

10/25/84

Memorandum 84-96

Subject: Suggested New Topic (Litigation Costs)

Attached is a letter from the California Judges Association requesting that the Commission study the provisions relating to recoverable costs in litigation. "The California Judges Association feels that the litigants, attorneys, and the courts would be greatly benefited by an overhaul of the statutory provisions dealing with this subject, leading toward the adoption of a simplified statute, and by statutory direction to the Judicial Council to promulgate rules governing the procedure for claiming and contesting recoverable costs."

The suggested project is one that would be suitable for Commission study and recommendation. However, it would take substantial staff time to prepare a recommendation. We are now engaged in a major effort to prepare a new Probate Code. We have deferred a number of important topics already authorized in order to devote our time almost exclusively to the Probate Code. We are not in a position to undertake any new topics. Accordingly, the staff reluctantly suggests that the California Judges Association be advised that the Commission is not in a position to undertake this new study at this time. This would appear to be a matter that could be considered by the Judicial Council.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

CALIFORNIA JUDGES ASSOCIATION

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October 2, 1984

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Mr. John H. DeMouilly
Executive Secretary
California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, CA 94301

Re: Litigation Costs

Dear Mr. DeMouilly:

Under existing law, numerous statutory rules govern the right of a prevailing party in Superior, Municipal, and Justice Court actions to recover costs incurred during litigation. To receive reimbursement for necessary costs of litigation, i.e., expenses for juries, depositions, service of process, etc., the claimant must serve and file a memorandum of costs. Both statutes and case law determine which costs are recoverable.

Currently, numerous technical rules govern the recovery of costs, and most of the provisions are found in Code of Civil Procedure sections 1031 through 1039. The rules determining which party is entitled to recovery of its costs are technical and tend to be confusing to many litigants. For example, in Municipal and Justice Courts, the prevailing party is automatically entitled to a cost award, with the exception of plaintiffs who obtain judgment for less than the amount prescribed by law as the maximum limitation upon the jurisdiction of the small claims courts; for those plaintiffs, the recovery of costs is discretionary with the court. In Superior Court, the award of costs is discretionary, except when a party prevails in actions involving real property, recovery of personal property or money, and certain special proceedings, where costs are awarded as a matter of course; even in those cases, however, when the judgment obtained by the prevailing party could have been rendered in a lower court, the recovery of costs then become discretionary.

The California Judges Association feels that the litigants, the attorneys, and the courts would be greatly benefited by an overhaul of the statutory provisions dealing with this subject, leading toward the adoption of a simplified statute, and by statutory direction to the Judicial Council to promulgate rules governing the procedure for claiming and contesting recoverable costs. The Association asks that the Law Revision Commission

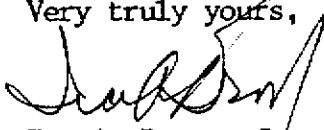
Constance E. Dove
Executive Director

Mr. John H. DeMouilly
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study this matter with that goal in mind, and to submit your recommendations to the Legislature. Enclosed, for your information, are copies of proposed legislation and proposed rules.

If the California Judges Association can provide further input to you, please do not hesitate to let me know.

Very truly yours,



Ira A. Brown, Jr.
President

IAB:gk

Enclosures

RECOMMENDATIONS
FOR REVISION OF THE CODE OF CIVIL PROCEDURE
PROVISIONS ON COSTS

I. Repeal present CCP sections 1031(a) and (b), 1032, 1032.5, 1032.7, 1032.8, 1033, 1033 1/2, 1034, 1037, 1039.

II. Enact new CCP sections as follows:

() Except as otherwise provided by law, a prevailing party is entitled as a matter of right to recover costs in any action or proceeding. "Prevailing party" includes the party with a net monetary recovery, a defendant on dismissal, a defendant where neither plaintiff nor defendant obtains relief, and a defendant as against those plaintiffs who do not recover against that defendant. When any party recovers other than monetary relief and in situations other than as specified, the "prevailing party" shall be as determined by the court.

() Costs or any portion of claimed costs shall be as determined by the court in its discretion where the prevailing party recovers a judgment that could have been rendered in a court of lesser jurisdiction.

() The procedure for claiming and contesting costs and allowable costs shall be as provided in rules adopted by the Judicial Council.

III. Enact California Rules of Court as follows:

() Claiming Costs

- (a) Trial Costs. The prevailing party may claim costs by serving and filing a verified cost memorandum at any time up to 10 days after the notice of entry of judgment or dismissal is given. CCP §1013 applies.
- (b) Costs after Judgment. The judgment creditor may claim costs after judgment by serving and filing a verified cost memorandum within six months after such costs are incurred but before the judgment is fully satisfied.
- (c) Costs on Appeal. The party prevailing on appeal shall claim costs on appeal by serving and filing a verified memorandum of costs within 30 days after the remittitur is filed in the trial court.
- (d) Costs on Default. The party seeking judgment by default shall file a verified memorandum of costs with the application for judgment.

() Contesting Costs

- (a) Striking and Taxing Costs. A motion to strike or to tax costs must be served and filed 10 days after service of the cost memorandum.

(b) Form of Motion. Excepting where the objection is made to the entire cost memorandum, the motion to strike or tax costs shall describe with particularity each item of cost by descriptive name, number on the cost memorandum and amount and argument as to the inappropriateness of the item.

(c) Extensions of Time. The court may extend the time for serving and filing the cost memorandum and a motion to strike or tax costs for not to exceed 30 days without the consent of the adverse party. The provisions of CCP §473 apply.

() Allowable Costs .

The following items are allowable as costs:

- (1) Filing, motion and jury fees;
- (2) Juror food and lodging while they are kept together during trial and after the jury retires for deliberation;
- (3) Taking and transcribing necessary depositions including one copy of those taken by the claimant and one copy of depositions taken by the party against whom costs are allowed, and travel expenses to attend depositions;
- (4) Service of process in an amount not exceeding that allowable to a public officer or employee under Government Code section 26721 or a registered process server under Business and Professions Code sections 22350, et seq. for similar service;
- (5) Costs of attachment including keeper's fees;
- (6) Premiums on necessary surety bonds;

- (7) Ordinary witness fees pursuant to Government Code §68093.
- (8) Fees of expert witnesses ordered by the court;
- (9) Transcripts of court proceedings ordered by the court;
- (10) Attorney fees when otherwise authorized to be recovered by law. A cost memorandum claiming fees shall cite statutory authority and attach a declaration justifying the amount of fees claimed.
- (11) Court reporter fees.

() Non-Allowable Costs

The following items are not allowable as costs:

- (1) Fees of experts not ordered by the court;
- (2) Investigation expenses in preparing the case for trial;
- (3) Postage, telephone and photocopying charges, except for exhibits;
- (4) Costs in investigation of jurors or in preparation for voir dire;
- (5) Transcripts of court proceedings not ordered by the court.

() General Rules and Court Discretion

- (1) Costs are allowable if incurred, whether or not paid.
- (2) Allowable costs must be reasonably necessary to the conduct of the litigation rather than merely convenient or beneficial to its preparation.
- (3) Allowable costs must be reasonable in amount.

(4) For items not mentioned in these Rules, the court has discretion to allow or deny costs.

(5) Models and blow-ups of exhibits and photocopies of exhibits may be allowed if they were reasonably helpful to aid the trier of fact.

() Entry of Costs. After the time has passed for a motion to strike or tax costs or determination of such motion, the clerk, within two days, shall enter the costs on the judgment.