



Judicial Council of California

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INVITATION TO COMMENT

SPR23-20

Title	Action Requested
Juvenile Law: Counsel Collections Program Guidelines	Review and submit comments by May 12, 2023
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, Appendix F	April 1, 2024
Proposed by	Contact
Family and Juvenile Law Advisory Committee Hon. Stephanie E. Hulse, Cochair Hon. Amy M. Pellman, Cochair	Daniel Richardson, 415-865-7619 daniel.richardson@jud.ca.gov

Executive Summary and Origin

The Family and Juvenile Law Advisory Committee proposes amending the *Guidelines for the Juvenile Dependency Counsel Collections Program (Guidelines)*, Appendix F of the California Rules of Court, to incorporate by reference Government Code section 68632(b)(1), which addresses eligibility for a court fee waiver, to determine the income level at or below which a responsible person is presumed unable to pay the cost of appointed counsel in a juvenile dependency proceeding. The proposed change would maintain the Judicial Council policy adopted with the original *Guidelines* in 2012 linking the presumption of a person's inability to pay the cost of dependency counsel to the income amount in Government Code section 68632(b), which addresses eligibility for a court fee waiver. New legislation recently amended section 68632(b) to increase that amount from 125 percent to 200 percent of the federal poverty guidelines.

Background

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

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).)

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 It is circulated for comment purposes only.

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 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).)

Appendix F includes a two-tiered standard for determining a person’s inability to pay, elaborated in item 6(d). In the first tier, 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 (italics added).

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

In the second tier, the guidelines permit a local court to make a policy determination as to whether circumstances in its jurisdiction warrant further inquiry into the financial condition of a person who meets these threshold requirements.

The Proposal

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 one way to establish a presumption that a

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 (WIC Program) (Health & Saf. Code, § 123275 et seq.); and (9) Unemployment compensation (Unemp. Ins. Code, § 1251 et seq.).

responsible person is 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).)

Since the council chose to use 125 percent of the federal poverty guidelines as a basis for establishing a presumptive inability to pay for dependency counsel to be consistent with Government Code section 68632(b), the committee proposes incorporating by reference Government Code section 68632(b)(1) into the *Guidelines*. Doing so will maintain the policy of matching the presumption of inability to pay to the figure in Government Code section 68632(b)(1), without 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 (note that these figures are based on the current federal poverty guidelines, which are typically updated annually):

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	4,143.34
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	6,713.34
For each additional person, add:	5,140.00	10,280.00	856.67

The proposed change to Appendix F would also require revisions to *Financial Declaration—Juvenile Dependency* (form JV-132) to update the dollar amounts in item 3 a chart that contains income figures based on the federal poverty guidelines. The numbers in the chart are calculated based on 125% of the federal poverty guidelines, and would be updated to 200%. Those figures

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.

are usually changed annually in any event to reflect annual adjustment of the federal poverty guidelines because item 6(d)(1) of Appendix F requires the use of the poverty guidelines “in effect at the time of the inquiry,” and item 6(d)(3) requires the assessment of the responsible person’s financial condition to be based, at least in part, on a completed form JV-132.⁵ The committee notes that the figures on the form will need to be updated again in early 2024 to reflect revisions to the federal poverty guidelines, which are typically published in January of each year, and so is proposing that the revisions to make the figures 200% rather than 125% be made at the same time. These revisions are made whenever federal poverty guidelines change, generally as minor noncontroversial changes (which do not require circulation for comment) under rule 10.22(d)(2).

Appendix F further requires that amendments to the *Guidelines* take effect no sooner than 30 days after the council meeting at which they are adopted (Cal. Rules of Court, App. F, item 2). For that reason, the committee is proposing an effective date of April 1, 2024. This effective date will also coincide with the annual revisions required to conform the form to updated federal poverty guidelines.

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 guideline. The committee, however, determined that the factor used in Appendix F should match the fee waiver income eligibility levels of 200 percent of the federal poverty guideline and follow the Legislature’s intent of reducing the financial burden that individuals face when they are involved in court proceedings, which they generally do in these matters involuntarily. In addition, under Appendix F, courts still have the ability to order a parent to pay if the court determines, after further inquiry, that they are 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 figures used in Appendix F should be kept and 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* are aligned with the statutory fee waiver eligibility, as determined by the Legislature.

⁵ In addition, a technical revision under rule 10.22(d)(2) was approved by the Judicial Council at its meeting on March 24, 2023, updating form JV-132 to reflect new qualifying benefits for a fee waiver, added by AB 199. A presumptive inability to pay in Appendix F is established if the individual receives public benefits under any of the programs listed in Government Code section 68632(a). (Cal. Rules of Court, App. F, item 6(d)(1)(A).) Government Code section 68632(a) was amended by AB 199 to add two benefit programs: (1) California Special Supplemental Nutrition Program for Women, Infants, and Children (WIC Program), and (2) Unemployment compensation. These new benefits have been added to the list of other qualifying benefits on form JV-132.

Fiscal and Operational Impacts

Section 903.1(c) mandates that reimbursements received by the courts under that section be “transmitted to the Administrative Office of the Courts [Judicial Council] in the same manner as prescribed in Section 68085.1 of the Government Code.” Section 903.1(c), in conjunction with section 903.47(a)(2), requires the Judicial Council to deposit any reimbursements received under section 903.1 into the Trial Court Trust Fund. 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 line may result in a decrease in funds available in the Trial Court Trust Fund because more parents will meet the presumption of an inability to pay.

The proposal was reviewed by the Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee’s Joint Rules Subcommittee on January 19, 2023. The Joint Rules Subcommittee supported the proposed change to Appendix F, 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.

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 an effective date of April 1, 2024, one hundred and eighty-seven days 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 F, at page 7
2. Link A: Assem. Bill 199 (Stats. 2022, ch. 57),
https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB199

Appendix F to the California Rules of Court would be amended, effective April 1, 2024, to read:

1 **Appendix F**

2
3 **Guidelines for the Juvenile Dependency Counsel Collections Program (JDCCP)**

4
5 **1.-5. * * ***

6
7 **6. * * ***

8
9 **(a)-(c) * * ***

10
11 **(d) Standard for Determining Ability to Pay**

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

14
15 (1) *Presumptive Inability to Pay; Waiver*

16 If a responsible person receives qualifying public benefits or qualifies
17 for a fee waiver under the criteria of Government Code section
18 68632(b)(1) has a household income 125 percent or less of the
19 threshold established by the federal poverty guidelines in effect at the
20 time of the inquiry, then he or she is presumed to be unable to pay
21 reimbursement and is eligible for a waiver of liability.

22
23 (A) *Qualifying public benefits* include benefits under any of the
24 programs listed in Government Code section 68632(a).

25
26 (2)-(3) * * *

27
28 **(e)-(h) * * ***

29
30 **7.-15. * * ***