

RESOLUTION 07-11-2016

DIGEST

Court Appointed Counsel: Limitations on Defendants' Repayment of Fees

Amends California Penal Code sections 987.8 and 987.81 to limit repayment of court provided counsel fees only to convicted criminal defendants.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code sections 987.8 and 987.81 to read as follows:

§987.8

1 (a) ~~If a defendant is convicted of a felony or misdemeanor offense,~~ Upon a finding by
2 the court that a defendant is entitled to counsel but is unable to employ counsel, the court may
3 hold a hearing or, in its discretion, order the defendant to appear before a county officer
4 designated by the court, to determine whether the defendant owns or has an interest in any real
5 property or other assets subject to attachment and not otherwise exempt by law. The court may
6 impose a lien on any real property owned by the defendant, or in which the defendant has an
7 interest to the extent permitted by law. The lien shall contain a legal description of the property,
8 shall be recorded with the county recorder in the county or counties in which the property is
9 located, and shall have priority over subsequently recorded liens or encumbrances. The county
10 shall have the right to enforce its lien for the payment of providing legal assistance to an indigent
11 defendant in the same manner as other lienholders by way of attachment, except that a county
12 shall not enforce its lien on a defendant's principal place of residence pursuant to a writ of
13 execution. No lien shall be effective as against a bona fide purchaser without notice of the lien.

14 (b) ~~If a defendant is convicted of a felony or misdemeanor offense,~~ In any case in which
15 a defendant is provided legal assistance, either through the public defender or private counsel
16 appointed by the court, upon conclusion of the criminal proceedings in the trial court, or upon the
17 withdrawal of the public defender or appointed private counsel, the court may, after notice and a
18 hearing, make a determination of the present ability of the defendant to pay all or a portion of the
19 cost thereof. The court may, in its discretion, hold one such additional hearing within six months
20 of the conclusion of the criminal proceedings. The court may, in its discretion, order the
21 defendant to appear before a county officer designated by the court to make an inquiry into the
22 ability of the defendant to pay all or a portion of the legal assistance provided.

23 (c) ~~If a defendant is convicted of a felony or misdemeanor offense,~~ In any case in which
24 the defendant hires counsel replacing a publicly provided attorney; in which the public defender
25 or appointed counsel was required by the court to proceed with the case after a determination by
26 the public defender that the defendant is not indigent; or, in which the defendant, at the
27 conclusion of the case, appears to have sufficient assets to repay, without undue hardship, all or a
28 portion of the cost of the legal assistance provided to him or her, by monthly installments or
29 otherwise; the court shall make a determination of the defendant's ability to pay as provided in
30 subdivision (b), and may, in its discretion, make other orders as provided in that subdivision.
31 This subdivision shall be operative in a county only upon the adoption of a resolution by the
32 board of supervisors to that effect.

33 (d) ~~If a defendant is convicted of a felony or misdemeanor offense,~~ ~~If~~ and the defendant,
34 after having been ordered to appear before a county officer, has been given proper notice and

35 fails to appear before a county officer within 20 working days, the county officer shall
36 recommend to the court that the full cost of the legal assistance shall be ordered to be paid by the
37 defendant. The notice to the defendant shall contain all of the following:

38 (1) A statement of the cost of the legal assistance provided to the defendant as determined
39 by the court.

40 (2) The defendant's procedural rights under this section.

41 (3) The time limit within which the defendant's response is required.

42 (4) A warning that if the defendant fails to appear before the designated officer, the
43 officer will recommend that the court order the defendant to pay the full cost of the legal
44 assistance provided to him or her.

45 (e) At a hearing, the defendant shall be entitled to, but shall not be limited to, all of the
46 following rights:

47 (1) The right to be heard in person.

48 (2) The right to present witnesses and other documentary evidence.

49 (3) The right to confront and cross-examine adverse witnesses.

50 (4) The right to have the evidence against him or her disclosed to him or her.

51 (5) The right to a written statement of the findings of the court. If the court determines
52 that the defendant has the present ability to pay all or a part of the cost, the court shall set the
53 amount to be reimbursed and order the defendant to pay the sum to the county in the manner in
54 which the court believes reasonable and compatible with the defendant's financial ability. Failure
55 of a defendant who is not in custody to appear after due notice is a sufficient basis for an order
56 directing the defendant to pay the full cost of the legal assistance determined by the court. The
57 order to pay all or a part of the costs may be enforced in the manner provided for enforcement of
58 money judgments generally but may not be enforced by contempt. Any order entered under this
59 subdivision is subject to relief under Section 473 of the Code of Civil Procedure.

60 (f) Prior to the furnishing of counsel or legal assistance by the court, the court shall give
61 notice to the defendant that the court may, if the defendant is convicted of a misdemeanor or
62 felony offense, after a hearing, make a determination of the present ability of the defendant to
63 pay all or a portion of the cost of counsel. The court shall also give notice that, if the court
64 determines that the defendant has the present ability, the court shall order him or her to pay all or
65 a part of the cost. The notice shall inform the defendant that the order shall have the same force
66 and effect as a judgment in a civil action and shall be subject to enforcement against the property
67 of the defendant in the same manner as any other money judgment.

68 (g) As used in this section:

69 (1) "Legal assistance" means legal counsel and supportive services including, but not
70 limited to, medical and psychiatric examinations, investigative services, expert testimony, or any
71 other form of services provided to assist the defendant in the preparation and presentation of the
72 defendant's case.

73 (2) "Ability to pay" means the overall capability of the defendant to reimburse the costs,
74 or a portion of the costs, of the legal assistance provided to him or her, and shall include, but not
75 be limited to, all of the following:

76 (A) The defendant's present financial position.

77 (B) The defendant's reasonably discernible future financial position. In no event shall the
78 court consider a period of more than six months from the date of the hearing for purposes of
79 determining the defendant's reasonably discernible future financial position. Unless the court

80 finds unusual circumstances, a defendant sentenced to state prison shall be determined not to
81 have a reasonably discernible future financial ability to reimburse the costs of his or her defense.

82 (C) The likelihood that the defendant shall be able to obtain employment within a six-
83 month period from the date of the hearing.

84 (D) Any other factor or factors which may bear upon the defendant's financial capability
85 to reimburse the county for the costs of the legal assistance provided to the defendant.

86 (h) At any time during the pendency of the judgment rendered according to the terms of
87 this section, a defendant against whom a judgment has been rendered may petition the rendering
88 court to modify or vacate its previous judgment on the grounds of a change in circumstances
89 with regard to the defendant's ability to pay the judgment. The court shall advise the defendant of
90 this right at the time it renders the judgment.

91 (i) This section shall apply to all proceedings, including contempt proceedings, in which
92 the party is represented by a public defender or appointed counsel.

93

94 §987.81

95 (a) In any case in which a defendant is provided legal assistance, either through the public
96 defender or private counsel appointed by the court and is convicted of a felony or misdemeanor
97 offense, upon conclusion of the criminal proceedings in the trial court, or upon the withdrawal of
98 the public defender or appointed private counsel, the court shall consider the available
99 information concerning the defendant's ability to pay the costs of legal assistance and may, after
100 notice, as provided in subdivision (b), hold a hearing to make a determination of the present
101 ability of the defendant to pay all or a portion of the cost thereof. Notwithstanding the above, in
102 any case where the court has ordered the probation officer to investigate and report to the court
103 pursuant to subdivision (b) of Section 1203, the court may hold such a hearing. The court may, in
104 its discretion, hold one such additional hearing within six months of the conclusion of the
105 criminal proceedings.

106 (b) ~~Concurrent~~ If the defendant is convicted of a felony or misdemeanor offense, as was
107 with the furnishing of ~~with~~ counsel or legal assistance by the court, the court ~~may~~ shall order the
108 defendant to appear before a county officer designated by the court to make an inquiry into the
109 ability of the defendant to pay all or a portion of the legal assistance provided. Prior to the
110 furnishing of counsel or legal assistance by the court, the court shall give notice to the defendant
111 that the court ~~shall~~ may, if the defendant is convicted of a felony or misdemeanor offense, after a
112 hearing, make a determination of the present ability of the defendant to pay all or a portion of the
113 cost of counsel. The court shall also give notice that, if the court determines that the defendant
114 has the present ability, the court shall order him or her to pay all or a part of the cost. The notice
115 shall inform the defendant that the order shall have the same force and effect as a judgment in a
116 civil action and shall be subject to enforcement against the property of the defendant in the same
117 manner as any other money judgment.

118 (c) The provisions of this section shall apply only in a county in which the board of
119 supervisors adopts a resolution which elects to proceed under this section.

120

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Los Angeles County Bar Association

STATEMENT OF REASONS

The Problem: Under existing criminal law, a person who is falsely accused of a crime, refuses to accept a plea bargain for a crime they did not commit, goes to trial and WINS (because they were not guilty in the first place), may still be ordered to pay the court for the costs of the court-appointed attorney who represented them during the erroneous prosecution. Consequently, an impoverished person who was falsely arrested, wrongly imprisoned, wrongly prosecuted, and ultimately exonerated, is still subject to a penalty of thousands of dollars for daring to assert their constitutional right to a trial and attorney in the first place. Such a penalty, placed on the backs of the already-poor, makes financial problems even worse and is fundamentally unfair – particularly as there is no “reverse fees” provision whereby the prosecution or court is required to pay the costs of the wrongly accused.

Finally, some unscrupulous courts threaten defendants with “attorney’s fees” even if they are acquitted, in order to induce pleas. Consequently, innocent people, who should not be convicted, are induced to plead guilty to time-served offers in exchange for an agreement to waive such fees.

The Solution: The proposed resolution would restrict attorney fees provisions to defendants who are actually convicted following trial or a plea. Such an amendment would remove an unjustified burden on the innocent, and remove an improper inducement (the threat of such fees) from pre-trial plea negotiations.

IMPACT STATEMENT

This proposed resolution does not affect any other law, statute or rule.

CURRENT OR PRIOR RELATED LEGISLATION

Not known.

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RESOLUTIONS COMMITTEE RECOMMENDATION

The CCBA’s Resolutions Committee recommended Disapproval of this resolution. The full Conference rejected that recommendation and approved the resolution.