



Washington State Office of Civil Legal Aid

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From: Jim Bamberger, Office of Civil Legal Aid

Re: Right to Counsel (RTC) Implementation Update

Date: 5/19/2021

It has been a month since I first wrote to you about the Office of Civil Legal Aid's (OCLA's) efforts to implement the RTC program established by the Legislature in sections 8 and 9 of ch. 115, Laws of 2021 (Senate Bill 5160). Much has occurred since, and we are beginning to see the manner in which the program will operate once fully implemented.

As reported in my April 16th memo to you, OCLA convened an RTC Implementation Advisory Work Group to identify, problem solve, and develop solutions to the many issues relating to the effective implementation of the nation's first statewide RTC program for indigent tenants. The purpose of this memo is to provide you with an update on the efforts of this group, emerging decisions being made relative to on-the-ground implementation systems and practices being developed and deployed.

1. Contracting Model.

OCLA will contract with non-profit legal aid providers in the first instance. Providers serving all 37 judicial districts have received initial authorization to hire an initial 52 RTC attorneys and have received draft contract documents. Efforts continue to coordinate basic recruitment language for job notices (see discussion of recruitment below). A list of authorized positions is attached. As we do for our Children's Representation Program (which provides appointed attorneys to represent children and youth in child welfare cases), we are using an FTE-based contract model coupled with caseload standards to ensure on-call/on-demand availability of attorneys for tenants eligible for RTC services.

2. Implementation Timelines.

While the Legislature has given OCLA until April 22, 2023 to establish full RTC capacity statewide, OCLA has established a working goal of having RTC capacity established in all jurisdictions by 12/31. In many small and some medium sized jurisdictions sufficient capacity to allow for judicial appointments can be established quickly following hiring and placement of RTC attorneys. Achieving minimum capacity in the larger jurisdictions (e.g., Snohomish, King, Pierce, Clark, Spokane) will be far harder to achieve, requiring as they do a substantial increase in the number of attorneys dedicated to this work. In addition to internal staff hiring authority, legal aid providers serving in these areas will be provided with resources to engage and contract with other non-profits and private attorneys to supplement in-house legal representation capacity.

3. Mechanics of Appointment

- a. The Eviction Defense Screening Line (ED Screening Line). Northwest Justice Project (NJP) is establishing a statewide ED Screening Line to screen and assign RTC eligible tenants to legal aid programs engaged by OCLA to provide RTC services to eligible tenants in each judicial district. The ED Screening Line is referenced in the new 14 Day Notice and Summons forms in sections 10 and 11 of Senate Bill 5160. Advanced call center technology and protocols will distinguish and prioritize tenants referred by judicial officers or court staff. NJP will hire sufficient staff capacity to screen and assign qualifying indigent tenants to RTC programs, with an objective of completing the process within two working days from receipt of the request. The ED Screening Line will also incorporate a system for on-line applications using a simple RTC specific form that can be accessed from any device in the courthouse.¹
- b. Appointment Process. To preserve limited RTC attorney and staff time and achieve the most efficient and consistent approach to screening and assignment, judicial officers, clerks, and court administrators should directly refer tenants to the designated RTC program providing service in their county or to the NJP ED Screening Line for screening and assignment. Model protocols (hopefully through a bench card) will be developed to help judicial officers through the process of advising tenants of their right to an attorney if they are indigent, inquiring whether they wish to seek legal counsel, and directing those who do to the appropriate screening entity.
- c. Legal Aid Presence at UD Dockets. Once RTC is implemented, judicial officers **should not** assume legal aid or housing justice presence at UD dockets. This is not an effective or efficient utilization of scarce RTC or HJB attorney capacity. Nor should judicial officers assume “day-of” assignment, appearance of counsel, and litigation of the merits of the show cause motion.² The system being developed will promise prompt (within 2 days) screening and assignment of eligible tenants to RTC programs. Upon receipt of the

¹ OCLA will purchase and make available to courts a limited number of digital tablets that (using court guest wifi) will connect to the statewide on-line ED Screening portal to facilitate prompt screening and assignment of eligible tenants to the designated RTC provider in each judicial district. Court staff may need to assist tenants who are not technologically savvy or who have other barriers.

² Courts can and are encouraged to allow for remote/virtual presence of RTC program intake staff at unlawful detainer dockets to ensure timely scheduling of screening and eligibility determinations.

assignment, attorneys associated with the program will appear and request appointment. In the case of unrepresented tenants who ask to be screened for appointed counsel, courts will be asked to continue the matter for a sufficient time (one week minimum) for the tenant to be screened and, if found eligible, meet with counsel and prepare a defense and/or negotiate a resolution.³

- d. Appointment in Cases Commenced But Not Filed (“Pocket-Served” Cases). Under Washington law, unlawful detainers can be commenced one of two ways: (i) filing of a Complaint or (ii) service of a Summons on the tenant. Under Sec. 8 of Senate Bill 5160, indigent tenants in both cases have a right to appointed counsel. The question is how to secure appointment.

OCLA is working with the Administrative Office of the Courts (AOC) to authorize an ex parte (no respondent/defendant or party on the other side) process pursuant to which tenants (and attorneys working with tenants prior to appointment) may request waiver of fees and appointment of an attorney in pocket-served cases. This would require almost ministerial level review, add very little court processing time or expense, and will guarantee that tenants for whom RTC rights attach receive timely appointments. It will also provide more complete records regarding unlawful detainer cases that are commenced and tenants assigned counsel. It will also protect tenants who appear as petitioners in these cases from the negative consequences of disclosing to tenant screening agencies and other court data miners the fact that an unlawful detainer action has been commenced prior to the action having been filed in court. Feasibility of this approach is under review.

4. Relationship Between Right to Counsel Efforts and Eviction Resolution Programs

There is unfortunately a fair amount of confusion about the scope and impact of Sec. 7 of Senate Bill 5160 which requires certain notices and record keeping/reporting for judicial districts that have or will establish an Eviction Resolution Program (ERP) through a local standing order or court rule. Further, at the same time we are standing up RTC capacity, Resolution Washington and the Dispute Resolution Centers (DRC’s) are expanding local capacity to provide conciliation and mediation services both within and outside of judicial districts that have or will establish ERP’s. And finally, the Department of Commerce and some federally designated entitlement localities are accelerating release of federal rent assistance funding to ensure funds are available in time to prevent mass harm that might otherwise follow the lifting of the Governor’s eviction moratorium.

ERP’s are designed to divert non-payment of rent cases that would otherwise flood the courts into a system wherein landlords and tenants (and their attorneys) – assisted by DRC-hosted and trained Eviction Resolution Specialists – work with rent assistance administrators to address the outstanding rent issue that may otherwise give cause for filing an unlawful detainer action. Under section 7 of Senate Bill 5160, courts have the option to establish a pilot ERP program (ERPP); they are not required to do so. We anticipate that the larger courts facing the greatest

³ [RCW 59.18.370](#) only requires that a hearing be scheduled for between 7 and 30 days. It does not require the matter to be heard or judgment to issue within that window.

level of potential unlawful detainer filings, the majority of which will likely be based on non-payment of rent, will continue their ERPP's. We anticipate that other courts may find the ERPP an appropriate model that facilitates resolution rather than litigation. But we also appreciate that some of the smaller courts, with limited court and administrative staff, may elect not to establish an ERPP. Even in those courts, we encourage and will be happy to work through the SCJA Unlawful Detainer Work Group and directly to help develop local practices and protocols that may serve the objectives of the ERPP without the administrative case tracking and reporting and attendant fiscal impacts that flow from the requirements of section 7 of Senate Bill 5160.

5. Training

OCLA is working closely with Judge Shea-Brown, Crissy Anderson at AOC, representatives of the DRC and rental housing industry, others to design and quickly develop on-line training opportunities for judicial officers on both Senate Bill 5160 and House Bill 1236 (which establishes uniform cause-based eviction standards in Washington State). The goal is to present these during June, before the eviction moratorium expires. Please watch for notification of these training opportunities.

6. Conclusion:

With respect to the RTC program, we are building the plane while flying it. In less than 30 days since the Governor signed Senate Bill 5160, we have learned a lot. We realize that much is expected of us, and we promise that much will be delivered. We apologize in advance that we cannot tailor protocols that will be responsive to the unique circumstances in each of our 37 judicial districts from King County to Asotin County; from Ferry, Stevens, and Pend Orielle Counties to Clark County; and from Okanogan County to Yakima County. Nor do we intend to impose a one-size fits all framework. Where possible and consistent with legislative directive, we will try to be as flexible as we can.

At the risk of redundancy, I close as I closed my April 16th memo:

1. No one has ever done this before
2. We will make many mistakes
3. We will stumble and fall, but we will stand right back up
4. We ask for your grace and patience
5. We promise to keep you informed

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