

# Right to Counsel for Indigent Tenants: Implementation Plan

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Washington State Office of Civil Legal Aid

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# 1. Introduction and Overview

The Washington State Legislature passed and on April 22, 2021 Governor Inslee signed 2ESSB 5160 ([ch. 115, laws of 2021](#))(hereafter referred to as SB 5160). This landmark legislation resulted in several significant structural changes in the way judicial eviction proceedings (legally characterized as “unlawful detainer proceedings”) are handled. Among the significant changes is the establishment of a right to legal representation (Right to Counsel (RTC)) for indigent tenants and a corresponding duty imposed on the superior courts to appoint counsel for indigent tenants in these proceedings. The bill became effective upon the Governor’s signature.

With enactment of this legislation, Washington State became the first state in the nation to establish a universal right to appointed counsel for indigent tenants in eviction cases. The legislation assigns responsibility for implementation and administration of the RTC program to the Office of Civil Legal Aid (OCLA), an independent judicial branch agency that administers and oversees legislatively appropriated funding for civil legal aid services throughout Washington State. SB 5160 directed that OCLA submit an implementation plan to the appropriate legislative committees within 90 days of its effective date, and further directed that full implementation be accomplished within 12 months after its effective date.

OCLA recognizes the urgency to stand up a tenant-centered, equity-informed eviction defense program that provides effective assistance of counsel to indigent tenants in unlawful detainer cases. OCLA is aware of the threat to restored broad-based eviction activity now that the Governor’s general moratorium has expired, and the transition period provided by the Governor’s “Bridge” proclamation (Proclamation 21-09) has begun. The Governor’s proclamation offers additional time to fully implement the three components essential to preserving rental housing stability in the post-moratorium environment – (a) timely access to federal and state rent assistance, (b) implementation of Eviction Resolution Pilot Programs by superior courts throughout Washington State, and (c) full implementation of the RTC Program.

There is a high sense of anxiety among the population of tenants who, upon termination of the emergency protections, will face eviction – a disproportionate number of whom are members of BIPOC communities, low-wage workers displaced by the pandemic, households that assumed economic responsibilities for COVID-19 affected extended family members, renters with disabilities, immigrants, and others. This risk dictates that OCLA act both quickly and responsibly in developing and implementing the RTC Program.

This Implementation Plan offers a high-level outline of the key strategies and anticipated timelines for implementation of the nation’s first statewide RTC program. In publishing this initial Plan, we recognize that there remain many unknown and unanswered questions many of which are compounded by a lack of uniformity of practice in the 37 independent superior court judicial districts that will be required to appoint attorneys in unlawful detainer cases. We further recognize the need and urgency to ensure equity of access to and the availability of attorneys for all indigent tenants, including those least likely to trust the civil justice system or seek help from traditional legal aid programs. Finally, we recognize our obligation to learn as we go and change our approach as experience and circumstances dictate.

With these thoughts in mind, we reiterate what we have shared in conversations and communications with key stakeholders since shortly after enactment of SB 5160:

- No one has ever done this before
- We will make mistakes
- We may stumble and fall, but we will stand right back up
- We ask for grace and patience
- We promise to keep the Legislature and all stakeholders informed

## 2. RTC Implementation Planning and Acknowledgements

On March 4, 2021, the Washington State Senate approved the first bill to propose a statewide right to appointed counsel for indigent tenants. OCLA recognized the extraordinary task that would be assigned should final legislation be enacted. OCLA immediately convened a multi-disciplinary “Provisional RTC Implementation Work Group” to help identify and develop strategies to address key implementation issues and challenges. Upon final passage of the bill, the term “Provisional” was removed and the RTC Implementation Work Group continued to provide OCLA with invaluable information, insight, and guidance. While many plans and reports of this nature put acknowledgments at the end or in an appendix, we want to express our recognition and thanks up front to those who have helped guide the initial RTC implementation effort over these past few months:

- Senator Patty Kuderer (Prime sponsor of SB 5160)
- Judge Jacqueline Shea-Brown (Benton Franklin Superior Court; Chair SCJA Unlawful Detainer Work Group)
- Judge Charnelle Bjelkengren (Spokane County Superior Court)
- Judge David Gregerson (Clark County Superior Court)
- Commissioner Clint Johnson (Pierce County Superior Court)
- Ashley Callan (Spokane County Superior Court Administrator)
- Scott Crain (Northwest Justice Project)
- Eva Wescott (Northwest Justice Project Screening Unit)
- Chea Berra (Northwest Justice Project CLEAR)
- Edmund Witter (King County Bar Association Housing Justice Project)
- Elizabeth Fitzgearld (Clark County Volunteer Lawyers Program)
- Jose Trejo (Northwest Justice Project Spokane)
- Mark Morzol (Tacomaprobono Housing Justice Project)
- Will Beck (Tacomaprobono Housing Justice Project)
- Paula Sardinias (Washington Build Back Black Alliance)
- Terri Anderson (Tenants Union of Washington Spokane)
- Michelle Lucas (Tenant Law Center Seattle)
- Michele Thomas (Washington Low Income Housing Alliance)

While the above-named individuals were deeply involved in developing strategies in each of the core implementation areas, many others (too numerous to be named at the risk of excluding others) supported our efforts. We express our gratitude to all who have shared their wisdom, ideas, constructive criticism, and encouragement as we moved forward to develop this initial Implementation Plan.

## 3. SB 5160 Directives and Scope

### a. Court Appointment of Counsel for Indigent Tenants in All UD Cases

Sec. 8 of SB 5160 requires courts to appoint counsel for indigent tenants in all unlawful detainer cases. The scope of the charge is universal – tenants who are determined to meet indigency standards set forth in sec. 8(2) of SB 5160 are entitled to appointed counsel in all unlawful detainer proceedings – *no matter how commenced*.

### b. Administration Assigned to OCLA

Sec. 9 of SB 5160 assigned administration of the RTC Eviction Defense Program to OCLA. The legislation directed OCLA to produce an Implementation Plan within 90 days and fully implement the RTC Eviction Defense Program within 12 months of its effective date (no later than April 22, 2022).

### c. Statutory Implementation Priorities

Sec. 8(2) directs OCLA to prioritize implementation in the counties in which most evictions occur (King, Pierce, Clark, Snohomish, Spokane) and for tenants disproportionately at risk of eviction (BIPOC, immigrant, Native, LGBTQ+, tenants with disabilities, tenants in rural and remote locations including on or near Indian Reservations, and limited English speaking (LEP) tenants).

### d. Scope of Right to Counsel

Attorneys appointed to represent indigent tenants must provide the *full spectrum* of legal assistance and representation required by the circumstances of each individual case and Washington’s Rules of Professional Conduct (RPC’s). While many cases may only require limited representation to resolve the underlying dispute, many others will require extended legal representation including trial and appellate representation when presented with unique issues of fact and law. OCLA expressly requires contracted attorneys to protect and preserve their tenant clients’ rights to fair and appropriate adjudication of the issues presented. This includes the attorneys’ rights and duty to secure the time necessary (through continuance if appropriate) to fully prepare for and defend the rights of their tenant clients in the unlawful detainer proceeding.

## e. Timing of Implementation

SB 5160 provides two messages in a single paragraph. First, it unequivocally directs that courts “must” appoint attorneys to represent tenants in unlawful detainer cases. Beyond being subject to appropriation (which was made in the operating budget), nothing in the directive is conditional. Second, it assigns implementation of the RTC program to OCLA. It allows OCLA 90 days to develop the implementation plan and 12 months to fully implement the plan. Landlords may not proceed with unlawful detainer actions against indigent tenants until a mechanism to appoint counsel is established. That mechanism must include capacity to accept referrals from the courts and others, screen tenants for indigency, assign indigent tenants to OCLA-contracted RTC providers, hire and train sufficient numbers of RTC attorneys to serve anticipated demand, and secure court appointments for indigent tenants. Until such capacity is in place, unlawful detainer actions against indigent tenants may not proceed.

This understanding is reflected in Governor Inslee’s June 29, 2021, Proclamation which states:

### **RIGHT TO COUNSEL**

- Nothing in this order modifies the requirement in Section 8 of E2SSB 5160 that a court must appoint an attorney for an indigent tenant in an unlawful detainer proceeding while this order is in effect.

Proclamation No. 21-09, Tenancy Preservation – A Bridge to E2SSB 5160.<sup>1</sup>

## 4. When Right to Appointed Counsel Attaches

Under applicable law (RCW 4.28.020), there are two ways to commence a civil law suit in the Superior Courts of the state of Washington: (a) filing of a Complaint with the court, and (b) service of a summons on the defendant (without filing of the Complaint). The former is the more traditional approach, but the latter (known as “pocket-service”) is widely used to commence unlawful detainer proceedings. Both approaches confer jurisdiction on the superior court, and the latter confers subject matter jurisdiction on the superior court and personal jurisdiction over the tenant-defendant.

SB 5160 directs that “the court must appoint an attorney for an indigent tenant in an unlawful detainer proceeding ...”. (Emphasis supplied). The law makes no mention of the way the case is commenced – appointment of counsel is required in all unlawful detainer actions.<sup>2</sup>

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<sup>1</sup> For further discussion, see Section 7 below.

<sup>2</sup> The original bill directed the court to appoint an attorney “at any show cause hearing or scheduled trial.” When informed that this language failed to ensure appointment of counsel for indigent tenants in many properly commenced unlawful detainer actions (those commenced through service of summons), the bill was amended to

## a. UD Cases Filed in Court

In many cases where an unlawful detainer action has been filed and an order to show cause entered and served on the tenant, tenants will appear at the courthouse (or virtually where virtual hearings are held) without legal counsel. In such cases courts will be expected to (i) advise the tenant of their right to appointed counsel if they are indigent, and (ii) inquire whether the tenant wishes to be screened for indigency and have counsel appointed. Tenants who elect to be screened will be referred either to a local OCLA-contracted RTC provider for screening or to the statewide Eviction Defense Screening Line. Upon determination that the tenant is indigent, the RTC provider will appear on the tenant's behalf and request appointment of counsel pursuant to Sec. 8 of SB 5160.

## b. UD Cases Commenced Through Service of a Summons

In cases in which tenants have received a summons but where the complaint has not been filed, a different procedure is required. Sec. 11 of SB 5160 includes express language advising the tenant-defendant that they may have a right to counsel and includes the toll-free number to the Eviction Defense Screening Line and the URL for the tenant screening portal for on-line screening requests.

Because indigent tenants acquire a right to appointed counsel upon being served, they have an implied right to seek appointment through an independent civil action outside of an unfiled unlawful detainer proceeding (as no such proceeding has yet been filed with the court). A simple petition/order has been developed to seek waiver of filing fees (under Supreme Court General Rule 34) and appointment counsel under Sec. 8 of SB 5160. Alternatively, OCLA worked with the Clerks Association and others to develop a proposal for administrative appointment of counsel in unfiled cases.<sup>3</sup>

# 5. Establishing RTC Capacity in All 37 Superior Court Judicial Districts

Prior to the pandemic, average yearly filings of unlawful detainer actions ranged between 17,000 and 20,000 per year. These do not include pocket-served unlawful detainer actions, the majority of which never end up being filed in court.

Historically, a significant percentage of tenants failed to appear at the show cause hearing (the hearing at which the court determines whether the landlord is entitled to a writ of restitution). Tenant default rates range from between 30% to 50% depending on the jurisdiction.<sup>4</sup> Recent changes in substantive

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include the current language – ensuring the right to appointed counsel and the duty of the court to appoint counsel attached regardless of the manner in which the unlawful detainer action was commenced.

<sup>3</sup> See Sec. 8.b of this plan.

<sup>4</sup> A recent study by the University of Washington documented default rates over time in this range. Thomas, Timothy, et al., [The State of Evictions: Results of the University of Washington's Eviction Study](#) (most recently

law – including the introduction of just-cause evictions and the range of tenant protections established in SB 5160 (including the right to appointed counsel) suggest that fewer unlawful detainers will be filed annually in the post-pandemic/post-moratorium period and that tenant default rates may also be reduced due to the availability of legal representation. During the 2021 legislative session, OCLA projected that legal representation would be required under an appointed attorney model in about 60% of filed cases.<sup>5</sup> No projection was made in relationship to unfiled unlawful detainer actions. OCLA currently projects that appointed counsel will be required in between 8,000 and 10,000 cases annually.

## a. Individual Private Attorney Contracts v. Contracts with Established Legal Aid Providers

There are two ways to implement an appointed counsel program: (i) contract with individual private attorneys (as OCLA does in its Children’s Representation Program) or (ii) contract with qualified non-profit legal aid programs.

Over the past few years, OCLA and the Legal Foundation of Washington have expanded support for non-profit legal aid programs operating courthouse-based Housing Justice Projects (HJP’s). Most HJP’s provide limited “day-of” assistance to tenants who show up at scheduled unlawful detainer dockets without appearing of record in the judicial proceeding. A few (most notably the King County Housing Justice Project) regularly enter notices of appearances and provide more direct legal representation at the show cause hearing and beyond. The in-house staff and volunteer attorneys working with these programs have developed substantial experience and substantive expertise in eviction defense representation. They have the proven ability to effectively represent indigent tenants in RTC cases.

Complementing these HJP efforts is the Northwest Justice Project (NJP) – Washington State’s largest non-profit legal aid provider – with offices in 21 locations throughout the state. NJP attorneys have substantial experience and expertise in landlord-tenant, eviction defense, public housing, fair housing, foreclosure defense, and many other areas of housing law. NJP hosts and supports a statewide Housing Task Force that serves as a coordination and support forum for housing advocates both within NJP and throughout the broader community of legal aid providers. Based on the strengths and extensive experience of these providers, OCLA elected to identify and contract with those who meet the basic criteria for providing RTC services.

## b. Criteria for Identifying and Contracting with Legal Aid Providers

OCLA used the following criteria to determine with which legal aid programs it would contract to provide RTC services:

- i. Demonstrated history of effective representation of indigent tenants in unlawful detainer proceedings

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updated 2/17/19) (UW Eviction Study) at 4.1. See also, Seattle Women’s Commission and King County Bar Association Housing Justice Project, [Losing Home, The Human Cost of Evictions in Seattle](#) (September 2018) at 56.

<sup>5</sup> See [FN 5160 E2SSB AMH ENGR H1400.E](#) at page 11.

- ii. In-house capacity and substantive expertise in landlord-tenant, eviction, fair housing, and other relevant housing laws
- iii. In-house quality control and oversight capability
- iv. Sufficient fiscal and administrative capability
- v. Licensed to use and competent in operating the Legal Server case management system and meet data reporting requirements
- vi. Ability to scale up and, in the case of HJP's that have historically relied on volunteer attorneys, build necessary in-house professional staff attorney capacity
- vii. Commitment to effective collaboration with other RTC providers
- viii. Ability to timely transfer/re-assign cases in the event of conflicts or other circumstances that render the program unable to accept appointments in specific cases.

To facilitate maximum efficiency and coordination of RTC services, OCLA concluded it best to contract with the fewest number of qualified providers in each judicial district.

### c. Legal Aid Providers Contracted to Accept Appointments and Provide RTC Services to Eligible Tenants

NJP will be the largest provider of RTC services, hosting 27 RTC attorneys across the state. While NJP offices will share RTC responsibilities in some urban counties (e.g., Snohomish, Spokane, Clark, Whatcom, Thurston), it will focus mostly on serving indigent tenants in rural counties – especially those counties not currently served by a robust Housing Justice Project. In addition to representing indigent tenants pursuant to judicial appointment, NJP will develop, staff, and operate the Eviction Defense Screening Line.<sup>6</sup>

In addition to NJP, OCLA-contracted RTC providers include:

- i. King County Housing Justice Project (King County) – 10 RTC attorneys
- ii. Tacomaprobono Community Lawyers Housing Justice Project (Pierce County) – 9 RTC Attorneys
- iii. Kitsap Legal Aid (Kitsap County) – 2 RTC attorneys
- iv. Skagit Legal Aid (Skagit, San Juan counties) – 1 RTC Attorney
- v. Snohomish County Legal Services (Snohomish County) – 4 RTC Attorneys
- vi. Thurston County Volunteer Legal Services Housing Justice Project (Thurston, Mason, Lewis, Grays Harbor, Pacific counties) – 3 RTC Attorneys
- vii. Clark County Volunteer Lawyers Program (Clark, Skamania counties) – 3 RTC Attorneys
- viii. Yakima County Volunteer Attorney Services (Yakima, Kittitas counties) – 1 RTC Attorney
- ix. Chelan County Volunteer Attorney Services (Chelan, Douglas, Grant counties) – 1 RTC Attorney/Contractor
- x. Spokane County Bar Volunteer Lawyers Program Housing Justice Project (Spokane County) – 2 RTC Attorneys

In addition, two programs – Benton Franklin Legal Aid and LAW Advocates of Whatcom County – will provide supplemental contract services in their respective service areas.

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<sup>6</sup> See Sec. 7.a below

## 6. RTC Attorney Caseload and Training Requirements

To ensure effective representation and quality control, OCLA has established recommended caseload levels and imposed mandatory training requirements for all RTC attorneys (including contract attorneys).

### a. Caseloads

Full-time eviction defense attorneys are expected to carry an average of 25 active extended representation cases at any given time, with specific levels depending on complexity and other complicating issues in an individual eviction defense attorney's caseload. This is in addition to cases involving limited levels of legal assistance (cases requiring less than 3 hours of professional time between opening and closure) to RTC eligible tenants. Each RTC attorney is expected to handle between 150 and 200 unlawful detainer cases per year. As there is no experience with an appointed counsel model to tenant eviction defense, caseload expectations will be regularly reviewed based on experience.

### b. Mandatory Training

Training is an essential component of any effective RTC program. Consequently, before undertaking RTC representation, each RTC attorney must attend or review recordings of mandatory trainings on (a) substantive landlord-tenant, unlawful detainer, fair housing, and related laws; (b) tenant defense litigation skills and strategies; (c) representation of LEP individuals and effective utilization of interpreters; and (d) basic race and other equity-related competencies.

Two Statewide Training and Support Coordinators will be placed at the King County Bar Association Housing Justice Project. Working closely with NJP's eviction defense team and others in the eviction defense community, these coordinators will assume principal responsibility to establish a statewide Eviction Defense Training Program, including development and delivery of a comprehensive curriculum for all RTC attorneys.

## 7. Screening, Assignment, and Appointment of RTC Attorneys

This section outlines the mechanics of how the RTC program will work in real time.

### a. Statewide Eviction Defense Screening Line

NJP will establish and operate the Statewide Eviction Defense Screening Line referenced in the eviction summons form (sec. 11 of SB 5160) and the revised 14-day notice (sec. 10 of SB 5160). During the post-moratorium period, NJP will staff the Screening Line with 20 screeners trained to determine eligibility for RTC services and assign eligible tenants to OCLA-contracted programs. Screening services will be available in all languages using contract interpreter services (and, where available, bilingual staff) and video American Sign Language (ASL) services. In addition to live screening, NJP will receive on-line referrals/requests for screening through its [online screening portal](#).

Sophisticated call center technology tied to a robust case management system (the same system used by all RTC providers) will facilitate timely and accurate screening and referral while ensuring capture and retention of necessary data for quality control and accountability purposes. The average turn-around time for screening and assignment of eligible tenants will not exceed two working days following receipt of the request/referral for screening.

NJP will electronically refer tenants found eligible for RTC services to the OCLA-designated RTC provider in the judicial district in which the unlawful detainer action is pending. NJP will transmit data securely through the Legal Server CMS. Upon receipt of the assignment, the RTC provider will assign the tenant to an attorney (in-house or contracted).

### b. Appointment Process

Before OCLA will certify the availability of RTC services in any judicial district, the RTC provider(s) and superior court must enter into an agreement or protocol describing the screening and appointment process for both filed and unfiled (pocket-served) unlawful detainer actions. At a minimum, the agreement or protocol must identify (a) the entity(ies) to which the court will refer tenants for indigency screening and assignment to an OCLA-contracted RTC provider; (b) the timelines for screening and assignment; and (c) the process for securing an order appointing a provider or specific attorney to represent tenants to represent indigent tenants eligible for RTC services in the judicial district.

Once OCLA has certified the availability of RTC services, judicial officers must inform unrepresented tenant-defendants of their rights to appointment of counsel if they are indigent and ask if they would like to be screened for eligibility for appointed counsel. If a tenant-defendant answers yes, judicial officers must refer them to the OCLA-contracted RTC provider or the Eviction Defense Screening Line for

eligibility screening and referral to the OCLA-contracted RTC provider(s) in accordance with the agreement or protocol.<sup>7</sup>

For unfiled cases, OCLA developed simple Motion/Order forms have been developed for legal aid programs representing indigent tenants against whom unfiled unlawful detainer actions have been commenced. This provides the opportunity for tenants to originate a civil action for waiver of filing fees and appointment of counsel.

Alternatively, OCLA (in consultation with the Clerks Association and others) is exploring the possibility of establishing a uniform administrative approach to appointment of counsel in unfiled cases. This will involve issuance of an order by the superior court outlining the appointment process and procedure for filed and unfiled cases. This order could include delegation of administrative authority to review and approve applications for appointment of counsel in unfiled unlawful detainer cases to the superior court administrator. Regardless of the mechanism employed, the agreement with the superior court must outline how indigent tenants will secure court-appointment of counsel in unfiled unlawful detainer cases without requiring them to demand that the unlawful detainer action be filed.

## 8. Conflicts

There will be times when the designated RTC provider is unable to accept a court appointment due to a conflict of interest or other legal limitations. RTC staffing redundancies have been created to minimize (but not eliminate) the impact of such occurrences on the timely appointment of counsel. These include contracting with more than one provider in many counties and strategic use of non-conflicted attorneys and law firms practicing in the district and qualified to accept appointments to represent tenants.

Where conflicts or other limitations prevent all OCLA-contracted RTC provider(s) practicing in the judicial district from representing a tenant-defendant eligible for appointment, the case will be assigned to an RTC provider in an adjacent judicial district or (if established) a regional conflicts attorney, law firm, or conflicts panel. Where conflict counsel is not local, courts must make provision for virtual participation of attorneys and ensure that tenants can confidentially communicate with their attorneys and otherwise participate in the judicial proceedings.<sup>8</sup>

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<sup>7</sup> The SCJA Unlawful Detainer Work Group is developing a bench card to guide judicial officers.

<sup>8</sup> Employing new technologies and practices that sustained remote court operations during the COVID-19 emergency, courts are strongly encouraged to employ virtual Zoom, WebEx, Teams, or other hearing systems to facilitate participation by both RTC attorneys and their clients who may reside well away from the courthouse and who cannot without significant difficulty or expense attend the hearing in person.

# 9. Implementation Schedule and Conditions for Certification

## a. Priority Assigned Consistent with Legislative Directive

Sec. 8(1) of SB 5160 requires OCLA to assign priority for implementation to the counties with the greatest number of unlawful detainers and to indigent tenants most at risk of eviction.

According to superior court data for the period 2016 – 2019, more than 70% of unlawful detainer filings occurred in Spokane, Clark, King, Pierce, and Snohomish counties. In late April 2021, OCLA provided early authorization for designated RTC providers to hire, train, and deploy attorneys in these counties. Full RTC staffing in Pierce and King counties will be achieved by August 30, 2021, with full staffing in the other three counties achieved shortly thereafter. Assuming protocols are timely developed with the superior courts, OCLA anticipates that RTC appointments in these counties will commence before September 30, 2021 when the Governor’s “Bridge” proclamation expires.

Census and other demographic information demonstrate that (a) renters are disproportionately people with limited incomes, (b) that Black, Indigenous, and other people of color (BIPOC) are over-represented among those with incomes below 200% of the federal poverty level and in the rental housing market, (c) that individuals with disabilities are disproportionately low-income and are overrepresented in the rental housing market relative to the population as a whole, and (d) non-English speaking individuals generally have lower incomes and are renters as opposed to homeowners. Additionally, individuals who are LGBTQ, transsexual, or otherwise not gender conforming are disproportionately represented in the rental housing market as are low income immigrants. The UW Eviction study<sup>9</sup> documents significant disproportionalities in the percentage of renters of color who are evicted relative to white renters. Renters that fall within these categories are found throughout Washington state,<sup>10</sup> and are considered at higher risk of eviction than white, English speaking renters.<sup>11</sup> Consequently, this Plan ensures active outreach to, education of, and culturally and linguistically meaningful access to RTC assistance for renters that fit within these categories wherever they reside in the state.<sup>12</sup>

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<sup>9</sup> See n. 2 above.

<sup>10</sup> Significantly higher percentages of LEP and immigrant renters (relative to the total population of renters) live in rural agricultural counties in Southeast, Southcentral, Northcentral, and Northwest Washington.

<sup>11</sup> The [Week 32 Census Pulse Survey](#) (June 9 – June 21, 2021) shows that 55.7% of Black renters and 23% of Hispanic renters were behind on rent while the corresponding number for white renters is 12%. 51% of Black renters and 42% of Hispanic renters had no or only slight confidence of making the next month’s rent payment. The corresponding number for white renters is 22%. The survey also shows that 47% of renters who lost income during the pandemic are behind on rent, while only 8% of those who did not were behind on rent; and that nearly 25% of renters with children were behind on rent while 13% of renters without children were similarly situated.

<sup>12</sup> For more detail, see Sec. 11 below.

## b. Conditions for Certification

The following conditions must be achieved before OCLA will certify that RTC services are available in any judicial district.

- i. Full Authorized RTC Tenant Defense Capacity: OCLA has allocated RTC attorney deployment based on historical eviction filing data, average default rates, and caseload expectations/limitations. Statewide, OCLA has authorized the hiring of 60 FTE RTC Attorneys to accept appointments in between 8,000 and 10,000 unlawful detainer actions annually. A condition of certification is that all attorneys designated for each judicial district have been hired and placed.
- ii. Mandatory Training: Prior to certification, each attorney will be required to attend or review recordings of mandatory trainings on (a) substantive landlord-tenant, unlawful detainer, fair housing, and related laws; (b) tenant defense litigation skills and strategies; (c) representation of LEP individuals and effective utilization of interpreters; and (d) basic race and other equity-related competencies. OCLA has authorized the hiring of two Statewide RTC Training Coordinators. These will work out of the King County Bar Association Housing Justice Project. The Coordinators will work with the Statewide Housing Law Task Force and others to develop and deliver the mandatory training curriculum and provide ongoing training, support, and statewide advocacy coordination within the RTC practitioner community. Initial training modules will be delivered during July, August, and September 2021.<sup>13</sup>
- iii. Agreed Protocol for Screening and Appointment: As outlined in Section 7.b above, each RTC contractor (or, in the case of programs working jointly in a specific judicial district, both entities) must enter into a written understanding or agreement with the local superior court describing the screening and appointment process for both filed and unfiled unlawful detainer actions.

## c. Issuance of Certification to Presiding Judicial Officer

Upon finding that all conditions necessary for certification are present, OCLA will issue a letter to the Presiding Judge in the judicial district (or their designee) that Sec. 8(1) RTC appointments may commence.

## d. Suspension of Certification

Should demand for appointments outstrip deployed RTC capacity in any judicial district, OCLA will issue a letter informing the Presiding Judge in the judicial district (or their designee) that Sec. 8(1) appointments are to be suspended due to a temporary lack of RTC capacity; and courts must suspend hearing unlawful detainer cases involving indigent tenants who would otherwise be eligible for

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<sup>13</sup> Initial substantive law and skills trainings are being developed by a consortium of experienced eviction defense attorneys currently employed by OCLA-contracted RTC provider organizations.

appointed counsel. OCLA will rescind this letter and reauthorize appointments as soon as caseloads stabilize and capacity is restored.<sup>14</sup>

## 10. Building a Sustainable Unlawful Detainer Community of Practice

Upon full statewide implementation, more than 60 attorneys will engage in the full-time defense of tenants in unlawful detainer proceedings in every corner of the state. OCLA is committed to consistency in achieving and maintaining the quality and consistency of tenant defense services in every judicial district. To this end:

### a. Statewide Training and Advocacy Support

OCLA has contracted with the King County Bar Association’s Housing Justice Project to hire two statewide training and advocacy coordinators.

### b. Facilitating RTC Communication, Coordination, Issue Spotting, Mutual Assistance

NJP will establish a confidential statewide platform to allow for direct communication among RTC attorneys to problem solve individual cases and identify and develop strategies to address commonly experienced practices or legal issues that arise in the post-pandemic period.

### c. RTC Mentorship Program

A statewide or regional mentoring program will be established to help provide proper support for attorneys newly entering the eviction defense practice.

### d. Annual RTC Conference

OCLA will underwrite an annual conference bringing RTC attorneys together for training, mutual support, coordination, and building a common culture of client-centeredness and excellence.

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<sup>14</sup> Many of the demand and caseload assumptions that underlie this Implementation Plan are based on court data that predates the substantial changes in landlord tenant and eviction laws resulting from passage of SB 5160 and HB 1236. As noted above, this data does not account for unfiled unlawful detainer actions. OCLA will carefully monitor case filing data, default rates, appointments in unfiled unlawful detainer cases, and RTC attorney caseload data. Should it be determined that additional RTC capacity is required, OCLA will advise the Legislature and seek additional authority to ensure that capacity consistent with demand in the “new normal” of eviction practice is achieved and maintained.

# 11. Ensuring Equity and Access

The low-income tenant population in Washington is disproportionately composed of people of color, tenants with limited English proficiency, tenants who are disabled, immigrants, and other tenants who experience a range of obstacles to learning of and understanding their legal rights and how to access services, including tenant defense services. Effective implementation of the RTC program requires intentional efforts to ensure equity of access to and competency in the delivery of legal representation to these tenants. This requires significant investment in infrastructure and support to ensure language access, disability access and accommodation, and effective education and outreach to underserved and remote communities including immigrant, Native, minority, LGBTQ+ and others. To this end, OCLA will take the following actions.

## a. Language Access/ADA Coordination

OCLA will hire or contract with an appropriate statewide organization to recruit a Language Access/Americans With Disabilities Act (ADA) Access Coordinator to implement and oversee compliance with Language/ADA Access requirements for the RTC Program. The Coordinator will work with a specially assembled Language/ADA Access Advisory Committee.

- i. Language/ADA Access Plan: OCLA will adopt a Language/ADA access plan for the RTC program. The plan will require that OCLA translate and post on its website (or a statewide RTC website hosted elsewhere) critical information about how to access RTC services and request reasonable accommodations. The plan will provide that, when necessary, critical information will be provided in multi-media formats where print translations would not achieve full access. The plan will require OCLA to ensure compliance by all RTC contractors with language access/ADA compliance policies and requirements.
- ii. Interpreter Services: To ensure effective out-of-court communications with clients, OCLA has allocated funding to contract with a state-approved entity (Cyracom dba VOIANCE) to provide certified and qualified interpreter service capacity (telephonic, video, ASL) for RTC contracted programs and contract attorneys. Individual PIN numbers will be assigned to each RTC program. RTC funding will also be used for in-person interpretation with an interpreter certified by either the Department of Social and Health Services or the Administrative Office of the Courts. Courts must continue to provide in-court interpreter services in accordance with applicable state laws.
- iii. RTC Provider Language/ADA Access Policies: OCLA will work with the Language Access Coordinator and Language/ADA Access Advisory Committee to develop model language access and ADA access policies for adoption by all RTC contracting agencies. OCLA will amend RTC contracts to expressly require adoption of language/ADA access plans by each RTC provider that are substantially consistent with the model policy.

- iv. Data Tracking and Transmission: To help facilitate real-time identification of language access or disability access issues/needs, the Legal Server case management system will be configured with mandatory tracking fields to ensure that access needs are documented and made known to the OCLA-contracted program.
- v. Training: As noted in Sec. 9/b.ii above, OCLA will include language/ADA access and competency skills modules in the mandatory RTC training curriculum for all RTC attorneys.

## b. Statewide Education and Outreach

In the area of education and outreach the Plan requires:

- i. Education and Outreach Plans: Each RTC contractor is required to develop a specific outreach plan to inform tenants at risk of eviction of their rights to appointed counsel. The plans will place priority focus on BIPOC, LGBTQ+, disability, immigrant, and other tenants experiencing significant barriers to information of their rights to appointed counsel in eviction cases and how to access RTC services.
- ii. Statewide Messaging: Statewide educational materials will be produced by the Northwest Justice Project's Washington LawHelp Team (with input and assistance from local RTC providers and community stakeholders). These will use plain, understandable language and be made available in multiple media formats (including audio and video where appropriate). Materials will be translated (and, as appropriate, interpreted) into languages and media formats required by significant tenant demographic communities. Messaging materials will be made available to statewide advocacy and tenant support organizations so they can be incorporated into more global communications and outreach efforts to help tenants understand the changes in landlord tenant laws and learn about their rights.
- iii. Statewide Media Campaign. OCLA will contract with an appropriate entity to develop a statewide media campaign to ensure that those facing eviction know of and how to assert their rights to appointed attorneys. The campaign will focus on media outlets and vehicles that serve immigrant, minority, Native, and LEP, and other hard to reach communities. Media vehicles will include print, TV and radio outlets as well as relevant social media platforms serving members of these communities. OCLA will also continue to contract with the Washington Immigrant Solidarity Network (WAISN) to ensure that appropriate RTC information and referrals are made available to immigrants who call the [WAISN Hotline](#).
- iv. Local Messaging: OCLA-contracted RTC programs will develop materials for use at the local level with courts, court staff, clerks, rent assistance administrators, ERPP programs, by and for organizations, etc. Materials will incorporate statewide messages and provide additional information relating to the local operation of the RTC program. Programs will translate local messages into languages predominately spoken by significant members of their communities.

# 12. Oversight and Accountability

Effectiveness and ultimate success of the RTC Program requires investment in necessary administrative and oversight capacity. In addition to the statewide training and advocacy coordinators and the LEP/Disability Access coordinator, OCLA will take the following actions.

## a. In-house OCLA Staffing

OCLA will hire two dedicated staff to administer and oversee the RTC Program.

- i. Eviction Defense Program Manager: The Eviction Defense Program Manager will administer and oversee all aspects of the RTC Program. These include, but are not limited to, oversight and monitoring of OCLA-contracted RTC Providers, coordination with the RTC Training and Support Coordinators, coordination with the LEP/ADA Access Coordinator and Advisory Committee, coordination with the Superior Court Judges' Association and its Unlawful Detainer Work Group, work with individual judicial officers to identify and problem solve implementation and operational issues, develop robust data analysis and reporting capacity, ensure consistency of messaging and outreach efforts, and work with the research team at the University of Washington's Evans School for Public Policy and Governance (Evans School). The Eviction Defense Program Manager will report to the Director of the Office of Civil Legal Aid.
- ii. Eviction Defense Program Counsel: The Eviction Defense Program Counsel will have day-to-day engagement with and responsibility to support OCLA-contracted RTC providers. The Eviction Program Counsel will report to the Eviction Defense Program Manager.

## b. Data Tracking and Analysis of Services and Outcomes

- i. Unified Case Management System for RTC Program: All RTC providers will be licensed and required to use the Legal Server case management system. This will facilitate effective data transfer between the Eviction Defense Screening Line and OCLA-contracted RTC providers as well as transfer between providers.
- ii. Uniform Standards for Case Information and Data Entry: OCLA has engaged JustTech, a technology consulting firm that supports the Legal Server CMS, to work with NJP and all RTC providers to establish and ensure consistent and uniform data entry into, and track information in the Legal Server case management system. This will facilitate contemporaneous tracking and uniform reporting of RTC data.
- iii. Electronic Reporting to OCLA: All RTC programs will transmit individualized and aggregate data to OCLA in a manner that does not disclose client identifying information or other information protected from disclosure under applicable laws and ethical rules. This will allow OCLA to regularly analyze and report on, among other things, RTC related outcomes, tenant demographics, geographic performance, and overall effectiveness.

### c. RTC Program Performance Reviews and Reporting

The Eviction Defense Program Manager will develop and implement a program for regular on-site review of RTC program operations and performance. By contract, OCLA requires all RTC programs to submit quarterly client service data and semi-annual narrative reports describing the operation and impact of their respective RTC activities.

### d. Continuing Engagement with Judicial Officers and Court System Stakeholders

OCLA will regularly consult and engage with the SCJA's Unlawful Detainer Work Group, court administrators, and others regarding implementation and operation of the RTC program. The goal is to maintain consistent and open dialogue, early identification of issues or problems, and solve problems that might undermine effective operation of the statewide program or in any particular judicial district. The Eviction Defense Program Manager will be primarily responsible for judicial relations.

### e. Implementation Advisory Committee

Successful implementation and permanent operation of the RTC program will require continued engagement with and advice from a range of key stakeholders. These include, among others, legislators, judicial officers, tenant advocacy organizations, rental housing industry representatives, and by and for organizations. Within the first year of operation, OCLA will establish an RTC Implementation Advisory Committee the purpose of which will be to provide feedback and criticism, identify and help OCLA resolve problem areas, and otherwise guide implementation and permanent operation of the nation's first statewide RTC program. The Eviction Defense Program Manager will staff the RTC Implementation Advisory Committee.

## 13. Research and Reporting

The statewide RTC program is an untested intervention here in Washington State and nationally. While several studies have documented the impact of counsel for tenants in eviction proceedings, none have looked at an appointed counsel model of representation undertaken on a statewide basis. Recognizing this, and in the exercise of its duty to ensure effective investment of limited taxpayer funding, the Legislature in the operating budget bill directed OCLA to track and report on a limited number of data points related to implementation and operation of the RTC program. The study and reporting provision reads:

By June 30, 2022, the department shall provide to the legislature a detailed report of program expenditures and outcomes including but not limited to the number of individuals served, the average cost of a representation case, and the number of qualified individuals who qualified for but were unable to receive representation for funding or other reasons.

Sec. 117, ch. 334, Laws of 2021.

The Legislature’s directive provides a baseline for assessing the effectiveness of the RTC program. OCLA believes it critical to undertake a rigorous contemporaneous effort to monitor and assess the effectiveness of this intervention. Consequently, OCLA has engaged a research team at the Evans School to undertake a two-year study of the RTC program. This study will provide OCLA, the Legislature, and stakeholders with a clear picture of the relationship between appointed counsel and housing stability for tenants facing eviction. The Evans School study team led by Drs. Rachel Fyall and Karin Martin will compile and present the required legislative report in June 2022 and a final report in July 2023.

## 14. Conclusion

Given the timelines and circumstances under which this Implementation Plan has been developed, the range of unknown and presently unknowable variables, and the lack of any baseline yardstick against which to measure performance, this is our “first crack” at the RTC implementation effort. We recognize the need for flexibility, agility, and adjustment guided by operational experience. Consequently, we consider this a “living” Implementation Plan – one subject to frequent update, adjustment and amendment. In doing so, we will continue to seek guidance from the Implementation Advisory Committee and the goodwill and support of all stakeholders.

Olympia, WA  
July 2021