



Washington State Office of Civil Legal Aid

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James A. Bamberger, Director
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To: Judge Rachelle Anderson, SCJA President
Chris Gaddis, President AWSCA
Kim Allen, President WSACC

From: Jim Bamberger, Director Office of Civil Legal Aid
Philippe Knab, OCLA Eviction Defense Program Manager

Re: Right to Counsel, Update Memorandum No. 7
Notice of Conflicts

Date: October 11, 2021

Last week witnessed the formal commencement of Washington state's Right to Counsel (RTC) program. We initially certified RTC operations in 17 counties. By the October 18th we expect to have certified as many as 25 judicial districts.

Consistent with the terms of our Implementation Plan, OCLA, has built a system with redundant capability in nearly all judicial districts, whether through multiple organizational providers (Northwest Justice Project and a local Housing Justice Project) or through the engagement of private attorney contractors. The objective is to ensure that there is available capacity in cases where a lead organizational program or a contracted attorney cannot ethically or legally accept an appointment.

Given the nature of relationships between and amongst tenants and certain legal limitations that attach to OCLA contracted providers, there will be situations where no provider under contract with OCLA or with an OCLA-contracted provider will be able to accept an appointment. In such cases, our providers will undertake diligent efforts to identify a qualified third-party contractor to represent the tenant(s). In such cases, the OCLA-funded provider will advise the court administrator (or other person designated by the court) via e-mail regarding the existence of the conflict and affirm that diligent efforts are underway to engage an attorney to represent the tenant(s) who are eligible for appointment.

RCW 59.18.640(1) expressly precludes consideration of the merits of an unlawful detainer proceeding involving an indigent tenant absent appointment of counsel. Consequently, upon receipt of a communication advising that all local providers are conflicted or otherwise legally unable to represent a qualifying tenant, we expect that the court's consideration of the case

will be stayed pending identification and appearance of an attorney who is able to accept an appointment and represent the tenant. In most circumstances, we anticipate the delay to be only a matter of days.

We welcome the opportunity to work with your organizations and our contracted providers to develop a model form for use in these (we believe rare) cases where all OCLA-contracted providers are unable to accept appointments in a given case. And we affirmatively represent that our contractors will actively work to identify substitute counsel to accept the appointment.

Finally, there will be situations where – most likely in the case of rural judicial districts – that our contractors will be unable to identify local counsel to accept an appointment. In such cases, conflict counsel will may have to appear virtually. We trust that courts in which such cases are pending will offer virtual access.

We remain grateful for the collaborative relationships that have guided our common efforts to implement this program. Please feel free to contact either Philippe Knab or me with questions or concerns on this or any other issues as we move through initial implementation.