

RESOLUTION 08-13-04

DIGEST

Memorandum of Costs: Attorney's Fees

Amends Judicial Council Form MC-010 (Memorandum of Costs-Summary) to specify whether attorney fees will be recovered by motion or statute.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Judicial Council Form MC-010 (Memorandum of Costs-Summary) to specify whether attorney fees will be recovered by motion or statute. This resolution should be approved because the amendment will resolve confusion created by the present wording of the form and make the process for the payment of attorney's fees clear.

The present form is confusing because it does not specify how fees are awarded. Most attorney fees are awarded by a separate motion after trial. Cal. Code Civ. Proc. §1033.5. Some, e.g., fees following a default, are determined by the court following the filing of an application for entry of default, and no motion is required. The amendment would change the form to specify which procedure will be followed in the individual case.

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that the Judicial Council amend Judicial Council Form MC-010 to read as follows:

- 1 Form MC-010
- 2 [Paragraphs (1) through (9) of Form MC-010 remain unchanged.]
- 3
- 4 10. Attorney fees (*enter here if contractual or statutory fees are fixed without*
- 5 *necessity of a court determination; otherwise if contractual, a noticed motion is required;*
- 6 *if statutory, refer to CCP §1033.5(c)(5)*)
- 7
- 8 [Paragraphs (11) through (13) of Form MC-010 remain unchanged.]

(Proposed new language underlined.)

PROPONENT: Orange County Bar Association

STATEMENT OF REASONS

Existing Law: Inaccurately limits the method of fixing those attorneys fees which are statutory

based and require further court determination. However, the code section on which the Form is based, i.e. Code of Civil Procedure section 1033.5(c)(5), allows for four (4) different methods through which to fix statutory based attorneys fees.

This Resolution: Would accurately state the options available to fix statutory based attorneys fees.

The Problem: Although the Form is approved for optional use, most if not all attorneys use this form to submit to the courts to recover allowable costs, including attorneys fees. The current language of the instruction suggests that unless attorneys fees are already fixed by contract or statute, a noticed motion is the only method by which they may be fixed regardless of whether they are contractual or statutory. This is not true where attorneys fees are statutorily based as Code of Civil Procedure section 1033.5(c)(5) provides:

When any statute of this state refers to the award of “costs and attorney’s fees,” attorney’s fees are an item and component of the costs to be awarded and are allowable as costs pursuant to subparagraph (B) of paragraph (10) of subdivision (a)... Attorney’s fees allowable as costs pursuant to subparagraph (B) of paragraph (10) of subdivision (a) may be fixed as follows: (A) upon a noticed motion, (B) at the time a statement of decision is rendered, (C) upon application supported by affidavit made concurrently with a claim for other costs, *or* (D) upon entry of default judgment. [Emphasis added.]

As indicated in the text of the statute, there are four optional methods by which to fix attorney’s fees allowable pursuant to subparagraph (B) of paragraph (10) of subdivision (a), i.e., pursuant to statute. Therefore, the current instructions on Line 10 of the Judicial Form forces a noticed motion where the other allowable three methods may be more time and cost effective for the parties as well as the courts.

IMPACT STATEMENT

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

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