

TO: Members of the Trial Court Budget Advisory Committee

FROM: Rebecca Wightman
Commissioner – Superior Court, San Francisco


RE: Agenda Item 4: AB1058 Funding Allocation

I am a Child Support Commissioner who has worked in different sized counties (Marin and San Francisco), with well over 15 years experience in child support. I am submitting this public comment as an individual and not on behalf of any organization. I am a statewide trainer for all new Title IV-D Commissioners, and am very knowledgeable regarding the state Department of Child Support Services' (DCSS) statewide child support computer system (CSE), having participated in certain aspects of operational review during the development of their system. I have previously submitted public comments and attended all meetings of the Joint Sub-Committee re: AB1058 Funding Allocation. I encourage any and all TCBC members who were not on the Joint Sub-Committee re: AB1058 Funding Allocation to please review the public comments received during that process.

The AB1058 program is like no other area of the law. There is **no** other area of the law where there are multiple ways in which a local child support agency can step in (and out of) different types of court cases, in addition to filing its own actions, and in which they can choose from an array of enforcement mechanisms, which in turn can drive the workload of an individual court. The state DCSS has embarked upon its own analysis of AB1058 funding allocation, and acknowledged that the data and workload issues are so complex, it will be a two year process (they are already in year one).

The Joint Sub-Committee spent many, many hours not only in discussion, but listening to presentations on the AB1058 program, and reviewing materials. They took a hard look at not only just numbers – in which real concerns concerning data reliability came to light – but also at some of the unique aspects of the program, with its distinct federal regulations, and federal performance measures (that drive the workload of the various local child support agencies, which in turn can variously impact the workload of the courts). After careful deliberation, a clear majority of the Joint Sub-Committee members, on a vote of 10-5, voted to adopt a measured approach, determining that the best course of action would be to continue the current funding methodology and coordinate with the state DCSS during its review, and then to review the trial court's funding methodology. This is a wise, deliberative and very responsible approach to take.

With a better overall understanding, and better, more reliable information, you get a better outcome. Again, I urge this Trial Court Budget Advisory Committee to endorse the Recommendation adopted by the Joint Sub-Committee re: AB1058 Funding Allocation at its final meeting on November 19, 2015.

Respectfully submitted, 



California Court Commissioners Association

JERI M. HAMLIN

President

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Sent via E-MAIL (to TCBAC@jud.ca.gov for expediency)

January 12, 2016

To: Hon. Jonathan Conklin, Chair of the Trial Court Budget Advisory Committee and All Members of the Trial Court Budget Advisory Committee

RE: Item 4 of Agenda for meeting on January 14, 2016 re: AB1058 Funding Allocation

Dear Honorable Committee Members of the Trial Court Budget Advisory Committee:

The California Court Commissioners Association (CCCA) understands that your sub-committee will be reviewing and considering the recommendation that was finally adopted on a formal vote by the Joint Sub-Committee re: AB1058 Funding Allocation at its last meeting on November 19, 2015. We are writing to urge this committee to support the good work and wise course of action chosen by that Joint Sub-Committee.

We recognize that the issues surrounding funding reallocation can be very complex. This is particularly true in the very unique area of the Title IV-D/AB1058 program, which has added layers of complexity due to the structure of the program – and where both operational differences between local child support agencies, as well as federal regulations, can affect court workloads differently – separate and apart from sheer numbers.

This was recognized in the careful consideration given by the entire Joint Sub-Committee on AB1058 Funding Allocation, when it decided to take a measured approach, and recognized the importance of working collaboratively with the state Department of Child Support Services, which is in the midst of its own funding reallocation analysis (a two year process coming to its own end in the near future).

During the six months of the time that the Joint Sub-Committee held their meetings, and through to completion and recommendation on November 19, 2015, numerous reasonable and legitimate concerns were raised, including data reliability and overreliance on that data. During this process, it became more and

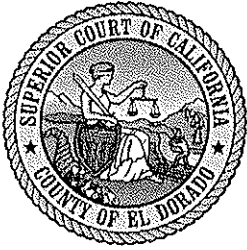
more clear to a majority of the sub-committee members that there was a need to take a more deliberative approach, and to work with the state DCSS (whose own decisions on funding reallocation could very well impact the court side). We urge this committee to not seek to overturn or change that recommended course of action.

We would also like to offer our organization's assistance in gathering any data or providing information to assist the Judicial Council in moving this issue forward in the manner as recommended by the Joint Sub-Committee on AB1058 Funding Allocation, and look forward to the final report to be presented to the Judicial Council next month.

Sincerely,



Jeri Hamiin



SUPERIOR COURT OF CALIFORNIA COUNTY OF EL DORADO

495 Main Street
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January 13, 2016

Trial Court Budget Advisory Committee
Judicial Council of California
455 Golden Gate Avenue
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Dear Committee Members:

This comment is being submitted for consideration at the January 14 meeting of the Trial Court Budget Advisory Committee. I have had an opportunity to review the options considered by AB 1058 Funding Joint Subcommittee and believe that the adoption of the proposed allocation methodology considered (and ultimately tabled) by the Subcommittee would threaten the long-term sustainability of AB 1058 programs throughout the state. As such, I urge your committee to vote in favor of the recommendation of the Subcommittee to allow adequate time to review additional factors which impact AB 1058 programs and to have the benefit of the analysis currently being conducted by the Department of Child Support Services.

The proposed allocation methodology is problematic for a number of reasons. As a preliminary matter, the proposal would result in a decrease in funding to 38 of the 54 Family Law Facilitator programs (over 70%) and 40 of the 54 Child Support Commissioner programs (over 74%). Looking specifically at the Facilitator programs, nearly half (26 of 54 programs) would receive a cut of over 30% of their funding, with 16% (9 of the 54) losing over half of their funding. Such cuts would devastate programs and compromise the ability of courts to maintain Facilitator offices as state-mandated per Family Code 10002.

One of the major concerns with this methodology is that it relies primarily on the DCSS caseload data. This data fails to weigh cases based on activity level. Additionally, the data does not include family law cases in which DCSS has intervened. In some courts, a significant portion of the support orders obtained and/or enforced by DCSS are within family law cases and consequently outside this data set. Moreover, the DCSS caseload data fails to account for cases that have been active for several years (e.g., ones with contempt proceedings, multiple modifications, collection of arrears, etc.), whereas the initial order was established years ago and therefore is missing from the data. In short, the DCSS caseload data is incomplete and not an accurate measurement of workload.

Additionally, qualitative factors are completely absent from the analysis. There is no consideration of the remoteness of rural court locations, who still, per California law, must fund an AB 1058 program. The availability (or lack) of outside and unpaid resources, such as interns, volunteers, and nearby legal services programs, that lessen

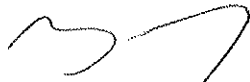
the burden on court staff is not considered nor is the need for bilingual services in some counties. Similarly, the relative weighing of the need for an increase in services for courts who would get increases (some whose budgets would double) versus the negative impact of cuts to services in other courts and its effect on unrepresented litigants is not considered.

While the proposal has included factors to account for different costs of labor and a minimum floor for small courts, these factors only come into play after the DCSS caseload data is used to set a baseline. As such, the data is skewed by an incomplete measure from the onset.

Ultimately, however, using any single data set to proportionally allocate funds is problematic. It leads to the chasing of numbers – pressuring litigants to open cases with DCSS when it may only serve to add conflict to their family dynamic, encouraging the filing of motions when settlement is clearly within reach, limiting necessary enforcement actions that are not rewarded by the numbers to focus on those actions that are, and so forth.

What became clear throughout the Subcommittee's process was the need for a more thorough analysis, with a full engagement of all stakeholders affected. The ultimate recommendation of the Subcommittee provides the space to have this thorough analysis and, in the end, will lead to a better final product. The continued health of the AB 1058 programs depend upon it as does the welfare of the children and families served by these programs. As such, I strongly urge the Trial Court Budget Advisory Committee to adopt the Subcommittee's recommendation.

Sincerely,



Gary Slossberg
Family Law Facilitator
El Dorado Superior Court



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January 13, 2016

Judicial Council of California
Trial Court Budget Advisory Committee
ATTN: Steven Chang at tcbac@jud.ca.gov

Re: January 14, 2016 Meeting of Trial Court Budget Advisory Committee,
**Item 3, Recommendations of the Court-Appointed Counsel Funding
Allocation Methodology Joint Subcommittee** (Action Item)

Dear Members of the Trial Court Budget Advisory Committee:

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, while we appreciate the difficult task in addressing the needs of all counties, we 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).¹

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. The revised methodology continues to rely on state averages. This county, like many others, will be unable to meet the needs of the families served in our dependency court utilizing the proposed methodology.

The recommendations will deleteriously affect San Francisco in the following ways:

1. **Recommendations (1-4)** concerning salaries, overhead and benefits continue to be based on statewide averages. San Francisco is an outlier in every regard as

¹ 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.



carefully documented in our Court Appointed Dependency Counsel Survey Responses. Specifically:

- a. City Attorney (county counsel) salaries in San Francisco range between \$150,000 and \$199,000 annually (which of course do not include benefits and overhead). The TCBAC average recommended is far, far lower. We are unable to attract and retain competent attorney representation if we cannot compete in this local market. We are currently experiencing a significant drop in attorneys willing to do this work.
 - b. Commercial space rental, which directly affects the cost of doing business in San Francisco, 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 experienced attorneys currently doing this work and to attract smart, dedicated entry-level attorneys, particularly attorneys representative of our diverse clientele.
2. **Recommendations 5-6** regarding source data and parent ratio funding will deprive a significant number of families of mandated representation.
- a. 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 the current number of appointments and the current number of active cases. The funding model suggests San Francisco's caseload (minors and parents) is approximately 2200 while we know it to be over 3,000. Therefore approximately one third of our current caseload remains unfunded.
 - b. 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. Perhaps our cases involve a smaller number of children but higher number of families than the model accounts for? The Working Group noted significant discrepancies from county to county but agreed upon an average ratio instead. Failing to adequately compensate each county for the specific number of parent appointments creates two problematic scenarios:
 - i. Counties that appoint at a rate lower than .8 per dependent child receive funds for legal services that are not provided.
 - ii. The statewide formula of .8 creates unlawful and unethical incentive for counties like ours to appoint counsel for fewer



parents than mandated. Studies have shown the benefit to family renunciation 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 encourages rather than discourages appointment, and appropriately compensate counties for the legal representation that their county provides.

3. Other funding concerns include circumstances unique to some counties including San Francisco; the proposed methodology fails to account for these circumstances.
 - a. **Out of county placement** is a unique and expensive problem in San Francisco which the funding model fails to 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 placement of minors. Using the UC Berkeley data, 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 at least two-thirds of minors well outside of this county. Counties unable to afford visits with minor clients are failing to provide due process and meet their ethical and legal obligations.
 - b. **Racial Disparity:** In addition, factors tied to racial composition are challenging. In San Francisco 59% of children in foster care is African American (based on the Census report of 2014) while only 5.8% of San Francisco's population is African American. 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.
 - c. **Caseload complexity:** 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 costs down. However, the cases filed 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.



- d. **Recommendation 9** which endorses a **caseload of 144 per attorney** is outside what is reasonable or ethical, particularly in a county such as this which selects only serious/complex cases for filing. Again, the State Bar Guidelines are ignored by this recommendation which overly funds counties which file on matters that are quickly or easily resolved, and deprives adequate representation to counties electing to file instead on the most serious and complex cases

Respectfully submitted.

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