



Judicial Council of California

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May 29, 2008

Hon. Ellen M. Corbett, Chair
Senate Judiciary Committee
State Capitol, Room 3092
Sacramento, California 95814

Subject: AB 2448 (Feuer), as amended March 10, 2008 – Sponsor
Hearing: Senate Judiciary Committee – June 10, 2008

Dear Senator Corbett:

The Judicial Council is pleased to sponsor AB 2448, which would revise the existing statute governing court fee waivers to ensure that indigent litigants have an opportunity to access the courts in a timely manner, and to provide for recovery of those fees in those cases in which it is appropriate.

The Judicial Council convened a Fee Waiver Working Group to review the current statute, rules of court, and forms that govern the process for litigants to proceed in forma pauperis in California. The membership of the working group included judges, court administrators, and representatives of qualified legal services providers. During the course of their review, the working group determined that it would be beneficial to incorporate the existing statute and rules of court that govern fee waivers into a new statutory structure that would ensure that fee waiver applications are processed in a consistent manner that promotes timely access to the courts. In addition, the working group worked to develop enhanced provisions for the recovery of waived

fees in order to fulfill the obligation of the court to be fiscally responsible in seeking to collect waived fees in appropriate circumstances. The key improvements in AB 2448 would:

- Clarify eligibility requirements for fee waivers by including additional income-based entitlement programs, including Medi-Cal, to the list of programs in current law which provide categorical eligibility for a fee waiver.
- Set forth in statute the fee waiver application processing requirements that are currently contained in a rule of court in a manner consistent with the holding of the Court of Appeal in *Cruz v. Superior Court*, 120 Cal.App.4th 175.
- Clarify that applicants represented by non-legal services attorneys who are advancing the costs of the litigation must so indicate on their applications, and that the assets of the attorney must be considered in determining whether the waiver is necessary.
- Set forth the methods by which courts must seek to recover previously waived fees in appropriate civil cases. These include a lien on settlement proceeds in excess of \$10,000 and a requirement that waived fees be added to a judgment in favor of a fee waiver recipient.
- Establish specific procedures for recovery of waived fees in family law cases that require the court to re-evaluate the waiver at the disposition of the case and determine if either party has the ability to pay the fees to the court.

The council sponsored similar legislation, AB 467 (Feuer) in 2007 that was vetoed by the Governor. To address the concern of the Governor that AB 467 would be burdensome for the courts, AB 2448 eliminates a new court hearing requirement that was included in AB 467 and is not required under current law. AB 467 would have allowed applicants whose waivers were denied for incompleteness to either resubmit their applications or request a court hearing. Because it is unclear what benefit would be provided by a court hearing in cases where the court has not received the information necessary to determine whether the applicant is eligible for the waiver, the council determined that it was appropriate to limit the remedy in these cases to re-filing a completed application. Elimination of that requirement should allay concerns that the proposal is increasing workload burdens for the courts as the other application processing requirements proposed by AB 2448 are consistent with current law.

During its consideration of court fee waiver procedures, the working group learned of numerous examples of courts employing administrative processes for fee waiver applicants that were not consistent with the current statute or the rule. As a result, the statutory proposal seeks to restate the requirements of the statute and rule with more specificity with regard to the actions the courts must and must not take when considering a fee waiver application. These procedures should not result in any workload increases for courts who are acting in compliance with current law. Also, by expanding the list of public benefit programs that establish categorical eligibility for a waiver, the proposal should improve the efficiency of the courts by streamlining the application process for indigent litigants who receive these income based entitlements (most notable in this category is the inclusion of Medi-Cal recipients).

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The other key change included in the proposed legislation addresses the recovery of waived fees in appropriate cases. Current law provides the court with broad authority to recover previously waived fees, but does not set forth the specific collection procedures. In addition, current law allows, but does not require, the court to make any efforts at recovery. This proposal seeks to enhance the fiscal accountability of the branch by requiring that courts take certain steps to ascertain whether recovery should be made, and setting forth efficient mechanisms by which the court can take action to collect these fees.

Taken together, these new provisions will ensure that indigent litigants can access the courts to pursue or defend their legal claims in a timely manner, and the court can subsequently recover the waived fees when that access is of significant benefit to the litigant or circumstances for the litigant have changed such that the waiver is no longer necessary.

For these reasons, the Judicial Council requests your “aye” vote on AB 2448.

Sincerely,

/s/

Tracy Kenny
Attorney

TK/yt/ljb

cc: Members, Senate Judiciary Committee
Hon. Mike Feuer, Member of the Assembly
Ms. Kathy Banuelos, Counsel, Senate Judiciary Committee
Mr. Chris Ryan, Deputy Legislative Affairs Secretary, Office of the Governor
Mr. Brent Jamison, Director of Legislation, Governor’s Office of Planning and Research
Mr. Mike Petersen, Consultant, Senate Republican Office of Policy