

Washington State Judicial Branch

2023-25 Biennial Budget

Tenant Right to Counsel Program

Agency: Office of Civil Legal Aid

Decision Package Code/Title: AF – Tenant Right to Counsel Program

Agency Recommendation Summary Text:

Appropriate dedicated funding for core functions for the tenant RTC program not included in the initial Implementation Plan; address capacity shortfalls in locations where demand exceeds currently allocated eviction defense capacity; provide vendor rate adjustments of 4% per year to ensure continuity of current capacity in the appointed counsel program for indigent tenants established by RCW 59.18.640. (General Fund – State)

Fiscal Summary:

	FY 2024	FY 2025	Biennial	FY 2026	FY 2027	Biennial
Staffing						
FTEs	0.00	0.00	0.00	0.00	0.00	0.00
Operating Expenditures						
Fund 001-1	\$1,902,440	\$2,448,949	\$4,351,389	\$3,111,158	\$3,706,015	\$6,817,173
Total Expenditures						
	\$1,902,440	\$2,448,949	\$4,351,389	\$3,111,158	\$3,706,015	\$6,817,173

Package Description:

A. Underwriting Core Tenant Right to Counsel Functions in FY 2024 and FY 2025

RCW 59.18.640 requires court appointment of attorneys for indigent tenants in all unlawful detainer proceedings commenced under RCW 59.12, 59.18, and 59.20. Under RCW 2.53.050, the Office of Civil Legal Aid (OCLA) was assigned responsibility to establish, administer, and fund the program (within appropriations).

During FY 2022, OCLA established a statewide program for appointed counsel for indigent tenants. Pursuant to legislative direction, and implementation plan was published on July 15, 2021, and full statewide implementation achieved by January 18, 2022. 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 of tenants against whom unlawful detainer actions have been commenced from courts, court administrators, legal aid programs, community-based programs, and others.
- **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. Components added in response to operational experience in FY 2022 and FY 2023 to date include:

- **RTC Appellate Services** – 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** – 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.

For FY 2022 and FY 2023, OCLA funded these capacities using a portion of COVID proviso funding. This is not sustainable as said funding will be substantially reduced in FY 2024 and FY 2025 and the RTC program must carry its own weight.

Disproportionate demand and relative capacity considerations also require the addition of 2 FTE attorneys in King County and 1 attorney each in Clark County, the five county South Puget Sound region, Snohomish County, and Spokane County for FY 2024 and 2025. A continuing shortage of attorneys in these counties presents a very real threat of rolling suspensions of unlawful detainer hearings in these counties.

B. Vendor Rate Adjustment for Tenant RTC Providers

OCLA funds contractor operations using a fully loaded FTE formula. This includes the average direct costs associated with each individual FTE attorney engaged in representing indigent tenants entitled to appointed counsel under RCW 59.18.640, including (a) salaries and benefits of the attorney, (b) a percentage of salary and benefits of staff assigned to support the attorney, (c) a percentage of the program’s overhead (space/occupancy, technology, goods/services, other infrastructure/expenses assigned on a pro-rata basis), and indirect expenses not to exceed 5% of total program costs. For FY 2023, the fully loaded FTE ceiling is \$165,000 per attorney. This level is well below comparable costs incurred by other state agencies for comparable attorney positions.

Baseline annual program expenses for all operational capacities outlined in Sec. A of this decision package for FY 2024 will be \$13,930,078. To maintain currently authorized and funded program operations in the face of increasing costs of operation in a highly inflationary environment, OCLA requests a modest 4% vendor rate adjustment for each of FY 2024 and FY 2025. This will be \$569,720 in FY 2024 and \$592,509 in FY 2025. Fully loaded costs per FTE attorney will increase from \$165,000 to \$171,600 in FY 2024 and to \$178,500 in FY 2025. The 4% VRA is carried forward into the FY 26-27 outlook.

All adjustments considered, the RTC program requires an additional \$1,902,440 in FY 2024 and \$2,448,949 in FY 2025 to properly operate and meet statutory directives.

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

In FY 2021 the Legislature enacted 2ESSB 5160 which established a right to appointed counsel for tenants in unlawful detainer (eviction) cases. The adjustments requested in this decision package will (a) ensure continuity of core capacities and (b) help mitigate the impact of inflation on program operating costs, and thereby protect OCLA’s ability to

meet the legislative charge and ensure that the entitlement to appointed counsel is met for all indigent tenants against whom unlawful detainer proceedings are initiated.

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

There are no alternatives. Under RCW 2.53.050 and RCW 59.18.640, court appointment of attorneys for indigent tenants is a non-discretionary state responsibility. The funding needed to protect Sec. A capacities is critical to the overall program's responsiveness to the legislative charge. Further, should state funding levels fail to keep up with true costs of operations, OCLA-contracted programs will be unable to maintain essential client service capacity. In such case, OCLA will have to revoke/suspend certification of RTC availability across the state. According to guidance provided by the Office of the Attorney General in July 2021 (attached), OCLA suspension/revocation of certification of RTC capacity will deprive courts of the ability to hear and decide unlawful detainer cases involving indigent tenants. In relevant part, the letter states:

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.

What are the consequences of not funding this request?

Failure to maintain core functions of the tenant RTC program and provide a meaningful vendor rate adjustment will force OCLA-contracted programs to terminate client service functions before the end of each fiscal year. The problem will compound over time. This will likely result in OCLA's suspension of RTC capacity certification which, in turn, will substantially disrupt the ability of courts to timely hear and decide unlawful detainer cases involving indigent tenant defendants.

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

Funding to maintain core functions of the RTC program and provide a meaningful vendor rate adjustment is designed to ensure continuity of current operations of the appointed counsel program for indigent tenants. No increase in client service capacity is anticipated.

Decision Package expenditure, FTE and revenue assumptions:

The combined appropriations above carryforward levels to maintain core RTC program operations and provide for a 4% vendor rate adjustment per year are outlined below:

Expenditures by Object	<u>FY 2024</u>	<u>FY 2025</u>	<u>FY 2026</u>	<u>FY 2027</u>
C Personal Service Contracts	1,902,440	2,448,949	\$3,111,158	\$3,706,015
Total Objects	2,526,443	3,102,658	3,111,158	\$3,706,015

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

The vendor rate adjustment requested serves the following judicial branch policy objectives:

- Fair and Effective Administration of Justice
- Accessibility

- Access to Necessary Representation
- Commitment to Effective Court Management

Are there impacts to other governmental entities?

Failure to maintain critical functions of the RTC program and address increased costs of operation will likely result in suspension of OCLA certification of RTC capacity in certain jurisdictions at some point during each of the fiscal years involved. OCLA certification is required before superior courts may hear and decide unlawful detainer cases involving indigent tenants.

Stakeholder response:

Opposition to the funding request is unlikely; there may be continuing opposition to the policy requiring appointed counsel for tenants established in RCW 58.19.640.

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

The duty to appoint attorneys for indigent tenants is a statutory legal mandate. This proposal ensures continuity of capacity to meet the mandate.

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?

The following documents are attached:

1. OCLA budget worksheet for FY 2024-27
2. July 2021 Memorandum from Assistant Attorney General Colleen Melody re: impact of OCLA certification of RTC capacity.

Are there information technology impacts?

No

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FY 2024 Projected Eviction Defense (RTC) Program Obligations			
Program Name	Functions	Amount	FTE RTC Attorneys
Northwest Justice Project	RTC attorneys (28)	\$4,785,000	28 incl. 5 AMAs
Northwest Justice Project	RTC EDSL Screeners	\$750,000	N/A
KCBA Housing Justice Project	RTC attorneys (14) and state support/training/appeals/emerg. (6)	\$3,135,000	20
Tacomaprobono HJP	13 FTE attorneys (11 Pierce, 1 Kitsap, 1 Thurston) plus contractors/CAP K's & Atty	\$2,213,000	13
LAW Advocates of Whatcom County	Contract Attorneys for conflicts	\$20,000	0
Kitsap Legal Services	1 FTE + contractors for conflicts	\$175,000	1
Skagit Legal Aid	1 FTE plus \$ for conflicts	\$165,000	1
Snohomish County Legal Services	5 FTE's + \$ for conflicts	\$900,000	5
Thurston County VLS	3 FTE's + \$ for conflicts	\$510,000	4
Clark County VLP/HJP	4 FTE's + \$ for conflicts	\$660,000	3
Yakima County VAS/HJP	1 FTE + \$ for conflicts	\$175,000	1
Chelan County VAS/HJP	1 FTE using contractors	\$80,000	0
Benton Franklin County Legal Aid	Contract Attorneys for conflicts	\$15,000	0
Spokane County (KCBA)	3 FTE's Spokane County only plus \$ for conflicts	\$495,000	2
Reinbold contract		\$165,000	1
OCLA Staff			Total
OCLA ED Program Manager (Salary and Benefits)	Fully loaded	\$167,440	79
OCLA Eviction Defense Program Counsel (Salary and Benefits)	Fully loaded	\$151,424	
. 5 OCLA Support (Salary and Benefits)	Fully loaded	\$37,856	
JustTech Data Assistance		\$75,000	
Interpreters		\$50,000	
Research -- UW Evans School		\$100,000	
Seattle U PILF Fellows at KCBA		\$30,000	
Total FY 2023 Expenses		\$14,854,720	
Total Appropriation		\$12,957,000	

Contractor and VRA Expenses FY 24-25	
Yr. 1 Incremental ED Attorney Costs	\$1,332,720
Yr. 1 4% Adjustment	\$569,720
Total Yr. 1	\$1,902,440
Yr. 2 Incremental ED Attorney Costs	\$1,332,720
Yr. 2 4% Adjustment = Sum of Yr. 1 and Yr. 2 adjustments)	\$1,185,929
Total Yr. 2	\$2,518,649
Total Biennial Attorney Costs	\$2,665,440
Total Biennial VRA	\$1,755,649
Total Revised Contractor + VRA Expenses	\$4,421,089

FY 2024-25 CFL BUDGETS, VENDOR RATE ADJUSTMENTS, NEW REVENUE CALCULATIONS	
FY 2024 RTC Contractor Expenses	\$14,243,000
FY 2024 4% Vendor Rate Adjustment	\$569,720
FY 2024 RTC Contractor Expenses	\$14,812,720
FY 2025 4% Vendor Rate Adjustment	\$592,509
FY 2025 Contractor Expenses	\$15,405,229
FY 2026 Vendor Rate Adjustment	\$616,209
FY 2026 Contractor Expenses	\$16,021,438
FY 2027 Vendor Rate Adjustment	\$640,858
FY 2027 Contractor Expenses	\$16,662,295
FY 2024 Total Program Expenses	\$15,424,440
FY 2025 Total Program Expenses	\$16,016,949
FY 2024 Carryforward	\$13,522,000
FY 2025 Carryforward	\$13,568,000
FY 2024 Total New Appropriations Above Carryforward Required	\$1,902,440
FY 2025 Total New Appropriations Above Carryforward Required	\$2,448,949
FY 2026 Total Program Expenses	\$16,633,158
FY 2027 Total Program Expenses	\$17,274,015
FY 2026 Carryforward	\$13,522,000
FY 2027 Carryforward	\$13,568,000
FY 2026 Total New Appropriations Above Carryforward Required	\$3,111,158
FY 2027 Total New Appropriations Above Carryforward Required	\$3,706,015