



Bob Ferguson
ATTORNEY GENERAL OF WASHINGTON

Civil Rights Division
800 Fifth Avenue • Suite 2000 • MS TB 14 • Seattle WA 98104

July 9, 2021

VIA EMAIL

James A. Bamberger, Director
Washington State Office of Civil Legal Aid
1112 Quince Street SE
P.O. Box 41183
Olympia, WA 98504-1183
Jim.Bamberger@ocla.wa.gov

RE: E2SSB 5160 and Proclamation 21-09

Dear Jim:

This letter responds to your request for advice and guidance about the interplay between certain provisions of Engrossed Second Substitute Senate Bill 5160 (E2SSB 5160), and Proclamation 21-09, titled “Tenancy Preservation – A Bridge to E2SSB 5160,” issued by Governor Inslee on June 29, 2021. Specifically, you asked whether the right-to-counsel provision of E2SSB 5160, which the Office of Civil Legal Aid (OCLA) is tasked with implementing, must be in place in a particular county before unlawful detainer actions may be commenced against indigent tenants in that county during the term of Proclamation 21-09. The answer is yes.

Under Section 8(1) of E2SSB 5160, a superior court “must appoint an attorney for an indigent tenant in an unlawful detainer proceeding.” Under Section 21, the emergency clause, that duty took effect immediately upon the Governor signing the bill into law, which occurred on April 22, 2021. While the Legislature prescribed certain time periods for OCLA to complete its contracting and program-development work to implement the right-to-counsel provision, E2SSB 5160 does not make an indigent tenant’s right to counsel contingent on OCLA’s completion of that work. Instead, beginning on April 22, 2021, state law has provided that no unlawful detainer proceeding may lawfully go forward against an indigent tenant who has not been offered appointed counsel by the superior court.

Proclamation 21-09 made no modification of the right-to-counsel provision of E2SSB 5160 or the requirements above. To the contrary, Proclamation 21-09 contains a clear statement that “[n]othing in this order modifies the requirement in Section 8 of E2SSB 5160 that a court must appoint an

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attorney for an indigent tenant in an unlawful detainer proceeding while this order is in effect.” So, both during the term of Proclamation 21-09 and after it expires on September 30, 2021, the same rule will apply, namely that an indigent tenant must be offered a court-appointed attorney before an unlawful detainer proceeding may go forward.

I trust this information is useful to you, and please contact me if you have additional questions.

Sincerely,

s/Colleen Melody
Colleen Melody
Civil Rights Division Chief
Office of the Attorney General
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
(206) 464-7744
colleen.melody@atg.wa.gov