



JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688
www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on: January 14-15, 2019

Title	Agenda Item Type
Juvenile Law: Court-Appointed Juvenile Dependency Counsel Funding Methodology for Small Courts	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
None	July 1, 2019
Recommended by	Date of Report
Trial Court Budget Advisory Committee Hon. Jonathan B. Conklin, Chair	December 14, 2018
	Contact
	Audrey Fancy, 415-865-7706 audrey.fancy@jud.ca.gov
	Brandy Sanborn, 415-865-7195 brandy.sanborn@jud.ca.gov

Executive Summary

The Trial Court Budget Advisory Committee (TCBAC) recommends that effective July 1, 2019, the Judicial Council adopt on an ongoing basis, changes to the Court-Appointed Counsel Funding Methodology for small courts previously adopted in May 2017. 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 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 2016² Judicial Council meetings indicated that the issues related to workload and funding for small courts required immediate attention. In July 2016³, 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 the small courts.

In May 2017, the Judicial Council acted on the recommendation of the Small Court Dependency Workload Working Group (SCDW) and modified the court-appointed dependency funding methodology for the two years (FY 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 2016-2017. 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 recommend 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 2017-2018 and 2018- 2019;
- 2. The 23 smallest courts continue to be exempt from reallocation-related budget reductions;
- 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

¹ <https://jcc.legistar.com/View.ashx?M=F&ID=4382676&GUID=E8BCCA8A-5DED-48C3-B946-6E21EBB0BEAF>

² <https://jcc.legistar.com/View.ashx?M=F&ID=4527811&GUID=F561AE45-2703-4D29-9A4F-B3545EA55E4E>

³ <https://jcc.legistar.com/View.ashx?M=F&ID=4572873&GUID=C33C7410-DDA2-451A-9004-024D84910504>

⁴ <https://jcc.legistar.com/View.ashx?M=F&ID=5150554&GUID=7D8E5F4F-6D83-4C73-A246-4F11E877A411>

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 FY 2017-2018 and 2018-2019. Implementation of adjusted funding enabled small courts to continue funding qualified dependency counsel and provide adequate representation services. For these reasons, the TCBAAC 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 Budget Services staff apply the methodology each year to

determine allocations, there may be changes in the number and identify 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 in funding for court-appointed dependency counsel funding. 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 FY 2017-2018 and 2018-2019 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 reviewed public comments on small court dependency counsel funding issues received by the joint subcommittee that formulated the workload funding methodology in FY 2015-2016, responses to court surveys, responses to interviews with court executive officers or other court staff, interviewed court-appointed counsel in small courts directly, and considered responses to additional interviews with court-appointed counsel conducted by staff as well. 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 their 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

1. *Sunset the modifications made to the Judicial Council dependency counsel workload and funding methodology for fiscal years 2017-2018 and 2019.* After review and discussion of the issues facing small courts and the positive impact of implementing the adjusted funding model in fiscal years 2017-2018 and 2018-2019, 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.
2. *Extend the modifications for two more fiscal years, 2019-2020 and 2020-21.* While the two year adjustment for fiscal years 2017-2018 and 2018-2019 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.

3. *Revisit the methodology as it relates to 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 the 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.

Links

1. Link A: *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. 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>
4. 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>



JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue • San Francisco, California 94102-3688
Telephone 415-865-4200 • Fax 415-865-4205 • TDD 415-865-4272

MEMORANDUM

Date

December 14, 2018

To

Members of the Executive and Planning
Committee

From

Judicial Council staff
Leah Rose-Goodwin, Manager
David Smith, Senior Research Analyst
Office of Court Research
Budget Services

Subject

Conversion of Two Vacant Subordinate
Judicial Officer Positions in the Superior
Court of Los Angeles County

Action Requested

Approve Staff Recommendation

Deadline

December 19, 2018

Contact

David Smith
415-865-7696 phone
david.smith@jud.ca.gov

Executive Summary

Office of Court Research staff recommend that the Judicial Council's Executive and Planning Committee consider conferring the conversion of two vacant subordinate judicial officer (SJO) positions in the Superior Court of Los Angeles County. The court has notified council staff of these vacancies and requested that the positions be converted. The conversions would be effective if the Executive and Planning Committee authorizes the transfer of two conversion slots to the Superior Court of Los Angeles County and allows the court to exceed the total number of conversions the court is allocated in a given fiscal year by two positions. Confirming this request for SJO conversions appears to be consistent with established council policy of improving access to justice by providing constitutionally empowered judges who are accountable to the electorate in matters that are appropriately handled by judges.

Recommendation

Office of Court Research staff recommend that the Executive and Planning Committee (E&P) consider confirming the conversion of two vacant commissioner positions in the Superior Court of Los Angeles County. This will require extending the allowable number of conversions for the

court by two positions, and transferring two conversion slots from another conversion allocation group.

If E&P confirms the Superior Court of Los Angeles County's request for the conversion of two vacant SJO positions, council staff also recommend that E&P allow the court to treat these converted positions as positions that the court may temporarily fill until judges are named and sworn to fill them.

Relevant Previous Council Action

The 2002 report of the Subordinate Judicial Officer Working Group led the Judicial Council to sponsor legislation to restore an appropriate balance between judges and SJOs in the trial courts. The 2002 report found that many courts had created SJO positions out of necessity in response to the dearth in the creation of new judgeships during the 1980s and 1990s. As a result, many SJOs were working as temporary judges. This imbalance between judges and SJOs was especially critical in the area of family and juvenile law.¹

In 2007, the Judicial Council approved a methodology for evaluating the workload appropriate to SJOs relative to the number of SJOs working in the courts. In the same year, the Legislature passed Assembly Bill 159 (Stats. 2007, ch. 722), which adopted the Judicial Council's methodology. This resulted in a list of 25 courts in which a total of 162 SJO positions would be converted. Government Code section 69615(c)(1)(A) allows for the annual conversion of up to 16 SJO vacancies upon authorization by the Legislature in courts identified by the Judicial Council as having SJOs in excess of the workload appropriate to SJOs.²

Subsequent council action established and refined guidelines for expediting the conversion of SJO vacancies. These guidelines included:

- The adoption of four trial court allocation groups and a schedule that distributes the 16 annual SJO conversions across these groups in numbers that are proportional to the total number of conversions for which the groups are eligible;
- The delegation of authority to E&P for confirming SJO conversions;

¹ See Judicial Council of Cal., Subordinate Judicial Officer Working Group Rep., *Subordinate Judicial Officers: Duties and Titles* (July 2002), www.courts.ca.gov/documents/sjowgfinal.pdf (as of June 7, 2017).

² See Judicial Council of Cal., *Update of the Judicial Workload Assessment and New Methodology for Selecting Courts with Subordinate Judicial Officers for Conversion to Judgeships* (Feb. 14, 2007), www.courts.ca.gov/documents/022307item9.pdf; and the update of this report and SJO allocation list, Judicial Council of Cal., *Subordinate Judicial Officers: Update of Conversions Using More Current Workload Data* (Aug. 11, 2015), www.courts.ca.gov/documents/jc-20150821-itemL.pdf (as of June 7, 2017).

- The establishment of guidelines for courts to notify the council of SJO vacancies and timelines for the redistribution of SJO conversions across the allocation groups; and
- The establishment of criteria for E&P to use in evaluating and granting requests by courts to exempt SJO vacancies from conversion.³

In addition to the above policies to expedite conversions, in 2015 the council refreshed the workload data used to determine the courts with eligible conversions. A list of eligible positions was established for the remaining conversions, and courts were notified of any changes in status based on the updated workload assessment.⁴

Analysis/Rationale

The Superior Court of Los Angeles County is eligible for a total of 79 of the 162 conversions authorized by the Legislature and has previously converted 75 positions, with the last conversion occurring on November 13 of the current fiscal year (FY 2018–19). The Superior Court of Los Angeles County is the sole member of Allocation Group 1, which is allotted 7 conversions each year. The confirmation of the present request would result in the conversion of an additional 2 positions above the total for which the court is ordinarily eligible in FY 2018–19, the court having converted 7 SJO positions earlier in the year.

To date, 11 of the possible 16 SJO conversions for which the trial courts are eligible have been converted, leaving 5 positions eligible for conversion in FY 2018–19. If the Superior Court of Los Angeles County's request for 2 SJO conversions is confirmed, 3 SJO positions would remain eligible for conversion during the remainder of the current fiscal year (FY 2018–19).

Based on the pattern of conversions in previous years and the greatly diminished number of courts eligible for and thus seeking SJO conversions, council staff do not believe that there will be an adverse impact on other courts if the Superior Court of Los Angeles County is granted two additional conversions in the current fiscal year.

Allocation Group 3, comprised primarily of medium-sized courts, has completed all the conversions for which its member-courts are eligible. Allocation Group 3 is eligible for 4 conversions each fiscal year, with all 4 conversion slots currently available for use by courts in other allocation groups. On that basis, staff recommend that the additional 2 conversions for the

³ See Judicial Council of Cal., *Subordinate Judicial Officers: Update of the Policy for Deferrals of Conversions to Judgeships* (Aug. 15, 2016), <https://jcc.legistar.com/View.ashx?M=F&ID=4625050&GUID=80FC1733-CB19-4468-9822-E63668EBC1C4> (as of June 7, 2017).

⁴ See Judicial Council of Cal., *Subordinate Judicial Officers: Update of Conversions Using More Current Workload Data* (Aug. 11, 2015), www.courts.ca.gov/documents/jc-20150821-itemL.pdf (as of June 7, 2017).

Superior Court of Los Angeles County be transferred on a one-time basis from Allocation Group 3.

Policy implications

Confirming these conversions is consistent with well-established tenets of council policy on SJO conversions.

Comments

This proposal, which is consistent with council policy on SJO conversions, did not circulate for comment.

Alternatives considered

The proposed conversion of vacant SJO positions is consistent with council policy. On that basis, no alternatives were considered.

Fiscal and Operational Impacts

To date, there have been minimal implementation costs for the trial courts. On appointment of a new judge to sit in a converted position, funding equal to the judge's estimated compensation—which includes salary and benefits but does not include retirement—is removed from the trial court's allocation that previously funded the SJO position. This funding is then transferred to the statewide fund for judicial salaries and benefits, Program 45.25.

Attachments and Links

1. Letter from Presiding Judge Daniel J. Buckley, Superior Court of Los Angeles County, to Justice Douglas P. Miller, Chair, Executive and Planning Committee, December 14, 2018, regarding the conversion of a vacant SJO position, at page 5



The Superior Court

STANLEY MOSK COURTHOUSE
111 NORTH HILL STREET
LOS ANGELES, CALIFORNIA 90012
CHAMBERS OF
DANIEL J. BUCKLEY
PRESIDING JUDGE

TELEPHONE
(213) 633-0400

December 14, 2018

The Honorable Douglas P. Miller, Chair
Judicial Council's Executive and Planning Committee
455 Golden Gate Avenue
San Francisco, California 94102-3688

Re: Request for Conversion of Two Commissioner Positions

Dear Justice Miller:

The Los Angeles Superior Court greatly appreciates the prompt action taken on previous SJO conversion requests.

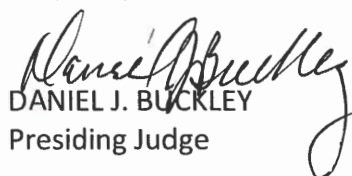
I am writing to request that you forward to the Judicial Council's Executive and Planning Committee our request to expedite approval of the conversion of two vacant commissioner positions in the Los Angeles Superior Court (LASC) to judgeships in the 2018-2019 fiscal year, pursuant to Government Code Section 69615.

The vacancies were created by the fact that two commissioners were appointed to judgeships by the Governor on December 14, 2018:

Commissioner James E. Blancarte
Commissioner Timothy Martella

As the above positions are instantly available, as we have a pressing need for judges – and as the Governor's office has specifically inquired about the availability of the resulting judicial vacancies – I hope and trust that the Committee will approve this request as soon as possible and promptly forward notice of the resulting vacancies to the Governor's office.

Very truly yours,


DANIEL J. BUCKLEY
Presiding Judge

DJB:BB:rm

c: Martin Hoshino, Administrative Director, Judicial Council of California
Leah Rose Goodwin, Office of Court Research, Judicial Council of California