



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on January 15, 2019

Title	Agenda Item Type
Juvenile Law: Court-Appointed Juvenile Dependency Counsel Funding Methodology for Small Courts	Action Required
	Effective Date
	July 1, 2019
Rules, Forms, Standards, or Statutes Affected	Date of Report
None	December 20, 2018
Recommended by	Contact
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Executive Summary

The Trial Court Budget Advisory Committee recommends that the Judicial Council adopt, on an ongoing basis, changes to the court-appointed counsel funding methodology for small courts previously adopted in May 2017 and scheduled to sunset on June 30, 2019. The small courts faced many unique circumstances that necessitate continuation of an adjusting funding methodology. The proposed methodology suspends reallocation-related budget reductions for the courts with a child welfare caseload under 200, permits adjustment of the local economic index for all courts with a child welfare caseload under 400, adjusts funding allocations of the larger courts, and continues the \$100,000 funding reserve to assist small courts with the cost of sharp caseload increases.

Recommendation

The Trial Court Budget Advisory Committee (TCBAC) unanimously recommends that the Judicial Council adopt the modified funding methodology for small courts, approved by the council in May 2017 for fiscal years 2017–18 and 2018–19, as ongoing effective July 1, 2019.

Relevant Previous Council Action

The Judicial Council approved a workload and funding methodology for court-appointed juvenile dependency counsel effective April 15, 2016, as detailed in *Juvenile Dependency: Court-Appointed Dependency Counsel Workload and Funding Methodology* (Apr. 1, 2016).¹ Discussion at the April and June 2016 council meetings indicated that the issues related to workload and funding for small courts required immediate attention.² In July 2016, the council directed the Executive and Planning Committee to form a working group to consider changes to the court-appointed juvenile dependency counsel funding methodology as it relates to the small courts.³

In May 2017, the Judicial Council acted on the recommendation of the Small Court Dependency Workload (SCDW) Working Group and modified the court-appointed dependency funding methodology for the two fiscal years (2017–18 and 2018–19).⁴ The recommendations approved by the council are detailed below:

- A. “Small courts” be defined as the 30 courts in California with the lowest child welfare caseloads. All of these courts have caseloads of fewer than 400 children in child welfare.
- B. “Smallest courts” be defined as the 23 smallest courts who were identified by the Judicial Council as exempt from reallocation-related budget reductions in fiscal year 2016–17. All of these courts have caseloads of fewer than 200.
- C. “Larger courts” be defined as the 28 courts not in the “small courts” group.

The SCDW Working Group also recommended that effective July 1, 2017:

- 1. Modifications be made to the Judicial Council dependency counsel workload and funding methodology as detailed in *Juvenile Dependency: Court-Appointed Dependency Counsel Workload and Funding Methodology* (Apr. 1, 2016) for fiscal years 2017–18 and 2018–19;
- 2. The 23 smallest courts continue to be exempt from reallocation-related budget reductions;

¹ Judicial Council of Cal., *Juvenile Dependency: Court-Appointed Dependency Counsel Workload and Funding Methodology* (April 1, 2016), <https://jcc.legistar.com/View.ashx?M=F&ID=4382676&GUID=E8BCCA8A-5DED-48C3-B946-6E21EBB0BEAF>

² Judicial Council of Cal., *Juvenile Dependency: Court-Appointed Dependency Counsel Workload and Funding Methodology Small Courts Recommendations* (June 15, 2016), <https://jcc.legistar.com/View.ashx?M=F&ID=4527811&GUID=F561AE45-2703-4D29-9A4F-B3545EA55E4E>.

³ Judicial Council of Cal., *Juvenile Dependency: Court-Appointed Dependency Counsel Workload and Funding Methodology Options* (July 18, 2016), <https://jcc.legistar.com/View.ashx?M=F&ID=4572873&GUID=C33C7410-DDA2-451A-9004-024D84910504>.

⁴ Judicial Council of Cal., *Juvenile Dependency: Small Court Dependency Workload Working Group Final Recommendations* (May 5, 2017), <https://jcc.legistar.com/View.ashx?M=F&ID=5150554&GUID=7D8E5F4F-6D83-4C73-A246-4F11E877A411>.

3. The Bureau of Labor Statistics employment and wages index that is less than 1.0 for any of the 30 small courts be adjusted to 1.0;
4. If the impact of these adjustments results in a small court being allocated more than 100 percent of the total need calculated through the workload and funding methodology, the court will receive an allocation equal to 100 percent of total need;
5. The budget increase for small courts related to recommendations 2 and 3 be offset by reducing the funding allocations of those larger courts receiving increases related to the ongoing reallocation; and
6. The \$100,000 reserve for caseload fluctuations in small courts be continued.

Analysis/Rationale

As detailed in *Juvenile Dependency: Small Court Dependency Workload Working Group Final Recommendations* (May 5, 2017), small courts face many unique circumstances that necessitate continuation of an adjusted funding methodology, including:

- Lack of a large enough pool of experienced attorneys;
- Limited pool of qualified attorneys and inability to lower costs by conducting competitive solicitations;
- Small courts are forced to look out of county and pay rates for conflict counsel that are higher than for attorneys on contract and costs for conflict counsel can overrun a small court's dependency counsel allocation;
- Attorneys incur higher costs when practicing in small courts (travel time, out-of-county client visits);
- Attorneys incur higher costs for overhead in small courts as they lack economies of scale; and
- The cost to small courts for expert witnesses is greatly affected by travel times and the lack of access to psychiatrists and other experts.

While the adjusted funding methodology for small courts was restricted to two years, the unique costs and challenges for small courts remain. The smallest courts continue to face lack of access to experienced dependency attorneys and the resulting difficulty in establishing competitive attorney rates; small court attorneys continue to experience higher ancillary costs for administration, travel, client visits, and costs for expert witnesses.

The adjusted methodology was instrumental in combating cost challenges for small courts in fiscal years 2017–18 and 2018–19. Implementation of adjusted funding enabled small courts to continue funding qualified dependency counsel and to provide adequate representation services. For these reasons, the TCBAC recommends that the Judicial Council approve the May 2017 funding methodology for small courts as ongoing effective July 1, 2019.

Staff note

In determining caseload metrics, the small court methodology is consistent with the Judicial Council–adopted workload methodology by using a three-year rolling average for filings and a

three-year rolling average of child welfare data from the University of California, Berkeley's Social Welfare Department. When Judicial Council Budget Services staff apply the methodology each year to determine allocations, there may be changes in the number and identity of courts identified as "small" (under 400 child welfare cases) and "smallest" (under 20 child welfare cases).

Policy implications

Ongoing implementation of the adjusted funding methodology for small courts results in greater equity of funding for court-appointed dependency counsel allocations. In addition, the adjustment for small courts will continue to impact the funding allocations of larger courts in order to compensate for increases to the small court budgets. The TCBAC has determined that these adjustments are justified and crucial to addressing the unique needs of small courts and to ensure adequate funding for dependency representation.

Comments

TCBAC recommendations to adopt adjustments to the funding methodology for small courts, approved by the council in May 2017 for fiscal years 2017–18 and 2018–19 as ongoing, were not circulated through the invitation-to-comment process. However, as detailed in *Juvenile Dependency: Small Court Dependency Workload Working Group Final Recommendations* (May 5, 2017), before making the recommendations, the SCDW Working Group reviewed public comments on small court dependency counsel funding issues received by the joint subcommittee that formulated the workload funding methodology in fiscal year 2015–16, responses to court surveys, and responses to interviews with court executive officers or other court staff. The working group also interviewed court-appointed counsel in small courts directly, and considered responses to additional interviews with court-appointed counsel conducted by staff. The TCBAC also considered and provided input on the recommendations at its April 2017 meeting.

In addition, the TCBAC's Funding Methodology Subcommittee discussed the adjusted funding methodology for the small courts at its meeting in October 2018. In support of recommendations to make the small court funding adjustments ongoing, one member indicated that the adjusted funding enabled the court to continue providing adequate dependency representation, and that without the adjustment the court may have been unable to continue to fund qualified counsel. Another member shared that the adjusted funding for small courts resulted in cost savings for the court as the established funding allowed for planning and streamlining to avoid higher costs.

Alternatives considered

TCBAC considered the following alternatives:

Sunset the modifications made to the Judicial Council dependency counsel workload and funding methodology for fiscal years 2017–18 and 2018–19. After review and discussion of the issues facing small courts and the positive impact of implementing the adjusted funding model in those fiscal years, the TCBAC determined that the unique costs and challenges of the small courts

remain and the adjusted methodology approved in May 2017 should continue on an ongoing basis effective July 1, 2019.

Extend the modifications for two more fiscal years, 2019–20 and 2020–21. While the two-year adjustment for fiscal years 2017–18 and 2018–19 was approved as a temporary plan, the committee decided that the adjustments approved in May 2017 are needed on an ongoing basis in order to ensure that the costs particular to the small courts are reflected in the court-appointed counsel funding allocation methodology, and that small courts are able to continue to provide adequate court-appointed counsel for dependency cases.

Revisit the methodology as it relates to small courts only, with any changes effective July 1, 2019. The committee decided that the issue had been well vetted and there was no need to revisit this matter later.

Fiscal and Operational Impacts

The recommendations will not add costs to the dependency court-appointed counsel budget. Ongoing implementation of the adjusted funding model for small courts will result in increased funding for some small courts, offset by reallocation of funding from larger courts. Furthermore, if the impact of the adjustments results in a small court being allocated more than 100 percent of the total need calculated through the workload and funding methodology, the court would only receive allocation equal to 100 percent.

As indicated above, the adjusted funding model results in cost savings for small courts as the established funding process allows for planning and streamlining to avoid higher costs. In addition, ongoing implementation will enable small courts to continue funding qualified dependency attorneys.

Attachments and Links

1. Link A: *Court-Appointed Dependency Counsel Workload and Funding Methodology* (Apr. 1, 2016), <https://jcc.legistar.com/View.ashx?M=F&ID=4382676&GUID=E8BCCA8A-5DED-48C3-B946-6E21EBB0BEAF>
 2. Link B: *Juvenile Dependency: Court-Appointed Dependency Counsel Workload and Funding Methodology Small Courts Recommendations* (June 15, 2016), <https://jcc.legistar.com/View.ashx?M=F&ID=4527811&GUID=F561AE45-2703-4D29-9A4F-B3545EA55E4E>
 3. Link C: *Juvenile Dependency: Court-Appointed Dependency Counsel Workload and Funding Methodology Options* (July 18, 2016), <https://jcc.legistar.com/View.ashx?M=F&ID=4572873&GUID=C33C7410-DDA2-451A-9004-024D84910504>
- Link D: *Juvenile Dependency: Small Court Dependency Workload Working Group Final Recommendations* (May 5, 2017), <https://jcc.legistar.com/View.ashx?M=F&ID=5150554&GUID=7D8E5F4F-6D83-4C73-A246-4F11E877A411>