

Judicial Council of California • Administrative Office of the Courts

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INVITATION TO COMMENT

SP12-04

Title	Action Requested
Probate Conservatorships and Guardianships: Guidelines to Assist in Determining Financial Eligibility for County Payment of the Cost of Counsel Appointed by the Court in Proceedings Under the Guardianship-Conservatorship Law	Review and submit comments by June 30, 2012
Proposed Rules, Forms, Standards, or Statutes Amend rule 1.4(d) and adopt Appendix E of the California Rules of Court	Proposed Effective Date January 1, 2013
Proposed by Probate and Mental Health Advisory Committee Hon. Mitchell L. Beckloff, Chair	Contact Douglas C. Miller, 818-558-4178 douglas.c.miller@jud.ca.gov

Executive Summary and Origin

In response to a direction from the Legislature, the Probate and Mental Health Advisory Committee proposes that the Judicial Council adopt guidelines for determining the financial eligibility for payment by the county of all or a portion of the cost of counsel appointed for (proposed) conservatees and wards and for certain other persons, in proceedings under the Guardianship-Conservatorship Law. The advisory committee also proposes the amendment of rule 1.4(d) of the California Rules of Court to specify that the guidelines will be included in the rules as Appendix E.

Background

Probate Code section 1470

Section 1470 of the Probate Code authorizes the court to appoint private counsel for a ward, proposed ward, conservatee, or proposed conservatee if the court determines that the person is not otherwise represented by counsel, and that the appointment would be helpful to resolution of the matter before the court or is necessary to protect the person's interests. Section 1470(b) requires the court to fix a reasonable sum for appointed counsel's compensation and expenses.

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

Before 2008, section 1470(c) directed the court to order the sums fixed by the court to be paid by the estate of the conservatee or, if the appointment was for a minor in a guardianship, from the ward's or proposed ward's estate, the ward's parents, or both in any combination, in proportions deemed just by the court; no provision was made for public payment of all or any portion of counsel's compensation or expenses fixed by the court. But in *Conservatorship of Berry* (1989) 210 Cal.App.3d 706, at pages 722–723, the Court of Appeal determined that the court has discretion to appoint a county public defender to represent an indigent probate conservatee under section 1470 and Government Code section 27706(d).¹ The court also concluded that Government Code section 27712 authorizes the court to award to the county the costs of providing the public defender to a conservatee under section 1470 from the conservatee's estate, to the extent of his or her ability to pay.²

Section 1470 was amended effective January 1, 2008.³ The amendment added a new paragraph (3) to section 1470(c), as follows:

(3) If a ward or proposed ward is furnished legal counsel for a guardianship proceeding, upon its own motion or that of a party, the court shall determine whether a parent or parents of the ward or proposed ward or the estate of the ward or proposed ward is financially unable to pay all or a portion of the cost of counsel appointed pursuant to this section. Any portion of the cost of that counsel that the court finds the parent or parents or the estate of the ward or proposed ward is unable to pay shall be paid by the county. *The Judicial Council shall adopt guidelines to assist in determining financial eligibility for county payment of counsel appointed by the court pursuant to this chapter.* (Italics added.)

It thus appears that under amended section 1470, the court may:

1. Appoint private counsel for a ward or conservatee (or proposed ward or conservatee) in a matter covered by the section without regard to the client's ability to pay the cost of representation;
2. Fix a reasonable sum for appointed counsel's compensation and expenses at the conclusion of the matter;
3. Order the amount fixed to be paid from the client's estate, or, in a guardianship, from the client's estate and by the client's parents in any combination and proportions deemed just;

¹ Section 27706(d) provides: "Upon request, or upon the order of the court, the public defender shall represent any person who is not financially able to employ counsel in proceedings under Division 4 (commencing with Section 1400) of the Probate Code" See footnote 4 below.

² See 210 Cal.App.3d at pp. 724–725. Section 27712 also authorizes counties to recover the cost paid by them for the services and expenses of private counsel appointed by the court. However, the court in *Berry* determined that private counsel appointed under section 1470 could be paid or reimbursed for expenses incurred only from the conservatee's estate (210 Cal.App.3d at p. 725).

³ Sen. Bill 241 (Stats. 2007, ch. 719), § 1.

4. Despite section 1470's express reference to private counsel, appoint the county's public defender to represent a ward or proposed ward in a guardianship or a conservatee or proposed conservatee in a conservatorship the court first determines is indigent (financially unable to employ private counsel) and award to the county any portion of the cost of representation by the public defender the court determines that the client, the client's estate, or the client's parents can afford;⁴ and
5. For appointments of counsel (private or county public defenders) for minors in guardianships, determine the portion of the amount of costs fixed by the court, if any, that the minor's estate, the minor's parents, or both, cannot afford, for payment by the county.

The phrase "this chapter" in section 1470(c)(3) refers to chapter 4 of part 1 of division 4 of the Probate Code, sections 1470–1474.⁵ Thus, although the direction to the council is contained in a paragraph that concerns only public payment of the cost of representation by appointed counsel for minors in guardianships under section 1470, the direction requires guidelines for county payment of the cost of representation by appointed counsel for conservatees and proposed conservatees and wards and proposed wards under section 1470, and also for conservatees, proposed conservatees, and certain other persons under sections 1471 and 1472.

⁴ The proposed guidelines address the eligibility of a client, or the parents or estate of a minor client, of appointed counsel for county payment of all or some of the cost of representation in an amount and on terms the court fixes after completion of legal services under section 1470, not the client's legal indigence. The latter is financial inability to employ private counsel on terms that counsel would be likely to accept in the actual local market for legal services. See, e.g., Government Code section 27706(d), quoted in footnote 1 above; *People v. Ferry* (1965) 237 Cal.App.2d 880, 887–888; and *Williams v. Superior Court* (1964) 226 Cal.App.2d 666, 672–673. Thus a legally indigent client (or a minor client's estate or parents) may still be able to pay all or some portion of the cost of appointed counsel's services and expenses fixed by the court after the performance of those services, in an amount and on payment terms that do not necessarily correspond to legal market amounts and payment terms for similar services. The *Berry* court's conclusion that the superior court may appoint the public defender for an indigent conservatee under section 1470 and Government Code section 27706(d) refers to legal indigence. See also Government Code section 27712, which emphasizes the difference between a determination of legal indigence before appointment of the public defender or private counsel and the post-services determination of the legally indigent client's ability to pay for all or some of the cost. Despite the conclusion of the *Berry* court on this point, most superior courts do not appoint public defenders under section 1470 for conservatees or wards on the basis of a determination of legal indigence prior to the performance of services.

⁵ Section 1474 refers to federal law concerning the appointment of counsel for an indigent biological parent or "Indian custodian" of a ward or proposed ward in a guardianship that is subject to the Indian Child Welfare Act (25 U.S.C. § 1901 et seq.) because the ward or proposed ward is or may be an Indian child within the meaning of the Act. (See § 1903(6) for the definition of "Indian custodian.") Federal law establishes the right of an Indian child's parents or Indian custodian to court-appointed counsel in any "removal" or "placement" proceeding, which includes a proceeding for the appointment of a temporary or general guardian of the child's person. (See 25 U.S.C. § 1903(1).) The Act and regulations under it provide a procedure to apply for payment of the cost of appointed counsel by the Bureau of Indian Affairs in the United States Department of the Interior when—as here for the appointment of counsel for a ward's parents or Indian custodian in a guardianship proceeding—state law does not provide for the appointment of counsel (25 U.S.C. § 1912(b), 25 C.F.R. § 23.13 (2001)). The proposed guidelines do not address appointments of counsel under section 1474 because there is no provision in California law for county payment of any part of the cost of appointments under that section.

Probate Code sections 1471–1472

Section 1471 requires the courts to appoint the public defender or private counsel to represent conservatees and proposed conservatees in connection with five specific proceedings listed in section 1471(a).⁶ Appointed counsel under section 1471 for conservatees in certain other matters and for certain other persons who may not necessarily be conservatees are also authorized or required by cross-references in other provisions of the Guardianship-Conservatorship Law.⁷ Appointment of counsel under section 1471 for a conservatee or proposed conservatee or for a person alleged to lack legal capacity must be made in two situations. First, if he or she is unable to retain an attorney and requests the appointment of counsel, the court must appoint an attorney at or before the hearing of one of the authorized matters (Prob. Code, § 1471(a)). Second, in a conservatorship, in the absence of a request by the conservatee or proposed conservatee for the appointment of counsel for one of the authorized matters, the court must appoint counsel if the court determines that the appointment would be helpful to resolution of the matter or necessary to protect the interests of the conservatee or proposed conservatee (Prob. Code, § 1471(b)).

For the appointment of counsel for a person alleged to lack legal capacity in a proceeding for a particular transaction in community property on the second ground noted above—helpful to resolution of the matter or necessary to protect the client’s interests—the proposed property transaction must call for substantial assets to be transferred to the other spouse. Even if the

⁶ Proceedings (1) to establish a conservatorship or appoint a conservator, (2) to terminate a conservatorship, (3) to remove the conservator, (4) for an order affecting the conservatee’s legal capacity, or (5) for authority to remove a temporary conservatee from his or her residence.

⁷ The Guardianship-Conservatorship Law is parts 1–4 of division 4 of the Probate Code, sections 1400–2893. See section 1400.

The other matters are proceedings (1) to restore a conservatee’s right to vote (§ 1852); (2) to give the conservator of the person exclusive authority to consent to specific medical treatment for the conservatee when the conservatee has not been adjudicated to lack the capacity to consent to medical treatment (§ 2357); (3) to authorize a particular transaction involving community property of a conservatee or other person alleged to lack legal capacity (§ 3140(d)(1)); (4) to determine the capacity of a health care patient without a conservator to make a health care decision and for authority to make the decision for the patient if he or she does not have capacity (§ 3205); and (5) to determine whether the conservator of the person should be granted or continue to have “dementia powers” (§ 2356.5).

Dementia powers are powers of a conservator of the person to consent to the administration to the conservatee of psychotropic medicines suitable for treatment of dementia or place the conservatee in a restricted-egress living facility designed for dementia patients. Appointment of counsel must be made on the initial petition for such powers and also when the court must consider whether a previous order granting these powers should be modified because the conservatee objects to the powers when interviewed by the court investigator or the investigator recommends modification of the order on a review investigation. (See §§ 2356.5(f)(1) (petition) and 2356.5(g) (review investigation).)

The authority to appoint counsel under section 2356.5 is “pursuant to Chapter 4 (commencing with Section 1470),” without specificity as to whether the authority is under section 1470 or section 1471 but the appointment is mandatory, not discretionary. Despite the ambiguity of section 2356.5’s provisions on appointment of counsel, those provisions appear more consistent with authority under section 1471 than under section 1470. All appointments of counsel for conservatees under section 1470 are discretionary and all such appointments under section 1471 are mandatory. No other Probate Code counsel appointment cross-reference is made “pursuant to Chapter 4,” and none are made to section 1470. See 1 California Conservatorship Practice (Cont. Ed. Bar, CD-ROM 2011 Update) Duties and Powers of Conservator of the Person, §§ 13.62 (petition for dementia powers) and 13.68 (review of previous grant of dementia powers). The author asserts, without discussion, that the appointment is made under section 1471 (§13.62) and is made under sections 1470–1471 (§ 13.68).

spouse alleged to lack legal capacity appears to have independent legal counsel, the court may inquire into counsel's retention. If the court determines that counsel has not been competently retained, the court has discretion to appoint counsel for the person alleged to lack legal capacity (Prob. Code, § 3140(d)(2)).

In the case of a proceeding to determine the capacity of a health care patient without a conservator to make a health care decision, the court must determine the identity of counsel the patient has retained or plans to retain. If the patient has not retained counsel and has no plans to do so, the court must appoint counsel for him or her under section 1471 (Prob. Code, § 3205).

At conclusion of the matters described above, section 1472 requires the court to fix the reasonable amount of compensation and expenses, determine the client's ability to pay all or a portion of the sum fixed, and order payment by the client or the client's estate (directly to private counsel or to the county for reimbursement of its prior payments of private counsel's compensation or expenses or the costs of representation by the public defender) in installments or other reasonable terms compatible with the client's financial ability. If the court determines that the client cannot pay all or a portion of the sum fixed, the county must pay that amount to private counsel or bear the cost of public defender representation without reimbursement.

The Proposal

The guidelines are proposed as a new Appendix E to the California Rules of Court, accompanied by an amendment of rule 1.4(d) of those rules to identify the new appendix. The advisory committee did not consider, in the words of section 1470(c)(3), "guidelines to assist in determining financial eligibility" to require a rule of court. The committee proposes placement of the guidelines in the rules as an appendix, however, to ensure a prominent, permanent, and public place for them and an assured wide distribution to judicial officers and court staff responsible for the disposition of matters under the Guardianship-Conservatorship Law as well as to county governments and officials responsible for payment of the public portion of the cost of appointed counsel in matters under that law.

The Guidelines

The guidelines would identify, in paragraph 2, those persons who are eligible as clients of appointed counsel under Probate Code sections 1470 and 1471. In addition to wards or proposed wards in guardianships (§ 1470) and conservatees and proposed conservatees (§§ 1470 and 1471), eligible clients include (1) persons, with or without conservators, alleged to lack legal capacity in a proceeding for authority to enter into a particular transaction involving community property under Probate Code section 3100, et seq., eligible for appointed counsel under sections 1471 and 3140(d)(1), and (2) health care patients without conservators in a proceeding to determine their capacity to make a health care decision under Probate Code section 3200 et seq., eligible for appointed counsel under sections 1471 and 3205.

Paragraph 3 would identify those persons who are responsible for payment of the cost of appointed counsel under Probate Code sections 1470–1472, collectively referred to in the

guidelines as the “responsible person.” These are the persons whose financial condition would be reviewed to determine their eligibility for county payment of all or some of their obligation. In addition to the estates of wards or proposed wards, conservatees and proposed conservatees and their estates, responsible persons include the parent or parents of a ward or proposed ward under section 1470, the person alleged to lack legal capacity under section 3100 et seq. (if payment of the cost is not ordered from the proceeds of the property transaction), and the patient whose capacity to make a health care decision is at issue in a proceeding under section 3200 et seq.

Paragraph 4 would define the term “cost of appointed counsel” as used throughout the guidelines to mean the reasonable sum fixed by the court after the performance of services by appointed counsel for his or her compensation and expenses, in accordance with the procedure required by sections 1470 and 1472.

Paragraph 5 would list three ways for a responsible person (singular or plural) to be presumed to be eligible for payment by the county of the cost of appointed counsel. These are (1) eligibility for listed public benefit programs; (2) income 125 percent or less of current federal poverty guidelines; or (3) the court’s individual determination that the responsible person cannot pay the cost of appointed counsel without using funds that would be normally used to pay for the “common necessities of life” for the responsible person and his or her family.

This three-part test is patterned after the standard for an initial court fee waiver under Government Code section 68632, a copy of which follows this Invitation to Comment. The test is framed as a presumption, however, for reasons discussed below. In this regard it is consistent with a proposed standard for the eligibility of persons responsible for the cost of appointed counsel for minors and parents in juvenile dependency proceedings for payment of that cost by the court. The juvenile court proposal is being circulated for public comment at the same time as this proposal, and is expected to be proposed for adoption by the Judicial Council effective on the same date as this proposal, January 1, 2013.

Paragraph 6 of the guidelines would describe the determination the court could make that a responsible person can pay all or a portion of the cost of appointed counsel in installments or in some other equitable manner set by the court without being required to resort to funds normally used for the common necessities of life for the person and his or her family. This paragraph clarifies that the presumption of eligibility under paragraph 5 refers to the responsible person’s ability to pay the whole sum fixed by the court for the cost of appointed counsel. The court retains authority to determine that even a person described in paragraph 5 may be able to afford a partial payment, payments over time, or other payment arrangements determined by the court to be fair and reasonable without having to use funds normally used for the common necessities of life.

This paragraph would also provide that the court may determine that the responsible person’s payments are to be made directly to appointed counsel, to the county as reimbursement for payments it has made to appointed counsel (the public defender under Probate Code section 1471

or private counsel under both sections 1470 and 1471), or a combination of payments. This provision is declarative of existing law in sections 1470 and 1472.

Paragraph 7 would restate the provisions of Probate Code section 1470(c)(2) concerning apportionment of responsibility for payment of the cost of appointed counsel for minors in guardianships under section 1470 between the ward's estate and his or her parent or parents.

Paragraph 8 would apply the conclusion of the Court of Appeal in *Conservatorship of Berry*, *supra*, 210 Cal.App.3d at page 725, discussed above at footnote 2, that section 1470 does not permit payment by the county of any portion of the cost of private counsel appointed under section 1470 for a conservatee or proposed conservatee.

Common Necessaries of Life

Appendix E to the rules of court would close with an advisory committee comment referring to the phrase "common necessities of life." The comment describes the intended use of that phrase in subparagraph 5C of the guidelines. The phrase would be used in that subparagraph as it is used in Government Code section 68632(c), concerning court fee waivers: to be interpreted as the phrase was used in Code of Civil Procedure section 706.051(c)(1) before the phrase was deleted by amendment of that section effective January 1, 2012.

The phrase's purpose in the guidelines is to establish a ground of a responsible person's eligibility for county payment of the cost of appointed counsel if the person would be required to use funds for paying the cost of counsel that would be normally used to pay for the common necessities of life for the person and his or her family. The phrase has a similar purpose in section 68632.

The purpose of the advisory committee comment is to explain the original application of the phrase, describe its deletion from the Code of Civil Procedure, and provide a list of appellate decisions that interpreted the phrase as it was used in that code section and its predecessors. Citing these cases and briefly describing their interpretation of "common necessities of life" are intended to preserve in a readily accessible form the courts' construction and interpretation of the phrase as a guide to judicial officers who will be required to determine its application to the guidelines and also to court fee waivers under section 68632. Over time, following deletion of the phrase from section 706.051, research to find this history by ordinary means will be increasingly difficult.

Alternatives Considered

The advisory committee developed the guidelines as a document that would be distributed to the courts but would not be permanently established as a rule of court or standard of judicial administration. The proposal was presented to and considered by the Joint Rules Working Group of the Trial Court Presiding Judges and Court Executives Advisory Committees. The working group approved circulation of the proposal, but several members of the group requested that the

guidelines be proposed as a rule of court or in another format that would become a permanent and easily accessible part of the public record.

In response to these requests, the advisory committee considered proposing the guidelines as a rule of court or as a standard of judicial administration. The committee ultimately decided that the direction from the Legislature was for guidelines, recommendations rather than strict mandates, and thus something other than a rule of court. Consideration was given to proposing the guidelines as a standard of judicial administration, but the committee decided against proceeding in that direction because of its understanding that in recent years, the Judicial Council has not favored that form of policymaking.

Early drafts of the guidelines were closer to the provisions of the statute governing court fee waivers and early drafts of a similar proposal for guidelines for the recovery of the cost of appointed counsel in juvenile court dependency proceedings, discussed in more detail below, in that the existence of one of the three conditions listed in paragraph 5 of these guidelines could be construed as establishing eligibility for county payment of the entire cost of appointed counsel. That was not intended, but the guidelines as then written could have been so interpreted.

The advisory committee learned from the Joint Rules Working Group that the advisory committees working on the juvenile court proposal were presenting for Joint Rules' consideration revised guidelines for a responsible person's eligibility for court payment of the cost of appointed counsel for children and parents in dependency proceedings, part of a much larger project required in considerable detail by lengthy provisions of the Welfare and Institutions Code. The dependency guidelines were said not to be consistent with the probate guidelines, in that the same three grounds of eligibility shown in paragraph 5 here were merely presumptions in the juvenile court version, subject to the court's authority to inquire further to determine whether partial payments or payments over time were possible from a presumptively eligible responsible person. The Joint Rules Working Group requested that the eligibility guidelines in the two systems be made as consistent as possible.

This advisory committee and its staff consulted with the dependency court working group and its staff, and reviewed the latest version of the juvenile court proposal. Changes were made in both proposals concerning eligibility for public payment of the cost of appointed counsel to make both proposals consistent. The changes included, in this proposal, a modification of paragraph 5 to make the eligibility standards listed there presumptions. Paragraph 6 of these guidelines was also modified to clarify that the court may determine that partial or installment payments are possible from responsible persons who are presumed to be eligible for county payment under paragraph 5.

Implementation Requirements, Costs, and Operational Impacts

The advisory committee does not expect that implementation requirements will be significant, although there will be some staff training costs. Courts and counties already have systems in place for the determination of a county's share of payment of the cost of appointed counsel under Probate Code section 1472 for appointments made under section 1471; the 2008 legislation

extended county payment for the services of appointed counsel only to wards in guardianship cases under section 1470. Most appointments of counsel for conservatees, all appointments of counsel for proposed conservatees in conservatorship appointment proceedings, and all appointments of counsel for adults without conservators who are eligible for appointed counsel, are made under section 1471. Courts and counties that use county financial evaluation officers to make initial determinations of responsible persons' eligibility for county payment under section 1472 will be able to continue that practice and extend it for appointments of counsel for minors under section 1470 if they have not already done so.

The advisory committee will consider whether additional financial statement forms or probate variants of existing forms, or new rules of court, are necessary or advisable to fully implement the guidelines, but expects that courts and counties will be able to work within their existing systems and with their existing forms over the short term.

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?
- Should the proposed guidelines be proposed as a rule of court or a standard of judicial administration?
- Are new or revised financial statement forms necessary or would they be helpful?

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

- Will the proposal provide cost savings? If so please quantify.
- What are the implementation requirements 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 system, or modifying case management system.
- Would additional time from Judicial Council approval of this proposal until its effective date (now anticipated as approximately 2 months) be necessary or helpful for its implementation? If so, how much additional time would be sufficient?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Rule 1.4 of the Cal. Rules of Court and Appendix E to the rules, at pages 10–14
2. Probate Code sections 1470–1472, at pages 15–17
3. Government Code section 68632, at pages 18–19

Rule Proposal

Rule 1.4 of the California Rules of Court would be amended and Appendix E to the rules would be adopted, effective January 1, 2013, to read as follows:

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TITLE 1
Rules Applicable to All Courts
Chapter 1. Preliminary Rules

Rule 1.4. Contents of the rules

(a)–(c) * * *

(d) The appendixes

(1)–(4) * * *

(5) 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.

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. Purpose

These guidelines are adopted to implement Probate Code section 1470(c)(3), which provides that the Judicial Council shall adopt guidelines to assist in determining financial eligibility for county payment of all or a part of the reasonable sum fixed by the court for compensation and expenses of counsel appointed by the court under chapter 4 of part 1 of division 4 of the Probate Code, Appointment of Legal Counsel, sections 1470–1474.

1 **2. Persons eligible for appointment of counsel under Probate Code sections**
2 **1470–1471**

3
4 **A. Section 1470:** The persons who may be eligible to have counsel appointed by
5 the court to represent them under Probate Code section 1470 are wards or
6 proposed wards in guardianship proceedings and conservatees or proposed
7 conservatees in conservatorship proceedings.

8
9 **B. Section 1471:** The persons who may be eligible to have counsel appointed by
10 the court to represent them under Probate Code section 1471 are (1)
11 conservatees or proposed conservatees in specific conservatorship
12 proceedings listed in section 1471(a) or described in other provisions of the
13 Probate Code that refer to the appointment of counsel under section 1471; (2)
14 persons alleged to lack legal capacity, whether or not they have a
15 conservator, in proceedings to authorize a particular transaction in
16 community property (Prob. Code, §§ 3100–3154); and (3) health care
17 patients without conservators in proceedings to determine their capacity to
18 make a health care decision (Prob. Code, §§ 3200–3212).

19
20 **3. Persons responsible for payment of the cost of appointed counsel**

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22 Unless they are determined to be unable to pay all or part of the cost of appointed
23 counsel under paragraph 6 of these guidelines, those responsible for the payment of
24 that cost (referred to collectively as the “responsible person”) are:

25
26 **A.** The estate of the ward or proposed ward in a guardianship proceeding under
27 section 1470;

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29 **B.** The parent or parents of the ward or proposed ward in a guardianship
30 proceeding under section 1470;

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32 **C.** The estate of a conservatee or proposed conservatee in a conservatorship
33 proceeding under sections 1470–1472;

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35 **D.** The conservatee or proposed conservatee, if he or she has no estate, in a
36 conservatorship proceeding under sections 1471–1472;

37
38 **E.** The person alleged to lack legal capacity in a proceeding to authorize a
39 particular transaction in community property under sections 1471–1472, to
40 the extent the court does not order the cost paid from the proceeds of the
41 transaction under section 1472(a)(3); and,
42

1 F. The health care patient in a proceeding to determine his or her capacity to
2 make a health care decision under sections 1471–1472.

3
4 **4. Cost of appointed counsel**

5
6 The cost of appointed counsel is the reasonable sum fixed by the court after the
7 performance of legal services under Probate Code section 1470 or section 1472 for
8 the compensation and expenses of appointed counsel.

9
10 **5. Presumed eligibility for county payment**

11
12 Except as provided in paragraph 8, the applicable responsible person listed in
13 paragraph 3 is presumed to be eligible for payment by the county of the cost of
14 appointed counsel for the applicable eligible person listed in paragraph 2 if the
15 responsible person satisfies one or more of the following three conditions:

16
17 A. The responsible person is eligible for:

18
19 (1) SSI and State Supplementary Payment (SSP);

20
21 (2) Medi-Cal;

22
23 (3) County/General Relief/General Assistance;

24
25 (4) Cash assistance program for aged, blind, and disabled legal immigrants
26 (CAPI);

27
28 (5) CalWORKs (California Work Opportunity and Responsibility to Kids)
29 or Tribal (Native American) TANF grant program;

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

34
35 (7) In-Home Supportive Services (IHSS); or

36
37 B. The responsible person's income is 125 percent or less of current federal
38 poverty guidelines updated periodically in the Federal Register by the United
39 States Department of Health and Human Services; or

40
41 C. The responsible person, as individually determined by the court, cannot pay
42 the cost of appointed counsel without using funds that would be normally

1 used to pay for the common necessities of life for the responsible person and
2 his or her family.

3
4 **6. Determination of responsible person’s obligation for the cost of appointed**
5 **counsel**

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7 If the court finds that the responsible person, including a responsible person
8 described in paragraph 5, can pay all or a portion of the cost of appointed counsel,
9 can pay those costs in installments, or can pay those costs under some other
10 equitable arrangement without using money that normally would pay for the
11 common necessities of life for the responsible person and the responsible person’s
12 family, the court may order the responsible person to pay appointed counsel
13 directly, reimburse the county for the costs of appointed counsel paid by the
14 county, or both, in part or on such other terms as the court determines are fair and
15 reasonable under the circumstances.

16
17 **7. Apportionment**

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19 If the responsible person is the estate of a ward or proposed ward and one or both
20 of his or her parents, the court may allocate the amount determined to be payable
21 by the responsible person under paragraph 6 among them in any proportions the
22 court deems just.

23
24 **8. Private appointed counsel for conservatee under section 1470**

25
26 A conservatee or proposed conservatee for whom private counsel is appointed
27 under Probate Code section 1470 is not eligible for payment by the county of any
28 portion of the cost of appointed counsel.

29
30 **9. Amount payable by the county**

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32 Except as provided in paragraph 8, the amount payable by the county for the cost of
33 appointed counsel is all or any part of the cost that the court determines that the
34 responsible person cannot pay under paragraph 6.

35
36 **Advisory Committee Comment**

37
38 These guidelines are based in part on the conditions for granting an initial court fee waiver under
39 Government Code section 68632(a)–(c). For the purposes of these guidelines as well as of that
40 Government Code section, the term “common necessities of life” has the same meaning it had in
41 Code of Civil Procedure section 706.051(c)(1) before the amendment of that section effective on
42 January 1, 2012. (Assem. Bill 1388, Stats. 2011, ch. 694, § 1).

1 The 2012 amendment of section 706.051(c)(1) completely eliminated “common necessities of
2 life” from that code section. The deleted phrase referred to an exception to the exemption
3 provided in the section from an earnings withholding order for amounts the debtor can prove are
4 necessary to support himself or herself and his or her family, often referred to as the support
5 exemption. In other words, under former section 706.051(c)(1), the support exemption of section
6 706.051(b) would not apply to shield the debtor from an earnings withholding order to collect a
7 debt incurred to purchase the “common necessities of life.”

8
9 The following appellate cases discussed the meaning of “common necessities of life” as that
10 phrase was used in section 706.051(c)(1) and predecessor code sections that used the phrase for
11 the same purpose:

- 12
13 • A debt for hospital services to defendant or his family was based on the common
14 necessaries of life. *J. J. MacIntyre Co. v. Duren* (1981) 118 Cal.App.3d Supp. 16.
- 15
16 • The performance of legal services and the advancement of costs of litigation giving rise
17 to award to an attorney in marriage dissolution action qualified as “common necessities
18 of life” for the benefit of the debtor’s indigent wife, thereby permitting the attorney to
19 enforce the award by writ of execution on the husband’s earnings against his claim of the
20 support exemption. *In re Marriage of Palesi* (1977) 73 Cal.App.3d 424.
- 21
22 • “Common necessities of life,” in former section 690.11 (repealed) exempting debts
23 incurred for common necessities of life from a statute protecting all of a judgment
24 debtor’s earnings from execution or attachment if earnings were necessary for the support
25 of the debtor’s family, did not refer to “necessaries” in the broad sense, but means things
26 that are ordinarily required for everyone’s sustenance. *Ratzlaff v. Portillo* (1971) 14
27 Cal.App.3d 1013.
- 28
29 • Attorney’s fees former wife incurred in obtaining divorce were not common “necessaries
30 of life” within the meaning of former section 690.11 (repealed). *Lentfoehr v. Lentfoehr*
31 (1955) 134 Cal.App.2d Supp. 905.
- 32
33 • “Common necessities of life,” as used in former section 690.11 (repealed), exempting all
34 of the earnings of a debtor if necessary for the use or support of debtor’s family residing
35 within the state, except as against the collection of debts incurred by debtor, his wife, or
36 family, for common necessities of life, meant those things that are commonly required
37 by persons for their sustenance regardless of their employment or status. *Los Angeles*
38 *Finance Co. v. Flores* (1952) 110 Cal.App.2d Supp. 850.
- 39
40 • In proceedings supplemental to execution, the debtor was required to pay one-half of a
41 check for \$47.50, which was in her possession, and which had been received as salary
42 from the Works Progress Administration, in partial satisfaction of a judgment based on a
43 necessary of life, although money may have been needed by debtor for the support of
44 herself and her family. *Medical Finance Association v. Short* (1939)
45 36 Cal.App.2d Supp. 745.

Probate Code sections 1470–1472

1470.

- (a) The court may appoint private legal counsel for a ward, a proposed ward, a conservatee, or a proposed conservatee in any proceeding under this division if the court determines the person is not otherwise represented by legal counsel and that the appointment would be helpful to the resolution of the matter or is necessary to protect the person's interests.
- (b) If a person is furnished legal counsel under this section, the court shall, upon conclusion of the matter, fix a reasonable sum for compensation and expenses of counsel. The sum may, in the discretion of the court, include compensation for services rendered, and expenses incurred, before the date of the order appointing counsel.
- (c) The court shall order the sum fixed under subdivision (b) to be paid:
 - (1) If the person for whom legal counsel is appointed is an adult, from the estate of that person.
 - (2) If the person for whom legal counsel is appointed is a minor, by a parent or the parents of the minor or from the minor's estate, or any combination thereof, in any proportions the court deems just.
 - (3) If a ward or proposed ward is furnished legal counsel for a guardianship proceeding, upon its own motion or that of a party, the court shall determine whether a parent or parents of the ward or proposed ward or the estate of the ward or proposed ward is financially unable to pay all or a portion of the cost of counsel appointed pursuant to this section. Any portion of the cost of that counsel that the court finds the parent or parents or the estate of the ward or proposed ward is unable to pay shall be paid by the county. The Judicial Council shall adopt guidelines to assist in determining financial eligibility for county payment of counsel appointed by the court pursuant to this chapter.
- (d) The court may make an order under subdivision (c) requiring payment by a parent or parents of the minor only after the parent or parents, as the case may be, have been given notice and the opportunity to be heard on whether the order would be just under the circumstances of the particular case.

1471.

- (a) If a conservatee, proposed conservatee, or person alleged to lack legal capacity is unable to retain legal counsel and requests the appointment of counsel to assist in the particular matter, whether or not such person lacks or appears to lack legal capacity, the court shall, at or before the time of the hearing, appoint the public defender or private counsel to represent the interest of such person in the following proceedings under this division:
 - (1) A proceeding to establish a conservatorship or to appoint a proposed conservator.
 - (2) A proceeding to terminate the conservatorship.
 - (3) A proceeding to remove the conservator.
 - (4) A proceeding for a court order affecting the legal capacity of the conservatee.
 - (5) A proceeding to obtain an order authorizing removal of a temporary conservatee from the temporary conservatee's place of residence.

- (b) If a conservatee or proposed conservatee does not plan to retain legal counsel and has not requested the court to appoint legal counsel, whether or not such person lacks or appears to lack legal capacity, the court shall, at or before the time of the hearing, appoint the public defender or private counsel to represent the interests of such person in any proceeding listed in subdivision (a) if, based on information contained in the court investigator's report or obtained from any other source, the court determines that the appointment would be helpful to the resolution of the matter or is necessary to protect the interests of the conservatee or proposed conservatee.

- (c) In any proceeding to establish a limited conservatorship, if the proposed limited conservatee has not retained legal counsel and does not plan to retain legal counsel, the court shall immediately appoint the public defender or private counsel to represent the proposed limited conservatee. The proposed limited conservatee shall pay the cost for such legal service if he or she is able. This subdivision applies irrespective of any medical or psychological inability to attend the hearing on the part of the proposed limited conservatee as allowed in Section 1825.

1472.

- (a) If a person is furnished legal counsel under Section 1471:
- (1) The court shall, upon conclusion of the matter, fix a reasonable sum for compensation and expenses of counsel and shall make a determination of the person's ability to pay all or a portion of that sum. The sum may, in the discretion of the court, include compensation for services rendered, and expenses incurred, before the date of the order appointing counsel.
 - (2) If the court determines that the person has the ability to pay all or a portion of the sum, the court shall order the conservator of the estate or, if none, the person, to pay in any installments and in any manner the court determines to be reasonable and compatible with the person's financial ability.
 - (3) In a proceeding under Chapter 3 (commencing with Section 3100) of Part 6 for court authorization of a proposed transaction involving community property, the court may order payment out of the proceeds of the transaction.
 - (4) If a conservator is not appointed for the person furnished legal counsel, the order for payment may be enforced in the same manner as a money judgment.
- (b) If the court determines that a person furnished private counsel under Section 1471 lacks the ability to pay all or a portion of the sum determined under paragraph (1) of subdivision (a), the county shall pay the sum to the private counsel to the extent the court determines the person is unable to pay.
- (c) The payment ordered by the court under subdivision (a) shall be made to the county if the public defender has been appointed or if private counsel has been appointed to perform the duties of the public defender and the county has compensated that counsel. In the case of other court-appointed counsel, the payment shall be made to that counsel.

Government Code section 68632

68632. Permission to proceed without paying court fees and costs because of an applicant's financial condition shall be granted initially to all of the following persons:

- (a) A person who is receiving public benefits under one or more of the following programs:
 - (1) Supplemental Security Income (SSI) and State Supplementary Payment (SSP) (Article 5 (commencing with Section 12200) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code).
 - (2) California Work Opportunity and Responsibility to Kids Act (CalWORKs) (Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code) or a federal Tribal Temporary Assistance for Needy Families (Tribal TANF) grant program (Section 10553.25 of the Welfare and Institutions Code).
 - (3) Food Stamps (Chapter 51 (commencing with Section 2011) of Title 7 of the United States Code) or the California Food Assistance Program (Chapter 10.1 (commencing with Section 18930) of Part 6 of Division 9 of the Welfare and Institutions Code).
 - (4) County Relief, General Relief (GR), or General Assistance (GA) (Part 5 (commencing with Section 17000) of Division 9 of the Welfare and Institutions Code).
 - (5) Cash Assistance Program for Aged, Blind, and Disabled Legal Immigrants (CAPI) (Chapter 10.3 (commencing with Section 18937) of Part 6 of Division 9 of the Welfare and Institutions Code).
 - (6) In-Home Supportive Services (IHSS) (Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code).
 - (7) Medi-Cal (Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code).
- (b) A person whose monthly income is 125 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.

- (c) A person who, as individually determined by the court, cannot pay court fees without using moneys that normally would pay for the common necessities of life for the applicant and the applicant's family. Only if a trial court finds that an applicant under this subdivision can pay a portion of court fees, or can pay court fees over a period of time, or under some other equitable arrangement, without using moneys that normally would pay for the common necessities of life for the applicant and the applicant's family, the court may grant a partial initial fee waiver using the notice and hearing procedures set forth in paragraph (5) of subdivision (e) of Section 68634. "Common necessities of life," as used in this article, shall be interpreted consistently with the use of that term in paragraph (1) of subdivision (c) of Section 706.051 of the Code of Civil Procedure, as that paragraph read prior to January 1, 2012.