COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET, ROOM 525
LOS ANGELES, CALIFORNIA 90012-3873
PHONE: (213) 974-8301 FAX: (213) 626-5427

WENDY L. WATANABE
AUDITOR-CONTROLLER

ASST. AUDITOR-CONTROLLERS

ROBERT A. DAVIS
JOHN NAIMO
JAMES L. SCHNEIDERMAN
JUDI E. THOMAS

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TO: Supervisor Michael D. Antonovich, Mayor
Supervisor Gloria Molina
Supervisor Mark Ridley-Thomas
Supervisor Zev Yaroslavsky
Supervisor Don Knabe

FROM: Wendy L. Watanabe
Auditor-Controller

SUBJECT: **LOS ANGELES SUPERIOR COURT FAMILY LAW COURT – MINORS' COUNSEL COST REVIEW (BOARD AGENDA ITEM #71, APRIL 29, 2011)**

On April 19, 2011, the Board of Supervisors (Board) directed the Auditor-Controller (A-C) to work with the Los Angeles Superior Court (SC or Court) to review the financial screening process used by the Family Law Court, and determine ways the County may be able to reduce the cost of minors' counsel. In addition, your Board directed the Chief Executive Officer (CEO) to work with County Counsel and the A-C to develop recommendations related to reducing the County's expenditures for minors' counsel, including a flat fee per case, as well as ways of leveraging other existing resources. On June 30, 2011, the CEO reported the results of their review to your Board. This is our report on the Court's financial screening process.

Review Summary

Our review indicates that the Family Law Court has taken action to reduce minors' counsel expenditures. However, it appears that the Court may be able to further reduce minors' counsel costs by reducing the hourly rate paid to the attorneys to a level comparable to other counties, and implementing improved financial screening and collection processes. The following are the detailed results of our review.

Background

Under California law, a court may appoint private counsel to represent a child in a custody or visitation proceeding, if the court determines it is in the best interests of the child. The court may also appoint counsel to represent a child if requested by a parent/guardian, the attorney for a parent/guardian, or the child. California Rules of Court state that, if a judge determines that the parents/legal guardians cannot afford to pay, the County will pay for the child's (minor's) counsel. The County's expenditures for minors' counsel in Fiscal Years (FY) 2009-10 and 2010-11 totaled $5.7 million and $3.6 million, respectively.

Scope

We reviewed the Family Law Court's operations to identify changes that may reduce the County's cost for minors' counsel. Our review included interviews with Family Law Court judges and Court management/staff. We also interviewed staff at the Criminal Law Court, the offices of Public Defender (PD) and Alternate Public Defender (APD), surveyed other counties to identify best practices, and reviewed a sample of Family Law Court case files to ensure the ability-to-pay determinations were adequately documented.

COMMENTS AND RECOMMENDATIONS

Recent Decrease in Minors' Counsel Expenditures

In October 2009, the Family Law Court Supervising Judge issued instructions to other judges to limit or reduce minors' counsel expenditures. The instructions limited attorney fees to $125 per hour, with a maximum of $100,000 per attorney per fiscal year; requested each trial court to evaluate the need for minors' counsel in existing cases, and consider limiting the number of hours for which an attorney will be paid, based on the circumstances of each case; and required attorneys to submit claims for payment within 90 days of providing service. Exceptions to these requirements must be approved in writing by the Supervising Judge.

Based on our interviews with Family Law judges and Court staff, and a review of a sample of minors' counsel claims, it appears the judges are complying with the Supervising Judge's instructions. Although we are unable to quantify actual savings, it appears the instructions have reduced minors' counsel expenditures. Minors' counsel expenditures decreased by 37%, from $5.7 million in FY 2009-10, to $3.6 million in FY 2010-11. During the same time period, the number of cases where minors' counsel was appointed decreased by 17%, from 2,259 to 1,884.

Recommendation

None.

Minors' Counsel Rates

Our review of a sample of 17 cases indicates that the average attorney billing rate was approximately $120 per hour, which is below the Supervising Judge's limit of $125. However, we noted that Los Angeles County's average and maximum rates are significantly higher than other counties:

MINORS' COUNSEL RATE COMPARISON – SELECTED COUNTIES

COUNTY	MINORS' COUNSEL RATE	ADDITIONAL RATES
Los Angeles	$125/hr [1]	N/A
Orange	$50/hr (case preparation) $75/hr (court time)	$35/hr (staff time – paralegals, investigators, etc.)
San Diego	$60/hr	N/A
Riverside	$65/hr	$75/hr for more complex cases (e.g., multiple minors involved)
Fresno	$80/hr	N/A

[1] The Los Angeles County Family Court has a limit on the total attorney's fees per case, based on the complexity of the case, in addition to the hourly rate limit. For example, the attorney compensation limit for a "one appearance" case is $1,500. Other counties do not appear to have similar per-case limits.

We noted that the maximum rate for counsel in the Los Angeles County Adoptions Court is $90 per hour, and the CEO's April 15, 2011 report has a proposed rate of $100 per hour for Family Law Panel Attorneys.

Assuming the number of hours billed remains unchanged from FY 2010-11, reducing the hourly rate could result in substantial savings. For example, reducing the minors' counsels' average rate from $120 to $100 per hour would save approximately $600,000 per year, and reducing it to $80 would save approximately $1.2 million per year.

While various factors (e.g., case complexity, types of cases handled in each county, etc.) might explain rate differences among the counties, it may be possible to reduce the Los Angeles County minors' counsel rate to a level comparable to other counties. We recommend that Court management evaluate the feasibility of reducing the minors' counsel hourly rate.

Recommendation

1. **Family Court management evaluate the feasibility of reducing the minors' counsel hourly rate.**

Financial Screening and Cost Recovery

Required Financial Documentation

The Family Law Court is responsible for determining whether any of the parties to a case (i.e., parents, guardians) have the financial ability to pay for some or all minors' counsel costs. The parties in each case must complete, under penalty of perjury, an Income and Expense Declaration (I&E) form (or a Simplified Financial Statement), which includes their income, assets, and expenses; and the other party's (e.g., spouse) estimated income. Court rules indicate that, before the Family Law Court determines the parties' ability to pay, the parties must have a current I&E form on file. The parties must also attach copies of their last two months' paystubs to the form, proof of any other income, and provide their most recent federal tax return to the judge at the hearing. This information, along with any additional financial information disclosed during hearings, is used by the judges to determine the parties' ability to pay.

We reviewed a sample of ten case files, where the County paid for minors' counsel, to determine whether the case files contained the required information (e.g., I&E form, paystubs, etc.). Four (40%) of the ten cases reviewed did not have I&E forms (or the Simplified Financial Statement) for at least one party. Two (50%) of the four cases did not have I&E forms for either party. In addition, we noted that in five (50%) of the ten cases, the required proof of income (e.g., paystubs, etc.) was not submitted by at least one party.

Family Court management indicated that parties who represent themselves sometimes have difficulty completing and filing all the required forms, and judges may obtain the necessary information during hearings. Court management also indicated that the judges may have reviewed the required documents and returned them to the parties, which would only be shown in court transcripts. We did not review any Court transcripts to determine if the judges reviewed the required documents in court.

As discussed below, we noted that the Family Law Court does not verify the accuracy of the financial information submitted by the parties. As a result, it is critical that the Court have copies of the required financial documents to support the Court's determination of the parties' ability to pay for minors' counsel.

Recommendation

2. **Family Law Court management make every effort to ensure that all parties submit the required financial documents (e.g., I&E forms, paystubs, etc.), and that the documents are filed in the case files.**

Financial Screening/Review

As noted earlier, the Family Law Court does not verify the accuracy of financial information submitted by the parties. We reviewed the PD's and the Criminal Law Court's financial screening processes to determine if the Family Law Court could use their processes to improve the Family Court's screening and reduce the County's minors' counsel costs.

When a criminal defendant is unable to pay for their own counsel, the PD, APD, or a panel attorney appointed by the Court will represent them. As noted below, the PD and the Criminal Law Court's financial screening/review processes are more extensive than the Family Law Court. It should be noted that the APD does not perform financial screening because their cases have already been financially screened by the PD.

- **PD's Financial Screening/Review**

  The PD reviews the defendant's financial information before providing services. If any of the financial information appears questionable, the information is forwarded to the PD's investigations unit for further review. PD investigators research the defendant's financial information by reviewing credit history, Department of Motor Vehicles (DMV) records for vehicles owned, conducting real property searches, and contacting the defendant's employer to verify employment, etc. In addition, the PD selects a random sample of cases, and completes a second financial review while the trials are in progress, as an additional check to ensure only financially eligible individuals are represented by the PD. However, the PD could not readily determine how much they collect as a result of their financial screening processes, so it is difficult to assess whether this approach would increase the Family Court's minors' counsel collections.

- **Criminal Law Court's Financial Screening/Review**

  In addition to the financial review completed by the PD, a judge may have a financial evaluator review a defendant's ability to pay at the conclusion of the case. The financial evaluator requests supporting documents, such as paystubs, tax returns, W-2s, etc., reviews the defendant's credit history, and conducts property searches. If a defendant is found to be able to pay, the Court can order the defendant to reimburse the full cost of his/her representation, or establish a payment plan through a collection agency. The Criminal Law Court indicated that approximately 53% of the defendants they reviewed in FY 2009-10, and 50% in FY 10-11 were found to be able to pay at least some of their attorney's fees. However, as noted with the PD, the Criminal Law Court could not tell us how much was actually collected.

We recognize that Family Law cases involve very different issues and a different group of parties than criminal cases, so the collection rate for Family Law Cases may not be comparable to the PD and Criminal Law courts. However, based on the PD and Criminal Court's percentage of cases with some ability to pay, we believe the Family

Law Court should evaluate the feasibility of implementing a more detailed financial review, and/or a post-case review process to identify parties who may be able to pay for their minors' counsel costs.

Recommendations

Family Court management:

3. **Determine the feasibility of verifying the parties' financial information.**

4. **Evaluate the cost-effectiveness of implementing a post-case review process to identify parties who may be able to pay for their minors' counsel costs.**

Cost Recovery/Reimbursement

When a Family Law judge obtains previously undisclosed financial information, or identifies changes in a party's financial condition that impacts their ability to pay, the judge may require the party to pay for future minors' counsel costs and/or reimburse the Court for costs already incurred.

Family Court staff indicated that they track actual amounts collected (approximately $86,000 for FY 2009-10) from the total amounts ordered to be paid. However, system limitations prevent them from tabulating the total amount ordered to be paid (i.e., receivable) or the current balance owed. California Rules of Court indicate the Court must inform the parties that the failure to pay court-ordered counsel costs may result in the attorney or the Court initiating legal action to collect the money. However, since the Court's system cannot identify parties who owe counsel costs, the Court cannot take action to recover the amounts due.

It should be noted that reimbursement orders are made only after the County has already paid for minors' counsel costs. Therefore, it is critical that the Court identify and track the total amount owed to the County, and take steps to collect those fees. Court staff indicated that they are working on ways to track outstanding and past due amounts, and are developing procedures to collect those amounts, including using a collection agency. The Court should implement these monitoring and collection efforts as soon as practical.

Recommendation

5. **Court management develop and implement mechanisms to track receivables and delinquent payments from reimbursement orders and collect minors' counsel costs owed by the parties.**

Review of Report

We met with SC/FL Court management on June 27, 2011, to discuss the results of our review. SC/FL Court management generally agree with the findings and recommendations contained in this report, and will provide a detailed response to your Board within 30 days.

We thank SC/FL Court management and staff for their cooperation and assistance during our review. Please call me if you have any questions, or your staff may contact Robert Campbell at (213) 253-0101.

WLW:JLS:RGC:TK

c: William T Fujioka, Chief Executive Officer
Superior Court
Marjorie Steinberg, Supervising Judge, Family Law
William H. Mitchell, Deputy Executive Officer
Ronald L. Brown, Public Defender
Janice Fukai, Alternate Public Defender
Sachi A. Hamai, Executive Officer, Board of Supervisors
Public Information Office
Audit Committee