



Washington State Office of Civil Legal Aid

1220 Main St, Ste 400
Vancouver, WA 98660
(360) 280-8784 (mobile)

Philippe Knab
Eviction Defense Program Manager
Philippe.Knab@ocla.wa.gov

To: Hon. Rachelle E. Anderson, Outgoing SCJA President
Hon. Jennifer Forbes, Incoming SCJA President
Chris Gaddis, AWSCA
Kimberly Allen, WSACC

From: Philippe A. Knab, Eviction Defense Program Manager

Re: Memo No. 10.1
Court Observation and Appointment Protocol

Date: April 8, 2022

The purpose of this Memo 10.1 is to keep the judiciary informed regarding OCLA's unlawful detainer docket observations and direction provided to Right-to-Counsel (RTC) staff regarding intervention when appointment protocols are not being followed.

As indicated in Memo 10 (para. 6), the Office of Civil Legal Aid (OCLA) is observing dockets to gain a sense of how courts are implementing RCW 59.18.640 (the right of indigent tenants to appointed counsel). We are delighted to report that the overwhelming majority of unlawful detainer dockets appear to be proceeding as the Legislature directed, with tenant notice and screening protocols leading to the efficient appointment of counsel without undue delay. Judicial officers have clearly benefitted from the training SCJA sponsored in July of 2021 and the SCJA Bench Card outlining how judicial officers should advise and ensure timely screening of tenants wishing to exercise their right to court-appointed counsel. While implementation has been evolving well in most courts, appointment protocols have not been consistently followed everywhere. We have observed situations where the appointment process was either ignored or improperly administered. We have received similar concerns from some of our contracted RTC providers.

As they are often closest to the ground, we encouraged RTC-contracted providers to timely and respectfully raise concerns about non-compliance with appointment protocols when and where they observe them. Specifically, we encouraged RTC attorneys or other staff associated with RTC providers who observe non-compliance with proper RTC appointment protocols -- and who (in the case of attorneys) are not appearing of record for any party to the proceeding -- to respectfully make a record request for recognition from the presiding judicial officer for the purpose of observing the issue and providing the court with the opportunity and ability to quickly

address it. We will provide a script to help RTC providers appropriately request the court's recognition for the sole purpose of reminding the judicial officer (often pro tem judges and commissioners who have not been trained on UD practice) of tenants' rights to be informed of and screened for eligibility for appointed counsel. This approach protects the court and the process against any appearance of post-hoc, case-specific, ex parte communications. It also ensures that the court has opportunity to take timely action that will avoid future challenges to orders issued in unlawful detainer cases to which the right to appointed counsel attaches but might not have been followed.

If RTC providers are unable to address the issue(s) at the time they observe it(them), we have encouraged them to raise the issue in appropriate court-convened work or stakeholder groups in a general way without reference to any specific case. Where no such court-convened group exists or if there are concerns about the propriety of such a communication, we have directed RTC providers to share their observations and concerns with us. We will then bring these to the local presiding judge. In so doing, we will focus on general UD practice and protocol, and will not mention specific cases.

Please contact me with any questions or concerns.