

March 12, 2018

MEMORANDUM

To: Civil Rights, Utilities, Economic Development and Arts Committee Members
From: Alan Lee, Council Central Staff
Subject: Resolution 31802 - Civil Legal Aid

Summary

[Resolution 31802](#) would approve criteria for providing civil legal representation to Seattle Municipal Court (SMC) public defense clients on evictions and other matters. Pursuant to [Green Sheet 352-1-C-2-2017](#), Council adoption of criteria is a requirement for authorizing a two-year civil legal aid pilot program to provide direct legal representation. This memo provides background information on the civil legal aid pilot program administered by KC DPD, discusses the scope of work contained in Resolution 31802, and offers considerations for the Committee.

Issue and Pilot Background

Civil legal aid is legal assistance to indigent clients that focuses on accessing or maintaining basic necessities, such as housing, government benefits, healthcare, and employment, and ensuring safety and stability. Numerous studies and surveys, including the [Washington State Civil Legal Needs Study](#) (2015), emphasize an increased need for civil legal aid and describe its potential to decrease costs for civic services such as emergency shelter and legal assistance related to domestic violence. Civil legal aid, however, unlike legal defense representation in criminal cases, is not guaranteed under federal or state law.

The Council in 2016 passed Green Sheet 352-1-C-2-2016 to provide \$440,000 over two years for a civil legal aid pilot program. The pilot is divided into two phases. Eligible clients are indigent¹ defendants referred by SMC to KC DPD for criminal representation. The initial phase of the pilot involves civil legal aid attorneys at KC DPD providing defense attorneys and clients advisement to address “collateral consequences” resulting from plea bargains in criminal cases in cases referred by SMC. Collateral consequences are unintended and often serious civic consequences that emerge from plea bargaining or from other facets of criminal defense. A particular length of jail sentencing, for example, can lead to a loss of housing, or certain types of convictions can affect professional licensure. KC DPD hired three civil legal aid attorneys in July-August 2017.

¹ Indigency is defined by RCW 10.101.010 as someone who, at any stage of a court proceeding, is at least one of the following: beneficiary of certain types of public assistance; involuntarily committed to a public mental health facility; receives an annual income 125 percent or less of federal poverty level; unable to pay costs of counsel.

The second, overlapping phase of the pilot involves the provision of direct civil legal representation on housing matters such as evictions proceedings. GS 352-1-C-2-2016 stipulates that direct legal representation services can commence only after (1) KC DPD provides the Council with a report on criteria for providing legal representation services (Attachment A); and (2) the Council passes a resolution approving criteria for providing civil legal representation services. It should also be noted that KC DPD by contract cannot engage in this kind of work until the interlocal agreement (ILA) with the City is amended to include direct representation services. The ILA provides an opportunity for the Council to provide contractual parameters around the expenditure of funds for civil legal representation and criteria for civil legal representation eligibility; presumably the ILA would mirror the guidance provided by Resolution 31802.

KC DPD report and proposed scope of work

The KC DPD report provides a demographic and programmatic summary of the pilot's results for data collected from July through December 2017. A total of 293 cases received civil legal aid during this time period. It should be noted that as SMC refers approximately 7,500 cases to KC DPD each year, the sample size (n = 293) and time period (six months) may not be large enough to allow representative conclusions to be drawn; the data are, however, the best available at this time.

The clients receiving civil legal aid were two-thirds male and one-third African American. While the report presents demographics of the clients served by the pilot, it does not compare those demographics to the SMC defendant population at large. This will be useful information to explore as the pilot data collection effort progresses.

Most of the civil legal aid was administered earlier in a client's case, occurring during pre-trial 33 percent of the time; post-sentencing, 23 percent; and plea bargaining, 20 percent.

As called for by Green Sheet 352-1-C-2-2016, the report includes criteria for providing civil legal representation to SMC public defense clients. KC DPD will base its decision for civil legal representation on three factors, including the following:

- (1) The client's ability to represent themselves;
- (2) The complexity of the case and expertise of the Collateral Consequence Attorneys; and
- (3) KC DPD resources required to complete the representation.

The first phase report also identifies seven areas of collateral consequences encountered during the course of the pilot thus far, and from these areas, proposes five service areas for direct representation (see Table 1 below). The five service areas were chosen based on KC DPD's assessment of client needs and the expertise of current Collateral Consequence Attorneys.

KC DPD’s five proposed areas of focus for civil legal representation are incorporated into Resolution 31802. This is an expansion of the original green sheet, which instructed that direct civil legal representation be on housing matters. The change recognizes the demand for other service areas that became apparent to KC DPD in the course of collecting pilot data. In keeping with the housing priority expressed in Green Sheet 352-1-C-2-2016, Resolution 31802 indicates that evictions should be prioritized for direct civil legal representation. The resolution also prioritizes serving communities adversely impacted by criminal justice system racial inequities.

Table 1: Direct Service Areas Proposed in Resolution 31802 and Collateral Consequences

RESOLUTION 31802 Direct Representation Service Areas	COLLATERAL CONSEQUENCES Civil Legal Aid Pilot Data		
	Type	Clients	% Clients
i. Evictions	Housing	71	24.2%
ii. Housing discrimination	Other	49	16.7%
iii. Public benefits	Employment	35	11.9%
iv. Matters involving no-contact or protection orders	Child and Family Issues	29	9.9%
v. Issues involving licensing, records, and legal financial obligations	Public Benefits	29	9.9%
	Driver's License	20	6.8%
	Record Issues	17	5.8%

The proposed direct representation service areas do not align with the collateral consequence categories, but there is crossover. For example, matters involving no-contact or protection orders are not listed as an explicit collateral consequence, but they are prevalent in housing and child and family issues, manifested as domestic violence, anti-harassment orders, neighbor disputes, and other issues across sundry collateral consequence types. “Other” as a collateral consequence type involves a variety of issues, including legal financial obligations.

Interlocal Agreement and Memorandum of Understanding with KC DPD

Interlocal Agreement

Prior to 2017, the City’s ILA with KC DPD to provide public defense for SMC clients did not include provision of civil legal aid of any kind in the scope of work. The civil legal aid work of the first phase was added as an amendment to the previous ILA, and subsequently included in the current ILA, which was approved by the Council in August 2017.

Initiation of the second phase of the pilot will require adding legal representation services to the ILA’s scope of work. A committee hearing for such an ILA amendment is presently scheduled for the Gender Equity, Safe Communities, New Americans, and Education Committee on March 28, 2018. The Executive will generate the amendment.

The current contract for services with KC DPD is \$8,325,548. Approval of Resolution 31802 and subsequent approval of an amendment to expand the scope of work of the interlocal agreement to include direct representation services will allow 2018 funding to be used for the pilot. The budget is discussed below.

Memorandum of Understanding (MOU)

Data collection for legal aid for collateral consequences will continue throughout the remainder of the pilot. A reporting requirement for legal representation services will be incorporated into a MOU between KC DPD and the City. Performance tracking for legal representation services is expected to include monthly reporting on hours and number of court cases, and whether services pertained to civil or administrative proceedings, as well as training hours for when attorneys provide civil legal aid training to KC DPD staff. The MOU will also include a final reporting requirement, summarizing the results of both phases of the pilot.

Budget and Criteria Considerations

The cost of each attorney (1.0 FTE), fully loaded, is \$146,834. The pilot's budget in the 2018 adopted budget is \$220,000 General Subfund, which funds 3.0 FTE through July 2018 (affording four month of opportunity for direct representation services if Resolution 31802 is adopted and the ILA is amended). The first phase of the pilot commenced in July 2017, leaving an underspend in 2017 for the project of \$94,449; if these funds are appropriated to the pilot, it could continue until September 2018. Providing funding to extend the pilot until the end of 2018 would require an additional \$220,502 in appropriations. The Council could consider appropriating \$94,449 in the 2018 carry forward ordinance and \$126,053 in a supplemental budget action.

At this time, it is unknown what the demand for direct civil legal representation will be, and the ability of the program to meet that need given its resources. In Phase 2, it is expected that the collateral aid being rendered in Phase 1 will continue, with direct representation being phased in to comprise some portion of services. Given the limited resources, it will be important to have clear prioritization criteria for determining which clients receive civil legal representation. In considering whether to scale up or extend the pilot, the Council may need to re-examine case criteria based on study of further pilot results, examine the costs and benefits of expanding the program to provide direct civil legal representation, and, if resources are strained in Phase 2, reconsider client eligibility criteria and potentially the incorporation of a Seattle residency requirement.

Attachment:

1. KC DPD Report on Collateral Consequence Attorneys

cc: Kirstan Arestad, Executive Director
Amy Tsai, Supervising Analyst

King County Department of Public Defense Report on Collateral Consequence Attorneys



King County

**Department of
PUBLIC DEFENSE**

*Upholding the Constitution,
one client at a time.*

**Report to City Council
March 8, 2018**

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I. Introduction

In 2017, the City of Seattle allocated \$440,000 of funding to Criminal Justice Contracted Services for a two-year pilot project for civil legal services attorneys (“Collateral Consequence Attorneys”) to provide services in coordination with the criminal representation provided to Seattle Municipal Court indigent defendants by the King County Department of Public Defense (KC DPD). The funding was a result of the Council’s recognition that there are a large number of unintended collateral consequences that result from a criminal conviction. These consequences were, in most cases, not intended by the legislature and are barriers to people re-entering and rehabilitating.

The initial phase of the pilot project focused on provision of legal advice regarding civil legal consequences of specific plea offers.

Given that the funding is directed to the KC DPD, DPD is expected to report to the City Council’s Committee on Civil Rights, Utilities, Economic Development, and Arts. (CRUEDA). This report is intended to meet the City’s expectation.

II. Background

A. King County Department of Public Defense

Pursuant to the contract with the City of Seattle, the KC DPD legally represents individuals who are indigent and charged with a crime in Seattle Municipal Court. KC DPD attorneys handle approximately 7,500 cases a year from SMC.

KC DPD assigns cases to one of the three divisions that currently work in SMC — Associated Counsel for the Accused Division, Northwest Defender Division, and The Defender Association Division. In order to provide conflict-free representation, the three divisions are separated by “ethical walls” and operate as separate law firms for the purposes of client representation. A client represented by one division cannot be represented by a lawyer from a different division and confidential client issues can only be discussed within that client’s particular division.

B. Collateral Consequences

While KC DPD attorneys have significant expertise in identifying and litigating criminal legal issues (e.g., unlawful searches, unlawfully obtained confessions), these attorneys have significantly less expertise in identifying and mitigating the civil collateral consequences of convictions.

The Council of State Governments has identified over 100 possible collateral consequences for a misdemeanor conviction in Washington.¹ These include the loss of

¹ <https://niccc.csgjusticecenter.org/search/?jurisdiction=48>

professional certifications (e.g., chemical dependency counselor), the loss of a driver's license, and the loss of housing.

The three Collateral Consequence Attorneys have received over 300 referrals from public defenders since joining KC DPD in August 2017. Involvement ranges from advising public defenders to working directly with clients, advising them of their rights, and empowering them to act upon these rights. Oftentimes, during the course of the representation, clients become aware of their rights for the first time regarding housing, employment licenses, visitation of their children, and public entitlements. The Collateral Consequence Attorneys advise clients on lease enforcement, immigration issues, administrative hearings, legal financial obligations, and family law proceedings, among many other issues that accompany clients' criminal charges. Additionally, these attorneys advise public defenders, prosecutors, and clients of the civil consequences attached to a criminal conviction. Even when clients do not secure a legal victory, they have been advised of their legal rights and provided an opportunity to act upon them.

In addition to the work with individual clients, Collateral Consequence Attorneys provide advice to public defenders about innumerable matters ranging from civil rules of discovery to administrative procedure and processes to specific rights held by people deemed incompetent in immigration court. They research and advise based on court and legislative policies. Below are a few examples of the results these attorneys have been able to achieve in their first five months.

III. Current Data

Thus far, the city-funded Collateral Consequence Attorneys have focused on helping KC DPD criminal defense attorneys and their Seattle Municipal Court clients determine plea agreements that help meet the client's needs by taking into account collateral impacts to the client.

Since August, Collateral Consequence Attorneys have provided advice and advocacy to nearly 300 clients regarding the potential collateral consequences of criminal charges they face. This report summarizes client demographics and areas in which clients were provided advice or advocacy.

A. Client Demographics

Of the nearly 300 clients advised by the Collateral Consequence Attorneys, approximately 66.2% of these clients were male and 29.0% were female. Approximately 32.4% of all clients were African-American and 31.4% were white, although the race of a large proportion (28.3%) of clients was unrecorded. Approximately 9.6% of all clients were of Hispanic/Latino origin.

Table 1. Client Gender²

Gender	Clients	Percentage of Clients
Male	194	66.2%
Female	85	29.0%
Trans-female	4	1.4%
Trans-male	2	0.7%

Table 2. Client Race/Ethnicity

Race	Clients	Percentage of Clients
Black/African-American	95	32.4%
White	92	31.4%
Asian	9	3.1%
More than Two Races	7	2.4%
Native American/Alaska Native	4	1.4%
Native Hawaiian or Other Pacific Islander	3	1.0%

Table 3. Client Hispanic Origin

Hispanic Origin	Clients	Percentage of Clients
No	167	57.0%
Yes	28	9.6%

Table 4. Client Immigration Status

Immigration Status	Clients	Percentage of Clients
U.S. Citizen	116	39.6%
Undocumented	13	4.4%
Documented	3	1.0%

Approximately 68.3% of clients were male and 28.3% were female.
 Approximately 37.6% of misdemeanor clients were white and 29.8% were African-

² At the time data for this report was compiled, KC DPD Collateral Consequence Attorneys had received just under 300 referrals. The current total is over 300.

American, with 23.9% of misdemeanor clients having an unrecorded racial group. Approximately 12.7% of misdemeanor clients were of Hispanic/Latino origin. Undocumented immigrants comprised 5.4% of KC DPD’s misdemeanor clients.

IV. Areas of Collateral Consequence Attorney Advocacy

KC DPD Collateral Consequence Attorneys have provided advocacy for 205 clients with misdemeanor charges (70.0%), 40 clients with felony charges (13.7%), and 19 clients with ITA charges (6.5%). KC DPD Collateral Consequence Attorneys provided advocacy at the pre-trial phase 33.1% of the time, during post-sentencing 23.2% of the time, and at the plea phase 19.8% of the time. Almost half of the attorneys’ advocacy efforts were providing advice to the defense attorney (49.8%), while 37.5% of the advocacy efforts were providing advice directly to the client. Approximately 24.2% of referrals were related to housing, which included maintaining housing and eviction concerns. Approximately 12.0% of issues were related to employment, which included maintaining employment, maintaining professional licenses (e.g., commercial driving and nursing), and maintaining unemployment benefits. Family issues and public benefit issues each comprised 9.9% of the Collateral Consequence Attorneys’ advocacy efforts. For misdemeanor clients, KC DPD Collateral Consequence Attorneys primarily dealt with issues surrounding housing, employment, and driver’s licenses. For felony clients, KC DPD Collateral Consequence Attorneys primarily dealt with issues surrounding housing, asset forfeiture, employment, and public benefits.

Table 5. Collateral Consequence Attorney Involvement by Case Type

Case Type	Clients	Percentage of Clients
Misdemeanor	205	70.0%
Felony	40	13.7%
ITA	19	6.5%
Dependency	6	2.0%
Mental Health Court	3	1.0%
Family Law	1	0.3%
RALJ	1	0.3%

Table 6. Collateral Consequence Attorney Involvement by Advocacy Stage

Advocacy Stage	Clients	Percentage of Clients
Pre-trial	97	33.1%
Post-sentencing	68	23.2%
Plea	58	19.8%

Sentencing	24	8.2%
Post-time served	20	6.8%
In Custody	2	0.7%
Post-commitment	2	0.7%
ITA	1	0.3%

Table 7. Collateral Consequence Attorney Involvement by Type of Advocacy

Type of Advocacy	Clients	Percentage of Clients
Advised Defense Attorney	146	49.8%
Advised Client	110	37.5%
Brief Services	26	8.9%
Advised Attorney and Client	1	0.3%
Advocacy with Judge	1	0.3%

Table 8. Collateral Consequence Attorney Involvement by Collateral Consequence Type

Collateral Consequence Type	Clients	Percentage of Clients
Housing	71	24.2%
Other	49	16.7%
Employment	35	11.9%
Child and Family Issues	29	9.9%
Public Benefits	29	9.9%
Driver's License	20	6.8%
Record Issues	17	5.8%
Immigration and Travel	12	4.1%
Civil Rights	9	3.1%
Court Admin and Fees	6	2.0%
Asset Forfeiture	5	1.7%
Warrants and Bail	5	1.7%
Care Status	1	0.3%
Debt and Finances	1	0.3%
Discovery	1	0.3%
Insurance	1	0.3%
Officer Misconduct	1	0.3%
Pretrial Negotiations	1	0.3%

V. Sample Success Stories

A. Enforcement of the Fair Chance Employment Ordinance

When an applicant or newly hired employee has a negative report on their employment criminal background check, the employer must provide the individual with an opportunity to explain or clarify prior to rejection. A major regional grocery chain and employer of numerous current and former KC DPD clients fired three clients without affording them the opportunity to explain or clarify their background check out of compliance with the Fair Chance Employment Ordinance. Following discussions between Collateral Consequence Attorneys and corporate personnel, an understanding was reached as to the proper applicability of the Ordinance's notice and opportunity to explain requirements. This resulted in one client (a 21-year-old Caucasian male) being re-hired, a second (a 19-year-old Black/African American female) currently in the re-hiring process, and a third (a Caucasian female in her late 30s) who has been advised of her right to challenge the negative hiring decision.

B. Public Entitlements

The Collateral Consequence Attorneys helped many maintain entitlements or continue applications and appeals for entitlements while in custody.

C. Legal Financial Obligations

Numerous clients have been assisted with negotiating and paying off legal financial obligations, including assistance in dealing with collection agencies and King County's new Unified Payment program.

D. Ensuring Better Housing Outcomes

- An eviction was stopped for a client while they were in custody.
- A 34-year-old single mother of African descent was arrested on an assault charge against the father of her nine-month-old daughter, but the prosecutor declined to file charges and she was subsequently released. Immediately thereafter, she was served with a three-day notice to vacate her apartment. The client vacated the apartment, but she did not know what her rights were or whether she could get back into the apartment. Through negotiations with the landlord's attorney, the Collateral Consequence Attorneys were able to ensure that the client would not have an eviction on her record or be responsible for back rent.
- A resident of a "tiny-home" faced loss of the house if he remained in custody for more than 30 days on a theft charge. The Collateral Consequence Attorney advised the defense attorney and the prosecutor, who agreed to a lesser charge and sentence so the client could keep his home.

E. Protecting Families

A mother facing jail time with no family, friends, or neighbors to care for her child was able to find supportive and stable housing for her daughter to avoid Child Protective Services' intervention and the fear that her daughter would end up in foster care.

F. Criminal Records

- An 18-year-old client was arrested during a police sting operation on massage parlors on the charge of "sexual exploitation." He was traveling to Canada for college on a full-ride football scholarship, but because of the arrest he was denied entry at the border. The Collateral Consequence Attorney was able to confer repeatedly with prosecutors to get a letter explaining he had not been charged, which the client continues to carry with him as he travels between the U.S. and Canada.
- Many clients have been assisted with expunging old charges and advised of the likely consequences stemming from their record.

G. Employment Licenses

- A 32 year old African-American male was charged with a DUI. The client had been employed with a contractor of Seattle Public Schools and was working towards obtaining his teaching certificate. He feared that a DUI conviction would threaten his chance at obtaining those credentials. After advising defense counsel on the potential ramifications of such a conviction, counsel was able to present a compelling case to the prosecutor and negotiate a lesser plea of reckless driving.
- The Collateral Consequence Attorneys have advised numerous clients about the consequences on professional licensure.

H. Drivers' Licenses

- Collateral Consequence Attorneys negotiated a payment arrangement with a collection agency so a client could re-obtain her driver's license.
- Numerous clients have been advised about appealing license suspension and assisted in securing temporary or limited licenses. Maintaining the right to drive has afforded breadwinners and parents the ability to continue providing for their families.

I. Asset Forfeiture

A client who was living in his car with all of his possessions had his car impounded following a DUI. By working with the impound lot and client's family, the Collateral Consequence Attorney was able to get the client's possessions secured prior to being put up for auction.

VI. Next Steps

In phase two of this project, the Collateral Consequence Attorneys will provide representation in civil proceedings. KC DPD will determine if a Collateral Consequence Attorney will represent a client in civil or administrative proceedings based primarily on three factors:

- The client's ability to represent themselves
- The complexity of the case and expertise of the Collateral Consequence Attorneys
- KC DPD resources required to complete the representation

Substantively, Collateral Consequence Attorneys will focus on:

- i. evictions;
- ii. housing discrimination;
- iii. public benefits;
- iv. matters involving no contact or protection orders; and
- v. issues involving licensing, records, and legal financial obligations.

These areas were chosen based on KC DPD's assessment of client needs and the expertise of current Collateral Consequence Attorneys.

VII. Conclusion

KC DPD is grateful for the benefits this pilot project has had for both KC DPD clients and for the people of Seattle. Housing and employment are protective factors against recidivism. The work done by the Collateral Consequence Attorneys to avoid the loss of housing and employment, or other barriers to maintaining housing and employment, keeps us all safer and healthier.

We look forward to building on this work by representing clients in evictions and other civil proceedings.