



A Report to the Legislature

FINDINGS OF PILOT PROGRAM ON
CIVIL SETTLEMENT OFFERS AND
ATTORNEY FEES CONDUCTED IN THE
SUPERIOR COURT OF RIVERSIDE
COUNTY



ADMINISTRATIVE OFFICE
OF THE COURTS

EXECUTIVE OFFICE PROGRAMS DIVISION



Judicial Council of California
ADMINISTRATIVE OFFICE OF THE COURTS

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December 9, 2004

Ms. Diane F. Boyer-Vine
Legislative Counsel
State of California
State Capitol, Room 3021
Sacramento, California 95814

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

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

RE: A Report to the Legislature: Findings of Pilot Program on Civil Settlement Offers and Attorney Fees Conducted in the Superior Court of Riverside County

Dear Ms. Boyer-Vine and Messrs. Schmidt and Wilson:

Attached is the Judicial Council report required by the Code of Civil Procedure section 1021.1 on a pilot program conducted by the Superior Court of Riverside County to assess the effects on settlement rates in certain civil cases.

Ms. Boyer-Vine and Messrs. Schmidt and Wilson

December 9, 2004

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If you have any questions related to this report, please contact Pat Sweeten, Director of Executive Office Programs, at 415-865-7560.

Sincerely,

A handwritten signature in black ink, appearing to read "W. Vickrey", written over a horizontal line.

William C. Vickrey
Administrative Director of the Courts

WCV/KV
Attachment

cc: Members of the Judicial Council
Kate Howard, Office of Governmental Affairs
Judicial Administration Library

Civil Settlement Offers and Attorney Fees in the Superior Court of Riverside County

Report Summary December 8, 2004

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." Its purpose was to promote early settlement in civil cases in which reasonable pretrial settlement offers pursuant to Code of Civil Procedure section 998 had been made.

Section 1021.1 was first enacted in 1987 to allow implementation of a two-year pilot program in the Superior Courts of Riverside and San Bernardino Counties during which the Judicial Council would study whether the section improved civil case settlement rates. On April 5, 2001, section 1021.1 was reenacted for three years to allow the Superior Court of Riverside County further opportunity to pilot the project, and additionally required that the Judicial Council and the court jointly assess the impact of the section on the court's settlement rates and report the findings to the Legislature.

A committee of judges and court personnel from the Superior Court of Riverside County and staff from the Administrative Office of the Courts developed a series of data elements that would help assess whether the provisions contained in section 1021.1 promoted the pilot project's goals. The Information Technology staff at the Superior Court of Riverside County wrote a computer program to extract civil cases subject to the code from the court's case management system. Data was collected from July 1, 2002, through June 30, 2003. Although the case management system identified a total of 62 cases for study, further review indicated only 55 cases were subject to section 1021.1. A summary of the findings is as follows:

- 55 cases were subject to the provisions of section 1021.1 between July 1, 2002, and June 30, 2003;
- 26 of the 55 cases settled pursuant to a section 998 offer;
- 11 of the 55 cases went to trial; and
- None of the 11 cases with judgments after trial sought attorney fees under the provisions of section 1021.1.

While 47 percent of the cases did settle pursuant to section 998 settlement offers, it is impossible to determine whether the provisions for attorney fees contained in section 1021.1 constituted an inducement to settle because no attorney fees were sought in any of the cases that went to trial. It may be that all parties to whom section 998 offers were made obtained more favorable judgments, which would account for the absence of motions seeking attorney fees under section 1021.1. Nonetheless, the number of cases potentially subject to section 1021.1 in the year studied was simply too small and the gaps in the data too large to yield any definitive conclusion regarding the impact of section 1021.1.

Civil Settlement Offers and Attorney Fees in the Superior Court of Riverside County

Report to the Legislature December 8, 2004

The Judicial Council submits to the Legislature this report on civil settlement offers and attorney fees in the Superior Court of Riverside County 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." Section 1021.1 was first enacted in 1987 to allow implementation of a two-year pilot program in the Superior Courts of Riverside and San Bernardino Counties for awarding attorney's fees in specified civil actions (not including personal injury, eminent domain, class actions, and injunctive relief actions). 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 fees to the prevailing party under the following conditions:

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

The code was amended several times. 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 when it was amended to provide that "[T]he Judicial Council shall assess the impact of this act upon the courts to which it applied and shall report its findings to the Legislature...." A study was conducted, and the Judicial Council reported its findings to the Legislature in April 2001 (a copy of that report is attached hereto as Attachment 1). On January 1, 2001, section 1021.1 was repealed by operation of its own terms.

On April 5, 2001, section 1021.1 was reenacted for three years to allow the Superior Court of Riverside County further opportunity to conduct the project and additionally required that the Judicial Council and the court jointly assess the impact of the section upon the court's civil case settlement rates and report the findings to the Legislature.

Project History—April 2001 Report

A Judicial Council advisory committee was appointed in 1987 to establish a protocol with which to assess the impact of section 1021.1. The committee reported very few actions under the test procedure conducted because most contract cases—the bulk of cases that would be subject to

Findings and Discussion

Data was collected from July 1, 2002 through June 30, 2003. A total of 62 cases were identified by the case management system for the study. The following table lists the findings.

Findings of Civil Settlement Study, Superior Court of Riverside County

Data Elements	Total	% of Total
Cases subject to section 1021.1	55	100%
Cases that settled pursuant to section 998	26	47%
Cases sent to trial	11	20%
Offerees failed to obtain more favorable verdicts	No Data	No Data
Attorney fees sought under section 1021.1	0	0%

As shown in the table,

- 55 cases were subject to the provisions of section 1021.1 between July 1, 2002, and June 30, 2003¹;
- 26 of the 55 cases settled pursuant to section 998;
- 11 of the 55 cases went to trial; and
- None of the 11 cases with judgments after trial sought attorney fees under the provisions of section 1021.1.

The study did not yield data indicating whether the party to whom the section 998 offer was made failed to obtain a more favorable judgment.

While 47 percent of the cases did settle pursuant to section 998 offers, it is impossible to determine whether the provisions for attorney fees contained in section 1021.1 constituted an inducement to settle because no attorney fees were sought in any of the cases that went to trial. It may be that all parties to whom section 998 offers were made obtained more favorable judgments, which would account for the absence of motions seeking attorney fees under section 1021.1. Nonetheless, the number of cases potentially subject to section 1021.1 in the year studied was simply too small and the gaps in the data too large to yield any definitive conclusion regarding the impact of section 1021.1.

The small number of cases subject to section 1021.1 in the year studied is likely attributable to the following: (1) the majority of contract dispute claims already contained an attorney fee provision; and (2) all personal injury and wrongful death actions were exempt from the code requirements.

Conclusion

It is impossible to determine what impact, if any, Code of Civil Procedure Section 1021.1 had on civil case settlement in the Superior Court of Riverside County.

¹ A Notice of Settlement Offer had been filed in 22 of the 55 cases. Thirty-three of the 55 cases subject to section 1021.1 were filed without Notices of Settlement Offers but determined upon examination to fall within the provisions of section 1021.1.

Appendix

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:

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.