



ADMINISTRATIVE OFFICE
OF THE COURTS
OFFICE OF GOVERNMENTAL
AFFAIRS
770 L STREET, SUITE 700
Tel 916-323-3121
Fax 916-323-4347
www.courtinfo.ca.gov

HON. RONALD M. GEORGE
Chief Justice of California
Chair of the Judicial Council

WILLIAM C. VICKREY
Administrative Director of the Courts

RONALD G. OVERHOLT
Chief Deputy Director

CURTIS L. CHILD
Director, Office of Governmental Affairs

FACT SHEET

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AB 2448 (Feuer) Courts: access to justice

Issue

Government Code section 68511.3, the current statute containing the procedures for granting a court fee waiver to a litigant who cannot afford to pay the fee has not been implemented consistently across the state, and should be clarified in order to enhance consistent statewide implementation.

Proposal

The Judicial Council is sponsoring AB 2448 (Feuer), which contains a clearer and more comprehensive statutory scheme for court fee waivers, to ensure that indigent litigants have an opportunity to access the courts in a timely and appropriate manner, and to provide for recovery of those fees in those cases in which there is a judgment in favor of the litigant who obtained the fee waiver; he or she receives a substantial settlement; or other changed circumstances allow the fees to be paid.

Key Differences from Current Law

The proposal is largely consistent with the current substantive requirements for providing court fee waivers, but AB 2448 incorporates the key procedural requirements for making a determination on a fee waiver application currently found in the rules of court and case law that govern fee waivers, and also provides greater clarity on the procedures available to the court for recovery of waived fees in appropriate cases. The key differences in AB 2448 are:

Eligibility. 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 because eligibility for these programs tracks eligibility for the existing income-based benefit programs. These programs are Cash Assistance Program for Immigrants (CAPI), the California Food Aid Program (CFAP) In-Home Supportive Services (IHSS), Medi-Cal, and Tribal TANF. Adding these programs to the categorical list will provide

administrative efficiencies in processing fee waiver applications by streamlining the application process for these eligible populations.

Applicants represented by counsel advancing court costs. In addition, AB 2448 would additionally require, for applicants who are represented by an attorney who is advancing the applicant's other litigation costs, that the court consider the resources available to the attorney when determining whether to grant the fee waiver application.

Application processing and determination. AB 2448 sets forth clear procedures and timeframes for acting on fee waiver applications that are consistent with the current rules of court and case law on fee waivers. Specifically it provides that a clerk cannot deny a fee waiver application on his or her own authority but may be delegated the authority to grant one. In addition, at the trial court level, it affords all applicants an opportunity to be heard by a judicial officer if a completed application has been denied, and requires the court to set a hearing if there is an evidentiary conflict.

Reconsideration and recovery of fees and costs initially waived. AB 2448 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 if the judgment is in favor of a party who received an initial fee waiver; (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. It would also allow the court to reconsider a fee waiver based upon changed circumstances in any case at disposition, or every six months when the court has a specific reason to reconsider the waiver.

Fiscal Impact

This proposal is not expected to have a significant impact on the total amount of filing fees waived or recovered by the courts, as it is largely consistent with current law. To the extent that the new recovery procedures become applicable, AB 2448 could generate an increase in the filing fee revenues collected by the courts.

For more information please contact: Tracy Kenny
(916) 323-3121
Tracy.Kenny@jud.ca.gov