



Judicial Council of California

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 23-165

For business meeting on September 19, 2023

Title

Juvenile Law: Counsel Collections Program
Guidelines

Agenda Item Type

Action Required

Effective Date

April 1, 2024

Rules, Forms, Standards, or Statutes Affected

Amend Cal. Rules of Court, Appendix F

Date of Report

August 23, 2023

Recommended by

Family and Juvenile Law Advisory
Committee

Contact

Hon. Stephanie E. Hulse, Cochair

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Executive Summary

The Family and Juvenile Law Advisory Committee recommends amending *Guidelines for the Juvenile Dependency Counsel Collections Program (Guidelines)*, Appendix F of the California Rules of Court, which addresses reimbursement to the court for the cost of appointed counsel in dependency matters, including setting an income level below which responsible persons are presumed unable to pay for this cost. The income level is based on the statute that addresses eligibility for a fee waiver, which was recently amended to increase the threshold income for a fee waiver from 125 percent of the federal poverty guidelines to 200 percent. Amending the *Guidelines* would maintain consistency with this statute.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective April 1, 2024, amend Appendix F to the California Rules of Court, item 6(d)(1), to incorporate by reference the fee waiver eligibility income limits in Government Code 68632(b)(1) to establish the presumptive inability to pay for dependency counsel.

The proposed amended appendix is attached at page 6.

Relevant Previous Council Action

Welfare and Institutions Code section 317¹ requires the juvenile court to appoint counsel to represent all children in dependency proceedings²—absent a finding that a particular child will not benefit from the appointment—as well as all indigent parents of children who have been placed out of the home or for whom out-of-home placement is recommended. Section 317 also authorizes the court to appoint counsel for all other indigent parents. Legislation in 2009, Assembly Bill 131 (Stats. 2009, ch. 413), required the Judicial Council to establish a program to collect monetary reimbursements from parents and other responsible persons, to the extent they are able to pay, for the court cost of providing legal services to these persons and their children in juvenile dependency proceedings. Effective January 1, 2013, the Judicial Council adopted the *Guidelines* as Appendix F to the California Rules of Court. As required by the statute, the *Guidelines* include a statewide standard for determining an obligated person’s ability to pay reimbursement, as well as policies and procedures to allow courts to recover costs associated with implementing the counsel collections program. (§ 903.47(a)(1).)

The *Guidelines* include a two-step process for determining a person’s inability to pay, stated in item 6(d). First, a responsible person who meets the income or benefits standards that automatically qualify an applicant for a fee waiver under Government Code section 68632(a) and (b) as they existed before recent amendments is presumed unable to pay and eligible for a waiver of liability:

If a responsible person receives qualifying public benefits or has a household income *125 percent or less of the threshold established by the federal poverty guidelines* in effect at the time of the inquiry, then he or she is presumed to be unable to pay reimbursement and is eligible for a waiver of liability.

(Cal. Rules of Court, App. F, item 6(d)(1), italics added.)³

In the second step, the *Guidelines* permit a local court to determine that the person is unable to pay, ending the inquiry, or to make a policy determination that circumstances in its jurisdiction warrant further inquiry into the financial condition of a person who meets these threshold requirements.

¹ All unspecified statutory references are to the Welfare and Institutions Code.

² Each child “who is the subject of a dependency proceeding is a party to that proceeding.” (§ 317.5(b).)

³ Qualifying benefits are those under Government Code section 68632(a), which are incorporated by reference in item 6(d)(1)(A) of Appendix F. These qualifying benefits are (1) Supplemental Security Income and State Supplementary Payment (Welf. & Inst. Code, § 12200 et seq.); (2) California Work Opportunity and Responsibility to Kids Act (*id.*, § 11200 et seq.) or a federal Tribal Temporary Assistance for Needy Families grant program (*id.*, § 10553.25); (3) Supplemental Nutrition Assistance Program (7 U.S.C. § 2011 et seq.) or the California Food Assistance Program (Welf. & Inst. Code, § 18930 et seq.); (4) County Relief, General Relief, or General Assistance (*id.*, § 17000 et seq.); (5) Cash Assistance Program for Aged, Blind, and Disabled Legal Immigrants (*id.*, § 18937 et seq.); (6) In-Home Supportive Services (*id.*, § 12300 et seq.); (7) Medi-Cal (*id.*, § 14000 et seq.); (8) California Special Supplemental Nutrition Program for Women, Infants, and Children (Health & Saf. Code, § 123275 et seq.); and (9) Unemployment compensation (Unemp. Ins. Code, § 1251 et seq.).

Analysis/Rationale

In its original adoption of the *Guidelines*, the Judicial Council chose to use the income level at which a responsible person qualifies for a fee waiver, then 125 percent of the federal poverty guidelines in Government Code section 68632(b), as the income level at which a responsible person is presumed unable to pay the cost of dependency counsel.⁴ Recently, Assembly Bill 199 (Stats. 2022, ch. 57) amended Government Code section 68632(b) to increase the qualifying income level in that statute to 200 percent of the federal poverty guidelines:

An applicant whose monthly income is 200 percent or less of the current poverty guidelines updated periodically in the Federal Register by the United States Department of Health and Human Services under the authority of paragraph (2) of Section 9902 of Title 42 of the United States Code or a successor statute or regulation.

(Gov. Code, § 68632(b)(1).)

To maintain consistency with the statute, the committee recommends referencing Government Code section 68632(b)(1) in the *Guidelines* rather than changing the number 125 to 200. Doing so would avoid having to update the *Guidelines* whenever the statute is changed.

Changing the presumption of inability to pay from 125 percent of the federal poverty guidelines to 200 percent would result in the following income figures based on the current federal poverty guidelines:

Number in Family	2023 Federal Poverty Guidelines (A)	200% of Poverty Guidelines (B) (B = A x 2)	2023 California Monthly Income (C) (C = B / 12)*
1	\$14,580.00	\$29,160.00	\$2,430.00
2	19,720.00	39,440.00	3,286.67
3	24,860.00	49,720.00	4,143.33
4	30,000.00	60,000.00	5,000.00
5	35,140.00	70,280.00	5,856.67
6	40,280.00	80,560.00	6,713.33
For each additional person, add:	5,140.00	10,280.00	856.67

The proposed change to the *Guidelines* would also require revisions to *Financial Declaration—Juvenile Dependency* (form JV-132), the optional form a responsible person can use to support a request to be found unable to pay for the cost of counsel. The form contains a chart with income

⁴ Cal. Rules of Court, App. F, item 6(d)(1); see Judicial Council of Cal., Advisory Com. Rep., *Juvenile Dependency: Counsel Collections Program* (Sept. 14, 2012), p. 5, www.courts.ca.gov/documents/jc-20121026-itemA20.pdf. The federal poverty guidelines are issued by the U.S. Department of Health and Human Services and typically updated every year in January. See 42 U.S.C. § 9902.

figures based on 125 percent of the current federal poverty guidelines. The numbers in the chart would be updated to 200 percent.

Typically, the federal poverty guidelines are adjusted in January of each year, and the numbers on this form are updated annually to reflect that adjustment.⁵ To avoid iterative changes, the committee recommends that the form be revised once, in early 2024, to reflect both the 2024 federal poverty guidelines and the increase from 125 to 200 percent as the income level establishing a presumption of inability to pay.

In addition, amendments to the *Guidelines* can take effect “no sooner than 30 days after the council meeting at which they are adopted” (Cal. Rules of Court, App. F, item 2). To accommodate this requirement, the committee recommends an effective date of April 1, 2024, for modifications to both the *Guidelines* and the form.

Policy implications

Increasing the fee waiver income eligibility level to 200 percent of the federal poverty guidelines reflects the Legislature’s intent to reduce the financial burden that individuals face when they are involved in court proceedings. Mirroring this change by amending the income level at which a person is presumed unable to pay the cost of counsel in juvenile dependency proceedings furthers this policy. It also will result in fewer individuals responsible for the payment of counsel, which will result in a marginal decrease in funding to courts (addressed further in the Fiscal and Operational Impacts section of this report). The committee determined this tradeoff was worth making to promote a more equitable approach for individuals with low incomes involved in dependency proceedings.

Incorporating Government Code section 68632(b) into the *Guidelines* by reference will also maintain alignment with the statutory fee waiver eligibility set by the Legislature.

Comments

The proposal circulated for public comment from March 31 to May 12, 2023, as part of the regular spring comment cycle. Three comments were received, from a bench officer, a bar association and on behalf of a superior court. All commenters agreed with the proposal. No substantive comments were received except the comment on behalf of the superior court noted, without further comment, that the proposal would not affect the court financially. The names of the commenters and the full comments received are in the attached comment chart.

Alternatives considered

The committee considered not recommending any change and so leaving the income eligibility for a presumption of inability to pay for attorney’s fees by a parent at 125 percent of the federal poverty guidelines. The committee, however, determined that the *Guidelines’* income levels should continue to match the statutory fee waiver income eligibility levels and further the Legislature’s intent of reducing the financial burden that individuals face when they are involved

⁵ These updates are minor, noncontroversial changes that are not circulated for public comment under rule 10.22(d).

in court proceedings. The committee noted that this involvement is most often involuntary. In addition, under the *Guidelines*, courts still have the ability to order a parent to pay if the court determines, after further inquiry, that the parent is able to pay, notwithstanding the presumption to the contrary.

The committee also considered whether Government Code section 68632(b) should be incorporated into the *Guidelines* by reference, or if the income level should simply be changed from 125 percent to 200 percent. The committee decided to incorporate Government Code section 68632(b)(1) by reference to ensure that the *Guidelines* remain aligned with statutory fee waiver eligibility and to conserve the resources that would be expended to update the *Guidelines* and form JV-132 when the Legislature adjusts the eligibility for a court fee waiver.

Fiscal and Operational Impacts

By statute, reimbursement money collected by the courts must be transmitted to the Judicial Council and deposited into the Trial Court Trust Fund. (§§ 903.1, 903.47.) Section 903.47(a)(2) adds a mandate that, “[e]xcept as otherwise authorized by law, the money collected under this program shall be utilized to reduce caseloads, for attorneys appointed by the court, to the caseload standard approved by the Judicial Council. Priority shall be given to those courts with the highest attorney caseloads that also demonstrate the ability to immediately improve outcomes for parents and children as a result of lower attorney caseloads.” Increasing the threshold requirement for inability to pay to 200 percent of the federal poverty guidelines may result in a decrease in funds available in the Trial Court Trust Fund because more individuals will meet the presumption of an inability to pay.

The Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee reviewed the proposal on January 19, 2023. The Joint Rules Subcommittee supported the proposed change to the *Guidelines*, reasoning that making the collections program consistent with fee waiver eligibility criteria promotes consistency for courts making these income determinations. In addition, the subcommittee believed that the fiscal impacts on courts would be very limited.

Attachments and Links

1. Cal. Rules of Court, Appendix F, at page 6
2. Chart of comments, at pages 7–8
3. Link A: Assem. Bill 199 (Stats. 2022, ch. 57),
https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB199

Appendix F

Guidelines for the Juvenile Dependency Counsel Collections Program (JDCCP)

1.-5. * * *

6. * * *

(a)-(c) * * *

(d) Standard for Determining Ability to Pay

The FEO will determine the responsible person's ability to reimburse the cost of legal services using the following standard:

(1) *Presumptive Inability to Pay; Waiver*

If a responsible person receives qualifying public benefits or qualifies for a fee waiver under the criteria of Government Code section 68632(b)(1) ~~has a household income 125 percent or less of the threshold established by the federal poverty guidelines in effect~~ at the time of the inquiry, then the person ~~he or she~~ is presumed to be unable to pay reimbursement and is eligible for a waiver of liability.

(A) *Qualifying public benefits* include benefits under any of the programs listed in Government Code section 68632(a).

(2)-(3) * * *

(e)-(h) * * *

7.-15. * * *

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

	Commenter	Position	Comment	Committee Response
1.	Hon. Stephen Ipson Commissioner Los Angeles Superior Court	A		No response required.
2.	Orange County Bar Association By Michael A. Gregg President	A		No response required.
3.	Superior Court of Orange County	A	<ul style="list-style-type: none"> ▪ <u>Does the Proposal appropriately address the stated purpose?</u> No comment. ▪ <u>Would the proposal provide cost savings? If so, please quantify.</u> This proposal does not impact Orange County financially. ▪ <u>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?</u> N/A ▪ <u>Would an effective date of April 1, 2024,</u> 	<p>No response required.</p> <p>The committee appreciates this information.</p>

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

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

	Commenter	Position	Comment	Committee Response
			<p><u>one hundred and eighty-seven days from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</u></p> <p>No comment.</p> <ul style="list-style-type: none"> ▪ <u>How well would this proposal work in courts of different sizes?</u> <p>No comment.</p>	

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