

# COUNTY OF EL DORADO

## HEALTH & HUMAN SERVICES

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### To The Honorable Board of Supervisors:

The following is an update on the status of Senior Legal Services:

On June 20, 2017, one of the revisions approved by the Board of Supervisors during the Fiscal Year 2017-18 Recommended Budget, relative to Senior Legal Services was as follows:

**17-0406 (2a) (iii)** - direct the Health and Human Services Agency, in coordination with the Commission on Aging and other interested and appropriate stakeholders, to identify a service delivery model that provides legal services to seniors in need, relying on Older Americans Act funding and donations, with minimal to no impact on the County General Fund, and which mitigates the existing risk and liability to the County;

A Senior Legal Services Ad Hoc Committee was formed and the attached Charter was created and approved on July 27, 2017.

Ad Hoc Committee Members were comprised of the following:

Chair: Patricia Charles-Heathers, Director, Health and Human Services Agency  
2 County Board of Supervisors – Supervisor Brian Veerkamp, Supervisor Shiva Frentzen  
2 Chief Administrative Office Staff - Mollie Purcell, Shawne Corley  
2 Commission on Aging Members – Steve Shervey, Raymond Wyatt  
1 Community Member – Diana Steele  
1 County Counsel Office Staff – Abigail Roseman  
2 Friends of Seniors Members – Kathi Lishman, George Appelbaum  
1 Health and Human Services Staff – Michelle Hunter

Meetings occurred on: 7/26/2017, 8/23/2017, 10/25/2017, \*11/21/2017, \*1/24/2018, \*2/28/2018 & \*3/28/2018 (\*= 2 hour meetings)

On October 24, 2017 an update was provided to the Board of Supervisors.

## **A. History**

The Senior Legal Program began on March 1, 1976. The first attorney was George Appelbaum, a two-time former Peace Corps Volunteer and recent graduate of the law school at University of California, Berkeley.

The attorney's actual employer was Legal Services of Northern California, although the attorney was also responsible to the local Supervisor, Robert Amburn, Head of the El Dorado County Community Action Council, the Area Four Agency on Aging (which was supplying the grant funds) and the El Dorado County Board of Supervisors. The Community Action Council was an outgrowth of the Federal Office of Economic Opportunity, created by Lyndon Johnson's "War on Poverty."

The legal program was located in the Community Action Council office on Pacific Street in Placerville. As was required to provide services to Placer County as well as El Dorado County, Mr. Appelbaum spent alternate weeks in Placerville and Auburn. He also visited South Lake Tahoe one day every two weeks. He was supplied with a manual typewriter and carbon paper. There was no copy machine. He was paid \$600 per month.

After approximately two years, the rules changed so that a County no longer had to be part of a multi-county Area on Aging. At that time, El Dorado County withdrew from Area 4 and became a Single-County Designated Service Area. The attorney was offered the choice of continuing to be employed by Legal Services or becoming an employee of the Community Action Council, a quasi-county agency. He chose the latter alternative. At that time, he was also allowed to hire 1 Secretary and 3 Paralegals. The Paralegals all lost their jobs when Proposition 13 passed.

Around 1982, the County Auditor recommended to the Board that all employees of the Community Action Council be made bona fide County employees. The Board accepted this recommendation. It was because of this action that the legal program became a part of County Government.

## B. Regulations

Senior Legal Services is funded by the Older Americans Act (OAA) of 1965. The California Department of Aging (CDA) is the State oversight agency and provides the Federal funds to the Area Agencies on Aging. El Dorado County (EDC) is an Area Agency on Aging (AAA) and has been established as Planning and Service Area (PSA) 29. There are 33 AAAs within California.

### Priority Services

The OAA defines senior services that are required to be provided by the AAA to all residents age 60 and older. These supportive services are identified as "Priority Services." The Priority Services are those services associated with:

- access to services
- in-home services, and
- legal assistance

The OAA requires that an adequate proportion of Title IIIB federal funding be allocated to priority services. In EDC, 30% of Title IIIB funding is allocated to Senior Legal Services. This percentage was determined based on the needs of the community and are discussed at the public hearings which are held for the four-year Area Plan for Senior Services for EDC; this percentage has not been changed over the years. This plan is approved by the Board of Supervisors.

Legal Assistance required activities include: legal advice, representation, assistance to the ombudsman program and involvement in the private bar. Legal Assistance includes legal advice, counseling and presentation by an attorney or legal staff. The purpose of the Legal Services Program is to deliver high quality, high-impact, cost effective services designed to address the unmet legal needs of vulnerable older people.

### Required Areas of Senior Legal Assistance

In accordance with Title 22 CCR Article 4, Section 7575, the Senior Legal Services Program provides legal assistance for the following areas:

▪ Consumer Finance	▪ Housing
▪ Employment	▪ Income Maintenance
▪ Family	▪ Individuals Rights
▪ Health/Community Based Care	▪ Wills/Trust, Advanced Health Care Directives, Powers Of Attorney, Other Miscellaneous

In addition to providing legal assistance to older adults, the Senior Legal Program is also required to conduct outreach to community members and organizations. This outreach is the process of informing potential clients and educating the public regarding legal information, legal issues, available services, and how to access those services. As stated in the California Statewide Guidelines for Legal Assistance, outreach is the key to implementing the targeting and priority setting goals in the OAA. This outreach provides an essential system to inform elders, other service providers and concerned parties of the legal rights of older people in the community.

Seniors cannot be denied services based on income. The OAA and the Welfare and Institutions Code (WIC) prohibit means testing. The regulations also prohibit AAA programs such as Senior Legal Services from charging a fee to clients. Senior Legal Services may ask if a client would like to donate to the program, however, the program staff cannot coerce a donation or deny services to a client who does not donate. Services must be provided to all seniors who seek legal assistance within the parameter of legal services provided.

### **Changes to Funding**

As stated in the Standard Agreement with CDA, Article II A. ...Performance shall not be unilaterally reduced or otherwise changed without prior consultation with, and written approval from CDA.

Changes to the established percentage spent in each priority service require approval from CDA. See Title 22 CCR 7312(d)(2). In order to reduce the percentages, the following must be completed:

#### Minor Changes (10%)

- A service unit reduction of greater than ten percent (10%) requires written approval from CDA.

#### Major Changes (20%)

- A budget revision must be submitted to CDA for approval
- A public hearing must be held to let the community know about the change in funding level and reasoning behind it
- The Area Plan must be revised and re-submitted to CDA for approval
- A service unit reduction of greater than twenty percent (20%) is a major change that effects the Area Plan goals and objectives and requires an Area Plan Amendment [22 CCR 7306(a)]. The Area Plan amendments shall be processed following the procedures identified in Section 7304(c) through (e) which include holding public hearings and resubmission to CDA for approval.

### **Change to Private Provider of Legal Services**

A justification of the change to the program would need to be submitted to CDA at least 180 days prior to the possible transition. The Contractor shall submit a Transition Plan in accordance with Exhibit E of the agreement between El Dorado County and CDA.

If the AAA is not the direct service provider, the AAA is required to release a Request for Proposal (RFP) to subcontract for the service with a provider. A RFP would need to be developed, released, scored, and a new vendor selected. This process could take 6 months to a year. RFPs must meet the requirements in the Older Americans Act, Code of Federal Regulations, Older Californians Act, California Code of Regulations and the CDA Standard Agreement. RFP applicants must be able to demonstrate their experience and capacity to meet the requirements of federal and state laws and regulations, address local concerns, and fulfill duties as outlined in the California Statewide guidelines for Legal Assistance.

A transition plan would need to be developed as written in the standard agreement (contract) between EDC and CDA, and submitted to CDA within 15 days of the notice to terminate Senior Legal Services. The Standard Agreement (contract) between El Dorado County and the California Department of Aging Exhibit E Additional Provisions, Article IV Transition Plan states

A. "...The transition plan must be approved by the State and shall at a minimum include the following:

1. A description of how clients will be notified about the change in their service provider.
2. A plan to communicate with other organizations that can assist in locating alternative services.
3. A plan to inform community referral sources of the pending termination of services and what alternatives, if any exist for future referrals.
4. A plan to evaluate clients in order to assure appropriate placement.
5. A plan to transfer any confidential medical and client records to a new contractor.
6. A plan to dispose of confidential records in accordance with applicable laws and regulations.
7. A plan for adequate staff to provide continued care through the term of the Contract. "

### **Change to Different County Agency Provider**

If there is a change in Senior Legal Provider from the AAA to another County Agency, a Memorandum of Understanding between the AAA and other County Agency is recommended. A RFP is not required because the change is within the County government structure. The AAA is still responsible for the program and required to monitor the program and submit the required quarterly CDA reports. The Area Plan would need to be updated to reflect the change and also include the rationale for the change and any expected impact to seniors in the AAA.

### C. Legal Services

The California Statewide Guidelines for Legal Assistance were developed to ensure that SLS is compliant with the OAA and consistent with the Older Californians Act while focusing the delivery of legal assistance to at risk older individuals in California.

SLS is authorized by the OAA to provide legal services to seniors in our community. SLS assists with a wide variety of legal issues, however the primary focus of SLS is to prevent and protect seniors from elder abuse.

The direct legal services provided by Senior Legal Services, include:

- over 450 phone calls per month
- approx. 150-200 face-to-face client appointments per month
- prepares over 100 documents per month for clients

The total unduplicated cases during the 2017 calendar year include advice only consultations, consultations with limited additional services and consultations with full representation of the clients. The vast majority of the services provided by Senior Legal Services are limited additional services. Which means the client was seen for one or more consultations and additional services were provided, such as preparing documents, pleadings and correspondences on the clients' behalf. Brief in person or other communications with individuals occur but are not generally counted in the state report and therefore do not appear in the numbers below.

The services provided by SLS include:

Area	Topics	Total Unduplicated Cases During 2017 Calendar Year
<b>Consumer Finance</b>		<b>387</b>
	Bankruptcy Contracts/Warranties Other Consumer/Finance such as Consumer Fraud, Contracts and Loans, Debt Collection and Defense	
<b>Employment</b>		<b>5</b>
	Discrimination Other Employment	
<b>Family</b>		<b>59</b>
	Divorce/Custody/Visitation/Grand parent Rights Conservatorship Other Family such as Adoptions and general consultations	

<b>Health/Community Based Care</b>		<b>51</b>
	Medi-Cal/Medicaid Medicare Other Health/Community Based Care such as long term care planning	
<b>Housing</b>		<b>293</b>
	Landlord-Tenant Real Property Other Housing such as homeownership and evictions	
<b>Income Maintenance</b>		<b>24</b>
	Social Security Supplemental Security Income (SSI) Pensions/Retiree Benefits Other Income Maintenance	
<b>Individual Rights</b>		<b>81</b>
	Immigration/Naturalization Elder Abuse/Neglect/Exploitation Other Individual Rights such as Restraining Orders, Fraud and Abuse by Caretakers and Others, Domestic Violence	
<b>Miscellaneous</b>		
<b><i>Note: These cases also fall under the area of Elder Abuse Prevention.</i></b>	Estate Planning/Wills/Trusts Advanced Health Care Directives (AHCD) Financial Powers of Attorney Other Miscellaneous	<b>1,345</b> <b>973</b> <b>990</b> <b>77</b>

#### **D. Budget**

HHSA Fiscal Staff provided the Ad Hoc Committee with the FY 17/18 Senior Legal Services program budget. Actual revenue and expenditures were compared to the budgeted appropriations. There were discussions regarding how the County establishes the budget including reviewing the appropriations in various County expenditure line items. The Committee discussed the possibility of ways to decrease appropriations and how the program could reduce impact on the General Fund such as using volunteers or interns. The Committee also discussed how the Title III B funds are allocated to various HHSA programs and the impact to the program if the funds were allocated differently in future years. The Committee spent some time discussing administration and overhead costs and the methodology on how the costs are allocated to the HHSA programs.

Administration costs were also discussed in order to quantify the net county cost if the program was moved to another County department. This topic of conversation prompted discussion regarding which County department is responsible for financial and programmatic oversight. After the discussion, it was decided that there was not sufficient savings to justify moving the program to another department. Additionally, the program is part of the senior safety net programs that are part of the HHSA System of Care.



### E. Statewide Review

El Dorado County is the only County that provides “in house” Senior Legal Services funded by the State, by the County and by private donations. The services are as comprehensive as any in the State, and are provided in a highly cost-efficient manner as measured by cost per client.

1. Other California rural Counties rely on private non-profit agencies in larger, more affluent, metropolitan Counties to provide Senior Legal Services.
2. In general, other rural Counties rely on attorneys traveling to these locals from large county “headquarters” to meet with clients on a limited basis.
3. Services vary from “advice only” (all) to include “phone calls” , “document preparation” and “court representation” (rare).
4. Non-profit Directors State-wide report a significant proportion of time and money spent on fund-raising activities. Other sources of funding included IOLTA (state bar), Title IIIB, local grants and endowments, contract work, and awards from legal cases.

Counties *	Provider	Unduplicated ** Annual No. Srs. Served	Total annual budget**/Cost per senior client	Comments
<b>Fresno</b> Merced Visalia Kings Madera Tulare	Central CA Legal Services	172 (2014)	\$6 million/Not Available	Serves all seniors and low income. Paid staff, Attys travel to rural counties periodically. Specialty programs.
<b>Santa Cruz</b> Benito	Sr. Citizen Legal	600-700	\$400,000/\$615	Services similar to EDC
<b>Tuolumne</b> Alpine Amador Calaveras Mariposa	Catholic Charities	150	\$11,000/\$73	All volunteer Advice Only Seniors must drive to Tuolumne
<b>Sacramento,</b> Butte, Plumas, Glenn, Tehama, Trinity, Colusa, Placer, Amador, Calaveras, El Dorado (low- income non- seniors) Sierra, Lassen, Modoc, Shasta, Siskiyou, Mendocino, Lake, Yolo , Nevada	Legal Services of N. CA	1,709 (2016)	\$10.6mil(2016) /NA	8 satellite offices Serve seniors and low income Paid staff Attys travel to rural counties periodically Limited services Specialty programs

<b>Monterey</b>	Legal Services for Seniors	2,200-2,500	\$749,000/\$312	Similar services to EDC
<b>San Diego</b> Imperial	Elder Law and Advocacy	331 in Imperial San Diego N/A	\$1.8 million/ N/A	Attorneys travel to 32 sites, limited services in rural areas, virtual services
<b>Marin</b>	Legal Aid of Marin	200-300	\$1 million/ NA	Two paid attorneys serve all seniors and low income clients, travel to two senior centers in County, usually advice only, some doc prep
<b>El Dorado</b>	Sr. Legal Services	1,781	\$482,800/\$271	1.5 paid attorneys, main office plus travel around county, advice, documents, court rep., education, seniors only

\*Bold = provider's main local

\*\* Unless otherwise stated, numbers are as reported by Directors in phone interviews conducted at end of 2017, for the most recent 12 month period, some fiscal, some calendar.

Santa Cruz and Monterey County are most similar to El Dorado County

#### **F. Within County Models for Service Delivery**

Ad Hoc Committee members reviewed and discussed a Public Defender, County Counsel and District Attorney Model. It was determined that the administration overhead costs would not change if the Public Defender or District Attorney maintained the services, since HHSAs would still need to monitor and prepare the State reports. Since County Counsel solely represents the County, a conflict of interest would exist when serving clients who may have grievances against the County.

## **G. County Counsel**

The following are a list of risks that County Counsel believes present potential liability for the County:

1. The Senior Legal Attorney represents private citizens, and must at all peril to himself/herself, protect the confidential communication with that individual client. The County, as employer of Senior Legal attorneys, is responsible for the acts and omissions of the Senior Legal attorneys, but cannot legally review files or otherwise oversee the performance of the Senior Legal attorneys because of the confidentiality of the attorney-client files and records. Therefore, there is no oversight of the legal services provided by Senior Legal notwithstanding the fact that the County is liable for those activities.
2. Senior Legal represents private citizens. But because of its role as a County agency and because of its use of County letterhead, staff, and facilities, there is a strong likelihood of the perception that the Senior Legal attorneys are speaking and acting on behalf of the County with the full authority of the County behind them, as evidenced by anecdotal information received by the County. This can result in actual or perceived abuses of County power.
3. Among the duties of Senior Legal attorneys is to inform seniors of benefit entitlements and related programs and assist them in obtaining such benefits. To the extent that the benefits are administered by the County, there is a conflict of interest in Senior Legal attorneys being employed by the County and acting in an adversarial role to the County. If on the other hand, Senior Legal attorneys decline to represent seniors in such matters, Senior Legal is not fulfilling its prescribed duties.

The only way to eliminate the above-described risks is for Senior Legal to be separate and apart from El Dorado County. El Dorado County is the sole County in the State of California that runs a Senior Legal Program as part of the County and that has assumed these risks. There have been suggestions of possible mitigation of some of these risks, as follows:

1. It has been suggested that Senior Legal attorneys request that each of their clients execute Authorization of Disclosure to a person and allow some representative of the County to oversee the work of Senior Legal. This is not an advisable solution for numerous reasons. First, a client may refuse to waive the attorney/client privilege or may, after signing a Release of Information later revoke that Release. Second, although the duty of the Senior Legal attorney is to the client, that attorney is appearing to serve a different master – the County – when encouraging the client to waive attorney/client privilege. Third, there is no appropriate representative of the County to review the work of Senior Legal. For all of the reasons that it would be a conflict of interest for Senior Legal to be under the auspices of County Counsel, District Attorney, or Public Defender, it would be a conflict of interest for any attorney in those departments to review the work of Senior Legal. A non-attorney would not have the expertise to judge the work of Senior Legal or set parameters for that work.

2. Senior Legal has already modified the letterhead it uses, to indicate that Senior Legal represents individuals. But this is not sufficient to prevent the perception that Senior Legal is working on behalf of the County.
3. There is no mitigation available that would allow Senior Legal to fulfill all of its prescribed duties while avoiding all conflicts of interest. The County could change the Class Specifications of Senior Legal attorneys to delete the duty to inform seniors regarding benefits and assist them in obtaining benefits. But this would negatively impact the services available to seniors.

### **Senior Legal Services Proposed Solutions to the Risks Identified By County Counsel**

In response to these concerns, it should first be noted that Senior Legal Services has been run by the County since approximately 1976 and no lawsuit has ever been filed against the County based on the actions of SLS.

#### **1. SLS Attorneys Cannot be Monitored by a Non-Attorney**

- County Counsel is monitored by the Board of Supervisors, who are non-attorneys; the Public Defender is monitored by non-attorneys as is the District Attorney who is elected by non-attorneys. Rule of Professional Code Section 1-600 states in pertinent part that – ***“A member shall not participate in a nongovernmental program, activity, or organization furnishing, recommending, or paying for legal services, which allows any third person or organization to interfere with the member’s independence of professional judgment, or with the client-lawyer relationship,*** [or allows unlicensed persons to practice law, or allows any third person or organization to receive directly or indirectly any part of the consideration paid to the member except as permitted by these rules, or otherwise violates the State Bar Act or these rules.]”
- This rule prevents a third person from interfering with an attorney’s independence of professional judgment – it does not specify if the third person is an attorney or not. Furthermore, in the discussion part of this rule it specifically states that “Rule 1-600 is not intended to apply to the activities of a **public agency** responsible for providing legal services to a government or **to the public.**” [Emphasis added]

#### **2. Lack of Oversight**

- County Counsel is concerned that because of the attorney-client privilege there is no oversight into the client files to ensure the quality of services being provided. The oversight begins by the County in their hiring process by ensuring that competent ethical attorneys are hired to provide services to the seniors. If there is a genuine concern regarding the need for the County to view Senior Legal Services client files, it would be possible to have all clients sign an authorization which would allow a designated authority, who is an attorney, to review the files.

#### **3. Conflict of Interest**

- County Counsel is concerned that Senior Legal Services will take cases which are a conflict of interest if the opposing party is the County, for example in assisting clients with obtaining Medi-Cal or other benefits. Senior Legal Services does not represent clients who are adverse to the County.

#### **4. Prior Complaints**

- County Counsel has raised two specific previous complaints: 1) A demand letter was sent out by Senior Legal Services to a County resident regarding a boundary line dispute. The issue involved was that, due to the letterhead used, the resident who received the letter believed the County was demanding the removal of the fence. This situation has since been addressed by including language on Senior Legal Services letters that Senior Legal is representing an individual and information contained in letter does not reflect the position of the county. 2) Complaint from a non-client abuser who complained about a referral that was made to an outside attorney. Although no wrongdoing or unethical behavior was found, Senior Legal Services created a Referral Policy in order to avoid future concerns.

## **H. Options**

The following concepts were discussed by the Senior Legal Services Ad Hoc Committee, but because this is an interim report, are not being presented as recommendations:

1. Consider reducing the number of allocated positions based on attrition, and if opportunity arises, explore alternative staffing options, such as use of Volunteers or Students, in order to ensure minimal impact to service levels.
2. In Fiscal Year 2018/19, create a Task Force with the specific purpose of identifying alternative funding sources for Senior Legal Services.
3. Explore the possibility of a special tax that would provide on-going funding for services to older adults.

## **I. Recommendation**

The following recommendation has been made by the Senior Legal Services Ad Hoc Committee:

1. Maintain the current structure of Senior Legal Services since it has been determined to be the most cost effective, efficient and highest of quality service, as a program within the Health and Human Services Agency, with a comparable level of General Fund support for Fiscal Year 2018/19 and continue to look into other possibilities for sustainable funding.