JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS
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Report

TO: Members of the Judicial Council

FROM: Civil and Small Claims Advisory Committee
Hon. Elihu M. Berle, Chair
Case Management Subcommittee
Hon. Robert B. Freedman, Chair
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DATE: April 12, 2006

SUBJECT: Fees to Be Set by the Court (amend Cal. Rules of Court, rules 6.712 and 2006) (Action Required)

Issue Statement

To implement the Uniform Civil Fees and Standard Fee Schedule Act of 2005, rule 6.712 of the California Rules of Court (Fees to be set by the court) was adopted by the Judicial Council by circulating order. It became effective January 1, 2006. Because there was insufficient time to circulate the rule before it was adopted, it was specially circulated in January–February 2006 to give the public an opportunity to comment. Several courts have identified additional services and products for which it would be appropriate to charge a reasonable fee not to exceed costs.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective July 1, 2006, amend rule 6.712 of the California Rules of Court to authorize courts to set fees for certain specified additional services and products.[1]

The text of amended rule 6.712 is attached at pages 5–6.

Rationale for Recommendation

The Uniform Civil Fees and Standard Fee Schedule Act of 2005, effective January 1, 2006, added new section 70631 to the Government Code. That section provides:

[1] The proposed amendments to rule 6.712 have also been reviewed by the Joint Rules Subcommittee of the Trial Court Presiding Judges and Court Executives Advisory Committees.

> In the absence of a statute or a rule authorizing or prohibiting a fee by the superior court for a particular service or product, the court may charge a reasonable fee not to exceed the costs of providing the service or product, if the Judicial Council approves the fee. The fee shall be distributed to the court in which it was collected.

To implement Government Code section 70631, the Judicial Council adopted a statewide rule authorizing fees for specific products and services not otherwise authorized by law. New rule 6.712 became effective January 1, 2006. It authorizes the superior courts to charge reasonable fees for certain specific products and services, including forms, form packages, compact discs, and audiotapes.

Rather than adopting a statewide rule authorizing courts to institute fees for certain products and services, the Judicial Council could have required courts to submit requests to establish individual new fees for approval on a case-by-case basis. However, this approach would have been very time-consuming and inefficient. This alternative would also have resulted in a wide range of different types of new fees being charged by the courts, which would be inconsistent with the goal of establishing uniform fees. Hence, the Judicial Council followed a rule-based approach to authorize the courts to set fees for certain products and services and to provide guidance to the courts on the amounts of such fees.

Rule 6.712 is not intended to change existing law by granting authority to the courts to provide services or to charge fees for services or products that they are otherwise prohibited from charging for under existing law. To indicate this intent, the first sentence of rule 6.712(b) states that courts are authorized to charge a reasonable fee not to exceed costs for listed items "unless courts are prohibited by law from charging a fee for, or providing, the product or service."

Rule 6.712, subdivisions (c) and (d) concern the amount of the fee. Subdivision (c) provides guidance to the courts in determining the costs of a service or product. Subdivision (d) indicates factors for courts to use in determining the reasonableness of the fee charged.

Rule 6.712(e) contains a reporting requirement. Each court that charges a fee under the rule must provide the Administrative Office of the Courts with a description of the fee, how the amount of the fee was determined, and how the fee is applied. Rule 6.712(f) requires courts to notify the public of any fee charged under the rule by providing information about the fee in a conspicuous place such as the court's fee schedule.

Finally, rule 6.712(g) provides procedures for a court to follow in adopting a new fee authorized under rule 6.712. After July 1, 2006, a court either instituting a new fee or

changing the amount of an existing fee under the rule will be required to follow the procedures for adopting or amending a local rule under rule 981 of the California Rules of Court.

Because of the need to institute the new fees promptly, there was not sufficient time to circulate this rule for public comment before the council considered it for adoption effective January 1, 2006. However, in adopting the rule on December 2, 2005, the council considered the suggestions and comments from a significant number of courts.

The public was invited to comment on rule 6.712 at the beginning of 2006. A total of six comments were received. The commentators were two superior courts and four court administrators. Several of the commentators proposed adding additional items to the list of products and services for which a fee is approved. A chart that contains the comments and the advisory committee's responses is attached at pages 7–11.

Although the Civil and Small Claims Advisory Committee recommends most of the proposals made by the commentators, it does not recommend them all.

Alternative Actions Considered

The Civil and Small Claims Advisory Committee considered a proposal to add to rule 6.712 a list of additional fees for electronic access to various court documents. However, the fees for access to electronic records are already covered by Government Code section 68150(h) and rule 2076 (Fees for electronic access). Hence, it is not appropriate to add such fees to the list under rule 6.712(b).

The committee also considered several proposals to authorize courts very broadly to set fees, but rejected these. Open-ended authorization of courts to set fees would be inconsistent with the statute's requirement that the Judicial Council approve the fees to be set by the court.

Comments From Interested Parties

Based on the public comments, the Civil and Small Claims Advisory Committee concluded that rule 6.712(b) should be amended to authorize fees for certain additional goods and services, including microfiches, envelopes, postage, shipping, and the off-site retrieval of documents. In addition, one court proposed authorizing a fee for returning filed-stamped copies of documents by fax to persons who request that a copy be sent to them by that means; other courts may want to provide that service. The committee recommends amending the rule to authorize a fee for that service.

Based on suggestions from several sources, the committee also recommends adding a per page fee for direct fax filing to rule 6.712(b). The inclusion of the direct fax filing fee in rule 6.712(b) is appropriate because then it will be located with other similar fees in the California Rules of Court. By being included in rule 6.712, the authority for the fax

filing fee and the determination of the amount to be charged will be clearly stated. At the same time the direct fax filing fee is included in rule 6.712, the current direct fax filing fee provision in rule 2006(g) should be repealed.

Finally, the Civil and Small Claims Advisory Committee recommends deleting the first sentence of rule 6.712(g) on the procedures for a court to use to adopt a fee before July 1, 2006, because the procedures for which it provides will be obsolete after that date.

As indicated above, the proposed amendments were also reviewed by the Joint Rules Subcommittee of Trial Court Presiding Judges and Court Executives Advisory Committees. A member of that subcommittee was concerned that some courts might misconstrue this rule as an opportunity to generate revenue and might charge for postage, envelopes, and shipping on core functions. More generally, he was concerned that the rule might result in restricting rather than enhancing access to the courts. These problems should not arise unless rule 6.712 is not properly construed and applied.

The rule is intended to permit (but not require) courts to provide services and products to the public that they would otherwise not be able to furnish. Courts should not use the rule to charge for core functions. The rule is not meant to be a source of generating revenue. Rule 6.712 and Government Code section 70631 allow courts to charge only "a reasonable fee not to exceed the costs of providing the service or product." Furthermore, rule 6.712 requires courts to take into account public access in determining what fee, if any, to charge and, if a fee is charged, the amount of the fee. (Rule 6.712(d)). So courts should set a fee under rule 6.712 only if the fee meets all the requirements of the rule and the fee furthers the purposes of the new fee statute and rule.

Implementation Requirements and Costs

There will be some implementation requirements and costs incurred under the rule in order for a court to set new fees. However, a court would not institute a new fee unless it would be beneficial for both the court and the public.

Attachments

Rules 6.712 and 2006 of the California Rules of Court are amended, effective July 1, 2006, to read:

Rule 6.712. Fees to be set by the court

(a) *** * ***

(b) **[Approved fees]** The Judicial Council authorizes courts to charge a reasonable fee not to exceed costs for the following products and services unless courts are prohibited by law from charging a fee for, or providing, the product or service:

(1) Forms;

(2) Packages of forms;

(3) Information materials;

(4) Publications, including books, pamphlets, and local rules;

(5) Compact discs;

(6) DVDs;

(7) Audiotapes;

(8) Videotapes;

(9) Microfiches;

(10) Envelopes;

(11) Postage;

(12) Shipping;

(13) Off-site retrieval of documents;

(14) Direct fax filing under rule 2006 (fee per page);

(15) Returning filed-stamped copies of documents by fax to persons who request that a faxed copy be sent to them;

~~(9)~~(16) Training programs for attorneys who serve as court-appointed temporary judges, including the materials and food provided to the participants; and

~~(10)~~(17) Other training programs or events, ~~offered by the court for members of the public~~ including materials and food provided to the participants.

(c)–(f) * * *

(g) [Procedure for adoption of fee] ~~Beginning January 1, 2006, a court may charge a fee authorized under (b) by determining the reasonable amount of the fee not to exceed costs under (c) and (d), providing the Administrative Office of the Courts with the information about the fee required under (e), and notifying the public of the fee under (f). After July 1, 2006,~~ If a court proposes to change any fee authorized under (b) that it is already charging or to charge any new fee authorized under (b), the court must follow the procedures for adopting or amending a local rule under rule 981 of the California Rules of Court.

Rule 2006. Direct Filing

(a) – (f) * * *

(g) ~~**[Facsimile filing fee]** In addition to any other fee imposed by law, a party filing a document by fax directly with a court shall pay a fee of $1 for each page of the document.~~

SP06-01
Fees to Be Set by the Court
(amend Cal. Rules of Court, rule 6.712)

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
1.	Ms. Jody Patel Court Executive Officer Superior Court of California, County of Sacramento Sacramento		Y	I would ask that the sale of microfiche be added to the specific list of items for which a court may charge a fee. Our court provides copies of our index on microfiche, and making a specific reference would enable us to recover our costs for this service.	Agreed. Microfiche has been added as (b)(9).
2.	Mike Roddy Executive Officer Superior Court of California, County of San Diego San Diego	AM	Y	1. The word "publications" as used in subsection (b) of rule 6.712 should be defined. Since the categories for which the court can charge expressly includes "packages of forms" and "informational materials," what would constitute "publications" by the court that would not fall within one of those two categories? 2. The manner in which rule 6.712 is drafted seems to indicate that the process to be followed for obtaining approval of a fee for a particular service or product only applies to those items specifically listed in subsection (b). However, subsection (a) refers to Govt. Code, § 70631 which states: In the absence of a statute or rule authorizing or prohibiting a fee by the superior court for a particular service or product, the court may charge a reasonable fee not to exceed the costs of providing the service or product, if the Judicial Council approves the fee. The fee shall be distributed to the	1. Agreed in part. The term has been clarified by providing examples, i.e., by adding the phrase "including books, pamphlets, and local rules." 2. The commentator is correct that the rule provides an express list of certain approved fees. It is not intended to be completely opened-ended so as to allow courts to charge for products or services not listed in (b). The rule approves the specific items in the list. If courts or others believe that additional items should be approved, then the rule amendment process is available. This rule-based approach avoids the burdens and problems of inconsistency that would arise if the Judicial Council had to approve

 Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

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				court in which it was collected. Thus, the Government Code expressly authorizes the court to charge a fee "for a particular service or product" not otherwise provided for or prohibited by statute so long as it is approved by the Judicial Council. Was the intent of the rule to prohibit the trial courts from charging for any products or services not listed in subsection (b), or could the rule be clarified by adding an item 11 to subsection (b) to include: "Any other fee for a particular service or product not specifically listed but for which Judicial Council approval is sought"? 3. Clarification on the scope of this rule is needed. As drafted, it is unclear if rule 6.712 applies to services or products provided to third parties in a criminal action. The rule states that the courts may charge a reasonable fee not to exceed costs "...unless courts are prohibited by law from charging a fee for, or providing, the product or service." Government Code, § 70633(b) states in part, "No fee shall be charged by the clerk for services rendered in any criminal action unless otherwise specifically authorized by law…" indicating that the court is prohibited from charging a defendant for services or products in their criminal case. However, the statute and the	each fee for a product or service on a case-by-case basis. Proposed new item 11 would be inconsistent with the rule-based approach to setting fees in rule 6.712. It would require case-by-case approval, which would be inefficient and likely to result in lack of uniformity. 3. As the commentator correctly notes, there are various limitations on charging fees, such as the limitation in Government Code, § 70633(b). The rule, like the statute, does not attempt to list all these limitations. Guidance on these matters may be provided to the courts by various other means such as legal opinions and policy guidelines. But it is not appropriate to provide such detailed information and analysis in the rule itself.

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				rule do not address services provided to third parties regarding a criminal action. An example of such a service, for which the court would like the authority to charge, is requests for record searches by research companies. These companies are requesting information about criminal cases to which they are not a party and in which they are not otherwise involved. Therefore, the rule needs to be clarified to state whether it would apply in these types of situations.	
3.	George Savage Superior Court of California, County of Mono	AM	Y	Request authorization to charge a fee for returning copies of documents by fax to persons who have filed the documents with the court when the persons request that a copy be returned to them by fax.	Agreed. This fee has been added as (b)(15).
4.	Superior Court of California, County of Los Angeles Los Angeles	AM	Y	Modify: Subdivision (b)(9): Training programs for attorneys who serve as court-appointed temporary judges, including, but not limited to, the materials and food provided to the participants; and Subdivision (b)(10): Other training programs, ~~or~~ events, or materials offered by the court for members of the public; Add:	The additional language is unnecessary. Subdivision (b)(10) has been revised to contain provisions on materials and food similar to (b)(9).

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				(b)(11) Products and services not specified in the Uniform Civil Fees (i.e., public access/internet fee, fax filing fee, and fees for other future products and services that may be necessary to efficiently and effectively conduct the business of the court using modern technology).	Agreed in part. The proposed language authorizing products and services not specified in the statute is too broad. (See Comment 2, item 2.) However, the direct fax filing fee should be included as a specific item in (b) (and accordingly it is also recommended that rule 2006 (g) per page fee for fax filing be repealed). On the other hand, fees for access to electronic documents are already covered by a separate statute (Gov. Code § 68150(h)) and a related rule (Cal. Rules of Court, rule 2076); hence, the access fees should not be included in this rule on fees for products and services.
5.	Superior Court of California County of Riverside Riverside	AM	Y	Recommends the following additions: 1. Costs for postage and shipping; 2. Costs for developing and running database queries.	 1. Agreed. These have been added as (b)(11) and (b)(12). 2. Disagreed. This is already covered by the statutes on fees for searches or for access to electronic data (See Gov. Code, §§ 70627(c) and 68150(h).)
6.	Ms. Kiri Torre Chief Executive Officer Superior Court of California,	A	N	I agree with the proposed categories for which courts may be reimbursed for actual costs. In addition to those identified, I recommend	The proposal regarding reimbursement for administrative/merchant fees for use

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

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	County of Santa Clara San Jose			adding the reimbursement category of administrative/merchant fees charged to courts who allow defendants/litigants to use credit cards to pay fines/fees/penalties directly to the courts. This modification will help increase collections under the statewide enhanced collections program pursuing court-ordered debt by recouping the administrative/merchant fee charges.	of credit cards is outside the scope of this rule on specific fees to be charged for goods and services. (On credit cards, see Gov. Code § 6159 and Cal. Rules of Court, 6.703.)

 Positions: A = Agree; AM = Agree only if modified; N = Do not agree.