

JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS
455 Golden Gate Avenue
San Francisco, California 94102-3688

Report

TO: Members of the Judicial Council

FROM: Policy Coordination and Liaison Committee
Hon. Marvin R. Baxter, Chair
Fee Waiver Working Group
Hon. Carolyn Kuhl, Chair
Michael Planet, Co-chair
Florence Prushan, Lead Staff, 818-558-3021,
florence.prushan@jud.ca.gov
Cara Vonk, Attorney, 415-865-7669,
cara.vonk@jud.ca.gov
Tracy Kenny, Attorney, 916-323-3121,
tracy.kenny@jud.ca.gov

DATE: October 26, 2006

SUBJECT: Fee Waiver Statutory Provisions (Repeal Gov. Code, § 68511.3 and add Gov. Code, §§ 68630.010–68630.100) (Action Required)

Issue Statement

Government Code section 68511.3, the current statute containing the procedures for granting a litigant the ability to proceed in forma pauperis, is cumbersome and confusing, and courts have implemented the statute in ways that are inconsistent with its underlying intent, to allow access to the courts for those who cannot afford the cost of basic court fees. The optimal system for granting initial fee waivers must balance the courts' fiscal responsibility with the need to ensure access to justice for those without the means to pay court fees. To achieve this objective, the Fee Waiver Working Group, appointed in August 2004, has drafted a revised statute to govern the grant of an initial fee waiver and the process for subsequent recovery of the waived fees in those cases in which it is appropriate. If that legislation is enacted, the working group is prepared to craft new rules and plain-language forms to streamline and simplify the fee waiver process and to develop a training program for court staff and bench officers.

Recommendation

The Policy Coordination and Liaison Committee (PCLC) and the Fee Waiver Working Group recommend that the Judicial Council sponsor legislation to revise the fee waiver

statute consistent with the proposal currently circulating for public comment and direct the PCLC, along with the chairs of the Executive and Planning Committee and the Rules and Projects Committee, to review the recommendations of the Fee Waiver Working Group for revisions to this proposal based on the comments received during the comment period, and to approve the final text for introduction in the 2007 Legislative session.

The text of the invitation for comment is attached at page 6 (Attachment A).

Rationale for Recommendation

The Fee Waiver Working Group (working group) was initially appointed in August 2004 as a subcommittee of the Collaborative Court-County Working Group on Enhanced Collections. The charge of the subcommittee was to develop standards and guidelines to assist judicial officers and staff in the approval or denial of fee waivers. The membership of the subcommittee included representatives from the courts (both bench officers and court administrators) and the legal services community (see Attachment B at page 22 for a membership roster). When the Collaborative Court-County Working Group on Enhanced Collections completed its work and disbanded, the Judicial Council approved the continuance of the Fee Waiver subcommittee members as an independent working group and retained its membership. That group has met regularly to develop an enhanced procedure for granting initial fee waivers and for recovering fees in certain instances. The council, at its August 25, 2006, meeting, received a detailed conceptual outline of the working group's proposed revised statutory scheme for fee waivers and directed the working group to draft statutory language to enact that concept and seek comment on it (see Attachment C pages 23-28). The working group finalized its draft proposal and at its October 25th meeting, the PCLC approved the draft to circulate for public comment.

In order to ensure that the legislative proposal can be introduced in 2007 as Judicial Council-sponsored legislation, the PCLC and the working group are recommending that it be adopted as part of the council's sponsored legislation package as a conceptual proposal while it circulates for public comment. The working group can then review the comments received from the public and the relevant Judicial Council advisory committees by the end of December and submit to the PCLC a revised proposal for its approval early next year. Enactment of legislation in 2007 will allow the working group to then begin drafting the rules and forms necessary to complete their charge and implement the enhanced fee waiver system.

The draft legislative proposal largely echoes the existing statutory requirements governing filings in forma pauperis, but it is different from the current statute in the following ways:

Organization

The draft proposal reorganizes the statutory provisions in current law to make them easier to follow and to implement. It begins with findings that set forth the purpose of the new

article and then lays out each of the aspects of the fee waiver and recovery system: criteria for eligibility, application procedure, application processing and determination, reconsideration and recovery of fees and costs initially waived, enforcement, and expiration of the fee waiver order.

Eligibility

The fee waiver eligibility provisions have been largely maintained as they exist in current law, but three additional income-based entitlement programs have been added to the list of public benefit programs for which recipients have an automatic right to an initial waiver of fees. These three programs are Cash Assistance Program for Immigrants (CAPI), In-Home Supportive Services (IHSS), and Medi-Cal. They have been added because the income eligibility requirements for these programs are similar to those of the other public benefit programs in current law, and adding them to the categorical list will provide administrative efficiencies in processing fee waiver applications.

Application processing and determination

The draft legislative proposal lays out clear procedures and timeframes for acting on fee waiver applications. It specifies that a clerk cannot deny a fee waiver application on his or her own authority but may be delegated authority to grant one. It also limits the documentation that must be provided to support the application at the time it is filed. Finally, it provides that the court must provide notice to an applicant whose application is being denied of the reasons for denial and that the court must afford the applicant a reasonable opportunity to either correct the application if information is missing or request a hearing to demonstrate eligibility. If the court has a reason to doubt the truthfulness of the application or finds that the applicant's eligibility is ambiguous, the court must then set an eligibility hearing and give the applicant at least 10 days' notice and specific reasons for the court's uncertainty.

Reconsideration of fees and costs initially waived

The working group's proposal would enact new procedures for collecting fees in cases where an initial fee waiver has been granted and subsequent events indicate that recovery of the waived fees is appropriate. These procedures would (1) require the court to add any waived fees to a judgment in a civil case if the judgment is in favor of a party who received an initial fee waiver (this does not apply to unlawful detainer cases); (2) place an automatic lien on any settlement or other recovery of \$10,000 or more if the party collecting the recovery received a fee waiver; and (3) require the court in family law matters to consider whether a party to a family law case who did not receive a fee waiver has the ability to pay the other party's fees, and/or to review at the time of judgment whether changed circumstances allow a party whose fees were initially waived to pay all or part of the waived fees.

Recovery

The proposal would require the person who is requesting the court to enter a partial or full satisfaction of the judgment to file a declaration that the waived fees and costs have been paid. When there has been a recovery of \$10,000 or more by settlement or other means, the party requesting dismissal must file a declaration that the court lien has been paid. If the request is filed without the declaration, the court may issue an order to show cause why the court should not order the parties jointly and severally liable for the waived fees or why the lien should not be enforced.

This revised and reorganized statute is intended to create a system for initial waiver of court fees and subsequent reconsideration in specified cases that meet the working group's vision of the fee waiver system's intent. This vision is set forth in the proposed legislative findings, which reads in part:

The procedure for allowing the poor to use court services without paying ordinary fees must be one that applies rules fairly to similarly situated persons; must be accessible to those with limited knowledge of court processes; and must not delay access to court services. The procedure for determining when a litigant may file a lawsuit without paying a fee must not interfere with court access for those without the financial means to do so.

Approval of this draft for sponsorship while it circulates for comment will allow the working group to continue its efforts to enact an improved system of access to the courts for those who cannot afford to pay court fees.

Alternative Actions Considered

As a subcommittee of the Enhanced Collections Working Group, the Fee Waiver Subcommittee (which became the working group) spent significant time exploring whether courts could implement better procedures to verify eligibility for an initial fee waiver. Ultimately the working group concluded that the information requested from applicants should not interfere with an applicant's ability to file a case and should reflect the limited avenues available for verification of such information.

Comments From Interested Parties

The draft legislative proposal has been the consensus product of the working group members. Any comments received during the comment period will be reviewed and the working group will recommend appropriate revisions to the PCLC and the chairs of the Executive and Planning Committee and the Rules and Projects Committee.

Implementation Requirements and Costs

Implementation of an enhanced fee waiver system is dependent not only on a revision of the underlying statute but also on the adoption of new rules and forms to make the

process clearer and more accessible to all potential applicants. If the council approves sponsorship of the proposed legislation and the legislation is enacted, the next step for the working group will be to develop and propose new rules and forms for adoption by the Judicial Council in 2008.

Attachments

**Attachment A: Invitation to Comment on Proposed Judicial Council–Sponsored
Legislation**

Title	Waiver of Court Fees and Costs (Repeal Gov. Code, § 68511.3; replace with Gov. Code, §§ 68630.010–68630.100 (new article 6 of title 8, chapter 2))
Summary	The statute on proceeding in forma pauperis would be repealed and replaced with new provisions governing fee waivers to clarify eligibility, application procedure and processing, determination, reconsideration, and recovery of court fees and costs initially waived by the court.
Source	Fee Waiver Working Group Hon. Carolyn B. Kuhl, Chair Michael D. Planet, Cochair
Staff	Florence Prushan, Lead Staff, 818-558-3021, florence.prushan@jud.ca.gov Cara Vonk, Counsel, 415-865-7669, cara.vonk@jud.ca.gov
Discussion	<p>Current procedures for processing and granting a fee waiver are cumbersome and confusing for the applicant and the court. The statute should be drafted so that it can guide users through the process and be easily understood. The law and procedure should ensure that court fees are not a barrier to court access for those with insufficient economic means to pay those fees and that the court be allowed to recover previously waived fees when the applicant obtains a judgment or substantial settlement.</p> <p>The draft legislative proposal is largely consistent with the substantive provisions of existing law. A brief discussion of key differences between the current statute and the proposed statute is provided below.</p> <p><i>Organization and structure:</i> The draft proposal reorganizes the statutory provisions in current law to make them easier to follow and implement. It begins with findings that set forth the purpose of the new article and then lays out each of the aspects of the fee waiver and recovery program: criteria for eligibility, application procedure, application processing and determination, reconsideration, recovery of fees and costs initially waived, enforcement, and expiration of the fee waiver order.</p> <p><i>Eligibility:</i> The fee waiver eligibility provisions have been largely maintained as they exist in current law, but three new income-based entitlement programs have been added to the list of public benefit</p>

programs for which recipients have an automatic right to an initial waiver of fees. These three programs are Cash Assistance Program for Immigrants (CAPI), In-Home Supportive Services (IHSS), and Medi-Cal. They have been added because the income eligibility requirements for these programs are similar to those of the other public benefit programs in current law, and adding them to the categorical list will provide administrative efficiency in processing fee waiver applications.

Application processing and determination: The draft legislative proposal lays out clear procedures and timeframes for acting on fee waiver applications. It specifies that a clerk cannot deny a fee waiver application on his or her own authority but may be delegated authority to grant one. It also limits the documentation that must be provided to support the application at the time it is filed. Finally, it provides that the court must provide notice to an applicant whose application is being denied of the reasons for denial and that the court must afford the applicant a reasonable opportunity to either correct the application if information is missing or to request a hearing to demonstrate eligibility. If the court has a reason to doubt the truthfulness of the application or finds that the applicant's eligibility is ambiguous, then the court must set an eligibility hearing and give the applicant at least 10 days' notice and specific reasons for the court's uncertainty.

Reconsideration of fees and costs initially waived: The proposal would enact new procedures for collecting fees in cases where an initial fee waiver has been granted and subsequent events indicate that recovery of the waived fees is appropriate. These procedures would (1) require the court to add any waived fees to a judgment in a civil case if the judgment is in favor of a party who received an initial fee waiver (this does not apply to unlawful detainer cases); (2) place an automatic lien on any settlement or other recovery of \$10,000 or more if the party collecting the recovery received a fee waiver; and (3) in family law matters, require the court to consider whether a party to a family law case who did not receive a fee waiver has the ability to pay the other party's fees, and/or review at the time of judgment whether changed circumstances allow a party whose fees were initially waived to pay all or part of the waived fees.

Recovery: The proposal would require the person who is requesting that the court enter a partial or full satisfaction of the judgment to file a declaration that the waived fees and costs have been paid. When there has been a recovery of \$10,000 or more by settlement or other means,

the party requesting dismissal must file a declaration that the court lien has been paid. If the request is filed without the declaration, the court may issue an order to show cause why the court should not order the parties jointly and severally liable for the waived fees or why the lien should not be enforced. The text of the legislative proposal is attached.

Attachment

1 Government Code section 68511.3 would be repealed, and sections 68630.010–
2 68630.100 would be added, to read:

3
4 **68511.3.** (a) ~~The Judicial Council shall formulate and adopt uniform~~
5 ~~forms and rules of court for litigants proceeding in forma pauperis.~~
6 ~~These rules shall provide for all of the following:~~

7 ~~–(1) Standard procedures for considering and determining~~
8 ~~applications for permission to proceed in forma pauperis, including,~~
9 ~~in the event of a denial of permission, a written statement detailing~~
10 ~~the reasons for denial and an evidentiary hearing where there is a~~
11 ~~substantial evidentiary conflict.~~

12 ~~–(2) Standard procedures to toll relevant time limitations when a~~
13 ~~pleading or other paper accompanied by the application is timely~~
14 ~~lodged with the court and delay is caused due to the processing of~~
15 ~~the application to proceed in forma pauperis.~~

16 ~~–(3) Proceeding in forma pauperis at every stage of the proceedings~~
17 ~~at both the appellate and trial levels of the court system.~~

18 ~~–(4) The confidentiality of the financial information provided to~~
19 ~~the court by these litigants.~~

20 ~~–(5) That the court may authorize the clerk of the court, county~~
21 ~~financial officer, or other appropriate county officer to make~~
22 ~~reasonable efforts to verify the litigant's financial condition~~
23 ~~without compromising the confidentiality of the application.~~

24 ~~–(6) That permission to proceed in forma pauperis be granted to all~~
25 ~~of the following:~~

26 ~~–(A) Litigants who are receiving benefits pursuant to the~~
27 ~~Supplemental Security Income (SSI) and State Supplemental Payments~~
28 ~~(SSP) programs (Sections 12200 to 12205, inclusive, of the Welfare~~
29 ~~and Institutions Code), the California Work Opportunity and~~
30 ~~Responsibility to Kids Act (CalWORKs) program (Chapter 2 (commencing~~
31 ~~with Section 11200) of Part 3 of Division 9 of the Welfare and~~
32 ~~Institutions Code), the Food Stamp Program (7 U.S.C. Sec. 2011 et~~
33 ~~seq.), or Section 17000 of the Welfare and Institutions Code.~~

34 ~~–(B) Litigants whose monthly income is 125 percent or less of the~~
35 ~~current monthly poverty line annually established by the Secretary of~~
36 ~~Health and Human Services pursuant to the Omnibus Budget~~
37 ~~Reconciliation Act of 1981, as amended.~~

38 ~~–(C) Other persons when in the court's discretion, this permission~~
39 ~~is appropriate because the litigant is unable to proceed without~~
40 ~~using money which is necessary for the use of the litigant or the~~
41 ~~litigant's family to provide for the common necessities of life.~~

42 ~~–(b) (1) Litigants who apply for permission to proceed in forma~~
43 ~~pauperis pursuant to subparagraph (A) of paragraph (6) of subdivision~~
44 ~~(a) shall declare under penalty of perjury that they are receiving~~

1 the benefits and may voluntarily provide the court with their date of
2 birth and social security number or their Medi-Cal identification
3 number to permit the court to verify the applicant's receipt of
4 public assistance. The court may require any applicant, except a
5 defendant in an unlawful detainer action, who chooses not to disclose
6 his or her social security number for verification purposes to
7 attach to the application documentation of benefits to support the
8 claim and all other financial information on a form promulgated by
9 the Judicial Council for this purpose.

10 ~~-(2) Litigants who apply for permission to proceed in forma~~
11 ~~pauperis pursuant to subparagraph (B) or (C) of paragraph (6) of~~
12 ~~subdivision (a) shall file a financial statement under oath on a form~~
13 ~~promulgated by, and pursuant to rules adopted by, the Judicial~~
14 ~~Council.~~

15 ~~-(e) The forms and rules adopted by the Judicial Council shall~~
16 ~~provide for the disclosure of the following information about the~~
17 ~~litigant:~~

18 ~~-(1) Current street address.~~

19 ~~-(2) Occupation and employer.~~

20 ~~-(3) Monthly income and expenses.~~

21 ~~-(4) Address and value of any real property owned directly or~~
22 ~~beneficially.~~

23 ~~-(5) Personal property with a value that exceeds five hundred~~
24 ~~dollars (\$500).~~

25 ~~The information furnished by the litigant shall be used by the~~
26 ~~court in determining his or her ability to pay all or a portion of~~
27 ~~the fees and costs.~~

28 ~~-(d) At any time after the court has granted a litigant permission~~
29 ~~to proceed in forma pauperis and prior to final disposition of the~~
30 ~~case, the clerk of the court, county financial officer, or other~~
31 ~~appropriate county officer may notify the court of any changed~~
32 ~~financial circumstances which may enable the litigant to pay all or a~~
33 ~~portion of the fees and costs which had been waived. The court may~~
34 ~~authorize the clerk of the court, county financial officer, or other~~
35 ~~appropriate county officer to require the litigant to appear before~~
36 ~~and be examined by the person authorized to ascertain the validity of~~
37 ~~their indigent status. However, no litigant shall be required to~~
38 ~~appear more than once in any four month period. A litigant proceeding~~
39 ~~in forma pauperis shall notify the court within five days of any~~
40 ~~settlement or monetary consideration received in settlement of this~~
41 ~~litigation and of any other change in financial circumstances that~~
42 ~~affects the litigant's ability to pay court fees and costs. After the~~
43 ~~litigant either (1) appears before and is examined by the person~~
44 ~~authorized to ascertain the validity of his or her indigent status or~~

1 (2) notifies the court of a change in financial circumstances, the
2 court may then order the litigant to pay to the court the sum and in
3 any manner the court believes is compatible with the litigant's
4 financial ability.
5 ~~In any action or proceeding in which the litigant whose fees and
6 costs have been waived would have been entitled to recover those fees
7 and costs from another party to the action or proceeding had they
8 been paid, the court may assess the amount of the waived fees and
9 costs against the other party and order the other party to pay that
10 sum to the court or to the clerk and serving and levying officers
11 respectively, or the court may order the amount of the waived fees
12 and costs added to the judgment and so identified by the clerk.
13 Execution may be issued on any order provided for in this
14 subdivision in the same manner as on a judgment in a civil action.
15 When an amount equal to the sum due and payable to the clerk has been
16 collected upon the judgment, these amounts shall be remitted to the
17 clerk within 30 days. Thereafter, when an amount equal to the sum due
18 to the serving and levying officers has been collected upon the
19 judgment, these amounts shall be due and payable to those officers
20 and shall be remitted within 30 days. If the remittance is not
21 received by the clerk within 30 days or there is a filing of a
22 partial satisfaction of judgment in an amount at least equal to the
23 fees and costs payable to the clerk or a satisfaction of judgment has
24 been filed, notwithstanding any other provision of law, the court
25 may issue an abstract of judgment, writ of execution, or both for
26 recovery of those sums, plus the fees for issuance and execution and
27 an additional fee for administering this section. The court shall
28 establish a fee, not to exceed actual costs of administering this
29 subdivision and in no case exceeding twenty five dollars (\$25), which
30 shall be added to the writ of execution.~~
31 ~~(e) Notwithstanding subdivision (a), a person who is sentenced to
32 imprisonment in a state prison or confined in a county jail and,
33 during the period of imprisonment or confinement, files a civil
34 action or notice of appeal of a civil action in forma pauperis shall
35 be required to pay the full amount of the filing fee to the extent
36 provided in this subdivision.~~
37 ~~(1) In addition to the form required by this section for filing in
38 forma pauperis, an inmate shall file a copy of a statement of
39 account for any sums due to the inmate for the six month period
40 immediately preceding the filing of the civil action or notice of
41 appeal of a civil action. This copy shall be certified by the
42 appropriate official of the Department of Corrections or a county
43 jail.~~
44 ~~(2) Upon filing the civil action or notice of appeal of a civil~~

1 ~~action, the court shall assess, and when funds exist, collect, as a~~
2 ~~partial payment of any required court fees, an initial partial filing~~
3 ~~fee of 20 percent of the greater of one of the following:~~
4 ~~–(A) The average monthly deposits to the inmate's account.~~
5 ~~–(B) The average monthly balance in the inmate's account for the~~
6 ~~six-month period immediately preceding the filing of the civil action~~
7 ~~or notice of appeal.~~
8 ~~–(3) After payment of the initial partial filing fee, the inmate~~
9 ~~shall be required to make monthly payments of 20 percent of the~~
10 ~~preceding month's income credited to the inmate's account. The~~
11 ~~Department of Corrections shall forward payments from this account to~~
12 ~~the clerk of the court each time the amount in the account exceeds~~
13 ~~ten dollars (\$10) until the filing fees are paid.~~
14 ~~–(4) In no event shall the filing fee collected pursuant to this~~
15 ~~subdivision exceed the amount of fees permitted by law for the~~
16 ~~commencement of a civil action or an appeal of a civil action.~~
17 ~~–(5) In no event shall an inmate be prohibited from bringing a~~
18 ~~civil action or appeal of a civil action solely because the inmate~~
19 ~~has no assets and no means to pay the initial partial filing fee.~~

21 Article 6. Waiver of Court Fees and Costs

22
23 The Legislature finds and declares that our legal system cannot claim to provide “equal
24 justice under law” unless all persons have access to the courts without regard to their
25 economic means. California law and court procedures should ensure that court fees are
26 not a barrier to court access for those with insufficient economic means to pay those fees.

27 Fiscal responsibility should be tempered with concern for litigants’ rights to access the
28 justice system. The procedure for allowing the poor to use court services without paying
29 ordinary fees must be one that applies rules fairly to similarly situated persons; must be
30 accessible to those with limited knowledge of court processes; and must not delay access
31 to court services. The procedure for determining when a litigant may file a lawsuit
32 without paying a fee must not interfere with court access for those without the financial
33 means to do so.

34 The Legislature further finds and declares that those who are able to pay court fees in fact
35 should do so and that courts should be allowed to recover previously waived fees when a
36 litigant has obtained a substantial judgment or settlement.

37 38 **68630.010** [Definition of initial waiver of court fees and costs]

39
40 An initial fee waiver must be granted by the court at any stage of the proceedings at both
41 the appellate and trial court levels whenever an applicant meets the standards of
42 eligibility and application requirements under Sections 68630.020 and 68630.030. An

1 initial fee waiver excuses the applicant from paying fees for the first pleading and other
2 court fees and costs as specified in rules adopted by the Judicial Council unless the court
3 orders the applicant to make partial payments under Section 68630.020(c), 68630.060(d),
4 or 68630.070(d). Under circumstances set forth in Section 68630.060, the court may
5 reconsider the initial fee waiver and order the fee waiver withdrawn for future fees and
6 costs or deny the fee waiver retroactively. At the end of the case, the court may recover
7 fees and costs that were initially waived under circumstances set forth in Section
8 68630.070.

9
10 **68630.020** [Criteria for eligibility]

11
12 Permission to proceed without paying court fees and costs because of an applicant's
13 financial condition must be granted initially to all of the following:

14
15 (a) [Public assistance] Persons who are receiving public benefits under one or more of the
16 following programs:

17
18 (1) Supplemental Security Income (SSI) and State Supplementary Payment (SSP)
19 programs (Welfare and Institutions Code Section 12200 et seq.)

20
21 (2) California Work Opportunity and Responsibility to Kids Act (CalWORKs)
22 (Welfare and Institutions Code Section 11200 et seq.).

23
24 (3) Food Stamps (7 United States Code Section 2011 et seq.).

25
26 (4) County Relief, General Relief (GR), or General Assistance (GA) (Section 17000
27 of the Welfare and Institutions Code).

28
29 (5) Cash Assistance Program for Immigrants (CAPI) (Welfare and Institutions Code
30 Section 18940 et seq.).

31
32 (6) In-Home Supportive Services (IHSS) (Welfare and Institutions Code Section
33 12300 et seq.).

34
35 (7) Medi-Cal (Welfare and Institutions Code Section 14000 et seq.).

36
37 (b) [125% of federal poverty guidelines] Persons whose monthly income is 125 percent
38 or less of the current poverty guidelines updated periodically in the Federal Register
39 by the U.S. Department of Health and Human Services under the authority of Section
40 9902(2) of Title 42 of the United States Code.

41
42 (c) [Unable to meet common necessities of life] Persons who, as individually determined
43 by the court, cannot pay court fees without using money that normally would pay for
44 the common necessities of life for the applicant and the applicant's family. If the

1 court finds that an applicant under this subdivision can pay a portion of court fees or
2 can pay court fees over a period of time or under some other equitable arrangement
3 without using money that normally would pay for the common necessities of life for
4 the applicant and the applicant’s family, the court may grant a partial initial fee
5 waiver using the notice and hearing procedures set forth in Section 68630.040(d)(5).
6 “Common necessities of life,” as used in this article, shall be interpreted consistently
7 with the use of that term in Section 706.051 of the Code of Civil Procedure.
8

9 **68630.030** [Application]
10

- 11 (a) [Public assistance] An applicant for an initial fee waiver under Section 68630.020(a)
12 must complete, under penalty of perjury, a Judicial Council application form requiring
13 the applicant to list his or her current street address, occupation, and employer and the
14 type of public benefits that he or she is receiving. At the time the application is
15 submitted, the applicant shall not be required to provide documents supporting receipt
16 of public benefits or to fill out additional parts of the application form.
17
- 18 (b) [125% of federal poverty guidelines] An applicant for an initial fee waiver under
19 Section 68630.020(b) must complete, under penalty of perjury, a Judicial Council
20 application form requiring the applicant to provide his or her current street address,
21 occupation, and employer and complete a financial statement showing monthly and/or
22 yearly income as determined under rules and on forms adopted by the Judicial
23 Council. At the time the application is submitted, the applicant shall not be required to
24 provide documents to prove income, dependents, or expenses or to fill out additional
25 parts of the application form.
26
- 27 (c) [Unable to meet common necessities of life] An applicant for an initial fee waiver
28 under Section 68630.020(c) must complete, under penalty of perjury, a Judicial
29 Council application form requiring the applicant to provide his or her current street
30 address, occupation, and employer and to complete a financial statement showing
31 monthly and/or yearly income and expenses and a summary of assets and liabilities as
32 determined under rules and on forms adopted by the Judicial Council. At the time the
33 application is submitted, the applicant shall not be required to provide documents to
34 prove income, dependents or expenses.
35
- 36 (d) [Judicial Council forms] The clerk shall provide forms adopted by the Judicial
37 Council pursuant to this article without charge to any person who requests it or
38 indicates that he or she is unable to pay any court fee or cost. No applicant shall be
39 required to complete any form as part of his or her application under this rule other
40 than forms adopted by the Judicial Council.
41
- 42 (e) [Notice] An applicant for an initial fee waiver must be informed that, at a later date,
43 the court may require proof of receipt of benefits or financial information to verify
44 eligibility as provided in Section 68630.060 and that the court may seek

1 reimbursement of initially waived fees under circumstances set forth in Section
2 68630.070. This notice requirement is satisfied if the information is provided on the
3 Judicial Council fee waiver application form.
4

- 5 (f) [Confidentiality] Financial information provided by an applicant will be kept
6 confidential by the court. No person shall have access to the application except the
7 court and authorized court personnel and any person authorized by the applicant. No
8 person shall reveal any information contained in the application except as authorized
9 by law. Hearings regarding whether to grant or deny a fee waiver request shall be held
10 in camera, and the court shall exclude all persons except court staff, the applicant,
11 those present with the applicant's consent, and any witness being examined. The fact
12 that an applicant's fees and costs have been initially waived and the amount of the
13 waived fees and costs are not confidential. The Judicial Council will adopt procedures
14 to keep the financial information confidential and to consider a request seeking that
15 confidential information.
16

17 **68630.040** [Application processing and determination]
18

- 19 (a) [Processing by clerk] All applications for an initial fee waiver must be accepted for
20 filing. If an application is submitted without all required information filled out on the
21 form, the clerk may request that the applicant supply the omitted information but may
22 not refuse to file the application and may not refuse to file any pleadings
23 accompanying the application on the ground that the fee has not been paid. The clerk
24 may not request that the applicant furnish information that is not required on the
25 Judicial Council fee waiver application form. At the time the application is submitted,
26 the clerk may not request that the applicant provide documents to support the
27 information other than those required under Section 68630.030.
28
- 29 (b) [Filing of pleading] If a person has filed an application for an initial fee waiver, the
30 person must be permitted to file his or her pleading or other papers immediately,
31 without paying any fees.
32
- 33 (c) [Delegation to clerk to approve] The court may delegate to the clerk the authority to
34 grant applications for an initial fee waiver that meet the standards of eligibility and
35 application requirements set forth in Sections 68630.020 and 68630.030. The court
36 may not delegate to a clerk the authority to deny or to partially grant an application
37 for an initial fee waiver.
38
- 39 (d) [Determination of application] The fee waiver application shall be determined without
40 regard to the substance of the applicant's pleading or other paper filed, if any. On
41 review of an application for an initial fee waiver the court must:
42

1 (1) Grant the application if the information provided on the application establishes
2 that the applicant meets the criteria for eligibility and application requirements set
3 forth in Sections 68630.020 and 68630.030.
4

5 (2) Deny the application if the application is incomplete. If the application is denied
6 on this basis, the applicant must be given notice of the reason for denial and a
7 reasonable opportunity to submit a revised application or to request a hearing.
8

9 (3) Deny the application if the information provided on the application conclusively
10 establishes that the applicant is not eligible for an initial fee waiver under Section
11 68630.020 on the grounds requested. If the application is denied on this basis, the
12 applicant must be given notice of the specific reason for denial and a reasonable
13 opportunity to request a hearing. The applicant may submit additional information
14 at the hearing.
15

16 (4) Set an eligibility hearing if the court has good reason to doubt the veracity of the
17 factual statements in the application. The applicant must be given 10 days' notice
18 of the hearing and the specific reason the court doubts the veracity of the factual
19 statements. The court may require that specified, reasonably available additional
20 information be provided concerning the truthfulness of the factual statements in
21 the application, but the court may not require submission of information that is not
22 related to the criteria for eligibility and application requirements set forth in
23 Sections 68630.020 and 68630.030.
24

25 (5) Set an eligibility hearing if the information provided on the application does not
26 establish that the applicant meets the criteria for eligibility and application
27 requirements set forth in Sections 68630.020 and 68630.030 but that information
28 does not conclusively establish that the applicant is not eligible for an initial fee
29 waiver on the grounds requested. The applicant must be given 10 days' notice of
30 the hearing and the specific reason why the court has not granted the application.
31 The court may require that specified, reasonably available additional information
32 be provided but may not require submission of information that is not related to
33 the criteria for eligibility and application requirements set forth in Sections
34 68630.020 and 68630.030.
35

36 After notice and an opportunity to be heard, the court may require an applicant
37 under Section 68630.020(c) to pay a portion of court fees or to pay court fees over
38 a period of time or under some other equitable arrangement that meets the criteria
39 of Section 68630.020(c). The court must give a written statement of reasons if an
40 application is denied in whole or granted in part.
41

42 (e) [Time limits] An application for an initial fee waiver is granted five court days after it
43 is filed, unless before that time the court gives notice of action on the application as
44 provided in subdivision (d). Any delay by the court in processing an application to

1 initially waive court fees and costs does not count against any time limits affecting the
2 pleadings or other papers that the applicant timely filed.

3
4 (f) [Payment of fees and costs] If an application is denied in whole or granted in part, the
5 applicant must pay the court fees and costs that ordinarily would be charged, or make
6 the partial payment as ordered by the court, within 10 days after the clerk gives notice
7 of the denial unless within that time the applicant submits a new application or
8 requests a hearing under subdivision (d). If the applicant does not pay on time, the
9 clerk must void the papers that were filed without payment of the court fees and costs.

10
11 (g) [Resubmission] Any person who applies for an initial fee waiver must indicate
12 whether he or she filed a prior application for an initial fee waiver in the same case
13 within the previous six months and must attach a copy if one is reasonably available.

14
15 **68630.050** [Fees for incarcerated litigants]

16
17 (a) [Fees to be paid] Notwithstanding any other provision of this article, persons who are
18 sentenced to a state prison or confined in a county jail must pay the full amount of the
19 filing fees and costs to the extent provided in this section.

20
21 (b) [Application for initial waiver] To be eligible for an initial fee waiver, a person who is
22 sentenced to a state prison or confined in a county jail must complete, under penalty
23 of perjury, a Judicial Council application form giving the current address of the
24 inmate and a statement that he or she is incarcerated, together with a statement of
25 account for any money due to the inmate for the six-month period immediately
26 preceding the application. The form must be certified by the appropriate official of the
27 Department of Corrections and Rehabilitation or the county jail.

28
29 (c) [Initial assessment and collection of fees] When the pleadings or other papers are
30 filed, the court will assess and, if funds exist, collect as partial payment a partial filing
31 fee of 20 percent of the greater of one of the following:

32
33 (1) The average monthly deposits to the inmate's account.

34
35 (2) The average monthly balance in the inmate's account for the six-month period
36 immediately preceding the application.

37
38 (d) [Subsequent assessment and collection of fees] After the initial filing fee is partially
39 paid, the inmate will be required to make monthly payments of 20 percent of the
40 preceding month's income credited to the inmate's account. The Department of
41 Corrections and Rehabilitation will forward payments from this account to the clerk
42 of the court each time the amount in the account exceeds ten dollars (\$10) until the
43 filing fees are paid in full.

- 1 (e) [Limit on collection of fees] The fees collected by the court under this section may
2 not exceed the amount of the fees that would be charged to a person who is not
3 incarcerated.
4
- 5 (f) [Processing by clerk] The court may delegate to a clerk the authority to process
6 requests for fee waivers from incarcerated persons under this section.
7
- 8 (g) [Court access] In no event will an inmate be prohibited from filing pleadings or other
9 papers solely because the inmate has no assets and no means to partially pay the
10 initial filing fee.
11

12 **68630.060** [Reconsideration of fees and costs initially waived]
13

- 14 (a) [Notification of changed circumstances] After the court has granted an initial fee
15 waiver in whole or in part and before final disposition of the case, the person who
16 received the initial fee waiver must notify the court within five days of any change in
17 financial circumstances that affects his or her ability to pay all or a portion of the
18 court fees and costs that were initially waived.
19
- 20 (b) [Reconsideration on the court's motion] If, before or at the time of final disposition of
21 the case, the court obtains information (including information derived from the court
22 file) suggesting that a person whose fees and costs were initially waived is not entitled
23 to a fee waiver, or that the person's financial condition has changed so that he or she
24 is no longer eligible for a fee waiver, the court may require the person to appear at a
25 court hearing by giving the applicant no less than 10 days' written notice of the
26 hearing. The court may require the person to provide reasonably available evidence,
27 including financial information, to support his or her eligibility for the fee waiver, but
28 the court may not require submission of information that is not related to the criteria
29 for eligibility and application requirements set forth in Sections 68630.020 and
30 68630.030. The court may not conduct such a hearing more often than once every six
31 months.
32
- 33 (c) [Reconsideration at final disposition] At the time of final disposition of the case, the
34 court may give notice that a person whose fees and costs were initially waived must
35 appear at a court hearing by giving the applicant no less than 10 days' written notice
36 of the hearing. The court may require the person to provide reasonably available
37 evidence, including financial information, to support his or her eligibility for the fee
38 waiver, but the court may not require submission of information that is not related to
39 the criteria for eligibility and application requirements set forth in Sections 68630.020
40 and 68630.030. This subdivision does not apply if the court conducted a review under
41 subdivision (b) within six months prior to the final disposition of the case.
42
- 43 (d) [Retroactive withdrawal] In conducting a review under subdivision (b) or (c), if the
44 court determines that the person was not entitled to the initial fee waiver at the time it

1 was granted, the court may order the waiver withdrawn retroactively. The court may
2 order the person to pay to the court immediately, or over a period of time, all or part
3 of the fees that were initially waived. The court must give the person a minimum of
4 10 court days to begin paying the full or partial fees.
5

6 (e) [Prospective withdrawal] In conducting a review under subdivision (a), (b), or (c), if
7 the court determines that the person's financial circumstances have changed since the
8 grant of the initial fee waiver or partial initial fee waiver, the court may order the fee
9 waiver withdrawn prospectively from the time that the person no longer was eligible
10 for a fee waiver. The court may order the person to pay to the court immediately, or
11 over a period of time, all or part of the fees that were waived since the time that the
12 person no longer was eligible for a fee waiver. The court may order the person to
13 begin paying all or part of the court fees assessed for future activities in the case. The
14 court must give the person a minimum of 10 court days to begin paying the full or
15 partial fees.
16

17 (f) [Services obtained in bad faith] If the court obtains information suggesting that a
18 litigant whose fees and costs were initially waived is obtaining court services in bad
19 faith, or for an improper purpose such as to harass or cause unnecessary delay, or to
20 needlessly increase the cost of litigation, the court may give notice that the litigant
21 must appear at a court hearing to consider whether limitations should be placed on
22 court services for which fees are initially waived.
23

24 **68630.070** [Recovery of fees and costs initially waived by court]
25

26 (a) [Waived fees and costs added to judgment] When judgment is entered in a civil case
27 in favor of a party whose fees and costs were initially waived, the waived fees and
28 costs must be added to the judgment, including any judgment by default, regardless of
29 the amount of the judgment. This provision does not apply to unlawful detainer cases.
30

31 (1) The waived fees and costs must be paid to the court before the prevailing party
32 whose fees and costs were initially waived collects on the judgment. This must be
33 stated in the judgment.
34

35 (2) The court may refuse to enter partial or full satisfaction of the judgment until the
36 waived fees and costs have been paid. The party asking the court to enter
37 satisfaction of judgment must declare under penalty of perjury that the waived fees
38 and costs have been paid to the court.
39

40 (b) [Court lien on settlement] When a party in a civil case whose fees and costs were
41 initially waived recovers ten thousand dollars (\$10,000) or more in value by way of
42 settlement, compromise, arbitration award, mediation settlement, or other recovery,
43 the waived fees and costs must be paid to the court out of the settlement, compromise,
44 award, or other recovery.

- 1
2 (1) The court will have a lien on any settlement, compromise, award, or other
3 recovery in the amount of all the court fees and costs initially waived.
4
5 (2) The waived fees and costs must first be paid to the court before the party whose
6 fees and costs were initially waived receives anything of value under the
7 settlement, compromise, award, or other recovery.
8
9 (3) Notice of the lien will be given to the parties under rules and on forms adopted by
10 the Judicial Council, and the Judicial Council will provide by rule the procedures
11 by which a party subject to a lien can determine the amount of the lien.
12
13 (4) The court may refuse to enter a request for dismissal in the case until the lien is
14 satisfied. A party filing a request for dismissal must declare under penalty of
15 perjury that the lien has been paid or that any settlement, compromise, award, or
16 other recovery has a value less than ten thousand dollars (\$10,000).
17
18 (5) In a case in which an initial waiver of fees and costs was granted, or if a request to
19 dismiss the case is filed without the declaration, the court may issue an order to
20 show cause why the lien should not be enforced and why the court should not
21 enter a judgment making the parties jointly and severally liable to the court for
22 initially waived fees and costs.
23
24 (c) [Family law] When judgment is entered in a family law case, the court must consider
25 whether a party who did not receive a fee waiver has the ability to pay all or part of
26 the other party's waived fees. If the court orders payment of the other party's waived
27 fees and the party required to pay is not present in court at the time judgment is
28 entered, the party required to pay must be given notice and an opportunity for a
29 hearing to request that the court set aside the order. A request for a hearing must be
30 made in writing within 20 days after service of the notice of the court order. If a
31 request for hearing is made, the order for payment of initially waived fees may not be
32 enforced until after the hearing.
33
34 (d) [Review of changed circumstances—family law] When a judgment is entered in a
35 family law case, the court must consider whether a party's circumstances have
36 changed so that it is reasonable to require a party who received an initial fee waiver to
37 pay all or part of the fees that were initially waived. In determining whether a party
38 should be required to pay all or part of the fees initially waived, the court shall use the
39 criteria for eligibility set forth in Section 68630.020. If the court orders the party to
40 pay all or part of the fees that were initially waived, the party required to pay must be
41 given notice and an opportunity for a hearing to request that the court set aside the
42 order. A request for a hearing must be made in writing within 20 days after service of
43 the notice of the court order. If a request for hearing is made, the order for payment of
44 initially waived fees may not be enforced pending hearing on the matter.

1
2 **68630.080** [Enforcement of court order to pay fees]
3

4 (a) The court may execute on any order for payment of initially waived fees and costs in
5 the same manner as on a judgment in a civil action. The court may issue an abstract of
6 judgment, a writ of execution, or both, for (1) recovery of the initially waived fees and
7 costs as ordered, plus (2) fees for issuing the abstract of judgment, writ of execution,
8 or both, plus (3) a twenty-five dollar (\$25) fee for administering this subdivision, plus
9 (4) an amount due to levying officers for serving and collecting on the judgment that
10 will all be added to the writ of execution. Upon collection, the initially waived fees
11 and costs, the fees for issuing the abstract of judgment and writ of execution, and the
12 twenty-five dollar (\$25) administrative fee must be remitted to the court. Thereafter,
13 the amount due to the levying officers for serving and collecting on the judgment will
14 be paid.
15

16 (b) The court will be entitled to recover attorney fees and costs if it must bring an action
17 to enforce its right to recover waived fees and costs under a lien, judgment, or order.
18

19 **68630.090** [Expiration of fee waiver order]
20

21 An initial fee waiver will expire 60 days after the judgment, dismissal, or other final
22 disposition of the case. In family law cases the initial fee waiver will not expire so long as
23 child custody or support orders are in effect.
24

25 **68630.100** [Judicial Council rules and forms to implement this article]
26

27 The Judicial Council shall adopt rules and forms to establish uniform procedures to
28 implement the provisions of this article, including but not limited to:
29

30 (a) Procedures for considering and determining applications to proceed without paying
31 court fees and costs at every stage of the proceedings, including at the trial and
32 appellate levels of the court.
33

34 (b) Prescribing the court fees and costs that may be waived at every stage of the
35 proceedings.
36

37 (c) Procedures for giving notice of lien and hearings for reconsideration and recovery of
38 initially waived fees and costs;
39

40 (d) Procedures for collecting waived fees and costs.
41

42 (e) Any other procedures necessary to implement the provisions of this article.

Attachment B: Fee Waiver Working Group Membership and Staff

Members: Hon. Carolyn B. Kuhl, Chair, Superior Court of Los Angeles County
Michael D. Planet, Cochair, Superior Court of Ventura County
Ken Babcock, Public Law Center
Hon. Charles W. Campbell, Jr., Superior Court of Ventura County
Hon. Donna J. Hitchens, Superior Court of San Francisco County
Mitch Kamin, Bet Tzedek Legal Services
Hon. Monica Marlow, Superior Court of Shasta County
Jody Patel, Administrative Office of the Courts
Hon. Donna M. Petre, Superior Court of Yolo County
Toby Rothschild, Legal Aid Foundation of Los Angeles
Hon. Paul Anthony Vortmann, Superior Court of Tulare County
Suzanne Whitlock, Superior Court of Stanislaus County

AOC Staff: Florence Prushan, Lead Staff, Southern Regional Office
Deborah Chase, Center for Families, Children & the Courts
Bonnie Hough, Center for Families, Children & the Courts
Tracy Kenny, Office of Governmental Affairs
Cara Vonk, Office of the General Counsel

Attachment C: August 25, 2006, Report to the Judicial Council by Fee Waiver Working Group

SYSTEM FOR GRANTING INITIAL FEE WAIVERS AND FOR RECOVERING FEES IN CERTAIN INSTANCES

Overall Philosophy

Our legal system cannot claim to provide “equal justice under law” unless all persons have access to the courts without regard to their economic means. California law and court procedures should ensure that court fees are not a barrier to court access for those with insufficient economic means to pay those fees.

A procedure for allowing the poor to use court services without payment of ordinary fees must be fair in the application of rules to similarly situated persons; must be accessible to those with limited knowledge of court processes; and must not delay access to court services. The court must not allow procedures to determine when a litigant may file a lawsuit without paying a fee to interfere with court access for those without means to pay.

The court system has a duty to be fiscally responsible, but it must serve that duty in a manner that does not interfere with litigants’ rights to access to justice. The court system should take reasonable steps to ensure that those who are able to pay court fees in fact do so; to ensure that those who have been excused from paying court fees do not abuse the privilege by making unnecessary demands for ancillary court services; and to provide for recovery of fees when a litigant has obtained a substantial judgment or settlement. To the extent possible, the requirements for administering requests to use court services without paying fees should not place excessive demands on court staff and bench officers.

Eligibility for an Initial Waiver of Court Fees

1. Eligibility of persons who receive public assistance

Applicants will receive an initial waiver of fees if they receive any of the following benefits:

SSI (specified in current law). “Supplemental Security Income” is a federal income supplement program for low income people aged 65 and over and for blind or disabled persons of any age. It provides cash to meet basic needs for food, clothing and shelter.

CalWORKs (specified in current law). The CalWORKs program provides temporary financial assistance and employment focused services to low income families with

children under 19 years old who have income and property below State maximum limits for their family size.

General Relief (specified in current law). “General Relief” is a County-funded program that provides financial assistance to indigent adults who are ineligible for federal or State programs.

Food Stamps (specified in current law). The federal Food Stamps Program provides funds to low income people that can only be used to buy food.

CAPI (proposed new addition). The “Cash Assistance Program for Immigrants” provides cash assistance to low income people aged 65 and older and for blind or disabled persons who are legal non-citizens ineligible for SSI solely due to immigration status.

IHSS (proposed new addition). The “In-Home Supportive Services” Program provides financial assistance for services provided to persons over age 65 or who are disabled or blind so that they can remain safely in their own home. Eligibility for IHSS is dependent on income. The Program is considered an alternative to out-of-home care, such as nursing homes or board and care facilities.

Medi-Cal (proposed new addition). Medi-Cal is California’s version of the federal Medicaid program which pays for medical care for low-income people, especially families, children, the disabled and the elderly.

To establish eligibility for an initial fee waiver, applicants should be required to state under penalty of perjury that they receive a specified type or types of these categories of financial assistance. Because the documentation provided to recipients of the various types of financial aid varies, and some programs do not provide recipients with ongoing documentation of benefits received, it is not realistic to require applicants to present proof of receipt of benefits as a prerequisite to approval of an application for an initial fee waiver.

Applicants should be informed that, at a later date, the court may require proof of receipt of the benefits claimed in order to verify eligibility. Because litigants often need immediate access to the court, and because there does not seem to be an available database of benefit recipients, it is not reasonable to attempt to verify eligibility in advance of granting an initial waiver of fees. Applicants would be required to produce proof of receipt of benefits only under the procedures for reconsideration of an initial fee waiver (see below).

Fees that are waived initially may be recovered by the court under the circumstances set forth below.

The clerk shall accept for filing all applications for an initial fee waiver. A clerk may not reject or deny a fee waiver application. If an application for an initial fee waiver is submitted without all required information, a clerk should request that the party submitting the application supply the omitted information. Whenever an application is denied by the court, there must be a written statement of the reason or reasons for that determination.

2. Eligibility of persons whose income is 125% of federal poverty guidelines or less

Persons whose income is 125% of federal poverty guidelines, or less, will receive an initial fee waiver. Applicants who seek an initial fee waiver under this provision are required to provide a statement of income on the application form. Information concerning assets and liabilities is unnecessary because the eligibility requirement looks only to income level.

Applicants should be informed that, at a later date, the court may require proof of income in order to verify eligibility. Because litigants often need immediate access to the court, it is not reasonable to attempt to verify eligibility in advance of granting an initial waiver of fees. Applicants would be required to produce proof of income only under the procedures for reconsideration of an initial fee waiver (see below).

Fees that are waived initially may be recovered by the court under the circumstances set forth below.

The existing application for fee waivers based on this criteria should be simplified to clearly indicate what information concerning monthly income is required to be furnished.

The clerk shall accept for filing all applications for an initial fee waiver. A clerk may not reject or deny a fee waiver application. If an application for an initial fee waiver on the basis of income of 125% or less of federal poverty guidelines is submitted without all required information, a clerk should request that the party submitting the application supply the omitted information. Whenever an application is denied by the court, there must be a written statement of the reason or reasons for that determination.

3. Eligibility of persons who cannot pay court fees without using money required for the “common necessities of life”

Persons may apply for an initial fee waiver by showing that they cannot pay court fees without using money required for the “common necessities of life.” In order to qualify, an applicant must provide a financial statement including a summary of assets, income and liabilities. The court may delegate to a clerk or court financial analyst the authority to approve initial fee waivers on this basis. An application only can be denied by a bench officer after notice and opportunity to be heard. After notice and opportunity to be heard,

the bench officer may require that an applicant pay a sum that the court believes is compatible with the litigant's ability to pay or that the litigant pay an amount of money over a period of time.

Fees that are waived initially may be recovered by the court under the circumstances set forth below.

An applicant must be permitted to file his or her pleading immediately even though review of the application for initial fee waiver is pending.

The clerk shall accept for filing all applications for an initial fee waiver. A clerk may not deny a fee waiver application. If an application for an initial fee waiver is submitted without all required information, a clerk should request that the party submitting the application supply the omitted information. Whenever an application is denied by the court, there must be a written statement of the reason or reasons for that determination.

Expenses Covered by Initial Fee Waiver and Additional Applications

When an application for an initial waiver of court fees is granted, the following fees are waived (unless modified by the court after reconsideration or unless fees are allowed to be recovered under the circumstances set forth below):

Filing fees;

Fees for reasonably necessary certification and copying;

Fees for issuance of process and certificates;

Fees for transmittal of papers;

Court-appointed interpreter's fees for parties in small claims actions;

Sheriff's, marshal's and constable's fees pursuant to article 7 of title 3 of division 2 of the Government Code;

Reporter's appearance fees for hearings and trial held within 60 days;

Fees for telephonic appearances;

Fees for the clerk's transcript on appeal;

Jury fees and expenses.

Waiver of the following fees would require an additional application to the court. The applicant would be required to show that the expense was reasonably necessary for the prosecution or defense of the case:

Court-appointed interpreter's fees for witnesses;

Witness fees of peace officers;

Reporter's appearance fees for hearings and trial held after 60 days;

Witness fees for court appointed experts;

Fees for reporters' transcripts;

Other fees and expenses as requested.

Reconsideration of Initial Fee Waiver

At any time prior to final determination of the case, if the court obtains information that may suggest a person was not entitled to a fee waiver, or that the person's financial situation has changed so that he/she is no longer eligible for a fee waiver, the court may give notice and have a hearing to consider whether the fee waiver should be (1) withdrawn prospectively or (2) denied retroactively based on a finding that the person was not entitled to a fee waiver at the time the initial fee waiver was granted. If the waiver is withdrawn prospectively, the person must begin paying ordinary court fees assessed for future activities in the case. If the court finds that the person was not entitled to an initial fee waiver at the time it was granted, the court shall order the fees that initially were waived to be paid to the court. The court may require the person who obtained the initial fee waiver to provide reasonably available evidence to support his/her eligibility for the fee waiver. The court may not have such a hearing more than once every 6 months.

If the court obtains information that may suggest that a person who has been granted an initial fee waiver is obtaining court services that are not reasonably necessary for the case (e.g., excessive photocopying), the court may give notice and have a hearing to consider whether limitations should be placed on the type of court services for which fees are waived.

Recovery of Fees That Were Waived Initially

Civil Cases (except unlawful detainer)

When a judgment is entered in favor of a litigant whose fees initially were waived, the clerk is to add the waived fees to the judgment. This applies regardless of the amount of the judgment and whether or not the judgment is entered after default.

When a person who has received an initial fee waiver recovers \$10,000 or more by way of a settlement, waived fees must be paid to the court out of the settlement. When a request for dismissal is submitted in a case in which fees have been waived, the request for dismissal must include a statement, signed under penalty of perjury by the party who received the initial fee waiver, that either (1) the party has not received money or property worth more than \$10,000 in settlement of the litigation or on account of the dismissal, or (2) all fees that were initially waived have been paid to the court. If a request for dismissal is filed without the required statement in a case in which an initial waiver was granted, the court would set an Order to Show Cause re Why Waived Fees Should Not be Charged. If no appearance is made at the OSC hearing, the court would enter an order that waived fees should be paid, and the order could be enforced in a manner similar to enforcement of monetary sanctions.

In cases in which a person who has received an initial waiver of fees recovers \$10,000 or more, it is desirable that the fees be paid out of the settlement sum before the remainder is paid to the person who received the initial waiver. If fees are paid to the court before the remainder of the settlement sum is turned over to the party who received the initial fee waiver, collection efforts are unnecessary.

For this reason, a duty should be imposed on the party who is paying the settlement to pay fees to the court out of the settlement amount. A lien can be created as a mechanism for imposing this duty on the party who pays the settlement. The lien would be created when the summons is served. When an initial fee waiver is granted, the summons would include a notice that the court has a lien on any settlement proceeds of \$10,000 or more in the amount of fees that have been waived. A party who pays a settlement of \$10,000 or more would be liable to the court for the amount of the waived fees if that party does not pay those fees to the court out of the settlement sum before paying the remaining amount to the party who received the initial fee waiver.

If the court learns that the party subject to the lien has not paid the waived fees (for example, in the course of a hearing on an Order to Show Cause re Why Waived Fees Should Not be Charged), the court could notice an Order to Show Cause regarding why the party paying the settlement should not be held liable for the waived fees. The outcome of the OSC hearing could be an order that the party paying the settlement shall pay the waived fees to the court.

These methods for collecting fees that initially were waived in civil cases would require that the court be able to quantify the amount of waived fees. This quantification would be required in order to add the amount of waived fees to a judgment, and in order to inform a party paying a settlement of \$10,000 or more of the amount of the waived fees.

Family Law Cases

In a family law case, at the time the judgment is entered, the court will consider whether a party who has not received a fee waiver has the ability to pay all or part of the other

party's initially waived fees. If the court shifts the waived fees, and if the party that is to pay the fees is not present at the time the judgment is entered, that party must be notified that he/she can challenge the fee assessment by motion.

At the time the judgment is entered, the court also will consider whether information in the file suggests that a party who received an initial fee waiver was not in fact eligible for waiver or that the person's financial situation has changed so that he/she is no longer eligible for a fee waiver. If there is such information, the court will use the procedure for reconsideration of initial fee waiver.

These methods for collecting fees that initially were waived in family law cases would require that the court be able to quantify the amount of waived fees.

Other Proceedings

Recovery of waived fees is not permitted other than as provided above.

Expiration of Initial Fee Waiver

An order waiving fees expires 60 days after the judgment, dismissal, or other manner of final disposition in the case. In family law cases where child custody or spousal support orders are in effect, the fee waiver does not expire.