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Bob Ferguson
Attorney General of Washington
PO Box 40100
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Re: Request for formal opinion

Dear Attorney General Ferguson,

The Washington State Office of Public Defense and the Washington State Office of Civil Legal Aid seek a formal opinion as to whether RCW 13.50.010 requires court clerks to provide both agencies access to records in dependency and termination cases, often referred to as “Type 7” cases, without the need to file a notice of appearance.

As background, the Legislature tasked OPD and OCLA with providing State-funded appointed counsel to parents and children, respectively, in dependency and termination of parental rights cases. *See* RCW 2.70.020(1)(c) (requiring OPD to administer state-funded services for the “representation of indigent parents qualified for appointed counsel in dependency and termination cases”); RCW 2.53.025(1)-(2) (establishing OCLA’s children’s legal representation program); RCW 2.53.045 (requiring OCLA to administer state funds to “enter into contracts with attorneys and agencies for the provision of legal services” to children). For children’s representation, the Legislature specifically requires OCLA to ensure that its contracted attorneys comply with the rules of professional conduct, standards of practice, caseload limits, and training guidelines. *See* RCW 13.34.212(e); RCW 2.53.045(3). OPD similarly maintains policies to ensure the effectiveness of parents’ statutory right to representation (*see* RCW 13.34.090(1), (2)), including setting caseload limits, implementing professional standards of practice, and providing access to resources.¹

To that end, the Legislature amended RCW 13.50.010 in 2009 and in 2015 to ensure both OPD and OCLA, respectively, have access to case records related to their respective programs. *See* Laws of 2015, ch. 262, § 1(14); Laws of 2009, ch. 440, § 1(12). Access to case records ensures that the agencies are able to quickly respond to concerns about contracted attorney performance and provide necessary oversight over State-funded services for parents and children. In recognition of the confidential nature of court records, the Legislature requires both agencies to maintain confidentiality of all information included in the records.

¹ *See* Wash. State Office of Public Defense, Parents Representation Program Standards for Attorneys, updated 2018, available at: https://opd.wa.gov/sites/default/files/2023-08/00569-2018_UpdatedStandards.pdf.

Specifically, RCW 13.50.010(13) refers to OPD and states:

The court shall release to the Washington state office of public defense records needed to implement the agency's oversight, technical assistance, and other functions as required by RCW 2.70.020. Access to the records used as a basis for oversight, technical assistance, or other agency functions is restricted to the Washington state office of public defense. The Washington state office of public defense shall maintain the confidentiality of all confidential information included in the records.

And, similarly, RCW 13.50.010(14) refers to OCLA and states:

The court shall release to the Washington state office of civil legal aid records needed to implement the agency's oversight, technical assistance, and other functions as required by RCW 2.53.045. Access to the records used as a basis for oversight, technical assistance, or other agency functions is restricted to the Washington state office of civil legal aid. The Washington state office of civil legal aid shall maintain the confidentiality of all confidential information included in the records, and shall, as soon as possible, destroy any retained notes or records obtained under this section that are not necessary for its functions related to RCW 2.53.045.

Despite this express language, OPD and OCLA have faced significant challenges in accessing court records. While some court clerks have provided OPD and OCLA access to "Type 7" case files, several other court clerks have declined. For example, some court clerks decline to provide access, reasoning that RCW 13.50.010 refers to "the court" and not specifically to "court clerks" or "the clerk." Other court clerks request OPD and OCLA managing attorneys file a notice of appearance in the underlying dependency and termination proceedings in order to access the confidential case file. But both OPD and OCLA are statutorily prohibited from doing so. *See* RCW 2.70.020 ("The office of public defense shall not provide direct representation of clients."); RCW 2.53.020 ("The office [of civil legal aid] shall not provide direct representation of clients."). This patchwork access to court records has hindered our agencies' ability to provide timely oversight and technical assistance to contracted attorneys.

We hope that an Attorney General Opinion will clarify the obligations court clerks have statewide to release court records (without requiring our attorneys to violate the statutory prohibition against direct representation) and facilitate our ability to provide important oversight over the legal services programs that we administer.

Thank you.



Sara Robbins
Director of the Office of Civil Legal Aid



Larry Jefferson
Director of the Office of Public Defense