



Judicial Council of California

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

www.courts.ca.gov/policyadmin-invitationstocomment.htm

INVITATION TO COMMENT

SPR24-07

Title

Civil Practice and Procedure: Memorandum
of Costs

Action Requested

Review and submit comments by May 3, 2024

Proposed Rules, Forms, Standards, or Statutes

Revise forms MC-010 and MC-011

Proposed Effective Date

January 1, 2025

Proposed by

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

Contact

Eric Long, 415-865-7691
eric.long@jud.ca.gov

Executive Summary and Origin

The Civil and Small Claims Advisory Committee proposes revising the optional form for claiming prejudgment costs under Code of Civil Procedure sections 1032 and 1033.5 (form MC-010), effective January 1, 2025, to add a certification under penalty of perjury for the costs submitted. The committee also proposes (1) removing item 15 from both form MC-010 and form MC-011 (the companion worksheet) because fees for hosting electronic documents have sunsetted as an expressly allowable cost under section 1033.5 and (2) relocating “Models, enlargements, and photocopies of exhibits” on both forms to follow more closely the sequence of costs in section 1033.5. The changes are recommended based on a litigant’s challenge to form MC-010’s verification language, a sunset provision in the statute, and a suggestion from a paralegal.

The Proposal

This proposal is responsive to three issues identified since the last revisions to forms MC-010 and MC-011.

This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules Committee, or its Legislation Committee. It is circulated for comment purposes only.

Adding a sworn verification to form MC-010

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with applicable verification requirements because it is not signed under penalty of perjury.¹ A Court of Appeal in an unpublished case rejected the argument, holding that form MC-010's verification complies with the requirements of California Rules of Court, rule 3.1700 because it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.

To conform the existing verification of costs on form MC-010 to other council forms, the committee proposes adding a penalty-of-perjury recital to form MC-010. The committee observes that the council's mandatory form for seeking costs on appeal (form APP-013, *Memorandum of Costs on Appeal*) and its mandatory form for requesting entry of default or default judgment, CIV-100, *Request for Entry of Default (Application to Enter Default)*, which also includes a memorandum of costs as item 7, both contain penalty-of-perjury recitals after the verification language from rule 3.1700 that to the best of the party's, counsel's, or the agent's knowledge the costs are correct and were necessarily incurred in the case. Based on those two forms, the committee proposes adding a penalty-of-perjury recital to form MC-010. This should reduce the incidence of litigants having to defend challenges to the legal sufficiency of the verification.

Removing references to fees for the hosting of electronic documents

The committee also proposes deleting item 15 on form MC-010, "Fees for hosting electronic documents," and item 15 on form MC-011, "Fees for hosting electronic documents through an electronic filing service provider." Removing these items is necessary because subdivision (a)(15) of section 1033.5—the subdivision that expressly authorized electronic document 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 paralegal pointed out that the items of allowable costs on forms MC-010 and MC-011 are not in the same sequence. These companion forms are used by litigants claiming prejudgment costs. The sequence of the items of costs set out in both forms should be the same. With the purpose of more closely following the statutory list of costs in section 1033.5, the committee is proposing a minor technical change of relocating "Models, enlargements, and photocopies of exhibits," which is presently out of order in the two forms (listed as item 12 in form MC-010 but item 11 in form MC-011), to item 13 in both forms.

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

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

Alternatives Considered

The alternative not to make changes to the forms was not considered because one of the changes removes references to costs for the hosting of electronic documents that are no longer expressly awardable due to a sunset provision in section 1033.5. The committee considered making no other changes because form MC-010 already includes a signed verification of the costs claimed and the items listed in the two forms are the same. However, the committee concluded that adding a penalty-of-perjury recital would be 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 parties and courts.

Fiscal and Operational Impacts

The committee anticipates that this proposal may result in costs incurred by courts to incorporate the revised form into their paper or electronic processes and to train court staff. However, given that the proposal only makes minor modifications to existing forms, any such costs or impacts are likely to be minor.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so, please quantify.
- 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?
- Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Forms MC-010 and MC-011, at pages 4–9
2. Link A: Form APP-013 (Rev. Jan. 1, 2020), www.courts.ca.gov/documents/app013.pdf
3. Link B: Form CIV-100 (Rev. Jan. 1, 2023), www.courts.ca.gov/documents/civ100.pdf

ATTORNEY OR PARTY WITHOUT ATTORNEY	STATE BAR NUMBER:	<i>FOR COURT USE ONLY</i>
NAME:		
FIRM NAME:		
STREET ADDRESS:		
CITY:	STATE:	ZIP CODE:
TELEPHONE NO.:	FAX NO.:	
EMAIL ADDRESS:		
ATTORNEY FOR (<i>name</i>):		

DRAFT

02/13/2024

**Not approved by
the Judicial Council**

SUPERIOR COURT OF CALIFORNIA, COUNTY OF

STREET ADDRESS:
MAILING ADDRESS:
CITY AND ZIP CODE:
BRANCH NAME:

PLAINTIFF:
DEFENDANT:

CASE NUMBER:

MEMORANDUM OF COSTS (SUMMARY)

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:
-------------	--------------

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:
-------------	--------------

MEMORANDUM OF COSTS (WORKSHEET)

1. Filing and motion fees

DRAFT

02/13/2024

**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:
-------------	--------------

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:
-------------	--------------

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	\$ _____
--------------------	----------

(Additional information may be supplied on the reverse)

SHORT TITLE	CASE NUMBER:
-------------	--------------

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
- 29