

## RESOLUTION 04-04-2017

### DIGEST

#### Costs: Entry of Costs Following Motion to Strike or Tax Costs

Amends rule 3.1700 of the California Rules of Court to provide for entry of costs upon determination of a motion to strike or tax costs.

### RESOLUTIONS COMMITTEE RECOMMENDATION

#### DISAPPROVE

#### History:

No similar resolutions found.

#### Reasons:

This resolution amends rule 3.1700 of the California Rules of Court to provide for entry of costs upon determination of a motion to strike or tax costs. This resolution should be disapproved because the issue it seeks to address is not significant in actual practice.

The costs are entered when the time for filing a motion has past. Plainly, in those cases when a motion has been filed, costs are held in abeyance pending a ruling on the motion by the court. When the court rules, as in the case of any motion, then those are the costs the clerk enters. As a result, this change in the law is unnecessary.

### TEXT OF RESOLUTION

**RESOLVED** that the Conference of California Bar Associations recommends that the Judicial Council amend California Rules of Court, rule 3.1700 to read as follows:

- 1 Rule 3.1700  
2 (a) Claiming costs  
3 (1) Trial costs  
4 A prevailing party who claims costs must serve and file a memorandum of costs within  
5 15 days after the date of service of the notice of entry of judgment or dismissal by the clerk  
6 under Code of Civil Procedure section 664.5 or the date of service of written notice of entry of  
7 judgment or dismissal, or within 180 days after entry of judgment, whichever is first. The  
8 memorandum of costs must be verified by a statement of the party, attorney, or agent that to the  
9 best of his or her knowledge the items of cost are correct and were necessarily incurred in the  
10 case.  
11 (2) Costs on default  
12 A party seeking a default judgment who claims costs must request costs on the Request  
13 for Entry of Default (Application to Enter Default) (form CIV-100) at the time of applying for  
14 the judgment.  
15 (b) Contesting costs  
16 (1) Striking and taxing costs  
17 Any notice of motion to strike or to tax costs must be served and filed 15 days after service of the  
18 cost memorandum. If the cost memorandum was served by mail, the period is extended as

19 provided in Code of Civil Procedure section 1013. If the cost memorandum was served  
20 electronically, the period is extended as provided in Code of Civil Procedure section  
21 1010.6(a)(4).

22 (2) Form of motion

23 Unless objection is made to the entire cost memorandum, the motion to strike or tax costs  
24 must refer to each item objected to by the same number and appear in the same order as the  
25 corresponding cost item claimed on the memorandum of costs and must state why the item is  
26 objectionable.

27 (3) Extensions of time

28 The party claiming costs and the party contesting costs may agree to extend the time for  
29 serving and filing the cost memorandum and a motion to strike or tax costs. This agreement must  
30 be confirmed in writing, specify the extended date for service, and be filed with the clerk. In the  
31 absence of an agreement, the court may extend the times for serving and filing the cost  
32 memorandum or the notice of motion to strike or tax costs for a period not to exceed 30 days.

33 (4) Entry of costs

34 After the time has passed for a motion to strike or tax costs or ~~for~~ upon filing an order  
35 determining that motion, the clerk must immediately enter the costs on the judgment.

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

**PROPONENT:** Sacramento County Bar Association

## **STATEMENT OF REASONS**

The Problem: Rule of Court 3.1700(b)(4) is currently so unclear as to be indecipherable. It requires the clerk to enter the pre-judgment costs claimed in a memorandum of costs “[a]fter the time has passed for a motion to strike or tax costs or for determination of that motion.” But there is no time “for determination” of a motion to strike or tax costs. Code of Civil Procedure section 689.050 provides that costs are added to the judgment either upon the filing of an order allowing costs or, if no motion to tax is filed, upon expiration of time for making the motion. But no statute or rule of court provides a deadline for making a determination on a motion to strike or tax. The existing rule, therefore, requires the clerk to enter costs after passage of a non-existent time.

Even if there were a time limit for determining such a motion, the rule does not provide what happens if the motion isn’t decided by the deadline. Is the motion deemed denied (as with a new trial motion) and the full amount of costs claimed awarded? Or is the motion deemed granted and the cost memorandum stricken, or disputed items deleted or reduced?

The Solution: In subsection (b)(4) of rule 3.1700, delete “for” and insert the proposed new language. The rule will then provide that the clerk shall enter the costs on the judgment either after the time for a motion to strike or tax has passed, or, consistent with section 689.050, “upon filing an order determining that motion.” This comports with the judicial rule, “Where costs are established by the judgment, but the amount of the award is ascertained at a later time, the court clerk enters the costs on the judgment *after the amount is determined.*” *Chodos v. Borman* (2015) 239 Cal.App.4th 707, 715 (italics added).

**IMPACT STATEMENT**

This resolution does not affect any other law, statute or rule other than those expressly identified.

**CURRENT OR PRIOR RELATED LEGISLATION**

None known.

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