

Assembly Bill No. 2684

Passed the Assembly May 10, 2012

Chief Clerk of the Assembly

Passed the Senate August 29, 2012

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2012, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 6072 of the Business and Professions Code, and to amend Section 1033.5 of the Code of Civil Procedure, relating to civil actions.

LEGISLATIVE COUNSEL'S DIGEST

AB 2684, Committee on Judiciary. Civil actions: interpreter costs: indigent.

Existing law provides that in a civil action, the prevailing party, as defined, is generally entitled to recover specified costs in an action or proceeding. These costs include court interpreter fees when the court has authorized a court interpreter for an indigent person represented by a legal services project serving indigent persons. Existing law also defines a pro bono attorney as an attorney, law firm, or legal corporation that undertakes representation of a party without charge to that party.

This bill would provide that court interpreter fees may also be recovered when the court has authorized a court interpreter for an indigent person who is represented by pro bono attorney, as defined.

Existing law provides for a program regulated by the State Bar that provides civil legal services to indigent persons, and requires a contract with the state for legal services that exceeds \$50,000 to certify that the contracting law firm agrees to make a good faith effort to provide a specified minimum number of hours of pro bono legal services, as defined, during each year of the contract. Failure to make a good faith effort to provide those pro bono legal services may be cause for nonrenewal of the state contract for legal services.

Under the bill, the certification of pro bono legal services for a legal services contract with the state exceeding \$50,000 could be fulfilled by a certification to make either a good faith effort to provide the specified minimum number of hours of pro bono legal services or an equivalent amount of financial contributions to qualified legal services and support centers, as defined.

The people of the State of California do enact as follows:

SECTION 1. Section 6072 of the Business and Professions Code is amended to read:

6072. (a) A contract with the state for legal services that exceeds fifty thousand dollars (\$50,000) shall include a certification by the contracting law firm that the firm agrees to make a good faith effort to provide, during the duration of the contract, a minimum number of hours of pro bono legal services, or an equivalent amount of financial contributions to qualified legal services projects and support centers, as defined in Section 6213, during each year of the contract equal to the lesser of either (1) 30 multiplied by the number of full-time attorneys in the firm's offices in the state, with the number of hours prorated on an actual day basis for any contract period of less than a full year or (2) 10 percent of its contract with the state. "Ten percent of the contract" shall mean the number of hours equal to 10 percent of the contract amount divided by the average billing rate of the firm.

(b) Failure to make a good faith effort may be cause for nonrenewal of a state contract for legal services, and may be taken into account when determining the award of future contracts with the state for legal services. If a firm fails to provide the hours of pro bono legal services set forth in its certification, the following factors shall be considered in determining whether the firm made a good faith effort:

(1) The actual number of hours of pro bono legal services or the amount of financial contributions provided by the firm during the term of the contract.

(2) The firm's efforts to obtain pro bono legal work from legal services programs, pro bono programs, and other relevant communities or groups.

(3) The firm's history of providing pro bono legal services or financial contributions, or other activities of the firm that evidence a good faith effort to provide pro bono legal services or financial contributions, such as the adoption of a pro bono policy or the creation of a pro bono committee.

(4) The types of pro bono legal services provided, including the quantity and complexity of cases as well as the nature of the relief sought.

(5) The extent to which the failure to provide the hours of pro bono legal services or financial contributions set forth in the certification is the result of extenuating circumstances unforeseen at the time of the certification.

(c) In awarding a contract with the state for legal services that exceeds fifty thousand dollars (\$50,000), the awarding department shall consider the efforts of a potential contracting law firm to provide, during the 12-month period prior to award of the contract, the minimum number of hours of pro bono legal services described in subdivision (a). Other things being equal, the awarding department shall award a contract for legal services to firms that have provided, during the 12-month period prior to award of the contract, the minimum number of hours of pro bono legal services described in subdivision (a).

(d) As used in this section, “pro bono legal services” means the provision of legal services either:

(1) Without fee or expectation of fee to either:

(A) Persons who are indigent or of limited means.

(B) Charitable, religious, civic, community, governmental, and educational organizations in matters designed primarily to address the economic, health, and social needs of persons who are indigent or of limited means.

(2) At no fee or substantially reduced fee to groups or organizations seeking to secure or protect civil rights, civil liberties, or public rights.

(e) Nothing in this section shall subject a contracting law firm that fails to provide the minimum number of hours of pro bono legal services described in subdivision (a) to civil or criminal liability, nor shall that failure be grounds for invalidating an existing contract for legal services.

(f) This article shall not apply to state contracts with, or appointments made by the judiciary of, an attorney, law firm, or organization for the purposes of providing legal representation to low- or middle-income persons, in either civil, criminal, or administrative matters.

(g) This article shall not apply to contracts entered into between the state and an attorney or law firm if the legal services contracted for are to be performed outside the State of California.

(h) The provisions of this article shall become operative on January 1, 2003.

SEC. 2. Section 1033.5 of the Code of Civil Procedure is amended to read:

1033.5. (a) The following items are allowable as costs under Section 1032:

- (1) Filing, motion, and jury fees.
- (2) Juror food and lodging while they are kept together during trial and after the jury retires for deliberation.
- (3) Taking, video recording, and transcribing necessary depositions including an original and one copy of those taken by the claimant and one copy of depositions taken by the party against whom costs are allowed, and travel expenses to attend depositions.
- (4) Service of process by a public officer, registered process server, or other means, as follows:
 - (A) When service is by a public officer, the recoverable cost is the fee authorized by law at the time of service.
 - (B) If service is by a process server registered pursuant to Chapter 16 (commencing with Section 22350) of Division 8 of the Business and Professions Code, the recoverable cost is the amount actually incurred in effecting service, including, but not limited to, a stakeout or other means employed in locating the person to be served, unless those charges are successfully challenged by a party to the action.
 - (C) When service is by publication, the recoverable cost is the sum actually incurred in effecting service.
 - (D) When service is by a means other than that set forth in subparagraph (A), (B), or (C), the recoverable cost is the lesser of the sum actually incurred, or the amount allowed to a public officer in this state for that service, except that the court may allow the sum actually incurred in effecting service upon application pursuant to paragraph (4) of subdivision (c).
- (5) Expenses of attachment including keeper's fees.
- (6) Premiums on necessary surety bonds.
- (7) Ordinary witness fees pursuant to Section 68093 of the Government Code.
- (8) Fees of expert witnesses ordered by the court.
- (9) Transcripts of court proceedings ordered by the court.
- (10) Attorney's fees, when authorized by any of the following:
 - (A) Contract.
 - (B) Statute.
 - (C) Law.

(11) Court reporter fees as established by statute.

(12) Court interpreter fees for a qualified court interpreter authorized by the court for an indigent person represented by a qualified legal services project, as defined in Section 6213 of the Business and Professions Code or a pro bono attorney as defined in Section 8030.4 of the Business and Professions Code.

(13) Models and blowups of exhibits and photocopies of exhibits may be allowed if they were reasonably helpful to aid the trier of fact.

(14) Any other item that is required to be awarded to the prevailing party pursuant to statute as an incident to prevailing in the action at trial or on appeal.

(b) The following items are not allowable as costs, except when expressly authorized by law:

(1) Fees of experts not ordered by the court.

(2) Investigation expenses in preparing the case for trial.

(3) Postage, telephone, and photocopying charges, except for exhibits.

(4) Costs in investigation of jurors or in preparation for voir dire.

(5) Transcripts of court proceedings not ordered by the court.

(c) Any award of costs shall be subject to the following:

(1) Costs are allowable if incurred, whether or not paid.

(2) Allowable costs shall be reasonably necessary to the conduct of the litigation rather than merely convenient or beneficial to its preparation.

(3) Allowable costs shall be reasonable in amount.

(4) Items not mentioned in this section and items assessed upon application may be allowed or denied in the court's discretion.

(5) When any statute of this state refers to the award of "costs and attorney's fees," attorney's fees are an item and component of the costs to be awarded and are allowable as costs pursuant to subparagraph (B) of paragraph (10) of subdivision (a). Any claim not based upon the court's established schedule of attorney's fees for actions on a contract shall bear the burden of proof. Attorney's fees allowable as costs pursuant to subparagraph (B) of paragraph (10) of subdivision (a) may be fixed as follows: (A) upon a noticed motion, (B) at the time a statement of decision is rendered, (C) upon application supported by affidavit made concurrently with a claim for other costs, or (D) upon entry of default judgment.

Attorney's fees allowable as costs pursuant to subparagraph (A) or (C) of paragraph (10) of subdivision (a) shall be fixed either upon a noticed motion or upon entry of a default judgment, unless otherwise provided by stipulation of the parties.

Attorney's fees awarded pursuant to Section 1717 of the Civil Code are allowable costs under Section 1032 of this code as authorized by subparagraph (A) of paragraph (10) of subdivision (a).

Approved _____, 2012

Governor