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MEMORANDUM

TO: Honorable Board of Supervisors
James R. Williams, County Executive

FROM: Tony LoPresti, County Counsel *TL*
Michaela Lozano Lewis, Assistant County Counsel

RE: Response to Request for Information regarding Training Levels Within the
Office of the County Counsel's Child and Family Protection Team

DATE: February 6, 2024

EXECUTIVE SUMMARY

At the Board of Supervisors Special Meeting on December 19, 2023, the Board requested that Administration and the Office of the County Counsel provide information on the subjects included in the Recommendations from the Special Hearing Relating to the Department of Family and Children's Services Protocols (Item No. 4(d)(a)). One of the requests to the Office of the County Counsel (D.3), was for information on training levels for the Child & Family Protection Team (CFP), which is the team within County Counsel that performs legal work relating to child welfare.¹

This memorandum provides information regarding mandatory training requirements for all actively practicing attorneys licensed by the State Bar of California and additional training requirements specifically for attorneys practicing juvenile dependency law per the California Rules of Court, as well as the team's activities to develop competency in practicing juvenile dependency law per the Standards of Judicial Administration.

¹ The subsection listed here (*e.g.*, D.3) refers to the subsection listed in Item No. 4(d)(a) for the Special Meeting that requested information from Administration and the Office of the County Counsel.

DISCUSSION

All attorneys in the Office of the County Counsel are licensed by the State Bar of California to practice law. To be licensed to practice law in California, each attorney in the Office of the County Counsel received a Juris Doctor from a law school and passed both the California Bar Examination and Multistate Professional Responsibility Examination. The State Bar of California requires attorneys to receive at least 25 hours of Minimum Continuing Legal Education (MCLE) every three years. Effective for the compliance period ending January 31, 2025, the State Bar has updated the requirements for subfields of continuing education. Of the 25 hours, at least four hours must be on legal ethics, at least two hours on competence issues, with at least one of those hours focused on substance use or other mental or physical issues that impair an attorney's ability to practice law and the additional hour may focus on wellness education in the context of the practice of law, at least one hour addressing technology in the practice of law, at least one hour addressing civility in the legal profession, and at least two hours on the elimination of bias, with one of those hours focused on implicit bias. The remaining MCLE hours can be on the practice of law more broadly, including substantive areas of law (*e.g.*, Brown Act, California Public Records Act, etc.) and practice skills (*e.g.*, case management, cross-examination techniques, discovery strategy, and attorney-client communications).

For dependency attorneys in particular, California Rules of Court, Rule 5.660(d) provides that "[e]very party in a dependency proceeding who is represented by an attorney is entitled to competent counsel," and defines "competent counsel" as "an attorney who is a member in good standing of the State Bar of California, who has participated in training in the law of juvenile dependency, and who demonstrates adequate forensic skills, knowledge and comprehension of the statutory scheme, the purposes and goals of dependency proceedings, the specific statutes, rules of court, and cases relevant to such proceedings, and procedures for filing petitions for extraordinary writs."

To establish initial competency in dependency, attorneys must have "completed a minimum of eight hours of training or education in the area of juvenile dependency, or . . . have sufficient recent experience in dependency proceedings in which the attorney has demonstrated competency . . . to represent parties."² The training must include (1) "[a]n overview of dependency law and related statutes and cases" and (2) "[i]nformation on child development, child abuse and neglect, substance abuse, domestic violence, family reunification and preservation, and reasonable efforts."³ Similar to the State Bar, the California Rules of Court also require continuing education specifically for dependency attorneys: "[w]ithin every three years, attorneys must complete at least eight hours of continuing education related to dependency proceedings."⁴

² Cal. R. Ct. 5.660(d)(3)(A).

³ *Id.*

The Standards of Judicial Administration—which are issued by the Judicial Council of California, the rulemaking body of the California courts—also outline best practices for developing competency in dependency attorneys, noting that longevity of practice and specialization are important components for attorneys practicing in dependency. Specifically, California Rules of Court, Standard 5.40 provides, in part, that:

The presiding judge of the juvenile court should:

- (1) Encourage attorneys who practice in juvenile court, including all court-appointed and contract attorneys, to continue their practice in juvenile court for *substantial periods of time*. A substantial period of time is at least two years and preferably from three to five years.
- (2) Confer with the county public defender, county district attorney, county counsel, and other public law office leaders and encourage them to raise the status of attorneys working in the juvenile courts as follows: hire attorneys who are interested in serving in the juvenile court for a substantial part of their careers; permit and encourage attorneys, based on interest and ability, *to remain in juvenile court assignments for significant periods of time*; and work to ensure that attorneys who have chosen to serve in the juvenile court have the same promotional and salary opportunities as attorneys practicing in other assignments within a law office.⁵

The Office of the County Counsel's CFP Team is a team of attorneys and paralegals who specialize in dependency law and are co-located with the Department of Family and Children's Services (DFCS). All nine attorneys on the CFP Team have substantial subject matter experience, ranging between three and 27 years practicing juvenile dependency law.

All attorneys on the team engage in ongoing training to ensure their continued competency. The CFP Team satisfies both the State Bar requirements and California Rules of Court requirements for appropriate training by attending and participating in a number of trainings related to dependency and child welfare matters each year. For example, the CFP Team, along with all local dependency practitioners—including attorneys representing children and parents, and the court—participate in ten one-hour system-wide trainings each year. Of the

⁴ Cal. R. Ct. 5.660(d)(3)(B).

⁵ Emphasis added.

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ten trainings, four teach participants the recent developments in appellate case law; one focuses on new legislation that impacts child welfare practice; and the remaining trainings address topics of particular focus in the dependency field, such as the Indian Child Welfare Act⁶ and the provision of services to incarcerated parents.

In addition to the local systems trainings, the CFP Team also participates in other legal and substantive trainings related to child welfare. For example, members of the CFP Team typically attend the two child welfare conferences hosted by the County Counsels' Association of California each year and also attend the symposium hosted annually by the Child Abuse Prevention Council of Santa Clara County.⁷ The members of the CFP Team also participate in trainings hosted by the Judicial Council of California, the policymaking body of the California courts, which provides extensive written guidance and a variety of remote and in-person seminars related to various practice areas, including juvenile dependency law.⁸ Team members also participate in trainings facilitated by DFCS that are designed to educate attorneys about their internal practices and policies on issues like family finding⁹ and drug testing. In recent years, CFP Team members have also attended national and international conferences related to child welfare, including the San Diego International Conference on Child and Family Maltreatment and the National Conference on Child Abuse and Neglect.

Given that the CFP Team must ensure ongoing coverage of child welfare workflows, the team typically selects a few members to attend conferences and symposiums. Whenever members of the CFP Team attend one of these trainings or conferences, they make a presentation to the full team regarding the conference and share the written materials they receive with the rest of the team to inform and improve the team's overall understanding, practices, and processes.

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⁶ The Indian Child Welfare Act (ICWA) is a federal law, with accompanying state law, that provides additional requirements and a heightened level of scrutiny for families with tribal affiliation in dependency court. Appellate court decisions on ICWA have significantly impacted child welfare practices in California over the last few years.

⁷ At the 2023 Symposium, Judge Leonard Edwards, a renowned expert in juvenile law, addressed child welfare trends over the last 40 years; representatives from the Office of the District Attorney presented on best practices in cases involving the sexual abuse of children; and Drs. Sturm, Albin, and Starling spoke about medical evaluations and medical treatment for children who have been abused and neglected.

⁸ In 2023, the Judicial Council of California trainings included such topics as dependency case law updates and statutory changes; the trauma of family separation; and Indian Child Welfare Act legal updates.

⁹ Welfare and Institutions Code § 309 requires DFCS to make extensive efforts to locate family members and notify them of the dependency case after a child is placed into protective custody, which is commonly referred to as "family finding."

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CONCLUSION

Members of the Office of the County Counsel's child welfare legal team satisfy all training requirements for competency in their practice area, including meeting Minimum Continuing Legal Education (MCLE) requirements; complying with the additional specific training requirements set forth by the California Rules of Court for attorneys that practice dependency law; following the Standards of Judicial Administration's best practices for an attorney to develop competency in practicing juvenile dependency law; and availing themselves of specific dependency law training opportunities that are offered at the international, national, state, and local level to support practitioners in this field.

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