



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

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For business meeting on September 25, 2020

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**Title**

Juvenile Law: Federally Funded Dependency  
Representation Program

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**Submitted by**

Family and Juvenile Law Advisory  
Committee

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### Executive Summary

Beginning with the Budget Act of 2019, increased federal funds have been made available to support court-appointed dependency counsel representing children and parents at every stage of a 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. Over the past year, Judicial Council staff have worked to execute a contract with the California Department of Social Services to pass these funds through to dependency representation providers and have entered into contracts with 61 providers in 29 courts to allow these funds to be used to improve the quality of representation for families and children in child welfare proceedings.

### Relevant Previous Council Action

Since court-appointed counsel in dependency matters was designated as a court operations expense in 1988 in the Brown-Presley Trial Court Funding Act (Sen. Bill 612/Assem. Bill 1197; Stats. 1988, ch. 945), and again, via the Lockyer-Isenberg Trial Court Funding Act of 1997 (Assem. Bill 233; Stats. 1997, ch. 850)—which provided the funding for, and delineated the parameters of, the transition to state trial court funding that had been outlined in the earlier legislation—the Judicial Council has taken an active role in trying to improve the quality of representation in dependency proceedings. That role includes sponsoring legislation that makes

such representation mandatory, identifying appropriate caseloads, and working to allocate funding across the state in an equitable manner. Most recently, the council took on a key role to ensure that court-appointed counsel in dependency proceedings could claim federal title IV-E foster care funds to match the state's investment in this representation and thereby lower caseloads and improve the quality of representation across California.

At its meeting on July 19, 2019, the council approved a recommendation from the Family and Juvenile Law Advisory Committee to undertake a process to determine the interest of the courts and providers in participating in the federal funding opportunity and to allocate the available federal funds based on each provider's existing allocation for court-appointed counsel funding and to report back to the council on those efforts at the end of the 2020 fiscal year (FY).

### **Analysis/Rationale**

The staff supporting the Federally Funded Dependency Representation Program (FFDRP) spent this initial year setting up the structures to allow the Judicial Council to act as a conduit for federal funds from the California Department of Social Services (CDSS), which is California's designated title IV-E agency; therefore, these funds can be accessed only by CDSS. Council staff worked with CDSS to execute an interbranch agreement that now enables 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, or the local trial court through an intra-branch agreement, 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.

At the same time as the council was working with CDSS, it was reaching out to providers and the courts to build a process that would meet federal requirements and improve the quality of representation in child welfare proceedings in California. The Court Executives Advisory Committee formed a working group to assist staff in developing a process, and sessions were held at the December 2019 Beyond the Bench Conference to identify the key objectives that the FFDRP should advance. In addition, during spring 2020, the council surveyed court-appointed counsel providers across California to inform the implementation of FFDRP and to gather information about the current status of legal representation in California.

Because California was an early adopter of these changes, and the novel challenges in a claiming process that connects a wide range of legal service providers with federal matching funds via two state level entities, significant time was expended trying to create procedures that would be compliant with state and federal requirements without overburdening court appointed counsel providers. While this effort permitted California to access funding in FY 2019-2020 it needed to be on a retroactive basis and therefore it is likely to result in providers be unable to claim all allowable expenses.

### High-quality legal representation

Shortly before the federal Administration for Children and Families updated the *Child Welfare Policy Manual* to clarify that the costs of legal representation for children and parents in foster care cases could be eligible for title IV-E foster care administrative funds, it issued a memorandum to all title IV-E agencies with the subject, “High-Quality Legal Representation for All Parties in Child Welfare Proceedings.”<sup>1</sup> That memorandum was issued to “emphasize the importance of high quality legal representation in helping ensure a well-functioning child welfare system”<sup>2</sup> and to highlight research on the best practices for implementing such representation. This objective, to improve the quality of legal representation in child welfare proceedings, has been the key touchstone for the FFDRP. To accomplish this goal, the council required each provider that wished to participate in the program to submit an application identifying how the provider would use the additional funding to improve services for clients. In that application, each provider was required to identify a number of attributes of high-quality representation that the provider was intending to work toward, with the number tied to the size of the organization. Providers were encouraged to consult a guide developed by the Family Justice Initiative,<sup>3</sup> which identified six key attributes of high-quality legal representation for parents and children in child welfare proceedings:<sup>4</sup>

- Attribute 1: Caseloads and Compensation
- Attribute 2: Interdisciplinary Model
- Attribute 3: Diversity/Cultural Humility
- Attribute 4: Timing of Appointment
- Attribute 5: Support and Oversight
- Attribute 6: Accountability/Use of Data

Providers, in partnership with their juvenile courts, were asked to identify how the use of the new funds would improve their current services with reference to these attributes or others that they proposed.

### Applications for Fiscal Year 2019–20

Although the interagency agreement with CDSS was not entered into until spring 2020, it was clear from the beginning of the fiscal year that providers would be able to submit retroactive

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<sup>1</sup> Admin. for Children & Families, Children’s Bureau, ACYF-CB-IM-17-02 (Jan. 17, 2017), [www.courts.ca.gov/documents/ACF\\_memo.pdf](http://www.courts.ca.gov/documents/ACF_memo.pdf).

<sup>2</sup> *Ibid.*

<sup>3</sup> According to its website, “[t]he Family Justice Initiative is a national collaborative of children’s attorneys, parents’ attorneys, educators, researchers, and national policy advocates who share a common goal: to increase access to high-quality legal representation for children and parents in child welfare cases. It’s led by the ABA Center on Children and the Law, the Children’s Law Center of California, and the Washington State Office of Public Defense.”

<sup>4</sup> Family Justice Initiative, *Attributes of High-Quality Legal Representation for Children and Parents in Child Welfare Proceedings*, pp. 4–5, <https://15ucklg5c821brpl4dycpk15-wpengine.netdna-ssl.com/wp-content/uploads/sites/48/2019/05/fji-attibutes-MAY2019.pdf>.

claims for all of FY 2019–20. To obtain those funds, providers were asked to submit an application that included support from the court where they provide legal representation. Despite the significant challenges resulting from the state of emergency related to the COVID-19 pandemic, the council received applications from 61 providers representing 29 courts. The council is directly contracting with providers in 26 courts, whereas 2 courts elected to directly contract with one or more of their providers via an agreement with the council and 1 court elected to both contract with one provider directly and request that the council contract with the remaining providers. The most common attributes that providers elected to implement in their initial proposals were to:

- “Ensure attorneys have a reasonable caseload” based on the Court-Appointed Dependency Counsel Workload and Funding Methodology (*Attributes of High-Quality Legal Rep.*, System Attributes—Caseloads and Compensation, p. 4);
- “Ensure parents’ and children’s attorneys’ compensation rates are adequate for the attorneys’ practice” (*ibid.*); and
- “Ensure attorneys have access to work in an integrated manner with interpreters, experts, social workers, and investigators, as needed” (*id.*, Interdisciplinary Model, p. 4).

In addition, ten providers indicated plans to incorporate efforts to increase diversity in their applications.

### **Court-appointed counsel 2020 survey**

In spring 2020, the Judicial Council contracted with a researcher to survey dependency law practitioners in California and analyze the results. The survey was designed to shed light on how funding and access to resources affect the management of a sustainable and successful dependency practice. The specific objectives of the survey were to:

- Provide an overview of how dependency law practices are organized;
- Describe how law practices are staffed, what caseloads they carry, and how caseloads are managed;
- Obtain feedback on what aspects of legal representation function well under current financial and organizational structures, and where significant challenges exist that affect client experience, attorney experience, and—potentially—case outcomes; and
- Gather best practices and ideas that could be shared with practitioners via training and other resources to support meaningful practice improvements.

The survey was emailed to dependency providers for consideration over the period of April 7 to June 28, 2020. Sixty-six responses were received by that date. At least one survey was received from 36 of the 58 courts. The providers who responded represented a range of organizational structures, from sole practitioners to for-profit and nonprofit firms.

The survey results provided a host of valuable information that can be used to inform FFDRP and the ongoing partnerships between the council, courts, providers, and other key child welfare stakeholders to improve legal representation in dependency proceedings and thereby improve outcomes for children and families in these courts. Key findings of the survey follow:

- Communication with clients is critical, especially between detention and jurisdiction, and although most attorneys are able to communicate with clients before *hearings*, many are not able to interview their clients before the *detention hearing*.
- Technology (email, cell phones, and videoconferencing) has made communication with clients easier, but if clients do not have access to that technology, it can be a barrier.
- Attorneys are satisfied with their ability to advocate for their clients in court but would like more assistance in gathering information outside of court, especially with the use of other professionals such as social workers or investigators, but the cost of that additional help can be prohibitive, especially for smaller firms.
- Providers would like access to reports via remote technology and would like additional training, including training to develop leadership skills and better skills for working with opposing counsel.

In addition to this survey report, the American Bar Association Center on Children and the Law did an evaluation of legal representation in three California jurisdictions that were affected by changes in funding for court-appointed counsel to determine the impact of funding on legal representation quality.<sup>5</sup>

### **Next Steps for FFDRP**

As providers work to submit their completed invoices for FY 2019–20, council staff are already rolling out the process for invoicing going forward for FY 2020–21. More money was appropriated in FY 2020–21, on the theory that more providers would opt in as the program moves forward. Of the 29 courts that did not participate in FY 2019–20, 10 have indicated an interest in joining in FY 2020–21. Others are still evaluating the use of their current resources and determining how best to deploy additional funding or are so small that the costs of participation are outweighed by the small amount of the available federal funds.<sup>6</sup> Council staff have compiled a host of informational resources,<sup>7</sup> as well as a set of tools to make timekeeping and invoicing as efficient as possible within the requirements set by the state and federal

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<sup>5</sup> American Bar Association, Center on Children and the Law, *Effects of Attorney Funding on Representation Quality for Children and Parents*, [www.americanbar.org/groups/public\\_interest/child\\_law/project-areas/legal-representation/calrep-funding/](http://www.americanbar.org/groups/public_interest/child_law/project-areas/legal-representation/calrep-funding/) (as of Aug. 3, 2020).

<sup>6</sup> Title IV-E matching funds provide about 30 percent of whatever the state has invested in eligible activities; thus, for a provider with a very small contract, a 30 percent match may be insufficient to justify new invoicing and record-keeping processes.

<sup>7</sup> See the FFDRP webpage: [www.courts.ca.gov/43441.htm](http://www.courts.ca.gov/43441.htm).

agencies. Staff will continue to work with courts that wish to join the program, as well as to ensure that the claiming and invoicing process is not overly burdensome to courts or providers.

For this initial phase of implementation, CDSS and the council opted to focus on drawing down funds to match core legal services for parents and children in the child welfare system.

Additional federal funds can be obtained for other legal services, such as appellate representation, and for services that the federal government provides a higher match rate for, including training and services for commercially sexually exploited children. Accessing these funds will be explored once this core process is working smoothly and efficiently.

### **Fiscal Impact and Policy Implications**

A total of \$57 million in federal funding is available for expenditure for FFDRP on an ongoing basis, including funds for the Judicial Council to administer the program. These funds, in addition to the current state funding for court-appointed council, should greatly assist providers in bringing caseloads to a minimum standard and result in more stable and experienced representation. The proposals received so far would result in the expenditure of about \$50 million dollars in FFDRP funding for the 2020–21 fiscal year. The administrative funding for the program has allowed the council to hire additional staff to manage the legal and financial oversight of the program, and providers have begun submitting invoices for reimbursement from the federal funds such that improvements in caseloads and services for parent and child clients should be emerging in the coming months.

### **Attachments and Links**

1. Link A: Judicial Council of Cal., *Juvenile Law: Distribution of Federal Title IV-E Reimbursement for Dependency Counsel* (June 28, 2019), <https://jcc.legistar.com/View.ashx?M=F&ID=7490062&GUID=00E5A572-FA1C-4405-9C24-82CA6EB8305E>
2. Link B: California Courts (website), “Federally Funded Dependency Representation Program,” [www.courts.ca.gov/43441.htm](http://www.courts.ca.gov/43441.htm) (as of Aug. 3, 2020)