



Washington State Office of Civil Legal Aid

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James A. Bamberger, Director
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January 27, 2022

Honorable Charles W. Johnson, Co-Chair
Honorable Mary I. Yu, Co-Chair
Supreme Court Rules Committee
Temple of Justice P.O. Box 40929 Olympia, WA 98504-0929
Sent via email to supreme@courts.wa.gov

Re: Proposed new Superior Court Special Proceedings Rule 98.24W

Dear Justice Johnson and Justice Yu,

Thank you for the opportunity to provide feedback on proposed Superior Court Special Proceedings Rule 98.24W. The Office of Civil Legal Aid (OCLA) encourages favorable consideration and adoption of the proposed rule.

RCW 59.18.640 tasked OCLA with implementing, administering, and overseeing a statewide program for court-appointed attorneys for indigent tenants in unlawful detainer proceedings. In that role, OCLA has regularly met with stakeholders, observed court hearings, monitored court processes and landlord attorney practices, and tracked tenant outcomes. These efforts helped inform us about and work to address obstacles to effective and complete implementation of the new right to appointed counsel consistent with legislative intent.

An early lesson has been the lack of consistency across the 37 judicial districts in both the interpretation and implementation of the newly established tenant right to appointed counsel. Despite the guidance outlined in a bench card developed by the Superior Court Judges' Association in consultation with rental housing industry representatives and OCLA, judicial officers frequently fail to advise unrepresented tenants of their right to appointed counsel, provide them with information about where and how to be screened for eligibility, and upon appearance and appointment of counsel, fail to provide sufficient time for the tenant's attorney to prepare for and effectively represent the tenant. The proposed rule would establish uniform, legally enforceable norms across all judicial districts. In so doing it will eliminate the current "justice by geography" that often results in the effective denial of the right to timely appointment and effective assistance of counsel required by the Legislature.

Re: Appointment of Counsel in Unlawful Detainer Cases

1/27/2023

Page 2 of 3

Adoption of the proposed rule is a necessary and proper exercise of the Court's inherent authority to regulate practice and procedure in our state's courts. During the early days of the COVID-19 pandemic, the Court required uniform practices across all courts in several areas of practice and procedure. The Court's most recent rule continues many of these. Adoption of this proposed rule is consistent with the Court's recent actions.

The right to appointed counsel and the effective assistance of same cuts to the core of a fair and just judicial system. Regulation of the procedure by which the right is recognized and administered by judicial officers falls squarely within the reach of the Court's inherent authority. Recognizing the fundamental interest in protecting tenant housing stability, the Legislature directed that courts appoint attorneys in all unlawful detainer proceedings. Given the lack of consistency in judicial understanding and practice, it is appropriate – and necessary -- that the Court establish minimal uniform procedural safeguards and practices to ensure the proper and effective exercise of this right.

Regarding the proposed rule's substance, it is important to recognize that most tenants first learn of the unlawful detainer proceeding when they are served. For these tenants, regardless of merit, a temporary stay is the only way they can get an attorney. Tenants residing in jurisdictions where courts, despite SCJA encouragement and its bench card, have not formalize those processes by local rule or administrative order will be denied access to a court appointed attorney. Requiring a 10 day pause to allow for the assessment and administration of the appointed counsel program, is a measured and necessary procedural protection. OCLA also agrees with the proponents' analysis and rationale for uniform standards for providing temporary relief in post-writ matters.

In sum, OCLA believes that the proposed rule is within the scope of the Court's rulemaking authority, addresses significant problems that result in disproportionate and differential justice by geography in the handling of unlawful detainer cases, is vital to ensuring fair treatment of disproportionately BIPOC, LEP, and other defendants with limited understanding of their rights, and is fully consistent with applicable law.

For the foregoing reasons, OCLA respectfully requests that the Rules Committee recommend adoption of the proposed special proceedings rule.

Sincerely,

OFFICE OF CIVIL LEGAL AID

James A. Bamberger
Director

C: Philippe Knab, OCLA ED Program Manager

Re: Appointment of Counsel in Unlawful Detainer Cases

1/27/2023

Page 3 of 3

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To: [Martinez, Jacquelynn](#)
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Attachments: [SC Rule Letter Draft 1-27-23 Final signed.pdf](#)

From: Bamberger, James (OCLA) <jim.bamberger@ocla.wa.gov>
Sent: Friday, January 27, 2023 4:21 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: Bamberger, James (OCLA) <jim.bamberger@ocla.wa.gov>; Knab, Philippe (OCLA) <philippe.knab@ocla.wa.gov>
Subject: Proposed Special Proceedings Rule 98.24W

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Greetings,

Please find attached the comments submitted by the Office of Civil Legal Aid on proposed Special Proceedings Rule 98.24W.

Thank you.

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