

RESOLUTION 08-08-2014

DIGEST

Court Costs: Recovery of Interpreter Fees as Court Costs

Amends Code of Civil Procedure section 1033.5 to authorize any interpreter fees incurred in the course of civil litigation as an item of recoverable costs by the prevailing party.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Code of Civil Procedure section 1033.5 to authorize any interpreter fees incurred in the course of civil litigation as an item of recoverable costs by the prevailing party.

This resolution should be approved in principle because the cost of interpreter services are a legitimate, if not necessary and reasonable court cost, and should be recoverable by the prevailing party, regardless of whether the party is indigent or represented by pro bono counsel.

There does not appear to be a good reason to limit cost recovery of court-authorized court interpreter services to situations involving a represented indigent litigant, as currently provided by subdivision (a)(12) of section 1033.5.

Bills such as AB 1127 (Chau), which creates a working group and pilot project for providing interpreters in civil matters, reflect the need in courts for proper interpreter services to assure access to justice, presentation of evidence, and fair and just outcomes. The federal courts also recognize the benefit and need for interpreters and allow interpreter fees as a recoverable cost. The resolution helps address this issue and appropriately spreads and apportions the cost of these services. It also removes from contention the question of recoverability of this item of cost under subdivision (c) of section 1033.5.

The resolution's currently proposed language may present some concern for potential abuse. It does not specify that the costs must be from a qualified court interpreter, nor does it address – having eliminated the requirement of court supervision and authorization – whether the court interpreter services are confined to court testimony, or whether recoverable court interpreter services embrace deposition, translation of documents, or non-formal assistance of counsel during trial preparation. Nevertheless, this can easily be remedied through simple clarifying language.

TEXT OF RESOLUTION

RESOLVED, that the Conference of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure section 1033.5 to read as follows:

§ 1033.5

- 1 (a) The following items are allowable as costs under Section 1032:
- 2 (1) Filing, motion, and jury fees.
- 3 (2) Juror food and lodging while they are kept together during trial and after the jury
- 4 retires for deliberation.
- 5 (3) Taking, video recording, and transcribing necessary depositions including an original

6 and one copy of those taken by the claimant and one copy of depositions taken by the party
7 against whom costs are allowed, and travel expenses to attend depositions.

8 (4) Service of process by a public officer, registered process server, or other means, as
9 follows:

10 (A) When service is by a public officer, the recoverable cost is the fee authorized by law
11 at the time of service.

12 (B) If service is by a process server registered pursuant to Chapter 16 (commencing with
13 Section 22350) of Division 8 of the Business and Professions Code, the recoverable cost is the
14 amount actually incurred in effecting service, including, but not limited to, a stakeout or other
15 means employed in locating the person to be served, unless those charges are successfully
16 challenged by a party to the action.

17 (C) When service is by publication, the recoverable cost is the sum actually incurred in
18 effecting service.

19 (D) When service is by a means other than that set forth in subparagraph (A), (B), or (C),
20 the recoverable cost is the lesser of the sum actually incurred, or the amount allowed to a public
21 officer in this state for that service, except that the court may allow the sum actually incurred in
22 effecting service upon application pursuant to paragraph (4) of subdivision (c).

23 (5) Expenses of attachment including keeper's fees.

24 (6) Premiums on necessary surety bonds.

25 (7) Ordinary witness fees pursuant to Section 68093 of the Government Code.

26 (8) Fees of expert witnesses ordered by the court.

27 (9) Transcripts of court proceedings ordered by the court.

28 (10) Attorney's fees, when authorized by any of the following:

29 (A) Contract.

30 (B) Statute.

31 (C) Law.

32 (11) Court reporter fees as established by statute.

33 (12) Court interpreter fees ~~for a qualified court interpreter authorized by the court for an~~
34 ~~indigent person represented by a qualified legal services project, as defined in Section 6213 of~~
35 ~~the Business and Professions Code or a pro bono attorney as defined in Section 8030.4 of the~~
36 ~~Business and Professions Code.~~

37 (13) Models and blowups of exhibits and photocopies of exhibits may be allowed if they
38 were reasonably helpful to aid the trier of fact.

39 (14) Any other item that is required to be awarded to the prevailing party pursuant to
40 statute as an incident to prevailing in the action at trial or on appeal.

41 (b) The following items are not allowable as costs, except when expressly authorized by
42 law:

43 (1) Fees of experts not ordered by the court.

44 (2) Investigation expenses in preparing the case for trial.

45 (3) Postage, telephone, and photocopying charges, except for exhibits.

46 (4) Costs in investigation of jurors or in preparation for voir dire.

47 (5) Transcripts of court proceedings not ordered by the court.

48 (c) Any award of costs shall be subject to the following:

49 (1) Costs are allowable if incurred, whether or not paid.

50 (2) Allowable costs shall be reasonably necessary to the conduct of the litigation rather
51 than merely convenient or beneficial to its preparation.

52 (3) Allowable costs shall be reasonable in amount.

53 (4) Items not mentioned in this section and items assessed upon application may be
54 allowed or denied in the court's discretion.

55 (5) When any statute of this state refers to the award of "costs and attorney's fees,"
56 attorney's fees are an item and component of the costs to be awarded and are allowable as costs
57 pursuant to subparagraph (B) of paragraph (10) of subdivision (a). Any claim not based upon the

58 court's established schedule of attorney's fees for actions on a contract shall bear the burden of
59 proof. Attorney's fees allowable as costs pursuant to subparagraph (B) of paragraph (10) of
60 subdivision (a) may be fixed as follows: (A) upon a noticed motion, (B) at the time a statement
61 of decision is rendered, (C) upon application supported by affidavit made concurrently with a
62 claim for other costs, or (D) upon entry of default judgment. Attorney's fees allowable as costs
63 pursuant to subparagraph (A) or (C) of paragraph (10) of subdivision (a) shall be fixed either
64 upon a noticed motion or upon entry of a default judgment, unless otherwise provided by
65 stipulation of the parties.

66 Attorney's fees awarded pursuant to Section 1717 of the Civil Code are allowable costs
67 under Section 1032 of this code as authorized by subparagraph (A) of paragraph (10) of
68 subdivision (a).

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

PROPONENT: Bar Association of Northern San Diego County

STATEMENT OF REASONS

The Problem: Existing Code of Civil Procedure section 1033.5 appears to only allow for recovery of necessary interpreter fees when authorized by the court and paid by the government for an indigent person. There is no rational basis for disallowing recovery of costs paid by a prevailing party for court interpreter services, which were necessary for deposition, trial, or other court proceedings.

The Solution: This resolution would delete the limitation upon recovery of necessary court interpreter fees.

LEGISLATIVE HISTORY

Not known.

IMPACT STATEMENT

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

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