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April 11, 2001

Mr. Bion M. Gregory  
Legislative Counsel  
State of California  
State Capitol, Room 3021  
Sacramento, CA 95814

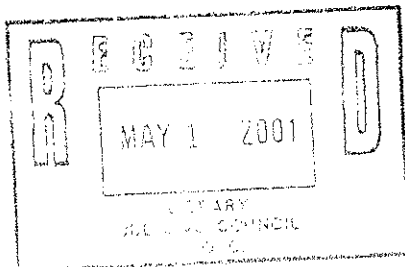
Mr. Gregory P. Schmidt  
Secretary of the Senate  
State Capitol, Room 400  
Sacramento, CA 95814

Mr. E. Dotson Wilson  
Chief Clerk of the Assembly  
State Capitol, Room 3196  
Sacramento, CA 95814

RE: Civil Settlement Offers and Attorney's Fees in Riverside and San Bernardino  
Counties  
Code of Civil Procedure Section 1021.1

Dear Mr. Gregory, Mr. Schmidt, and Mr. Wilson:

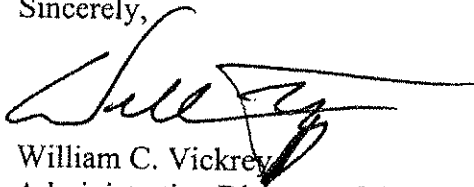
Attached is the Judicial Council report required pursuant to Code of Civil  
Procedure section 1021.1 on civil settlement offers and attorney's fees in Riverside and  
San Bernardino Counties.



Mr. Gregory, Mr. Schmidt and Mr. Wilson  
April 11, 2001  
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If you have any questions related to this report, please contact Frederick Miller, at  
415-865-7658.

Sincerely,



William C. Vickrey  
Administrative Director of the Courts

WCV/FB  
Attachments

cc: Members of the Judicial Council  
Ray LeBov, Office of Governmental Affairs  
Judicial Administration Library (2 copies)

**Civil Settlement Offers and Attorney's Fees  
in Riverside and San Bernardino Counties**

**Report Summary  
April 11, 2001**

The Judicial Council submits to the Legislature this report on civil settlement offers and attorney's fees in Riverside and San Bernardino Counties pursuant to section 1021.1 of the Code of Civil Procedure. The code was first enacted in 1987 to establish a pilot program for awarding attorney's fees in certain types of civil cases. Its purpose was to promote early settlement in civil cases in which reasonable pretrial settlement offers had been made.

Code of Civil Procedure section 1021.1 authorized the Riverside County and San Bernardino County trial courts to award attorney's fees to the prevailing party in specified civil actions (not including personal injury, eminent domain, class actions or injunctive relief actions) under the following conditions:

1. The prevailing party had made a legitimate offer for judgment under Code of Civil Procedure section § 998; and
2. The offer was not accepted; and
3. The recipient of the offer subsequently failed to secure a more favorable judgment.

Neither the Superior Court of Riverside County nor the Superior Court of San Bernardino County has tracked data on the utilization of this code. Furthermore, no baseline information is available from which to draw a comparison that would enable an assessment of the impact of the legislation.

Both courts supported the use of the provisions outlined in the Code of Civil Procedure section 1021.1; however, neither court believed that it applied in a significant number of cases. Riverside reported that it was utilized in only nine cases in a three-month period and San Bernardino said that in a year's time only a handful of actions fell under the provisions of the code.

Both courts perceived section 1021.1 as having little impact on improving case settlement rates in the court. This may be partially attributable to two factors: (1) the majority of contract dispute claims already contain an attorney fee provision, and (2) personal injury and wrongful death actions are exempt from the code requirements.

**Civil Settlement Offers and Attorney's Fees  
in Riverside and San Bernardino Counties**

**Report to the Legislature  
April 11, 2001**

The Judicial Council submits to the Legislature this report on civil settlement offers and attorney's fees in Riverside and San Bernardino Counties pursuant to section 1021.1 of the Code of Civil Procedure.

Statutory Background

Section 1021.1(a) of the Code of Civil Procedure states, "Reasonable attorney's fees may be awarded in an amount to be determined in the court's discretion, to a party to any civil action as provided by this section, and that award shall be made upon notice and motion by a party and shall be an element of the costs of suit." The code was first enacted in 1987 to establish a pilot program for awarding attorney's fees in certain types of civil cases. Its purpose was to promote early settlement in civil cases in which reasonable pretrial settlement offers had been made by authorizing the trial court to award attorney's fees to the prevailing party under certain circumstances. It was to be in effect in Riverside and San Bernardino Counties until January 1, 1991.

The code section was amended several times. Each amendment preserved the geographical limitation but extended the time frame. When first enacted, the measure required the Judicial Council to assess the impact of the project and report its findings to the Legislature. However, discussion of the Judicial Council study was dropped from subsequent amendments to the code until 1998. The final amendment in 1998 provided that "[t]he effectiveness of this act shall be determined by whether, and to what extent, this act increases the early settlement of cases subject to its provisions. . . . The Judicial Council shall assess the impact of this act upon the courts to which it applied and shall report its findings to the Legislature on or before March 1, 2000." On January 1, 2001, Code of Civil Procedure section 1021.1 was repealed by operation of its own terms. No additional extension has been enacted.

Code of Civil Procedure, section 1021.1 authorized the Riverside County and San Bernardino County trial courts to award attorney's fees to the prevailing party in specified civil actions (not including personal injury, eminent domain, class actions or injunctive relief actions) under the following conditions:

1. The party had made a legitimate offer for judgment under Code Civil Procedure section 998; and
2. The offer was not accepted; and
3. The recipient of the offer subsequently failed to secure a more favorable judgment.

Although the intent of the original bill was to pilot test the code provisions in Riverside and San Bernardino Counties for a limited time, it was envisioned that the code could subsequently be applied statewide after a positive assessment of its efficacy.

### Project History

A Judicial Council Advisory Committee was appointed in 1987 to establish protocol with which to assess the impact of Code Civil Procedure section 1021.1. In 1989, the committee, composed of business litigation and personal injury attorneys, as well as judges from both Riverside and San Bernardino Counties, concluded that a meaningful pilot project could not occur without the removal of the exception for personal injury and wrongful death actions. They reported very few actions under the experimental procedure because most contract cases already contain an attorney fee provision. The vast majority of actions that would otherwise be subject to the provision are excluded because they are personal injury actions. Although the Judicial Council voted to sponsor legislation to include personal injury and wrongful death among affected case types, the process was halted because of strong opposition from trial court attorneys.

### Methodology and Findings

The case management systems used in Riverside and San Bernardino Counties do not permit court personnel to extract cases specific to Code Civil Procedure section 1021.1. Therefore, neither the Superior Court of Riverside County nor the Superior Court of San Bernardino County has tracked data on the utilization of this code. Furthermore, no baseline information is available from which to draw a comparison that would enable an assessment of the impact of the legislation.

Both courts conducted ad hoc investigations into the utilization of the code provisions, at the request of the Research and Planning Unit of the Administrative Office of the Courts. The San Bernardino County court reported that the code applied in "only a handful of actions each year." The Riverside County court determined that it was utilized in nine cases in a three-month period in calendar year 2000. Unfortunately, neither court had data regarding the amounts of the judgments or any other case-specific information. Regardless of the lack of

substantive data, both courts felt that the practice was effective in the few cases to which it applied. Both courts hoped the practice would continue.

The Judicial Branch Statistical Information System does not break down civil filings into categories specific enough to estimate the number of cases to which section 1021.1 may have applied. Many of the relevant actions would be reported under the category of "Other Civil Complaints", which also includes injunctive relief filings. It is not possible to disaggregate these data.

### Conclusion

The Superior Courts of Riverside and San Bernardino Counties supported the use of the provisions outlined in the Code of Civil Procedure section 1021.1; however, neither court believed that it applied in a significant number of cases. It was perceived as having little impact on improving civil case settlement rates in the court. This may be partly attributable to the facts that the majority of contract claims already contain an attorney fee provision and that personal injury wrongful death actions were exempt from the code requirements.