

# San Francisco Counsel for Families & Children

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February 16, 2016

Joint Subcommittee on Court-Appointed Dependency Counsel Workload and Funding  
Methodology

Trial Court Budget Advisory Committee

Family and Juvenile Law Advisory Committee

Re: Public Comment to Proposals of the Joint Subcommittee for Meeting February 17,  
2016

On behalf of San Francisco Counsel for Families and Children, I am writing to thank the members of the Joint Subcommittee on Court-Appointed Dependency Counsel Workload and Funding Methodology for all of the hard work they have done over the last nine months in response to the Judicial Council's April 2015 instructions.

At the outset, I want to recognize the extremely thorough and thoughtful assessment performed under the strictest timelines. The Joint Subcommittee has gone to great lengths to fully consider as many aspects of this complicated problem as possible in the extremely limited time necessitated by the undisputed urgency of this statewide problem.

We also recognize and appreciate that the Subcommittee has added "Recommendation 10," seeking approval for continuing work to upgrade the model, as nine months is too little time to fully assess and update the model. Nevertheless, it is essential to ensure that resolutions adopted now do not fall too far short from the model we can anticipate when that further work is complete lest we end up with an unsatisfactory compromise adopted for no reason other than expedience.

Therefore, SFCFC proposes the following amendments to recommendations set forth in the Subcommittee report for February 17, 2016:

## ***Proposed Amendment to Recommendations 1-2:***

### **Tie attorney salaries to more senior county counsel salaries.**

We fully support adoption of a county-specific, BLS-indexed system for devising the appropriate attorney salary per county. As to assessing parity between government

counsel and court-appointed counsel for children and families, however, we share in the sentiment of some commentators that appointed counsel salaries should not be tied to Tier 1 or Tier 2 government rates but rather to more senior level county counsel. This comment is based on our review of the results of our public records request of city attorney salaries for those attorneys assigned to the San Francisco Department of Children and Family Services. Those agency attorneys have similar experience – an average of 16.2 years of practice as compared to 17 years as court-appointed counsel in our jurisdiction. Yet average salary for agency attorneys, non-supervisor level, is \$167,638<sup>1</sup> per year, not including benefits, which is significantly more than even the Class 1 or 2 maximum for San Francisco set forth in Appendix 1 of the materials.

As the Subcommittee is well-aware, the practice of Juvenile Dependency is highly specialized. It takes place in closed courtrooms and involves society's most vulnerable members. There is no reputational glory, and as is obvious from the tireless work of this subcommittee, most court-appointed attorneys do not perform this work to get rich. Yet practitioners, on both sides of the aisle, are unquestionably dedicated to their work and their clients. This fact is reflected by the experience levels set forth above.

We respectfully request that the Subcommittee, the Trial Court Budget and Family and Juvenile Law Advisory Committees, and the Judicial Council recognize this fact by establishing **true and actual parity** between government and court-appointed counsel.

***Proposed Amendment to Recommendations 5-6:***

Recommendation 5 concerns the data source for the count of the number of children, and Recommendation 6 concerns total estimated client count, based on a multiplier. The analysis on which the Subcommittee relies for both of these recommendations illustrates the problem of using averages to create general rules for all members of the set.

The implications of these recommendations cannot be overstated. Attributing accurate client counts to each county is the most fundamental component of this model, upon which each county's total funding relies. As the report acknowledges, ongoing work is required to create a system whereby each county's actual clients can be accurately reported. Until this system can be created, this body must do its best to fairly allocate funds to counties for the legal work performed.

***Recommendation 5:***

**Utilize a 10:90 ratio of JBSIS to CWS for child counts.**

Application of a 30:70 JBSIS:CWS ratio to child counts will penalize counties that utilize progressive and pro-social community interventions, like Differential Response, and whose

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<sup>1</sup> This figure likely undervalues the total cost of Agency attorneys. San Francisco City Attorney uses a contract firm to handle all appeal and writ work which costs approximately \$285,000 additional per year. Court-appointed counsel handle most all of their own writ work.

court-appointed counsel resources are currently relied upon to address the more serious and challenging cases. Using the lower ratio of 10:90 compensates attorneys who defend against more complicated cases while properly valuing the work they perform on behalf of children and parents who remain in the juvenile dependency system for a significant amount of time.

To arrive at its recommendation, the Subcommittee analyzed each county's percentage of total new filings and percentage of total dependent children and plotted the difference between the two numbers to create the bar graph on page 11 of the July 16, 2015 materials.

Analysis of this bar graph yields the following information: 1.) 50 of the 58 counties have less than one-half of one percent difference between the values with five filing at lower rates and three at higher rates; 2.) All but one of the eight counties (Placer) are in the top 10 biggest counties (for dependent children); 3.) One county (Los Angeles) is an outlier with nearly three times higher value than its nearest absolute value deviation, San Diego; and, 4.) The majority of counties beneath the line (lower proportion of new filings than proportion of dependent children in the State) are considered "overfunded" under the 2007 model as compared to those with higher proportions of new filings, the majority of which are considered "severely underfunded" by 2007 model standards.

We recognize and appreciate that the Subcommittee did not have time to analyze the different child welfare practices across the State to assess programmatic differences which might explain the filing/children in care variances. In San Francisco, our Human Services Agency utilizes a robust Differential Response program, tapping community services when safe to do so, which may also mean that less serious cases are being handled within the community, by community service providers. In San Francisco, our limited state, federal and court resources are reserved for those cases where the government has a cognizable claim that the alleged abuse and neglect meets the definitions of Section 300 of the Welfare and Institutions Code.

From these observations, one could conclude that were appointed counsel better resourced, the government might file more conservatively or file only when the facts clearly necessitated government intrusion into the family realm. One might also conclude that the current system (CWS numbers only) seems to fit for the majority of the counties, and when it doesn't, no clear rule better describes the data.

Application of the 30:70 JBSIS:CWS ratio to child counts will penalize those counties, like us, that utilize Differential Response programs and whose court-appointed counsel resources are currently relied upon to address the more serious and challenging cases – those that get filed – resulting in a case weighting inequity.

Moreover, early discussions of the Subcommittee demonstrated significant inconsistencies among the courts in terms of what constitutes a "new filing." For example, do section 342 and 387 petitions get counted as new filings?

For the foregoing reasons, we respectfully request that the Subcommittee modify its recommendation regarding child counts to utilize no more than a 10:90 JBSIS:CWS ratio.

***Recommendation 6:***

**Use actual client counts for counties that can produce  
client count information and a more accurate multiplier  
for those with less complete records.**

SFCFC has been a staunch advocate for use of actual client counts to determine budget. San Francisco appoints counsel for parents at a much higher ratio than the model proposes – 1.5 parents per child. We support the appointment of counsel for indigent alleged fathers, presumed mothers, and some *de facto* parents because it affirms due process protections for all parties and, most importantly, maximizes positive outcomes for system-involved families. Many prior public comments have addressed the societal and social welfare value of this fact.

As set forth below, the data set on which the Subcommittee relies yields misleading results which when relied on to set budget, end up grossly underestimating the funding needs of many counties.

Preliminarily, the Subcommittee relied on data from 19 DRAFT counties to analyze the validity of the parent multiplier (page 42, July 16, 2015 materials). The fact that the sample set is made up of DRAFT counties necessarily shapes the results. The DRAFT counties must operate within a budget limiting them to .82 parents per child. There is no wiggle room in the contract for counties that appoint at a higher rate. These counties are incentivized to appoint for no more than .82 parents per child, regardless of county-specific features relating to number of two-parent households, number of children per household, number of father-supportive programs, etc. Even with that fact, there is variety in the rates of appointment which likely reflects county-specific features that go far beyond the scope of the Subcommittee report and proves the point that one size does not fit all.

Unfortunately, given the huge influence of the parent multiplier factor in the total budget per county, inexact estimations based on this factor will result in magnified deficits for smaller counties.

Because of the imprecision involved with using averages with dissimilar objects, the inclusion of Los Angeles as a data point has skewed the results. Los Angeles has nearly six times as many dependents as the state's second largest county. It is manifestly different from all other counties.

To illustrate: Of the 47,692 dependent children in the 19 DRAFT counties considered, 29,403 are in Los Angeles, 62% of the total. Los Angeles presently appoints at a rate of .73 parents per child, resulting in 50,867 clients.

The Subcommittee divided the total number of parents represented by the 19 counties by the total number of children in the 19 counties and arrived at .81 parents per child, then increased it to .82 to be consistent with the 2007 model. **The average appointment rate of the 19 counties, without reference to the actual numbers of clients, is 1.02, and the median rate of the 19 counties is .90.**

If one removes Los Angeles from the equation, the average jumps up to .93 parents per child, much closer to the average and median *rates* of the 19 counties.

In monetary terms, by using an average based on the total of the 19 counties' parents divided by the total of the 19 counties' children, Amador (33/208), El Dorado (35/856), Mendocino (23/649), Plumas (35/124), San Joaquin (1145/5504), San Luis Obispo (46/798), Santa Barbara (848/2046), Santa Cruz (56/669), Solano (269/1164), Sonoma (288/1369), and Stanislaus (206/1180) counties will, collectively, represent 2,984 clients for free.

At the same time, Los Angeles county will receive  $\$875^2 \times (.09 \times 29,403) = \$2,315,486$  for client representation for clients it does not have.

In the counties that appoint at rates higher than .82 parents per child, the loss of funds is significant: \$2,611,000, at \$875 per case. Moreover, those attorneys carrying higher caseloads suffer further compromises to available time and resources for all clients in the caseload.

For the foregoing reasons, we propose using actual client counts for counties that can produce client count information and a more accurate multiplier, like .93, .90 or 1.02, for those with less complete records.

***Proposed Amendment to Recommendation 9:***

**Set the interim caseload standard at 100.**

We support adoption of a caseload standard that reduces the 2007 model number of 188 clients per attorney. We respectfully request that the Subcommittee, the Trial Court Budget and Family and Juvenile Law Advisory Committees, and the full Judicial Council adopt, as an interim caseload number, a caseload maximum of 100 clients per attorney. Both the National Association of Counsel for Children and the American Bar Association support a caseload maximum of 100.

The 2007 California model recommended a maximum of 77 clients for optimal performance. Preliminary results referenced in the Subcommittee's current report acknowledge "serious shortcomings in the existing caseload funding model," with "greatly underestimated" task time obligations. So, while the 2007 study involved significant research, comprehensive analysis of vast data collected from painstaking efforts of many

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<sup>2</sup> \$875 is the statewide average cost per case from page 12, current report.

extremely intelligent people, it ultimately failed to comprehend the realities of competent child and family representation in child welfare cases. It is essential that the Council avoid the errors of 2007.

October 26, 2007 "Draft Pilot Program and Court-Appointed Counsel" Report to Members of the Judicial Council, page 4, footnote 5:

Staff recommended piloting of the basic, as opposed to the optimal, caseload standard because of concerns about the fiscal viability of optimal standard implementation. It should be noted that national standards, promulgated by the American Bar Association and the National Association of Counsel for Children, recommend caseload maximums of 100 clients per full-time practitioner. This recommendation was followed by the U.S. District Court, Northern District of Georgia in *Kenny A. ex. Rel. Winn v. Perdue*, 218 F.R.D. 277 (N.D. Ga. 2005) in a decision that mandated a 100-client caseload maximum for dependency attorneys in Georgia.

We cannot again invest so much intensive research and thoughtful consideration of this most important measure only to disable the efficacy of the model by ignoring sound conclusions because of budget realities.

We are well aware that the Legislature and the Governor may not agree that our work is absolutely essential for the protection of the unquestionably most vulnerable members of our state. That cannot mean that this body should adopt their failure to recognize that importance by formalizing it into our model. If the other branches of government will not recognize this work as important, we have recourse to petition, cajole, encourage and beg. But without the support of *our* branch of government, the Judicial Branch, to support a fully accurate model, we are doomed to fail.

For this reason, SFCFC respectfully requests that the Subcommittee, the Trial Court Budget and Family and Juvenile Law Advisory Committees, and the full Judicial Council adopt, as an interim caseload number, 100 clients per attorney.

Respectfully submitted,



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