *Pham v. Corbett*, 351 P.3d 214 (2015)
3. Discrimination and reasonable accommodation. *Josephinium Associates v. Kahli*, 45 P.3d 627 (2002)
4. Retaliation. RCW 59.18.240; RCW 59.18.250.

REINSTATEMENT UNDER RCW 59.18.410

1. After 14 day notice to pay or vacate expires and up to five court days after judgment, tenant may reinstate tenancy by paying: a) rent owed, b) late fee up to \$75.00 if lease provides, c) court costs incurred at time of payment, and d) attorney’s fees if court has awarded at judgment. RCW 59.18.410(2).
2. At Show Cause Hearing or before writ executes, tenant may seek payment plan for up to 90 days under .410(3).

ORDER OF LIMITED DISSEMINATION:

1. Prohibits tenancy screening company from sharing information about unlawful detainer.
2. Awarded if i) complaint had no basis in law or fact, ii) tenant reinstated under RCW 59.18.410, or iii) other good cause.

POST-JUDGMENT RELIEF

GENERAL OVERVIEW:

1. Tenants may seek post-judgment relief under the Civil Rules or RCW 59.18.410 or RCW 59.12.190.
2. Tenant may seek a stay of the writ of restitution pending outcome. RCW 59.18.410(4); *Randy Reynolds & Assoc. v. Harmon*, 193 Wash.2d 143 (2019).

EX PARTE STAYS OF THE WRIT OF RESTITUTION

1. Court may issue ex parte stay. RCW 59.18.410(4); *Randy Reynolds & Assoc. v. Harmon*, 193 Wash.2d 143 (2019).
2. Bond is not required. *Randy Reynolds & Assoc. v. Harmon*, 193 Wash.2d 143 (2019).
3. Court may require service of motion by delivery, mail, fax, or other means. RCW 59.18.410(4).

CIVIL RULE MOTIONS

1. Court may set aside order or judgment under CR 55(c) and 60(b) per Civil Rules. *Randy Reynolds & Assoc. v. Harmon*, 193 Wash.2d 143 (2019).

RCW 59.18.410: REINSTATEMENT OF TENANCY IN NON-PAYMENT OR RENT CASES

A tenant who failed to pay rent due within the 14 day notice period may reinstate the tenancy or seek reinstatement:

Reinstatement by Right: RCW 59.18.410(2)

After 14 day notice to pay or vacate expires and up to five court days after judgment, tenant may reinstate tenancy by paying: a) rent owed, b) late fee up to \$75.00 if lease provides, c) court costs incurred at time of payment, and d) attorney's fees if court has awarded at judgment. *RCW 59.18.410(2)*. The tenant shall pay an additional \$50 for each time tenant was reinstated after judgment pursuant to this section within the previous 12 months.

Reinstatement and Payment Plans by Court Discretion: RCW 59.18.410(3)

1. Discretionary Stay of Writ to Allow Repayment: Following the entry of a judgment against the tenant for nonpayment of rent, but before writ executes, tenant may ask court to stay the writ of restitution "upon good cause and on such terms that the court deems fair and just for both parties. In making this decision the court shall consider evidence of the following factors:

- “(i) The tenant's willful or intentional default or intentional failure to pay rent;
- “(ii) Whether nonpayment of the rent was caused by exigent circumstances that were beyond the tenant's control and that are not likely to recur;
- “(iii) The tenant's ability to timely pay the judgment;
- “(iv) The tenant's payment history;
- “(v) Whether the tenant is otherwise in substantial compliance with the rental agreement;
- “(vi) Hardship on the tenant if evicted; and
- “(vii) Conduct related to other notices served within the last six months.”

RCW 59.18.410(3)(a).

2. Ineligibility for Relief: A tenant may not seek this discretionary relief if the tenant has been served with three or more notices to pay or vacate for failure to pay rent as set forth in RCW 59.12.040 within twelve months prior to the notice to pay or vacate upon which the proceeding is based. RCW 59.18.410(3)(d).

3. *Duration of Stay*: The court shall not stay the writ of restitution for more than 90 days. RCW 59.18.410(c)(i).

4. *Payment Plan*: The court may order that the tenant may repay the judgment balance within the period of the stay pursuant to a payment plan. RCW 59.18.410(c):

- If the payment plan is to exceed 30 days, the total cumulative payments for each 30 day period shall be no less than one month of the tenant's share of the rent. The total amount of the judgment, and all additional rent that becomes due, shall be paid within 90 days.
- The payment plan shall require the tenant to pay one month's rent within 5 court days of the issuance of the order. If the date of the order is on or before the fifteenth of the month, the tenant shall remain current with ongoing rental payments as they become due for the duration of the payment plan; if the date of the order is after the fifteenth of the month, the tenant shall have the option to apportion the following month's rental payment within the payment plan, but monthly rental payments thereafter shall be paid according to the rental agreement.
- If granted, court may permit payment i) out of pocket, ii) by emergency rental assistance, or iii) Tenancy Preservation Program (TPP). RCW 59.18.410(3)(c),(e).

RCW 59.18.410(3) PAYMENT PLANS

1. At Show Cause Hearing or before writ executes, tenant may ask court for payment plan. RCW 59.18.410(3).

2. Tenant may not have payment plan if tenant has received three or more pay or vacate notices in last 12 months. RCW 59.18.410(3)(d).

3. Court weighs seven factors: (i) The tenant's willful or intentional default or intentional failure to pay rent; (ii) Whether nonpayment of the rent was caused by exigent circumstances that were beyond the tenant's control and that are not likely to recur; (iii) The tenant's ability to timely pay the judgment; (iv) The tenant's payment history; (v) Whether the tenant is otherwise in substantial compliance with the rental agreement; (vi) Hardship on the tenant if evicted; and (vii) Conduct related to other notices served within the last six months. RCW 59.18.410(3)(a).

4. If granted, court may permit payment **i) out of pocket, ii) by emergency rental assistance, or iii) Tenancy Preservation Program (TPP)**. RCW 59.18.410(3)(c),(e).

(i) Out of Pocket:

- Writ issues; T must pay one month in five court days; plan is up to 90 days. 410(3)(c)
- if tenant defaults, landlord serves 3-Day notice before writ executes. 410(3)(c)(iii)

(ii) Rental Assistance:

- plan is based on charitable pledge timeline. 410(3)(c)(iv)

(iii) TPP

- Find if tenant is low-income;
- Stay writ 30 days;
- permit LL/T to apply to TPP. 410(3)(e).

PETITION FOR RELIEF FROM FORFEITURE

1. 30 days after court issues judgment, tenant may ask for relief from forfeiture by *a) tendering rent owed or b) remedying breach of lease*. RCW 59.12.190.

2. May not be used for nuisance activities. *Burgess v. Crossan*, 358 P.3d 416 (2015)

Federal Coronavirus Aid, Relief, & Economic Security (“CARES”) Act § 4024 Eviction Moratorium
Judicial Bench Card for Superior Court Judges and Commissioners for Evictions Filed After March 27, 2020

NOTE: The CARES Act does not apply to evictions filed before March 27, 2020

Excerpt from “CARES” Act, Public Law 116-136

§4024. TEMPORARY MORATORIUM ON EVICTION FILINGS.

(a) DEFINITIONS. —In this section:

- (1) COVERED DWELLING. —The term “covered dwelling” means a dwelling that—
 - (A) is occupied by a tenant—
 - i. pursuant to a residential lease; or
 - ii. without a lease or with a lease terminable under State law; and
 - (B) is on or in a covered property.
 - (2) COVERED PROPERTY. —The term “covered property” means any property that—
 - (A) participates in—
 - i. a covered housing program (as defined in section 41411(a) of the Violence Against Women Act of 1994 (34 U.S.C. 12491(a))); or
 - ii. the rural housing voucher program under section 542 of the Housing Act of 1949 (42 U.S.C. 1490r); or
 - (B) has a—
 - i. Federally backed mortgage loan; or
 - ii. Federally backed multifamily mortgage loan.
 - (3) DWELLING. —The term “dwelling”—
 - (A) has the meaning given the term in section 802 of the Fair Housing Act (42 U.S.C. 3602); and (B) includes houses and dwellings described in section 803(b) of such Act (42 U.S.C. 3603(b)).
 - (4) FEDERALLY BACKED MORTGAGE LOAN. —The term “Federally backed mortgage loan” includes any loan (other than temporary financing such as a construction loan) that—
 - (A) is secured by a first or subordinate lien on residential real property (including individual units of condominiums and cooperatives) designed principally for the occupancy of from 1 to 4 families, including any such secured loan, the proceeds of which are used to prepay or pay off an existing loan secured by the same property; and
 - (B) is made in whole or in part, or insured, guaranteed, supplemented, or assisted in any way, by any officer or agency of the Federal Government or under or in connection with a housing or urban development program administered by the Secretary of Housing and Urban Development or a housing or related program administered by any other such officer or agency, or is purchased or securitized by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.
 - (5) FEDERALLY BACKED MULTIFAMILY MORTGAGE LOAN. —The term “Federally backed multifamily mortgage loan” includes any loan (other than temporary financing such as a construction loan) that—
 - (A) is secured by a first or subordinate lien on residential multifamily real property designed principally for the occupancy of 5 or more families, including any such secured loan, the proceeds of which are used to prepay or pay off an existing loan secured by the same property; and
 - (B) is made in whole or in part, or insured, guaranteed, supplemented, or assisted in any way, by any officer or agency of the Federal Government or under or in connection with a housing or urban development program administered by the Secretary of Housing and Urban Development or a housing or related program administered by any other such officer or agency, or is purchased or securitized by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.
- (b) MORATORIUM. —During the 120-day period beginning on the date of enactment of this Act,* the lessor of a covered dwelling may not—
 - (1) make, or cause to be made, any filing with the court of jurisdiction to initiate a legal action to recover possession of the covered dwelling from the tenant for nonpayment of rent or other fees or charges; or
 - (2) charge fees, penalties, or other charges to the tenant related to such nonpayment of rent.
- (c) NOTICE. —The lessor of a covered dwelling unit—
 - (1) may not require the tenant to vacate the covered dwelling unit before the date that is 30 days after the date on which the lessor provides the tenant with a notice to vacate; and
 - (2) may not issue a notice to vacate under paragraph (1) until after the expiration of the period described in subsection b.

*From March 27, 2020 through July 25, 2020

Potential Resources to Determine if the Property is a “COVERED PROPERTY”

- This information may be recorded in public land records or appear in the original mortgage or closing documents.
- Anyone can access the following: The National Low-Income Housing Coalition’s database of covered multifamily properties: <https://www.nlihc.org/federalmoratoriums>. (Note: This database does not cover single-family properties with 1-4 units and does not reflect all multifamily properties with Fannie Mae and Freddie Mac mortgages).

Databases to determine whether a multifamily property has a Fannie Mae or Freddie Mac mortgage on resources released by the Federal Housing Finance Agency.

(Note: These tools do not cover single-family properties with 1-4 units).

- Fannie Mae: <https://www.knowyouroptions.com/rentersresourcefinder>
- Freddie Mac: <https://myhome.freddie.com/renting/lookup.html>
- The National Housing Preservation Database of multifamily properties with certain federal subsidies: <https://preservationdatabase.org/> (Note: Does not include Section 8 Housing Choice Voucher, McKinney-Vento funded properties, or some Low Income Housing Tax Credit).
- Washington State Housing Finance Commission has a list of WA Low Income Housing Tax Credit properties: <http://www.wshfc.org/limits/Map.aspx>

Landlords can:

- Call the FHA, VA, USDA, Fannie Mae, or Freddie Mac escalation number to inquire as to the status of their mortgage: <https://www.hmpadmin.com/portal/resources/advisors/escalation.jsp>.
- Look up if Fannie Mae or Freddie Mac own their mortgage at:
 - <https://www.consumerfinance.gov/ask-cfpb/how-can-i-tell-who-owns-my-mortgage-en-214/>
 - Fannie Mae: <https://www.knowyouroptions.com/loanlookup>
 - Freddie Mac: <https://www3.freddie.com/loanlookup/>

Federal Coronavirus Aid, Relief, & Economic Security ("CARES") Act § 4024 Eviction Moratorium
Judicial Bench Card for Superior Court Judges and Commissioners for Evictions Filed After March 27, 2020

NOTE: The CARES Act does not apply to evictions filed before March 27, 2020

DOES THE "CARES" ACT EVICTION MORATORIUM APPLY TO THIS PROCEEDING?

Section A.

Is it a Covered Dwelling located in a Covered Property? See CARES Act §4024(a)(1).

- (1) Does the property have a federally backed single family (1-4 units) or multifamily mortgage?

Questions to ask landlord:

- Does the property have a mortgage insured by the FHA? Where did you obtain this information?
- Does the property have a mortgage guaranteed, provided by, or insured by HUD, the Department of Veterans Affairs (VA), or Department of Agriculture (USDA)? Where did you obtain this information?
- Is the mortgage owned by Fannie Mae or Freddie Mac? Where did you obtain this information?

IF YES, THE CARES ACT EVICTION MORATORIUM APPLIES. IF NO, THEN GO TO QUESTION (2).

- (2) Does the property "participate in" a subsidy program covered by the Violence Against Women Act, or "VAWA" (34 U.S. Code § 12491(a)(3)), or "participate in" the Section 542 Rural Housing Voucher program?

Questions to ask landlord under oath:

- Does the tenant or the property participate in a Section 8 Housing Choice Voucher ("HCV"), a VASH (HUDVeterans Affairs), or a Rural Housing voucher?
- Does the property contain any Public Housing units?
- Does the property contain any HOPWA (Housing Opportunities for Persons with AIDS) units?
- Does the property have any federal Low Income Housing Tax Credit (LIHTC or "tax credit") units?
- Does the property receive a project-based subsidy through the U.S. Department of Agriculture?
- Does the property contain any Section 8 Project-Based Voucher (PBV) units?
- Does the property contain any HOME (HOME Investment Partnership) units?
- Does the property have any Permanent Supportive Housing (PSH) units, or any tenants that use a PSH or Shelter Plus Care voucher?
- Does the property receive a project-based subsidy through HUD?

Questions to ask tenant:

- Do you receive government assistance to pay you rent? Through what program?
- Do you recertify your income every year with your landlord or housing authority?

IF "YES" TO ANY OF SECTION A, THEN GO TO SECTION B. IF "NO," THEN THE EVICTION MAY PROCEED AS NORMAL.

Section B.

Under the CARES Act §§ 4024(b)-(c), a landlord of a covered dwelling in a covered property may not:

- (1) File an eviction for nonpayment of rent, fees, or other charges between March 27, 2020 and July 25, 2020;**
Give a notice to vacate between March 27, 2020 and July 25, 2020;*** and
- (2) Charge late fees for late rent that accrues during the period of time from March 27, 2020 through July 25, 2020.

** Under the CARES Act §4023, landlords with federally-backed multifamily mortgages have access to forbearance for up to 90 days. If a qualifying landlord chooses forbearance, an eviction for nonpayment of rent may not be filed during the forbearance period. See §4023(d).

*** The prohibition on notices to vacate in § 4024(c) does not contain language limiting the reason for eviction and refers to any notice demanding the tenant vacate (see reverse side for full text).

AFTER JULY 25, 2020

A landlord of a **covered dwelling** **MAY NOT** ask a tenant to vacate the dwelling unit unless the landlord has served a **30-DAY NOTICE TO VACATE** prior to initiating the eviction action.

See CARES Act § 4024(c).

Sec. 4024(c) does not have a sunset date and preempts local laws permitting shorter notice periods.

ATTACHMENT 3

**SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR BENTON AND FRANKLIN COUNTIES**

7122 W. Okanogan Place, Building A, Kennewick, WA 99336

SUPERIOR COURT JUDGE
Jacqueline Shea-Brown

Benton County Justice Center
Franklin County Courthouse
Benton County Courthouse
Telephone (509) 736-3071
Fax (509) 736-3057

August 31, 2020

The Honorable Debra L. Stephens, Chief Justice
Washington State Supreme Court

The Honorable Judith Ramseyer, Judge
King County Superior Court
President, SCJA

Ms. Dawn Marie Rubio, J.D.
State Court Administrator
Administrative Office of the Courts

Re: SCJA Unlawful Detainer Work Group

Dear Chief Justice Stephens, Judge Ramseyer and Administrator Rubio -

On behalf of the SCJA Unlawful Detainer Work Group (UD WORK GROUP), I want to thank you for your joint letter of July 28, 2020 and for your sincere appreciation of the efforts by UD WORK GROUP to develop judicial resources for use in unlawful detainer cases.

It was and remains my honor to chair the UD WORK GROUP. The UD WORK GROUP members include landlord representatives and tenant representatives whose level of expertise, I would venture to say, makes them subject matter experts. Their respective expertise facilitated our valuable collaboration on the assigned action items.

Your request that the SCJA Unlawful Detainer Work Group develop a "court-house based unlawful detainer early resolution process" focused on cases where non-payment of rent¹ is the principal reason for the eviction was seen as a justice-oriented and fairness-focused endeavor by the UD WORK GROUP.

¹ It is believed that 90% of the unlawful detainer cases filed in Washington state are due to nonpayment of rent.

The UD WORK GROUP appreciated and shared your serious concerns about how courts could handle and fairly consider the deluge of unlawful detainer cases, *post-moratorium*, given the ongoing challenges courts are facing due to COVID-19.

The UD WORK GROUP gladly accepted your request and worked in earnest these past several weeks to achieve consensus on a pilot Eviction Resolution Program (ERP) with the goal of diverting a significant amount of unlawful detainer cases from the courts when the state eviction moratorium expires on October 15th.² Given that the vast majority of unlawful detainer cases are filed in approximately six to seven counties in Washington, the ERP focuses on those counties that will likely have the most need.

With all due respect, and with sincere gratitude for extending the timeline for providing you with a response, the UD WORK GROUP makes the following recommendations for implementing the ERP *post-moratorium*: (1) that the Washington State Supreme Court issue an emergency order authorizing establishment of the ERP in each of the pilot counties with the goal of diverting a significant amount of unlawful detainer cases (due to nonpayment of rent) from the courts; (2) that the ERP be implemented in six to seven pilot counties, *i.e.* Clark, King, Pierce, Snohomish, Spokane, Thurston and Yakima counties³; (3) that on or before September 15, 2020, each pilot county notify AOC of the judicial officer(s) that will serve as the procedural point person(s) to work with relevant stakeholders on the implementation and ongoing administration of the ERP; (4) that AOC, in partnership with the Office of Civil Legal Aid (OCLA) allocate a portion of CARES Act funds to underwrite the technology and operational expenses in each pilot county for the ERP; (5) that the ERP incorporate a Tier 1 and Tier 2 process (see descriptions attached) that includes use of one or more mandatory forms; (6) that the superior courts in the pilot counties use a form standing order, which may be modified based on local-specific requirements/needs, mandating compliance with the ERP as a condition precedent to filing an unlawful detainer case (based on nonpayment of rent) or serving a summons and complaint in an unlawful detainer case (based on nonpayment of rent) in the court; (7) that the Administrative Office of the Courts (AOC) contract with one or more local state Dispute Resolution Centers (DRC) for each pilot county to recruit (where needed), train and deploy Eviction Resolution Specialists (ERS) to facilitate the ERP at both the Tier 1 and Tier 2 levels; (8) that the AOC use a form contract with the local DRC for each pilot county; (9) that the local DRC provide trained Eviction Resolution Specialists (ERS) to facilitate the ERP both at the Tier 1 and Tier 2 levels; (10) that AOC, OCLA, the local DRCs, and the local HJPs publish the ERP materials and forms on their respective websites, if available; (11) that the ERP include the use of AOC-funded and court-certified interpreters if and as needed and that the ERP Notice #1 and Notice #2 be translated into the languages deemed most useful, *e.g.* Chinese, Korean, Russian, Spanish and Vietnamese; and (12) that the ERP process be implemented through the current end of

² Or, if it is extended again, upon its ultimate expiration.

³ Each pilot county court has been contacted and, subject to further information, is willing to participate in the Pilot ERP.

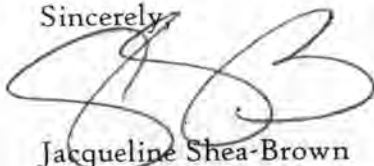
the CARES Act funding period (December 31, 2020), unless authority to expend such funding is extended or new COVID-19 emergency funding becomes available.

With recognition that there are a variety of stakeholders already taking action to address the eviction crisis in a variety of counties, as well as the legal constraints on the courts, it is further recommended that landlords and tenants in the pilot counties be encouraged to voluntarily engage with the ERP process *during* the continuing state and local moratoria. To that end, the UD WORK GROUP recommends that outreach and education be implemented to maximize the success of the ERP. However, the fiscal realities and the limited timeframe of the ERP narrow the viability of outreach and education options. In lieu of a website or digital advertisements on social medial channels, the UD Work Group recommends creation and distribution of user-friendly, public service announcements for the purpose of informing landlords and tenants of the ERP process and encouraging voluntary participation in the ERP as of October 1, 2020. If resources and time allow, we recommend an even more aggressive effort to educate the public and promote the ERP employing social media and other relevant platforms.

Enclosed with this letter are the following documents relevant to the ERP process: (1) An overview of the SCJA Pilot ERP; (2) Tier 1 ERP process sheet; (3) Tier 2 ERP process sheet; (4) Notice #1 (to be used in the Tier 1 ERP process); (5) Notice #2 (to be used in the Tier 2 ERP process); (6) DRC Certification Form for use with Tier 1 and Tier 2 ERP processes; (7) a proposed standing order for each pilot county with Exhibit A; and (8) a proposed contract (for AOC to contract with the local DRCs);

In closing, while each member of the UD WORK GROUP meaningfully participated in numerous meetings, raised thoughtful questions, provided useful input and dedicated much time and effort to the UD-ERP, it is vital and important for me to recognize Jim Bamberger, the Director of the Office of Civil Legal Aid (OCLA), Edmund Witter of the King County Bar Association Housing Justice Project, Brett Waller, Director of Government Affairs at the Washington Multi-Family Housing Association, and LaDessa Croucher, Senior Director of the Dispute Resolution Center in Snohomish County (which is part of the Volunteers of America organization) for their invaluable contributions, exceptional work product and expert guidance as the UD WORK GROUP developed the ERP. Their respective imprimaturs of excellence are evident throughout all aspects, processes and forms of the ERP.

Sincerely,



Jacqueline Shea-Brown
Chair, UD WORK GROUP
Judge, Benton-Franklin Counties Superior Court

Encs.

cc: James Bamberger, OCLA

Eviction Resolution Program (ERP)

TIER ONE – Landlord sends Notice #1/Resource Sheet to Tenant along with 14-day Notice to Pay or Vacate

Most Likely But Not Exclusive Scenarios

SCENARIO #1: Tenant Engages with Landlord within the 14-day notice period (re: the Notice to Pay or Vacate) without active DRC Involvement; Multiple early resolution (ER) options available (involving the local DRC/ERS &/or HJP) to assist the Tenant and Landlord in the event they are unable to achieve resolution on their own to include: Resolution Facilitation, Meet & Confer #1, Mediation & Meet & Confer #2.

<u>TIMELINE</u>	<u>ACTION</u>	<u>COMMENTS</u>
DAY 1	Landlord (LL) sends Tenant (T): <ul style="list-style-type: none"> • Rent Owing Notice; and • Eviction Resolution Program (ERP) Notice #1 & Resource Sheet (combined). 	<u>Use:</u> Mandatory Form: ERP Notice #1 & Resource Sheet that includes contact information for: (a) rental assistance program; (b) the local Housing Justice Project (HJP) and local Northwest Justice Project (NJP); and (c) local DRC.
DAY 1 to DAY 14	T engages with LL within this time period without active DRC involvement.	
	Case gets resolved.	
ONGOING	<u>If Case DOES not get resolved:</u> OPTION A - Resolution Facilitation: <ul style="list-style-type: none"> • T or LL – either one – contacts DRC/ERS (Dispute Resolution Center/Eviction Resolution Specialist) for <i>Resolution Facilitation</i>. • DRC/ERS makes contact with T if and as needed (e.g. if LL contacted DRC/ERS for <i>Resolution Facilitation</i>). • T engages with DRC/ERS. • DRC/ERS works on funding packet; funding packet received. • DRC/ERS undertakes <i>Resolution Facilitation</i> with T and LL. HJP involvement &/or participation preferred. • Case gets resolved. 	<u>Note:</u> DRC trains and has Eviction Resolution Specialists (ERS) ready to assist.

Eviction Resolution Program (ERP)

TIER ONE – Landlord sends Notice #1/Resource Sheet to Tenant along with 14-day Notice to Pay or Vacate

Most Likely But Not Exclusive Scenarios

<u>TIMELINE</u>	<u>ACTION</u>	<u>COMMENTS</u>
ONGOING	<p><u>T did not engage in Option A or if Case does NOT get resolved:</u></p> <p>OPTION B – Meet & Confer #1:</p> <ul style="list-style-type: none"> • DRC/ERS connects T to HJP & Paying Agency/Agencies. • T works with HJP; DRC/ERS shares funding packet with HJP. • DRC/ERS schedules <i>Meet & Confer #1</i>. • HJP, T, LL & LL’s attorney & DRC/ERS meet & confer.* • Case gets resolved. 	<p>Soft Engagement/Conciliation</p>
ONGOING	<p><u>If Case does NOT get Resolved:</u></p> <p>OPTION C - Optional Mediation:</p> <ul style="list-style-type: none"> • DRC/ERS offers <i>mediation</i>. • If <i>mediation</i> is accepted by both parties, the DRC/ERS schedules <i>mediation</i> for the parties and their respective attorneys and the ERS. • Mediation occurs. • Case gets resolved. 	
ONGOING	<p><u>If Mediation NOT accepted by both parties OR If Case does NOT get resolved:</u></p> <p>OPTION D – DRC Certification:</p> <ul style="list-style-type: none"> • No mediation; DRC/ERS gives DRC Certification Form to LL who can file unlawful detainer (UD) case in court. 	<p><u>Use:</u></p> <p>Mandatory Form: DRC Certification Form to include: parties met, whether mediation was or was not offered, whether mediation was or was not accepted, case not resolved, and, as applicable, whether parties agree to any information (from meet & confer and/or mediation) being shared with the court at a later date.</p>
	<p>*If T <u>did not</u> have representation at <i>Meet & Confer #1</i>:</p>	

Eviction Resolution Program (ERP)
TIER ONE – Landlord sends Notice #1/Resource Sheet to
Tenant along with 14-day Notice to Pay or Vacate

Most Likely But Not Exclusive Scenarios

<u>TIMELINE</u>	<u>ACTION</u>	<u>COMMENTS</u>
	<ul style="list-style-type: none"> • A <i>Meet & Confer #2</i> is scheduled by the DRC/ERS within a reasonable time and with notice to the invitees/attendees, <i>i.e.</i> the T, the LL, T representation and LL representation. • The DRC/ERS provides T with referral/connection to the local HJP and the local NJP office for help/representation before and at the <i>Meet & Confer #2</i>. • <i>Meet & Confer #2</i> occurs. • Case gets resolved. • <u>If case does NOT get resolved:</u> DRC/ERS offers mediation; if mediation is accepted by both parties, the DRC/ERS schedules mediation for the parties and provides T with referral/connection to local HJP and the local NJP office for help/representation before and at mediation. • Mediation occurs. • Case resolved. • <u>If case does NOT get resolved:</u> <ul style="list-style-type: none"> • DRC/ERS gives DRC Certification Form to LL who can file UD case in court. 	

Eviction Resolution Program (ERP)

TIER ONE – Landlord sends Notice #1/Resource Sheet to Tenant along with 14-day Notice to Pay or Vacate

Most Likely But Not Exclusive Scenarios

SCENARIO #2: *Tenant engages with Landlord within 14-day notice to pay or vacate period **and** one or both of the parties contacts DRC/ERS to assist with resolution. Multiple early resolution (ER) options available (involving the local DRC/ERS &/or HJP) to include: Resolution Facilitation, Meet & Confer #1, Mediation & Meet & Confer #2.*

<u>TIMELINE</u>	<u>ACTION</u>	<u>COMMENTS</u>
DAY 1	Landlord (LL) sends Tenant (T): <ul style="list-style-type: none"> • Rent Owing Notice; and • Eviction Resolution Program (ERP) Notice #1 & Resource Sheet. 	Use: <u>Mandatory Form:</u> <i>ERP Notice #1 & Resource Sheet that includes contact information for: (a) rental assistance program; (b) the local HJP and local NJP; and (c) local DRC.</i>
DAY 1 to DAY 14	T engages with LL within this time period.	
DAY 1 to DAY 14	T or LL – either one – contacts DRC/ERS for <i>Resolution Facilitation.</i>	Note: DRC trains and has Eviction Resolution Specialists (ERS) ready to assist.
ONGOING	DRC/ERS makes contact with T if and as needed (e.g. if LL contacted DRC for <i>Resolution Facilitation</i>).	
ONGOING	T engages with DRC/ERS.	
ONGOING	DRC/ERS works on funding packet; funding packet received.	
ONGOING	DRC/ERS undertakes <i>Resolution Facilitation</i> with T and LL; HJP involvement &/or participation preferred.	
	Case gets resolved.	
	If Case does NOT get resolved: <u>OPTION A – Meet & Confer #1:</u> <ul style="list-style-type: none"> • DRC connects T to HJP & Paying Agency/Agencies. • T works with HJP; DRC shares funding packet with HJP. • DRC/ERS schedules <i>Meet & Confer #1.*</i> 	<u>Soft Engagement/Conciliation</u>

Eviction Resolution Program (ERP)

TIER ONE – Landlord sends Notice #1/Resource Sheet to Tenant along with 14-day Notice to Pay or Vacate

Most Likely But Not Exclusive Scenarios

<u>TIMELINE</u>	<u>ACTION</u>	<u>COMMENTS</u>
	<ul style="list-style-type: none"> HJP, T, LL & LL's attorney & DRC/ERS meet & confer.* Case gets resolved. 	
ONGOING	<p>If Case does NOT get Resolved:</p> <p>OPTION B – Optional Mediation:</p> <ul style="list-style-type: none"> DRC/ERS offers mediation. If mediation is accepted by both parties, the DRC/ERS schedules mediation for the parties and their respective attorneys and the ERS. Mediation occurs. Case gets resolved. 	
ONGOING	<p>If Mediation NOT accepted OR If Case does NOT get resolved:</p> <p>OPTION C – DRC Certification:</p> <ul style="list-style-type: none"> No mediation; DRC/ERS gives DRC Certification Form to LL who can file UD case in court. 	<p>Use:</p> <p><u>Mandatory Form:</u> <i>DRC Certification Form to include: parties met, mediation was or was not offered, whether mediation was or was not accepted, case not resolved and, as applicable, whether the parties agree to any information (from meet & confer and/or mediation) being shared with the court at a later date.</i></p>
ONGOING	<p>*If T <u>did not</u> have representation at <i>Meet & Confer #1:</i></p> <ul style="list-style-type: none"> A <i>Meet & Confer #2</i> is scheduled by the DRC/ERS within a reasonable time and with notice to the invitees/attendees, <i>i.e.</i> the T, the LL, T representation and LL representation. The DRC/ERS provides T with referral/connection to the local HJP and local NJP office for help/representation before and at the <i>Meet & Confer #2;</i> 	

Eviction Resolution Program (ERP)

TIER ONE – Landlord sends Notice #1/Resource Sheet to Tenant along with 14-day Notice to Pay or Vacate

Most Likely But Not Exclusive Scenarios

<u>TIMELINE</u>	<u>ACTION</u>	<u>COMMENTS</u>
	<ul style="list-style-type: none"> • Meet & Confer #2 occurs. • Case gets resolved. • <u>IF Case does NOT get resolved:</u> DRC/ERS offers mediation and if mediation is accepted by both parties, the DRC/ERS schedules mediation for the parties and provides T with referral/connection to the local HJP and local NJP office for help/representation before and at mediation. • Mediation occurs. • Case resolved. • <u>If case does NOT get resolved:</u> <ul style="list-style-type: none"> • DRC/ERS gives DRC Certification Form to LL who can file UD case in court. 	

SCENARIO #3: *Tenant does not engage unilaterally with the Landlord during the 14-day notice to pay or vacate period **and** the Tenant &/or Landlord contacts the local DRC/ERS during the 14-day notice period. Multiple early resolution (ER) options available (involving the local DRC/ERS &/or HJP) to include: Resolution Facilitation, Meet & Confer #1, Mediation & Meet & Confer #2.*

<u>TIMELINE</u>	<u>ACTION</u>	<u>COMMENTS</u>
DAY 1	Landlord (LL) sends Tenant (T): <ul style="list-style-type: none"> • Rent Owing Notice; and • Eviction Resolution Program (ERP) Notice #1 & Resource Sheet (combined). 	Use: <u>Mandatory Form:</u> ERP Notice #1 & Resource Sheet that includes contact information for: (a) rental assistance program; (b) and to the local HJP and local NJP; and (c) local DRC.
DAY 1 to DAY 14	T or LL contacts DRC/ERS.	
DAY 1 to DAY 21	DRC/ERS connects T to HJP & Paying Agency.	

Eviction Resolution Program (ERP)

TIER ONE – Landlord sends Notice #1/Resource Sheet to Tenant along with 14-day Notice to Pay or Vacate

Most Likely But Not Exclusive Scenarios

<u>TIMELINE</u>	<u>ACTION</u>	<u>COMMENTS</u>
DAY 1 to DAY 21	DRC/ERS works on funding packet; funding packet received.	Note: DRC trains and has Eviction Resolution Specialists (ERS) ready to assist.
ONGOING	OPTION A – Meet & Confer #1: <ul style="list-style-type: none"> • T works with HJP; DRC/ERS shares funding packet with HJP. • DRC/ERS Schedules <i>Meet & Confer #1</i>. • HJP, T, LL & LL’s attorney & DRC/ERS meet & confer.* • Case gets resolved. 	Soft Engagement/Conciliation
ONGOING	If Case does NOT get Resolved: OPTION B – Optional Mediation: <ul style="list-style-type: none"> • DRC/ERS offers mediation. • If accepted by both parties, the DRC/ERS schedules mediation for the parties and their respective attorneys and the ERS. • Mediation occurs. • Case gets resolved. 	
ONGOING	If Mediation NOT accepted OR If Case does NOT get resolved: OPTION C – DRC Certification: <ul style="list-style-type: none"> • No mediation; DRC/ERS gives DRC Certification Form to LL who can file UD case in court. 	Use: Mandatory Form: DRC Certification Form to <i>include: parties met, mediation was or was not offered, whether mediation was or was not accepted, case not resolved and, as applicable, whether the parties agree to any information (from meet & confer and/or mediation) being shared with the court at a later date.</i>
ONGOING	*If T did not have representation at <i>Meet & Confer #1:</i>	

Eviction Resolution Program (ERP)
TIER ONE – Landlord sends Notice #1/Resource Sheet to
Tenant along with 14-day Notice to Pay or Vacate

Most Likely But Not Exclusive Scenarios

<u>TIMELINE</u>	<u>ACTION</u>	<u>COMMENTS</u>
	<ul style="list-style-type: none"> • A <i>Meet & Confer #2</i> is scheduled by the DRC/ERS within a reasonable time and with notice to the invitees/attendees, <i>i.e.</i> the T, the LL, T representation and LL representation. • The DRC/ERS provides T with referral/connection to the local HJP and local NJP office for help/representation before and at the <i>Meet & Confer #2</i>. • <i>Meet & Confer #2</i> occurs. • Case gets resolved. • <u>If Case does NOT get resolved:</u> DRC/ERS offers mediation; if mediation is accepted by both parties, the DRC/ERS schedules mediation for the parties and provides T with referral/connection to the local HJP and local NJP office for help/representation before and at mediation. • Mediation occurs. • Case resolved. • <u>If case does NOT get resolved:</u> • DRC/ERS gives DRC Certification Form to LL who can file UD case in court. 	

Eviction Resolution Program (ERP)

TIER TWO – Landlord Sends Notice #2/Resource Sheet to Tenant & local DRC After Tenant Fails to Respond to “14-day Notice to Pay or Vacate” & Notice #1

Most Likely But Not Exclusive Scenarios

SCENARIO #1: - Tenant Does Not Respond to Notice #2 from the Landlord and does not respond to outreach efforts by the local DRC during a ten (10) day calendar period which is subsequent to expiration of the 14-day period related to the Landlord’s Notice to Pay or Vacate & Notice #1; DRC Certification issues.

<u>TIMELINE</u>	<u>ACTION</u>	<u>COMMENTS</u>
DAY 15+ (sent at least 14 days after Notice #1 and IF no response to Notice #1)	Landlord (LL) sends Tenant (T) & Dispute Resolution Center/Eviction Resolution Specialist (DRC/ERS): <ul style="list-style-type: none"> • Rent Owing Notice; and • Eviction Resolution Program (ERP) Notice #2 & Resource Sheet (combined). 	<u>Use:</u> Mandatory Form: ERP Notice #2 & Resource Sheet that includes contact information for: (a) rental assistance program; (b) the local Housing Justice Project (HJP) and local Northwest Justice Project (NJP); and (c) the local DRC.
DAY 15+	DRC/ERS Notifies the local Housing Justice Project (HJP).	<u>Note:</u> Notification by DRC/ERS to HJP: “locale-specific.”
DAY 15-DAY 25	DRC/ERS makes three (3) attempts to contact T for the next ten (10) calendar days.	<u>Note:</u> DRC trains and has Eviction Resolution Specialists (ERS) ready to assist.
	T does NOT respond to DRC’s outreach efforts during the ten (10) calendar days.	
	DRC/ERS issues DRC Certification Form to LL who can file unlawful detainer (UD) case in court.	<u>Use:</u> Mandatory Form: DRC Certification Form to include: parties met, whether mediation was or was not offered, whether mediation was or was not accepted, case not resolved, and, as applicable, whether parties agree to any information (from meet & confer and/or mediation) being shared with the court at a later date.

Eviction Resolution Program (ERP)

TIER TWO – Landlord Sends Notice #2/Resource Sheet to Tenant & local DRC After Tenant Fails to Respond to “14-day Notice to Pay or Vacate” & Notice #1

Most Likely But Not Exclusive Scenarios

SCENARIO #2: - After the 14-day Notice period has expired for the Notice to Pay or Vacate & Notice #1, the Tenant & the local DRC receives Notice #2; DRC undertakes outreach to Tenant; Tenant Responds & Engages with DRC/ERS at some point during a subsequent ten (10) day calendar period; Multiple early resolution (ER) options available (involving the local DRC/ERS & HJP) to include: Resolution Facilitation, Meet & Confer #1, Mediation, Meet & Confer #2.

<u>TIMELINE</u>	<u>ACTION</u>	<u>COMMENTS</u>
DAY 15+ (sent at least 14 days after Notice #1 and IF no response to Notice #1)	Landlord (LL) sends Tenant (T) & DRC/ERS: <ul style="list-style-type: none"> Rent Owing Notice; and Eviction Resolution Program (ERP) Notice #2 & Resource Sheet (combined). 	<u>Use:</u> Mandatory Form: ERP Notice #2 and Resource Sheet that includes contact information for: (a) rental assistance program; (b) the local HJP and the local NJP; (c) local DRC.
DAY 15+	DRC/ERS Notifies HJP.	<u>Note:</u> Notification by DRC/ERS to HJP: “locale-specific.”
DAY 15+	DRC/ERS makes three (3) attempts to contact T during a ten (10) calendar day period.	<u>Note:</u> DRC trains and has Eviction Resolution Specialists (ERS) ready to assist.
ONGOING	T does respond and engages with DRC/ERS (during the ten (10) day calendar period).	
ONGOING	DRC/ERS connects T to HJP & Paying Agency/Agencies.	
ONGOING	DRC/ERS works on funding packet; funding packet received.	
ONGOING	OPTION A – Resolution Facilitation: <ul style="list-style-type: none"> DRC/ERS facilitates resolution with LL & T; HJP involvement &/or participation preferred. Case gets resolved. 	
ONGOING	<u>If Case does NOT get resolved:</u> OPTION B – Meet & Confer #1:	Soft Engagement/Conciliation

Eviction Resolution Program (ERP)

TIER TWO – Landlord Sends Notice #2/Resource Sheet to Tenant & local DRC After Tenant Fails to Respond to “14-day Notice to Pay or Vacate” &

Notice #1

Most Likely But Not Exclusive Scenarios

<u>TIMELINE</u>	<u>ACTION</u>	<u>COMMENTS</u>
	<ul style="list-style-type: none"> • T works with HJP; DRC/ERS shares funding packet with HJP. • DRC/ERS Schedules <i>Meet & Confer #1</i> • HJP, T, LL & LL’s attorney & DRC/ERS meet & confer.* • Case gets resolved. 	
	<p><u>If Case does NOT get resolved:</u> OPTION C – Optional Mediation:</p> <ul style="list-style-type: none"> • DRC/ERS offers <i>mediation</i>. • If <i>mediation</i> is accepted by both parties, the DRC/ERS schedules <i>mediation</i> for the parties and their respective attorneys and the ERS; • <i>Mediation</i> occurs. • Case gets resolved. 	
	<p><u>If Mediation NOT accepted by both parties OR if case does NOT get resolved:</u> OPTION D – DRC Certification:</p> <ul style="list-style-type: none"> • No mediation; DRC/ERS gives DRC Certification Form to LL who can file UD case in court. 	<p><u>Use:</u> Mandatory Form: <i>DRC Certification Form to include: parties met, whether mediation was or was not offered, whether mediation was or was not accepted, case not resolved, and, as applicable, whether parties agree to any information (from meet & confer and/or mediation) being shared with the court at a later date.</i></p>
	<p>*If T <u>did not</u> have representation at <i>Meet & Confer #1:</i></p> <ul style="list-style-type: none"> • A <i>Meet & Confer #2</i> is scheduled by the DRC/ERS within a reasonable time and with notice to the invitees/attendees, <i>i.e.</i> the T, the LL, T representation and LL representation. 	

Eviction Resolution Program (ERP)

TIER TWO – Landlord Sends Notice #2/Resource Sheet to Tenant & local DRC After Tenant Fails to Respond to “14-day Notice to Pay or Vacate” & Notice #1

Most Likely But Not Exclusive Scenarios

<u>TIMELINE</u>	<u>ACTION</u>	<u>COMMENTS</u>
	<ul style="list-style-type: none">• The DRC/ERS provides T with referral/connection to the local HJP and the local NJP office for help/representation before and at the <i>Meet & Confer #2</i>.• <i>Meet & Confer #2</i> occurs.• Case gets resolved.• <u>If Case does NOT get resolved:</u> DRC/ERS offers <i>mediation</i>; if <i>mediation</i> is accepted by both parties, the DRC/ERS schedules <i>mediation</i> for the parties and provides T with referral/connection to the local HJP and the local NJP office for help/representation before and at <i>mediation</i>.• <i>Mediation</i> occurs.• Case resolved.• <u>If case does NOT get resolved:</u><ul style="list-style-type: none">• DRC/ERS gives DRC Certification Form to LL who can file UD case in court.	

SUPERIOR COURT JUDGES ASSOCIATION

PILOT UNLAWFUL DETAINER EVICTION RESOLUTION PROGRAM (ERP)

Since February 2020, nearly one million people in Washington state lost their jobs or have had employment hours severely curtailed because of the COVID-19 emergency. This mass loss of income coupled with substantial barriers in accessing state and pandemic unemployment insurance has made it impossible for many families and individuals (tenants) to keep current in rental payments

Recognizing the risk of mass evictions flowing from the COVID-19 emergency, federal, state, and local governments began enacting moratoria on evictions. These moratoria continue to operate, effectively denying landlords access to the only legal means of removing tenants for failure to pay all or part of their rents – the unlawful detainer process. Some local moratoria have been extended through December 31st, while the Governor’s emergency moratorium is currently slated to expire October 15, 2020.¹

In recent months, state and local rent assistance programs – funded with emergency federal, state, local, and philanthropic funds – have been established with the objective of preserving tenancies threatened due to the non-payment of rent and providing some level of relief to landlords for whom tenants have fallen farther and farther behind in their rental payments.

Between April and July 2020 in accordance with various emergency orders promulgated by the Washington State Supreme Court and local court orders, trial courts ceased the majority of their in-court operations, stayed civil and criminal trials, established off-site virtual operational capacities, and focused judicial functions on the most critical and emergent judicial proceedings. In virtually every trial court, the disruption of court processes created lengthy backlogs of civil, criminal, juvenile, and child welfare trials that will take months from which to dig out.

The Residential Landlord-Tenant Act (RCW 50.18) and the Unlawful Detainer statute (RCW 50.12) set forth accelerated processes by which landlords can secure return of their property when tenants fail to pay their rent on time. The statutes employ compressed timelines designed to facilitate early review and determination

¹ In the most recent Proclamation extending the moratorium through October 15th, Governor Inslee established an informal Eviction Moratorium Work Group comprised of legislators and stakeholders (a number of whom serve on the SCJA UD Work Group) which is scheduled to meet for the first time on September 4, 2020.

by a judicial officer of a landlord's claimed right to retake possession. In normal times, unlawful detainer proceedings are given priority status.

The most recent extension of Governor Inslee's eviction moratorium ([Proclamation 20-19.3](#)) is scheduled to expire October 15, 2020. Recognizing the threat of mass unlawful detainer filings and the courts' inability to timely process them while, at the same time, digging out from the backlog of stayed civil, criminal, juvenile, and child welfare trials (and other proceedings placed on the back burner), the Superior Court Judges Association (SCJA) established the Unlawful Detainer Work Group (UD Work Group). SCJA President Judith Ramseyer invited representatives of statewide landlord associations, civil legal aid housing justice programs, local housing authorities, and the courts to (a) provide training for judicial officers on recent changes to the unlawful detainer process; and (b) develop tools, bench cards, supporting materials, and possibly model court rules to facilitate the timely and fair resolution of unlawful detainer cases once the moratorium is lifted. The UD Work Group is chaired by Benton-Franklin Counties Superior Court Judge Jackie Shea-Brown.

During the course of its deliberations, Chief Justice Stephens and Judge Ramseyer invited the UD Work Group's members to consider the possibility of designing an eviction resolution system that might divert substantial numbers of cases away from overwhelmed, overburdened, and understaffed courts in ways that work to the mutual benefit of tenants and landlords. The UD Work Group embraced the challenge and quickly achieved consensus around the framework of a Pilot Eviction Resolution Program (Pilot ERP) that, if funded, would operate in the seven Washington State counties that collectively see more than 80% of annual unlawful detainer filings.²

COMPONENTS OF THE PILOT EVICTION RESOLUTION PROGRAM

Each pilot ERP will operate in accordance with (a) an enabling order from the Washington State Supreme Court, and (b) a standing order of the local superior court. These orders will require landlords to undertake efforts to engage tenants in pre-filing resolution efforts including direct negotiation, facilitated conciliation services, and, upon agreement of both parties, formal mediation. The objective is to bring all parties to the table, with the assistance of qualified and trained Eviction Resolution Specialists, to explore the amount of rent arrears, the current and prospective circumstances of the tenant, the availability of rent and other assistance

² Designated pilot counties include King, Snohomish, Pierce, Thurston, Clark, Yakima, and Spokane.

to cure or partially cure the arrearage, and the range of other terms that might resolve the matter in a way that allows the tenant to retain housing (and avoid the need for filing of an unlawful detainer action).

Principal parties and their roles include:

- **Washington State Supreme Court:** Issue an enabling order for the courts in the seven pilot counties.
- **Superior Courts** in each of the seven pilot counties: Adopt a standing order mandating that: (a) landlords comply with the Pilot ERP, including Tier 1 and Tier 2 notification and engagement processes prior to serving and/or filing a summons and complaint for non-payment of rent; (b) file the DRC Certification form if and as applicable at the time of filing a summons and complaint for non-payment of rent; and (c) designates the judicial officer(s) that will serve as the procedural point person(s) to work with relevant stakeholders on the implementation and ongoing administration of the ERP.
- **Local Dispute Resolution Centers (DRC's):** Receive landlord notices, engage tenants, civil legal aid Housing Justice Projects, administrators of local rent assistance programs, and others as necessary to commence early resolution of nonpayment of rent and related issues; provide conciliation and, where agreed upon by both parties, mediation; and issue a Certification form, the issuance of which is a condition precedent to the landlord's authority to serve and/or file a summons and complaint for non-payment of rent; and post the ERP materials and forms on their website (if available);
- **Civil legal aid Housing Justice Projects:** Receive notices from landlords, DRCs, or others; engage and provide legal assistants to tenants participating in the Pilot ERP, participate in DRC-hosted conciliation and mediation services; and post the ERP materials and forms on their website (if available);
- **Washington State Office of Civil Legal Aid:** Provide funding for civil legal aid DRCs to assist and represent tenants in each of the pilot counties; contribute to the costs of DRC intake, conciliation, and mediation services; and post the ERP materials and forms on their website (if available);
- **Washington State Administrative Office of the Courts:** On behalf of each pilot county's superior court, enter into a contract with the local DRC to reimburse that program for expenses associated with the DRC's duties under the pilot ERP; contribute to the costs of DRC intake, conciliation, and mediation services; help promote public awareness of the pilot ERP through

media and outreach assistance; ensure that the relevant ERP materials and forms are made available on the courts.wa.gov website and that the Notice #1 and Notice #2 forms be translated into the languages deemed to be most useful, *e.g.* Chinese, Korean, Russian, Spanish and Vietnamese.

While the Pilot ERP establishes mandatory conditions precedent to service and/or filing of a summons and complaint for non-payment of rent in the participating counties, it is the intent of the UD Work Group and the superior courts in the pilot counties that landlords and tenants engage the Pilot ERP even while eviction moratoria remain in place. All understand that early resolution will help achieve better outcomes and should substantially reduce the anticipated demand on superior courts when these moratoria are lifted.

Because the Pilot ERP will be underwritten initially with federal Coronavirus Relief Funds (CARES Act), it will terminate (along with CARES Act funded rent assistance programs) on December 31, 2020. The UD Work Group hopes that additional federal and state resources will allow extension and expansion of the ERP to other counties and, ultimately, a permanent, state-wide ERP in each county.

EVICTION RESOLUTION PROGRAM

NOTICE #1: OPPORTUNITY FOR EARLY RESOLUTION & RESOURCE INFORMATION

****Tenants: Respond within 14 days of the date below!****

Date: _____

TO:	FROM: (Send Response here);
<u>Name:</u>	<u>Name of Landlord (LL):</u>
	<u>Name of LL's Attorney:</u>
<u>Telephone</u>	<u>Telephone for LL:</u>
	<u>Telephone for LL's Attorney:</u>
<u>E-mail:</u>	<u>E-mail for LL:</u>
	<u>E-mail for LL's Attorney:</u>

HELP & RESOURCES ARE AVAILABLE – DO NOT DELAY!

- **① Tenants:** A NEUTRAL THIRD PARTY OR LOCAL LEGAL AID PROGRAM MAY BE ABLE TO HELP YOU WITH YOUR RENT AT NO COST TO YOU.
- **② Tenants:** YOU MAY ASK FOR A MEDIATOR TO ASSIST YOU AND THE LANDLORD
- **③ Tenants: GET HELP:** To get free early resolution or free legal help contact the **Dispute Resolution Center** or **Get a Lawyer** telephone numbers below in the county where you live.

RESOURCES

County	Dispute Resolution Center	Rental Assistance	Get a Lawyer
Clark County	(360) 334-5862, ext. 1001	https://www.councilforthehomeless.org/erap/	(360) 334-4007
King County	(206) 443-9603, ext. 115	https://kingcounty.gov/depts/community-human-services/COVID/eviction-prevention-rent-assistance.aspx	(206) 267-7069
Pierce County	(253) 572-3657	https://www.piercecountywa.gov/housinghelp	(253) 572-5134
Snohomish County	(425) 339-1335	NEEDS TO BE PROVIDED WHEN KNOWN	(425) 258-9283 Ext. 5
Spokane County	(509) 456-0103 (509) 838-2799	NEEDS TO BE PROVIDED WHEN KNOWN	(509) 477-2674
Thurston County	(360) 965-1155	http://www.caclmt.org/ https://hatc.org/community-resources/eviction-rent-assistance-program/	(360) 705-8194
Yakima County	(509) 453-8949, ext. 2	NEEDS TO BE PROVIDED WHEN KNOWN	(509) 453-4400

EVICTION RESOLUTION PROGRAM

NOTICE #1: OPPORTUNITY FOR EARLY RESOLUTION & RESOURCE INFORMATION

****Tenants: You may also complete the below information and return this Notice to your landlord within 14 days of the date above by email or other means to access the Eviction Resolution Program. If possible, keep a copy of the form for yourself.****

I want assistance in resolving my unpaid rent. My contact information is:

Tenant's Name: _____

Tenant's Address: _____

Tenant's Phone: _____ Tenant's Email: _____

Tenants: You may return this Form to your landlord to initiate Early Dispute Resolution.

Tenants: This Notice is available in different languages at: www.courts.wa.gov/

Tenants: Interpreter services are available to assist you. Please call [xxx-xxx-xxxx](tel:xxx-xxx-xxxx) for interpreter services.

EVICTION RESOLUTION PROGRAM NOTICE #2: OPPORTUNITY FOR EARLY RESOLUTION & RESOURCE INFORMATION

****Attention Landlords: This notice must be sent to the Dispute Resolution Center in the County where your property is located in addition to be served on the tenant/s.**

****See DRC e-mails on page 2 of this Notice.*****

****Tenants: Respond within 10 days of the date below!****

Date: _____

<u>TO:</u>	<u>FROM: (Send Response here):</u>
<u>Name:</u>	<u>Name of Landlord (LL):</u>
	<u>Name of LL's Attorney:</u>
<u>Telephone</u>	<u>Telephone for LL:</u>
	<u>Telephone for LL's Attorney:</u>
<u>E-mail:</u>	<u>E-mail for LL:</u>
	<u>E-mail for LL's Attorney:</u>

HELP & RESOURCES ARE AVAILABLE – DO NOT DELAY!

- **① Tenants:** A NEUTRAL THIRD PARTY OR LOCAL LEGAL AID PROGRAM MAY BE ABLE TO HELP YOU WITH YOUR RENT AT NO COST TO YOU.
- **② Tenants:** YOU MAY ASK FOR A MEDIATOR TO ASSIST YOU AND THE LANDLORD
- **③ Tenants: GET HELP:** To get free early resolution or free legal help contact the **Dispute Resolution Center** or **Get a Lawyer** telephone numbers below in the county where you live.

RESOURCES

County	Dispute Resolution Center	Rental Assistance	Get a Lawyer
Clark County	(360) 334-5862, ext. 1001	https://www.councilforthehomeless.org/erap/	(360) 334-4007
King County	(206) 443-9603, ext. 115	https://kingcounty.gov/depts/community-human-services/COVID/eviction-prevention-rent-assistance.aspx	(206) 267-7069
Pierce County	(253) 572-3657	https://www.piercecountywa.gov/housinghelp	(253) 572-5134
Snohomish County	(425) 339-1335	NEEDS TO BE PROVIDED WHEN KNOWN	(425) 258-9283 Ext. 5

EVICTION RESOLUTION PROGRAM NOTICE #2: OPPORTUNITY FOR EARLY RESOLUTION & RESOURCE INFORMATION

****Attention Landlords: This notice must be sent to the Dispute Resolution Center in the County where your property is located in addition to be served on the tenant/s.**

See DRC e-mails on page 2 of this Notice.*

RESOURCES – continued:

County	Dispute Resolution Center	Rental Assistance	Get a Lawyer
Spokane County	(509) 456-0103 (509) 838-2799	NEEDS TO BE PROVIDED WHEN KNOWN	(509) 477-2674
Thurston County	(360) 965-1155	http://www.caclmt.org/ https://hatc.org/community-resources/eviction-rent-assistance-program/	(360) 705-8194
Yakima County	(509) 453-8949, ext. 2	NEEDS TO BE PROVIDED WHEN KNOWN	(509) 453-4400

- **① Tenants:** The Dispute Resolution Center will attempt to contact you to engage in Early Dispute Resolution.
- **② Tenants:** You may respond to this Notice and engage in Early Dispute Resolution within 10 days of the date above by contacting the Dispute Resolution Center, obtaining a free lawyer, or returning this completed form to your landlord (see information above). If possible, keep a copy of the form for yourself.
- **③ Tenants:** *If you have received a Summons and Complaint, you should respond to the Summons by sending this Notice to the Landlord’s attorney, or if no attorney, the Landlord.*

I want assistance in resolving my unpaid rent. My contact information is:

Tenant’s Name: _____

Tenant’s Address: _____

Tenant’s Phone: _____ Tenant’s Email: _____

Tenants: You may return this Form to your landlord to initiate Early Dispute Resolution.

Tenants: This Notice is available in different languages at: www.courts.wa.gov/

Tenants: Interpreter services are available. Please call [xxx-xxx-xxxx](tel:xxx-xxx-xxxx) for interpreter services.

****Landlords: You must send this Notice by email to the Dispute Resolution Center in the County where your property is located at the email address below.****

County	Dispute Resolution Email Address
Clark County	
King County	
Pierce County	
Snohomish County	
Spokane County	
Thurston County	
Yakima County	

EVICTI ON R ESOLUTI ON P ROGRAM (ERP)

DRC CERTIFICATION: I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Date of DRC Certification	1)
City & State of DRC Certification	2)
DRC Certification Authored by:	
Print name:	
Sign name:	
Case Type	
Date case opened with DRC	
DRC Contacted Tenant (if applicable)	
DRC's First Date of Attempted Contact	
DRC's Second Date of Attempted Contact	
DRC's Third Date of Attempted Contact	
Date agreed to Mediate	
Landlord Name	
Landlord's Counsel	
Tenant Name	
Tenant's Counsel	
Meet & Confer:	<input type="checkbox"/> YES <input type="checkbox"/> NO
Scheduled Date of Meet & Confer	
Actual Date of Meet & Confer	
Name of Eviction Resolution Specialist (ERS)	
Mediation:	<input type="checkbox"/> YES <input type="checkbox"/> NO
Landlord Declined Mediation	<input type="checkbox"/> YES <input type="checkbox"/> NO
Tenant Declined Mediation	<input type="checkbox"/> YES <input type="checkbox"/> NO
Name of Eviction Resolution Specialist (ERS)	

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Early Resolution Achieved	<input type="checkbox"/> YES <input type="checkbox"/> NO
Offers: Landlord Agrees to Share Final Offer at Meet & Confer &/or Mediation? Final Offer: _____ _____	<input type="checkbox"/> YES <input type="checkbox"/> NO
Tenant Agrees to Share Final Offer at Meet & Confer &/or Mediation? Final Offer: _____ _____	<input type="checkbox"/> YES <input type="checkbox"/> NO
Date case closed with DRC	

NOTICE: **By certifying herein, the Dispute Resolution Center is not making any certification as to whether the parties acted in good faith or whether any payment offers were reasonable in light of Governor Inslee's Proclamations regarding collection of rent.*

PROFESSIONAL SERVICES AGREEMENT

Between the
Administrative Office of the Courts
and the
[Insert Name of DRC]
[Contract Reference Number]

This Professional Services Agreement (Contract) is made and entered into by and between the Administrative Office of the Courts and the [name of DRC], a non-profit corporation that provides mediation and other dispute resolution services, under Title 7.75 RCW, in [name] County.

RECITALS AND STATEMENT OF PURPOSE

- The parties recognize that nearly one million people in Washington state lost their jobs or have had employment hours severely curtailed because of the COVID-19 emergency.
- The parties further recognize that the mass loss of income has made it impossible for many families and individuals (tenants) to keep current in rental payments;
 - that various federal, state, and local orders have prohibited evictions during the COVID-19 emergency, but that such orders will be lifted at some point;
 - that many landlords face hardship and significant loss of income due to the inability of tenants to keep current in their rent and the prohibition on evictions established by federal, state, and local eviction moratoria;
 - that many renters currently face substantial arrearages and threat of eviction upon termination of state and local eviction moratoria;
 - that court operations have been substantially curtailed since April 2020 and that [Name] County Superior Court is digging out from substantial civil, criminal, juvenile, and child welfare trial and hearing backlogs;
 - that the prospect of a deluge of unlawful detainer filings presents a threat to the ability of the [Name] County Superior Court to timely hear and fairly decide such cases consistent with statutory deadlines and mandated procedures;
 - that local and state rent assistance programs offer the opportunity for immediate assistance in addressing rent arrearages (or portions thereof); that [Insert Name of Housing Justice Project] is prepared to assist tenants facing the threat of eviction resolve that threat through non-judicial processes;
 - that [Name] County Superior Court has agreed to participate in a pilot Eviction Resolution Program (ERP) that encourages landlords and tenants to participate in a structured system that offers the prospect of resolving non-payment of rent cases before they are filed in court;

- that, to this end, [Name] County Superior Court has issued a standing order requiring landlords to demonstrate that they have attempted in good faith to work with tenants to resolve rent disputes and access rent assistance prior to filing a Summons and Complaint for Unlawful Detainer;
- that [Name of DRC] is willing and able to dedicate the services of one or more Eviction Resolution Specialists (ERS) to assist landlords and tenants achieve agreements that will prevent the need to file an unlawful detainer action, and that [Name of DRC] has agreed to fully implement the Tier 1 and Tier 2 ERP processes, including timely forwarding of notices received from landlords to [name of Housing Justice Project];
- that the Administrative Office of the Courts (AOC) is the statewide support organization for all levels of court and provides multiple services and financial support for trial courts and court managers;
- that AOC recognizes the importance of the ERP and, in partnership with the Office of Civil Legal Aid (OCLA), has committed to providing financial support for the conciliation and mediation services offered in the seven Pilot ERP sites;
- that, on behalf of the Superior Courts in each of the pilot counties, AOC will contract with the local dispute resolution center in each pilot county to perform the tasks and functions outlined in Tiers 1 and 2 of the ERP; and
- that both AOC and OCLA have secured and are committed to making federal Coronavirus Relief Fund (CARES Act) funding available to address court-related and eviction-related challenges caused by the COVID-19 pandemic including issues relating to the fair and proper administration of justice in unlawful detainer cases.

The purpose of this Contract is for AOC to engage [Name of DRC] to provide ERS services in accordance with the above referenced standing order and the terms of the SCJA ERP through qualified and trained Eviction Resolution Specialists and mediators with the objective of facilitating resolution of rent payment disputes and preserving the tenancy and avoiding displacement of the tenant(s) if possible (it being the express intent of the contracting parties and the SCJA Pilot ERP that scarce rent assistance funding be prioritized to preserve tenancies and avoid displacement/eviction), prior to the filing of an unlawful detainer action. Through the provision of ERS services, the parties intend to relieve unnecessary burdens on tenants, landlords, and the [County] Superior Court, with such services being provided during the contract term regardless of whether a state or local moratorium is in effect.

DEFINITIONS

For purposes of this Contract, the following definitions shall apply:

1. "Tenant" means an individual who as a result of the COVID-19 emergency has been unable to pay rent for any period since February 2020 and who faces eviction as a result of that failure to pay rent.
2. "Landlord" means the individual or entity to whom/which tenant is obligated to pay rent under the terms of a rental agreement governed by the Residential Landlord Tenant Act, RCW 59.18.

3. "Housing Justice Project" or "HJP" means a non-profit provider of targeted civil legal assistance to tenants faced with the prospect of eviction due to the non-payment or rent.
4. "Pilot Eviction Resolution Program" or "SCJA Pilot ERP" means the framework developed and adopted by the Unlawful Detainer Work Group established by the Superior Court Judges Association, as adopted in and by the [Name] County Superior Court's standing order (Attachment 1).

PERIOD OF PERFORMANCE

The period for performance of this Contract is September 1, 2020 through December 31, 2020 unless otherwise extended by mutual agreement of the parties.

SCOPE OF WORK

[Name of DRC] will provide ERS services in accordance with the standing order adopted by [County] Superior Court and the terms of the SCJA ERP through one or more qualified and trained Eviction Resolution Specialists (ERS) and mediators in a manner consistent with the Statement of Purpose set forth above. The parties acknowledge that each pilot county has or will designate to AOC the judicial officer(s) who will serve as the procedural point person(s) to work with the DRC and other relevant stakeholders on the implementation and ongoing administration of the ERP.

COMPENSATION

AOC shall pay [Name of DRC] for services provided to [Name] County Superior Court under this Contract up to [\$ insert authorized level of funding]. Authorized expenses shall be those included in the approved Budget (Attachment 2).

BILLING PROCEDURES AND PAYMENT

[Name of DRC] will electronically submit an invoice by the 15th of the month following that in which ERS services were rendered to AOC's Contract Manager, with a copy provided to the presiding judge or their designee of [Name] County Superior Court.

The AOC Contract Manager will review and approve properly completed invoices within fourteen (14) working days following receipt. Payment shall be considered timely if received within thirty (30) calendar days after receipt of properly completed invoices.

INDEPENDENT CAPACITY.

The parties recognize and affirm that [Name of DRC] is an independent contractor having no relationship to the AOC or the [Name] County Superior Court except to provide professional conflict resolution services to the persons eligible for services under this Agreement. Neither [Name of DRC] nor any employee of [Name of DRC] is an employee of the AOC or [Name] County Superior Court. [Name of DRC] will provide the AOC with proof of a valid Washington Uniform Business Identification number and valid taxpayer identification number before commencement of work under this Contract. [Name of DRC] is solely responsible for the timely payment of any taxes, assessments, statutory workers compensation, or employer's liability insurance as required by federal or state law for Contractor and any employees of Contractor.

INDEMNIFICATION

To the fullest extent permitted by law, [Name of DRC] shall indemnify, defend, and hold harmless the State of Washington, [Name] County, [Name] County Superior Court, the AOC, and all officials, agents and employees of the State, from and against all claims for injuries or death arising out of or resulting from the performance of the contract.

[Name of DRC]'s obligation to indemnify, defend and hold harmless includes any claim by [Name of DRC]'s agents, employees, representatives, or any subcontractor or its employees.

[Name of DRC] expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to [Name of DRC]'s performance or failure to perform the contract. [Name of DRC] shall be required to indemnify, defend and hold harmless the State only to the extent claim is caused in whole or in part by negligent acts or omissions of [Name of DRC].

[Name of DRC] waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless State and its agencies, officials, agents or employees.

REPORTING.

By January 15, 2021 [Name of DRC] shall submit to AOC and the presiding judge of [Name] County Superior Court or their designee a statistical report documenting:

- (1) the number of requests for assistance;
- (2) the number of cases presented,
- (3) the number of cases in which resolution was achieved through
 - a. (i) conciliation
 - b. (ii) the meet and confer protocol
 - c. (iii) formal mediation
- (4) the number of cases in which resolution is not achieved;
- (5) a demographic breakdown of tenants assisted by
 - a. age range,
 - b. number of persons in household
 - c. annual household income range as percentage of the FPL (<100% FPL; 100% - 200% FPL; >201% FPL
 - d. race (if disclosed),
 - e. gender (if disclosed)
 - f. limited English proficiency (LEP)
- (6) for each case in which resolution was achieved
 - a. (i) whether and, if so, how much rent assistance funding was secured
 - b. (ii) whether a repayment plan was entered into for the balance or a portion thereof of rent owing for months for which rent assistance was not secured
 - c. (iii) whether the resolution involved termination of the tenancy.

AGREEMENT ALTERATIONS AND AMENDMENTS

This Contract may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

RIGHT OF INSPECTION

[Name of DRC] shall provide a right of access to its facilities to AOC, or any of its designated employees, or to any other authorized agent, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Contract.

DISPUTES

Except as otherwise provided in this Contract, when a dispute arises regarding the interpretation and/or application of this Contract that cannot be resolved by direct negotiation, the parties agree to participate in mediation in good faith. If applicable, the parties agree that mediation shall precede any action in a judicial or quasi-judicial tribunal. The mediator will be chosen by agreement of the parties. If the parties cannot agree on a mediator, the parties will use a mediation service that selects the mediator for the parties. The cost of the mediator will be shared equally by both parties. This provision does not limit the ability of the parties to agree to another mutually acceptable dispute resolution method such as a dispute resolution board or arbitration.

TERMINATION

Either party may terminate this Contract upon thirty (30) days written notice to the other party. If this Contract is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Contract prior to the effective date of termination.

GOVERNANCE

This Contract is entered into pursuant to and under the authority granted by the laws of the state of Washington. The provisions of this Contract shall be construed to conform to those laws. In the event of an inconsistency in the terms of this Contract, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order: Applicable state statutes and rules; this Contract; and any other provisions of the Contract, including materials incorporated by reference.

RESPONSIBILITIES OF THE PARTIES

Each party to this Contract assumes responsibility for claims and/or damages to persons and/or property resulting from any act or omission on the part of itself, its employees, its officers, and its agents. No party assumes any responsibility to the other party for the consequences of any claim, act, or omission of any person, agency, firm, or corporation not a party to this Contract.

ASSIGNMENT

Except as outlined in this section and in paragraph 2 related to the Scope of Work, the work to be provided under this Contract is not assignable or delegable by [Name of

DRC], in whole or in part, without the express prior written consent of AOC and the presiding judge of the **[Name]** County Superior Court.

PROTECTION OF CONFIDENTIAL INFORMATION; MANDATORY DISCLOSURE OF INFORMATION BREACH.

[Name of DRC] shall establish systems that protect the security, confidentiality, and integrity of personal information acquired during the performance of activities underwritten in whole or in part with funds made available under this Contract. In the event of a breach of **[Name of DRC]**'s security system(s) that compromises personal information, **[Name of DRC]** shall (a) AOC immediately regarding (i) the nature and scope of said breach and information that may have been compromised by the same, and (ii) action that **[Name of DRC]** is taking/will take to mitigate the potential consequences of said breach, and (b) comply with all notification and related requirements set forth in RCW 19.255, as amended by Sec. 241, Laws of 2019.

WAIVER

A failure by either party to exercise their rights under this Contract shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Contract unless stated to be such in a writing signed by an authorized representative of the party and attached to the original Contract.

MONITORING AND OVERSIGHT

[Name of DRC] shall grant AOC a right of access to information, records and facilities upon reasonable notice and at times mutually agreed by the parties. In addition, AOC reserves any and all other rights, whether express or implied, to review and monitor activities funded in whole or in part, directly or indirectly, with funding made available under this Contract. It is mutually understood that OCLA shall not seek, and that **[Name of DRC]** has a duty to protect, confidential information by law.

SOURCE OF FUNDING/LIMITATIONS

Funding for this Contract originates from an allocation of funding from the federal COVID Aid Relief and Economic Security Act (CARES Act), administered by the AOC.

NONDISCRIMINATION

During the performance of this contract, the Contractor shall comply with RCW 49.60 as amended by Ch. 52, Laws of 2020 (prohibiting discrimination on the basis of citizenship and immigration status), and all federal and state nondiscrimination laws, regulations and policies. In the event of the Contractor's noncompliance or refusal to comply with any nondiscrimination law, regulation, or policy, this Contract may be rescinded, canceled or terminated in whole or in part, and the Contractor may be declared ineligible for further contracts with AOC or the **[Name]** County Superior Court. The Contractor shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

SEVERABILITY

If any provision of this Contract, or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Contract, which can be given effect without the invalid provision and, to this end, the provisions of this Contract are declared to be severable.

CONTRACT MANAGEMENT

The Contract Manager for each of the parties shall be the contact person for all communications and billings regarding the performance of this contract.

[Name of DRC] Contract Manager	AOC Contract Manager
Name: Address: Phone: Email: Federal EIN: Washington State UBI:	Name: Address: Phone: Email:

ASSURANCES

AOC and [Name of DRC] agree that all activity pursuant to this Contract will be in accordance with all the applicable current federal, state and local laws, rules, and regulations.

ORDER OF PRECEDENCE

Each of the exhibits listed below is by this reference hereby incorporated into this contract. In the event of an inconsistency in this contract, the inconsistency shall be resolved by giving precedence in the following order:

1. Applicable federal and state of Washington statutes and regulations
2. The terms and conditions as contained in this basic contract instrument, including the [Name] County Superior Court Standing Order (Attachment 1) and the Project Budget (Attachment 2)
3. Any other provision, term or material incorporated herein by reference or otherwise incorporated

ENTIRE AGREEMENT

This contract, including referenced exhibits, represents all the terms and conditions agreed upon by the parties. No other statements or representations, written or oral, shall be deemed a part hereof.

CONFORMANCE

If any provision of this contract violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

APPROVAL

This Contract shall be subject to the written approval of AOC's authorized representative and shall not be binding until so approved. The Contract may be altered, amended, or waived only by a written amendment executed by both parties.

THIS CONTRACT is executed by the persons signing below, who warrant they have the authority to execute the contract.

[Name of DRC]

Administrative Office of the Courts

Signature

Title

Date

Title

Date

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5 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
6 IN AND FOR _____ COUNTY

7 **STANDING ORDER -**

8 **Eviction Resolution Program (ERP)**

9 Effective October 1, 2020 through December 31, 2020 unless otherwise extended.

10
11 1. **Findings. It is recognized that:**

- 12 A. Nearly one million people in Washington state have lost their jobs or have had
13 employment hours severely curtailed because of the COVID-19 emergency;
- 14 B. The mass loss of income has made it impossible for many families and individuals
15 (tenants) to keep current in rental payments;
- 16 C. Various federal, state, and local orders have prohibited most evictions during the
17 COVID-19 emergency, but such orders will be lifted at some point;
- 18 D. Many landlords face hardship and significant loss of income due to the inability of
19 tenants to keep current in their rent and the prohibition on evictions established by
20 federal, state, and local eviction moratoria, as applicable;
- 21 E. Many renters currently face substantial arrearages and threat of eviction upon termination
22 of state and local eviction moratoria;
- 23 F. Court operations have been substantially curtailed since April 2020 due to COVID-19
24 and this court continues to face a substantial hearing backlog related to civil, criminal,
25 juvenile, and child welfare matters;
- 26 G. Given the administrative backlog this court is facing, the anticipated deluge of unlawful
27 detainer filings presents a threat to the ability of this court to timely hear and fairly decide
28 such cases consistent with statutory deadlines, due process and mandated procedures;

- 1 H. State and local rent-assistance programs offer the opportunity for immediate assistance in
2 addressing rent arrearages (or portions thereof);
- 3 I. It is understood that the local Dispute Resolution Center (DRC) and local housing justice
4 project (HJP) are prepared to assist tenants facing the threat of eviction and help tenants
5 resolve that threat through non-judicial processes including the Eviction Resolution
6 Program (ERP);
- 7 J. This court is one of seven (7) counties that has agreed to participate in a pilot ERP;
- 8 K. It is anticipated that the number of unlawful detainer cases will be greatest in the seven
9 (7) pilot counties;
- 10 L. The court designates that _____ (judicial officer(s)) will serve as
11 the procedural point person(s) to work with relevant stakeholders on the implementation
12 and ongoing administration of the ERP and certifies such designation has been provided
13 to AOC;
- 14 M. The goal of the ERP is to divert unlawful detainer cases based on nonpayment of rent
15 through effective and fair conflict resolution and alternative dispute resolution processes
16 with the assistance of an impartial Eviction Resolution Specialist (ERS) trained and
17 provided by the local DRC while ensuring tenants have access to community resources,
18 including attorney representation through the local HJP, to reach a solution that stabilizes
19 households through relationship building;
- 20 N. That *prior to* the expiration of any state and/or local eviction moratoria, the ERP will
21 encourage landlords and tenants to voluntarily participate in a structured resolution
22 process that offers a real prospect of resolving cases before they are filed in court;
- 23 O. This Standing Order is issued to specifically mandate use of the ERP *after* expiration of
24 any state and/or local eviction moratorium;
- 25 P. The successfulness of the ERP depends on mandating its use in order to divert unlawful
26 detainer cases from this court thereby ensuring all court dockets are managed effectively;
- 27 Q. The local DRC has been contractually engaged by the Administrative Office of the
28 Courts (AOC) on behalf of the Superior Court and is an integral component of the pilot
ERP.

1 NOW, THEREFORE,

2 IT IS ORDERED THAT:

3
4 2. **Order.** Prior to serving and/or filing a summons and complaint for nonpayment of rent, the
5 landlord or landlord's counsel, is:

6 A. ***Mandated to comply with*** the ERP including Tier One and Tier Two processes; and

7 B. ***Mandated to file*** the ERP DRC Certification Form attached hereto as Exhibit A at the
8 time of filing a summons and complaint with the court.

9 DATED this _____ day of _____, 2020.

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12 _____
13 The Honorable _____
14 Presiding Judge
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“Exhibit A”

EVICTIION RESOLUTION PROGRAM (ERP)

DRC CERTIFICATION: I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Date of DRC Certification	1)
City & State of DRC Certification	2)
DRC Certification Authored by:	
Print name:	
Sign name:	
Case Type	
Date case opened with DRC	
DRC Contacted Tenant (if applicable)	
DRC's First Date of Attempted Contact	
DRC's Second Date of Attempted Contact	
DRC's Third Date of Attempted Contact	
Date agreed to Mediate	
Landlord Name	
Landlord's Counsel	
Tenant Name	
Tenant's Counsel	
Meet & Confer:	<input type="checkbox"/> YES <input type="checkbox"/> NO
Scheduled Date of Meet & Confer	
Actual Date of Meet & Confer	
Name of Eviction Resolution Specialist (ERS)	
Mediation:	<input type="checkbox"/> YES <input type="checkbox"/> NO
Landlord Declined Mediation	<input type="checkbox"/> YES <input type="checkbox"/> NO
Tenant Declined Mediation	<input type="checkbox"/> YES <input type="checkbox"/> NO
Name of Eviction Resolution Specialist (ERS)	

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Early Resolution Achieved	<input type="checkbox"/> YES <input type="checkbox"/> NO
Offers:	
Landlord Agrees to Share Final Offer at Meet & Confer &/or Mediation?	<input type="checkbox"/> YES <input type="checkbox"/> NO
Final Offer: _____	

Tenant Agrees to Share Final Offer at Meet & Confer &/or Mediation?	<input type="checkbox"/> YES <input type="checkbox"/> NO
Final Offer: _____	

Date case closed with DRC	

NOTICE: **By certifying herein, the Dispute Resolution Center is not making any certification as to whether the parties acted in good faith or whether any payment offers were reasonable in light of Governor Inslee's Proclamations regarding collection of rent.*

ATTACHMENT 4

**Washington State Judicial Branch
2021 Supplemental Budget
Decision Package**

Agency: Office of Civil Legal Aid

Decision Package Title: Children’s Representation Caseload Reduction

Budget Period: 2021 Supplemental Budget

Budget Level: Policy Level

Agency Recommendation Summary Text:

Recent and projected reductions in caseloads of legally free children entitled to appointed counsel under RCW 13.34.100(6) require a downward adjustment to the FY 2021 budget. OCLA proposes to reduce FY 2021 expenditures by \$200,000. The \$200,000 includes a reduction of \$165,000 in GF-S and a corresponding reduction of \$37,200 in federal Title IV-E match funds.

Summary:

Operating Expenditures	FY 2020	FY 2021	FY 2022	FY 2023
Fund 001	\$Click here to enter text.	(\$165,000)	(\$165,000)	(\$165,000)
Fund	\$Click here to enter text.	\$Click here to enter text.	\$Click here to enter text.	\$Click here to enter text.
Total Cost	\$Click here to enter text.	(\$165,000)	(\$165,000)	(\$165,000)
Biennial Total		\$		\$
Staffing	FY 2020	FY 2021	FY 2022	FY 2023
FTEs	Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.
Revenue	FY 2020	FY 2021	FY 2022	FY 2023
Fund – Fed. IV-E	\$Click here to enter text.	(\$37,200)	(\$37,200)	(\$37,200)
Fund	\$Click here to enter text.	\$Click here to enter text.	\$Click here to enter text.	\$Click here to enter text.
Total Revenue	\$	(\$37,200)	(\$37,200)	(\$37,200)
Object of Expenditure	FY 2020	FY 2021	FY 2022	FY 2023
Obj. E	\$Click here to enter text.	(\$200,000)	(\$200,000)	(\$200,000)

Package Description:

Under RCW 13.34.100(6), dependency courts must appoint attorneys for children who remain dependent six months following termination of their parents' legal rights. Under RCW 2.53.045, the Office of Civil Legal Aid recruits and pays attorneys appointed to represent these legally free children. As outlined below, OCLA anticipates a reduction in the average number of cases through the balance of FY 2021 and into the FY 2022-23 biennium.

Current Level of Effort: If the proposal is an expansion or alteration of a current program or service, provide information on the current level of resources devoted to the program or service.

N/A

Decision Package expenditure, FTE and revenue assumptions, calculations and details:

The quarterly rolling six-month average of cases in which OCLA attorneys must be appointed has declined over the past six quarters, from a high of 1100 during the last six months of 2019 to the current level of 970 for the period April through July 2020. At an average of \$1500 per case, the projected savings is anticipated to be a little more than \$200,000 per fiscal year. We expect the new normal to continue around the 970 figure through the balance of FY 2021 and possibly FY 2022-23. We will continue to closely monitor and timely report any changes (increases or continuing decreases).

Using federal Title IV-E funds, the Department of Children, Youth, and Families reimburses OCLA for a portion of expenses for children's representation. The current reimbursement rate is 18.5%. To achieve a net reduction of \$200,000 in program expenditures, OCLA proposes to reduce FY 2021 GF-S appropriations by \$165,000, which will result in a reduction of \$37,200 in IV-E matching funds.

Decision Package Justification and Impacts**How does this package contribute to the Judicial Branch Principal Policy Objectives identified below?****Fair and Effective Administration of Justice.**

N/A

Accessibility.

N/A

Access to Necessary Representation.

The right to representation is statutory. The reduction in this decision package does not affect the availability of representation to those who qualify under RCW 13.34.100(6).

Commitment to Effective Court Management.

N/A

Sufficient Staffing and Support.

There is no impact on staffing, support, or services.

What is the impact on other state agencies?

None

What is the impact to the Capital Budget?

N/A

Is change required to existing statutes, Court rules or contracts?

No

Is the request related to or a result of litigation?

No

What alternatives were explored by the agency and why was this option chosen?

N/A

What are the consequences of not funding this request?

N/A

Other supporting materials:

[Click here to enter text.](#)

Information technology: Does this Decision Package include funding for any IT-related costs, including hardware, software, services (including cloud-based services), contracts or IT staff?

No

Yes

ATTACHMENT 5

Washington State Judicial Branch
2021 – 2023 Biennial Budget
Decision Package

Agency: Office of Civil Legal Aid

Decision Package Title: Children’s Representation Caseload Reduction

Budget Period: FY 2022-2023

Budget Level: Policy

Agency Recommendation Summary Text: [Click here to enter text.](#)

Recent and projected reductions in caseloads of legally free children entitled to appointed counsel under RCW 13.34.100(6) require a downward adjustment to the FY 2021 budget. OCLA proposes to reduce FY 2021 GF-S expenditures by \$165,000.

Summary:

Operating Expenditures	FY 2022	FY 2023	FY 2024	FY 2025
Fund	(\$165,000)	(\$165,000)	(\$165,000)	(\$165,000)
Fund	\$Click here to enter text.	\$Click here to enter text.	\$Click here to enter text.	\$Click here to enter text.
Total Cost	(\$165,000)	(\$165,000)	(\$165,000)	(\$165,000)
Staffing	FY 2022	FY 2023	FY 2024	FY 2025
FTEs	Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.
Object of Expenditure	FY 2022	FY 2023	FY 2024	FY 2025
Obj. E	(\$165,00)	(\$165,000)	(\$165,000)	(\$165,000)
Obj. X	Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.

Package Description:

Under RCW 13.34.100(6), dependency courts must appoint attorneys for children who remain dependent six months following termination of their parents’ legal rights. Under RCW 2.53.045, the Office of Civil Legal Aid recruits and pays attorneys appointed to represent these legally free children. As outlined below, OCLA anticipates the recent reduction in the average number of cases in which appointment is required will continue through into the FY 2022-23 biennium.

Current Level of Effort: If the proposal is an expansion or alteration of a current program or service, provide information on the current level of resources devoted to the program or service. Please include current expenditure authority level and FTEs.

Current expenditure authority is \$1.65M per year of which 81.5% is GF-S and 18.5% is federal Title IV-E matching funds. The Children's Representation Program has one FTE.

Decision Package expenditure, FTE and revenue assumptions, calculations and details: Clearly articulate the workload or assumptions used in calculating expenditure and revenue changes proposed.

The quarterly rolling six-month average of cases in which OCLA attorneys must be appointed has declined from a high of 1100 during the last six months of 2019 to the current level of 970 for the period April through July 2020. At an average of \$1500 per case, the projected savings is anticipated to be a little more than \$200,000 per fiscal year. We expect the new normal to continue around the 970 figure through FY 2022-23. OCLA will continue to closely monitor and timely report any changes (increases or continuing decreases).

Using federal Title IV-E matching funds, the Department of Children, Youth, and Families reimburses OCLA for a portion of expenses for children's representation. The current reimbursement rate is about 18.5%. To achieve a net reduction of \$200,000/fiscal year in program expenditures, OCLA proposes to reduce FY 2022 and FY 2023 GF-S appropriations by \$165,000 each, which will result in a reduction of \$37,200 in IV-E matching reimbursements each fiscal year.

Decision Package Justification and Impacts

How does this package contribute to the Judicial Branch Principal Policy Objectives identified below?

Fair and Effective Administration of Justice in All Civil and Criminal Cases.

N/A

Accessibility

N/A

Access to Necessary Representation

The right to representation is statutory. The reduction in this decision package does not affect the availability of appointed counsel for those who qualify under RCW 13.34.100(6).

Commitment to Effective Court Management

N/A

Appropriate Staffing and Support

N/A

What is the impact on other state agencies?

None

What is the impact to the Capital Budget?

None

Is change required to existing statutes, Court rules or contracts?

No

Is the request related to or a result of litigation?

No

What alternatives were explored by the agency and why was this option chosen?

N/A

What are the consequences of not funding this request?

Over-appropriation of state funds relative to caseload.

How has or can the agency address the issue or need in its current appropriation level?

N/A

Other supporting materials: Please attach or reference any other supporting materials or information that will further help explain this request.

None

Information technology: Does this Decision Package include funding for any IT-related costs, including hardware, software, services (including cloud-based services), contracts or IT staff?

No

Yes

ATTACHMENT 6



Washington State Office of Civil Legal Aid

1206 Quince St. SE
Olympia, WA 98504
MS 41183
360-704-4135

James A. Bamberger, Director
jim.bamberger@ocla.wa.gov

June 30, 2020

Naoko Inoue Shatz, Board Chair
Linda Inagawa, Executive Director
International Families Justice Coalition
1001 Fourth Avenue, Suite 4400
Seattle, WA 98154

RE: Conditional Notice of Intent to Terminate Contract
Options for FY 2021 IFJC State Support

Dear Ms. Shatz and Ms. Inagawa,

This letter is a Conditional Notice of Intent to Terminate and Wind-Down Contract No. PSC 20249. The letter follows up on prior correspondence making clear that the Office of Civil Legal Aid (OCLA) would not be able to continue full funding for IFJC in FY 2021. As outlined in my May 26, 2020 memorandum and later communications, critical budget circumstances call for immediate action to reduce expenditures for programs that are under-performing, fall outside of OCLA's statutory mission, or both.

Funding was initially provided to enable IFJC to achieve necessary institutional capacity to provide services on an ongoing basis without state dollars. The 2019 Legislature provided IFJC with an additional two-year period within which to achieve this objective. IFJC remains the only entity funded through OCLA that receives nearly all of its annual operating revenues from the State of Washington. This is an unsustainable situation.

In light of the current fiscal crisis and at my urging, you and Anne Daly at the King County Bar Association (KCBA) had a phone conversation some weeks ago to explore whether and, if so under what circumstances, KCBA and IFJC might work together to support current client service operations while positioning IFJC to operate more effectively as a stand-alone non-profit in the future. If my understanding is correct, this was the only conversation IFJC has had with KCBA.

Recognizing the significant overlap (while not a precise fit) between the core missions of IFJC and the KCBA Pro Bono Services Program, Ms. Daly (now acting KCBA Executive Director) has offered to "incubate" IFJC as a stand-alone program during FY 2021. IFJC Executive Director Linda Inagawa would be employed by KCBA and have an office from which to work (once offices are reopened). KCBA would extend its malpractice insurance to cover IFJC pro

bono (not low-bono) cases, and provide in-kind administrative and peer support, mentoring, etc. for Linda. IFJC would maintain its own identity, website, and e-mail address. During this period of time, client service operations would be limited, while recruitment and training of pro and low bono attorneys would continue as would efforts by the IFJC Board to secure independent private support for the program. The express objective of this incubation period is to provide IFJC breathing space so that it may grow and hopefully fledge with greater levels of sustaining private sector support and reduced levels of public support. During this time, we will expect that IFJC Board members actively cultivate corporate, philanthropic, and other sources of private sector support. That said, OCLA will not allow state funding to be used for significant resource development efforts such as IFJC's initial plan to spend \$30,000 of state money on a 2020 GALA. Such efforts should be underwritten by private sector sponsors, not state taxpayers.

The Legislature is due to reconvene in August. It will be looking for affirmative responses to the fiscal crisis and OFM's request for potential savings. OCLA will propose a reduction of \$55,000 in the budget proviso for IFJC, conditioned on execution of an agreement between IFJC and KCBA for the limited term "incubation period" outlined above. This should cover the direct salary and benefits of the IFJC Executive Director (\$78,000) as well as other essential operating expenses. This would be achieved through a direct contract between OCLA and KCBA (superseding the current contract with IFJC) and a Memorandum of Agreement between IFJC and KCBA.

Absent an agreement along these lines or some other suitable alternative hosting/incubation relationship that achieves a like savings, OCLA will ask the Legislature in August to direct that we work with IFJC to wind down state-funded operations over the course of the remaining months of this calendar year, with funding terminating December 31, 2020. I will make a determination on what action to recommend to the Legislature by July 31, 2020.

Sincerely,

OFFICE OF CIVIL LEGAL AID



James A. Bamberger
Director



Washington State Office of Civil Legal Aid

1206 Quince St. SE
Olympia, WA 98504
MS 41183
360-704-4135

James A. Bamberger, Director
jim.bamberger@ocla.wa.gov

To: Naoko Inoue Shatz, Board Chair
Linda Inagawa, Executive Director

From: Jim Bamberger

Re: Conditional Notice of Termination

Date: July 20, 2020

This memo responds to your letter of July 10, 2020. In that letter you express appreciation for the Office of Civil Legal Aid's willingness to continue to support the International Families Justice Coalition (IFJC) at a substantially reduced level. You do not appear to accept the suggestion of moving into an incubation arrangement with the King County Bar Association's Pro Bono Services Program (the substance of which would be negotiated bilaterally between IFJC and KCBA PBS). This, despite the goal of allowing IFJC to continue operating as an independent program, with full institutional identity, and the Board capacity to continue resource development efforts designed to achieve full operational independence.

While our preferred approach remains the incubation model and are happy to facilitate that conversation with KCBA PBS, we are willing to continue to contract with IFJC for FY 2021 under the following terms:

1. The face amount of the contract will be reduced to \$95,000.
2. IFJC will provide a written plan to achieve operational sustainability with state funding representing no more than sixty percent (60%) of program resources by the start of FY 2022 (July 1, 2021).
3. IFJC will submit an amended Operational Plan establishing revised attorney recruitment and client service performance targets for FY 2021.
4. IFJC will limit the use of state funding to client service-related (including attorney recruitment) and essential administrative activities.

Please advise if these terms are acceptable to you or if there are other suggestions you have to offer. As outlined in my last communication, if we cannot achieve agreement by July 31, 2020, I will have to take unilateral action.

C: Jeffrey Even, AAG

INTERNATIONAL FAMILIES JUSTICE COALITION

1001 Fourth Avenue, Suite 4400
Seattle, WA 98154
Phone: 206.849.6885

OCLA Semi-Annual Client Service Report

January 1, 2020 – June 30, 2020

1. The total number of attorneys providing low-bono or pro bono service by race/ethnicity, national origin (if not of US origin) and language fluency:

Race/Ethnicity	National Origin	Language Fluency
Asian-American	Japan	Japanese/English
American	US	Russian/English
Asian-American	US	Mandarin/Cantonese/Taishanese/English
American	US	Mandarin/Japanese/English
American	US	Mandarin/English
Asian-American	Vietnam	Vietnamese/English
American	US	English

Total number of volunteer attorneys: **Seven**

Total number of languages: **Seven**

2. The number of individuals who were screened in the prior six-month period: **29**
3. The number of individuals who were referred to a private attorney for full price service: **4**
4. The number of individuals who received limited service: **1**
5. The number of individuals who received no service: **24**
 - a. Reasons for no service:
 - i. Change of heart: **4**
 - ii. Jurisdiction outside of WA: **7**
 - iii. Scope outside of IFJC: **10**
 - iv. Qualified and currently waiting for attorney availability: **3**
6. The number of individuals who received extended direct legal representation by a low-bono or pro bono attorney: **7**
7. The number of individuals who received legal representation by in-house IFJC staff (currently defined as Board Members): **3**
8. For each case that has been closed, the outcome of the legal assistance provided as follows:
 - a. Successful referral to a pro bono or low-bono attorney:
 - b. Protection order obtained [**1**]Y []N []N/A
 - c. Financial support obtained [**2**]Y []N []N/A
 - d. Residential placement of children secured [**2**]Y []N []N/A
 - e. A description of other relief obtained: **N/A**
9. For each of the individuals included in reports required by subsections (2) through (7), identify the:
 - a. Country of origin

b. Principal language spoken

Gender	Country of Origin	Principal Language Spoken	DV
Female	Laos	Laotian	✓
Female	Mexico	Spanish	✓
Female	Japan	Japanese	
Female	Japan	Japanese	✓
Female	Japan	Japanese	
Female	Japan	Japanese	✓
Female	USA	English (spouse is foreign)	✓
Female	Vietnam	Vietnamese	✓
Female	Japan	Japanese	
Female	Ghana	Dagbani	✓
Female	Japan	Japanese	✓
Female	Japan	Japanese	
Female	India	Hindi/Urdu	✓
Female	Japan	Japanese	
Female	Japan	Japanese	
Female	Japan	Japanese	
Female	Japan	Japanese	✓
Female	Mexico	Spanish	
Female	Japan	Japanese	
Male	Japan	Japanese	✓
Female	Israel	Hebrew/English	✓
Female	USA	English (spouse is foreign)	
Female	India	Urdu	✓
Female	Mexico	Spanish	
Female	Japan	Japanese	✓
Male	India	Hindi/Urdu	✓
Female	Poland	Polish	✓
Female	India	Urdu	✓
Male	USA (Guam)	English (spouse is foreign)	

Totals:

- **29 Individuals: 26 Females, 3 Males.**
- **9 Countries**
- **10 Languages**
- **17 Domestic Violence Cases**
- **16 inquiries by email, 13 by phone**

Due to Naoko Inoue Shatz' Internet presence, all seven of the "out of jurisdiction" cases were Japanese spouses reaching out to her via IFJC. These inquiries came from outside of WA State and from international locations.

Most of the inquiries occurred before the pandemic shut down. Then, very few inquiries arrived. We discussed during a Board Meeting that perhaps many foreign spouses who are DV victims were silenced by the presence of their abusers and could not reach out to us. As expected, as the #StayHome restrictions began to lift, our inquiry rates escalated.

10. Please list any educational services provided during this period:

- **WA State Senate Law and Justice Committee on January 22nd:** Naoko Inoue Shatz and Linda Inagawa travelled to Olympia to testify in favor of Senate Bill 5984, lead-sponsored by Senator Lisa Wellman. This Bill would require all documents in cases involving divorces to be translated or interpreted for foreign-born spouses. Naoko testified giving examples of the many cases she has witnessed where, because of cultural and linguistic barriers, the outcomes were bleak due to spouses unknowingly signing away their rights. Linda testified that despite over 160 languages spoken in our state, which is the third most linguistically diverse in the nation, each WA State resident has a right to equal justice. The Bill passed unanimously.
- **IFJC Featured on KING5 *New Day Northwest* on February 5th:** Japanese Consul General “Jiro” Yamada and IFJC Co-Founder Naoko Inoue Shatz were featured on King5’s morning news talk program *New Day Northwest*. Their interview with King5’s Margaret Larson highlighted the growing issue of how foreign-born spouses become silent victims when facing divorce.
- **WA State Civil Rights and Judiciary Committee on February 26th:** Naoko Inoue Shatz and Linda Inagawa travelled once again to Olympia to testify in favor of Engrossed Substitute Senate Bill 5984, lead-sponsored by Senator Lisa Wellman. While the ESSB Bill passed it did not make it out onto the House Floor. Linda travelled one last time on March 12th to put forth best efforts, but sadly the Session ended and Bill will revisited next Session.
- **Superior Court Judges Association Educational Spring Training:** was scheduled for the morning of **April 28th** in Suncadia Resort. This training session titled, “Toolkit for Family Law Courts on Immigrant Families and Non-English Speakers” is co-sponsored by IFJC, and was approved by the WA State Minority and Justice Commission and the Superior Court Judges Association Judicial Education Committee. The topics to be covered in this presentation were scheduled to include:
 - Immigrant Issues in Family Law
 - Language & Cultural Barriers
 - Family Law Court Responsibilities under the Hague Convention
 - Vulnerable Spouses & Children
 - Procedural Barriers to Access for Immigrant Families and Non-English Speakers
 - Proposed Procedures to Reduce Impact on Vulnerable Families
 - Cultural Competence in Family Law
 - Recognizing Abuse of Process Used to Disadvantage Non-English-Speaking Parties and How to Combat It

Scheduled Panelists for this presentation included Judge Anthony Gipe, Naoko Inoue Shatz and Paige Hardy of the WSBA. Linda Inagawa would moderate.

Initially this training was postponed, and now it is cancelled. Judge Gipe will be re-applying for the 2021 SCJA Spring Training with the same materials but requesting a Plenary Session. If approved, the same prepared materials will be presented. If not approved, a plan to record the presentation will be finalized, and the recording will be made available to judicial officers.

- **Navy Ombudsmen Training:** An in-person training session which was scheduled for **May 19th** in the evening at Naval Station Everett was postponed due to the pandemic. Judge Anthony Gipe was scheduled to present this IFJC sponsored training. Linda Inagawa was scheduled to travel with him. The Navy requested to postpone instead of having a virtual educational session. They prefer in-person trainings, and now the new dates discussed are in 2021.
- **IFJC Sponsored CLE Webinar: A-Z Family Law with International Family Lens on July 10th:** We offered this free 3.5 CLE credit training via Webinar format to any one of the 3340 multilingual WA State attorneys we invited and who registered. We had 261 registrants, and the Zoom Attendance report stated 177 attendees logged in and stayed connected the entire 3 hours 45 minutes. Our presenters were Judge Anthony Gipe, Diem Chi Nguyen (a fabulous Vietnamese-speaking IFJC volunteer attorney) and Rosemarie Warren LeMoine (a gracious IFJC volunteer attorney). As of August 10th, ten attorneys who joined the CLE have signed up to become IFJC volunteers through our website “Volunteer” button, and five attorney attendees have donated \$1100.



Washington State Office of Civil Legal Aid

1206 Quince St. SE
Olympia, WA 98504
MS 41183
360-704-4135

James A. Bamberger, Director
jim.bamberger@ocla.wa.gov

To: Naoko Inoue Shatz

From: Jim Bamberger *JAB*

Re: Notice to Terminate – PSC 20249

Date: August 12, 2020

Last week you forwarded an e-mail advising that Executive Director of the International Families Justice Coalition (IFJC), Linda Inagawa, would no longer be with the organization effective August 10, 2020. We are very sorry to learn of her departure and wish her well.

As Linda's departure comes on very short notice, it compounds many of the challenges IFJC has faced since its founding. Your August 5, 2020 e-mail indicates that the IFJC Board is engaged in an active search for a replacement executive director. While we recognize that Linda's departure comes as a result of unanticipated personal circumstances, we must nevertheless acknowledge that this is the second turnover of staff leadership in the little more than two years that IFJC has been under contract with the Office of Civil Legal Aid (OCLA).

Operating on the assumption that Linda would continue as the principal employee of IFJC, we previously asked that you submit a revised Operational Plan by August 15, 2020¹. Linda's departure changes our assessment of the situation.

In little more than a year, IFJC has lost a founding and very active Board member/volunteer (Anthony Gipe) and two executive level staff members. You, as the founding Board chair, are the lone person who has been with the organization from the outset. You serve as Board Chair while maintaining a full-time private practice; leaving you with limited capacity to play an interim or longer-term administrative or operational role for the organization. IFJC has a very small (4 member) Board of Directors, all of whom are fully employed in other pursuits and have limited time to devote to governance, much less support of organizational operations.

The most recent semi-annual report (attached) indicates that IFJC received a total of 29 referrals between January and June of 2020. Four (4) of these were referred for full price service and just one (1) received limited pro bono assistance. No services were provided to 25 individuals. IFJC reports a total of just seven (7) volunteer attorneys. Our most recent information is that IFJC has just eight (8) open cases.

¹ IFJC requested an extension to August 17, 2020. Given the action taken in this memo, that request is moot.

By any objective measure, IFJC is failing to perform. Further, the short- and longer-term critical capacity vulnerabilities of IFJC are too pronounced for us to have confidence that it can achieve the level of operational and client service performance promised to and envisioned by the Legislature when it appropriated funding for this program.

Consequently, and acting in our capacity as trustee of limited state taxpayer funding, we have no choice but to issue this Notice to Terminate the contract and direct that IFJC cease state-funded operations effective September 30, 2020. To this end, we direct that IFJC not use state funding to accept or support any new cases; and that it wind down its state-funded client service operations by that date. IFJC may not use state funding to hire permanent staff. IFJC may use state funding to contract with a third party to provide interim administrative management to facilitate the wind-down and close-out process. To the extent that termination of state-funded activities may require transfer of existing cases, IFJC will take such actions necessary to protect the legal rights of its clients and actively assist with the effective transfer of cases consistent with the requirements of the Washington Rules of Professional Conduct (RPC's).

INTERNATIONAL FAMILIES JUSTICE COALITION

August 15, 2020

To: Jim Bamberger of OCLA

From: Alice Bagirova

Re: Notice to Terminate – Request for Reconsideration

Dear Jim,

This letter is in response to your August 12, 2020 Notice to Terminate . We are shocked by the sudden unilateral decision to terminate our contract with the Office of Civil Legal Aid (OCLA). The IFJC Board Members have been working hard towards an agreement with the terms set forth by your office on July 31, 2020. According to the letter, OCLA requested IFJC to submit a revised Operational Plan by August 15, 2020. The Chair of our Board requested an extension until August 17, 2020. We never received a response from you but instead received your Notice to Terminate before the deadline set by you. We respectfully request that you reconsider OCLA's decision to terminate IFJC.

You mentioned concerns about Linda's sudden departure as indicative of high turnover in staff leadership and as impetus for changing your assessment of the situation. Please do not hastily decide that this organization is unable to function given this unfortunate, but unexpected circumstance. Although we are incredibly sad to see Linda leave, our board responded swiftly to this loss and immediately began to initiate steps to fill her role. Our Board has four incredibly dedicated minority women lawyers that have all agreed to work together to share administrative responsibilities in the interim as the organization finds a new Executive Director. We already interviewed a very competent candidate at a reduced salary; we are in the process of offering this position with a September 1 start date right as we received your notice.

You also mention that the semi-annual report provided illustrates a failure by IFJC to perform. We respectfully disagree. We reviewed the work plan submitted to OCLA in June 2019. This work plan was created to target our biennium goals for 2019- 2021, but you were narrowly focused only on the period of January-June 2020. When we looked into our annual report for July 2019- June 2020, we found out that we currently have 29 volunteer attorneys signed up (13 volunteers were not included in Linda's latest report). We had 8 cases that were fully represented throughout the case by low bono clients (For some reason, Linda categorized these clients as ones for full price services, but they are in fact receiving services at the hourly rates of \$30-\$80.). We have 3 cases with limited services. Furthermore, we have 3 additional new cases that are recently being handled. Although the number of clients does not coincide with the number targeted in each category laid out in our work plan, the number of all cases we handled in the year of Jul 2019- June 2020 is very close to the half of the number targeted for our biennium goal. The only item we could not meet this past year was to raise \$50,000 from private donors.

As you are aware, many of our clients are domestic violence victims and do not have the resources or language skills to navigate the legal arena. The socio-economic impact our clients face significantly affects their access to justice-related resources and those inequalities have been exacerbated in this global

pandemic. The stay-at-home orders and the limitations to travel has detrimentally affected the ability of victims to seek legal assistance for dissolutions and protective orders. We anticipate the number of clients seeking legal assistance will only increase in the coming months. We currently have 14 cases served by volunteer attorneys. Without funding from the state that allows IFJC to administer the operation, these clients would lose access to counsel immediately.

We held a very successful CLE on July 10 where we had 251 attorneys (256 were registered) from all over Washington and as far as Vienna, and this CLE was a great recruiting tool for new volunteers. We have continued to have more volunteer attorneys on a daily basis, particularly after this CLE.

We are a dedicated group of minority women board members who serve the underrepresented, and we are invested in the missions of IFJC. We believe that with your support, this organization will grow and continue to serve the needs of immigrants in the complicated family law legal system. We ask that you reconsider your decision and allow us to continue under the terms laid out by your letter on August 31, 2020.

Sincerely,

A handwritten signature in blue ink, appearing to read 'AB', is positioned below the text 'Sincerely,'.

Alice Bagirova

Board of Director of IFJC

Cc: Mei Shih, Paige Hardy, and Naoko Inoue Shatz



Washington State Office of Civil Legal Aid

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James A. Bamberger, Director
jim.bamberger@ocla.wa.gov

To: Legislative Leaders and Budget Writers

From: Jim Bamberger

Re: International Families Justice Coalition – Notice of Termination

Date: August 18, 2020

I write to advise that the Office of Civil Legal Aid (OCLA) has taken the extraordinary action of terminating our client service contract with the International Families Justice Coalition (IFJC). This action was taken after extensive efforts to address longstanding sub-par performance by IFJC relative to both legislative expectations and performance targets set forth in its contract with OCLA.

By way of background, IFJC first sought and secured a budget proviso appropriating \$125,000 in capacity development funding in the FY 2018 supplemental budget. The Legislature assigned administration of the contract to OCLA. In the FY 2019-21 budget, the Legislature increased funding to \$150,000 per fiscal year and established such funding level as part of OCLA's carryforward budget. Neither proviso was requested by OCLA as part of the agency's FY 2018 supplemental or FY 2019-21 biennial budget submissions.

As outlined in the attached August 12, 2020 Notice of Termination, OCLA has long had concerns about IFJC's critical capacity and related performance. Following receipt of OFM's request to find operational savings and reduce expenditures outside of the agency's core mission, OCLA began a series of conversations with IFJC leadership. Most recently, we encouraged IFJC to enter into an organizational incubation relationship with the King County Bar Association's Pro Bono Services Program (KCBA PBS). Under such an agreement, KCBA PBS would host and support the IFJC staff director at least through the end of this biennium. OCLA offered to facilitate such conversations. KCBA PBS leadership offered to serve in such a role. However, after two remote conversations with KCBA PBS leadership, IFJC's founding board member declined the proposed incubator relationship; opting instead to remain operating as an independent stand-alone organization.

On August 5th, OCLA was informed that the IFJC staff director (and only staff member) would be leaving effective August 10th. This was the second staff leadership turnover during the two-year period of OCLA's support for the organization. On August 10th, OCLA received a late-filed semi-annual client service report (attached). That report confirmed OCLA's concerns about the organization's lack of critical capacity to meet either legislative or contracted client service

performance targets. Specifically, it showed that during the period January to June 2020, IFJC staff handled 29 referrals/requests for assistance. Of these 24 were not accepted for service, 4 were accepted for compensated service (we are advised that these are being handled at below-market rates) and that one (1) was provided limited pro bono assistance.

In light of the budget crisis facing our state, the very limited level of services being provided, and OCLA's assessment of IFJC's inability to achieve critical client service and administrative capacity, OCLA determined it necessary to terminate the contract, and wind down state funded services effective September 30, 2020. OCLA also determined that it would ask the Legislature to remove the budget proviso in its appropriation (beyond expenses incurred through September 30, 2020) in the next FY 2021 supplemental budget and to ask that the ongoing support be removed from OCLA's FY 2022-23 carryforward budget.

While regrettable, we believe that we had no choice under the totality of the circumstances but to take this action. I am available to share additional information should you require it.

CC: Gaius Horton, Garry Austin OFM



Washington State Office of Civil Legal Aid

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James A. Bamberger, Director
jim.bamberger@ocla.wa.gov

August 27, 2020

Alice Bagirova, IFJC Board Member
Northwest Law Group
11900 NE 1st Street, Suite 300
Bellevue, WA 98005

Re: IFJC Contract Termination

Dear Ms. Bagirova,

I want to thank you and your fellow board members for reaching out and questioning the apparent abruptness of our decision to terminate the contract effective September 30, 2020. This responds to your memorandum dated August 15, 2020.

I assure you that our concerns about organizational viability long predated the decision to terminate the contract and have been shared with IFJC leadership – both during the contract and work plan negotiation phase and since. Unfortunately, the unanticipated loss of Linda Inagawa (for unforeseen personal reasons) and the prospect of yet another change in organizational staffing forced our hand.

IFJC's performance has never come close to meeting client service or attorney engagement expectations. Even accepting in the most generous manner possible the client service and other representations outlined in your memo, it is our judgment that IFJC is not now and, with the prospect of another change in staffing, will not in the near future capable of meeting these basic organizational objectives.

After an initial capacity development grant in the FY 2018 supplemental budget, the Legislature appropriated \$150,000 per year in the FY 2019-21 operating budget to help IFJC move from a new and aspiring to a fully functional client service organization. While COVID-19 has had a negative impact of IFJC's ability to fully transition from the former to the latter, we concluded that with yet another change in organizational staffing, IFJC will not be in the position contemplated either by the Legislature or OCLA by the end of the biennium.

IFJC remains almost entirely supported by taxpayer funds. IFJC provides legal assistance to very few clients. IFJC has demonstrated an unwillingness to integrate its services with those provided through established civil legal aid organizations affiliated with the Alliance for Equal

Re: IFJC Contract Termination

8/27/2020

Page 2 of 2

Justice. IFJC declined the opportunity to establish an “incubator” relationship with the King County Bar Association’s Pro Bono Services Program. It offered no other suggestions or relationships that would position it to achieve critical operating capacity by the end of the biennium.

Washington State faces a nearly \$9B revenue shortfall and a corresponding budget crisis of unprecedented magnitude. OCLA has been directed by the Office of Financial Management to identify savings from programs that fall outside of core areas of agency mission.

IFJC’s program is not part of OCLA’s core mission and is not funded as part of the statewide civil legal aid program. Low-income foreign nationals have been and continue to be eligible for civil legal assistance from a range of existing legal aid programs. While the idea of IFJC engaging and training linguistically and culturally competent attorneys to assist foreign nationals with family related legal problems holds promise for some, the expenditure of limited taxpayer funds over the past two-plus years has returned very limited results. And, while in another time an organization like IFJC might have had a chance to compete for scarce private and philanthropic funds, current circumstances place it in a position where, in the middle of the COVID-19 crisis, it must compete for scarce private legal aid funding with other more effectively capitalized civil legal aid programs that provide a broader spectrum of relevant legal aid services.

Under the totality of the circumstances, OCLA determined it best to terminate the contract now, save scarce state taxpayer dollars, and focus efforts on ensuring that low-income foreign nationals receive legal help from existing and established legal aid providers. We have advised legislative leadership and budget writers of the action we have taken and will be submitting appropriate budget reduction proposals for the FY 2021 supplemental and FY 2022-23 operating budgets.

We regret the need to have taken this action but stand by it.

Sincerely,

OFFICE OF CIVIL LEGAL AID

James A. Bamberger, Director

C: Jeffrey Even, AAG

ATTACHMENT 7

**Washington State Judicial Branch
2020 Supplemental Budget
Decision Package**

Agency: Office of Civil Legal Aid

Decision Package Title: Eliminate dedicated funding for International Families Justice Coalition

Budget Period: 2021 Supplemental Budget

Budget Level: Policy Level

Agency Recommendation Summary Text:

Funding is eliminated to implement sec. 115(5) of ch. 357, Laws of 2000 (FY 2019-21 supplemental operating budget due to inability of the designated recipient to meet basic client service and capacity development performance objectives.

Summary:

Operating Expenditures	FY 2020	FY 2021	FY 2022	FY 2023
Fund 001	\$Click here to enter text.	(\$100,000)	(\$150,000)	(\$150,000)
Fund	\$Click here to enter text.	\$Click here to enter text.	\$Click here to enter text.	\$Click here to enter text.
Total Cost	\$Click here to enter text.	(\$100,000)	(\$150,000)	(\$150,000)
Biennial Total		\$		\$
Staffing	FY 2020	FY 2021	FY 2022	FY 2023
FTEs	Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.
Revenue	FY 2020	FY 2021	FY 2022	FY 2023
Fund	\$Click here to enter text.	\$Click here to enter text.	\$Click here to enter text.	\$Click here to enter text.
Fund	\$Click here to enter text.	\$Click here to enter text.	\$Click here to enter text.	\$Click here to enter text.
Total Revenue	\$	\$	\$	\$
Object of Expenditure	FY 2020	FY 2021	FY 2022	FY 2023
Obj. E	\$Click here to enter text.	(\$100,000)	(\$150,000)	(\$150,000)

Package Description:

The Office of Civil Legal Aid (OCLA) asks that the Legislature eliminate line item funding for the International Families Justice Coalition (IFJC). Initially funded with a \$125,000 capacity development budget proviso in the 2018 supplemental operating budget, the designated funding for IFJC was continued and increased to \$150,000 per fiscal year in the FY 2019-21 operating budget. While it had lofty objectives, over the course of more than two years, IFJC has not been able to demonstrate the capacity to meet legislative and contractual client service objectives. Because of this and repeated staff turnover, OCLA terminated the contract effective September 30, 2020. Services to the low-income component of the target demographic should be underwritten with general legal aid funding and delivered by established legal aid service providers.

Current Level of Effort: If the proposal is an expansion or alteration of a current program or service, provide information on the current level of resources devoted to the program or service.

This decision package seeks legislative confirmation of OCLA's termination of a legislatively designated but non-performing civil legal aid project.

Decision Package expenditure, FTE and revenue assumptions, calculations and details:

N/A

Decision Package Justification and Impacts

How does this package contribute to the Judicial Branch Principal Policy Objectives identified below?

Fair and Effective Administration of Justice.

N/A

Accessibility.

N/A

Access to Necessary Representation.

As the IFJC was unable to significantly expand services to the target demographic after more than two years of state support, OCLA terminated the contract effective September 30, 2020. Services to low-income foreign nationals with family related problems will need to be provided by existing, well-established civil legal aid providers.

Commitment to Effective Court Management.

N/A

Sufficient Staffing and Support.

N/A

What is the impact on other state agencies?

N/A

What is the impact to the Capital Budget?

N/A

Is change required to existing statutes, Court rules or contracts?

Yes. Sec. 115(5) of ch. 357, Laws of 2020 (FY 2019-21 supplemental operating budget) should be eliminated.

Is the request related to or a result of litigation?

No

What alternatives were explored by the agency and why was this option chosen?

Non-profit agency's inability to meet performance expectations.

What are the consequences of not funding this request?

N/A

Other supporting materials:

[Click here to enter text.](#)

Information technology: Does this Decision Package include funding for any IT-related costs, including hardware, software, services (including cloud-based services), contracts or IT staff?

No

Yes

Washington State Judicial Branch
2021 – 2023 Biennial Budget
Decision Package

Agency: Office of Civil Legal Aid

Decision Package Title: Eliminate dedicated funding for International Families Justice Coalition

Budget Period: FY 2022-23 biennium

Budget Level: Policy

Agency Recommendation Summary Text: [Click here to enter text.](#)

Dedicated funding for the International Families Justice Coalition (IFJC) is removed from carryforward level due to its inability to meet basic client service and capacity development performance objectives.

Summary:

Operating Expenditures	FY 2022	FY 2023	FY 2024	FY 2025
Fund	(\$150,000)	(\$150,000)	(\$150,000)	(\$150,000)
Fund	\$Click here to enter text.	\$Click here to enter text.	\$Click here to enter text.	\$Click here to enter text.
Total Cost	\$Click here to enter text.	\$Click here to enter text.	\$Click here to enter text.	\$Click here to enter text.
Staffing	FY 2022	FY 2023	FY 2024	FY 2025
FTEs	Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.
Object of Expenditure	FY 2022	FY 2023	FY 2024	FY 2025
Obj. E	(\$150,000)	(\$150,000)	(\$150,000)	\$150,000)
Obj. X	Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.

Package Description:

The Office of Civil Legal Aid (OCLA) asks that the Legislature eliminate funding for the International Families Justice Coalition (IFJC) from its carryforward level. Initially funded with a \$125,000 capacity development budget proviso in the 2018 supplemental operating budget, funding for IFJC was continued and increased to \$150,000 per fiscal year through a budget proviso in the FY 2019-21 operating budget (sec. 115(5), ch. 357, Laws of 2020). While IFJC had lofty objectives to serve foreign nationals in need of legal assistance in family law cases, over the course of more than two years, it never achieved sufficient organizational capacity (including financial support from sources other than the state of Washington) to meet legislative and contractual client service

objectives. Because of this and repeated turnover of its single staff employee, OCLA terminated the contract effective September 30, 2020. OCLA believes that services to the low-income component of the target demographic should be underwritten with general legal aid funding and delivered by established legal aid service providers.

Current Level of Effort: If the proposal is an expansion or alteration of a current program or service, provide information on the current level of resources devoted to the program or service.

This decision package seeks legislative confirmation of OCLA's termination of a legislatively designated but non-performing civil legal aid project.

Decision Package expenditure, FTE and revenue assumptions, calculations and details: Clearly articulate the workload or assumptions used in calculating expenditure and revenue changes proposed.

N/A

Decision Package Justification and Impacts

How does this package contribute to the Judicial Branch Principal Policy Objectives identified below?

Fair and Effective Administration of Justice in All Civil and Criminal Cases.

N/A

Accessibility

N/A

Access to Necessary Representation

As the IFJC was unable to significantly expand services to the target demographic after more than two years of state support (and without any meaningful level of private financial support), OCLA terminated the contract effective September 30, 2020. Services to low-income foreign nationals with family related problems will need to be provided by existing, well-established civil legal aid providers.

Commitment to Effective Court Management

N/A

Appropriate Staffing and Support

N/A

What is the impact on other state agencies?

None

What is the impact to the Capital Budget?

None

Is change required to existing statutes, Court rules or contracts?

No

Is the request related to or a result of litigation?

No

What alternatives were explored by the agency and why was this option chosen?

This option was chosen as a result of the non-profit organization's failure to meet designated organizational capacity and client service objectives and OCLA's assessment of its continuing inability to do so.

What are the consequences of not funding this request?

Limited impact on access to the low-income component of the target client population.

How has or can the agency address the issue or need in its current appropriation level?

Family law services to low-income foreign nationals can and should be provided through well-established existing legal aid providers using base level funding.

Other supporting materials: Please attach or reference any other supporting materials or information that will further help explain this request.

[Click here to enter text.](#)

Information technology: Does this Decision Package include funding for any IT-related costs, including hardware, software, services (including cloud-based services), contracts or IT staff?

No

Yes

ATTACHMENT 8

Washington State Judicial Branch
2021 – 2023 Biennial Budget
Decision Package

Agency: Office of Civil Legal Aid

Decision Package Title: Maintain COVID-19 Pandemic Legal Aid Services

Budget Period: FY 2022-2023

Budget Level: Policy

Agency Recommendation Summary Text: Funding is requested to continue front-line emergency civil legal aid services for individuals and families adversely affected by the COVID-19 pandemic.

Summary:

Operating Expenditures	FY 2022	FY 2023	FY 2024	FY 2025
Fund	\$5,440,000	\$5,000,000	\$3,000,000	\$3,000,000
Fund	\$Click here to enter text.	\$Click here to enter text.	\$Click here to enter text.	\$Click here to enter text.
Total Cost	\$Click here to enter text.	\$Click here to enter text.	\$Click here to enter text.	\$Click here to enter text.
Staffing	FY 2022	FY 2023	FY 2024	FY 2025
FTEs	1	1	1	1
Object of Expenditure	FY 2022	FY 2023	FY 2024	FY 2025
Obj. E	\$5,440,000	\$5,000,000	\$3,000,000	\$3,000,000
Obj. X	Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.

Package Description:

From the very start, Governor Inslee, OFM leadership, state and local agency leads, and legislative leaders recognized the importance of making civil legal aid services available to individuals and families affected by the COVID-19 pandemic. By May 30th, \$3M in state Disaster Response Account and \$2.38M in federal Coronavirus Relief Funds (CARES Act) funding had been allocated to support emergency civil legal assistance in five core areas of impact: (a) unemployment insurance, (b) eviction and foreclosure defense, (c) family and individual safety, (d) employment, and (e) economic security. Of the \$2.38M in CARES Act funding, \$2.13M was allocated by OFM and \$250,000 in foreclosure assistance funding was made available through an interagency agreement between OCLA and the Department of Commerce. By mid-July, OCLA had executed all necessary contracts and launched the state’s comprehensive COVID-19 civil legal aid response.

The social, health, and economic impacts of the COVID-19 pandemic will not go away soon; they will long be felt by Washington residents – especially those that threaten basic legal rights and create or exacerbate pandemic-related civil legal problems. It is therefore critical to the health and safety of those most affected by the COVID-19 emergency – and to Washington state and local communities around the state -- to maintain support for these front-line emergency civil legal aid services. This decision package seeks \$11M in FY 2022-23 to (a) maintain, (b) allow for flexible adjustment of, (c) expand to include a dedicated foreclosure defense component, and (d) and begin to wind down COVID-19 related emergency civil legal aid services as the need for such services ebbs.

Current Level of Effort: If the proposal is an expansion or alteration of a current program or service, provide information on the current level of resources devoted to the program or service. Please include current expenditure authority level and FTEs.

OCLA manages and oversees three core programs, two of which are state-funded and one of which is supported with federal Victims of Crime Act (VOCA) funds. Including a temporary .25% FTE managing the COVID-19 Unemployment Insurance Claimant Representation Program, OCLA has a total of 3.25 state-supported FTE's. One FTE is supported entirely with federal VOCA funds. Including the \$10M biennial VOCA funds, OCLA administers and oversees \$55.4M in state and federal funding during the FY 2019-21 biennium.

With DRA and federal CARES Act funding, OCLA stood up a comprehensive and coordinated emergency statewide response targeted on the most urgent and immediate civil legal problems experienced by individuals and families affected by the COVID-19 public health emergency, and the economic, health, housing, and related consequences of initial and continuing emergency orders. An outline of the services engaged, their focus, and the entities involved is set forth in the attached July 28, 2020 Interim Report (Attachment 1).

Decision Package expenditure, FTE and revenue assumptions, calculations and details: Clearly articulate the workload or assumptions used in calculating expenditure and revenue changes proposed.

Even assuming the development and prompt deployment of a safe vaccine sometime in 2021 and a gradual return of economic activity thereafter, COVID-19 related civil legal needs will continue well into the next biennium and beyond. A more detailed description of these needs with reference to supporting data sources is attached (Attachment 2).

Consequently, OCLA will maintain critically needed front-line legal aid services in the principal areas currently supported with one-time DRA and CARES Act funding. With the lifting of state and local moratoria on evictions and federal protections for homeowners unable to keep up with their mortgage payments, eviction¹ and foreclosure

¹ A portion of continued eviction defense services will be continued in FY 2022 through re-appropriation of \$568,000 in unspent FY 2020-21 funding previously appropriated for an eviction defense study that was

defense will remain priority areas of emergency legal aid focus. So, too, will unemployment insurance as many thousands of Washingtonians will continue to struggle with un- and under-employment and challenges navigating ESD's labyrinth-like review and adjudication systems. The pandemic-related increase in both the numbers and lethality of incidents of domestic violence and sexual assault will require sustained responses as well. In addition, many new types of problems will be experienced including those involving worker health and safety, employment and re-employment discrimination, health care, consumer debt collection and related problems, and a range of problems related to protecting income security for those newly finding themselves at or near the margins. Finally, national and state experts agree that over the near- and longer-term poverty rates will increase dramatically and with them, the need for full-range legal assistance in each of the priority areas outlined in the FY 2015 Civil Legal Needs Study.

As the legal problems that flow from the pandemic and its echoes change over time, so will the specific investments in legal aid capacity be required to change. Consequently, OCLA seeks funding that is dedicated to continuing COVID-19 related emergency legal assistance in ways that allow agile, flexible, and relevant responses informed by demand data and information received from community-based legal aid program staff involved in the direct delivery of these services.

Of the funds sought, OCLA will allocate \$750,000 each fiscal year to help capitalize capacity to provide emergency COVID-19 related foreclosure defense services not yet funded with federal and state emergency COVID-19 funds. This will allow the Northwest Justice Project to add 5 full-time dedicated attorneys to help address the anticipated flood of foreclosures that will result from the lifting of federal forbearance protections and the lack of any meaningful federal or state-funded foreclosure defense program.²

Consistent with the current emergency civil legal aid program, COVID-19 services delivered in FY 2022-23 will be targeted to address the needs of communities that experience disproportionate numbers of legal problems and correspondingly high levels of need for civil legal aid as a result of the pandemic – low-wage and “essential” (including immigrant) workers who more often than not lack health insurance, members of communities of color, urban and reservation-based Native Americans, and others most vulnerable to experiencing and least able to respond to COVID-19 related legal problems.

As noted above, OCLA has only 3.25 state-funded employees. While the initial COVID-19 emergency civil legal aid program was developed, contracted, and managed for the most part by the agency Director, this is not sustainable.³ OCLA must add one

terminated on legislative direction because the eviction moratoria effectively prevented evictions through the end of CY 2020. A separate decision package is submitted for this purpose.

² This will begin to address the critical shortfall in funding for civil legal aid services generated through the Foreclosure Fairness Account to meet the unprecedented number of Notices of Default that are forecasted by the industry to be issued in the spring of 2021.

³ The Legislature was advised during the FY 2020 session that, even before COVID-19, OCLA staffing placed the agency at high risk of failure and that additional executive leadership was needed. While the House budget

professional position to take over day-to-day administration and oversight of the COVID-19 emergency civil legal aid program.

Decision Package Justification and Impacts

How does this package contribute to the Judicial Branch Principal Policy Objectives identified below?

Fair and Effective Administration of Justice in All Civil and Criminal Cases.

Many of the pandemic related civil legal problems must be addressed in our courts. Among these are eviction, family law, domestic violence, sexual assault cases, debt collection, garnishment and related consumer cases. Civil legal aid is critical to their ability to protect their rights, their homes, their safety and fair treatment in the courts and just outcomes in their cases. In many other cases, timely and effective civil legal aid will help mitigate the problem from spiraling out of control in ways that drive other problems for which court intervention will be required.

Accessibility

Pandemic related legal problems disproportionately affect individuals and communities that experience a range of obstacles to accessing the courts. These include, but are not limited to, members of communities of color, LGBTQ+ individuals, LEP individuals, foster children and youth, individuals with physical and behavioral health challenges, and immigrants. The availability of culturally and linguistically competent civil legal aid facilitates access to and the fairness of treatment in our courts for these individuals.

Access to Necessary Representation

Since publication of the 2015 Civil Legal Needs Study, the Legislature, judicial branch, and other policy makers have increasingly recognized the need for a robust civil legal aid system to meet the justice needs of low-income people in Washington State. The COVID-19 emergency has brought the urgency of ensuring access to necessary representation into greater focus across the spectrum of pandemic-related legal problems. Absent continuing support for COVID-19 related legal assistance, many thousands of affected individuals will be forced to navigate the courts and court systems by themselves. Justice will be scarce; and public trust and confidence will fall precipitously as more and more people realize outcomes inconsistent with their legal rights on matters that affect their most basic needs.

Commitment to Effective Court Management

N/A

Appropriate Staffing and Support

N/A

What is the impact on other state agencies?

provided funding for a Deputy Director, the final budget did not. A letter to the Legislature from consultants engaged by OCLA to review the agency's staffing situation and outlining their concerns is attached.

Every day OCLA-funded legal aid attorneys are engaged with and help promote core state policies being advanced by state and local agencies. From ensuring that unemployment decisions are based on sound grounds and individuals timely receive their benefits to ensuring accountability of schools to their duties to meet the educational needs of children and youth, to helping individuals access state and federal disability and income assistance, to working with law enforcement agencies to protect the safety and security of domestic violence and sexual assault victims, civil legal aid programs, staff, and volunteers complement core state and local objectives and ensure accountability of the agencies entrusted to deliver on them.

Absent continuation of COVID-19 emergency legal aid funding, many thousands of individuals and families will be wrongly evicted; thousands of homeowners will wrongly be foreclosed upon; debt collectors will prey on those unable to pay health care, consumer, and other debts, and wrongly garnish what few wages they receive; and so many more will find themselves on the brink of homelessness and economic calamity – all because of a small, unseen virus. This in turn will increase demand on overtaxed and under-capitalized homeless prevention programs, staff, and volunteers; and increase demand for state income, housing, health care, and food assistance.

State and local agencies look to civil legal aid programs, staff, and volunteers as the front-line defense to these negative outcomes and protection against unnecessary demands on their already under-funded services.

What is the impact to the Capital Budget?

NA

Is change required to existing statutes, Court rules or contracts?

No

Is the request related to or a result of litigation?

No

What alternatives were explored by the agency and why was this option chosen?

From the start of the pandemic, OCLA diligently identified and pursued all available sources of COVID-19 emergency assistance. We were able to secure both state and federal emergency support to make front-line legal aid available to individuals and families with COVID-19 related or caused civil legal problems. We will continue to monitor the federal response to the pandemic and pursue every source of federal support that becomes available, with the goal of reducing demands on the state general fund during this unprecedented economic and fiscal emergency.

What are the consequences of not funding this request?

Failure to fund this decision package will effectively terminate the COVID-19 emergency civil legal aid program. As noted above, this will result in direct and immediate negative consequences to thousands of individuals and families across the state – the majority of whom have never needed publicly funded help in the past and who, for the first time, are reaching out in a moment of dire need. For these people, civil legal aid services is a lifeline, helping carry them from the urgency and fears in their moment of life and legal

crisis to a more stable situation as the most dire impacts of the pandemic-driven crisis recede. Taking away this lifeline serves no affirmative public purpose.

How has or can the agency address the issue or need in its current appropriation level?

Despite recent gains, current levels of civil legal aid capacity remain below the “minimum access” level established by the 2016 Civil Justice Reinvestment Plan and embraced by the Legislature over the past four years. This level was never designed to address the succession of waves of new and exacerbated civil legal needs caused by the COVID-19 pandemic. Continuation of emergency funding is critical to the civil legal aid system’s continuing capacity to meet the emergency needs funded initially with state DRA and federal CARES Act support.

Other supporting materials: Please attach or reference any other supporting materials or information that will further help explain this request.

Documents attached: (a) Interim Report on Emergency COVID-19 Legal Aid Response, and (b) Outline of high priority COVID-19 related civil legal needs, (c) 2-28-2020 letter from Marcella Fleming Reed and Lori Homer re: OCLA agency staffing capacity.

DRAFT

Information technology: Does this Decision Package include funding for any IT-related costs, including hardware, software, services (including cloud-based services), contracts or IT staff?

- No
- Yes

DRAFT

ATTACHMENT 9

Washington State Judicial Branch
2021 – 2023 Biennial Budget
Decision Package

Agency: Office of Civil Legal Aid

Decision Package Title: Re-Appropriate and Re-Purpose Eviction Representation Study Funding

Budget Period: FY 2022

Budget Level: Policy

Agency Recommendation Summary Text: Funding previously appropriated for a comparative eviction representation study is re-appropriated for the purpose of providing expanded eviction defense services in FY 2022.

Summary:

Operating Expenditures	FY 2022	FY 2023	FY 2024	FY 2025
Fund	\$568,000	0	0	0
Fund	Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.
Total Cost	Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.
Staffing	FY 2022	FY 2023	FY 2024	FY 2025
FTEs	Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.
Object of Expenditure	FY 2022	FY 2023	FY 2024	FY 2025
Obj. E	\$568,000	0	0	0
Obj. X	Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.

Package Description:

On the recommendation of Senate and House policy leads, the Office of Civil Legal Aid asks that unexpended appropriations for the eviction legal representation study authorized in sec. 117(9), Ch. 415, Laws of 2019 (the FY 2019 – 2021 operating budget be re-appropriated are targeted for use exclusively to expand eviction defense services following the termination of relevant state and federal eviction moratoria.

As noted above, the Legislature appropriated funds in the FY 2019-21 operating budget for a research-based controlled comparative study of the differences in outcomes for

tenants facing eviction who receive legal representation and tenants facing eviction without legal representation in unlawful detainer cases. OCLA engaged the researchers at the University of Washington's Evans School of Public Policy and Governance to conduct the study in four counties. Protocols were developed, agreements reached with each of the study counties, contracts with attorneys signed, and the study officially commenced in January 2020.

The COVID-19 pandemic hit in February. Shortly thereafter, eviction moratoria were enacted and extended, and the courts ceased hearing eviction cases. On recommendation of the research team, the Eviction Representation Study Advisory Committee suspended the study through May 31st. By then the entire context for the study had changed. The eviction moratoria had been extended and there was limited prospect that courts would be hearing eviction cases until well into the fall at the earliest. At the same time OFM had allocated one-time funding to OCLA for the purpose of providing emergency eviction defense services to individuals facing eviction due to non-payment of rent. Consequently, on direction of the legislative sponsors of the study proviso – Sen. Patty Kuderer and Rep. Nicole Macri – the study was discontinued.

Of the \$625,000 appropriated for the study, only \$57,000 was spent before the study was terminated, leaving \$568,000 available for re-appropriation to help continue emergency eviction defense services into FY 2022.

Funding of this decision package will effectively reduce the amount of new (not previously appropriated funding) to continue emergency COVID-19 related eviction defense services into the FY 2022-23 biennium.

Current Level of Effort: If the proposal is an expansion or alteration of a current program or service, provide information on the current level of resources devoted to the program or service. Please include current expenditure authority level and FTEs.

Re-appropriation these funds for eviction defense services in FY 2022 will help ensure continuity of eviction defense services beyond FY 2021 when current emergency COVID-19 expenditure authority expires.

Decision Package expenditure, FTE and revenue assumptions, calculations and details: Clearly articulate the workload or assumptions used in calculating expenditure and revenue changes proposed.

Funding will be dedicated to continuing contracted eviction defense services in FY 2022 with emphasis on remote and rural renters not currently served by the ten Housing Justice Projects funded with COVID-19 emergency funds. This decision package complements and should be read in tandem with OCLA's decision package to maintain emergency COVID-19 civil legal aid services – including eviction defense services -- in FY 2022-23.

Decision Package Justification and Impacts

How does this package contribute to the Judicial Branch Principal Policy Objectives identified below?

Fair and Effective Administration of Justice in All Civil and Criminal Cases.

Civil legal representation of tenants facing eviction will provide a level playing field and ensure their ability to have their cases heard on the merits.

Accessibility

Continued eviction defense legal assistance will help ensure that residents of rural communities and others with significant cultural, language, and geographic barriers will continue to be assisted after expiration of emergency COVID-19 expenditure authority on June 30, 2021. Re-appropriation of these funds will enhance accessibility and availability of services to these tenants.

Access to Necessary Representation

Funding will support continued access to civil legal representation for many people who, in the early part of FY 2022, will be facing eviction due to non-payment of rent.

Commitment to Effective Court Management

N/A

Appropriate Staffing and Support

N/A

What is the impact on other state agencies?

N/A

What is the impact to the Capital Budget?

N/A

Is change required to existing statutes, Court rules or contracts?

No

Is the request related to or a result of litigation?

No

What alternatives were explored by the agency and why was this option chosen?

This request is submitted on recommendation of the majority party policy leads in both the House and Senate. The alternative is for unexpended study funding to revert back to the state treasury. Funding of this decision package will reduce the need to appropriate new funding to continue emergency COVID-19 civil legal aid services in FY 2022 by \$568,000.

What are the consequences of not funding this request?

There will be less legal assistance available for tenants at a time when demand will skyrocket due to the termination of federal and state eviction moratoria.

How has or can the agency address the issue or need in its current appropriation level?

N/A

Other supporting materials: Please attach or reference any other supporting materials or information that will further help explain this request.

N/A

Information technology: Does this Decision Package include funding for any IT-related costs, including hardware, software, services (including cloud-based services), contracts or IT staff?

- No
- Yes