



March 8, 2016

To: Members of the Trial Court Budget Advisory Committee
Transmitted by email to tcbac@jud.ca.gov

Re: March 10, 2016 Meeting
Item 5, Recommendation of the Court-Appointed Counsel Funding Allocation Methodology Joint Subcommittee



Dear Members of the Trial Court Budget Advisory Committee:



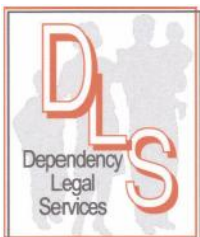
The undersigned submit this joint public comment on behalf of court-appointed counsel for children and parents in juvenile dependency court in thirteen counties. Our group is comprised of providers in counties rural and urban, as well as large and small, throughout the state. Members of our group have participated in all of the meetings, surveys and focus groups held by the Subcommittee. Our comments pertain specifically to Recommendation 10:



That the Family and Juvenile Law Advisory Committee consider a comprehensive update of the attorney workload data and time standards in the current workload model. Since any updates to the workload data and time standards will uniformly impact all trial courts, this pending work should not slow or delay the remaining three-year, phase-in period previously approved by the Judicial Council for implementing the new dependency counsel funding methodology.



First, the recommended adjustments to the workload model should be adopted now, although we agree with the Subcommittee that the work of updating the workload model must continue. Additional research and analysis is needed to review current workload estimates of attorney time required per case, to accurately count the actual number of clients served, and to determine the appropriate average attorney salary. For example, the Subcommittee recommends a median of the entry-to-midlevel county counsel salaries. As indicated in the report, staff did not have sufficient time to gather the requested information on actual county counsel salaries and benefits. We believe that the full range of county counsel salaries should be considered to create a pay structure that reflects the experience and skills of dependency attorneys, many of whom have committed their careers to dependency law for decades. This will also provide for retention of qualified attorneys in dependency cases that have the potential to last for up to 21 years. However, these issues can be addressed within the context of the new methodology and adoption of the recommended adjustments should not be delayed.



Second, we disagree that the remaining three-year, phase-in Reallocation Plan should not be slowed or delayed. When this committee recommended that the Judicial Council adopt the reallocation plan in April 2015, the committee specifically noted that “The model was developed between 2005 and 2007, and many of the financial assumptions could be usefully revisited.” The Judicial Council acknowledged that an update of the funding model would merit revisiting the reallocation plan.

We appreciate the swift and detailed work of the Joint Subcommittee. The Subcommittee's work thus far has confirmed what we all suspected – all counties are underfunded to varying degrees. We were also relieved that, with coordinated efforts between the advocates and the Judicial Council, the final state budget for FY15-16 included an \$11 million increase that was allocated entirely to the counties in greatest crisis. This first step has already provided needed assistance in the severely underfunded counties. However, this was only 1/3 of the total amount needed to equalize caseloads and avoid dramatic cuts to current service levels. As a result, the approved plan reallocating funding from underfunded counties to severely underfunded counties, if continued, will unavoidably result in reductions to service levels in many counties, in some instances forcing providers to close their doors, and cause significant disruption to the legal representation of children and parents.

At this time, we request the following:

- That the remaining three-year, phase-in period of the reallocation plan be suspended and any new funds be allocated entirely to the counties below the statewide ratio of total base funding to total funding required to meet the current workload standard.

If the committee is unwilling to consider suspending the reallocation plan, the progression of annual increases or decreases for FY 2016-2017, FY 2017-2018, and FY 2018-2019 should be revisited and modified to take a more measured approach as we continue working on obtaining full funding from the state and completing the updated funding methodology. The currently approved phase-in plan (10:90, 40:60, 80:20, 100) was recommended by 15 with 13 opposed. While the committee mitigated the Year 1 reallocation to allow time to update the funding methodology, the deep reallocation cuts in the remaining years were not addressed. Without modification, many of the current providers of legal services will not be able to sustain their practices to benefit from the updated methodology.

In conclusion, we urge the committee to:

1. Suspend the remaining three-year, phase-in reallocation plan but allocate any new funds to the severely underfunded counties
2. Adopt the recommended adjustments to the new funding allocation methodology.
3. Adopt the recommendation to continue developing the attorney workload model.

We are committed to continued collaboration with the Judicial Council to establish a reliable workload model as well as to make all efforts to secure full funding from the State. Thank you for your consideration.

Respectfully submitted,

Roger Chan
Executive Director
East Bay Children's Law Offices
Alameda County

Jennifer Kelleher
Directing Attorney
Legal Advocates for Children and Youth
Santa Clara County

Candi Mayes
Chief Executive Officer
Dependency Legal Group
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March 8, 2016

Judicial Council of California
Trial Court Budget Advisory Committee

ATTN: Steven Chang at tcbac@jud.ca.gov

Re: March 10, 2016 Meeting – Written Public Comment re Dependency
Funding: **Item 5 Recommendations of the Court-Appointed Counsel
Funding Allocation Methodology Joint Subcommittee (Action Item)**

Dear Honorable Members 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 the attached letter as written public comment on the recommendations under consideration.

In reviewing the materials before you today, neither our letter to the TCBAC/Family and Juvenile Law Advisory Committee submitted for the February 17 meeting date nor our letter to the Judicial Council submitted for the February 26 meeting date have been included in your materials.

As our letter submitted to the Judicial Council incorporated many of our earlier remarks, we include only our most recent letter.

Many of us attended the Judicial Council meeting of February 26, 2016 in San Francisco. Judge Borack provided keen insight into the funding crisis facing this state for dependency counsel. While she has not concluded her work, it appears clear to all, that every county is seriously underfunded – some more than others. Her work is critical and additional funding pending the conclusion of her work is even more critical.



As San Francisco, like a number of counties will face untenable cuts next year, we write to urge this group, in the strongest terms possible, to stay the cuts until Judge Borack concludes her work.

The attached letter describes what those cuts would look like for San Francisco. Some of the speakers described what the cuts would look like in their counties. Ms. Candi Mayes, co-founder of the Dependency Legal Group of San Diego (DLG) told the Judicial Council that if the Judicial Council continues to further implement funding reductions adopted last year, they would be sacrificing San Diego's representation model. She advised that absent a freeze, the Judicial Council's action would result in the closure of DLG and therefore it would not be an unintended consequence but a purposeful decision on the part of the Judicial Council should they continue with the additional funding cuts as planned. Ms. Mayes' story is the story of far too many counties. For years dependency counsel have been underfunded. No county can sustain the planned cuts. Certainly not ours.

Your work and your recommendations have never been more critical to the poorest and neediest families of this State. We urge you to stay the cuts and revise a number of the recommendations as explained in the attached letter to bring the recommendations in line with real and jurisdiction-specific needs.

I thank you for your careful consideration of our attached letter and promise all help needed to assist you.

Respectfully submitted,

Julie A. Traun

Director Court Programs

Lawyer Referral and Information Service

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Judicial Council of California
Judicial Council of California
455 Golden Gate Avenue
San Francisco, California 94102-3688
Attention: Nancy Carlisle
judicialcouncil@jud.ca.gov

Re: February 26, 2016 Meeting – Written Public Comment Re: Dependency
Funding, Item 16-019

Dear Chief Justice Tani G. Cantil-Sakauye and Honorable Members of the Judicial Council:

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 identified as Item 16-019 on Friday's agenda. Also, we take this opportunity to make some predictions about the Judicial Council's proposed cuts for Year-Two (2016-2017).

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 your discussion today, and the decisions ultimately made by you will affect families throughout the state, impacting some counties more than others.

We also appreciate that Item 16-019 is not an action item but instead is scheduled for discussion only. Therefore we take the opportunity comment, for the Recommendations if

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followed, will profoundly and negatively affect far too many families of this state that deserve and need much better.

Please know that most of the comments below were sent to the Trial Court Budget Advisory Committee in a timely manner for their February 17th meeting.

Proposed Cuts in Year-Two:

While not outlined in the Recommendations before you, we first remind you that last year, significant cuts are slated for 2016-2017.

Should the Judicial Council implement the planned cuts to counties like ours, we will be **unable to meet our statutory obligations to the families served in our dependency court. Representation will be ineffective.** The families served in our dependency courts are poor and disproportionately of color. Black families in San Francisco's dependency court are *10 times* that of the general population. We must serve poor families and our families of color far better than we currently are able, and certainly budget cuts will further exacerbate an already unacceptable situation. Underfunding our neediest families sends the message that we do not care.

San Francisco, like many counties, has already sustained cuts this year, which will leave the current year's budget short. We were already short last year, and many bills for 2014-2015 were necessarily paid from the 2015-2016 budget. We have implemented every possible cost-saving efficiency, and frankly there are no more to be had.

What does a cut of approximately \$400,000 - \$500,000 look like for us in 2016-2017? We track how our attorneys spend their time through a billing system. We would be unable to compensate any attorney who meets with or visits any minor client *ever* if the proposed cuts are implemented. Two thirds of our minor clients are placed well outside this county, and their attorneys will simply never see them; in addition a cut of this magnitude would preclude any meeting time between minor clients and their attorneys within the county as well.

We believe that the funding methodology which supports the recommended cuts continues to need serious work. The working groups do not disagree. Until that work is completed, and a sound methodology is adopted, we urge you in the strongest terms possible to find sufficient funding elsewhere so that the proposed cuts do not take effect.

We have reached out to the Judicial Council in an effort to coordinate and support this important branch of government to secure additional funding from the Legislature and Governor. We again offer our help. Please let us know how best to help you.



Recommendations:

First we 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).¹ For the reasons set forth below, the Recommendations before you today too often rely on statewide averages rather than the complexities unique to some of the 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. Since at least 2006, case weighting has been recommended for all funding of all indigent services in the State of California, but to date case weighting has not been adopted by the Judicial Council or any of the working groups, though all concur it is needed.

Recommendations 1-2:

Real parity is needed, particularly in a county where commercial space rental, which directly affects the cost of doing business 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 under this model.²

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.



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 urge that *actual client counts* be utilized for counties that can produce client count information; we add the following as further comment:

A review of filings 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:

A **caseload of 141** 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 141 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,

Julie A. Traun

Director Court Programs

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March 9, 2016

Honorable Trial Court Budget Advisory Committee:

The Association of Independent Judicial Interpreters of California (AIJIC) is a professional association that represents certified and registered independent court interpreters statewide.

AIJIC respectfully requests that the committee consider raising the per diem rates for independent court interpreters, currently at \$156.56 for a half day and \$282.23 for a full day.

These rates have remained stagnant since 2007 and are significantly below what independent court interpreters charge in the private sector. As a result, many independent court interpreters in California have very little interest in working for the courts, which results in less interpreters being available.

Court interpreting is a job that requires skills and years of preparation, and should be thus compensated accordingly with annual cost of living adjustments.

We have addressed the Judicial Council of California and the Executive and Planning Committee on this matter about this issue and will continue to do so, but also wanted to bring awareness on this issue to the Trial Court Budget Advisory Committee.

Our organization will address the committee in person at the next meeting in May.

Respectfully,

Sincerely,

AIJIC Board of Directors, in alphabetical order:

- Mariana Bension-Larkin, Spanish State and Federally Certified Court Interpreter (President)
- Nataliya Kharikova, Russian State Certified Court Interpreter (Treasurer)
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- Jesús Rivera, Spanish State and Federally Certified Court Interpreter (Vice-President)
- Anabella Tidona, Spanish State and Federally Certified Court Interpreter (Secretary)