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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: February 26, 2016

Title

Juvenile Dependency: Interim Report on
Court-Appointed Dependency Counsel
Workload and Funding Methodology

Agenda Item Type

Information Only

Date of Report

February 1, 2016

Submitted by

Trial Court Budget Advisory Committee
Family and Juvenile Law Advisory
Committee

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Joint Subcommittee on Court-Appointed
Dependency Counsel Workload and
Funding Methodology

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Executive Summary

On April 17, 2015, the Judicial Council approved recommendations of the Trial Court Budget Advisory Committee (TCBAC) to change the methodology used to allocate annual funding for court-appointed dependency counsel among the courts. The purpose was to provide a more equitable allocation of funding among the courts. Rather than using historical funding levels dating back to the adoption of state trial court funding, the new funding methodology is based on the caseload-based calculation of funding for each court provided by the workload model approved by the Judicial Council through the *DRAFT Pilot Program and Court-Appointed Counsel* report of October 26, 2007. One of the recommendations approved by the Judicial

Council was that a joint working group of the TCBAC and the Family and Juvenile Law Advisory Committee be formed to review that workload model for possible updates and revisions. The joint working group was charged with bringing recommendations to the Judicial Council at the April 2016 meeting. The working group formed is called the Joint Subcommittee on Court-Appointed Dependency Counsel Workload and Funding Methodology (“subcommittee”). In an effort to keep the Judicial Council informed of the progress of the subcommittee, particularly as it relates to potential, increased statewide funding needs for dependency counsel, this report presents the draft recommendations of the subcommittee as an informational item.

Previous Council Action

On April 17, 2015, the Judicial Council approved recommendations of the Trial Court Budget Advisory Committee to change the methodology used to allocate annual funding for court-appointed dependency counsel among the courts.¹ One of the recommendations approved was that a joint working group of the TCBAC and the Family and Juvenile Law Advisory Committee be formed to review that workload model for possible updates and revisions.

Possible Recommendations

The subcommittee was charged with reviewing the workload model for court-appointed dependency counsel and including eight specific issues in its review. In addition the subcommittee realized that to update the workload model, one additional issue needed to be reviewed.

Issues in Judicial Council Charge

1. *Whether attorney salaries should continue to be based on an average salary by region, or whether another method should be used such as an individual county index of salaries. (7.a. in Judicial Council report of April 17, 2015).*

Recommendation:

That attorney salaries used in workload model estimates be based on two factors: (1) the median salary for the first-tier range for county counsel in all counties; and (2) the Bureau of Labor Statistics (BLS) Category 92 index that is used in the Workload Allocation Funding Model (WAFM).

2. *Whether the attorney salaries used in the model should be updated (7.b.).*

¹Judicial Council of Cal., Advisory Com. Rep., *Juvenile Dependency: Court-Appointed-Counsel Funding Reallocation* (Apr. 17, 2015), <http://www.courts.ca.gov/documents/jc-20150417-item1.pdf>.

Recommendation:

That attorney salaries used in the model be updated for each county using the statewide median county counsel salary and the BLS Category 92 index.

3. *Whether the calculation for benefits costs in the model is accurate or if it should be changed (7.c.).*

Recommendation:

That benefits costs not be calculated directly by any formula, but that the costs be estimated as 15 percent of total costs or 33 percent of salary costs.

4. *Whether the calculation for overhead costs in the model is accurate or if it should be changed (7.d.).*

Recommendation:

That the calculation for overhead costs be revised as follows:

- a) Salaries for line attorneys are calculated using the sources described in recommendations 1 and 2 and comprise 45 percent of the total cost.
 - b) All nonsalary costs (benefits and overhead) comprise 55 percent of the total cost and be estimated on a statewide level as follows:
 - i. Social worker/investigator/paralegal staff 10%
 - ii. Other salaried workers 15%
 - iii. Benefits 15%
 - iv. Operating costs 15%.
5. *Whether the state child welfare data reported through the University of California, Berkeley accurately represents court-supervised juvenile dependency cases in each county, or whether court filings data or another source of data be used (7.e.).*

Recommendation:

That annual child caseload will be determined for each court using a weighted metric derived from a court's percentage of total original dependency filings and the court's percentage total of child welfare caseload; that the child caseload metric be weighted by 30% of court filings and 70% of child welfare caseload; and that the caseload metric use a rolling average composed of the previous three years.

6. *Whether the ratio used to estimate parent clients in the model is accurate or if it should be changed (7.f.).*

Recommendation:

That the ratio used to estimate parent clients continue to be estimated using the multiplier of 0.8 parent case per 1.0 child case.

7. *Whether a modified methodology be used for funding small courts (7.g.).*

Recommendation:

That a program be established for providing emergency funding to small courts experiencing unexpected short-term caseload increases.

8. *Whether dependency counsel funding should be a court or county obligation (7.h.).*

Recommendation:

That dependency counsel funding is established in statute as a court function.

Additional Workload Model Issues

9. *The subcommittee determined that to review and update the workload model, it needed to consider the caseload standard of 188 cases per attorney when the attorney is supported by a .5 full-time equivalent investigator or social worker.*

Recommendation:

That the caseload standard be set at the alternate standard that is included in the 2007 workload model: 141 cases per attorney without considering investigator or social worker support.

10. *The subcommittee determined that the current workload model is based on data on attorney workload from 2002 and that many of its assumptions are outdated and not supported by current data.*

Recommendation:

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. Rather this recommendation recognizes that a comprehensive update could not be completed within the time frame set by the Judicial Council for final report from the joint committees.

Rationale for Recommendations

The subcommittee held six meetings, two of them in-person, between July and November 2015. To support the discussions of the workload model, Judicial Council staff conducted two statewide surveys of attorney providers, four focus groups of dependency line attorneys inquiring into their workload and concerns, a web-based survey of county counsel salary ranges, and a data analysis of attorney workload data derived from the case management system used by the attorneys in the Dependency Representation, Administration, Funding, and Training (DRAFT)

program. Extensive public comment was provided at the subcommittee meetings and also at a stakeholders meeting held at a statewide conference and attended by attorneys and subcommittee members.

Recommendations 1–4: Fiscal Calculations

The subcommittee chose the median of statewide county salaries as the first tier of salaries because county counsel at this range should be roughly parallel in skills and experience to court-appointed dependency counsel, and because the salary information is publically available and can be updated. Using the same BLS index used in the WAFM model provides a way to adjust the median salary to each county's governmental salary market that is consistent with full-time equivalent salary adjustments in WAFM.

The subcommittee's finding from the survey of attorney firm managers on their budget and organization was that court-appointed dependency counsel use very different organizational models. There is no single method of calculating financial need for court-appointed counsel that accounts for all the variance in organizational models and local costs. Nor is the workload model meant to be prescriptive for attorney firms. Rather, the model should provide a means for calculating a total financial need that courts and attorney firms can then implement through a variety of service models.

For that reason the subcommittee does not recommend methods of calculating benefits, rent, supervisory costs, or other factors that are highly dependent on local factors and organizational models. Instead, line attorney salaries calculated using the method described above provides a base funding that accounts for local costs. The subcommittee points out that setting a proportion for all other costs at 55% of the total means that benefits, rent, and all other costs are also driven by the BLS index and thus adjusted for local costs.

Recommendations 5–7: Caseload

The subcommittee carried out an extensive review of the child welfare caseload counts provided by the California Department of Social Services, and compared them to the dependency filings reported through the Judicial Branch Statistical Information System (JBSIS). Advantages of the child welfare counts include using data from a statewide uniform case management system with a common set of data entry standards and using data that can be reported longitudinally (thus providing a snapshot of cases under supervision at a given time). Disadvantages include the fact that local courts have no control over ensuring the accuracy of the data being reported.

Advantages of using the JBSIS filings counts include the control and accountability that derive from using court data to determine court dependency counsel budgets. Disadvantages include the fact that filing counts do not provide a snapshot caseload measure but only a count of case entries.

The subcommittee recommends that the workload model continue to use the child welfare caseload numbers, but that these be combined with JBSIS dependency filings to gain the

advantages from both data sources. The weighting recommended is 70% child welfare filings and 30% JBSIS filings.

The subcommittee also reviewed data on the number of parent cases in the system and found that, consistent with public comment, there is wide variance among courts in the ratio of parent to child clients. However, the overall ratio in courts able to provide complete caseload data remained approximately .8 parent to 1.0 child client, the ratio set in the 2007 report.

Recommendation 9: Caseload per Attorney

The 2007 workload model set a “basic” caseload standard of 141 cases per dependency attorney. This standard was qualified by noting that many attorneys have access to paralegal, investigator, or social worker staff for appropriate case work. The 2007 workload model estimates that a one-half time social worker/investigator should enable an attorney to carry a caseload of 188 clients.

The subcommittee reviewed the original analysis that supports the 141/188 caseload and an analysis of current workload data. The subcommittee’s conclusion is that attorney workload has changed substantially since the original workload study was conducted in 2002, and that more research needs to be done on attorney workload before a new caseload standard can be set. However, it also appeared to the subcommittee that applying the 188-caseload standard statewide, as the current model does, unfairly disadvantaged the many attorneys who are solo practitioners or who do not have access to investigators and social workers. Therefore, the subcommittee recommends that the “basic” caseload standard of 141 be used for statewide workload calculations. This approach is consistent with the subcommittee’s approach to overhead costs in recommendations 3 and 4, which makes line attorney cost the basis for total costs.

Next Steps

The committees will make formal recommendations to the Judicial Council at the April meeting, and provide a full report on the subcommittee’s work at that time.