



Washington State Office of Civil Legal Aid

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To: Judge Judith Ramseyer, President SCJA
Judge David Estudillo, President-Elect SCJA

CC: Chris Gaddis, AWSCA President
Ashely Callan, AWSCA Vice President
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From: Jim Bamberger, Office of Civil Legal Aid

Re: Senate Bill 5160 and the Right to Counsel for Indigent Tenants in Unlawful Detainer Cases

Date: April 16, 2021

Since the beginning of the public health emergency and the recognition of the threat of mass eviction filings due to unpaid rent caused by the massive economic dislocation, the SCJA has taken a leadership role in finding effective solutions that protect the integrity of court operations while, at the same time, promoting just outcomes in rent disputes between landlords and tenants. Working with tenant advocates, representatives of the rental housing industry, DRC representatives and others, the SCJA's Unlawful Detainer (UD) Work Group (chaired by Benton-Franklin County Superior Court Judge Jackie Shea-Brown) designed and implemented the pilot Eviction Resolution Program in six counties that handle nearly 80% of all UD filings. The UD Work Group has designed and delivered trainings to judicial officers presiding over eviction matters. And it has developed several bench cards to help judicial officers manage unlawful detainer cases that come before them. It is in the spirit of the SCJA's leadership – and its partnership with the Office of Civil Legal Aid while doing so – that I reach out and ask that you share this memo with SCJA members.

The Legislature is poised to pass and the Governor will likely sign [2ESSB 5160](#),¹ a comprehensive bill addressing a range of landlord-tenant issues, including the eviction and unlawful detainer processes. Most of the bill does not directly affect the courts, but three provisions directly do so. These are sections 7, 8, and 9.

Section 7 authorizes all courts to establish pilot eviction resolution programs (ERP's) much along the lines of the SCJA's pilot ERP's established this past year in Spokane, Clark, Thurston, Pierce, King, and Snohomish Counties. Sections 3 and 4 of this section require landlords to

¹ A PDF of the most current version of the bill as passed by the House is attached.

issue specific notices to tenants and section 5 requires landlords to secure certificates of participation before an unlawful detainer proceeding may be heard in court.

Sections 8 through 11 fall under the heading “Right to Counsel.” Section 8 directs courts to appoint attorneys for indigent tenants in unlawful detainer proceedings filed under chapters 59.12, 59.18, and 59.20. It makes clear that the state is responsible for payment for legal representation and assigns responsibility for implementation of the right to counsel (RTC) program to the Office of Civil Legal Aid (OCLA). Sec. 8 also provides OCLA with guidance relating to priority areas for implementation as it phases in the RTC program. Finally, section 8 defines “indigency” for the purposes of the right to appointed counsel.

Section 9 acknowledges that it will take time for OCLA to implement the RTC on a statewide basis. It directs OCLA to submit a plan within 90 days of passage to fully implement the RTC within 12 months. This language implicitly acknowledges that RTC will not be operational and courts will not have a duty to appoint until there is sufficient state-funded capacity in place and protocols have been established between the courts and the state-funded RTC providers to facilitate the appointment.

Sections 10 and 11 revise the 14-Day Notice and UD Summons respectively to incorporate language relating both to the eviction resolution program and the right to counsel provisions of the bill.

A late amendment to bill directs that the Governor’s existing moratorium ([Proclamation 20-19.6](#)) terminate effective June 30th. Many people recognize that ending the moratorium without RTC and ERP programs in place and at a time when critically needed rent assistance has still not hit the streets will create an immediate eviction crisis. [This Op-Ed](#) offers good insight into the conundrum. At this point it is too early to tell if, or if so how, the Governor might take action to mitigate the threat of mass eviction.

So, let me be clear: In no place in the state will we have sufficient capacity for courts to appoint state-funded RTC attorneys pursuant to section 8’s directive by the time the Governor signs the bill, by July 1st, or even shortly thereafter. Recognizing this, OCLA is upgrading its short-term investment in existing and possibly new Housing Justice Projects throughout the state.² Our one-time increase in support for these programs is an emergency stop-gap measure designed to provide greater assistance to greater numbers of tenants facing eviction post-moratorium pending implementation of RTC. Depending on the location, these HJP’s generally offer limited scope legal assistance and limited representation for tenants against whom unlawful detainer proceedings are filed. This is often “day of” assistance, with tenants and HJP attorneys connecting at the show cause hearing. This is not RTC representation, and these attorneys cannot be called upon or impressed to represent any particular tenant in any particular UD case.

Planning for RTC

Shortly after Senate passage of the bill, OCLA convened a technical advisory work group to explore the technical, logistical, legal, operational, and other issues associated with

² Typically operated out of local volunteer attorney programs, Housing Justice Projects currently operate in Whatcom, Skagit, Snohomish, King, Pierce, Kitsap, Thurston, Clark, Yakima, Chelan/Douglas, Benton/Franklin, and Spokane Counties. Others may soon be established in Clallam/Jefferson and Walla Walla Counties.

implementing the statewide RTC program. The group includes three SCJA members – Pierce County Superior Court Commissioner Clint Johnson (a member of the SCJA Work Group), Spokane County Superior Court Judge Charnelle Bjelkengren, and Judge Jackie Shea-Brown (Chair and liaison to the work group from the SCJA Work Group). Other members include housing justice staff, staff and senior attorneys from Northwest Justice Project, representatives of the tenant and BIPOC communities that promoted the bill, and others. We have identified at least 11 substantive issue areas for which plans must be developed.

First and foremost is how the RTC program will work in practice. In a nutshell we intend to have a single point of contact for screening and eligibility assessment (NJP Eviction Defense Hotline).³ Tenants who have been screened will be e-referred to one of 7 regional assigning entities. RTC assignment staff will likely be co-located in one of the organizations participating in the program (typically NJP or a local HJP). Protocols will be established whereby courts will refer tenants who show up without counsel and who claim to meet indigency standards to the regional assigning entity. Upon determination of eligibility, tenants will be assigned attorneys who, upon appearing, will be appointed (hopefully in accordance with a procedure outlined in a standing order or local rule). All RTC attorneys will be funded through OCLA.

Until RTC is Effective?

OCLA is committed to maintaining regular communications with designated judicial officers in each of the 37 judicial districts. We will undertake efforts to establish this chain of communication as soon as possible. Stay tuned. Once established, we will provide regular progress updates and target implementation objectives.

Local communication and coordination amongst the principal stakeholders will be critical. In the spirit of the Legislature’s declared intent that indigent tenants be represented by attorneys as soon as possible, we **strongly encourage** every court to reach out to the HJP or legal aid program providing services in their districts and establish working protocols designed to facilitate timely identification and referrals of indigent tenant defendants in unlawful detainer cases to these organizations even before RTC is fully operationalized.

In closing allow me to share with you what I share with everyone with whom I talk about this:

1. No one has ever done this before
2. We will make many mistakes
3. We will stumble and fall down, 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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³ The ED Hotline number is included in both the revised 14-day notice and unlawful detainer summons.