



RIGHT TO COUNSEL

Meredith Bruch
NJP Yakima



OVERVIEW

- It is not an absolute “right” to counsel- it is dependent on availability of funding.
- The “right” to counsel is triggered after an unlawful detainer (eviction) has been filed or served. It, therefore, will not apply at the mediation stage.
- OCLA is dispersing funds to pay for attorney services to legal aid providers, HJPs and volunteer lawyer programs. They will hire or contract with attorneys to provide this representation.
- The plan is to have one primary point of intake- a new eviction defense screening line.
- Landlords are required to use 14-day pay or vacate notices and eviction summons notices that include information on a tenant’s right to counsel, and that include the eviction defense screening line phone number.

ELIGIBILITY

Indigent tenants in an unlawful detainer proceeding.

- “Indigent” defined as earning 200% or less of the federal poverty line (after taxes) or a person who receives certain public assistance programs (TANF, SSI, ABD, Medicaid, etc.).
- “Tenant” defined as any individual renting a dwelling unit or lot primarily for living purposes, including any individual with a tenancy subject to this chapter or chapter 59.20 RCW or any individual residing in transient lodging, such as a hotel or motel or camping area as their primary dwelling, for 30 days or more prior to March 1, 2020. Does not include occupants of homeless mitigation sites or a person entering onto land without permission of the landowner or lessor.
- “In an unlawful detainer proceeding” means against whom an eviction action has been filed OR served.
- Immigration status is not a factor, but not all attorneys will be able to serve all clients.

IMPLEMENTATION

- State law requires full implementation of the Right to Counsel within 1 year, but the state budget provided funding starting July 1, 2021, and the goal is to have it up and running as soon as possible. (OCLA hopes to have substantial implementation by October 1, 2021 and full implementation by December 31, 2021.)
 - *The bill requires prioritization for those counties in which the most evictions occur (as determined by the office of civil legal aid) and to tenants who are disproportionately at risk of eviction.*
- OCLA has already approved the hiring of attorneys in several areas across the state, but positions across the state have not been completely allocated.
- Ramping up will take time.
- To access an attorney after an eviction is filed or served, tenants can call the new eviction defense screening line: 855-657-8387. This line will be active July 1st and is run by the Northwest Justice Project. Clients can also go to NJP's apply online site: <https://nwjustice.org/apply-online> to begin the screening process for eviction help.

IMPLEMENTATION

- The bill directs Courts to appoint counsel, but the Court is not expected to screen or determine eligibility of the tenant.
- Tenants should be referred to the new eviction defense screening line or apply online site with NJP. We expect that attorneys for eligible clients will come back to the court for an order appointing specific counsel. Some programs funded by OCLA for RTC might also accept local intakes-contact them to find out their intake protocols.
- RTC programs should have access to interpreter services over the phone (at a minimum) for tenants who require an interpreter in order to consult with the attorney.
- Courts are required to provide access to interpreters for in-court proceedings.

IMPLEMENTATION

- When a tenant appears at an eviction show cause hearing and asks for counsel, we expect that a continuance will need to be granted to allow that tenant to access RTC services.
- Indigent tenants who appear at a show cause hearing and have been unable to contact an attorney should ask the court for a continuance. Continuances are at the discretion of the Court.
- Because this is not a housing justice project model, and attorneys will not necessarily be on site to step into cases the same day, continuances will be necessary. We expect that the need for continuances will be addressed in each court's local/standing orders.



Olympia Address:
411 Legislative Building
PO Box 40448
Olympia, WA 98504-0448
E-mail: Patty.Kuderer@leg.wa.gov

Washington State Senate
Senator Patty Kuderer
48th Legislative District

Telephone:
Olympia Office: (360) 786-7694
District Office: (425) 453-3064
Toll-Free Hotline: 1-800-562-6000
TDD: 1-800-833-6388

May 26, 2021

Judge David Estudillo, SCJA President
Dawn Marie Rubio, State Court Administrator

Re: Secs. 8-11, Ch. 115, Laws of 2021 (E2SSB 5160 Right to Counsel)

Dear Judge Estudillo and Administrator Rubio,

I am reaching out as the prime sponsor and lead negotiator on ESSB 5160, the bill that establishes the right to counsel for indigent tenants in evictions. I understand questions have arisen about how we intended the right to counsel provision to work.

Like many bills, E2SSB 5160 was changed as it moved through the process. The original bill provided that courts appoint attorneys for an indigent tenant “at any show cause hearing.” When informed that many unlawful detainer proceedings are commenced under RCW 4.28.020 (service of summons, or “pocket service”), we amended the bill to provide “the court must appoint an attorney for an indigent tenant in an unlawful detainer proceeding,” *regardless of the manner in which these cases are commenced*. Additionally, we modified the notice in the unlawful detainer summons form to include language encouraging tenants to call the new Eviction Defense Screening Line to see if they meet right to counsel qualifications, again, with the intent that for those eligible tenants, counsel would be appointed at the earliest possible opportunity.

I am aware that the Office of Civil Legal Aid (OCLA) has requested the Administrative Office of the Courts to establish a special code in the Odyssey case management system that would allow tenants and attorneys representing tenants against whom unlawful detainer proceedings have been commenced through service of a summons. This allows indigent tenants and their attorneys to initiate the ex parte proceeding (outside of any filed unlawful detainer action) to perfect their rights to appointed counsel under sec. 8 of the legislation and secure prompt appointment of the same. OCLA has provided me with an initial draft petition and order to do this. Consistent with clear legislative intent and purpose, I respectfully request that you work with OCLA to facilitate such a proceeding so that indigent tenants receive timely appointment of counsel.

I understand there is a concern regarding the courts’ duty to appoint counsel prior to being advised that sufficient attorney capacity exists in the judicial district under the law. The Legislature expressly acknowledged that OCLA would need time to set this program up.

Accordingly, the law provides OCLA with 90 days from the law's effective date to submit an implementation plan. The Legislature further directed OCLA to fully implement the program within twelve months of its effective date. This was done with the intent that the courts and OCLA work collaboratively to determine when sufficient capacity is available in each judicial district to effect the section 8 duty to appoint.

OCLA has kept me informed of the work of its RTC Implementation Work Group. I am aware that OCLA has also communicated with the Superior Court Judges Association, the Court Administrators and the Court Clerks on the design and timelines for implementation. OCLA advises that it intends to submit its implementation plan well in advance of the July 23, 2021 due date, and that it has taken steps to achieve substantial implementation by October 1, 2021 with a target date for full implementation by December 31, 2021.

In closing, our intent was to ensure that indigent tenants have attorney representation at the earliest possible opportunity in the unlawful detainer proceeding. I hope you find this letter helpful and I am happy to meet with you and others, as appropriate, to address any other questions you may have regarding this historic law.

Sincerely,

A handwritten signature in cursive script that reads "Patty Kuderer".

Senator Patty Kuderer
48th Legislative District