

# Daily Journal

January 12, 2017

## Dependency lawyers bemoan governor's refusal to boost budget

*Dependency attorneys say they are overburdened*

By L.J. Williamson

When a budget increase for dependency counsel funding was yanked from the 2014 California budget at the eleventh hour, Ed Howard, for the first time in his professional career, cried. But now that attorneys who represent abused and neglected children have been through the same experience for three of the last four budgets, they are "saddened, but not surprised."

On Tuesday, Gov. Jerry Brown's budget numbers for dependency counsel stayed flat, offering no relief to overloaded dependency lawyers. The Judicial Council has said that dependency attorneys should handle a maximum 141 cases, but in many counties, attorneys are acting as advocates for nearly twice that number of children.

"We're now down to 220 as the average caseload in LA, but we were at over 300 in 2014 when we started this journey," said Leslie Starr Heimov, executive director of Children's Law Center of California, a dependency counsel nonprofit.

Howard, senior counsel for University of San Diego School of Law's Children's Advocacy Institute, and other dependency attorneys were heartened when the Legislature increased dependency counsel funding by \$11 million in 2015. But no other budgetary help has followed since then.

"It's hard to find a more compelling need in the court system, and yet the budget proposes to increase spending for judges' salaries and benefits but not dependency cases," said Kevin G. Baker, Legislative Director for ACLU California.

Baker said the state's failure to provide sufficient funding for dependency counsel has violated children's and parents' rights to competent and effective representation in dependency proceedings.

Without more money, the language being bandied about in dependency circles — words like "crisis" and "collapse" — are apt, Howard said.

"Imagine yourself in this job. You wake up every day and know that you're violating your own ethics," lamented Howard. "At worst, lawyers throughout the state will say, 'No more, I can't take any more cases.'" Howard said he has spoken to large numbers of lawyers who have said they have thought about rejecting more cases. The dependency budget doesn't have to be perfected this year, he explained, "but we can't be shut out again."

California is facing a number of significant pressures, said H.D. Palmer, deputy director of external affairs for the state Department of Finance, with revenue receipts below projections and the unknowns that come with the incoming Trump administration. "All of those things make a strong case for a prudent budget."

It isn't that anyone opposes funding for counsel for abused and neglected kids, said Senator Holly J. Mitchell, D-Los Angeles, chair of the Senate Budget & Fiscal Review Committee, who said the issue has bipartisan support. "I think what you may hear from the administration is the priorities, in the overall scheme of things. You're not going to get anybody that says we oppose it because children aren't worthy."

The issue is righteous, Mitchell said, but is one of many competing interests the state is trying to address as the state's financial recovery proceeds. Other items that did receive boosts in the 2017 budget include K-12 education, early learning programs, foster care youth education, and in-home supportive services for the disabled.

There's a danger of addressing critical public policy issues through the budget process, Mitchell said, where the weight of the issue can sometimes be lost when stuck with a price tag. "It could be the most critical issue to the most Californians, but particularly in this case, there's no strong, supersonic lobby," she added.

Others echoed Mitchell's sentiment that a lack political juice works against the issue. Foster kids don't show up at political rallies, and they don't vote.

Dependency Legal Services, for example, is a nonprofit law firm that exclusively offers indigent representation in dependency cases, with contracts in nine counties. But Chief Operating Officer David Meyers said he may be forced to close shop in one or more of those locations.

"I just feel deflated and disappointed," Meyers said of the string of budget defeats. According to calculations from the Judicial Council, the total need for court-appointed dependency counsel is \$202.9 million per year. The \$114.7 million in the current state budget meets only 57 percent of that need.

"There are three types of counties: 'underfunded,' 'severely underfunded,' and 'in crisis,'" Meyers said. "The actual dollars are so low we may have no choice but to leave ... for people like me doing this for more than 20 years, you can't work for less than you would get at a minimum wage job."

In Mendocino County, Meyers said there are only about five attorneys representing all of that county's children in dependency. And one of them is actively looking for another job, he said.

Firm closures are not theory, but reality. In October, Dependency Legal Group of San Diego (DLG) closed its doors after its contract with the Judicial Council expired.

"The State's new budget for juvenile dependency representation in San Diego County can no longer support the organizational structure of DLG and the accompanying scope of services it has been providing the community since 2010," DLG explained on its webpage.

Meyers and others said the Judicial Council is largely to blame for the disparities, because of an outmoded formula for allocating funds.

The Judicial Council instituted a four-year reallocation plan in 2015 to more equitably distribute funds, which benefited some counties but further starved others. A subcommittee directed to reexamine the allocation formula is expected to report back to the council this May.

"The primary issue is not the allocation formula adopted by the Judicial Council; the primary issue is adequate funding for court-appointed dependency counsel who do vital and life-saving work on behalf of the state's dependent children," said a Judicial Council spokesperson. "That's why the council continues to advocate every year for adequate funding for this and other important needs."

The hope of the reallocation plan was that it would include additional funds, Heimov said. "Equity is an important part of the solution, but it doesn't work all by itself." Heimov said advocates will spend the next five and a half months trying to get more money in the May revised budget. If that doesn't happen, they have little choice but to keep going.

"Most of us can't say no to new clients because our contracts say we will represent 100 percent of the children," she said. "What ends up happening is we work harder but are able to do less for each child."

Lawyers are forced to triage, and the kids who are not in crisis don't get attention, Heimov said. That might mean immediately sorting out Medi-Cal coverage for the infant with a 103-degree fever, but postponing work for the 10-year-old who's being expelled for acting out in school.

"I don't want to do this for the next 20 years asking for money," Heimov said. "I want to get where the funding is adequate so we can do our jobs."

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Editorial Id: 953404

Publication Date: 01/12/2017