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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 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.

2. Persons responsible for payment of the cost of appointed counsel

Except to the extent that they are determined to be unable to pay for all or any portion of the cost of appointed counsel under paragraph 5 of these guidelines, the following persons or estates of persons (referred to collectively as the “responsible person”) are responsible for the payment of that cost:

- A. The estate of the ward or proposed ward in a guardianship proceeding under section 1470;
- B. The parent or parents of the ward or proposed ward in a guardianship proceeding under section 1470;
- C. The estate of a conservatee or proposed conservatee in a conservatorship proceeding under sections 1470–1472;
- D. The conservatee or proposed conservatee, if he or she has no estate, in a conservatorship proceeding under sections 1471–1472;
- E. The person alleged to lack legal capacity in a proceeding to authorize a particular transaction in community property under sections 1471–1472, to the extent the court does not order the cost paid from the proceeds of the transaction under section 1472(a)(3); and
- F. The health care patient in a proceeding to determine his or her capacity to make a health care decision under sections 1471–1472.

3. Cost of appointed counsel

1 The cost of appointed counsel is the reasonable sum fixed by the court after the
2 performance of legal services under Probate Code section 1470 or section 1472 for
3 the compensation and expenses of appointed counsel.
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5 **4. Presumed eligibility for county payment**
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7 Except as provided in paragraph 7, the person responsible for payment of the cost
8 of appointed counsel is presumed to be eligible for payment by the county of that
9 cost if the person satisfies one or more of the following three conditions:
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11 A. The responsible person is eligible for:

- 12 (1) Supplemental Security Income (SSI) and State Supplementary
13 Payment (SSP);
- 14 (2) Medi-Cal;
- 15 (3) General Assistance or General Relief (GA/GR) Program (county
16 general relief);
- 17 (4) Cash Assistance Program for [aged, blind, and disabled legal]
18 Immigrants (CAPI);
- 19 (5) CalWORKs (California Work Opportunity and Responsibility to Kids)
20 or Tribal (Native American) TANF (Temporary Assistance for Needy
21 Families) grant program;
- 22 (6) CalFresh (Supplemental Nutrition Assistance Program (SNAP)) or
23 California Food Assistance Program (CFAP), a California program for
24 immigrants not eligible for federal SNAP; or
- 25 (7) In-Home Supportive Services (IHSS);

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

29 C. The responsible person, as individually determined by the court, cannot pay
30 the cost of appointed counsel without using funds that would be normally
31 used to pay for the common necessities of life for the responsible person and
32 his or her family.
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1 **5. Determination of responsible person’s obligation for the cost of appointed**
2 **counsel**

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4 If the court finds that the responsible person, including a responsible person
5 described in paragraph 4, can pay all or a portion of the cost of appointed counsel,
6 can pay those costs in installments, or can pay those costs under some other
7 equitable arrangement without using money that normally would pay for the
8 common necessities of life for the responsible person and the responsible person’s
9 family, the court may order the responsible person to pay appointed counsel
10 directly, reimburse the county for the costs of appointed counsel paid by the
11 county, or both, in part or on such other terms as the court determines are fair and
12 reasonable under the circumstances.

13
14 **6. Apportionment**

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16 If the responsible person is the estate of a ward or proposed ward and one or both
17 of his or her parents, the court may allocate the amount determined to be payable
18 by the responsible person under paragraph 5 among them in any proportions the
19 court deems just.

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21 **7. Private appointed counsel for conservatee under section 1470**

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23 A conservatee or proposed conservatee for whom private counsel is appointed
24 under Probate Code section 1470 is ineligible for payment by the county of any
25 portion of the cost of appointed counsel.

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27 **8. Amount payable by the county**

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29 Except as provided in paragraph 7, the amount payable by the county for the cost of
30 appointed counsel is all or any part of the cost that the court determines that the
31 responsible person cannot pay under paragraph 5.

32
33 *Appendix E adopted effective January 1, 2013.*

34
35 **Advisory Committee Comment**

36
37 The guidelines placed in Appendix E to the California Rules of Court are not rules of court. They
38 are based in part on the conditions for granting an initial court fee waiver under Government
39 Code section 68632(a)–(c). For the purposes of these guidelines as well as of that Government
40 Code section, the term “common necessities of life” has the same meaning it had in Code of
41 Civil Procedure section 706.051(c)(1) before the amendment of that section effective on January
42 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 necessities 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 Pallesi* (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 meant 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

1 herself and her family. (*Medical Finance Association v. Short* (1939)
2 36 Cal.App.2d Supp. 745.)