
REPORT TO THE AB 1058 FUNDING ALLOCATION JOINT SUBCOMMITTEE

For business meeting on: May 11, 2017

Title	Agenda Item Type
AB 1058 Family Law Facilitator Subject Matter Expert Group Final Report	Information Only
Submitted by	Date of Report
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INTRODUCTION:

At the February 26, 2016 Judicial Council meeting, two subject matter expert (SME) groups were formed, one comprised of child support commissioners (CSCs) and another comprised of family law facilitators (FLFs) to provide input and expertise to the joint subcommittee. The subcommittee cochairs directed both groups to submit a final report summarizing its input and recommendations to the subcommittee by May 1, 2017. This report is being provided pursuant to that directive.

COMPOSITION OF THE SME GROUP:

The membership for the FLF SME group was selected by California Family Law Facilitator Association. While initially there were seven FLFs on the SME group, the chair had to resign from the group for personal reasons, leaving the current composition at six FLFs. These FLFs represent courts of various sizes both in population and geography throughout the state.

Activities of the SME Group

- To date, the SME group has met 16 times since June 2016, holding 1-2 conference calls per month to discuss factors that may impact workload and to determine methods to gather statewide input.
- The group developed an exploratory survey which was distributed to all FLFs throughout the state in an attempt to identify unique factors that may impact workload. The surveys

were not intended to measure workload, but rather were to uncover possible variables worth further consideration.

- Furthermore, at the 2016 AB 1058 Child Support Training Conference in Los Angeles, the SME group facilitated a focus group session at which the attending FLFs had an opportunity to provide more in-depth input about factors affecting workload as well as to ask questions about the funding allocation methodology review process.
- From 11/2016 – 02/2017 the SME group also participated in 3 conference calls with the consultant from MAXIMUS (Daniel Bauer, Esq.) to develop guiding principles and driving factors to assist in his work. The SME group then participated in 2 Delphi sessions (along with other FLF volunteers) to provide time estimates related to the performance of the various FLF tasks (as mandated in Family Code section 10000 *et seq.*), which information could be used in Mr. Bauer’s proposed funding models.
- In addition in March and April 2017, the SME held 7 focus group sessions open to any FLF in order to gather the maximum diversity of input. After the initial orientation meeting on 3/3/2017, the interested FLFs were divided into 2 groups according to court size as follows:

FLFs from mid-sized to large courts:

March 6, 2017: about¹ 11 FLFs participated representing 9 courts²
March 13, 2017: about 10 FLFs participated representing 9 courts³

FLFs from small to mid-sized courts:

March 10, 2017: about 13 FLFs participated representing 16 courts⁴
March 17, 2017: about 9 FLFs participated representing 9 courts

Combined sessions for FLFs from courts of all sizes:

April 3, 2017: about 17 FLFs participated representing 20 courts
April 17, 2017: about 14 FLFs participated representing 17 courts

RESULTS AND RECOMMENDATIONS:

Based on the input received from the FLF focus groups and ongoing discussion within the SME group regarding factors that impact the work of FLFs, the following recommendations are offered:

¹ As the focus groups were facilitated via conference calls, it is possible that FLFs joined the call late who are not included in the totals.

² The superior courts of Los Angeles and San Diego each had 2 FLFs participating on the call.

³ San Diego Superior Court had two FLFs participating on the call.

⁴ For the small to mid-sized courts calls, a few FLFs participated who work in more than one court.

1. There should be a base level of funding for small courts to account for the minimum costs to provide FLF services. The burden of underfunding must be equitably allocated among all courts.

The group considered the possibility of implementing multiple funding floors into the funding methodology to account for the different basic costs required to keep the door open for FLF programs in courts of varying sizes. (The size of a court would be based on the county population for purposes of this recommendation.) There was disagreement about whether funding floors should only be for the small courts (e.g., divide the small courts in a few similarly sized groups and give each its own floor, as appropriate) or for the remaining larger courts as well. Since workload measures should provide most courts with “right-sized” funding, the idea of stratified funding floors was generally rejected. There was consensus, however, on the need for a minimum funding floor for small courts. All participants recognized that small courts present unique needs/challenges. A base amount of funding is needed to keep an office open and staffed with competent and qualified personnel. At the same time, large courts want to avoid a situation where a small court’s minimum funding allows a superior level of service to that of a large court’s workload-based funding. Participants agreed, and returned repeatedly, to the underlying truth that the FLF program state-wide is drastically underfunded. Courts are being forced to skirmish for a portion of inadequate funding. Until funding is increased overall, the FLFs agree that all courts must equitably share the burden of underfunding. The SME group therefore makes no recommendation on how to implement multiple funding floors, if the subcommittee decides to adopt this concept.

2. While there should not be a mandated service delivery model for all FLF offices, FLF-derived recommendations for best practices in FLF offices would be helpful. Additional funding to purchase new hardware and software would be essential to optimize the work effort of smaller courts with remote service locations.

A discussion point for both the FLF SME group and the FLF focus groups was whether or not mandating a service-delivery model should be a part of funding reallocation. Both large and small court FLFs commented that due to funding limitations, court culture, or other unique characteristics of individual courts, there should not be a mandated service delivery model, such as a set of standardized practices or uniform staffing dictates. Instead, courts need to have the freedom to develop programs that meet their counties’ specific needs. However, the suggestion to develop best practices to help guide offices received no dissent. A significant amount of time was also spent discussing the role of technology in making basic services available state-wide. Focus group participants and the FLF SME group support the need for one-time supplemental funding to purchase hardware and software that would allow remote locations access to services through technology. Such an investment could alleviate the impact of funding reallocation on small, remote counties. The FLF SME group recommends that the Judicial Council of California support the Family Law Facilitators’ effort to develop and disseminate a “best practices guide.”

3. The Family Law Facilitator Electronic Database (FLFED), despite its limitations, may be the best source of workload data for the FLF programs.

At the present time, FLFs are required to report their encounters with litigants to the Judicial Council AB 1058 Program on a quarterly basis through the Family Law Facilitator Electronic Data system (FLFED). While some FLFs felt that the FLFED data should be used as only one of many factors in the reallocation process, no FLF doubted that the FLFED data, tabulated through the years, had usefulness as a measurement of workload, albeit not an entirely accurate and comprehensive measure. The following concerns were cited as specific shortcomings to the FLFED system currently in effect:

- FLFED does not account for litigants who are turned away (or who never seek services after seeing the long lines at offices);
- FLFED's reliability is compromised by the lack of uniformity in how data are entered (e.g., determining whether an encounter is IV-D or non-IV-D and determining whether to count an encounter as part of a workshop, a one-on-one service, or a brief service);
- FLFED reporting is not uniformly conducted on a regular basis in all counties;
- FLFED is cumbersome to use on a daily basis and thus does not integrate well into the rapid pace of an FLF office; and
- FLFED collects extraneous, marginally useful information and does not capture other data points that many FLFs believe are more important in defining the work accomplished in the FLF office on a daily basis.

Additionally, the service times recorded in FLFED cannot be relied upon in determining workload since they are more a reflection of the level of service each county *can* provide given the amount of the existing allocation and the volume of litigants seeking services. Instead, an average time should be assigned to each function based on the information provided by all counties, and this average should be applied across the board. A time study was conducted by Maximus, but only a small number of courts participated for a brief period of time. The average times derived by Maximus may be used on an interim basis until more accurate data can be obtained from a wider sampling of courts.

Despite these shortcomings, the FLFED data already collected and given to the Judicial Council better describe the workload of an FLF office than other factors currently being considered in the reallocation process, such as number of open cases or number of motions filed in court. FLFs routinely provide services to individuals who never appear in front of the commissioner or who have cases in other counties. In looking at the current FLFED data to determine workload, data related to non-grant-funded tasks should be eliminated so that the remaining data can be used to determine the AB1058 workload of each FLF office.

4. If the FLFED is used as the primary workload measure for the FLF programs, it should be redesigned to better track workload. The FLF SME group

recommends that the Judicial Council establish a workgroup to analyze the FLFED system and suggest ways to improve the data collection.

Given the shortcomings of the current FLFED system, it should be revamped to better track IV-D services. Particularly, the interface could be redesigned to make the process of tracking litigant encounters less onerous on, and more consistent, among FLFs. In particular, if the FLFED data will be used to determine funding levels for each program, the actual data that is collected should be limited to those functions which can be billed to the grant. Tracking of non-grant funded activities distorts the data and makes it difficult to compare workload across counties. In addition, except to the extent necessary to measure unique factors that impact court funding, FLFs should not be required to collect and report demographic data on the litigants they serve. These data have been collected for the first twenty years of the program despite the fact that they are not in any way tied to funding. Individual FLFs may collect additional data on the litigants they serve, if and when the need arises.

The FLF SME group recommends that the Judicial Council appoint an FLF workgroup to analyze the current FLFED system, collect input regarding suggested changes and make specific recommendations on ways to improve the data system. Facilitators statewide invest a considerable amount of time and effort every day in maintaining and inputting the data. It is essential that the most relevant data are properly collected to maximize their usefulness in determining future court funding allocations and supporting increased AB1058 program funding requests.

5. While a quantitative workload measure should be used as a starting point for allocations, it is also possible to consider the impact of other unique factors that can affect a court's ability to operate its FLF program.

The majority view of FLFs was that a quantitative measure of workload (e.g., FLFED) is essential in determining allocations, but that the funding methodology needs to have the flexibility to adjust for unique factors impacting individual courts. To identify specific unique factors, the SME group first tabulated a list of factors that had been specifically described in various public comment letters submitted in November 2015 to the Judicial Council following its initial reallocation proposal. This list of unique factors included the following:

- Unemployment rate
- Poverty rate
- Multiple court locations that are geographically far apart
- Effect of weather on the ability of FLF or public to travel
- Effect of traffic on the ability of FLF or public to travel
- Need to rent out-of-court office space
- Existence or nonexistence of electronic case management system

- Different approaches of the LCSA per county (e.g., some LCSAs strive to maximize pre-court settlement opportunities; some LCSAs easily issue an administrative driver's license release)
- Number of LEP litigants and in how many languages
- Illiteracy rate
- Prevalence of substance abuse/mental health issues
- Existence or nonexistence of public transportation
- Cost of living per locale, not just per county
- Availability of outside resources: law schools, Legal Aid, volunteers and interns
- Degree to which AB1058 funds were unused in prior funding year per county
- Access to and use of technology
- Increased administrative workload due to need to supervise frontline staff
- Ease of access to IV-D information by the FLF from the LCSA
- Time to wait for and use of an interpreter

A survey with these factors was distributed to all FLFs, who were asked to rank the factors from most to least impactful on the workload of FLFs. The response rate of the survey was very low and thus not statistically significant. Of the 5 counties who responded, 2 were very large in size, 1 was medium sized, and 2 were very small. The following factors were viewed in the responses as having some unique impact:

- ✓ Multiple court locations that are geographically far apart
- ✓ Different approaches of the LCSA per county (e.g., some LCSAs strive to maximize pre-court settlement opportunities; some LCSAs easily issue an administrative driver's license release)
- ✓ Cost of living per locale, not just per county
- ✓ Availability of outside resources: law schools, Legal Aid, volunteers and interns
- ✓ Need to rent out-of-court office space
- ✓ Illiteracy rate
- ✓ Access to and use of technology
- ✓ Increased administrative workload due to need to supervise frontline staff

The 14 FLFs who participated in the final focus group on 04/17/2017 engaged in a lively discussion of the various factors. The consensus was that it would be (1) difficult to measure many of the factors, and (2) difficult to ascertain how this would impact funding. The method of incorporating consideration of these factors into any funding allocation is outside the professional purview of this SME group. It is nevertheless the reality of some courts that increased costs of running an office are uniquely incurred because of the factors cited above. Other factors uniquely restrict the ability of an FLF to work with more customers in a personalized way. The small courts especially do not want to be penalized for lowered work performance due to factors out of their control. The larger courts in turn want to be able to offer more personalized services and need more funds to do so. A reallocation proposal might give special weight to the existence of the listed factors for any particular county.

6. The SME group recommends implementing the funding reallocation in a manner so as to minimize disruptions to the provision of existing FLF services by the donor courts and to maximize the spending power of additional funding to create expanded FLF services by the recipient courts.

The need for a gradual phase-in of any funding reallocation (e.g., small cuts over time) received unanimous approval. It was alternatively suggested and well received that it might be more desirable to determine and announce a single future date when the new budget reallocations would be fully implemented (e.g., a major reallocation of funding done once 5 years into the future). Rather than a phase-in over time, this latter approach would give FLF programs a set period of time to prepare for the funding changes rather than getting minimal increases or decreases over a number of years. Small immediate decreases would disrupt the operation of a smaller program. When such small sums of money are then shifted to larger programs, the funds may not be effectively utilized. Salary and benefit costs are the predominant expenditures in the FLF program. Funding increases that are not sufficient to add staffing are difficult, if not impossible, to absorb and result in either unnecessary expenditures or money left on the table and returned to the funder at the end of the year. For example, a \$20,000 decrease to a small program would be a major cut in funding, but such sum given to a larger court is not enough to pay for new staff, and therefore such transferred funds might remain unused. If additional funding is going to be offered to a court over time, the recipient court should have the option of delaying receipt of the funds until such time as they can be fully spent. For example, if a court were scheduled to receive an increase of \$30,000 over three years for a total of \$90,000 and that court needed \$90,000 to fund a full-time position, the court should be allowed to defer receipt of the additional funds until the third year without risking loss of the increase. In the third year, the full \$90,000 increase would be awarded, enabling that Court to fill an additional full time position and thereby ensure that it is able to spend the entire amount. The unclaimed funds for the first two years could remain with a court that is scheduled to lose funding, this enabling it to retain staff while it prepares for the eventual funding reduction.

CONCLUSION:

The FLF SME group appreciates the opportunity to provide the Subcommittee with input on the reallocation of funding. The extensive time the SME Group members and Focus Group participants have spent studying the reallocation issue reflects our recognition of the gravity of the impact of reallocation on FLF offices statewide. The overarching issue is that the program is significantly underfunded. While moving money amongst courts may alleviate a percentage of service delivery issues for a few Courts, it will not allow **any** court to meet all the litigant needs of that county and will certainly diminish the ability of other courts to provide their current level of services. Rather than simply move the burden of underfunding from one court to the other, the SME Group urges the Judicial Council to develop and implement a plan to find additional funds for the AB 1058 program.

We recognize, however, that the immediate issue is reallocation of existing funds. The FLF SME Group thus recommends: (1) An equitable budget reallocation based on workload, (2) a funding floor for the small counties that will allow basic services to continue with consideration of unique factors that affect certain courts, and (3) use of an implementation schedule that minimizes the impact on donor courts and maximizes the usefulness of increased funding by the recipient courts. The method for calculating existing workload is problematic. FLFs agree that the FLFED should be the starting point for relevant workload data. However, a review of recent years of data reflects that inconsistent reporting and differing interpretations of data elements make the existing data unreliable. Ideally, the FLFED would be revised and reliable data would be gathered over a one-two year period *before* any reallocation occurs. If the Subcommittee is unwilling to postpone reallocation to allow additional data gathering, then workload should be determined by using the existing workload data that can be culled from FLFED. For those counties that lack sufficient data in FLFED to determine workload, the funding allocation should be based upon the funding level allocated to counties of similar size, which should be determined by the population of the county as a whole. When sufficient FLFED data has been collected for these counties, their funding may be adjusted to accurately reflect the workload of each county.