

Judicial Council of California

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INVITATION TO COMMENT

LEG17-01

Title	Action Requested
Proposed Legislation (Appellate Procedure) Authorizes Fees for Electronic Filing and Service	Review and submit comments by April 28, 2017
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Government Code sections 68929, 68930, and 68933	January 1, 2019
Proposed by	Contact
Administrative Presiding Justices Advisory Committee	Robert Lowney, 415-865-7833, robert.lowney@jud.ca.gov

Executive Summary and Origin

The Administrative Presiding Justices Advisory Committee proposes amending the statutes relating to appellate court fees to clarify that an appellate court's electronic filing service provider may charge a reasonable fee for its services, to allow an appellate court to contract with its electronic filing service provider to receive a portion of the fees collected by that provider, and to authorize the appellate courts to charge a fee to recover costs incurred for providing electronic filing. Persons entitled to fee waivers would not be subject to any of the fees provided for in this proposal.

Background

The Courts of Appeal and the Supreme Court are in the process of instituting electronic filing and service, which will improve access to the courts and expedite business processes at a time when the development of appellate e-filing is moving forward rapidly. Currently, e-filing is mandatory in five of the six appellate districts, and the deployment of e-filing in the Supreme Court is tentatively scheduled for July 2017.

The Proposal

To help finance the full implementation of electronic filing, some statutory changes are needed to clarify the authority of the vendor and the courts to collect fees for these services. Fees in the Supreme Court and the Courts of Appeal are the subject of Article 4 of Chapter 3 of Title 8 of the Government Code (sections 68926–68933). This proposal would amend three of the fee statutes in that article. The principal amendments are described below.

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

Government Code section 68930

The main proposed changes to the fee statutes would be to add new subdivisions (a)(1)–(2) and (b) to Government Code section 68930.

Proposed paragraph (1) of subdivision (a). In California, a central feature of the e-filing systems used by the appellate and trial courts is the reliance on electronic filing service providers (EFSPs) to enable parties to file their documents electronically with the courts. EFSPs assist filers not only in preparing and transmitting documents to the courts but also in electronically serving these documents on other parties in the case. For providing these services, the EFSPs expect to be, and are, paid. The system would not operate without such compensation.

The California Rules of Court on electronic filing and service recognize this situation. Appellate rule 8.73(b) provides, in part: “The court’s contract with an electronic filing service provider may allow the provider to charge electronic filers a reasonable fee in addition to the court’s filing fee.” The same provision appears in the trial court rules. (See rule 2.255(b).)

For the trial courts, the rule providing for a reasonable fee is also reflected in a statute. (See Code Civ. Proc., § 1010.6(d)(1)(B), which provides, in part: “Any fees charged by an electronic filing service provider shall be reasonable.”) The appellate courts presently have no equivalent statutory provision. Because the Judicial Council has the authority to adopt rules provided they are not inconsistent with statute and there is no statute on this subject, the appellate rule allowing providers to charge reasonable fees is legally sufficient. However, though a statute expressly addressing the issue of providers charging reasonable fees in the appellate courts is not necessary, to have such statutory authority for the appellate as well as the trial courts seems desirable.

This proposal therefore recommends amending Government Code section 68930 to include the following provision: “A court of appeal that contracts with an electronic filing service provider to furnish and maintain an electronic filing and service system may. . . [¶] [a]llow the provider to charge electronic filers a reasonable fee in addition to the court’s filing fee.” (See amended Government Code, § 68930(a)(1).)

In addition to codifying rule 8.73, this proposal recommends that section 68930(a)(1) allow the appellate courts to contract with the electronic filing and service providers to receive a portion of the fee revenues collected by the providers under that paragraph. Section (a)(1) would also specify that any revenue received by a court of appeal under that paragraph shall be remitted to the Appellate Court Trust Fund.

To ensure access for low-income persons, the statute would state that the fees authorized under (a)(1) shall not be charged to any party who has been granted a fee waiver. (Amended section 68930(b).)

Proposed paragraph (2) of subdivision (a). The institution of electronic filing imposes direct costs not only on the electronic filing service providers that assist the courts but also on the courts that are implementing e-filing. The new e-filing systems need to be integrated with the appellate courts' case management systems. Once developed and installed, the integrated e-filing processes must be operated, maintained, and updated. In addition to technology, costs for training, personnel, and other elements are associated with adopting electronic filing. To address these fiscal issues, section 68930 would be amended to include new subdivision (a)(2).

For the trial courts, the principal statute on electronic filing and service already includes express authority for the courts implementing e-filing to charge fees to recover their costs. (See Code Civ. Proc., § 1010.6(d)(1)(B).) Providing similar statutory authority for the appellate courts is appropriate. Hence, this proposal recommends amending Government Code section 68930 to include a provision that a court of appeal that contracts with electronic filing service providers to furnish and maintain an electronic filing and service system may “[c]harge a fee to recover its costs.” (Amended Gov. Code, § 68930(a)(2).) The statute would specify that the cost recovery fees shall be collected by the electronic filing service provider and remitted to the court.

Again, the statute would state that the fees authorized under (a)(2) shall not be charged to any party who has been granted a fee waiver. (See amended Gov. Code, § 68930(b).)

Other statutory changes

Amended Government Code section 68929. Currently, Government Code section 68929 concerns the fee for comparing documents requiring a certification. This fee is in addition to the fee for certification. Under this proposal, the provision for the fee for certification, which is currently in section 68930, would be relocated to become subdivision (a) of section 68929. The current provisions in section 68929 on the fee for comparing documents would become subdivision (b) of that section. These changes have the benefit of locating all the certification fees in a single section while providing a place in section 68930 for the new fee provisions described above.

Amended Government Code section 68933. Government Code section 68933, which establishes the Appellate Court Trust Fund and identifies the fees collected by the Courts of Appeal and Supreme Court that are to be deposited in that fund, would be amended to specify that any fee revenue from amended section 68930(a)(1) shall be placed in the fund.

Alternatives Considered

One consideration was to leave the law unchanged. In that event, appellate fee issues would continue to be addressed through rules and contracts. To provide greater certainty and transparency, the better option is to have legislation enacted that will clarify the law, provide express statutory authority for all the fees described above, and specify how the fees collected are to be distributed.

Implementation Requirements, Costs, and Operational Impacts

The proposed legislation will require some implementation efforts. However, the legal clarity provided by the amended statutes should make it easier to identify, track, and distribute the fees collected.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Do the proposed statutory changes achieve the goals of the legislation?
- Are the distributions of fee revenues in amended sections 68930 and 68933 the appropriate distributions?
- Do any other statutory changes regarding appellate court fees for electronic filing and service need to be made as part of this proposal?

Attachments

1. Proposed amended Government Code sections 68929, 68930, and 68933, at page 5

Government Code sections 68929, 68930, and 68933 would be amended, effective January 1, 2019, to read:

1 **68929.**

2 (a) The fee for each certificate under seal is one dollar (\$1).

3 (b) The fee for comparing any document requiring a certificate is five cents (\$0.05) a
4 folio, except that when the document to be compared was printed or typewritten from the
5 same type or at the same time as the original on file and has been corrected in all respects
6 to conform with it, such charge shall be one cent (\$0.01) a folio. Such fee is in addition to
7 the fee for the certificate.

8

9 **68930.**

10 ~~The fee for each certificate under seal is one dollar (\$1).~~

11 (a) A court of appeal that contracts with an electronic filing service provider to furnish
12 and maintain an electronic filing and service system may do the following:

13 (1) Allow the provider to charge electronic filers a reasonable fee in addition to the court's
14 filing fee. The court may contract with the electronic filing service provider to receive a
15 portion of the fee revenues collected by the provider under this paragraph. Any revenues
16 received by the court of appeal pursuant to this paragraph shall be remitted to the Appellate
17 Court Trust Fund.

18 (2) Charge a fee to recover its costs. The cost recovery fee shall be collected by the
19 electronic filing service provider and remitted to the court.

20 (b) The fees authorized under (a)(1) and (a)(2) shall not be charged to any party who has
21 been granted a fee waiver.

22

23 **68933.**

24 (a) There is hereby established the Appellate Court Trust Fund, the proceeds of which
25 shall be used for the purpose of funding the courts of appeal and the Supreme Court.

26 (b) The fund, upon appropriation by the Legislature, shall be apportioned by the Judicial
27 Council to the courts of appeal and the Supreme Court as determined by the Judicial
28 Council, taking into consideration all other funds available to each court and the needs of
29 each court, in a manner that promotes equal access to the courts, ensures the ability of the
30 courts to carry out their functions, and promotes implementation of statewide policies.

31 (c) Notwithstanding any other provision of law, the fees listed in subdivision (d) shall all
32 be transmitted for deposit in the Appellate Court Trust Fund within the State Treasury.

33 (d) This section applies to all fees collected pursuant to Section 68926, excluding that
34 portion subject to Section 68926.3; subdivision (b) of Section 68926.1; and Sections
35 68927, 68928, 68929, 68930(a)(1), and 68932.

36 (e) The Appellate Court Trust Fund shall be invested in the Surplus Money Investment
37 Fund, and all interest earned shall be allocated to the Appellate Court Trust Fund
38 semiannually and used as specified in this section.