

Washington State Judicial Branch 2023-25 Biennial Budget Reduce Barriers to Appellate Access

Agency: Administrative Office of the Courts

Decision Package Code/Title: D5 – Reduce Barriers to Appellate Access

Agency Recommendation Summary Text:

The Administrative Office of the Courts (AOC) requests \$109,000 to fund research that will identify barriers to the appellate justice system for unrepresented appellants.

Currently, there are substantial expenses associated with filing an appeal, and no effective mechanism for waiving those expenses for low-income individuals. These (and many other) barriers are compounded for appellants with limited English proficiency and those with disabilities requiring accommodation to enable them to effectively participate in the appellate proceeding. The right to appellate review is therefore illusory for many thousands of people aggrieved by and who wish to seek appellate review of trial court decisions.

We don't fully know the extent of the problems of and solutions to address the systemic and institutional obstacles that effectively prevent access to justice for unrepresented litigants in our appellate courts. The logical first step, though, is an intensive and inclusive research and discovery phase – one that not only seeks input from representatives from our state trial and appellate courts, but also significant and meaningful involvement of and engagement with individuals who may seek or have sought review in our appellate court system without the assistance of legal counsel. (General Fund-State)

Fiscal Summary:

	FY 2024	FY 2025	Biennial	FY 2026	FY 2027	Biennial
Staffing						
FTEs	0.2	0.4	0.3	0.0	0.0	0.0
Operating Expenditures						
Fund 001-1	\$43,000	\$66,000	\$109,000	\$0	\$0	\$0
Total Expenditures						
	\$43,000	\$66,000	\$109,000	\$0	\$0	\$0

Package Description:

Currently, there are substantial expenses associated with filing an appeal, and no effective mechanism for waiving those expenses for low-income individuals. There are no studies of or means available to assess the number of pro se appeals filed or allowed to proceed at public expense. Absent the ability to proceed at public expense, the door to the appellate court system is effectively closed to unrepresented litigants, especially those who meet applicable indigency standards under GR 34 or RCW 10.101.010. Other barriers include:

- Rules of Appellate Procedure expressly limit the rights of indigent and unrepresented litigants;
- Standards for submission of written materials are difficult to understand and comply with (leading to rejection of motions and briefs);
- Cost of filing, production and transmittal of records of proceedings can be substantial for individuals without financial means; and
- The near-absolute lack of meaningful self-help information or resources to help unrepresented appellants navigate the labyrinthine appellate process.

Together, these barriers work together to bar unrepresented appellants from accessing the appellate justice system. These barriers are even higher for appellants with limited English proficiency and those with disabilities requiring accommodation to enable them to effectively participate in the appellate proceeding. The right to appellate review is therefore illusory for many thousands of people aggrieved by and who wish to seek appellate review of trial court decisions.

Addressing these barriers is no simple feat. Costs associated with an appeal include not only the filing fee, but also the charges from the superior court for preparing clerk's papers and the charges from the court reporter for preparing transcripts. The appellate courts cannot authorize waiver of fees charged by other entities. In addition, to make the system fully accessible, we must address barriers beyond fees. Making the system accessible to people with disabilities, people who are illiterate, and people with limited English proficiency, requires consulting with those communities and learning how to best facilitate their access.

Identifying barriers to accessing appellate courts will require funding for staff and research over a period of 15 months. Once staff compile the initial findings, we'll test those findings with non-lawyer community members who have lived experience in poverty-law related matters, are recipients of civil legal aid, and/or are individuals who have attempted to navigate the appellate process without representation to test research findings and form our approach. While focus groups will have informed research findings, *it is essential to include those with lived experience* in interpreting results and framing how to report them. Our goal is to reality-test findings by bringing together diverse perspectives in an environment that supports respect for differences and commitment to group initiatives. We will apply the Pathways to Action Model problem-solving steps to the issues that have been identified, further forming and refining conclusions. This step will engage research staff with a team of 6 community members over the course of 4-6 2-hour meetings.

The total cost including staffing, discovery, development of the RFRP, testing research findings and forming our approach is \$109,000.

Once we have the findings from this research, we can begin the work of effectively tackling the barriers identified by the community.

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

The outcome of the research study will allow the appellate courts to systematically address the current barriers to low-income and unrepresented litigants attempting to access the appellate courts. The primary people affected by this work will be those who cannot afford a private attorney. This will disproportionately include BIPOC individuals.

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

The appellate courts have not previously undertaken this type of focused effort regarding access for low-income individuals. In order to comprehensively address the barriers, we must first identify the barriers. The best practice for identifying the barriers is to work with the impacted communities to help identify those barriers.

What are the consequences of not funding this request?

The current barriers to the appellate systems will continue to exist, and the system will remain inaccessible to unrepresented and low-income individuals, which will have a disparate impact on BIPOC people.

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

This is not an expansion or alteration of a current program or service. This is a new effort to tackle a historical problem that prevents individuals from accessing their right to appeal in an equitable manner.

Decision Package expenditure, FTE and revenue assumptions:

Staffing Assumptions

Beginning July 1, 2023, AOC requires one-time salary, benefits, and associated standard costs for:

Administrative Secretary. Schedule interviews and focus groups, transcribe interviews, arrange travel, and proofing and finalize reports (0.1 FTE).

Senior Research Associate. Develop and revise the interview protocol, conduct interviews with court staff and attorneys for background information, conduct up to 45 interviews (or focus groups, all by phone or video) with unrepresented litigants who sought to appeal adverse trial court decisions, produce discovery results, and consult on developing research plan and RFRP (0.2 FTE).

Other Non-Standard Costs

Contracts (Object C)

Discovery and Development of the RFRP. Payments to survey/focus group participants: 60 participants * \$200 per participant = \$12,000.

Community Member Engagement.

- Facilitator skilled in listening intentionally across diverse groups or sectors – @\$225 per hour * 12 hours = \$2,700.
- Payments to community consultants with lived experience: 6 participants * \$600 per participant = \$3,600.

Travel (Object G)

Travel in addition to standard costs to support discovery and development of the RFRP and community member engagement = \$3,200.

Expenditures by Object	<u>FY 2024</u>	<u>FY 2025</u>	<u>FY 2026</u>	<u>FY 2027</u>	<u>FY 2028</u>	<u>FY 2029</u>
A Salaries and Wages	\$16,800	\$33,500				
B Employee Benefits	\$5,400	\$10,700				
C Personal Service Contract	\$12,000	\$6,300				
E Goods and Services	\$800	\$1,400				
G Travel	\$2,100	\$2,600				
J Capital Outlays	\$400	\$600				
T Intra-Agency Reimbursements	\$5,500	\$10,900				
Total Objects	\$43,000	\$66,000				

Staffing

Job Class	Salary	<u>FY 2024</u>	<u>FY 2025</u>	<u>FY 2026</u>	<u>FY 2027</u>	<u>FY 2028</u>	<u>FY 2029</u>
ADMINISTRATIVE SECRETARY	\$55,900	0.1	0.1				
SENIOR RESEARCH ASSOCIATE	\$111,500	0.1	0.3				
Total FTEs		0.2	0.4				

Explanation of standard costs by object:

Salary estimates are current biennium actual rates at Step L.

Benefits are the agency average of 31.89% of salaries.

Goods and Services are the agency average of \$3,800 per direct program FTE.

Travel is the agency average of \$2,500 per direct program FTE.

One-time IT Equipment is \$4,800 for the first fiscal year per direct program FTE. Ongoing Equipment is the agency average of \$1,600 per direct program FTE.

Agency Indirect is calculated at a rate of 24.73% of direct program salaries and benefits.

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

The current structure of the Rules of Appellate Procedure creates substantial barriers to low-income individuals attempting to access the appellate courts. Any barriers that apply to low-income communities will have a disparate impact on BIPOC individuals. The Supreme Court is dedicated to improving equity and access to the Courts. This effort proposes to conduct research, including a focus groups with impacted communities, to identify the specific barriers that need to be addressed in order to facilitate equitable access to the appellate courts. This work directly supports the Judicial Branch's policy objectives of eradicating policies that result in disparate outcomes based on race.

Are there impacts to other governmental entities?

No

Stakeholder response:

The purpose of this project is to directly engage stakeholders from low-income communities in order to effectively identify barriers to accessing the appellate courts. We anticipate that unrepresented litigants, advocates for low-income people, and impoverished communities will support this effort to identify barriers on their access to the appellate courts. No opposition is expected to this effort.

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

No

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?

N/A

Are there information technology impacts?

No

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