



Judicial Council of California

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REPORT TO THE JUDICIAL COUNCIL

Item No. 23-169

For business meeting on September 19, 2023

Title

Probate Conservatorship and Guardianship:
Eligibility for County Payment of Cost of
Appointed Counsel

Agenda Item Type

Action Required

Effective Date

January 1, 2024

Rules, Forms, Standards, or Statutes Affected

Amend Cal. Rules of Court, Appendix E

Date of Report

July 17, 2023

Recommended by

Probate and Mental Health Advisory
Committee
Hon. Jayne Chong-Soon Lee, Chair

Contact

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Executive Summary

The Probate and Mental Health Advisory Committee recommends amending the *Guidelines for Determining Financial Eligibility for County Payment of the Cost of Counsel Appointed by the Court in Proceedings Under the Guardianship-Conservatorship Law (Guidelines)*, Appendix E of the California Rules of Court, to update the criteria for establishing presumptive eligibility for county payment of the cost of court-appointed counsel and to make a minor technical revision. The recommendation maintains the Judicial Council's policy of basing the criteria for presumptive eligibility for county payment on the conditions for granting an initial court fee waiver under Government Code section 68632(a)–(c) by adjusting the criteria in the *Guidelines* to conform to recent amendments to that statute.

Recommendation

The Probate and Mental Health Advisory Committee recommends that the Judicial Council, effective January 1, 2024, amend the California Rules of Court, Appendix E, as follows:

1. Amend paragraph 4A to include two public benefit programs recently added to Government Code section 68632(a); and

2. Amend paragraph 4B to increase the maximum income threshold from 125 percent of the federal poverty guidelines to 200 percent to conform to the recent amendment of Government Code section 68632(b).

The recommended amendments to Appendix E are attached at page 5.

Relevant Previous Council Action

In 2012, the Judicial Council adopted the *Guidelines* in Appendix E to the California Rules of Court to fulfill the mandate in Probate Code section 1470(c)(3) to “adopt guidelines to assist in determining financial eligibility for county payment of counsel appointed by the court pursuant to this chapter.”¹ Paragraph 2 of the *Guidelines* outlines the persons statutorily responsible for paying the cost of counsel appointed in guardianships, conservatorships, and proceedings to determine legal capacity under division 4 of the Probate Code.² Paragraph 4 then provides criteria for establishing a presumption that a responsible person is unable to pay those costs and thus eligible to have the county to pay them.

Analysis/Rationale

The advisory committee recommends amending paragraphs 4A and 4B of the *Guidelines* to reflect amendments to Government Code section 68632 by Assembly Bill 199 (Stats. 2022, ch. 57, § 6, effective June 30, 2022). Paragraph 4 borrows three criteria for determining a person’s eligibility for county payment from the conditions of eligibility for an initial court fee waiver in Government Code section 68632(a)–(c).³ A responsible person is presumed to be eligible for county payment if the person is eligible to receive public benefits from one or more listed programs, the person’s income is at or below a specified percentage of the federal poverty guidelines, or the person would be unable to pay the cost of counsel without using funds that would be normally used to pay for the common necessities of life.⁴ From the adoption of the *Guidelines* until June 30, 2022, Government Code section 68632(a) authorized receipt of public benefits from seven programs to establish eligibility for an initial fee waiver. Government Code section 68632(b) set the income threshold for eligibility for an initial fee waiver at 125 percent of the federal poverty guidelines.

¹ Judicial Council of Cal., Advisory Com. Rep., *Probate Conservatorship and Guardianship: Financial Eligibility for County Payment for Counsel Appointed by the Court in Proceedings Under the Guardianship-Conservatorship Law* (Aug. 29, 2012), p. 3, www.courts.ca.gov/documents/jc-20121026-itemA23.pdf.

² See Prob. Code, §§ 1470–1474, 3140(d)(1), 3205. For more detail about the statutory scheme for appointment of counsel in proceedings under division 4 of the Probate Code, see Judicial Council of Cal., Advisory Com. Rep., *supra*, at pp. 2–6.

³ Cal. Rules of Court, Appendix E, Advisory Com. com.; Judicial Council of Cal., Advisory Com. Rep., *supra*, at p. 7 (“[T]his three-part test is patterned after the standard for an initial court fee waiver under Government Code section 68632”).

⁴ Cal. Rules of Court, Appendix E, para. 4A–C.

AB 199 added two programs—the California Special Supplemental Nutrition Program for Women, Infants, and Children (WIC Program) and unemployment compensation—to the list of the public benefit programs in section 68632(a), receipt of which establishes eligibility for an initial court fee waiver. The recommended amendment to paragraph 4A of Appendix E adds those same two programs to the list of those from which eligibility to receive public benefits would establish presumptive eligibility for county payment of the cost of appointed counsel in covered proceedings. The committee also recommends amending paragraph 4A(4) to use the title of the listed program, Cash Assistance Program for Aged, Blind, and Disabled Legal Immigrants (CAPI), that is used in Government Code section 68632(a)(5).

AB 199 also raised the monthly income threshold for eligibility for an initial fee waiver set in section 68632(b) from 125 percent of the federal poverty guidelines to 200 percent. The recommended amendment to paragraph 4B of Appendix E would raise the income threshold in that paragraph from 125 percent to 200 percent of the current federal poverty guidelines.

Policy implications

The recommended amendments promote access to the courts by persons with limited financial resources by loosening the criteria for presumptive eligibility to public payment of the cost of appointed counsel in specified protective proceedings.

Comments

The recommended amendments circulated for public comment in the spring 2023 invitation-to-comment cycle. The committee received two comments. Both commenters agreed with the proposal as circulated.

A chart of comments is attached at page 6.

Alternatives considered

The committee considered not taking action but determined that the Judicial Council’s established policy to base the conditions for presumptive eligibility for county payment of the cost of appointed counsel in protective proceedings under division 4 of the Probate Code required some action. As an alternative to following that policy by amending Appendix E to conform to the statutory amendments, the committee considered proposing a change to the policy that would have decoupled the criteria under the *Guidelines* for presumptive eligibility for county payment from the statutory conditions of eligibility for an initial fee waiver. The committee concluded, however, that the legislative and judicial branch policies of promoting access to the courts for persons of limited financial resources would best be served by the proposed amendments.

Fiscal and Operational Impacts

The recommended changes will have minimal fiscal impact on the courts. Although the amendments would increase the number of persons presumptively eligible for county payment of the costs of their appointed counsel, the courts will not bear those costs. The proposed amendments will also have minimal effect on court operations. Once staff is trained and local

forms or online programs are reset to reflect the added benefit programs and higher income threshold, they will operate as before. The amendments do not change paragraphs 4C or 5 of the *Guidelines*, which authorize the court to make an individualized determination of a person's ability to pay the costs of appointed counsel.

Attachments and Links

1. Cal. Rules of Court, Appendix E, at page 5
2. Chart of comments, at page 6
3. Link A: Gov. Code, § 68632 (as amended by Assem. Bill 199; Stats. 2022, ch. 57, § 6, effective June 30, 2022),
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV§ionNum=68632

Appendix E to the California Rules of Court is amended, effective January 1, 2024, to read:

Appendix E

**Guidelines for Determining Financial Eligibility for County
Payment of the Cost of Counsel Appointed by the Court in Proceedings
Under the Guardianship-Conservatorship Law**

1.-3. * * *

4. Presumed eligibility for county payment

Except as provided in paragraph 7, the person responsible for payment of the cost of appointed counsel is presumed to be eligible for payment by the county of that cost if the person satisfies one or more of the following three conditions:

A. The responsible person is eligible ~~for~~ to receive benefits under one or more of the following programs:

(1)-(3)

(4) Cash Assistance Program for ~~[aged, blind, and disabled legal]~~ Aged, Blind, and Disabled Legal Immigrants (CAPI);

(5) * * *

(6) CalFresh (Supplemental Nutrition Assistance Program (SNAP)) or California Food Assistance Program (CFAP), a California program for immigrants not eligible for federal SNAP; ~~or~~

(7) * * *

(8) California Special Supplemental Nutrition Program for Women, Infants, and Children (WIC Program); or

(9) Unemployment compensation.

B. The responsible person's income is ~~125~~ 200 percent or less of the current federal poverty guidelines, updated periodically in the Federal Register by the United States Department of Health and Human Services; or

C. * * *

5.-8. * * *

SPR23-25

Probate Conservatorship and Guardianship: Eligibility for County Payment of Cost of Appointed Counsel (amend Cal. Rules of Court, Appendix E)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
1.	Orange County Bar Association by Michael A. Gregg, President	A	*The proposal appropriately addresses the stated purpose.	The committee appreciates this comment. No further response required.
2.	Superior Court of San Diego County by Mike Roddy, Executive Officer	A	<p>Does the proposal appropriately address the stated purpose? Yes.</p> <p>Would the proposal provide cost savings? If so, please quantify. No.</p> <p>What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? Minimal training for Probate Examiners and Judicial Officers would be required.</p> <p>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes.</p> <p>How well would this proposal work in courts of different sizes? This proposal should work well, regardless of the size of the court.</p> <p>No additional comments.</p>	The committee appreciates the court’s comments. No further response required.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated