



Judicial Council of California

455 Golden Gate Avenue · San Francisco, California 94102-3688

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 24-107

For business meeting on September 20, 2024

Title

Civil Practice and Procedure: Memorandum of Costs

Agenda Item Type

Action Required

Rules, Forms, Standards, or Statutes Affected

Revise forms MC-010 and MC-011

Effective Date

January 1, 2025

Recommended by

Civil and Small Claims Advisory Committee
Hon. Tamara L. Wood, Chair

Date of Report

August 20, 2024

Contact

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Executive Summary

The Civil and Small Claims Advisory Committee recommends revising the optional form litigants use for claiming prejudgment costs under Code of Civil Procedure sections 1032 and 1033.5 (form MC-010) to add a certification under penalty of perjury for the costs submitted. The committee also recommends on form MC-010 and its companion worksheet (form MC-011) (1) removing the references to fees for hosting electronic documents as a cost because these fees have sunsetted as an expressly allowable cost and (2) relocating the item “Models, enlargements, and photocopies of exhibits” on the lists of costs. The origins of this proposal are a litigant’s challenge to form MC-010’s verification language, a sunset provision in the statute, and a suggestion from a form user to make parallel the cost items in the two forms.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2025:

1. Revise *Memorandum of Costs (Summary)* (form MC-010) to add a certification under penalty of perjury for the costs requested; and

2. Revise form MC-010 and *Memorandum of Costs (Worksheet)* (form MC-011) by removing references to fees for hosting electronic documents as a cost and relocating “Models, enlargements, and photocopies of exhibits” to item 13 of the list of costs.

The proposed revised forms are attached at pages 5–10.

Relevant Previous Council Action

To implement legislation (Sen. Bill 654; Stats. 1986, ch. 377), the Judicial Council originally approved for optional use forms MC-010 and MC-011, effective January 1, 1987, for claiming prejudgment costs under Code of Civil Procedure sections 1032 and 1033.5. Both forms were revised in 1999 to conform to statute—for example, by including “court reporter fees as established by statute” among the costs that a litigant can claim. Finally, both forms were revised, effective September 1, 2017, to implement technical changes based on amendments to section 1033.5 regarding fees for interpreters and electronic filing or service, as well as to replace the word “blowups” with “enlargements.”

Analysis/Rationale

The committee recommends three changes to the current form for claiming prejudgment interest (form MC-010) and two corresponding changes to the companion worksheet (form MC-011).

Adding a sworn verification to form MC-010

To conform the existing verification of costs on form MC-010 to those on other council forms, the committee recommends adding a penalty-of-perjury recital. At least one party has argued unsuccessfully that form MC-010 does not comply with applicable verification requirements because it is not signed under penalty of perjury.¹ A Court of Appeal in an unpublished case rejected the argument, holding that form MC-010’s verification complies with the requirements of California Rules of Court, rule 3.1700 because it provides for a signed statement from the party, attorney, or agent that “to the best of [their] knowledge the items of cost are correct and were necessarily incurred in the case.”² Without a published decision resolving the issue, parties who choose to use form MC-010 remain open to similar challenges.

The committee notes that the council’s mandatory forms for seeking costs on appeal (*Memorandum of Costs on Appeal* (form APP-013)) and for requesting entry of default or default judgment (*Request for Entry of Default (Application to Enter Default)* (form CIV-100), which includes a memorandum of costs as item 7) both contain penalty-of-perjury recitals after rule 3.1700’s verification language that—to the best of the party’s, counsel’s, or agent’s knowledge—the costs are correct and were necessarily incurred in the case. Based on those two forms, the committee recommends adding a penalty-of-perjury recital to form MC-010. Doing so will make form MC-010 consistent with these other council forms and should reduce the

¹ See *Srabian v. Triangle Truck Ctr.* (Aug. 12, 2022, F080066) 2022 Cal.App.Unpub. Lexis 4963, at p. *11.

² See *id.* at pp. 12–13; see also form MC-010 (rev. Sept. 1, 2017), www.courts.ca.gov/documents/mc010.pdf.

incidence of litigants having to defend challenges to the legal sufficiency of form MC-010's verification.

Removing references to fees for the hosting of electronic documents

The committee also recommends deleting on forms MC-010 and MC-011 fees for hosting electronic documents. This change is necessary because the provision that expressly authorized those hosting costs became inoperative as of January 1, 2022. (Code Civ. Proc., § 1033.5(a)(15); Assem. Bill 2244 (Stats. 2016, ch. 461).)

Other changes to forms MC-010 and MC-011

A form user pointed out that the items of allowable costs on forms MC-010 and MC-011 are not in the same sequence. "Models, enlargements, and photocopies of exhibits" is listed as item 12 on form MC-010 but as item 11 on form MC-011. The sequence of the items of costs set out in these companion forms should be the same. With the purpose of more closely following the statutory list of costs in section 1033.5 and making the forms more user friendly, the committee recommends a minor technical change of relocating "Models, enlargements, and photocopies of exhibits" to item 13 in both forms.

Policy implications

This proposal has no major policy implications. It aligns with the Judicial Council's policy of keeping forms consistent with related statutes.

Comments

This proposal circulated for public comment from April 2 to May 3, 2024. The committee received four comments, including three from superior courts. Two commenters agreed with the proposal as circulated, and two commenters did not indicate a position. All four stated that the proposal addresses the stated purpose, and none of the commenters suggested any changes.

A chart of comments and committee responses is attached at pages 11–13.

Alternatives considered

The alternative of not making changes to the forms was not considered because one of the changes is to remove references to costs for the hosting of electronic documents, which are no longer awardable under section 1033.5 due to a sunset provision. The committee considered making no other changes beyond the removal of the references to the fees for hosting electronic documents because form MC-010 already includes a verification of the costs claimed and the two forms list the same items, albeit in a different order; however, the committee concluded that adding a penalty-of-perjury recital in form MC-010 would make the form consistent with other council forms involving costs. The committee also believes that resequencing the items of allowable costs to harmonize the two forms would be helpful to litigants and courts.

Fiscal and Operational Impacts

Operational impacts are expected to be minimal. The proposal would impose the usual costs for courts to train judicial officers and staff and to update internal procedures.

Attachments and Links

1. Forms MC-010 and MC-011, at pages 5–10
2. Chart of comments, at pages 11–13

ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NUMBER: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (name):	FOR COURT USE ONLY DRAFT 06/17/2024 Not approved by the Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF: DEFENDANT:	
MEMORANDUM OF COSTS (SUMMARY)	CASE NUMBER:

The following costs are requested:

	TOTALS
1. Filing and motion fees	\$
2. Jury fees	\$
3. Jury food and lodging	\$
4. Deposition costs	\$
5. Service of process	\$
6. Attachment expenses	\$
7. Surety bond premiums	\$
8. Witness fees	\$
9. Court-ordered transcripts	\$
10. Attorney fees <i>(enter here if contractual or statutory fees are fixed without necessity of a court determination; otherwise a noticed motion is required)</i>	\$
11. Court reporter fees as established by statute	\$
12. Interpreter fees	\$
13. Models, enlargements, and photocopies of exhibits	\$
14. Fees for electronic filing or service	\$
15. Other	\$
TOTAL COSTS	\$

I am the party counsel for the party agent for the party who claims the costs listed above.
 To the best of my knowledge, the items of costs are correct and were necessarily incurred in this case.
 I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____

(TYPE OR PRINT NAME)



(SIGNATURE OF DECLARANT)

(Proof of service on reverse)

SHORT TITLE	CASE NUMBER:
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PROOF OF MAILING PERSONAL DELIVERY

1. At the time of mailing or personal delivery, I was at least 18 years of age and **not a party** to this legal action.
2. My residence or business address is (*specify*):

3. I mailed or personally delivered a copy of the *Memorandum of Costs (Summary)* as follows (*complete either a or b*):
 - a. **Mail.** I am a resident of or employed in the county where the mailing occurred.
 - (1) I enclosed a copy in an envelope AND
 - (a) **deposited** the sealed envelope with the United States Postal Service with the postage fully prepaid.
 - (b) **placed** the envelope for collection and mailing on the date and at the place shown in items below following our ordinary business practices. I am readily familiar with this business' practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.
 - (2) The envelope was addressed and mailed as follows:
 - (a) Name of person served:
 - (b) Address on envelope:

 - (c) Date of mailing: _____
 - (d) Place of mailing (*city and state*):
 - b. **Personal delivery.** I personally delivered a copy as follows:
 - (1) Name of person served:
 - (2) Address where delivered:

 - (3) Date delivered:
 - (4) Time delivered:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME)

 _____

(SIGNATURE OF DECLARANT)

SHORT TITLE	CASE NUMBER:
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MEMORANDUM OF COSTS (WORKSHEET)

1. Filing and motion fees

DRAFT

06/17/2024

**Not approved by
the Judicial Council**

	<u>Paper filed</u>		<u>Filing fee</u>
a.	_____	\$	_____
b.	_____	\$	_____
c.	_____	\$	_____
d.	_____	\$	_____
e.	_____	\$	_____
f.	_____	\$	_____

g. Information about additional filing and motion fees is contained in Attachment 1g.

TOTAL 1. \$

2. Jury fees

	<u>Date</u>		<u>Fee & mileage</u>
a.	_____	\$	_____
b.	_____	\$	_____
c.	_____	\$	_____
d.	_____	\$	_____

e. Information about additional jury fees is contained in Attachment 2e.

TOTAL 2. \$

3. Juror food: \$ _____ and lodging: \$ _____

TOTAL 3. \$

4. Deposition costs

	<u>Name of deponent</u>		<u>Taking</u>		<u>Transcribing</u>		<u>Travel</u>		<u>Videotaping</u>		<u>Subtotals</u>
a.	_____	\$	_____	\$	_____	\$	_____	\$	_____	\$	_____
b.	_____	\$	_____	\$	_____	\$	_____	\$	_____	\$	_____
c.	_____	\$	_____	\$	_____	\$	_____	\$	_____	\$	_____
d.	_____	\$	_____	\$	_____	\$	_____	\$	_____	\$	_____

e. Information about additional deposition costs is contained in Attachment 4e.

TOTAL 4. \$

(Continued on reverse)

Page ___ of ___

SHORT TITLE	CASE NUMBER:
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5. **Service of process**

	<u>Name of person served</u>	<u>Public officer</u>	<u>Registered process</u>	<u>Publication</u>	<u>Other (specify)</u>
a.	_____	\$ _____	\$ _____	\$ _____	\$ _____
b.	_____	\$ _____	\$ _____	\$ _____	\$ _____
c.	_____	\$ _____	\$ _____	\$ _____	\$ _____
d.	<input type="checkbox"/> Information about additional costs for service of process is contained in Attachment 5d.				

TOTAL 5. \$

6. Attachment expenses (*specify*):

6. \$

7. Surety bond premiums (*itemize bonds and amounts*):

7. \$

8. a. **Ordinary witness fees**

	<u>Name of witness</u>	<u>Daily fee</u>	<u>Mileage</u>		<u>Total</u>
(1)	_____	days at _____ \$/day	_____ miles at _____ ¢/mile:		\$ <input style="width: 100px;" type="text"/>
(2)	_____	days at _____ \$/day	_____ miles at _____ ¢/mile:		\$ <input style="width: 100px;" type="text"/>
(3)	_____	days at _____ \$/day	_____ miles at _____ ¢/mile:		\$ <input style="width: 100px;" type="text"/>
(4)	_____	days at _____ \$/day	_____ miles at _____ ¢/mile:		\$ <input style="width: 100px;" type="text"/>
(5)	_____	days at _____ \$/day	_____ miles at _____ ¢/mile:		\$ <input style="width: 100px;" type="text"/>

(6) Information about additional ordinary witness fees is contained in Attachment 8a(6).

SUBTOTAL 8a. \$

(Continued on next page)

SHORT TITLE	CASE NUMBER:
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8. b. **Expert fees** (per Code of Civil Procedure section 998)

	Name of witness	Fee			
(1)	_____	_____ hours at \$ _____ /hr			\$ _____
(2)	_____	_____ hours at \$ _____ /hr			\$ _____
(3)	_____	_____ hours at \$ _____ /hr			\$ _____
(4)	_____	_____ hours at \$ _____ /hr			\$ _____
(5)	<input type="checkbox"/> Information about additional expert fees is contained in Attachment 8b(5).				

SUBTOTAL 8b. \$ _____

c. **Court-ordered expert fees**

	Name of witness	Fee			
(1)	_____	_____ hours at \$ _____ /hr			\$ _____
(2)	_____	_____ hours at \$ _____ /hr			\$ _____
(3)	<input type="checkbox"/> Information about additional court-ordered expert fees is contained in Attachment 8c(3).				

SUBTOTAL 8c. \$ _____

TOTAL (8a, 8b, & 8c) 8. \$ _____

9. **Court-ordered transcripts** (specify):

9. \$ _____

10. **Attorney fees** (enter here if contractual or statutory fees are fixed without necessity of a court determination; otherwise a noticed motion is required):

10. \$ _____

11. **Court reporter fees** (as established by statute)

- a. (Name of reporter): _____ Fees: \$ _____
- b. (Name of reporter): _____ Fees: \$ _____
- c. Information about additional court-reporter fees is contained in Attachment 11c.

TOTAL 11. \$ _____

12. **Interpreter fees**

- a. Fees of a certified or registered interpreter for the deposition of a party or witness
 (Name of interpreter): _____ Fees: \$ _____
 (Name of interpreter): _____ Fees: \$ _____
- b. Fees for a qualified court interpreter authorized by the court for an indigent person represented by a qualified legal services project or a pro bono attorney
 (Name of interpreter): _____ Fees: \$ _____
 (Name of interpreter): _____ Fees: \$ _____
- c. Information about additional court-reporter fees is contained in Attachment 12c.

TOTAL 12. \$ _____

13. **Models, enlargements, and photocopies of exhibits** (specify):

13. \$ _____

14. **Fees for electronic filing or service of documents through an electronic filing service provider** (enter here if required or ordered by the court):

14. \$ _____

15. **Other** (specify): _____

15. \$ _____

TOTAL COSTS	\$ _____
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(Additional information may be supplied on the reverse)

SHORT TITLE	CASE NUMBER:
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SPR24-07

Civil Practice and Procedure: Memorandum of Costs (revise forms MC-010 and MC-011)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
1.	Orange County Bar Association by Christina Zabat-Fran, President	A	These changes all address the stated purpose and, in particular, it is important to remove non-recoverable costs from the form.	The committee acknowledges the Orange County Bar Association’s agreement with the proposal, and appreciates the information provided.
2.	Superior Court of Orange County Family Law and Juvenile Divisions by Katie Tobias, Operations Analyst	NI	<p>Comments N/A</p> <p>Request for Specific Comments In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following: <i>Does the proposal appropriately address the stated purpose?</i></p> <ul style="list-style-type: none"> • Yes, the proposal appropriately addresses the stated purpose. 	The committee appreciates the information provided.
			<p>The advisory committee also seeks comments from courts on the following cost and implementation matters: <i>Would the proposal provide cost savings? If so, please quantify.</i></p> <ul style="list-style-type: none"> • No, the proposal does not appear to provide any cost savings. <p><i>What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?</i></p> <ul style="list-style-type: none"> • Implementation would require providing communication to judicial officers and staff. <p><i>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i></p> <ul style="list-style-type: none"> • Yes, three months would provide sufficient time for implementation in Orange County. <p><i>How well would this proposal work in courts of different sizes?</i></p> <ul style="list-style-type: none"> • Our court is a large court, and this could work for Orange County. 	The committee appreciates the information provided.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR24-07

Civil Practice and Procedure: Memorandum of Costs (revise forms MC-010 and MC-011)

All comments are verbatim unless indicated by an asterisk (*).

	Committer	Position	Comment	Committee Response
3.	Superior Court of Riverside County by Sarah Hodgson, Chief Deputy of Legal Services / General Counsel	NI	<p>No additional comments nor suggestions.</p> <hr/> <p>Does the proposal appropriately address the stated purpose?</p> <ul style="list-style-type: none"> • It does address the stated purpose <p>Would the proposal provide cost savings? If so, please quantify.</p> <ul style="list-style-type: none"> • No cost saving associated with this change for the Court <p>What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?</p> <ul style="list-style-type: none"> • Not required <p>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</p> <ul style="list-style-type: none"> • Yes <p>How well would this proposal work in courts of different sizes?</p> <ul style="list-style-type: none"> • No impact to the Court 	<p>No response required.</p> <hr/> <p>The committee appreciates the information provided.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR24-07

Civil Practice and Procedure: Memorandum of Costs (revise forms MC-010 and MC-011)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
4.	Superior Court of San Diego County by Mike Roddy, Executive Officer	A	<p>Q: Does the proposal appropriately address the state purpose? A: Yes.</p> <p>Q: Would the proposal provide cost savings? If so, please quantify. A: No.</p> <p>Q: What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? A: Implementation will require updating internal procedures and training affected staff.</p> <p>Q: Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? A: Yes.</p> <p>Q: How well would this proposal work in courts of different sizes? A: This proposal should work well, regardless of the size of the court</p>	The committee acknowledges the Superior Court of San Diego County’s agreement with the proposal, and appreciates the information provided.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.