

RESOLUTION 4-04-05

DIGEST

Filing Fees: Statutory Exclusion for Stipulated Orders

Amends Government Code section 26830 to exclude stipulated orders from filing fees.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Government Code section 26830 to exclude stipulated orders from filing fees.

This resolution should be approved in principle because the moving party has already paid a filing fee for filing its motion and should not have to pay a second filing fee on the same matter.

Apparently some superior courts are charging a filing fee when parties submit a stipulated order on a motion for which a filing fee has already been paid. This creates an inequitable situation for those parties who resolve a matter short of hearing, as parties who proceed to hearing on a noticed motion only pay one filing fee, although more judicial resources are used for reviewing and hearing their matters. This also creates a disincentive for the parties to resolve the matter without a hearing.

The rationale apparently given by the courts which charge a second filing fee on the same matter is that section 26830 does not specifically list a stipulated order as a filing that is excluded from the filing fee requirement. This narrowly drawn resolution would remedy that situation by specifically excluding from payment of filing fees those orders on matters for which filing fees have already been paid.

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Government Code Section 26830 as follows:

- 1 § 26830
- 2 (a) Except as provided in subdivisions (b), (c), and (d), the fee for filing any notice of motion, or any
- 3 other paper requiring a hearing subsequent to the first paper, or any notice of intention to move for a
- 4 new trial of any civil action or special proceeding, or an application for renewal of a judgment, is
- 5 thirty-three dollars (\$33). However, there shall be no fee for filing any of the following:
- 6 (1) An amended notice of motion.
- 7 (2) A civil case management statement.
- 8 (3) A hearing on a petition for emancipation of a minor.
- 9 (4) Default hearings.
- 10 (5) A show-cause hearing on a petition for an injunction prohibiting harassment.
- 11 (6) A show-cause hearing on an application for an order prohibiting domestic violence.
- 12 (7) A show-cause hearing on writs of review, mandate, or prohibition.
- 13 (8) A show-cause hearing on a petition for a change of name.
- 14 (9) A hearing to compromise a claim of a minor or an insane or incompetent person.
- 15 (10) An order presented to the Court on a matter for which a fee has already been paid pursuant to
- 16 subdivision (a), above.
- 17 (b) The fee for filing a motion for summary judgment or summary adjudication of issues is one
- 18 hundred fifty dollars (\$150).
- 19 (c) The fee for the filing of any motion in small claims court matters is fourteen dollars (\$14), which
- 20 shall be deposited in the county general fund for use as county general fund revenue.
- 21 (d) If a continuance is granted, in addition to the notice of motion fee required under subdivision (a),
- 22 a fee of one hundred dollars (\$100) shall be collected for filing a motion or a stipulation for
- 23 continuance of a trial, or requesting a continuance for trial orally, which shall be deposited in a

24 special account in the county treasury and transmitted therefrom monthly to the Controller for deposit
25 in the Trial Court Trust Fund.
26 (e) Notwithstanding Section 68085, fourteen dollars (\$14) of the thirty-three dollar (\$33) fee
27 authorized in subdivision (a) and one hundred dollars (\$100) of the one hundred fifty dollar (\$150)
28 fee established by subdivision (b) shall be deposited in the county general fund for use as county
29 general fund revenue. The balance of the fees collected shall all be deposited in a special account in
30 the county treasury and transmitted therefrom monthly to the Controller for deposit in the Trial Court
31 Trust Fund.
32 (f) Regardless of whether each motion or matter is heard at a single hearing or at separate hearings,
33 the filing fees required by subdivisions (a), (b), (c), and (d) apply separately to each motion or other
34 paper filed.
35 (g) This section shall become inoperative on July 1, 2006, and, as of January 1, 2007, is repealed,
36 unless a later enacted statute that is enacted before January 1, 2007, deletes or extends the dates
37 on which it becomes inoperative and is repealed.

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

PROPONENT: Bar Association of San Francisco

STATEMENT OF REASONS

Existing Law: Requires, with some exceptions, that a fee be paid for filing all notices of motion and other papers requiring a hearing.

This Resolution: Would exclude from the filing fee requirements all orders presented to the court on matters for which a motion fee has already been paid.

The Problem: Some court clerks require parties to pay a second "hearing" fee when a stipulation and order is presented to the court on a motion for which a fee has already been paid. The justification given is the somewhat ambiguous language on subdivision (e), since that subdivision does not expressly list such stipulated orders. This results in the parties having to incur unnecessary costs and effort to secure an order to which they have already agreed.

The intent of the section is to collect a fee on each matter submitted to the court which will result in a separate order. It is counterproductive to attempt to collect a separate motion fee when the parties have resolved the matter and present a stipulated order to the court for signature. No hearing will be required. Moreover, no fee is required to file an opposition to a motion. Therefore, why should a fee be required when the parties have cooperated and resolved the matter?

Exempting stipulated orders from filing fee requirements would encourage the resolution of disputed motions and other matters, and would reduce the costs incurred by the parties.

In accordance with CDCBA rules, BASF timely offers this resolution for consideration. Consistent with traditional CDCBA practice, the Proponent reserves the right to timely withdraw or amend the resolution.

IMPACT STATEMENT

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

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