

**Introduced by Committee on Judiciary (Senators Schiff
(Chair), Burton, Escutia, Peace, and Sher)**

February 26, 1999

An act to amend Section 998 of the Code of Civil Procedure, relating to offers to compromise.

LEGISLATIVE COUNSEL'S DIGEST

SB 1161, as introduced, Committee on Judiciary. Offers to compromise.

Under existing law, any party may serve an offer in writing, not less than 10 days prior to the commencement of trial or arbitration, upon any other party to the action to allow judgment to be taken or an award to be entered in accordance with the terms and conditions stated at that time. Existing law provides that if the offer is rejected and the offering party obtains a more favorable result at trial or arbitration, the court or arbitrator, in its discretion, may require the other party to pay the offering party's costs of the services of expert witnesses, as specified, actually incurred and reasonably necessary in preparation for trial or arbitration of the case.

This bill would additionally authorize the court or arbitrator, in its discretion, to require the party rejecting the offer to pay the offering party's costs of services of expert witnesses, as specified, actually incurred and reasonably necessary during trial or arbitration of the case, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

1 SECTION 1. Section 998 of the Code of Civil
2 Procedure is amended to read:

3 998. (a) The costs allowed under Sections 1031 and
4 1032 shall be withheld or augmented as provided in this
5 section.

6 (b) Not less than 10 days prior to commencement of
7 trial or arbitration (as provided in Section 1281 or 1295)
8 of a dispute to be resolved by arbitration, any party may
9 serve an offer in writing upon any other party to the
10 action to allow judgment to be taken or an award to be
11 entered in accordance with the terms and conditions
12 stated at that time.

13 (1) If the offer is accepted, the offer with proof of
14 acceptance shall be filed and the clerk or the judge shall
15 enter judgment accordingly. In the case of an arbitration,
16 the offer with proof of acceptance shall be filed with the
17 arbitrator or arbitrators who shall promptly render an
18 award accordingly.

19 (2) If the offer is not accepted prior to trial or
20 arbitration, within 30 days after it is made, whichever
21 occurs first, it shall be deemed withdrawn, and cannot be
22 given in evidence upon the trial or arbitration.

23 (3) For purposes of this subdivision, a trial or
24 arbitration shall be deemed to be actually commenced at
25 the beginning of the opening statement of the plaintiff or
26 counsel, and if there is no opening statement, then at the
27 time of the administering of the oath or affirmation to the
28 first witness, or the introduction of any evidence.

29 (c) (1) If an offer made by a defendant is not accepted
30 and the plaintiff fails to obtain a more favorable judgment
31 or award, the plaintiff shall not recover his or her
32 postoffer costs and shall pay the defendant's costs from
33 the time of the offer. In addition, in any action or
34 proceeding other than an eminent domain action, the
35 court or arbitrator, in its discretion, may require the
36 plaintiff to pay a reasonable sum to cover costs of the
37 services of expert witnesses, who are not regular
38 employees of any party, actually incurred and reasonably



1 necessary in preparation for trial *or arbitration, or during*
2 *trial* or arbitration, of the case by the defendant.

3 (2) (A) In determining whether the plaintiff obtains
4 a more favorable judgment, the court or arbitrator shall
5 exclude the postoffer costs.

6 (B) It is the intent of the Legislature in enacting
7 subparagraph (A) to supersede the holding in Encinitas
8 Plaza Real v. Knight, 209 Cal. App. 3d 996, that attorney's
9 fees awarded to the prevailing party were not costs for
10 purposes of this section but were part of the judgment.

11 (d) If an offer made by a plaintiff is not accepted and
12 the defendant fails to obtain a more favorable judgment
13 or award in any action or proceeding other than an
14 eminent domain action, the court or arbitrator, in its
15 discretion, may require the defendant to pay a reasonable
16 sum to cover costs of the services of expert witnesses, who
17 are not regular employees of any party, actually incurred
18 and reasonably necessary in preparation for trial or
19 arbitration, *or during trial or arbitration*, of the case by
20 the plaintiff, in addition to plaintiff's costs.

21 (e) If an offer made by a defendant is not accepted and
22 the plaintiff fails to obtain a more favorable judgment or
23 award, the costs under this section, from the time of the
24 offer, shall be deducted from any damages awarded in
25 favor of the plaintiff. If the costs awarded under this
26 section exceed the amount of the damages awarded to the
27 plaintiff the net amount shall be awarded to the
28 defendant and judgment or award shall be entered
29 accordingly.

30 (f) Police officers shall be deemed to be expert
31 witnesses for the purposes of this section; plaintiff
32 includes a cross-complainant and defendant includes a
33 cross-defendant. Any judgment or award entered
34 pursuant to this section shall be deemed to be a
35 compromise settlement.

36 (g) This chapter does not apply to an offer ~~which~~ *that*
37 is made by a plaintiff in an eminent domain action.

38 (h) The costs for services of expert witnesses for trial
39 under subdivisions (c) and (d) shall not exceed those
40 specified in Section 68092.5 of the Government Code.



1 (i) This section shall not apply to labor arbitrations
2 filed pursuant to memoranda of understanding under the
3 Ralph C. Dills Act (Chapter 10.3 (commencing with
4 Section 3512) of Division 4 of Title 1 of the Government
5 Code).

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