



Judicial Council of California

455 Golden Gate Avenue · San Francisco, California 94102-3688

www.courts.ca.gov/policyadmin-invitationstocomment.htm

INVITATION TO COMMENT

SPR23-25

Title

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

Action Requested

Review and submit comments by May 12,
2023

Proposed Effective Date

January 1, 2024

Proposed Rules, Forms, Standards, or Statutes

Amend Cal. Rules of Court, Appendix E

Contact

Corby Sturges, 415-865-4507
Corby.Sturges@jud.ca.gov

Proposed by

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

Executive Summary and Origin

The Probate and Mental Health Advisory Committee proposes 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. The proposal would maintain the Judicial Council's policy of basing presumptive eligibility for county payment in part 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.

Background

In 2012, the Judicial Council adopted the *Guidelines* in Appendix E in response to 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

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-item.A23.pdf.

This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules Committee, or its Legislation Committee. It is circulated for comment purposes only.

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.

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 (A) the person is eligible to receive public benefits from one or more listed programs, (B) the person’s income is at or below a specified percentage of the federal poverty guidelines, or (C) 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.

The Proposal

The advisory committee proposes 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. AB 199 amended section 68632(a) to add two programs—the California Special Supplemental Nutrition Program for Women, Infants, and Children (WIC Program) and unemployment compensation—to the list of the public benefits, receipt of which establishes eligibility for an initial court fee waiver. The proposed amendment to paragraph 4A of Appendix E would add 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.

AB 199 also amended section 68632(b) to raise the income threshold for eligibility for an initial fee waiver from 125 percent of the federal poverty guidelines to 200 percent of those guidelines. The proposed amendment to paragraph 4B of Appendix E would raise its income threshold from 125 percent to 200 percent of the current federal poverty guidelines.

Alternatives Considered

The committee considered not taking any 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

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]he 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.

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 proposed changes should have no fiscal impact on the courts. Although the proposed amendments would increase the number of persons presumptively eligible for county payment of the costs of their appointed counsel, the courts would not bear those costs. Neither would the proposed amendments affect court operations. Once local forms or online programs were reset to reflect the new benefit programs and income threshold, they would operate as before. The proposal would 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.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so, please quantify.
- 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?
- Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Cal. Rules of Court, Appendix E, at page 4
2. 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 would be 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)-(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. * * *

Advisory Committee Comment

* * *