

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

455 Golden Gate Avenue
San Francisco, California 94102-3688

Report

TO: Members of the Judicial Council

FROM: AOC Center for Families, Children & the Courts
Diane Nunn, Division Director
Lee Morhar, Assistant Director
Leah Wilson, Supervising Court Services Analyst, 415-865-7977

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SUBJECT: Juvenile Dependency: DRAFT Pilot Program and Court-Appointed
Counsel

Issue Statement

Costs for court-appointed counsel representing children and indigent parents in juvenile dependency proceedings are included as “trial court operations” under the Trial Court Funding Act. As such, the Judicial Council has overseen expenditures of these funds since the onset of trial court funding¹. In the last five years, the council has been particularly active in the court-appointed counsel program area, with respect to both quality of practice and fiscal considerations. As this report describes, a number of factors, including escalating program costs and legislative direction for the development of caseload standards for court-appointed counsel, led the council to direct staff to implement the Dependency Representation, Administration, Funding, and Training (DRAFT) pilot program for a three-year period beginning in July 2004. The goal of the DRAFT pilot program is to improve the quality of attorney representation for parents and children in dependency cases in as cost-effective manner as possible.

DRAFT comprises a partnership between 10 volunteer court systems and the Administrative Office of the Courts.² Escalating costs in non-DRAFT courts during the first two years of the program’s existence have rendered the results of the pilot

¹ Lockyer-Isenberg Trial Court Funding Act of 1997 (Stats. 1997, ch.850).

² A request for letters of interest (LOIs) regarding DRAFT program participation was sent to the courts in April 2004. Sixteen courts submitted letters of interest in DRAFT program participation. Of these courts, the following 10 were selected: Imperial, Los Angeles, Marin, Mendocino, San Diego, San Joaquin, San Luis Obispo, Santa Barbara, Santa Cruz, and Stanislaus. Courts were selected based upon criteria including dependency population size, geography, service-delivery model mix, fiscal implications of existing contractual obligations, and an assessment of AOC staff’s ability to provide comprehensive DRAFT program services to each selected court.

particularly critical; standards developed under DRAFT address the concomitant goals of ensuring quality court-appointed counsel representation and realizing program cost containment.

Recommendation

AOC staff recommends that the Judicial Council request the DRAFT Pilot Program Implementation Committee to provide a final DRAFT pilot program report in August 2007 with recommendations therein regarding: (1) proposed court-appointed counsel caseload, compensation, and performance standards for statewide implementation; and (2) cost-containment approaches that account for both the limited funding available and the importance of quality representation in the state's juvenile dependency courts.

Rationale for Recommendation

Court-appointed counsel costs in juvenile dependency proceedings have been a state fiscal responsibility since the onset of trial court funding. In the transition to state funding, trial court systems inherited the unique dependency counsel service-delivery models of their respective counties. As a result, little uniformity exists between court systems with respect to provider types (e.g. private vs. government attorneys), fee structures (e.g. per case vs. annual contract rates) and standards of practice (which, for the most part, are defined by local court rules).

The significance of the lack of uniformity and absence of practice and compensation standards has been highlighted by several factors including escalating program costs and legislative direction regarding the establishment of court-appointed counsel caseload standards.

Legislation³ (Sen. Bill 2160, Stats. 2000, ch. 450) amended section 317 of the Welfare and Institutions Code to require (1) the appointment of counsel for children in almost all dependency cases; (2) caseloads and training for appointed counsel that ensure adequate representation; and (3) Judicial Council promulgation of rules establishing caseload standards, training requirements, and guidelines for appointment of counsel for children. In 2001 the Judicial Council took action regarding the effective delivery of court-appointed counsel services in juvenile dependency proceedings. In addition to adopting a rule of court that mandated the appointment of counsel for children subject to dependency proceedings in all but the rarest of circumstances, the council directed staff to undertake a study to identify caseload standards for attorneys representing both parents and children.

In 2002 the Judicial Council made a series of policy decisions regarding funding for court-appointed counsel, including transitioning the program from the aggregate Trial Court Trust Fund distribution to a reimbursable line-item. The reimbursement funding

³ The Judicial Council co sponsored Senate Bill 2160; no opposition to the bill was filed in the Legislature.

mechanism results in courts being reimbursed by the AOC in *arrears* for actual court-appointed counsel costs incurred. The purpose behind reimbursement funding is to ensure the use of court-appointed counsel funding solely for that purpose, and to thereby eliminate the practice extant at the onset of the policy by which dependency counsel funding was used to support other court operations. While reimbursement funding has resulted in the establishment of a dedicated dependency counsel funding stream, it has not achieved another implicit objective — cost containment. In fact, statewide court-appointed counsel expenditures have increased an average of 8 percent annually since the onset of reimbursement funding, a rate which has consistently exceeded corollary increases in the statewide appropriation.

In fiscal year 2004–2005, in response to both escalating program costs and the legislative mandate to develop and implement dependency counsel caseload standards, the council launched the DRAFT pilot program.

DRAFT shifted responsibility for administering dependency counsel contracts from participating courts to the AOC; DRAFT is a partnership in which the courts retain responsibility for attorney selection and the AOC has responsibility for direct attorney payment. Primary components of DRAFT include competitive bidding for court-appointed counsel services, execution of standardized appointed counsel contracts, and the development and promulgation of attorney performance and training standards.

The partnership between DRAFT-participating courts and the AOC was formalized with the establishment of the DRAFT Pilot Program Implementation Committee (committee). The committee, which is chaired by Justice Richard D. Huffman, includes at least one judicial and one court administration representative from each participating court, as well as additional juvenile court judicial officers, court administrators, and trial and appellate court attorneys.

The committee has seven working groups charged with overseeing the development of policies and standards addressing DRAFT attorney performance, compensation, and reporting requirements. The efforts of three of these working groups are described below.

Attorney Performance Working Group: Caseload and performance standards

The Court-Appointed Counsel Caseload Study (caseload study) report received by the council in June 2004 was premised on work that began pursuant to council direction in 2002. At that time, the AOC contracted with the American Humane Association for a quantitative caseload study of trial-level court-appointed dependency counsel based upon an assessment of the duties required as part of the representation and the amount of time required to perform those tasks.

The caseload study comprised four distinct components, including the identification of a standardized set of attorney “tasks” and a two-week workload study, during which approximately 600 attorneys statewide reported time spent on identified tasks.

The results of each caseload study component indicated a recommended maximum caseload figure of *141 cases, or clients*, per full-time dependency attorney⁴. The proposed maximum caseload of 141 clients compared to a statewide average at the onset of the caseload study of 273 clients per attorney.

Because of the obvious fiscal implications of caseload reduction this significant and the fact that important issues, such as the impact of non-attorney support staffing on requisite caseloads, were not addressed in the report, the Judicial Council did not adopt the caseload standard as identified but instead directed staff to pilot the standard, or caseload reduction, as part of the DRAFT pilot program.

One of the challenges faced in attempting to pilot caseload reduction as part of DRAFT implementation has been a lack of accurate data on current attorney caseloads. Requests for Proposals (RFPs) and contract specifications under DRAFT have been designed to address the ongoing need for attorney workload data via the inclusion of consistent mandatory data collection and reporting requirements.

The results of DRAFT caseload standard implementation, as reflected in executed DRAFT contracts, are provided in the following table.

⁴ Caseload Study findings suggested that each client be counted as one case, regardless of sibling group affiliation.

Court System	Pre-DRAFT Caseload	Post-DRAFT Caseload
Imperial	377	205
Los Angeles	unavailable⁵	267
Marin	51	110
Mendocino	92	168
San Diego	363	286
San Joaquin	288	205
San Luis Obispo	180	118
Santa Barbara	201	118
Santa Cruz	136	136
Stanislaus	217	177

As shown in the table, the implementation of DRAFT reduced caseloads in the majority of participating courts; exceptions can be attributed to factors such as inordinately low caseloads at the onset of DRAFT (Marin and Mendocino) and pre-DRAFT attorney caseloads approximating recommended caseload standards (Santa Cruz).

DRAFT's Attorney Performance Working Group (APWG) is charged with identifying and evaluating the relationship between caseload standard implementation and attorney performance. To that end, the APWG has developed and promulgated practice standards which serve as the basis for all performance expectations delineated in DRAFT RFPs and contracts, experience and training requirements for attorneys seeking new dependency appointments, enhanced annual training requirements for all dependency counsel, and an attorney performance review process, whereby court-appointed counsel will be evaluated by their peers, clients, and judicial officers, to be implemented January 1, 2007.

⁵ Pre-DRAFT caseload data could not be generated because parent clients in Los Angeles were represented by private solo practitioners who did not track caseload information for either their dependency or non dependency caseloads.

Compensation and Organizational Models Working Group: Compensation standards

The Compensation and Organizational Models Working Group of the DRAFT Pilot Program Implementation Committee is charged with developing attorney rates and cost models. At the onset of its work in this area, the working group made a policy decision regarding the development of *regional*, versus statewide, appointed-counsel rates. Staff utilized a combination of data sources to develop proposals for regional rates. These sources included (1) the Watson-Wyatt study of court employees conducted as a precursor to the transition of court staff from county to court employees; (2) county counsel salary information; (3) census data on median home value; and (4) census data on median income. Staff began its regional rate analysis with the four regions identified by the Watson-Wyatt study; court affiliation with any particular region was then adjusted as census and county counsel salary data were taken into account. Specifically, staff averaged each court’s ranking among the data sources (Watson-Wyatt, county counsel salary, and census data) and “rounded” up to generate a DRAFT-court regional ranking. DRAFT court affiliation by region is shown in the following table:

County	Watson-Wyatt Study	County Counsel Average Salary	Household Income	Home Value	DRAFT Region⁶
Imperial	1	1	1	1	1
Los Angeles	3	4	2	2	3
Marin	3	4	4	4	4
Mendocino	1	1	1	2	2
San Diego	2	4	2	2	3
San Joaquin	1	2	2	1	2
San Luis Obispo	1	3	2	2	2
Santa Barbara	2	3	2	2	3
Santa Cruz	2	2	3	3	3
Stanislaus	1	2	2	1	2

⁶ For each data source, 1 is low, 4 is high. Recommended compensation rates are thus lowest in DRAFT Region 1 and highest in DRAFT Region 4.

Subsequent to determining DRAFT regional rankings staff addressed the issue of developing compensation levels for each region. Working group members made another important policy decision at this juncture, determining that court-appointed counsel salaries (not including benefit packages) should be pegged to those of county counsel. This decision reflects equity and recognition principles at the heart of the DRAFT pilot program's goal of improving the quality of court-appointed counsel practice.

County counsel salary data for entry-level, mid- and high-range positions were analyzed to create regional court-appointed counsel rates; these rates essentially reflect the regional average of midrange county counsel salaries. Regional rates are used in conjunction with caseload data in DRAFT contract negotiations to identify the total expected cost of direct attorney services. Court caseload determines the number of full-time attorneys required, and the regional rate dictates the marginal cost of those attorneys. It is important to note that while caseload and compensation standards form the basis of aggregate negotiated contract amounts, providers, once under contract, are free to allocate that budget internally as they see fit.⁷ The impact of this internal allocation flexibility is that organizational providers can offer a broad salary range to current and prospective employees so long as the *average* of all attorney salaries is equivalent to the funded regional rate.

There are very few providers in DRAFT-participating courts that are compensated on an hourly basis; those that remain are paid at rates that reflect variations on the hourly equivalent of each regional contractual rate. Three hourly rate tiers have been established for each region; local presiding juvenile court judges are asked to set the appropriate payment tier for individual appointed counsel based on experience and skill level.

⁷ Contractors have budgetary discretion within certain parameters; DRAFT contracts stipulate a minimum number of full-time-equivalent attorneys and investigators/social workers if applicable.

DRAFT regional salary and hourly rates are provided below:

		Annual Salary	Hourly Rate
DRAFT Region 1	Tier 1	\$43,908	\$55
	Tier 2	\$65,592	\$60
	Tier 3	\$87,276	\$65
DRAFT Region 2	Tier 1	\$51,251	\$65
	Tier 2	\$76,622	\$70
	Tier 3	\$101,993	\$75
DRAFT Region 3	Tier 1	\$52,304	\$75
	Tier 2	\$88,568	\$80
	Tier 3	\$124,833	\$85
DRAFT Region 4	Tier 1	\$70,637	\$85
	Tier 2	\$102,170	\$90
	Tier 3	\$133,703	\$95

While the process of developing regional rates for direct attorney services has been finalized under DRAFT, additional work remains with respect to developing a comprehensive cost model for appointed counsel services. Remaining factors to consider include supervisory attorney staff, non attorney staffing, and overhead costs. Data collected from non-DRAFT providers via survey and analysis of DRAFT contracts will serve as the starting point for the development of staffing and overhead ratios. The data are provided in the tables that follow:

Provider Type	Staffing Ratios		
	Supervising Attorneys to Line Attorneys	Investigators/Social Workers to Line Attorneys	Support Staff to Line Attorneys
Administered Panel	0.1	0	0.1
Firm (Non Profit or Private)	0.1	0.5	0.6
Government Agency	0.1	0.4	0.5
Solo Practitioner	0	0.2	0.3

Overhead by Provider Type				
Provider Type	Average by Provider Type		Overall Average	
	Direct	Indirect	Direct	Indirect
Administered Panel	75%	25%	74%	26%
Firm	65%	35%		
Government Agency	75%	25%		
Solo Practitioner	81%	19%		

It is important to emphasize that the data above regarding staffing ratios and average overhead costs reflects current patterns only. No analysis has been done to determine whether or not these averages are in fact consistent with optimal practice from either a performance or fiscal perspective. Finalization of staffing ratios and overhead rates will ultimately account for not only current practice but also “best” practice as related to both quality of attorney performance and cost efficacy. The development of a ratio with respect to investigator/social worker staffing will have particularly significant implications. It is anticipated that there will be a direct relationship between such staffing and attorney caseload, with the caseload standard being adjusted upwards as the level of available investigator/social worker support increases.

DRAF implementation costs

The preceding background regarding DRAFT regional rates informs an analysis of the following table, which outlines the implementation costs of DRAFT-negotiated contracts.

Court System	Pre-DRAFT Costs⁸	Post-DRAFT Costs
Imperial	\$420,074	\$785,864
Los Angeles	\$23,658,326	\$28,445,562
Marin	\$449,892	\$405,320
Mendocino	\$493,298	\$775,713
San Diego	\$11,459,720	\$11,044,069
San Joaquin	\$1,329,998	\$3,379,505
San Luis Obispo	\$455,722	\$583,188
Santa Barbara	\$457,343	\$1,523,100
Santa Cruz	\$674,689	\$944,807
Stanislaus	\$132,115	\$1,258,367

The table shows implementation cost increases in all DRAFT courts other than Marin and San Diego; these increases can be attributed to the following factors:

- Inclusion of county costs not previously charged to the courts (underreporting):
 - Imperial: \$136,800
 - Santa Barbara: \$705,500
 - Stanislaus: \$816,092
- Historical underfunding rendered pre-DRAFT average costs per child in foster care unreasonably low; pre-DRAFT costs averaged \$1,896 annually for all parties associated with a given child in foster care (e.g., child and all parents) and post-DRAFT costs average \$2,312.
- Pre-DRAFT funding level was artificially low, reflecting the impact of implementation of reimbursement funding and a related “penalty” for failure to spend entire allocation on court-appointed counsel services (Los Angeles).
- Caseload reduction averaging 28 percent among affected courts:
 - Imperial: 46 percent reduction
 - San Diego: 21 percent
 - San Joaquin: 29 percent
 - San Luis Obispo: 11 percent
 - Santa Barbara: 41 percent
 - Stanislaus: 18 percent
- Implementation of compensation standards for all providers in each court system
- Lack of sufficient competition

⁸ Pre-DRAFT costs reflect fiscal year 2003–2004 costs; post-DRAFT reflect current year costs for all courts other than Los Angeles. Los Angeles post-DRAFT costs reflect fiscal year 2007–2008 as a transition from pre- to post-DRAFT providers is currently taking place in Los Angeles.

Outcome and Process Evaluation Working Group: Outcome analysis

The far-reaching implications of DRAFT for both participating and non participating court systems renders a systemic analysis of the effort critical. At a most basic level that analysis must address the question, what outcomes can reasonably be expected as a result of the implementation of caseload and compensation standards? The Outcome and Process Evaluation Working Group of the DRAFT Pilot Program Implementation Committee has tackled this question and identified *measurable* expected outcomes of the DRAFT pilot program as follows:

- Compensation and workload parity among court-appointed counsel providers;
- Improvement in judicial, peer, and client satisfaction with court-appointed counsel services; and
- Improvement in specified child welfare permanency and well-being outcomes for children in foster care as identified by the state Department of Social Services.⁹

These child welfare outcomes include:

- Reduced time to reunification;
- Reduced time to guardianship;
- Increased placements with kin; and
- Increased frequency of placement with some or all siblings.

DRAFT program benefits realized by courts not participating in the pilot program

Standard RFP and contract templates have been created for utilization in DRAFT courts. These documents contain detailed performance and data collection requirements that enable a correlation of compensation and workload. A number of courts that are not participating in DRAFT as pilot courts have requested technical assistance from the AOC with respect to competitive bidding for court-appointed counsel services and subsequent contract negotiations; pilot program staff have provided these courts with the DRAFT templates. Courts' current interest in obtaining tools to more effectively manage this program area is another factor emphasizing the need for a comprehensive approach to the administration of court-appointed counsel services.

Conclusion

As highlighted in this report, court-appointed counsel costs statewide have escalated significantly in the last several fiscal years, and at a pace exceeding available funding levels. While the program's growth has not surpassed that of other trial court operations areas such as security and interpreter services, there is little to no available data that can be used to determine the reason for the growth in non-DRAFT courts. While anecdotally cost increases may be attributable to important efforts, including caseload reduction or

⁹ All 50 states' child welfare agencies were audited by the federal government between 2001 and 2004; California's review was conducted in 2002. Those reviews were premised on federally identified child welfare outcomes. In response to its review, California modified those outcomes. The DRAFT analysis utilizes the state-modified child welfare outcomes.

performance standards implementation, it is virtually impossible to advocate for additional resources absent additional data upon which requests can be justified.

The DRAFT program has made significant strides toward identifying and implementing standardized reporting and caseload and compensation standards. Results of these efforts will ultimately benefit the statewide court-appointed counsel area, with broad applicability as related to the concurrent goals of ensuring quality representation and program cost stability.

Alternative Actions Considered

Not applicable.

Comments from Interested Parties

Not applicable.

Implementation Requirements and Costs

Not applicable.