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February 16, 2016

Judicial Council of California  
Joint Subcommittee on Court-Appointed Dependency Counsel Workload and Funding  
Methodology  
Trial Court Budget Advisory Committee  
Family and Juvenile Law Advisory Committee

ATTN: Steven Chang at [tcbac@jud.ca.gov](mailto:tcbac@jud.ca.gov)

Re: February 17, 2016 Meeting – Written Public Comment re Dependency  
Funding

Dear Honorable Members of the Judicial Council and Committee Members:

I write as the Director of Court Appointment Programs of the Lawyer Referral and Information Service (LRIS), a California State Bar certified program, which contracts with the Superior Court for the City and County of San Francisco as administrators for this county's Dependency Representation Program.

Please consider this letter as written public comment on the recommendations under consideration.

First, we fully appreciate the difficult task in addressing the needs of all counties, and we understand the attention to detail and hard work undertaken to date. We also thank you for the opportunity for public comment, for the decisions made by you will affect families throughout the state but will impact some counties more than others.

We take the opportunity to once again urge this body to follow the State Bar Guidelines on the Delivery of Services in Indigent Defense (making specific reference to applicability in dependency cases).<sup>1</sup> For the reasons set forth below, the recommendations before you too often rely on statewide averages rather than the complexities unique to some of the

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<sup>1</sup> In 2006, the State Bar of California adopted these Guidelines following a considerable undertaking; this Supreme Court should follow these Guidelines studied, developed and adopted by its administrative arm.



counties. A cursory review of the Guidelines and ABA Standards makes clear that the proposed recommendations fail to comport with the Guidelines which require jurisdiction specific funding accounting for case complexity and county specific needs. This county, like many others, will be unable to meet the needs of the families served in our dependency court if the recommendations are adopted.

We have received and reviewed the detailed written comments submitted by The San Francisco Counsel for Families and Children (SFCFC) and we concur with the statements and recommendations and we will not repeat them here. This letter is intended to supplement some of the SFCFC's comments given our role as administrators for this county's Dependency Representation Program.

**Recommendations 1-2:**

We concur with SFCFC's comments and recommendations. *Real parity is needed, particularly in a county where commercial space rental, which directly affects the cost of doing business in here, has risen by 100% since 2006. No other city in the state or nation has experienced a similar rise in home or commercial rental. Yet during this same time period, funding for dependency counsel in San Francisco has decreased. These rising costs negatively impact our ability to retain our experienced attorneys who are cost effective given their many years of experience. And lack of real parity deleteriously impacts our ability to attract smart, dedicated entry-level attorneys, particularly attorneys representative of our diverse clientele.*

**Recommendations 5-6:**

The proposed source data and parent ratio funding will deprive a significant number of families of mandated representation. *Real and accurate case count, not averages based on average practices, should inform funding.*

San Francisco keeps very accurate records of appointments and caseload. Contrary to the numbers relied upon by the Judicial Council for this county, our caseload is much higher than reported by current or proposed funding methodology. Perhaps unlike some counties, we are able to accurately report both the current number of new appointments and the current number of active cases. The funding model misrepresents the actual caseload of San Francisco; the recommendations will disproportionately affect this county and nearly one third of the parties for whom counsel have been appointed will receive no funding.

Further, the recommendation supports an appointment rate of .8 parents per dependent child, while we have *accurately reported the appointment rate of 1.53* in San Francisco. Although it is understood that there are significant discrepancies from county to county, the



recommendation proposes an average ratio instead. Failing to adequately compensate each county for the specific number of parent appointments creates two problematic scenarios:

- Counties that appoint at a rate lower than .8 per dependent child receive funds for legal services that are not provided.
- The statewide formula of .8 creates unlawful and unethical incentives for counties like ours to appoint counsel for fewer parents than mandated. Studies have shown the benefit to family reunification when a parent has appointed counsel early in the proceedings. Due process requires no less. *The Judicial Council should count parent appointments in a manner that (1) encourages, rather than discourages appointment of counsel when it is so required and (2) appropriately compensates counties for the legal representation provided.*

The second part of the recommendation before you concerns the combination of **70% child welfare filings and 30% JBSIS filings**.

We again concur with the comments and recommendations of SFCFC particularly its recommendation that *actual client counts* be utilized for counties that can produce client count information; we add the following as further comment:

A review of filing among counties suggests that Los Angeles files at a much higher rate than its relative percentage of open cases. San Francisco appears to file at a much lower rate, suggesting San Francisco better assesses the seriousness of cases at the emergency response level, filing only on the more serious/complex cases. This has two benefits: 1) it aligns with scientific research – San Francisco’s practice is designed to keep families intact; and 2) it keeps unnecessary costs down. However, the cases filed here are more costly to litigate and drives a cost-per-case above counties with higher filings representing less serious cases. The proposed methodology fails to account for costs incurred in this county and encourages counties to file when unnecessary.

For all of these reasons, the current funding model and the proposed recommendations significantly underfund this county. Moreover, additional county-specific factors remain unaddressed by any of the recommendations despite our repeated efforts to bring these matters to the attention of the working groups. Both race and out-of-county placements pose unique and costly challenges for this county:

- **Out of county placement** is a unique and expensive problem in San Francisco which the funding model fails to consider or compensate. Deeply troubling for this county are the number of minors placed outside the county. *No other comparably sized county* is burdened by so many out-of-



county placements of minors. Two-thirds of all counties are able to place minors without five (5) miles. Yet San Francisco, due to a number of factors, including costs associated with service providers unique to this county, is forced to place two-thirds of minors well outside of this county. Counties unable to afford visits with minor clients fail to provide due process and meet their ethical and legal obligations.

- **Racial Disparity:** In addition, factors tied to racial composition are challenging. In San Francisco 59% of children in foster care are African American while only 5.8% of San Francisco's population is African American (based on the Census Report of 2014). As reported in San Francisco's Court Appointed Dependency Counsel Survey, we are without any funds needed to understand and address this disparity and better serve these families. While racial disparity is a statewide problem, no other county experiences disparity of this magnitude. Failure to fund is a failure to address the needs of the poor and families of color.

#### **Recommendation 9:**

Once again we concur and adopt the comments/recommendations of SFCFC. A **caseload of 144** falls far outside of everything we know to be true about best practices. Even the 2007 model recommended a maximum of 77 clients. This recommended caseload of 144 not only institutionalizes excessive caseloads statewide making it unreasonable and unethical for practitioners everywhere in the state, this caseload formula is a complete disaster in a county such as this which selects only serious/complex cases for filing. We are utterly unable to provide even a semblance of what is legally and ethically required under this model.

Again, the State Bar Guidelines are ignored by this recommendation which deprives adequate representation to all counties but in particular to those counties electing to file only on the most serious and complex cases.

Respectfully submitted,

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