



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: July 18–19, 2019

Title	Agenda Item Type
Juvenile Law: Distribution of Federal Title IV-E Reimbursement for Dependency Counsel	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
None	July 19, 2019
Recommended by	Date of Report
Family and Juvenile Law Advisory Committee	June 28, 2019
Hon. Jerilyn L. Borack, Cochair	Contact
Hon. Mark A. Juhas, Cochair	Audrey Fancy, 415-865-7706 audrey.fancy@jud.ca.gov

Executive Summary

The Budget Act of 2019 provides an increase of \$34 million, and ongoing funds in future years, in federal funds to support court-appointed dependency counsel representing children and parents at every stage of the dependency proceeding. This funding became available with a change to the federal *Child Welfare Policy Manual*, which now permits claiming federal foster care dollars (title IV-E funds) for attorneys to provide legal representation to a title IV-E–eligible child in foster care or to the child’s parents. This federal funding brings California closer to the Judicial Council caseload standard to fully fund the adequate and competent representation of parents and children required by Welfare and Institutions Code section 317. The Family and Juvenile Law Advisory Committee recommends the distribution of these funds to court-appointed counsel providers meeting eligibility requirements according to the court-appointed counsel workload methodology adopted in April 2016 and modified for small courts in January 2019.

Recommendation

The Family and Juvenile Law Advisory Committee recommends, effective July 19, 2019, that the Judicial Council:

1. Direct staff to distribute federal IV-E match funds to court-appointed dependency counsel that satisfy the eligibility requirements, based on each county's allocation; and
2. Direct staff to survey court-appointed counsel providers regarding their ability to utilize IV-E match funds during the remainder of fiscal year 2019–20; reallocate any court-appointed dependency counsel IV-E match funding that is estimated to remain unspent at the end of the year by workload, using the formula and method approved by the Judicial Council on January 22, 2015; and report back to the council at its July 23–24, 2020 meeting.

Relevant Previous Council Action

Court-appointed dependency counsel became a state fiscal responsibility in 1989 through the Brown-Presley Trial Court Funding Act (Sen. Bill 612/Assem. Bill 1197; Stats. 1988, ch. 945), which added section 77003 to the Government Code, defined “court operations” in that section as including court-appointed dependency counsel, and made an appropriation to fund trial court operations. In 1997, the Lockyer-Isenberg Trial Court Funding Act of 1997 (Assem. Bill 233; Stats. 1997, ch. 850) provided the funding for, and delineated the parameters of, the transition to state trial court funding that had been outlined in the earlier legislation.

In 2000, the Judicial Council sponsored legislation, Senate Bill 2160 (Schiff; Stats. 2000, ch. 450)¹ to conform to federal Child Abuse Prevention and Treatment Act (CAPTA) requirements. Welfare and Institutions Code section 317 was amended to provide counsel be appointed for children in almost all dependency cases; appointed counsel have caseloads and training to ensure adequate representation; and that the council promulgate rules establishing caseload standards, training requirements, and guidelines for appointment of counsel for children.

In 2001, the council adopted rule 5.660 mandating appointment of counsel for children, except in extraordinary cases and directed staff to undertake a caseload study. In 2003, the Dependency Counsel Caseload Study by the American Humane Association, started in 2002, was completed. The study identified a maximum per attorney caseload of 141 clients. This finding compared to a statewide average at the onset of the study of 273 clients per attorney. In 2004, the council launched the Dependency, Representation, Administration, Funding, and Training (DRAFT) Pilot Program. In 2007, the council extended the DRAFT program to the current 20 courts.

In 2015, the Judicial Council approved recommendations of the Trial Court Budget Advisory Committee (TCBAC) to reallocate funding for court-appointed dependency counsel among the trial courts based on a caseload funding model. The purpose was to provide a more equitable

¹ Link A: Senate Bill 2160: http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=199920000SB2160

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 (*Juvenile Dependency: Court-Appointed–Counsel Funding Reallocation*; Apr. 17, 2015).² (See Link B.)

Another recommendation approved by the Judicial Council at this time was that a joint subcommittee of the TCBAC and the Family and Juvenile Law Advisory Committee be formed to review that workload model for possible updates and revisions. After a year of research and analysis, the methodology recommended by this joint subcommittee was approved by the Judicial Council (*Juvenile Dependency: Court-Appointed Dependency Counsel Workload and Funding Methodology*; Apr. 15, 2016).³ (See Link C.)

Discussion at the April and June 2016 Judicial Council meetings indicated that the issues related to workload and funding for small courts required immediate attention. In July 2016, the Judicial 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 small courts.

The working group determined that changes were justified in light of the unique costs faced by small courts. In May 2017, it recommended that the funding methodology be modified for 2017–18 and 2018–19 to suspend reallocation-related budget reductions for those smallest courts with caseloads under 200, adjust the local economic index for all those small courts with caseloads under 400, and adjust the funding allocations of those larger courts receiving increases related to the reallocation to compensate for these increases to the small court budget (*Juvenile Dependency: Small Court Dependency Workload Working Group Final Recommendations*; May 19, 2017).⁴ (See Link D.) Implementation of adjusted funding enabled small courts to continue funding qualified dependency counsel and to provide adequate representation services.

² Judicial Council of Cal., *Juvenile Dependency: Court-Appointed–Counsel Funding Reallocation* (Apr. 17, 2015), www.courts.ca.gov/documents/jc-20150417-item1.pdf.

³ Judicial Council of Cal., *Juvenile Dependency: Court-Appointed Dependency Counsel Workload and Funding Methodology* (Apr. 15, 2016), <https://jcc.legistar.com/View.ashx?M=F&ID=4382676&GUID=E8BCCA8A-5DED-48C3-B946-6E21EBB0BEAF>.

⁴ Judicial Council of Cal., *Juvenile Dependency: Small Court Dependency Workload Working Group Final Recommendations* (May 19, 2017), <https://jcc.legistar.com/View.ashx?M=F&ID=5150554&GUID=7D8E5F4F-6D83-4C73-A246-4F11E877A411>.

At its January 15, 2019 meeting, the Judicial Council adopted the modified funding methodology for small courts approved in May 2017 for fiscal years 2017–18 and 2018–19, as ongoing effective July 1, 2019.⁵ (See Link E.)

Analysis/Rationale

In December 2018, the federal Administration for Children & Families issued a notice of a revision to the *Child Welfare Policy Manual* (CWPM). (See Link F.) Revised section 8.1B, question 30 now permits an agency to claim federal foster care dollars (title IV-E funds) for attorneys to provide legal representation to a title IV-E–eligible child in foster care and the child’s parents to “ensure that, among other things: reasonable efforts are made to prevent removal and finalize the permanency plan; and parents and youth are engaged in and complying with case plans.”⁶

The California Department of Social Services (CDSS) is California’s designated title IV-E agency; therefore, these funds can only be accessed by CDSS. Judicial Council staff and CDSS are developing an interbranch agreement that will enable CDSS to reimburse the Judicial Council for qualified, court-appointed dependency counsel expenditures through federal matching funds. Under this agreement, the Judicial Council is responsible for contracting with court-appointed dependency counsel providers and overseeing the invoicing, reporting, and accountability process to ensure that only eligible funds are matched and that funds are spent in accordance with federal intent. The committee has asked staff to worked with CDSS to explore additional aspects impacting children and families in the child welfare system to ensure clarification of the ability to match funds to the extent allowed under the policy.

The fiscal year (FY) 2019–20 budget for the judicial branch includes an augmentation of \$20 million in state general funds to the Judicial Council’s dependency counsel budget, bringing the state total to \$156.7 million annually.⁷ The budget also includes anticipated federal match funding for FY 2019–20—the first year of match funding implementation—of \$34 million in federal match funding and includes ongoing funds to the Judicial Council to hire staff to

⁵ Judicial Council of Cal., *Juvenile Law: Court-Appointed Juvenile Dependency Counsel Funding Methodology for Small Courts* (Jan. 15, 2019), <https://jcc.legistar.com/View.ashx?M=F&ID=6913216&GUID=4DEB6A82-B007-46D8-9885-8D11D907DBF5>.

⁶ Admin. for Children & Families, Children’s Bureau, *Child Welfare Policy Manual*, https://www.acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=36. In February 2019, the American Bar Association published *Claiming Title IV-E Funds to Pay for Parents’ and Children’s Attorneys: A Brief Technical Overview* to provide guidance on implementation. See https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/january---december-2019/claiming-title-iv-e-funds-to-pay-for-parents-and-childrens-attor/.

⁷ Allocation of state general funds is a companion item on this meeting agenda. See the proposed allocation in item [19-075](#), *Trial Court Budget: Fiscal Year 2019–20 Allocation of Court-Appointed Juvenile Dependency Counsel Funding*.

administer this program. Based on the current federal requirements governing the match funding, an estimated maximum of \$47 million will be available annually for reimbursement.

Funding for court-appointed dependency counsel is distributed following the dependency workload model approved by the council in April 2016 and updated in July 2016 to account for the unique needs of small courts.⁸ The dependency workload model is the foundation for the Family and Juvenile Law Advisory Committee's recommendations regarding distribution of the match funds. Match funding will be allocated to legal services providers in a county based on their court's allocation of the total Judicial Council Juvenile Dependency Counsel budget and in proportion to their contracted services representing parents or children.

The committee recognizes that it is critical to ensure that only eligible funds are matched and that the funds are utilized for the intended purpose. Therefore, the committee recommends that match funds be subject to additional terms, including submission and approval of a plan for expenditure that addresses the use and outcomes of the additional funding; a commitment to abide by the standards of dependency representation based on rule 5.660 of the California Rules of Court that are used by the DRAFT Program; submission of revenue and expenditure accounting statements; ability to electronically submit invoices on templates approved by CDSS to meet federal requirements; ability to electronically submit caseload metrics related to the expenditure plan; and other terms as necessary to effectuate the successful drawdown of the federal match.

The committee recognizes that full utilization of match funding will require additional staff at the state level to administer the program, as well as new attorneys and other staff who will need to be recruited, trained, and onboarded by the court-appointed counsel programs. In addition, new attorneys may necessitate the need for equipment, additional office space, and costs that may take time to develop and may leave some providers without expenditure of initial funds to match. Therefore, the committee recommends that at midyear staff be directed to identify match funds that will not be spent by a provider by the end of the fiscal year in order to reallocate them to those providers with allowable expenses who can meet all match terms.

The committee proposes the following timeline to ensure funds are distributed as providers meet eligibility requirements and that Judicial Council staff are available to execute contracts with providers and oversee the program to ensure compliance with federal regulations and the interbranch agreement with CDSS.

FY 2019–20, Quarter 1

Finalization of state plan and agreement between Judicial Council and CDSS: the council will identify staff and contractors to execute the program.

⁸ Judicial Council of Cal., *Juvenile Dependency: Court-Appointed Dependency Counsel Workload and Funding Methodology* (Apr. 15, 2016), <https://jcc.legistar.com/View.ashx?M=F&ID=4382676&GUID=E8BCCA8A-5DED-48C3-B946-6E21EBB0BEAF>.

Issue a Request for Application by posting to the judicial branch webpage, notice to court, and a notice to all known providers: providers will be asked to submit a plan for match funds, financial statements, proof of insurance, and other documentation necessary to satisfy match criteria. Providers will also be asked to indicate their readiness to meet match terms and their time frame for readiness.

Staff will analyze proposals and offer technical assistance as necessary to providers to satisfy criteria: they will develop a plan to issue and monitor contracts to eligible providers in waves throughout the fiscal year, based on provider readiness, client impact, and Judicial Council staff resources.

FY 2019–20, Quarter 2

Execute agreements with providers meeting criteria as feasible within available staff resources. Begin invoicing process.

FY 2019–20, Quarter 3

Survey court-appointed counsel providers regarding their ability to utilize IV-E match funds during the remainder of FY 2019–20. Reallocate any court-appointed dependency counsel IV-E match funding that is estimated to remain unspent at the end of the year by workload, using the formula and method approved by the Judicial Council on January 22, 2015.

FY 2020–21, Quarter 1

Report to the council at its July 23–24, 2020 meeting on reallocation of match funding.

Policy implications

Effective counsel will ensure that the complex requirements in juvenile law for case planning, notice, and timeliness are adhered to, thereby reducing case delays, improving court case processing and the quality of information provided to the judge, and ultimately shortening the time children spend in foster care. The statewide funding need for court-appointed counsel is based primarily on the number of children in court-ordered child welfare supervision. The Judicial Council has established a caseload standard of 141 clients per full-time equivalent attorney and a total funding need of \$207 million to achieve this standard. This federal funding brings the state closer to the caseload standard to fully fund the adequate and competent representation for parents and children required by Welfare and Institutions Code section 317. Inadequate funding and subsequent high caseloads lead to high attorney turnover and lack of retention of qualified advocates for children.

Comments

These recommendations to apply existing methodologies to allocate these funds were not circulated through the invitation-to-comment process. Prior to committee consideration, staff convened a call of court-appointed counsel providers. Fifteen attorneys participated in that call

representing 17 counties⁹ from a cross-section of the state including DRAFT and non-DRAFT courts; large, medium, and small courts; and courts in all appellate districts. On the call, staff provided an overview of the proposal in this report. While numerous questions were asked about the mechanics of implementation, no questions or comments were provided suggesting a different approach for distribution.

Alternatives considered

The committee considered requesting formation of an advisory body to review possible funding models and recommend an approach for these funds. The committee does not believe this is necessary given the extensive examination of dependency counsel funding in recent years and due to the substantial experience that the Family and Juvenile Law Advisory Committee has in the administration of funds for court-appointed counsel.

The committee also considered disbursing funds directly to trial courts. Due to the technical federal match requirements to match federal funds, the committee believes that the most efficient and streamlined approach is for state administration.

Fiscal and Operational Impacts

The FY 2019–20 budget for the judicial branch includes funding support for implementation costs. Upon approval of the recommendations, Judicial Council staff will initiate the process of hiring staff to administer this program. Because the program will be administered at the state level, there are no trial court costs. However, trial courts may not see enhanced attorney performance through reduced caseloads or changes in practice until full staffing is available at the council and within attorney groups.

Attachments and Links

1. Link A: Senate Bill 2160:
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=199920000SB2160
2. Link B: Judicial Council of Cal., *Juvenile Dependency: Court-Appointed–Counsel Funding Reallocation* (Apr. 17, 2015), www.courts.ca.gov/documents/jc-20150417-item1.pdf
3. Link C: Judicial Council of Cal., *Juvenile Dependency: Court-Appointed Dependency Counsel Workload and Funding Methodology* (Apr. 15, 2016), <https://jcc.legistar.com/View.ashx?M=F&ID=4382676&GUID=E8BCCA8A-5DED-48C3-B946-6E21EBB0BEAF>
4. Link D: Judicial Council of Cal., *Juvenile Dependency: Small Court Dependency Workload Working Group Final Recommendations* (May 19, 2017), <https://jcc.legistar.com/View.ashx?M=F&ID=5150554&GUID=7D8E5F4F-6D83-4C73-A246-4F11E877A411>

⁹ Alameda, Los Angeles, Lake, Marin, Mendocino, Merced, Placer, Sacramento, San Diego, Santa Barbara, Santa Clara, San Francisco, Solano, Sonoma, Stanislaus, Ventura, and Yolo.

5. Link E: Judicial Council of Cal., *Juvenile Law: Court-Appointed Juvenile Dependency Counsel Funding Methodology for Small Courts* (Jan. 15, 2019),
<https://jcc.legistar.com/View.ashx?M=F&ID=6913216&GUID=4DEB6A82-B007-46D8-9885-8D11D907DBF5>
6. Link F: Administration for Children & Families, Children's Bureau, *Child Welfare Policy Manual*,
https://www.acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_ds_p.jsp?citID=36