

Superior Court of California County of Marin

JAMES M. KIM
Court Executive Officer



3501 Civic Center Drive, Room 116
P.O. Box 4988
San Rafael, CA 94913-4988
(415) 444-7020

May 31, 2016

To the Members of the Ad Hoc Working Group:

Thank you for your time and efforts in reviewing the impact of the Judicial Council's new Funding Allocation Model (FAM) for Court-Appointed Dependency Counsel. I appreciate the opportunity to provide feedback, as well as propose solutions to the current problem facing small courts.

While I support the Judicial Council's recommendation 7 from the April 15, 2016 report, I believe that the recommendation needs to be expanded to review both short and long term funding strategies based on gathering current information and data from all of the small courts. As noted in recommendation 10, the need for more current data is vital in producing formulas that have a relevant impact to the current workload. To base current FAMs on data that is no longer relevant and outdated could have catastrophic impacts on all courts in California.

As such, the following are proposed recommendations in gathering updated data to help determine the best possible FAM solution for small courts regarding dependency counsel funding:

- 1. Update Current Workload Model Data with Court Specific Data** – Gathering current data to determine the impact of the funding strategy is critical since the landscape for most courts and counties has changed since 2002. The proposed process of gathering data would include the following:
 - Develop interview questions to quickly identify current workload, attorney hours, and unique geographical challenges of each small court, as well as determine best practices. The deliverable for this step would be an interview "tool-kit" that could quickly be used in consistently gathering caseload and court specific information for all of the small courts.

- Conduct in-person interviews for all small courts using the questions developed above. The interview panels should include representation from this working group, the Judicial Council and court representatives from small courts. The deliverable for this step would include conducting interviews in a period of no more than six months after the "tool-kit" was completed.
- Develop a working group to review the data and determine proposed recommendations on FAM, as well as a list of best practices to help courts implement efficiencies. The deliverable for this step would include a new proposed FAM specifically for small courts, as well as recommendations to implement best practices and new efficiencies.

2. **Suspend Funding Reallocation Process for Small Courts** – This is a critical piece to the recommendation 1 since this will allow the data gathering process to collect current information rather than data on programs already impacted by the FAM. This will also provide time for the small courts to document current best practices without having to change those practices due to funding challenges.

I believe both proposed recommendations will provide a FAM strategy that may better address the needs of the small courts in funding Court-Appointed Dependency Counsel. In addition, I hope that once this process is completed, this model could also benefit the mid to large sized courts in quickly updating their workload data. As noted in the Judicial Council's Report on April 15th, it is vital that we fund courts based on current and future funding needs rather than historical assumptions. Updating the current workload model in determining a more practical and relevant FAM for small courts would be consistent with this approach.

Please let me know if you have any questions. I would be happy to discuss any of the above. Thank you again for the opportunity to provide feedback.

Best Regards,



James M. Kim

Dean T. Stout
Presiding Judge

Brian J. Lamb
Judge



Pamela M. Foster
Court Executive Officer

Superior Court of California County of Inyo

301 West Line Street
Bishop, California 93514
(760) 872-3038

May 31, 2016

Dear Judge Borack and Court-Appointed-Counsel Funding Allocation Methodology Joint Subcommittee Members:

Inyo Superior Court would like to thank the committee and staff for the tremendous effort in review of the Subcommittee's Recommendation 7 with regard to a small court methodology and allocation related to Juvenile Dependency. As you have heard from so many of the small courts, Juvenile Dependency Counsel Appointments come with unique challenges in small, remote areas of the State. With a limited pool of qualified attorneys and unpredictable need Inyo Superior Court has had to be creative in providing this vital service to our community.

Upon review of the Draft Alternative Recommendations for your consideration on June 1, 2016, Inyo Superior Court supports all four Alternative Recommendations proposed. We believe that this is a situation where "one size does not fit all" and recognize that even amongst "small" courts that there will be a variety of needs. We encourage Alternative Recommendation 1 with regard to base funding, especially in two judge courts. We appreciate and applaud the outreach and effort that has gone into evaluating and understanding the circumstances that small courts face in providing Dependency Counsel. We would be happy to continue to work with the Subcommittee and staff moving forward on this project in order to provide data or information about how we operate.

Thank you again for all of your time and effort.

Sincerely,

A handwritten signature in blue ink that reads "Pam Foster".

Pamela M. Foster
Court Executive Officer

May 31, 2016



Trial Court Budget Advisory Committee
455 Golden Gate Ave.
San Francisco, CA 94102
Attn: Steven Chang

Transmitted by email to tcbac@jud.ca.gov

PUBLIC WRITTEN COMMENT

RE: 6/1/16 Juvenile Dependency: Court-Appointed Counsel Funding Allocation Methodology Joint Subcommittee

Dear Honorable Committee Members:

On behalf of East Bay Children’s Law Offices, I write in support of “alternative recommendation 3” regarding funding for dependency counsel in small courts:

That the funding reallocation be suspended for small courts until a more accurate model for calculating workload is developed.

It is abundantly clear that special attention must be given to the needs of small courts after reviewing how the new workload model suggests that only the small courts are now “overfunded.” Rather than accept that small courts are in fact overfunded, careful review of the dependency practice in small courts is merited.

Alternative recommendations 1, 2, and 4 are sensible approaches, but require more time for analysis and implementation. To prevent the reallocation plan’s unintentional, but likely, consequence of causing some small courts to be unable to fulfill the right to counsel for children and parents in the dependency courts, the reallocation process for those counties must be suspended until a realistic workload model can be developed for small courts.

Although my organization is not in a “small court” county, I believe we all agree that it is important to get the workload funding methodology right. At the same time, the reallocation plan should be delayed until there is a more accurate model to avoid dismantling programs today only to reinstate funding later.

Similarly, as several of us have raised at previous hearings, the reallocation plan as a whole is too aggressive in shifting funding from some counties to others, especially considering that even the “donor counties” are underfunded under the updated workload methodology.

	Dependency Counsel Reallocation	WAFM (by comparison)
Year 1	10% workload; 90% historical	10% workload; 90% historical
Year 2	40% workload; 60% historical	15% workload; 85% historical
Year 3	80% workload; 20% historical	30% workload; 70% historical
Year 4	100% workload	40% workload; 60% historical
Year 5		50% workload; 50% historical

Roger Chan
Executive Director

Kristin Mateer
Managing Attorney

C. Joy Ricardo
Managing Attorney

Susan Walsh
Managing Attorney

Jaime Michel, PhD, MSW
Clinical Director

Carol Barnett
Director of Training

Peggy Stone
Director of Interns and
Volunteer Attorneys

Ana Wong
Director of Finance
and Operations

BOARD OF DIRECTORS

Kathy Siegel
Chairperson

Sheri Schoenberg
Secretary

Norbert Ralph, PhD, MPH
Treasurer

Ayanna Bennett, MD

Tess Chandler

Patricia Lee

When the Council adopted WAFM, it acknowledged that time was needed to adjust – not just to less funding, but also to more funding to ensure that new funding is used effectively. Likewise, this subcommittee should reconsider the pace of the reallocation given that additional work on the funding model is needed.

As seen by the example of the small courts, the reallocation plan moves us further away from, not closer to, the Chief Justice’s vision for our “court’s children.” We are all very concerned about the impact of inadequate funding and the reallocation on the right to counsel for children and parents. Caseloads must be reduced so that no county has above the maximum limit, without reducing services and increasing caseloads in other counties.

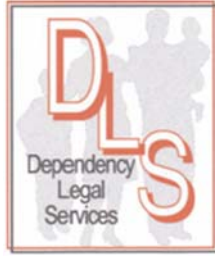
I am grateful for the work of this subcommittee. I have participated in all of the subcommittee’s public sessions over the past year and appreciate your commitment to access to the courts for children and their parents through making a better dependency counsel funding model.

Therefore, I respectfully request that this subcommittee adopt Alternative Recommendation 3 to suspend the funding reallocation process for small courts. In addition, the subcommittee should revisit the Reallocation Plan as a whole, and modify it to allow for a more balanced adjustment period (e.g. five years instead of 3) that does not plunge more counties into caseload crisis.

Respectfully submitted,



Roger Chan
Executive Director
East Bay Children’s Law Offices
(510) 496-5201
roger.chan@ebclo.org



107 West Perkins Street, Suite 12

Ukiah, California 95482

(707)526-7337; (916) 220-2853

www.dependencyls.com; info@dependencyls.com

May 31, 2016

To the Members of the Ad Hoc Working Group:

On behalf of Dependency Legal Services, a non-profit public benefits corporation formed for the purpose of representing parents and children in California's child welfare system, we first want to thank you for taking the time to consider the impact the Judicial Council's new funding methodology will have on small and remote counties (hereinafter "SRC's"). DLS has personnel operating in Humboldt, Mendocino, Lake, Sonoma, Marin, Placer and Stanislaus counties. Prior to our work with DLS, we managed parent law firms in Sacramento and Stanislaus counties. As such, we are uniquely qualified to discuss the particular challenges that dependency counsel in SRC's face.

We strongly urge this group to adopt all four of the proposed recommendations. As indicated in the materials, these recommendations are not mutually exclusive, and each helps support SRC's in a variety of much-needed ways. Specifically:

Recommendation 1: Much like our Cluster I and Cluster II Courts in WAFM, establishing a base funding for SRC's is critical for SRC's to be able to function. It is our position that Recommendations 2 and 4, if implemented, will necessarily delay implementation of this recommendation until the data from these other recommendations can be gathered and analyzed;

Recommendation 2: This recommendation accounts for the reality of the challenges we face representing children and families in SRC's. A further delineation of these challenges appears below.

Recommendation 3: Please adopt this recommendation. As you know, most of the SRC's are currently funded below 100% now, and to further cut SRC's will cause some SRC's to lose their ability to provide any representation (as opposed to less quality). And given that these are mandated services, the debt will have to be paid: As we heard on the focus group calls, when the

compensation is reduced, the experienced, qualified attorneys will disappear. The likely result will be a need to pay attorneys on an hourly basis which, like paying for overtime, will expand costs and create even more budget instability and unpredictability.

Recommendation 4: We strongly support this recommendation as well, as several of our courts are well-suited to pilot some of the concepts discussed in the materials, and already provide some of the services contemplated in the materials.

Finally, while the materials accurately delineate many of the issues we face, we felt it important to expand upon a term that is discussed often, but rarely with specifics. To us, “Economy of Scale” issues are vivid, and the challenges they present are constant. Here is what we believe Economy of Scale means to court-appointed dependency counsel working in SRC’s, and we offer the following as additional evidence to support the adoption of all of the proposed recommendations:

1. When we break down the dollar-for-dollar cost of part-time practitioners, it actually costs SRCs more (i.e. no group discounts on insurance, phone lines, supplies, and the inability to share office space, support staff, rent, etc.). This is another reason a premium must be paid to practitioners to get them to agree to devote a portion of their practice to dependency law.
2. Expert and ancillary costs: Larger counties are able to negotiate lower fees for psychological evaluations and attachment studies based on volume. In SRCs, no such reduced rates exist. In fact, the experts often have to travel from larger counties thereby making their fees even higher than the costs in larger counties.
3. Inability of SRC’s to capture savings: Larger firms have senior attorneys who mentor new attorneys on their cases. Consequently, large firms often hire new attorneys. This creates tremendous cost savings because these attorneys are not usually paid the highest compensation level and certainly never start out at that level. For example, under the new methodology, Los Angeles is given \$104,763 per attorney. However, they start their attorneys off at significantly less, resulting in tremendous cost savings. When multiplied by the number of positions, this can add up to amounts that exceed all of the SRC’s budget combined. This allows them to fund support staff and senior compensation. Conversely, in SRC’s, attorneys are often solo practitioners and cannot rely on mentorship from opposing counsel. As such, they typically need to be more experienced. Furthermore, their allotted compensation (as little as \$60,000 in some counties) leaves no cost savings to capture. And as independent contractors, their income must be reduced for taxes, health insurance, and other costs that larger counties can typically cover.
4. Some small counties still have enough work to command at least three full-time attorneys. Even though these attorneys do not have court hearings five full days each week, they are in court often enough such that dependency practice has to be their sole source of income. In these counties, the compensation is inadequate to provide for full-time support staff, and again, part-time staff is difficult to find, given potential conflicts, the nature of the work and the limited amount of hours needed. As such, these attorneys spend their out of court time on such tasks as internal filing, subpoenaing witnesses, filing documents with the court, traveling to see clients, drafting and transcribing writs, office administration etc.

5. In small counties, attorneys spend a significant amount of time communicating with social workers by phone, electronic mail, in meetings, and in the community. In at least one large county, the rule is to not allow attorneys to speak with social workers, and in others, court demands make this impossible, thereby creating less work for those attorneys than those in SRC's actually do. Further, our attorneys attend a number of outside, case-specific meetings (IEP, TDM, FTM, etc.) that attorneys in large counties either don't attend or send support staff in their place.
6. Under the new methodology, the salary data creates the anomaly that attorneys in SRCs get paid about half to do the same work. For example, under the new model, the attorneys in SRCs, some of whom have 20 or more years of full-time dependency experience, will now earn less than half as much as a new attorney in San Francisco for the exact same caseload. Example: Under the new methodology, a San Francisco attorney's salary is \$131,331 annually. In Humboldt the salary is \$60,304. Ironically, the purpose of the reallocation was to create parity. Yet SRC attorneys will get paid less than half to do the exact same work with the exact same caseload. Furthermore, since overhead is a percentage of salary, the overhead compensation is similarly skewed.
7. Some counties have to pay hourly rates to counsel, and even in those who use flat-fee contracts for primary attorneys, privately retained and conflict counsel are almost always hourly. One lawyer getting paid hourly can detrimentally impact the entire county budget by setting meaningless, inordinately long trials, billing for travel and other costs, etc.
8. Every single case matters: If counts are off by even as many as 50 clients in SRCs, allocations are hugely impacted. And if they are off by hundreds, as they are in Humboldt County, the impact is devastating. As of this date, there is still no consistency on how appointments are made to parents, much less even an attempt to count the actual number of parent clients in the state. These disparities are felt much more in SRC's than in larger counties.
9. SRC's have little to no organized leadership. Given that most SRC's employ solo practitioners who must carry cases and rely on other case types for income, there are very few leaders who can represent SRC's at the policy level. Unlike in large counties, where Executive Directors, Firm Heads, Managers, and even supervisors can be non-case-carrying, all attorneys in SRC's – including DLS leadership – must take time away from client needs to work at an administrative or policy level.
10. The amounts allotted to counties INCLUDE ancillary fees. Therefore, when you look at the small amount available for attorney compensation in SRCs, you have to deduct an additional \$30,000 to \$40,000 (depending on the caseload) which must be spent annually on medical experts, attachment studies, psychological evaluations, investigators, etc. With such little money for compensation, attorneys will be placed in the conflicted position of forgoing necessary expert work in order to obtain minimal compensation.

Once again, we urge you to adopt each of the recommendations before you, with an emphasis on implementing Recommendations 3, 4, and 2 immediately.

Thank you again for your time and consideration,

/s/

John Passalacqua, CEO

David Meyers, COO