

Washington State Judicial Branch

2023-25 Biennial Budget

Electronic Access for Superior Court Records

Agency: Office of Public Defense

Decision Package Code/Title: AG – Electronic Access to Court Docs

Agency Recommendation Summary Text:

OPD requests continued funding to maintain critical electronic access to Superior Court records. Current funding expires June 30, 2023. Ongoing funding is needed to cover County Clerks’ fees for the Odyssey court records system and other online document management systems in the Superior Courts. OPD-contracted attorneys and OPD managing attorneys who monitor contract compliance must be able to electronically access court records in order for OPD to ensure the right to counsel in indigent programs funded by the state, as required by RCW 2.70.005. (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	\$127,100	\$127,100	\$254,200	\$127,100	\$127,100	\$254,200
Object of Expenditure						
EY / Y040	\$127,100	\$127,100	\$254,200	\$127,100	\$127,100	\$254,200
Total Expenditures						
	\$127,100	\$127,100	\$254,200	\$127,100	\$127,100	\$254,200

Package Description:

Background:

All but two Washington counties have implemented the Superior Court case management system known as Odyssey. A smaller subset of counties currently utilizes the Odyssey Portal, a web-based application to view court records and individual documents. Other counties utilize other online document management platforms.

Fees are imposed to access court records.

As the independently elected record-keeping officers of the courts, County Clerks maintain and control official court records. Clerks are authorized to charge fees for court records, including fees to access and view documents electronically via Odyssey or other online platforms. There is not a consistent statewide fee protocol, and each Clerk’s Office develops its own fee schedules, ranging from single-service charges to monthly and annual subscriptions. Each Clerk administers fees only for their own county. Attorneys who practice in more than one county are subject to subscription and document fees in each county in which they practice.

Chapter 2.70 RCW requires OPD to provide qualified and effective lawyers to represent 1) all indigent persons who have constitutional and statutory rights to appeal a decision in appellate courts; 2) all indigent parents whose children are removed by CPS; 3) and all indigent persons facing indefinite civil commitment under Chapter 71.09 RCW. OPD administers these services through client services contracts with attorneys throughout the state. OPD managers must access court records in every county in order to effectively oversee contract performance. Many OPD contract attorneys are responsible for cases in two or more counties and must be able to access court records and documents in all the counties where they practice.

County Clerks typically exempt their own county prosecutors and county-employee public defense agencies from fees to access Odyssey and other electronic sources of court documents. However, state agencies and their contractors, such as OPD and its staff and contract attorneys, are *not exempt* from the fees.

Ethics rules prohibit government-contracted indigent defense attorneys from bearing investigation costs.

The Rules of Professional Conduct (RPCs) are attorney ethics regulations that are binding on every attorney licensed to practice in Washington State, including attorneys who contract with the Office of Public Defense to represent indigent clients. Violation of the RPCs can subject an attorney to professional discipline by the Washington State Bar Association and the Washington Supreme Court.

[RPC 1.8](#) addresses a variety of attorney conflict-of-interest situations. RPC 1.8 (m)(1)(ii) prohibits an attorney from engaging in a government indigent defense contract that requires the attorney to bear the cost of case investigation, which would disincentivize investigation and conflict with the attorney’s duty to provide effective client representation. The rule requires the government contracting authority to provide “a fair and reasonable amount for such costs ... that does not adversely affect the income or compensation allocated to the lawyer, law firm, or law firm personnel[.]” WSBA [Ethics Advisory Opinion 2208](#) further advises that RPC 1.8(m)(1)(ii) applies to “all investigation services, whether extraordinary or not.”

Investigating certain case-related issues necessarily requires access to court records and documents. For example, witnesses may appear in criminal, civil, and family law cases in multiple counties. Court records can be used to impeach, or even to help locate further witnesses.

OPD believes RPC 1.8(m)(1)(ii) and Ethics Advisory Opinion 2208 support the payment of fees to ensure that contracted defense attorneys have electronic access to court records and documents.

Problem

Current funding expires in Fiscal Year 2023. But costs are ongoing.

The state supplemental operating budget , Section 15(7) [Chapter 297, Laws of 2022](#), provides funding through Fiscal Year 2023 for OPD to purchase electronic access for OPD staff attorneys, and to reimburse OPD contract attorneys for eligible subscription and document fees, based on receipts. These are ongoing costs, and OPD requires ongoing funding to maintain access that is critically necessary for contract attorneys to effectively represent indigent clients and for OPD staff to effectively oversee contract performance.

Solution

The Legislature should provide ongoing funding. This Decision Package would provide ongoing funding to cover costs for OPD staff and OPD contractors to electronically access Superior Court records and documents via Odyssey and other online document management systems.

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

Washington statutes require OPD to provide qualified and effective lawyers to represent 1) all indigent persons who have constitutional and statutory rights to appeal a decision in appellate courts; 2) all indigent parents whose children are removed by CPS; 3) and all indigent persons facing indefinite civil commitment under Chapter 71.09 RCW. OPD serves more than 11,000 clients each year. OPD’s public defense clients are from every geographic area of Washington State, but they are disproportionately more likely to be from poor neighborhoods and to be people of color than non-indigent people who can afford to pay for an attorney of their own choosing.

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

As Odyssey and other electronic platforms became available over the years, OPD managing attorneys and many OPD contract attorneys initially sought fee exemptions from individual counties on the basis that the clients are indigent.

Clerks typically have denied the requests for exemption because the requesting attorneys are not employed by the county or a nonprofit organization. Most counties do not waive fees for OPD staff or for attorneys representing indigent clients pursuant to OPD public defense contracts.

As a work-around, some OPD contract attorneys attempted to avoid costly user fees by viewing court documents at the courthouse, which typically is free as provided by Court Rule [GR 31\(d\)\(3\)](#). However, since March 2020, in-person free access has become unpredictable and often impossible due to COVID-related closure and reduced hours at County Clerk's Offices. For OPD's Appellate and RCW 71.09 contractors, whose practices can include cases from numerous counties, in-person access is not a feasible alternative.

Prior to seeking this funding, OPD has attempted since 2018 to engage the Association of County Clerks to seek a statewide fee exemption for OPD's public defense cases. Outreach efforts have not secured an exemption for OPD staff and contracted attorneys.

What are the consequences of not funding this request?

Not funding this request would require OPD to reduce or end payment for electronic access to court records for OPD staff and contract attorneys.

- OPD staff would lose access to an important tool for monitoring contract performance.
- OPD-contracted attorneys would have to use personal funds to pay subscription and document fees for electronic access to court records, sometimes in multiple counties.
- At least some contractors could interpret this as a violation of RPC 1.8(m)(1)(ii) and refuse to accept an OPD contract.

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

This Decision Package does not expand or alter a current program or service. It maintains an existing service level.

Decision Package expenditure, FTE and revenue assumptions:

Goods and Services

OPD will pay Superior Court electronic subscription and document fees for OPD staff attorneys. OPD will reimburse contracted attorneys for eligible subscription and document fees, based on receipts.

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

This Decision Package supports the "Fair and Effective Administration of Justice" and "Access to Necessary Representation" principal policy objectives. It ensures that OPD-contracted attorneys can access electronic court records and documents, and it provides OPD staff with an efficient tool to monitor contract performance.

Are there impacts to other governmental entities?

No impact. County Clerks will continue to receive their fee revenue.

Stakeholder response:

OPD contractors and potential contractors would support this Decision Package.

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

RPC 1.8(m)(1)(ii) and Ethics Advisory Opinion 2208 require the state to cover investigation costs. OPD believes this includes fees for electronic access to court records and documents.

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?

Projected fees for FY 2023 and FY 2024



GSN Odyssey by
program 6-16-22.xlsx

[RPC 1.8\(m\)\(1\)\(ii\)](#), and related commentary:

Washington Court Rules, Rules of Professional Conduct, RPC 1.8(m)(1)(ii)

(m) A lawyer shall not: (1) make or participate in making an agreement with a governmental entity for the delivery of indigent defense services if the terms of the agreement obligate the contracting lawyer or law firm: (i) to bear the cost of providing conflict counsel; or (ii) to bear the cost of providing investigation or expert services, unless a fair and reasonable amount for such costs is specifically designated in the agreement in a manner that does not adversely affect the income or compensation allocated to the lawyer, law firm, or law firm personnel; or (2) knowingly accept compensation for the delivery of indigent defense services from a lawyer who has entered into a current agreement in violation of paragraph (m)(1).

Comment 28 to RPC 1.8(m)

[28] Similar conflict-of-interest considerations apply when indigent defense contracts require the contracting lawyer or law firm to pay for the costs and expenses of investigation and expert services from the general proceeds of the contract. Paragraph (m)(1)(ii) prohibits agreements that do not provide that such services are to be funded separately from the amounts designated as compensation to the contracting lawyer or law firm.

WSBA [Ethics Advisory Opinion 2208](#)

Advisory Opinion: 2208

Year Issued: 2010

RPC(s): 1.8(m)(1)(ii)

Subject: Lawyer paying costs of routine investigation services under county contract

Under its rules of procedure, the RPC Committee does not generally opine on past conduct, and will not do so here. Moreover, the Committee is not in a position to assess the reasonableness of the funding in a contract for public defender services or to involve itself in the negotiations over the terms of such a contract, and declines to do so here. However, because future conduct also appears to be implicated in the inquiry, the Committee is in a position to advise the inquiring lawyer that RPC 1.8(m)(1)(ii) requires a contract that, among other things, specifically designates a fair and reasonable amount for the costs of all investigations services, whether extraordinary or not.

Are there information technology impacts?

No

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