



Judicial Council of California

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PATRICIA GUERRERO

*Chief Justice of California
Chair of the Judicial Council*

SHELLEY CURRAN

Administrative Director

June 25, 2024

Hon. Marie Alvarado-Gil
Chair, Senate Human Services Committee
1020 N Street, Room 521
Sacramento, California 95814

Subject: Assembly Bill 3049 (Bryan), as amended April 17, 2024—Oppose unless amended

Dear Senator Alvarado-Gil:

The Judicial Council, regretfully, is opposed to Assembly Bill 3049 as it was amended on April 17, 2024, unless it is amended to provide a focused approach to ensuring effective representation of children and youth in dependency proceedings. AB 3049 amends Welfare and Institutions Code section 349 which entitles a child who is the subject of a juvenile dependency proceeding to notice of the hearing and the right to be present and participate in the proceeding to expressly include nonminor dependents (NMDs) in the statute and to require the court to ask the child or nonminor if they have had an opportunity to consult with counsel. The bill was amended on June 24, 2024, and these amendments address some of the concerns that we have raised with the bill, but we are still reviewing the impact of the required inquiry that remains in the bill with the juvenile courts to determine whether it is an appropriate intervention for the court in the attorney client relationship.

We continue to believe that AB 3049 is based on a flawed premise that court appointed counsel for children and youth in California are routinely failing to represent the interests of their clients. A group of attorneys who represent about 60 percent of foster children in California issued an [open letter](#) contesting the methodology and conclusions of the report that was the genesis of AB 3049. They characterize the report's findings as follows: "their sweeping claim about the lack of contact between children's attorneys and their clients is based on seriously flawed research and erroneous data. The conclusions drawn are irresponsible, misleading, and potentially damaging to the overall goals of high-quality representation, accountability, and adequate funding."

The council concurs with these attorneys that it is not accurate to assert that there is a systemic problem that requires a solution that would impact every juvenile dependency proceeding. Children and youth are represented because their interests are paramount, but it is not consistent with our model of representation for the court to be in the position of interrogating the child or youth without any indication that there is a problem. Judges engage with children in these cases

Hon. Marie Alvarado-Gil

June 25, 2024

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routinely, but some children and youth are not comfortable being put on the spot by a judicial officer. California has provided representation for youth to ensure that their voices are heard regardless of their level of comfort with speaking directly to a judge.

More appropriate remedies for inadequate representation of children and nonminors in dependency cases already exist. The Judicial Council has adopted a rule of court that sets forth requirements for court appointed counsel in dependency cases. California Rule of Court, [rule 5.660\(a\)\(2\)](#) specifically requires that each court have a local rule that provides for “reviewing and resolving complaints by parties regarding the performance of attorneys.” The Advokids report suggests that the perspective of the child’s current caregiver is not available to the court because counsel for the child is not contacting the caregiver, but caregivers are entitled to notice of all proceedings, and have the right to attend and be heard. In addition, they can submit Judicial Council form JV-290, *Caregiver Information Form*, and provide information to the court which could include their concerns about the child’s representation. These existing avenues are the appropriate mechanisms to ensure that caregiver concerns can be heard by the court.

AB 3049 continues to require the court to ask any child present in court if they have had an opportunity to consult with their counsel, but we think the more appropriate approach is to require the counsel for the child to be responsible for ensuring that there is consultation, and to request a continuance or delay in the proceedings in those cases in which they need time to consult with their clients. Such an approach would make the obligations of court appointed counsel clear and avoid the court interfering in the attorney-client relationship between the child or youth and their attorney.

For these reasons, the Judicial Council is opposed to AB 3049 as amended on April 17, 2024, unless it is amended to provide a focused solution to the problem it is seeking to target as well as concerns about the inquiries that remain in the bill as amended on June 24, 2024.

Should you have any questions or require additional information, please contact Tracy Kenny at 916-323-3121.

Sincerely,



Cory T. Jaspersen
Director
Governmental Affairs

CTJ/TK/lmm

cc: Members, Senate Human Services Committee
Hon. Isaac Bryan, Member of the Assembly, 55th District
Ms. Heather Hopkins, Staff Director, Senate Human Services Committee
Mr. Joe Parra, Consultant, Senate Republican Office of Policy and Budget
Ms. Jith Meganathan, Deputy Legislative Affairs Secretary, Office of the Governor
Ms. Shelley Curran, Administrative Director, Judicial Council of California



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PATRICIA GUERRERO
Chief Justice of California
Chair of the Judicial Council

SHELLEY CURRAN
Administrative Director

June 6, 2024

Hon. Thomas J. Umberg
Chair, Senate Judiciary Committee
1021 N Street, Room 3240
Sacramento, California 95814

Subject: Assembly Bill 3049 (Bryan), as amended April 17, 2024—Oppose unless amended.

Dear Senator Umberg:

The Judicial Council, regrettably, is opposed to Assembly Bill 3049 unless it is amended to provide a focused approach to ensuring effective representation of children and youth in dependency proceedings. AB 3049 amends Welfare and Institutions Code section 349 which entitles a child who is the subject of a juvenile dependency proceeding to notice of the hearing and the right to be present and participate in the proceeding to expressly include nonminor dependents (NMDs) in the statute and to require a series of inquiries of the child or nonminor by the court. These inquiries place the court in an inappropriate role with regard to represented parties and may result in unnecessary continuances and delays to address an issue of limited scope.

AB 3049 is based on a flawed premise that court appointed counsel for children and youth in California are routinely failing to represent the interests of their clients. The sponsor of AB 3049, Advokids, conducted a nonrandom survey of caregivers and some former foster youth on this topic and issued a [report](#) that alleges that most children in foster care have had no in-person contact with their attorneys based on the survey results. A group of attorneys who represent about 60 percent of foster children in California issued an [open letter](#) contesting the methodology and conclusions of the report. They characterize the report's findings as follows: "their sweeping claim about the lack of contact between children's attorneys and their clients is based on seriously flawed research and erroneous data. The conclusions drawn are irresponsible, misleading, and potentially damaging to the overall goals of high-quality representation, accountability, and adequate funding."

The council concurs with these attorneys that it is not accurate to assert that there is a systemic problem that requires a solution that would impact every juvenile dependency proceeding. Children and youth are represented because their interests are paramount, but it is not consistent with our model of representation for the court to be in the position of interrogating the child or youth without any indication that there is a

Hon. Thomas J. Umberg

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problem. Judges engage with children in these cases routinely, but some children and youth are not comfortable being put on the spot by a judicial officer. California has provided representation for youth to ensure that their voices are heard regardless of their level of comfort with speaking directly to a judge.

More appropriate remedies for inadequate representation of children and nonminors in dependency cases already exist. The Judicial Council has adopted a rule of court that sets forth requirements for court appointed counsel in dependency cases. California Rule of Court, [rule 5.660\(a\)\(2\)](#) specifically requires that each court have a local rule that provides for “reviewing and resolving complaints by parties regarding the performance of attorneys.” The Advokids report suggests that the perspective of the child’s current caregiver is not available to the court because counsel for the child is not contacting the caregiver, but caregivers are entitled to notice of all proceedings, and have the right to attend and be heard. In addition, they can submit Judicial Council form JV-290, *Caregiver Information Form*, and provide information to the court which could include their concerns about the child’s representation. These existing avenues are the appropriate mechanisms to ensure that caregiver concerns can be heard by the court. If AB 3049 were to be enacted, it would place the court in the role of second guessing the work of court appointed attorneys for children and NMDs and undermine the independence of the attorneys in these proceedings.

If the Legislature wants to ensure that counsel for children have had an opportunity to consult with their clients prior to a hearing, then section 349 could direct counsel for the child to request these continuances or delays in the proceedings in those cases in which they need time to consult with their clients and require the court to allow for this unless doing so would not be in the best interests of the client. Such an approach would make the obligations of court appointed counsel clear and avoid the court interfering in the attorney-client relationship between the child or youth and their attorney.

For these reasons, the Judicial Council is opposed to AB 3049 unless it is amended to provide a focused solution to the problem it is seeking to target.

Should you have any questions or require additional information, please contact Tracy Kenny at 916-323-3121.

Sincerely,



Cory T. Jaspersen
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cc: Members, Senate Judiciary Committee
Hon. Isaac Bryan, Member of the Assembly, 55th District
Ms. Allison Meredith, Consultant, Senate Judiciary Committee
Mr. Morgan Branch Consultant, Senate Republican Office of Policy and Budget
Ms. Jith Meganathan, Legislative Affairs Secretary, Office of the Governor
Ms. Shelley Curran, Administrative Director, Judicial Council of California