

Written Comments Received for
March 26–27, 2013, Trial Court Funding Workgroup Meeting

Item No.	Name	Topic	Date of Receipt
1	Mr. Jim Luther, Judge (Retired) Mendocino County Superior Court	The Need for Branch Courts in Geographically Challenged Rural Counties	March 7, 2013
2	Mr. Karl Nicholas	Legal Aid in the San Francisco Family Law Courts—a Study	March 20, 2013
3	Ms. Mary Lavery Flynn, on behalf of the Access to Justice Commission	Modified Minimum Standards for Access	March 21, 2013



March 4, 2013

Hon. Philip Isenberg, Co-Chair
Trial Court Funding Workgroup
c/o Jody Patel, Chief of Staff
Administrative Office of the Courts
2860 Gateway Oaks Drive, Suite 400
Sacramento, California 95833

**Re: The Need for Branch Courts in
Geographically Challenged Rural Counties**

Dear Phil:

I hope the enclosed copy of my letter to Judge Earl and short paper "**Getting to Court in Mendocino County**" are self-explanatory.

You know I never write to you except when I need something. Please do what you can so we can stop whacking branch courts here and in the other rural counties that need them in order to serve their people.

Mary Drew says hi and sends you her best wishes. As do I.

Yours very truly

A handwritten signature in black ink, appearing to read "Jim Luther".

Jim Luther

cc: Hon. Richard Henderson, Presiding Judge
Mendocino County Superior Court



March 1, 2013

Hon. Laurie M. Earl, Chair (EarlL@saccourt.ca.gov)
and Members of the Funding Methodology Subcommittee
Trial Court Budget Working Group
c/o Sacramento County Superior Court
720 Ninth Street
Sacramento, California 95814

Re: **“Geographic Challenges”** (Very Apt Expression)

Dear Judge Earl and Members:

I live on the Mendocino Coast and belong to a group called “Save Our Coast Court.” Our County is divided by a mountain range separating the coast from the inland region. A one-judge court in Fort Bragg on the coast serves about 30% of the County’s population. The seven-judge main court in Ukiah, 60 rugged miles inland and an hour and a half away, serves the rest. The court in Fort Bragg is the last functioning branch court in Mendocino County. We are trying to help our judges in their increasingly valiant efforts to keep it going and expand its services.

To acquaint you with our County’s particular geographic challenges, I attach a paper, “Getting to Court in Mendocino County,” and invite you to visit our www.saveourcoastcourt.org website.

In your recommendation for a new funding model, we are heartened by your inclusion of consideration of special local factors, like unique geography and how it can prevent a single Superior Court from providing an accessible forum to all segments of its County’s population. We find this kind of thinking refreshing, want it to succeed, and hope our information helps you. If you need any further assistance in your endeavor, please contact us and we will provide it.

Yours very truly,

Jim Luther, Judge (Retired)
Mendocino County Superior Court

cc: Hon. Richard Henderson, Presiding Judge
Mendocino County Superior Court

Over Hill and Dale, Over Time . . .

GETTING TO COURT IN MENDOCINO COUNTY

By Jim Luther ¹

First, a Page of Necessary Background

Historically, two kinds of trial courts served Mendocino County. There was the Superior Court ² at the county seat in Ukiah. And there were the many “inferior courts” of various names—known most familiarly to us as Justice Courts ³—one in Ukiah and the rest situated in wide-spread coastal and inland towns and villages throughout the County.

The Superior Court handled the “big” cases: The civil suits for large sums of money, the divorces and family law cases, the probate, juvenile, and mental health cases, and the jury and non-jury trials and sentencings in the felony criminal cases. In the Superior Court, lawyers usually represented the litigants. Selection of the Superior Court judge was by election by the voters of the County every six years, or in case of a mid-term vacancy by appointment by the Governor. The State Constitution provided for one Superior Court with one or more judges in each of California’s counties. The number of Superior Court judges in each County and their salaries were set by the Legislature. Superior Court judges were required by law to be lawyers admitted to the Bar.

The Justice Courts, legally designated as a type of inferior court, handled the other cases: The civil suits for limited sums, the traffic, Fish & Game, Animal Control, and Small Claims cases, and most of the unlawful detainer and collections cases. In most of these cases, the parties on one or both sides represented themselves. The Justice Courts also conducted the jury and non-jury trials and sentencings in the misdemeanor criminal cases. And the Justice Courts in the larger towns conducted preliminary examinations in the felony cases. Each Justice Court judge was elected by the voters of his Court’s judicial district every six years. Mid-term vacancies were filled by appointment by the County Board of Supervisors, and the number and boundaries of the Justice Court districts and the salaries of their judges were set by the Board. Until the mid-1970’s, the majority of Justice Court judges statewide and in Mendocino County were non-lawyers.

¹ Judge (Retired): Ukiah Justice Court (1977-1984); Mendocino County Superior Court (1985-1996).

² Established by *California Constitution of 1879* (hereinafter “*Cal.Const.*”), art. VI, §§ 1, 5-6.

³ Then called Justices of the Peace or Justices Courts, these courts were authorized by *California Constitution of 1849*, art. VI, §§ 1, 14, prior to statehood.

Not So Long Ago

*“The county has a tradition of bringing the judge to the people.”*⁴

As recently as 1969, there were ten Justice Courts in Mendocino County, each with its own judge and constable. On the Coast, they were the Ten Mile Justice Court in Fort Bragg; the Big River Justice Court in Mendocino; the Cuffey’s Cove Justice Court in Elk; and the Arena Justice Court in Point Arena. Inland, they were the Long Valley Justice Court sitting alternately in Leggett and Laytonville; the Round Valley Justice Court in Covelo; the Little Lake Justice Court in Willits; the Ukiah Justice Court in Ukiah; the Sanel Justice Court in Hopland; and the Anderson Justice Court in Boonville. The locations of these courts are shown on the map on page 3.⁵

Jury trials were regularly held in the Ukiah, Ten Mile, and Little Lake Justice Courts, and were sometimes held in the others. Felony preliminary hearings were conducted in the Ukiah, Ten Mile, and Little Lake Courts. The Ukiah Court had a full-time caseload; the Ten Mile and Little Lake Courts sat most days every week; all three of these courts had full-time Clerks’ Offices. The other seven Justice Courts had part-time Clerks and held court a few days each month.

In 1970, the Cuffey’s Cove Justice Court in Elk was closed.

Starting with the election of 1976, a change in the law required Justice Court judges to be lawyers.⁶ In Mendocino County, those Justice Court judges who were not lawyers were replaced by young attorneys, most of whom were relatively new to the County.

In 1982, the Big River Justice Court in Mendocino and the Sanel Justice Court in Hopland were closed.

In 1990, the Justice Court in Ukiah and the Little Lake Justice Court in Willits were consolidated into a single judicial district. Because the new district contained 40,000 or more residents, the Constitution required it to be transformed into a Municipal Court district. It was named the Mt.

⁴ *Facilities Master Plan* prepared for the Superior Court of California, Mendocino County by the California Administrative Office of the Courts (AOC,) September 26, 2002, at page 12.

⁵ As of 1969, all ten of these courts had been in continuous existence under various names for more than 70 years, six of them for more than a century. The *Mendocino Dispatch Democrat* mentioned the “Long Valley Justice of the Peace” on April 10, 1896; the “Justice of the Peace of Cuffeys Cove Township” on January 6, 1893; the “Justice of the Peace of Little Lake Township” on January 10, 1890; and the “Justice of the Peace for Ten-Mile River Township” on October 11, 1889. The *Mendocino Herald* referred to “Justice Stebbins’ Court, Anderson Township” on August 3, 1866; the “Justice’s Court, Arena Township” on June 5, 1863; the “Justice’s Court, Ukiah Township” and the “Justice’s Court, Big River Township” on June 13, 1862; and the “Justice’s Court, Sanel Township” and the “Justice of the Peace in and for the Round Valley Township” on September 13, 1861.

⁶ *Gordon v. Justice Court* (1974) 12 Cal.3d 323.

MENDOCINO

County Map, California



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Sanhedrin Municipal Court District, and its two former Justice Court judges became Municipal Court judges. Municipal Courts, another kind of inferior court usually situated in California's urban areas, and Justice Courts, in the rural areas, handled the same kinds of cases as each other. Municipal Court judges were selected every six years by the voters living within the Municipal Court's judicial district; mid-term vacancies were filled by gubernatorial appointment. The salaries of Municipal Court judges were set by the Legislature.

More Recently

*“(We were) determined that these courts should be kept close to the people . . .”*⁷

Despite this principle, in 1994 by Constitutional Amendment the Justice Courts in California were all abolished and converted into Municipal Courts.⁸ All the former Justice Court judges automatically became full-time Municipal Court judges. New legislation replaced all the previously existing inferior court districts in Mendocino County with a single County-wide Mendocino County Municipal Court Judicial District divided into an Inland Division with four judges (to be reduced to three in 1998) and a Coastal Division with three judges (to be reduced to two in 2000,) each judge subject to re-election every six years by the voters in his Division.⁹

Then in 1998, another Constitutional Amendment providing for full trial court unification was adopted.¹⁰ Within two and one-half years, all the trial courts in California's 58 counties were unified as Superior Courts. All the Municipal Courts were abolished; the only trial court remaining in existence was the Superior Court. All the former Municipal Court judges in Mendocino County were now Superior Court judges. Just prior to unification, there had been three judges of the Mendocino County Superior Court. Now as of 2000, there would be eight.

The promise of trial court unification was that more court services would be offered at more of the existing court locations: Cases formerly filed, heard, and decided only by the Superior Court in Ukiah would now also be filed, heard, and decided at some of the former Justice Court locations in Mendocino County, such as Fort Bragg and Willits. Unification also meant that it would now be the obligation of the Superior Court and its judges to provide all the judicial and

⁷ *Reorganization of Our Inferior Courts*, 24 California State Bar Journal 382 (1949) at page 392 (Hon. Phil Gibson, Chief Justice of California (1940-1964), explaining why the Inferior Court Reorganization Plan contained in *Cal. Const.*, art VI, § 1 as amended by Prop. 3 adopted November 7, 1950—which abolished seven different kinds of inferior courts—stopped short of eliminating the Justice and Municipal Courts.) “The courts should be kept close to the people in the sense of accessibility to all communities and the retention of local election of judges.” Judicial Council of California, Twelfth Biennial Report (1948) note 1, pages 15-16.

⁸ *Cal. Const.*, art. VI, § 5(b), Prop. 191 adopted November 8, 1994.

⁹ *Government Code* §§ 73784-73784.11 (AB 737) enacted 1995.

¹⁰ *Cal. Const.*, art. VI, § 5(e), Prop. 220 adopted June 2, 1998.

clerical court services that formerly had been provided locally by the Justice Courts and the Municipal Courts.

But things turned out differently. By 2002, court sessions in what were now Superior Court Branch Courts in Point Arena, Boonville, Covelo, and Leggett/Laytonville had been reduced to one day or less per month. The four Superior Court judges who before had served those communities as Justice Court judges would now hear cases in Ukiah virtually full-time.

Then in 2003, the Branch Court in Boonville was closed. At about the same time, the Branch Court in Leggett/Laytonville was closed.

In 2009, the Branch Court in Willits was closed. The judge who had served Willits and most of Northern Inland Mendocino County was now stationed in Ukiah full-time.

Since 2011, Branch Court sessions in Point Arena and Covelo have been reduced to three hours every other month, with no Clerk's Office operating at either location.

In late 2012, the Superior Court gave—and then rescinded—notice that jury trials, felony proceedings, cases with in-custody defendants, and juvenile matters would no longer be conducted or heard at the Coast Branch Court in Fort Bragg.

“(I)n any event, money is not the prevailing thing to be considered. If these courts do not take in a dollar, the very fact of their existence in the various communities constitutes a deterrent to crime and a great convenience to the residents therein.”¹¹

Presently

Now, except in Ukiah and Fort Bragg, there is no longer any *court presence* anywhere in Mendocino County.

As of March 2013, the Coast Branch Court in Fort Bragg is the only functioning Branch Court in Mendocino County. It continues to operate full-time, with its single courtroom being used on a daily basis.¹² One of the County's eight Superior Court judges is permanently assigned there.¹³

¹¹ Hon. Lilburn Gibson, Judge of the Mendocino County Superior Court (1945-1961), quoted in the *Ukiah Daily Journal* April 16, 1973.

¹² Mendocino County Superior Court letter to AOC Court Facilities Working Group, dated August 23, 2012, at pages 16, 20.

¹³ *Id.* at page 14.

However, a substantial number of cases that arise on the Coast, in which the parties, witnesses, or attorneys reside or work on the Coast, are not being heard on the Coast. These include LPS conservatorship cases in which the conservatee lives on the Coast, juvenile dependency cases in which the dependent child and his/her natural or foster family live on the Coast, juvenile delinquency cases in which a detained juvenile is accused of conduct occurring on the Coast, criminal and civil cases involving parties living and/or actions occurring on the Coast in which the trial is estimated to take longer than three days, criminal cases in which the charged crime occurred on the Coast and the defendant is in custody, and District Attorney felony grant cases charging crimes occurring on the Coast. Instead, these cases are transferred or accepted for filing inland to be heard and decided in Ukiah where the County's 7.4 other judicial officers are permanently based.¹⁴ Of the 87,572 people living in Mendocino County, 26,702—30%—live on the Coast. However, the Superior Court estimates that only approximately 10% of all its cases are heard in the Coast Court.¹⁵

The judicial district that is served by the Mendocino County Superior Court is the entire County. A mountain range divides its Coastal areas from its Inland areas. Except for most of U.S. 101 which runs north-south, there are no four-lane highways in Mendocino County. Lengthy portions of all the east-west roads connecting the Coast to Ukiah pass over rugged terrain and are tightly curving, alternately climbing and descending, with no passing permitted except where there are sporadic turnouts. These roads require vigilant driving in fog, rain, and wind, and are especially dangerous in winter when they are often icy. Even in good weather, driving east against the early morning sun to get to court in Ukiah and driving back tired against the late afternoon sun to the Coast can be difficult. In recognition of this terrain and these road conditions and the driving distances, the Court has divided the County into two sub-areas for the purpose of summoning prospective jurors in misdemeanor criminal and limited civil cases.¹⁶

¹⁴ Seven judges plus a part-time (40% of full-time) Commissioner.

¹⁵ Mendocino County Superior Court letter, *op. cit.*, at page 15. It is also noteworthy that of the 77 individual attorneys in private practice who list only one office location in Mendocino County, 25—or 32%—list it as being on the Coast; *AT&T Yellow Pages for Lake and Mendocino Counties*, November 2012-2013, at pages 11-23.

¹⁶ Rule 21.10, Mendocino County Superior Court *Local Rules*. The designated Coastal area includes the towns of Albion, Anchor Bay, Caspar, Cleone, Comptche, Elk, Fort Bragg, Gualala, Little River, Manchester, Mendocino, Navarro, Point Arena, and Westport, all shown on the map on page 3, and all closer to the Coast Branch Court than to Ukiah by an average of 29 miles.

However, in felony cases and unlimited civil cases, the Court is required to summon prospective jurors from the whole County. With almost no exceptions, all jury trials in these cases are held in Ukiah, requiring prospective jurors from the Coast to travel over and back to appear there.¹⁷

The Future?

“Over the past five fiscal years . . . the General Fund share of the entire judicial branch budget fell from 56% to just 20%. . . for FY 2013-2014, only 1% of the General Fund—that’s just one penny out of each dollar—goes to fund the entire judicial branch . . . Consequently, our seriously underfunded branch is being transformed into a user-fee-supported institution . . . The impacts on court services are already severe. In virtually every county court services to the public are being compromised by a lack of adequate funding . . . Finally, during this last budget year, the trial courts were stripped of the legal authority . . . to maintain fund balances (reserves) that are necessary to enable them to make payroll . . . If those fund balances are extinguished in the coming months, a cash flow crisis will disable each and every trial court.”¹⁸

¹⁷ The distance by shortest route from Fort Bragg to the Ukiah courthouse is approximately 57 miles. Driving it takes about an hour and a half each way. For people without access to a vehicle, there is a bus that leaves the Boatyard Center in Fort Bragg at 7:30 AM and arrives at the Pear Tree Center in Ukiah at 9:00 AM. From the Pear Tree Center, the courthouse is a half mile walk away. The bus back to Fort Bragg leaves the Pear Tree Center at 4:30 PM and arrives at the Boatyard Center at 6:00 PM. There is another bus taking a different route that leaves Fort Bragg’s Boatyard Center at 7:40 AM, arriving at Navarro Junction at 8:50 AM for transfer to another bus that leaves the Junction 8:55 AM and arrives a block from the Ukiah Courthouse at the Library 10:35 at AM. The bus back leaves the Library at 3:05 PM, arriving at Navarro Junction at 4:40 PM for transfer and departure at 4:50 PM to Fort Bragg, arriving at the Boatyard Center at 5:30 PM.

¹⁸ Hon. Tani G. Cantil-Sakauye, Chief Justice of California, January 23, 2013.

*“The mission of the Mendocino County Superior Court is to . . .provide an accessible forum to all segments of our community . . .”*¹⁹

*“We do not want to reduce services in Fort Bragg and will do all we can to avoid that result. Access to justice by the citizens of this county is suffering and will get worse unless cuts proposed in next year’s budget are restored or offset in some way.”*²⁰



www.saveourcoastcourt.org

¹⁹ Excerpt from Mendocino County Superior Court *Mission Statement*.

²⁰ Hon. Richard Henderson, Presiding Judge of the Mendocino County Superior Court, December 10, 2012.

From: karlnicholas@gmail.com on behalf of [Karl Nicholas](#)
To: [TCEWG](#)
Subject: Legal Aid Study for San Francisco
Date: Wednesday, March 20, 2013 9:48:10 AM
Attachments: [Family Law Legal Aid Study.pdf](#)

Dear Sirs, Madams,

I would like to encourage members of the Trial Court Funding Workgroup to read a study done in regards to Legal Aid in the San Francisco Family Law Courts, and would like to comment on this study at the next working group. Please find it attached.

Thank you,

Karl Nicholas.

A Simple Statistical Analysis of Attorney Participation in Family Law for Parties with Critical Issues Controlling for Indications of Financial Hardship

Karl Nicholas (kbn@mail.sfsu.edu)

Introduction:

Family Law courts have changed from the traditional lawyer centered forum of civil courts and have become predominately pro-per forums. Overall, an average of 20 percent of parties has an attorney. In some cases however, parties have complicated issues that need attorneys and hire attorneys over 60% of the time.

This study looked how often attorneys were hired when critical issues existed and compared that against parties who file fee waivers. When critical issues existed, parties hired attorneys 63% of the time, but when fee waivers were filed, attorneys were involved only 34% of the time. Three critical issues of Child Custody, Domestic Violence, and Spousal Support were used in this study because they are issues for which legal aid was legislated. This study finds that if legal aid is to bring the level of attorney participation up to same percentage as the majority of parties who don't file fee waivers, then approximately twice the number of parties who file fee waivers need to have an attorney in their case.

Methodology:

Electronic records for most family law cases in San Francisco are available via an online database. A program was written to randomly sample 2,889 out of 12,412 "FDI" cases in the five year period between 2008 and 2012. The files were then split into individual parties and flags for attorney participation, fee waivers and critical issues were parsed out. The statistical analysis was conducted with IBM's SPSS program version 20. The resulting dataset contained a sample of 5,788 parties. FDV, FMS and other types of cases from San Francisco were not included.

The following table shows the number and percentage of occurrences for the variables in the study.

	Number Within Sample	Percentage Within Sample
Total	5788	100.0%
Party Fee Waiver	1249	21.6%
Attorney This Party	1185	20.5%
Children in case	1940	33.5%
Custody Issue	508	8.8%
Domestic Violence Issue	215	3.7%
Spousal Support Issue	426	7.4%

A comparison of attorney participation for parties with and without fee waivers was made, giving the following table.

AttorneyThisParty * PartyFeeWaiver Crosstabulation

			PartyFeeWaiver		Total
			0	1	
AttorneyThisParty	0	Count	3543	1060	4603
		% within PartyFeeWaiver	78.1%	84.9%	79.5%
	1	Count	996	189	1185
		% within PartyFeeWaiver	21.9%	15.1%	20.5%
Total		Count	4539	1249	5788
		% within PartyFeeWaiver	100.0%	100.0%	100.0%

This table shows that parties without fee waivers used attorneys 21.9% of the time as compared to 15.1% for parties with fee waivers on file.

Hypothesis:

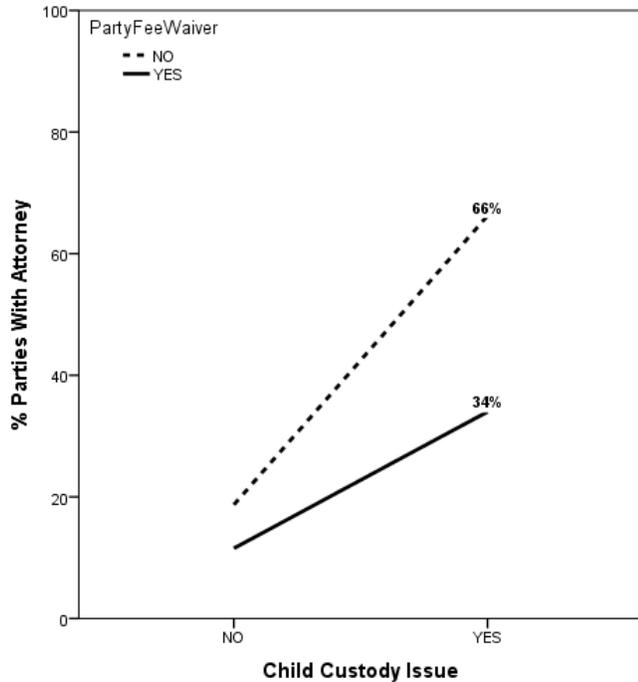
First, the level of attorney participation in family law cases where critical issues exist should be significantly higher than cases where no critical issues exist. Second, the level of attorney involvement where critical issues exist and no fee waiver has been filed indicates the desired level of attorney involvement when critical issues exist. Third, the difference between the levels of attorney involvement for parties who do not have a fee waiver on file and those who do have fee waivers quantifies the difference between the desired level of legal aid and the desired level.

Critical issues are defined as issues of public importance and interest for which legal aid programs are legislated. This study analyses child custody, domestic violence, and spousal support as the three most important issues for family law cases.

Results:

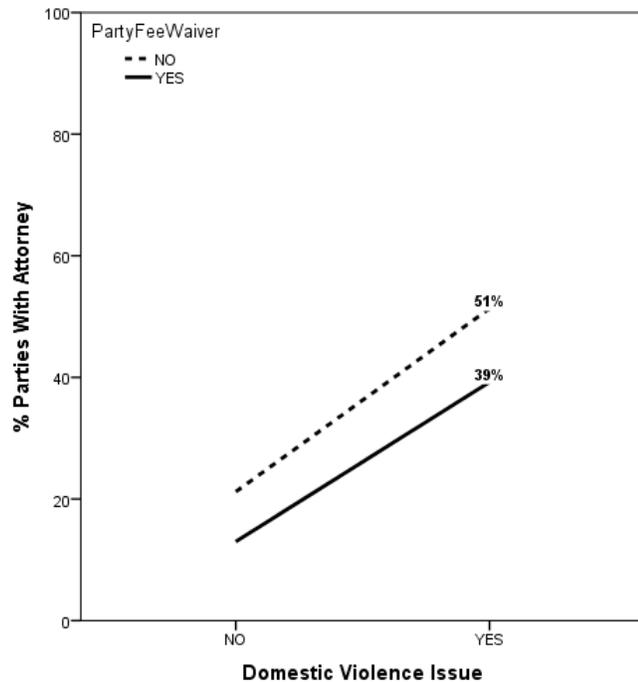
Comparisons were made between the three critical issues and attorney involvement controlling for fee waivers. Also, a comparison was made for any critical issue and attorney involvement again controlling for fee waivers. All results were statistically significant in that there was less than 1 in 1000 chance that random sampling could cause the differences observed. Finally, the predicted number of parties per year on average with critical issues and attorney involvement was calculated for parties with and without fee waivers, and a determination was made for how many more parties need representation in order to equalize the overall level of attorney participation regardless of whether or not a fee waiver is filed.

This graph shows a positive, interactive relationship between parties with child custody issues and attorney involvement controlling for fee waivers. The dotted line represents the majority of parties, those without fee waivers, and shows a 47.5% increase, from 18.7% to 66.2%, in attorney involvement when child custody is an issue. The solid line represents parties who have filed a fee waiver, and shows a 22.5% increase, from 11.5% to 34.0%, in attorney participation when child custody is an issue. In addition to starting at a 7.2% lower attorney participation rate, parties with fee waivers are 32% less likely to be



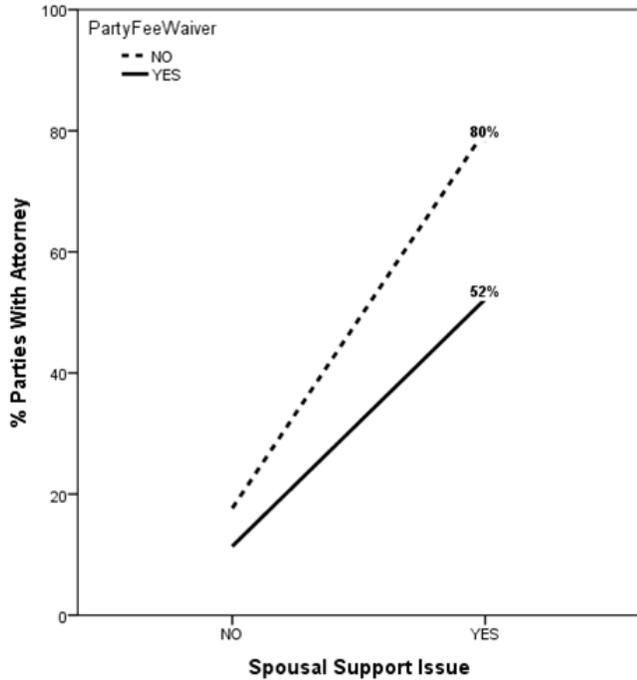
represented by an attorney than parties without fee waivers when child custody is an issue. Child custody issues are present in 8.8% of the parties in FDI cases and 3.5% have fee waivers.

This graph shows a positive, additive relationship between domestic violence and attorney involvement controlling for fee waivers. The dotted line represents the majority of parties, those without fee waivers, and shows a 30.1% increase from 21.2% to 51.3% in attorney involvement when domestic violence is an issue. The solid line represents parties who have filed a fee waiver, and shows a 26.2% increase, from 13.0% to 39.2%, in attorney involvement domestic violence is an issue. In addition to starting at an 8.2% lower attorney participation rate, parties with fee waivers are 12.1% less likely to be represented by attorneys than

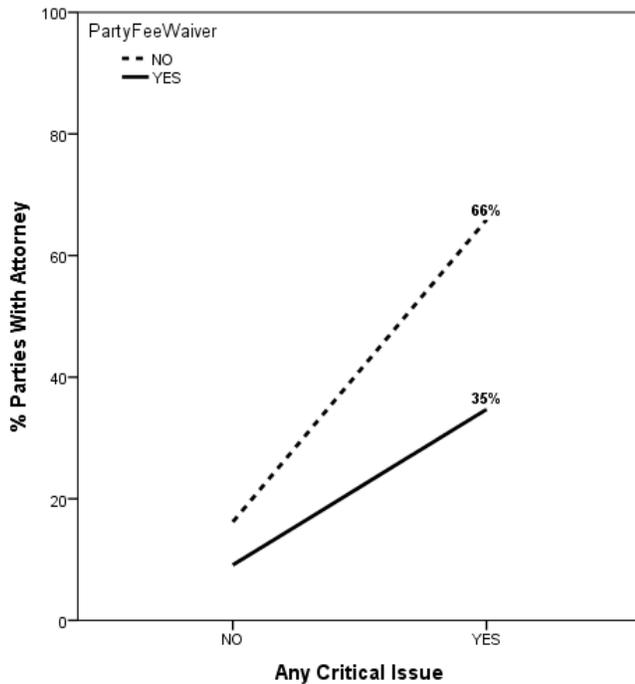


parties without fee waivers when domestic violence is an issue. Domestic violence issues are present in 3.7% of the parties in FDI cases and 1.7% have fee waivers.

This graph shows a positive, interactive relationship between parties with spousal support issues and attorney involvement controlling for fee waivers. The dotted line represents the majority of the parties, those without fee waivers, and shows a 62.4% increase, from 17.7% to 80.1%, in attorney involvement when spousal support is an issue. The solid line represents parties who have a fee waiver, and shows a 40.8% increase, from 11.4% to 52.2%, in attorney participation when child custody is an issue. In addition to starting at a 6.3% lower attorney participation rate, parties with fee waivers on file are 27.9% less likely to be represented by an attorney than parties without fee waivers when spousal support is an issue. Spousal support issues are present in 7.4% of the parties in FDI cases and 2.0% have fee waivers.



This graph shows the relationship between any issue and attorney involvement controlling for fee waivers. The dotted line represents the majority of parties, those without fee waivers on file, and shows a 49.7% increase, from 16.2% to 65.9%, in attorney involvement when there is an issue. The solid line represents parties who have filed a fee waiver, and shows a 25.6% increase, from 9.1% to 34.7%, in attorney involvement when there is any issue. In addition to starting at a 7.1% lower attorney participation rate, parties with fee waivers on file are 31.2% less likely to be represented by attorneys than parties without fee waivers on file when there are critical issues in the case. Any critical issue is present in 14.1% of parties in FDI cases and 5.0% have fee waivers.



Applying the Analysis:

The data predicts the actual number of parties in the San Francisco FDI courts. On average, over the last five years, about 704 parties per year have one or more critical issues, and of those about 452 parties did not file a fee waiver and about 253 did. As stated, attorneys were present in 66% of the first group of parties, which is about 298 parties per year, and 35% of the second group, which is about 88 per year. In order for parties with critical issues in their case and fee waivers on file to have attorneys at the same percentage (66%) as those who didn't file fee waivers, approximately 79 parties per year in FDI court would need to be represented. Due to the approximations in the calculations, it seems reasonable to say that about twice the number of parties with fee waivers and critical issues need to be represented by attorneys instead of self-help.

Conclusion:

This study presents a premise for objectively determining how much legal aid is needed. The family law forum has evolved to accommodate primarily pro per parties without attorney representation, but at the same time it must also accommodate litigants who are unable to resolve important and critical issues for which an attorney is needed. The three issues of child custody, domestic violence and spousal support have been studied as critical issues. The study finds that the public needs a much higher attorney participation rate than normal when issues of child custody, domestic violence or spousal support exist. It was calculated that a relatively small number of parties in San Francisco's FDI court need legal aid but are not getting it. About 4,977 parties a year (as opposed to cases) appear in the FDI court, and of these only about 79 ± 10 need legal aid.

Further study needs to be done to include other courts within the state and other areas of family law courts such as the domestic violence court (e.g., FDV or FMS cases). A similar study should be done on a year by year basis in order to examine changes over time. The legal aid budget should be looked at to determine what portion of the budget goes to self-help and what portion goes to attorney participation and the consideration should be given to determining the incremental cost of bringing attorney participation to the desired level for those who have fee waivers and critical issues.

From: [Flynn, Mary Lavery](#)
To: [TCEWG](#)
Cc: [Patel, Jody](#); [Hershkowitz, Donna](#)
Subject: Slightly revised Access Standards
Date: Thursday, March 21, 2013 4:31:47 PM
Attachments: [Minimum Access Standards REVISED 3-21-2013.docx](#)

On behalf of the Access to Justice Commission, I am submitting the attached modified Access Standards with a slightly expanded introduction. For your information, the body of the standards have not been changed.

Please let me know if you have any questions.

Sincerely,

mary

Mary Lavery Flynn | Director, Office of Legal Services
State Bar of California
Office 415-538-2251 | Cell 510-387-6490 | mary.flynn@calbar.ca.gov

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March 21, 2013

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Associate Justice of the Court of Appeal
Third Appellate District

Hon. Phillip Isenberg, Co-Chair
Delta Stewardship Council, Chair

Dear Justice Hull and Mr. Isenberg:

Please accept the attached modified 'Minimum Standards for Access' statement adopted by the California Commission on Access to Justice. Recognizing that appropriation and allocation of judicial resources is a complex matter, it was our intent to identify some basic needs that are faced by all courts and the litigants who use them, with the hope these goals will help to define necessary funding levels.

The Commission stands ready to assist in the development of a narrative that amplifies and explains these standards, as well as the identification of appropriate methods for measuring these standards wherever possible.

We will be happy to provide any further information or assistance that you would find beneficial.

Sincerely,



Hon. Ronald B. Robie – Chair
Commission on Access to Justice

CALIFORNIA COMMISSION ON ACCESS TO JUSTICE

c/o State Bar of California – 180 Howard Street – San Francisco, CA 94105 – (415) 538-2251 – (415) 538-2524/fax

Minimum Standards for Access

Introduction:

To ensure equal access to justice in California, courts must be funded adequately throughout all parts of the state, and courts must design their own processes to provide effective and efficient court services for all who use the courts.

Using standards now in court rules, and to be developed, concerning case disposition by case type, minimum hours at clerks' offices, self-help centers, etc., funding should be allocated based on a court's need to add resources to achieve minimum standards, and after that to expand services beyond the minimum.

Recognizing that each litigant, advocate, and witness may have different individual needs, courts should adopt procedures and rules that meet the constitutional mandate of due process and that do not disadvantage any identifiable cohort of the population. To meet these goals, and to ensure the most efficient use of available resources to provide the same access to justice for all litigants in all jurisdictions, the following principles of access are defined:

- **All litigants shall receive due process of law**
- **Courts shall be accessible to all court users**
- **An official record shall be made to preserve court proceedings and to preserve the right to a meaningful appeal**
- **Access to the courts shall be affordable**
- **Jurisdictions shall have adequate numbers of judicial officers, staff, and other non-judicial resources to meet caseloads**
- **Courts shall provide services to meet community needs**
- **The identified components of these access standards shall be tracked on a regular basis**

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Minimum Standards for Access

- **All litigants shall receive due process of law**
 - Hearings will be conducted by impartial, trained bench officers according to applicable laws, rules and procedures.
 - Hearings will be conducted on a timely basis and dispositions will be reached without undue delay.
 - Hearings will be timely provided in all case types, from traffic and small claims to family, complex civil, and long cause criminal matters.
 - Services will be provided to ensure participants understand and can participate in the proceedings.
 - Court users will have access to accurate and timely information through adequate counter hours at clerks' offices and telephonic access to a live court staff member.
 - Court users will have access to accurate and timely information both on-line and through staffed self help centers.
 - Interpreter services will be provided.
 - Orders after hearing and judgments will be timely prepared and made available to litigants.

- **Courts shall be accessible to all court users**
 - Courthouses will be located so that users are not forced to travel unreasonable times or distances, especially where public transportation is inadequate or unavailable.
 - Court facilities will be safe and adequate to conduct the business of the courts.
 - Courts will maintain reasonable hours of operations so that court users can file documents and conduct their court business without undue delays.
 - Technology will be developed and maintained to meet the needs of the court and court users.
 - State and federal access requirements, including the Americans with Disabilities Act, will be met for all court facilities and services.
 - Copies of court pleadings, orders and judgments will be accessible in a timely manner and at a reasonable cost.

- **An official record shall be made to preserve court proceedings and to preserve the right to a meaningful appeal**

- **Access to the courts shall be affordable**
 - Courts will be funded principally from public funds, not user fees.
 - User fees will not be set at levels that deny access to persons of moderate income, nor at levels that create the perception that process is based upon incentives other than the fair administration of justice.
 - Petitions for fee waivers will be addressed in full compliance with the law.
 - Where technology is utilized, it will be designed for all users to have impartial and effective access and will not be deployed in a manner that

- excludes access to court proceedings and services to those without access to technology or the internet.
- Courts will not order participation in services or programs a litigant cannot afford.
 - **Jurisdictions shall have adequate numbers of judicial officers, staff, and other non-judicial resources to meet caseloads**
 - Courts will appropriately assign judicial and non judicial resources by case type.
 - Courts will make resources available for alternative dispute resolution to assist litigants in resolving their civil cases at a cost which does not create a barrier to utilization.
 - Regular training will be provided to all judicial officers and staff.
 - **Courts shall provide services to meet community needs**
 - Specialty courts will be maintained or established whenever they are the most effective way to serve population needs, such as drug courts, homeless courts, and veterans' courts.
 - Other services identified as special needs in the community to obtain access to the courts will be provided.
 - **The identified components of these access standards shall be tracked on a regular basis**
 - The allocation of resources will be adjusted if these standards are not achieved in the period under review.

Adopted by the Executive Committee, California Commission on Access to Justice,
March 21, 2013