

First Supplement to Memorandum 2009-35

**Statutes Made Obsolete by Trial Court Restructuring: Part 5
(Discussion of Issues)**

Government Code Sections 29603 and 68098 relate to witness and juror fees. At pages 18-20 of Memorandum 2009-35, the staff recommended that those provisions be amended to reflect that trial jury costs and fees for a court-appointed expert witness are “court operations” and thus chargeable to the superior court instead of the county.

However, Daryl Kennedy, General Counsel of the Shasta County Superior Court, has pointed out that it is necessary to distinguish between an expert witness appointed by the court *for the court’s needs*, and an expert witness appointed by the court *for other purposes*. See Third Supplement to Memorandum 2009-34. He appears to be correct about this. Under Function 10 of Rule 10.810(d) of the California Rules of Court, only “court-appointed expert witness fees (*for the court’s needs*)” constitute a “court operation.” (Emphasis added.)

To properly reflect this principle, **Government Code Section 29603 should be amended as follows, instead of as shown at page 19 of Memorandum 2009-35:**

Gov’t Code § 29603 (amended). Payments to jurors and witnesses

29603. The sums required by law to be paid to ~~the grand and trial~~ jurors and witnesses in criminal cases tried in a superior or municipal court, other than expert witnesses appointed by the court for the court’s needs pursuant to Section 730 of the Evidence Code, are county charges.

Comment. Section 29603 is amended to reflect enactment of the Lockyer-Isenberg Trial Court Funding Act. See Sections 77003 (“court operations” defined), 77200 (state funding of trial court operations); Cal. R. Ct. 10.810(d), Functions 2 (jury services) & 10 (“court-appointed expert witness fees (for the court’s needs)”). The reference to grand jurors is retained because grand jury expenses and operations are not court operations. See Section 77003(a)(7); Cal. R. Ct. 10.810(b)(6) & (d), Function 2 (civil and criminal grand jury costs unallowable). Likewise, the fees for a lay witness, or an

expert who is not court-appointed, are not a court operation and thus remain a county charge. See Section 77003; Cal. R. Ct. 10.810.

The section is also amended to reflect unification of the municipal and superior courts pursuant to former Section 5(e) of Article VI of the California Constitution.

Similarly, **Government Code Section 68098 should be amended as follows, instead of as shown at page 20 of Memorandum 2009-34:**

Gov't Code § 68098 (amended). Witness fees in criminal cases

68098. Witness' fees in criminal cases in superior ~~and municipal~~ courts, other than fees for expert witnesses appointed by the court for the court's needs pursuant to Section 730 of the Evidence Code, are charges against the same funds as grand jurors' fees in such criminal cases.

Comment. Section 68098 is amended to reflect enactment of the Lockyer-Isenberg Trial Court Funding Act. See Sections 77003 ("court operations" defined), 77200 (state funding of trial court operations); Cal. R. Ct. 10.810(b)(6) & (d), Functions 2 (jury services) & 10 ("court-appointed expert witness fees (for the court's needs)").

The section is also amended to reflect unification of the municipal and superior courts pursuant to former Section 5(e) of Article VI of the California Constitution.

Section 68098 is further amended to make a stylistic revision.

Respectfully submitted,

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