

Washington State Judicial Branch 2023 Supplemental Budget FY 2023 Indigent Tenant Right to Counsel

Agency: Office of Civil Legal Aid

Decision Package Code/Title: 2S – FY 23 Indigent Tenant RTC

Agency Recommendation Summary Text:

FY 2023 supplemental funding is requested to ensure full and effective implementation of legislative mandate that, upon mandatory court appointment, indigent tenants receive the effective assistance of counsel in all unlawful detainer actions commenced under RCW 59.12, 59.18, and 59.20. [RCW 59.18.640](#). (General Fund-State)

Fiscal Summary:

	FY 2022	FY 2023	Biennial	FY 2024	FY 2025	Biennial
Staffing						
FTEs	0.00	0.00	0.00	0.00	0.00	0.00
Operating Expenditures						
Fund 001-1	\$0	\$ 743,078	\$743,078	\$0	\$0	\$0
Total Expenditures	\$0	\$743,078	\$743,078	\$0	\$0	\$0

Package Description:

The Office of Civil Legal Aid (OCLA) is the independent judicial branch agency assigned by the Legislature to administer and oversee the statewide right to appointed counsel (RTC) program for indigent tenant defendants in unlawful detainer cases commenced under RCW 59.12, 59.18, and 59.20. The mandate was included in sec. 8, ch. 115, laws of 2021. Effective upon the Governor’s signature on 4/22/2021, OCLA was directed to provide the Legislature with an implementation plan within 90 days and achieve full statewide implementation by 4/22/22 (one year after the effective date). OCLA published its Implementation Plan on 7/15/21 and achieved full statewide operation of the tenant RTC program by 1/18/22.

As outlined in the [Implementation Plan](#), the initial components of OCLA’s RTC Program included:

- **Eviction Defense Screening Line** – composed of non-attorney screeners who receive telephonic and on-line requests from tenants for screening and assignment to an OCLA-contracted attorney; also receives referrals from courts, court administrators, legal aid programs, community-based programs, and others of tenants against whom unlawful detainer actions have been commenced.
- **RTC Legal Aid Programs and Contractors** – Thirteen (13) established legal aid programs were initially engaged to provide representation for indigent tenants found eligible for appointment. Each program was assigned responsibility to hire, train, and oversee the work of attorneys dedicated exclusively to representation of RTC-eligible clients
- **Statewide Training and Support (Insufficiently Staffed in Implementation Plan)** – Statewide training, technical assistance, and support capacity was assigned to the KCBA/HJP and is staffed independent of the program’s line RTC tenant service staff.

Creating the tenant RTC program on such a short timeline required a range of assumptions, many of which had not been field-tested in March 2021 when OCLA submitted its fiscal note for 2ESSB 5160. Changes made in response to experience to date:

- **RTC Appellate Services (3 FTE)** – While some RTC contracted programs have experience and capacity to undertake appeals of adverse judicial decisions, it became clear early on that statewide appellate capacity needed to be established. This function was assigned to the King County Bar Association’s Housing Justice Project (KCBA/HJP), the flagship provider of effective tenant defense services in Washington State.
- **Conflict and Emergency RTC Capacity (4 FTE)** – Early experience indicated a need to establish statewide capacity to (a) provide cover for local RTC attorneys who may be at caseload limits, on leave, or otherwise unavailable, (b) address situations where the primary RTC program(s) in a particular region are unable to represent the tenant(s) due to ethical obligations including the avoidance of conflicts of interest with other currently or previously represented clients, and (c) provide emergency representation for tenants faced with the potential loss of their right to appointed counsel or improper issuance of a writ of restitution. Authority was issued to KCBA/HJP to dedicate staff to establish and make such capacities available to other RTC-contracted programs.

These additional capacities along with a difference in early data between assumed time/case (5 hr. ave) and actual time/case (10-15 hr. average) and recent significant increases in UD filings in King County drove changes in our staffing requirements (2 additional FTE attorneys to meet demand in King County) and one each in Spokane County and the South Sound region (Thurston, Mason, Lewis, Grays Harbor, and Pacific Counties). The net difference for FY 2023 is \$743,078. This level of funding will ensure all contractors are compensated for the professional services for which they have been engaged to meet the legislative mandate.

Fully describe and quantify expected impacts on state residents and specific populations served:

This request ensures that all indigent tenants screened and found eligible for appointed attorneys under RCW 59.18.640 have timely and effective assistance of counsel in the defense of the unlawful detainer actions that have been commenced against them. It also reduces the likelihood of extended delays in unlawful detainer actions due to the temporary unavailability of contracted counsel. Finally, it affirms the critical importance of appellate counsel as the laws under which unlawful detainer proceedings now operate are new; judges are making quick, sometimes uninformed, and often conflicting decisions on both substance and procedure; and appellate guidance/review is needed to achieve certainty of understanding for landlords and tenants of the new laws’ operational impact.

Explain what alternatives were explored by the agency and why they were rejected as solutions:

There are no alternatives to this request. The right to appointed counsel is absolute (subject to appropriation). OCLA has operationalized the steps outlined above. Effective implementation of the RTC program and certainty that qualified attorneys will be appointed for eligible tenants requires this modest but critical investment.

What are the consequences of not funding this request?

The Office of Civil Legal Aid will be unable to fully compensate contracted programs and may have to suspend certification of availability of RTC services in some counties due to the lack of available attorneys.

Is this an expansion or alteration of a current program or service?

This request ensures OCLA’s ability to meet current FY 2023 contracted obligations. With the exceptions discussed above, the scope of the program and OCLA staffing remains unchanged.

Decision Package expenditure, FTE and revenue assumptions:

Expenditures by Object	<u>FY 2022</u>	<u>FY 2023</u>	<u>FY 2024</u>	<u>FY 2025</u>
C Personal Service Contracts		743,078		
Total Objects		743,078		

The FY 2023 expenditure breakdown is attached. No new agency staff is required and there are no changes in any line item other than the expenses for professional services. No revenue assumptions are included. The RTC program is underwritten entirely by state general funds.

How does the package relate to the Judicial Branch principal policy objectives?

- Fair and Effective Administration of Justice
- Accessibility
- Access to Necessary Representation
- Commitment to Effective Court Management
- Sufficient Staffing and Support

This request ensures that all indigent tenants screened and found eligible for appointed counsel receive the effective assistance of the same. This serves objective No.’s 1, 2, and 3 above.

Are there impacts to other governmental entities?

No impacts on other agencies, courts, or local governments.

Are there legal or administrative mandates that require this package to be funded?

This request ensures OCLA’s ability to comply with legislative mandates to ensure effective assistance of counsel to indigent tenants appointed counsel under RCW 59.18.640.

Does current law need to be changed to successfully implement this package?

No

Are there impacts to state facilities?

No.

Are there other supporting materials that strengthen the case for this request?

FY 2023 contracted budget breakdown attached.

Are there information technology impacts?

No.

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