

Appendix F.

Guidelines for the Juvenile Dependency Counsel Collections Program (JDCCP)

1. Legal Authority

These guidelines are adopted under the authority of section 903.47 of the Welfare and Institutions Code,¹ which mandates that the Judicial Council “establish a program to collect reimbursements from the person liable for the costs of counsel appointed to represent parents or minors pursuant to Section 903.1 in dependency proceedings.” (Welf. & Inst. Code, § 903.47(a).) As part of the program, the statute requires the council to “[a]dopt a statewide standard for determining [a responsible person’s] ability to pay reimbursements for counsel.” This standard must “at a minimum include the family’s income, their necessary obligations, the number of people dependent on this income, and the cost-effectiveness of the program.” (*Ibid.*) The statute also requires the council to “[a]dopt policies and procedures allowing a court to recover from the money collected the costs associated with implementing the reimbursements program.”² These policies and procedures must, in turn, “limit the amount of money a court may recover to a reasonable proportion of the reimbursements collected and provide the terms and conditions under which a court may use a third party to collect reimbursements.” (*Ibid.*)

Section 903.1 imposes liability on specified persons and estates for the cost of legal services provided to the child and directly to those persons in dependency proceedings. These responsible persons are jointly and severally liable for the cost of the child’s representation. If the petition is dismissed at or before the jurisdictional hearing, though, no liability attaches.

Section 904 authorizes the trial court to determine the cost of dependency-related legal services using methods or procedures approved by the Judicial Council.

Under section 903.47(b), the court may designate a court financial evaluation officer (FEO) or, with the consent of the county, a county financial evaluation officer (FEO) to determine a responsible person’s ability to pay the cost of court-appointed counsel. The court refers any responsible person to the designated FEO at the close of the dispositional hearing under section 903.45(b) unless that referral would not be cost-effective under section 903.47(a)(1)(A). The FEO then determines the responsible person’s ability to pay all or part of the cost of dependency-related legal services under the procedures and within the limits set by section 903.45(b). The statutory scheme, particularly sections 901 and 903, prohibits the assessed amount from exceeding the actual cost of the legal services.

¹ Except as otherwise specified, all statutory references in these guidelines are to the Welfare and Institutions Code.

² This section defines *costs associated with implementing the reimbursements program* as the “court costs of assessing a parent’s ability to pay for court-appointed counsel and the costs to collect delinquent reimbursements.”

Sections 903.1(c) and 903.47(a)(2) direct each court to deposit collected reimbursements in the same manner as it deposits revenue collected under section 68085.1 of the Government Code. The Judicial Council must then transfer the remitted reimbursements to the Trial Court Trust Fund (TCTF).

Except as otherwise authorized by law, the Judicial Council must allocate the funds collected through the reimbursement program to reduce court-appointed attorney caseloads to the Judicial Council–approved standard. In determining allocations, the council must give priority to courts with the highest attorney caseloads that also demonstrate the ability to immediately improve outcomes for parents and children as the result of lower caseloads.

2. Effective Date

These guidelines are effective for all dependency proceedings filed on or after January 1, 2013. Amendments adopted after that date will take effect as specified by the Judicial Council, but no sooner than 30 days after the council meeting at which they are adopted.

3. Responsible Person—Definition

“Responsible person,” as used in these guidelines, refers to the father, mother, spouse, or any other person liable for the support of a child; the estate of that person; or the estate of the child, as made liable under section 903.1(a) for the cost of dependency-related legal services rendered to the child or directly to that person.

4. No Liability

Under section 903.1(b), a responsible person is not liable for, and the court will not seek reimbursement of, the cost of legal services under section 903.1(a) if the dependency petition is dismissed at or before the jurisdictional hearing.

5. Determination of Cost of Legal Services

The court is charged with determining the cost of dependency-related legal services. In doing so, the court may adopt **one** of the three methods in (a)–(c). In no event will the court seek reimbursement of an amount that exceeds the actual cost of legal services already provided to the children and the responsible person in the proceeding. The court may update its determination of the cost of legal services on an annual basis, on the conclusion of the dependency proceedings in the juvenile court, or on the cessation of representation of the child or responsible person.

(a) Actual Cost

The court may determine the actual cost of the legal services provided to a child or responsible person in a dependency proceeding. The court should base this determination on the actual cost incurred per event in the proceeding, per hour billed, or per client represented.

(b) Cost Model

The court may determine the cost of legal services provided to a child or responsible person in a dependency proceeding by applying the Uniform Regional Cost Model available on *serranus.courtinfo.ca.gov* or from *jdccp@jud.ca.gov*. Use of the cost model as described in this section will ensure that the court seeks reimbursement of an amount that most closely approximates, but does not exceed, the actual cost incurred by the court.

(1) *Time Allocated to Each Event per Attorney*

The court will calculate the time allocated to each event in a local dependency proceeding by

- (A) Dividing the normative caseload of 141 clients per attorney by the actual caseload reported by the dependency attorneys in the county in which the court sits, and then
- (B) Multiplying the result by the number of hours allocated to the type of event in question by the Dependency Counsel Caseload Study.³

(2) *Cost of Each Event per Attorney*

The court will then calculate the cost of each type of event by multiplying the time allocated to the event by

- (A) The actual hourly rate billed to the court for the provision of dependency-related legal services, or
- (B) The lowest actual hourly rate billed for dependency-related legal services in the region⁴ in which the court is located as reported in the most recent survey of those rates, or
- (C) The approved hourly rate for the region in which the court is located as provided in the Caseload Funding Model (CFM) approved by the Judicial Council in October 2007 and June 2008.⁵

(3) *Cost of Proceeding per Attorney*

The court will then calculate the cost of the services provided by an attorney in a dependency proceeding by adding together the costs of each event that has occurred in the proceeding at issue.

³ See Center for Families, Children & Cts., Admin. Off. of Cts. Rep., *Court-Appointed Counsel: Caseload Standards, Service Delivery Models, and Contract Administration* (June 23, 2004), p. 3 & appen.

⁴ California trial courts are grouped into four regions based on parity in cost of living, attorney salaries, and other factors among counties in a given region. See Center for Families, Children & Cts., Admin. Off. of Cts. Rep., *DRAFT Pilot Program and Court-Appointed Counsel* (Oct. 26, 2007), pp. 7–8.

⁵ See *id.*, at pp. 7–10; Trial Court Budget Working Group Rep., *Court-Appointed Counsel Compensation Model and Workload-Based Funding Methodology* (June 10, 2008).

(c) Flat Rate Fee Structure

The court may adopt a flat rate fee structure for the cost of legal services in a dependency proceeding as long as the fees charged do not exceed the actual cost of the services provided in that proceeding up to and including the date of the determination and assessment.

6. Determination of Ability to Pay; Financial Evaluation Officer; Statewide Standard

(a) Referral for Financial Evaluation

At the close of the dispositional hearing, the court will order any responsible person present at the hearing to appear before a designated financial evaluation officer (FEO) for a determination of the responsible person's ability to pay reimbursement of all or part of the cost of legal services for which he or she is liable under section 903.1(a), unless the court finds that, given the resources of the court, evaluation by an FEO would not be a cost-effective method of determining the responsible person's ability to pay.

(1) *Responsible Person Not Present at Dispositional Hearing*

If a responsible person is not present at the dispositional hearing, the court will issue proper notice and an order for him or her to appear before an FEO for determination of his or her ability to pay reimbursement of all or part of the cost of legal services for which he or she is liable under section 903.1(a) unless the court finds that evaluation by an FEO would not be a cost-effective method of determining the responsible person's ability to pay given the resources of the court.

To issue proper notice to a responsible person not present at the hearing at which appearance for a financial evaluation is ordered, the court should send *Order to Appear for Financial Evaluation* (form JV-131) or the equivalent local form by first-class mail to that person's mailing address of record.

(2) *Alternative Methods*

If the court finds that evaluation by an FEO is not cost-effective, it may take whatever steps it deems cost-effective to determine the responsible person's ability to pay.

(3) *Failure to Appear for Financial Evaluation*

If a responsible person is ordered to appear for financial evaluation, has received proper notice, and fails to appear as ordered, the FEO will recommend that the court order the responsible person to pay the full cost of legal services as determined under section 5 of these guidelines unless the next paragraph applies.

If a responsible person is not present at the hearing at which the order to appear for a financial evaluation is made, has received proper notice and an order to appear, and responds to the order by submitting a declaration that he or she is involuntarily confined and therefore not able to attend or reschedule the evaluation, the FEO or the court may presume that he or she is unable to pay reimbursement and is eligible for a waiver of liability at that time.

(4) *Proper Notice*

Proper notice to a responsible person will contain notice of all of the following:

- (A) His or her right to a statement of the costs as soon as it is available;
- (B) His or her procedural rights under section 27755 of the Government Code;
- (C) The time limit within which his or her appearance is required; and
- (D) A warning that if he or she fails to appear before the FEO, the officer will recommend that the court order him or her to pay the full cost of legal services, and that the FEO's recommendation will be a sufficient basis for the court to order payment of an amount up to the full cost.

(b) Financial Evaluation Officer

The court may either designate a court FEO to determine responsible persons' ability to reimburse the cost of legal services or, with the consent of and under terms agreed to by the county, designate a county FEO to determine responsible persons' ability to reimburse the cost of legal services.

(c) Authority of Financial Evaluation Officer

The designated FEO will conduct the evaluation under the procedures outlined in section 903.45(b). The FEO may determine a referred responsible person's ability to pay all or part of the cost of legal services for which he or she is liable, negotiate a plan for reimbursement over a set period of time based on the responsible person's financial condition, enter into an agreement with the responsible person regarding the amount to be reimbursed and the terms of reimbursement, petition the court for an order of reimbursement according to the terms agreed to with the responsible person, and refer the responsible person back to court for a hearing in the event of a lack of agreement.

(d) Standard for Determining Ability to Pay

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

- (1) *Presumptive Inability to Pay; Waiver*

If a responsible person receives qualifying public benefits or has a household income 125 percent or less of the threshold established by the federal poverty guidelines in effect at the time of the inquiry, then he or she is presumed to be unable to pay reimbursement and is eligible for a waiver of liability.

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

(2) *Further Inquiry*

If the court has concluded as a matter of policy that further inquiry into the financial condition of persons presumed unable to pay would not be warranted or cost-effective, the inquiry may end at this point with a determination that the person is unable to pay.

If the court has concluded as a matter of policy that further inquiry into the financial condition of persons presumed unable to pay is warranted notwithstanding the presumption, the FEO may proceed to a detailed evaluation under (d)(3).

(3) *Responsible Person's Financial Condition*

The FEO may, at any time following the close of the dispositional hearing, make a detailed evaluation of a referred responsible person's financial condition at that time under section 903.45(b). Based on any relevant information submitted by the responsible person, including but not limited to a completed *Financial Declaration—Juvenile Dependency* (form JV-132) or the equivalent local form, the FEO will assess the responsible person's household income, household needs and obligations (including other court-ordered obligations), and the number of persons dependent on the household income and will determine the person's ability to pay all or part of the cost of legal services without using funds that would normally be used to pay for the common necessities of life.

When calculating a person's household income, the FEO must exclude from consideration any benefits received from a public assistance program that determines eligibility based on need.⁶

(e) **Circumstances Requiring No Petition or Order for Reimbursement**

Under section 903.45(b), the FEO may not petition the court to order reimbursement of the cost of legal services, and the court will not so order, if:

⁶ *In re S.M.* (2012) 209 Cal.App.4th 21, 28–31.

- (1) The responsible person has been reunified with any of the children under a court order and the FEO determines that requiring repayment would harm his or her ability to support the children;
- (2) The responsible person is currently receiving reunification services and the court or the FEO determines that requiring repayment will pose a barrier to reunification; or
- (3) The court determines that requiring repayment would be unjust under the circumstances of the case.

(f) Amount Assessed

The FEO may, consistent with the responsible person's ability to pay, assess any amount up to the full cost determined under section 5 of these guidelines, and may recommend reimbursement in a single lump sum or in multiple installments over a set period of time.

(g) Agreement; Petition

If the responsible person agrees in writing to the FEO's written determination of the amount that the responsible person is able to reimburse and the terms of reimbursement, the FEO will petition the court for an order requiring the responsible person to reimburse the court in a manner that is reasonable and compatible with the responsible person's financial condition.

(h) Dispute; Referral

If the responsible person disputes his or her liability for the cost of legal services, the amount of that cost, the FEO's determination of his or her ability to reimburse all or part of that cost, or the terms of reimbursement, the FEO will refer the matter, with his or her written determination, back to the juvenile court for a hearing.

7. Judicial Proceeding Following Determination of Ability to Reimburse Cost

On having made a determination of the responsible person's ability to reimburse all or part of the cost of legal services, the FEO will return the matter to the juvenile court as follows:

(a) Agreement; Order

If the responsible person agrees to reimburse the court as recommended by the FEO, the FEO will prepare an agreement to be signed by the responsible person. The agreement will reflect the amount to be reimbursed and the terms under which reimbursement will be paid. The juvenile court may order the responsible person to pay reimbursement under those terms without further notice to the responsible person.

(b) Dispute; Hearing

If the matter is deemed in dispute and the FEO has referred the matter back to the juvenile court under section 6(h), the court will set and conduct a hearing under section 903.45(b).

(c) Judicial Determination

If, at the conclusion of the hearing, the court determines that the responsible person is able to reimburse all or part of the cost of legal services—including the cost of any attorney appointed to represent the responsible person at that hearing—without using funds that would normally be used to pay for the common necessities of life, the court will set the amount to be reimbursed and order the responsible person to pay that amount to the court in a manner that the court believes reasonable and compatible with the responsible person’s financial condition.

8. Reevaluation of Ability to Pay

At any time before reimbursement is complete, a responsible person may petition the court to modify or vacate the reimbursement order based on a change in circumstances affecting his or her ability to pay. The court may deny the petition without a hearing if the petition fails to state a change of circumstances. The court may grant the petition without a hearing if the petition states a change of circumstances and all parties stipulate to the requested modification.

9. Frequency of Determination of Ability to Pay and Assessment

The initial evaluation and determination of a responsible person’s ability to pay reimbursement may be conducted at any time following the conclusion of the dispositional hearing. The court may order a reevaluation of a responsible person’s financial condition on an annual basis, on the conclusion of the dependency proceedings in the juvenile court, or on the cessation of court-appointed representation of the child or the responsible person.

If the FEO determines on reevaluation that the responsible person is able at that time to pay all or part of the cost of legal services, the FEO may, consistent with the responsible person’s ability to pay without using funds that would normally be used to pay for the common necessities of life, assess an amount up to the full cost, as determined under section 5, of any legal services provided to the child or the responsible person and may recommend reimbursement in a single lump sum or in multiple installments over a set period of time.

10. Collection Services

(a) Court-Based Collection Services

To the extent applicable and consistent with sections 903.1 and 903.47, a court should administer the collection, processing, and deposit of court-ordered reimbursement of the cost of dependency-related legal services under the procedures in policies FIN 10.01 and FIN 10.02 of the *Trial Court Financial Policies and Procedures Manual*.

(b) Outside Collection-Services Providers

When appropriate and consistent with policy FIN 10.01, a court may use an outside collection-services provider.

(1) *Collection Services Provided by County*

If collection services are provided by the county, the agreement should be formalized by a memorandum of understanding (MOU) between the court and county. Judicial Council staff will provide a sample MOU on request. An electronic copy of the MOU, including a scanned copy of the completed signature page, must be sent to jdccp@jud.ca.gov.

(2) *Collection Services Provided by Private Vendor*

A court that uses a private collection service should use a vendor that has entered into a master agreement with the Judicial Council to provide comprehensive collection services. A court that uses such a vendor should complete a participation agreement and send it to Judicial Council staff via e-mail to jdccp@jud.ca.gov. A court may contract directly with a private vendor only on terms and conditions substantially similar to those set forth in the master agreements for comprehensive collection services available at <http://serranus.courtinfo.ca.gov/programs/collections/mva.htm>.

(3) *Court Option for Judicial Council Agreement with Collection-Services Provider*

At a court's request, the Judicial Council may directly enter into an MOU with the county or an agreement with a private collection-services vendor for services under this program.

(c) Agreements Between Courts

Nothing in this section is intended to preclude a court or courts from establishing an agreement with another court or courts for one or more courts to perform services under this program on behalf of other courts, or for one or more courts to combine collection efforts under this program.

11. Recovery of Program Implementation Costs

A court may recover, from the money it has collected, its eligible program implementation costs before remitting the balance of the collected funds to the state in the manner required by Government Code section 68085.1. Eligible costs are limited by statute to the cost of determining responsible persons' ability to repay the cost of court-appointed counsel and to the cost of collecting delinquent reimbursements. If a court's eligible costs in any given month exceed the amount of revenue it has collected in that month, the court may carry the excess costs forward within the same fiscal year until sufficient revenue is collected to recover the eligible costs in full. Any program costs recovered by the court must be documented by the court and reported monthly by e-mail to jdccp@jud.ca.gov in a format

consistent with the Cost Recovery Template available on *serranus.courtinfo.ca.gov* or from *jdccp@jud.ca.gov*.

(a) *Delinquent Reimbursement Defined*

For purposes of this section, *delinquent reimbursement* means any reimbursement payment not received within one business day of the date it is due.

12. Remittance and Reporting of Collected Revenue

A court will remit collected revenue, less recovered costs, to the state in the same manner as required under Government Code section 68085.1 and will report this revenue on row 130 of *Court Remittance Advice* (form TC-145). The Judicial Council will deposit the revenue received through this program into the Trial Court Trust Fund as required by statute.

(a) Judicial Council Collections Agreement Option

Where the Judicial Council has entered into an MOU or an agreement with a county or a private collection-services vendor under section 10(b)(3) of these guidelines, funds will be remitted directly to the Judicial Council under the terms of the MOU or the agreement.

13. Program Data Reporting

Each court should report JDCCP data to Judicial Council staff to ensure implementation of the Legislature's intent by determining the cost-effectiveness of the program and confirming that efforts to collect reimbursement do not negatively impact reunification; to provide a basis for projecting the amount of future reimbursements; and to evaluate the JDCCP's effectiveness both statewide and at the local level.

(a) Ongoing Reporting Requirement

To support the amount remitted to the Trial Court Trust Fund, each court will report collections data annually on or before September 30, beginning September 30, 2013. The first report should cover the period from January 1, 2013, to June 30, 2013. Each court should submit its completed report attached to an e-mail message to *jdccp@jud.ca.gov*.

(1) *Data Reporting*

Judicial Council staff will provide a reporting template that solicits the following information:

- (A) Total number of responsible persons evaluated in the reporting period to determine their ability to pay
- (B) Number of persons in (A) found unable to pay

- (C) Number of persons in (A) found able to pay but not ordered to pay under section 6(e)
- (D) Number of open accounts at the beginning of the reporting period
- (E) Dollar amount in open accounts at the beginning of the reporting period
- (F) Number of new accounts opened in the reporting period
- (G) Dollar amount in accounts opened during the reporting period
- (H) Total dollar amount collected from all accounts in the reporting period
- (I) Number of accounts closed or discharged in the reporting period
- (J) Number of open accounts at the end of the reporting period
- (K) Dollar amount in open accounts at the end of the reporting period

(2) *JDCCP Implementation Review*

Within two years of the effective date of these guidelines and thereafter as needed, the Judicial Council will evaluate the progress of the JDCCP's statewide implementation and examine the impact of the program on court workload and finances. For this purpose, Judicial Council staff may survey the courts about their financial evaluation processes, including the time and resources needed to determine responsible persons' ability to pay, the number of such persons evaluated, the results of the evaluations as specified in 6(d)–(g), and the number of judicial hearings necessary under 7(b)–(c).

14. Allocation of Collected Funds to Trial Courts

(a) Eligibility for Allocation

A trial court is eligible to receive an allocation from the funds remitted through the JDCCP for the purpose of reducing its dependency-counsel caseload if it meets the following criteria.

(1) *Participation*

The court has demonstrated its participation in the JDCCP by

- (A) adopting a local rule or policy requiring the juvenile court to inquire at or before the close of each dispositional hearing about each responsible person's ability to pay reimbursement and
- (B) submitting annual reports under section 13.

(2) *Funding Need*

The court receives a base court-appointed counsel allocation that, viewed as a percentage of the available statewide funding, is less than its percentage share of the statewide court-appointed counsel funding need as estimated by the CFM.⁷

(b) Allocation Methodology

Remitted funds will be allocated annually, as part of the court-appointed counsel budget development process, to each eligible court in an amount equivalent to its need as a percentage of the estimated aggregate funding need of all eligible courts. Any allocation from the remitted funds is separate from, and in addition to, a court's allocation from the statewide court-appointed counsel funding base.

The Judicial Council provides a single funding allocation to the DRAFT program to support court-appointed counsel in participating courts. This funding is managed by the Judicial Council as part of the court-appointed counsel budget development and funding process. Collected reimbursements allocated to the DRAFT program will also be managed by the council through this process.

(c) Review of Determination of Funding Level

A court that believes that the amount of its allocation is due to an error in determining its funding need may request a review of that determination within 90 days. The request should clearly state the nature of the error.

The review will be conducted collaboratively by the court and the Judicial Council.

15. Technical Assistance

Judicial Council staff will provide technical assistance on request to courts that are in the process of implementing the JDCCP or that wish to coordinate collection efforts with other

⁷ In October 2007, the TCBWG developed and the Judicial Council approved a need-based compensation or caseload funding model (CFM) for court-appointed dependency counsel practicing in courts under the DRAFT program. (See Trial Court Budget Working Group Rep., *supra* note 5.) In June 2008, the council's Executive and Planning Committee extended that methodology to appointed dependency counsel in all juvenile courts statewide. The CFM uses the number of data-supported clients in a county to determine the number of FTE attorneys needed to serve that population at the Judicial Council-approved caseload standard of 188 clients per FTE attorney. (See *id.*, at p. 4.) It then uses cost of living, county counsel salaries, and other economic factors to assign each court to one of four statewide groups. (See *id.*, at p. 5.) To promote equity in attorney compensation, each group of courts is assigned an attorney salary level based on the prevailing county counsel salary range in that group. Each court's appointed-counsel salary needs are determined by multiplying the mid-tier salary level by the number of FTE attorneys needed to serve the client population at the approved caseload. The cost of benefits and overhead, including support staff, are calculated at assigned percentages of the attorney salaries. Adding these elements together yields a precise estimate of the funding needed for a court to ensure competent representation of all parties in juvenile dependency proceedings under sections 317(c) and 317.5, as well as rule 5.660(d) of the California Rules of Court.

courts. Courts may send requests by e-mail to *jdccp@jud.ca.gov* to receive technical assistance, which can include (but is not limited to) services such as:

- (a) Helping a court implement the reimbursement program within its current administrative structure;
- (b) Advising a court on the application of the Uniform Cost Model under section 5(b) of these guidelines;
- (c) Coordinating a regional reimbursement program among several courts; or
- (d) Working with current collection-services providers who have entered into master agreements with the Judicial Council to ensure compliance with the JDCCP reporting requirements.

Appendix F amended effective January 1, 2016; adopted effective January 1, 2013; previously amended effective September 23, 2013.