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AB-330 Appointed legal counsel in civil cases. (2019-2020)

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Assembly Bill No. 330

CHAPTER 217

An act to amend Sections 68651 and 70626 of the Government Code, relating to courts.

[Approved by Governor September 04, 2019. Filed with Secretary of State September 04, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

AB 330, Gabriel. Appointed legal counsel in civil cases.

Existing law requires legal counsel to be appointed to represent low-income parties in civil matters involving critical issues affecting basic human needs in specified courts. Existing law requires the Judicial Council to develop one or more pilot projects in selected courts to receive grants to, among other things, provide legal counsel to low-income persons who require legal services in civil matters involving housing-related matters, domestic violence and civil harassment restraining orders, probate conservatorships, guardianships of the person, elder abuse, or actions by a parent to obtain sole legal or physical custody of a child. Existing law places the highest priority for funding on proposals to provide counsel in child custody cases, particularly when one side is represented and the other is not, and requires up to 20% of available funds to be directed to projects regarding civil matters involving actions by a parent to obtain sole legal or physical custody of a child.

This bill would instead require the Judicial Council to develop and provide grants for programs in selected courts that provide legal counsel to low-income persons in matters involving child custody, when the parent is seeking to obtain any level of legal or physical custody, and would require that up to 20% of the available funds be directed at civil matters involving an action under the Family Code, as specified. The bill also would place the highest priority for funding on proposals to provide counsel in child custody cases, irrespective of whether one side is represented and the other is not. The bill would also authorize the Judicial Council to accept donations from public or private entities for the purposes of providing grants.

Existing law requires the Judicial Council to conduct a study to demonstrate the effectiveness and continued need for the pilot program and to report its findings and recommendations to the Governor and the Legislature on or before January 31, 2016.

This bill would require the Judicial Council to conduct the study and report its findings and recommendations for the programs every 5 years, commencing June 1, 2020.

Existing law provides for the assessment of fees for various court services, including, among others, issuing an abstract of judgment and issuing an order of sale. Existing law requires an amount equivalent to \$10 of each fee collected to be used by the Judicial Council to implement and administer the civil representation pilot program described above.

This bill would increase the amount assessed for the above services by \$15, and would require those funds to be used by the Judicial Council to implement and administer the civil representation programs, thereby imposing a tax.

This bill would include a change in state statute that would result in a taxpayer paying a higher tax within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of $\frac{2}{3}$ of the membership of each

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares both of the following:

(a) The Sargent Shriver Civil Counsel Act pilot projects were established to provide legal representation and improved court services to low-income parties on critical legal issues affecting basic human needs, such as housing, child custody disputes, domestic violence, or the need for guardianship or conservatorship. Since their formation in 2011, over 27,000 Californians have received legal assistance through the program when facing evictions, child custody disputes, or seeking urgent family guardianships or conservatorships. These pilot programs have increased the likelihood of settlement, improved longevity of court orders, reduced court costs, and improved outcomes for tenants facing eviction, parents seeking legal or physical custody, and families in need of guardianship or conservatorship.

(b) It is the intent of the Legislature to expand the scope of the Sargent Shriver Civil Counsel Act and access to the programs created under that act.

SEC. 2. Section 68651 of the Government Code is amended to read:

68651. (a) Legal counsel shall be appointed to represent low-income parties in civil matters involving critical issues affecting basic human needs in those specified courts selected by the Judicial Council as provided in this section.

(b) (1) Subject to funding specifically provided for this purpose pursuant to subdivision (e) of Section 70626 and donations provided pursuant to subdivision (e), the Judicial Council shall develop one or more programs in selected courts pursuant to a competitive grant process and a request for proposals. Programs authorized under this section shall provide representation of counsel for low-income persons who require legal services in civil matters involving housing-related matters, domestic violence and civil harassment restraining orders, probate conservatorships, guardianships of the person, elder abuse, or actions by a parent to obtain legal or physical custody of a child, as well as providing court procedures, personnel, training, and case management and administration methods that reflect best practices to ensure unrepresented parties in those cases have meaningful access to justice, and to gather information on the outcomes associated with providing these services, to guard against the involuntary waiver of those rights or their disposition by default. These programs should be designed to address the substantial inequities in timely and effective access to justice that often give rise to an undue risk of erroneous decision because of the nature and complexity of the law and the proceeding or disparities between the parties in education, sophistication, language proficiency, legal representation, access to self-help, and alternative dispute resolution services. In order to ensure that the scarce funds available for the programs are used to serve the most critical cases and the parties least able to access the courts without representation, eligibility for representation shall be limited to clients whose household income falls at or below 200 percent of the federal poverty level. Programs shall impose asset limitations consistent with their existing practices in order to ensure optimal use of funds.

(2) (A) In light of the significant percentage of parties who are unrepresented in family law matters, proposals to provide counsel in child custody cases should be considered among the highest priorities for funding.

(B) Up to 20 percent of available funds shall be directed to programs regarding civil matters involving actions under the Family Code, subject to the priority set forth in subparagraph (A). This subparagraph shall not apply to distributions made pursuant to paragraph (3).

(3) Amounts collected pursuant to subdivision (e) of Section 70626 in excess of the total amount transferred to the Trial Court Trust Fund in the 2011–12 fiscal year pursuant to subparagraph (E) of paragraph (1) of subdivision (c) of Section 68085.1 and subdivision (e) of Section 70626 shall be distributed by the Judicial Council without regard to subparagraph (B) of paragraph (2). Those amounts may be distributed by the Judicial Council as set forth in this subdivision. If the funds are to be distributed to new programs, the Judicial Council shall distribute those amounts pursuant to the process set forth in this subdivision.

(4) Each program shall be a partnership between the court, a qualified legal services project, as defined by subdivision (a) of Section 6213 of the Business and Professions Code, that shall serve as the lead agency for case assessment and direction, and other legal services providers in the community who are able to provide the services for the program. The lead legal services agency shall be the central point of contact for receipt of referrals to the program and to make determinations of eligibility based on uniform criteria. The lead legal services agency shall be responsible for providing representation to the clients or referring the matter to one of the organization or individual providers with whom the lead legal services agency contracts to provide the service. Funds received by a qualified legal services project shall not qualify as expenditures for the purposes of the distribution of funds pursuant to Section 6216 of the Business and Professions Code. To the extent practical, the lead legal services agency shall identify and make use of pro bono services in order to maximize available services

efficiently and economically. Recognizing that not all indigent parties can be afforded representation, even when they have meritorious cases, the court partner shall, as a corollary to the services provided by the lead legal services agency, be responsible for providing procedures, personnel, training, and case management and administration practices that reflect best practices to ensure unrepresented parties meaningful access to justice and to guard against the involuntary waiver of rights, as well as to encourage fair and expeditious voluntary dispute resolution, consistent with principles of judicial neutrality.

(5) The participating programs shall be selected by a committee appointed by the Judicial Council with representation from key stakeholder groups, including judicial officers, legal services providers, and others, as appropriate. The committee shall assess the applicants' capacity for success, innovation, and efficiency, including, but not limited to, the likelihood that the program would deliver quality representation in an effective manner that would meet critical needs in the community and address the needs of the court with regard to access to justice and calendar management, and the unique local unmet needs for representation in the community. Programs approved pursuant to this section shall initially be authorized for a three-year period, commencing July 1, 2011, subject to renewal for a period to be determined by the Judicial Council, in consultation with the participating program in light of the program's capacity and success. After the initial three-year period, the Judicial Council shall distribute any future funds available as the result of the termination or nonrenewal of a program pursuant to the process set forth in this subdivision. Programs shall be selected on the basis of whether, in the cases proposed for service, the persons to be assisted are likely to be opposed by a party who is represented by counsel. The Judicial Council shall also consider the following factors in selecting the programs:

(A) The likelihood that representation in the proposed case type tends to affect whether a party prevails or otherwise obtains a significantly more favorable outcome in a matter in which they would otherwise frequently have judgment entered against them or suffer the deprivation of the basic human need at issue.

(B) The likelihood of reducing the risk of erroneous decision.

(C) The nature and severity of potential consequences for the unrepresented party regarding the basic human need at stake if representation is not provided.

(D) Whether the provision of legal services may eliminate or reduce the potential need for, and cost of, public social services regarding the basic human need at stake for the client and others in the client's household.

(E) The unmet need for legal services in the geographic area to be served.

(F) The availability and effectiveness of other types of court services, such as self-help.

(6) Each applicant shall do all of the following:

(A) Identify the nature of the partnership between the court, the lead legal services agency, and the other agencies or other providers that would work within the program.

(B) Describe the referral protocols to be used, the criteria that would be employed in case assessment, why those cases were selected, the manner to address conflicts without violating attorney-client privilege when adverse parties are seeking representation through the program, and the means for serving potential clients who need assistance with English.

(C) Describe how the program would be administered, including how the data collection requirements would be met without causing an undue burden on the courts, clients, or the providers, the particular objectives of the project, strategies to evaluate their success in meeting those objectives, and the means by which the program would serve the particular needs of the community, such as by providing representation to limited-English-speaking clients.

(7) To ensure the most effective use of the funding available, the lead legal services agency shall serve as a hub for all referrals, and the point at which decisions are made about which referrals will be served and by whom. Referrals shall emanate from the court, as well as from the other agencies providing services through the program, and shall be directed to the lead legal services agency for review. That agency, or another agency or attorney in the event of conflict, shall collect the information necessary to assess whether the case should be served. In performing that case assessment, the agency shall determine the relative need for representation of the litigant, including all of the following:

(A) Case complexity.

(B) Whether the other party is represented.

(C) The adversarial nature of the proceeding.

(D) The availability and effectiveness of other types of services, such as self-help, in light of the potential client and the nature of the case.

(E) Language issues.

(F) Disability access issues.

(G) Literacy issues.

(H) The merits of the case.

(I) The nature and severity of potential consequences for the potential client if representation is not provided.

(J) Whether the provision of legal services may eliminate or reduce the need for, and cost of, public social services for the potential client and others in the potential client's household.

(8) If both parties to a dispute are financially eligible for representation, each proposal shall ensure that representation for both sides is evaluated. In these and other cases in which conflict issues arise, the lead legal services agency shall have referral protocols with other agencies and providers, such as a private attorney panel, to address those conflicts.

(9) Each program shall be responsible for keeping records on the referrals accepted and those not accepted for representation, and the reasons for each, in a manner that does not violate privileged communications between the agency and the prospective client. Each program shall be provided with standardized data collection tools and shall be required to track case information for each referral to allow the evaluation to measure the number of cases served, the level of service required, and the outcomes for the clients in each case. In addition to this information on the effect of the representation on the clients, data shall be collected regarding the outcomes for the trial courts.

(10) A local advisory committee shall be formed for each program, to include representatives of the bench and court administration, the lead legal services agency, and the other agencies or providers that are part of the local program team. The role of the advisory committee is to facilitate the administration of the local program and to ensure that the program is fulfilling its objectives. In addition, the committee shall resolve any issues that arise during the course of the program, including issues concerning case eligibility, and recommend changes in program administration in response to implementation challenges. The committee shall meet at least monthly for the first six months of the program, and no less than quarterly for the duration of the funding period. Each authorized program shall catalog changes to the program made during the three-year period based on its experiences with best practices in serving the eligible population.

(c) The Judicial Council shall conduct a study to demonstrate the effectiveness and continued need for the programs established pursuant to this section and shall report its findings and recommendations to the Governor and the Legislature every five years, commencing June 1, 2020. The study shall report on the percentage of funding by case type and shall include data on the impact of counsel on equal access to justice and the effect on court administration and efficiency, and enhanced coordination between courts and other government service providers and community resources. This report shall describe the benefits of providing representation to those who were previously not represented, both for the clients and the courts, as well as strategies and recommendations for maximizing the benefit of that representation in the future. The report shall describe and include data, if available, on the impact of the programs on families and children. The report also shall include an assessment of the continuing unmet needs and, if available, data regarding those unmet needs.

(d) This section does not negate, alter, or limit any right to counsel in a criminal or civil action or proceeding otherwise provided by state or federal law.

(e) The Judicial Council may accept donations from public or private entities for the purpose of providing grants pursuant to this section.

SEC. 3. Section 70626 of the Government Code is amended to read:

70626. (a) The fee for each of the following services is forty dollars (\$40). Subject to subdivision (e), amounts collected shall be distributed to the Trial Court Trust Fund under Section 68085.1.

(1) Issuing a writ of attachment, a writ of mandate, a writ of execution, a writ of sale, a writ of possession, a writ of prohibition, or any other writ for the enforcement of any order or judgment.

(2) Issuing an abstract of judgment.

(3) Issuing a certificate of satisfaction of judgment under Section 724.100 of the Code of Civil Procedure.

(4) Certifying a copy of any paper, record, or proceeding on file in the office of the clerk of any court.

(5) Taking an affidavit, except in criminal cases or adoption proceedings.

(6) Acknowledgment of any deed or other instrument, including the certificate.

(7) Recording or registering a license or certificate, or issuing a certificate in connection with a license, required by law, for which a charge is not otherwise prescribed.

(8) Issuing a certificate for which the fee is not otherwise fixed.

(b) The fee for each of the following services is forty-five dollars (\$45). Subject to subdivision (e), amounts collected shall be distributed to the Trial Court Trust Fund under Section 68085.1.

(1) Issuing an order of sale.

(2) Receiving and filing an abstract of judgment rendered by a judge of another court and subsequent services based on it, unless the abstract of judgment is filed under Section 704.750 or 708.160 of the Code of Civil Procedure.

(3) Filing a confession of judgment under Section 1134 of the Code of Civil Procedure.

(4) Filing an application for renewal of judgment under Section 683.150 of the Code of Civil Procedure.

(5) Issuing a commission to take a deposition in another state or place under Section 2026.010 of the Code of Civil Procedure, or issuing a subpoena under Section 2029.300 to take a deposition in this state for purposes of a proceeding pending in another jurisdiction.

(6) Filing and entering an award under the Workers' Compensation Law (Division 4 (commencing with Section 3200) of the Labor Code).

(7) Filing an affidavit of publication of notice of dissolution of partnership.

(8) Filing an appeal of a determination whether a dog is potentially dangerous or vicious under Section 31622 of the Food and Agricultural Code.

(9) Filing an affidavit under Section 13200 of the Probate Code, together with the issuance of one certified copy of the affidavit under Section 13202 of the Probate Code.

(10) Filing and indexing all papers for which a charge is not elsewhere provided, other than papers filed in actions or special proceedings, official bonds, or certificates of appointment.

(c) The fee for filing a first petition under Section 2029.600 or 2029.620 of the Code of Civil Procedure, if the petitioner is not a party to the out-of-state case, is eighty dollars (\$80). Amounts collected shall be distributed to the Trial Court Trust Fund pursuant to Section 68085.1.

(d) The fee for delivering a will to the clerk of the superior court in which the estate of a decedent may be administered, as required by Section 8200 of the Probate Code, is fifty dollars (\$50).

(e) An amount equivalent to twenty-five dollars (\$25) of each fee collected pursuant to subdivisions (a) and (b) shall be used by the Judicial Council for the expenses of the Judicial Council in implementing and administering the civil representation program under Section 68651.