

Washington State Judicial Branch

2024 Supplemental Budget

Address Eviction Defense Attorney Capacity Shortfall

Agency: Office of Civil Legal Aid

Decision Package Code/Title: BB – Address Eviction Defense Capacity

Agency Recommendation Summary Text:

Funding is requested to increase attorney capacity to accept court-appointments in unlawful detainer cases to address a 100 percent increase in unlawful detainer case filings.

Fiscal Summary:

	FY 2024	FY 2025	Biennial	FY 2026	FY 2027	Biennial
Staffing						
FTEs	0.5	1.00	0.75	1.00	1.00	1.00
Operating Expenditures						
Fund 001-1	\$1,117,400	\$1,935,304	\$3,052,704	\$1,992,988	\$2,052,403	\$4,045,391
Total Expenditures						
	\$1,117,400	\$1,935,304	\$3,052,704	\$1,992,988	\$2,052,403	\$4,045,391

Package Description:

In 2021, the Legislature directed that all indigent tenant defendants receive court-appointed attorney representation Section 8, Chapter 115, Laws of 2021 (codified at RCW 59.18.030). The Office of Civil Legal Aid (OCLA) was assigned responsibility to establish, administer, and oversee a statewide program for appointed counsel (tenant defense attorney program). Id. at sec. 9 (codified at RCW 2.53.050). The legislation was effective immediately upon the Governor's signature, April 22, 2021.

OCLA's tenant defense program was operational in every judicial district effective January 2022. Since then, every unrepresented indigent tenant who has requested, has been appointed an attorney to represent them. Through September 30, 2023, courts appointed attorneys for tenants in more than 12,500 unlawful detainer cases.

As a result of the substantial changes in landlord-tenant law enacted in 2021, most notably the just cause eviction requirement and the right of tenants to court appointed attorneys, unlawful detainer case filings were running at about 1,000 per month. This was about two-thirds the pre-moratorium level of 1,500 filings. Since late spring 2023 and increasingly following sunset of the Eviction Resolution Pilot Program (ERPP) on June 30th, unlawful detainer filings have increased dramatically – especially in the urban counties (King, Pierce, Spokane, Snohomish, Clark). While the initial post-moratorium norm was about 1,000 filings per month and was 1,027 as recently as April 2023, filings increased by 100 percent through the end of October (2056 unlawful detainer filings). Monthly filings are now at rates that exceed pre-pandemic filing levels. (A month-to-month report on case filings by county is attached below.) This 100 percent increase in case filings has placed enormous and unsustainable stress on the thinly staffed eviction defense providers which were already operating close to caseload handling capacity. To address this short-term trend, and more likely longer-term, and to avoid suspending court eviction proceedings in due to lack of capacity, OCLA has had to expand the number of attorneys available to accept court appointments. This decision package requests funding to cover the incremental expenses of ten (10) additional full-time eviction defense attorneys who will be strategically situated to ensure continued eviction defense services across the state and reduce the risk of attorney capacity shortfalls. This

represents a 13 percent increase in the current number of dedicated eviction defense attorneys. The cost of a fully loaded FTE attorney averages \$171,500 in FY 2024. The decision package assumes a 3 percent increase in each of the succeeding years.

In the absence of this additional capacity, OCLA will be faced with the prospect of suspending certification of attorney availability in one or more judicial districts. Should such a decision be made, the authority of courts in the affected judicial districts will cease until OCLA confirms that caseloads have stabilized at a level that is sustainable. See [July 11, 2021 AGO Letter Re: Effect of RCW 59.18.640](#) on Authority of Courts to Hear UD Cases. See also [Payton v. Nelson](#) (Ct. of App., Div. III (March 7, 2023)). This would result in the suspension of courts' authority to hear unlawful detainer cases involving low-income tenants – an outcome that would harm both landlords and tenants alike.

This request also includes funding for an additional Eviction Defense Program Counsel position. At present, OCLA has 1.3 FTE staff committed to administering both eviction defense programs (appointed counsel Right to Counsel (RTC) and pre-RTC). OCLA cannot perform essential contracting, oversight, and accountability functions of these more than \$17 million per fiscal year programs at this level of staffing. An additional Program Counsel is required to ensure the agency's capacity to perform these functions and ensure effective stewardship of state taxpayer funds.

Fully describe and quantify expected impacts on state residents.

Additional attorney capacity is necessary to maintain the existing standard of high-quality tenant defense legal services statewide, ensure that tenant defenders operate within applicable caseload guidelines (necessary for the effective assistance of counsel), and prevent potential disruptions in court proceedings or processes that could arise due to insufficient tenant defense attorney capacity.

Explain what alternatives were explored by the agency and why this was the best option chosen.

RCW 59.18.640 establishes a right to court appointed attorneys for indigent tenant defendants in unlawful detainer cases. This is a state legislative mandate and must be funded as such. There are no alternatives that will ensure continued effective assistance of court appointed attorneys and avoid suspension of unlawful detainer processing for indigent tenants due to client service (attorney) capacity shortages.

What are the consequences of not funding this request?

Rolling suspensions of certification of availability of attorney capacity resulting in suspension of courts' ability to hear unlawful detainer cases involving indigent tenants. This will further clog court dockets and cause harm to tenants and landlords alike.

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

No. This ensures continuity of operations consistent with the Legislature's directives in RCW 59.18.640 and RCW 2.53.050 in the face of a 100% increase in case filings.

Decision Package expenditure, FTE and revenue assumptions:

Funding for one new FTE is included. There is no revenue associated with this request.

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

Services funded through this appropriation serve the following judicial branch objectives.

Fair and Effective Administration of Justice

The Legislature has mandated public defense counsel for tenants in unlawful detainer cases. Effective assistance of counsel is essential to the fair administration of justice in these cases. To provide such assistance, attorneys must work within manageable caseloads and timelines. Injustice becomes systemic when attorneys are overwhelmed and unable to provide the level of representation demanded in these cases.

Accessibility

People of color, people with disabilities, and people with limited English proficiency are overrepresented in the ranks of tenants facing eviction. Attorneys require special training and skills to effectively defend their tenancies. Eviction cases involving these tenants often take more time to develop and defend.

Access to Necessary Representation

The right of indigent tenants to public civil defenders RCW 59.18.640 is absolute. As in the criminal, mental health, child welfare and juvenile justice contexts, the right is premised on the “effective assistance of counsel.” Overworked attorneys carrying excessive caseloads cannot meet this expectation. The outcome is ineffective assistance of counsel – or the effective denial of “necessary representation.”

Are there impacts to other governmental entities?

No

Stakeholder response:

OCLA anticipates no opposition to this request.

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?

No

Are there information technology impacts?

No

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Office of Civil Legal Aid
Policy Level – BB – Address Eviction Defense Capacity

Unlawful Detainer Cases Filed between 4/1/2023 and 10/31/2023 by Case Filed Month and by County

	April	May	June	July	August	September	October
ADAMS COUNTY SUPERIOR COURT	1	4		1	2		
ASOTIN COUNTY SUPERIOR COURT	6	5	2	4	4	3	9
BENTON COUNTY SUPERIOR COURT	37	42	42	39	69	67	68
CHELAN COUNTY SUPERIOR COURT	7	8	8	5	15	10	17
CLALLAM COUNTY SUPERIOR COURT	4	3	6	8	8	14	8
CLARK COUNTY SUPERIOR COURT	101	97	97	154	203	142	231
COLUMBIA COUNTY SUPERIOR COURT		1					
COWLITZ COUNTY SUPERIOR COURT	15	25	27	24	37	24	23
DOUGLAS COUNTY SUPERIOR COURT	2	5	4	2	6	8	
FERRY COUNTY SUPERIOR COURT	2	2			1		1
FRANKLIN COUNTY SUPERIOR COURT	18	15	10	7	11	16	29
GRANT COUNTY SUPERIOR COURT	10	7	14	14	10	14	21
GRAYS HARBOR COUNTY SUPERIOR COURT	9	9	10	13	23	20	22
ISLAND COUNTY SUPERIOR COURT	7	4	3	5	13	3	4
JEFFERSON COUNTY SUPERIOR COURT	2		2	1	2	6	2
KING COUNTY SUPERIOR COURT	223	288	327	386	488	449	634
KITSAP COUNTY SUPERIOR COURT	18	23	12	18	30	53	37
KITTITAS COUNTY SUPERIOR COURT	1	4	4	4	4	4	9
Klickitat County Superior Court		1	4	2	2	4	4
LEWIS COUNTY SUPERIOR COURT	18	9	6	10	11	12	12
LINCOLN COUNTY SUPERIOR COURT			4			2	
MASON COUNTY SUPERIOR COURT	3	6	5	6	7	6	6
OKANOGAN COUNTY SUPERIOR COURT	4	3	1	4		10	5
PACIFIC COUNTY SUPERIOR COURT	2	7	2	2		6	2
PEND OREILLE COUNTY SUPERIOR COURT	2	1	2	3	1	2	
PIERCE COUNTY SUPERIOR COURT	207	209	242	278	302	258	318
SAN JUAN COUNTY SUPERIOR COURT			2				1
SKAGIT COUNTY SUPERIOR COURT	12	12	10	7	21	5	21
SKAMANIA COUNTY SUPERIOR COURT	2	1	1	3	1		1
SNOHOMISH COUNTY SUPERIOR COURT	91	106	102	86	136	158	204
SPOKANE COUNTY SUPERIOR COURT	100	113	117	109	138	201	180
STEVENS COUNTY SUPERIOR COURT	1	2	5	5	2	3	3
THURSTON COUNTY SUPERIOR COURT	50	47	44	51	72	54	98
WAHIAKUM COUNTY SUPERIOR COURT		2		1			
WALLA WALLA COUNTY SUPERIOR COURT	7	11	10	7	13	15	11
WHATCOM COUNTY SUPERIOR COURT	21	18	23	28	56	39	28
WHITMAN COUNTY SUPERIOR COURT	6	5	1	4	1	6	4
YAKIMA COUNTY SUPERIOR COURT	38	25	37	31	40	40	43
Sum:	1027	1120	1186	1322	1729	1654	2056