

FREQUENTLY ASKED QUESTIONS

(Sen. Bill 1021 (2011-2012 Reg. Sess.))

Deposit of Advance Jury Fees Court Reporting Services Under One Hour Will Delivery Fee • Complex Case Fee Effective June 27, 2012

I-V. ADVANCE JURY FEE		
I.	Changes to the Deposit of Advance Jury Fees	
1.1	Q: What are the primary changes related to the deposit of the advance jury fees resulting from the recent amendment to Code of Civil Procedure section 631?	A: The five primary changes relating to the deposit of the advance jury fees are: <ol style="list-style-type: none">1. The fee is fixed at \$150, rather than limited to \$150;2. The fees must be deposited earlier than previously required;3. Fees deposited after June 27, 2012 will be non-refundable;4. The fees will no longer be credited to the actual jury fees and costs paid by the party on the second day of trial; and5. The fees will be transmitted to the Trial Court Trust Fund before trial begins.
II.	New Deadlines for Deposit of Advance Jury Fees	
2.1	Q: What are the new deadlines for depositing the advance jury fees?	A: Beginning June 28, 2012¹ , the advance jury fees must be deposited: <ul style="list-style-type: none">• On or before the date scheduled for the initial case management conference in the action; or• If no case management conference is scheduled, no later than 365 calendar days after the filing of the initial complaint; or• If the party has not appeared before the initial case management conference or has appeared more than 365 calendar days after the filing of the initial complaint, at least 25 calendar days before the date initially set for trial; or• If the action is for unlawful detainer action, at least five days before the date set for trial.

¹ Changes from the June 29, 2012 version of the FAQs are highlighted. The changes relate to the date the advance jury fee could first be deposited. Although SB 1021 became effective on June 27, 2012, it was not signed by the Governor until after 9:00 p.m. A statute that takes immediate effect does not become operative until the moment it is signed. Accordingly, the first date on which the advance jury fee could have been deposited was June 28, 2012.

2.2	Q: Do the new deadlines apply to cases that were filed before the effective date of the amendments to Code of Civil Procedure section 631?	A: Yes.
2.3	Q: What if the deadline in a case filed prior to the effective date of the amendments to Code of Civil Procedure section 631 already passed.	<p>A: If the deadline in a case filed prior to the effective date of the amendments to Code of Civil Procedure section 631 has already passed, then the later deadline becomes applicable.</p> <p>For example, if the initial case management conference occurred prior to June 28, 2012, then the fee is due on or before the 365th day following the filing of the complaint. If the 365th day following the filing of the complaint has passed, then the fee is due at least 25 days prior to trial. With the exception of unlawful detainer actions, in which the fee is due at least 5 days prior to trial, the fee will never be due fewer than 25 days prior to trial, as required under the previous version of Code of Civil Procedure section 631.</p>
2.4	Q: What if the party misses the deadline?	<p>A: The party has waived the right to a trial by jury in that action. (Code Civ. Proc., § 631(f)(5).)</p> <p>Note: The court may, in its discretion upon just terms, allow a trial by jury despite the waiver. (Code Civ. Proc., § 631(g).)</p>
2.5	Q: May a clerk accept advance jury fees after the deadline has passed?	<p>A: There is nothing in the amendments to the jury deposit statute that directs or authorizes courts to refuse a late deposit of the advance jury fees. Absent this direction or authority, the clerk likely should accept advance jury fees tendered by a party, provide a receipt, and record in the court file the date the fees were received. (See <i>People v. Funches</i> (1998) 67 Cal.App.4th 240, 244 [court clerks “must act in strict conformity with statutes, rules, or orders of the court” defining their duties, and have “no power to decide questions of law nor any discretion in performing” their duties.])</p> <p>Note: Only a judge has the authority to grant a jury trial following a waiver.</p>

III. Advance Jury Fees are Non-Refundable		
3.1	Q: What jury fees have become non-refundable?	<p>A: Any \$150 advance jury fee deposited <i>on or after</i> June 28, 2012 is non-refundable.</p> <p>Any \$150 advance jury fee deposited <i>before</i> June 28, 2012 may be refunded upon request of a party as provided under Code of Civil Procedure section 631.3. Similarly, any jury fees other than the \$150 advance jury fees that are deposited, but not used, may be refunded upon request of a party as provided under Code of Civil Procedure section 631.3.</p>
IV. Transmittal of the Advance Jury Fees to the Trial Court Trust Fund		
4.1	Q: What should the court do with the advance jury fees that are deposited on or after June 27, 2012?	<p>A: The court must transmit the advance jury fees to the State Treasury for deposit in the Trial Court Trust Fund within 45 days of the end of the month in which the advance jury fees are deposited with the court, in the same way as the court transmits civil filing fees. (Code Civ. Proc., § 631(h).)</p> <p>The advance jury fee should be deposited into the UCF bank account or the Distribution bank account and recorded in GL 353050, Civil Fines & Fees. Please contact Coleen Hultin at coleen.hultin@jud.ca.gov if you have any questions about the accounting for this jury fee.</p> <p>The advance jury fee should be reported on row 209 of the TC-145.</p>
4.2	Q: Is this a change from the previous handling of the deposit of advance jury fees?	<p>A: Yes. In the past, the court retained the fee, either until the second day of a trial, when it was used to offset the actual jury fees, or it was retained through the end of trial.</p> <p>Note: Where a court previously used the advance jury fee to offset actual jury fees on the second day of trial, the court should now, at the beginning of the second and each succeeding day of trial require the deposit of “a sum equal to that day’s fees and mileage of the jury,” consistent with Code of Civil Procedure section 631(e). This amount should continue to be deposited into the trust bank account as a jury deposit as it is today.</p>

4.3	Q: What should the court do with the advance jury fees that were deposited before June 28, 2012 ?	A: Advance jury fees collected prior to June 28, 2012 , should be treated the same as they were prior to the amendment. Specifically: <ol style="list-style-type: none"> 1. The fee should be retained by the court and deposited into the trust bank account; 2. The fee may be used to offset the amount due on any day of trial or may be retained through the end of trial; and 3. If the fee is not used it may be refunded if requested under Code of Civil Procedure section 631.3; 4. Any fees not refunded under Code of Civil Procedure section 631.3 must be remitted to the State Treasury for deposit in the Trial Court Trust Fund and reported on row 21 of the TC-145.
4.4	Q: What should the court do if a party deposits jury fees in excess of the \$150 advance jury fee?	A: Any jury fees in excess of the \$150 advance jury fee, whether received before or after June 28, 2012 , should be deposited into the trust bank account and: <ol style="list-style-type: none"> 1. The fee may be used to offset the amount due on any day of trial; 2. If the fee is not used, it may be refunded if requested under Code of Civil Procedure section 631.3; and 3. Any fees not refunded under Code of Civil Procedure section 631.3 must be remitted to the State Treasury for deposit in the Trial Court Trust Fund and reported on row 21 of the TC-145.
V. Other Issues Related to the Deposit of Advance Jury Fees		
5.1	Q: Is the fee required if the party does not want to retain the right to a jury in the action?	A: No. Only parties that want to retain the right to a jury must deposit advance jury fees.
5.2	Q: Must each party that wants to retain the right to a jury deposit the advance jury fee?	A: Yes. Each party that wants to retain the right to a jury must deposit the advance jury fee by the relevant deadline. (Code Civ. Proc., § 631(b). [“Each party demanding a jury trial shall deposit advance jury fees. . . .”] Bold added.)
5.3	Q: If there are multiple plaintiffs, or multiple defendants, must each deposit a separate \$150 advance jury fee if the party wants to retain the right to a jury?	A: Yes. Each party that wants to retain the right to a jury must deposit the \$150 advance jury fee. Thus, if there are four plaintiffs, and all four want to retain the right to a jury, each must deposit the \$150 advance jury fee, for a total of \$600. The same analysis applies even if the parties are represented by the same attorney or law firm.
5.4	Q: May the advance jury fees be waived because of a party’s financial condition?	A: Yes. A court may (but is not required to) waive jury fees and expenses, and other fees or expenses itemized in an application for a fee waiver under rule 3.56(1) and (6) of the California Rules of Court.

5.5	<p>Q: What effect does the amendment have on a local rule providing a process for obtaining refunds of advance jury fees.</p>	<p>A: The local rule would still be in effect with respect to advance jury fees deposited prior to June 28, 2012, but would be ineffective as to advance jury fees deposited on or after that date. Local rules are valid only to the extent that they do not conflict with statute. (Gov. Code, § 68070.)</p>
<p>VI. COURT REPORTING SERVICES UNDER ONE HOUR (Gov. Code, § 68086(a)(1)(A))</p>		
6.1	<p>Q: Is the \$30 fee provided in Government Code section 68086(a)(1)(A) for court reporting services in proceedings lasting under one hour collected from one party, or from all parties to the proceeding.</p>	<p>A: Only one \$30 fee is collected for each proceeding. The statute does not specify whether it is collected from one party to the proceeding or from all the parties to the proceeding collectively. The absence of the words “pro rata” from section 68086(a)(1)(A), in contrast to the use of those words in section 68086(a)(1)(B) (for services <i>over</i> an hour), supports the conclusion that only one party pays the fee. Section 68086(a)(2), which states that “all parties shall deposit their pro rata shares of these fees” may support the opposite conclusion (that the \$30 fee is to be collected from all parties), although that language arguably applies only to the pro rata fee for services <i>over</i> an hour in section 68086(a)(1)(B). Collecting the \$30 fee from one party may be more efficient operationally and is likely an acceptable practice given the ambiguity in the statute. In addition, we understand that possible clarifying legislation is being considered which may specify that the court collects the fee only from the party initiating the proceeding.</p>
6.2	<p>Q: If the court collects the \$30 fee from only one party, from which party should the court collect the fee?</p>	<p>A: Section 68086(a)(1)(A) does not specify which party is responsible for paying the \$30 fee. In the absence of clear authority, it seems most likely that the party initiating the proceeding was intended to pay the \$30 fee. In addition, we understand that possible clarifying legislation is being considered which may specify that the court collects the fee only from the party initiating the proceeding.</p>
6.3	<p>Q: When should the court collect the \$30 fee?</p>	<p>A: The statute is ambiguous as to when the court should collect the \$30 fee, although section 68086(a)(2) states that the fee for proceedings <i>over</i> an hour shall be deposited “as specified by the court, but not later than the conclusion of each day’s court session.” Given this precedent, and the absence of statutory language to the contrary, the court likely has the discretion to collect the \$30 fee as early as the filing of papers initiating the proceeding. Operationally this may be the most efficient method, especially if the court is collecting the fee from the initiating party. In addition, we understand that possible clarifying legislation is being considered which may authorize the court to collect the fee as early as the filing of the paper initiating the proceeding.</p>

6.4	Q: If the court collects the \$30 fee before the proceeding begins, is it refundable?	A: The statute is silent on whether the \$30 fee is refundable. Where a fee is refundable, statute often states so explicitly and provides a process for a refund. (See e.g., Code of Civ. Proc., § 631.3, which provides for the refund of certain funds deposited in connection with a jury.) Here, the absence of such authority or process supports the argument that the court is not obligated to return the fee if the proceeding does not occur.
6.5	Q: If the \$30 fee is collected before the proceeding begins, but the proceeding lasts over an hour, may the court credit the party who deposited the fee when charging the fee for proceedings lasting over an hour?	A: Nothing in section 68086 precludes the court from crediting the party for the \$30 fee already deposited.
6.6	Q: If the proceeding lasts exactly one hour, what fee should the court charge?	A: Section 68086(a)(1)(A) provides the fee for proceedings lasting under an hour; Section 68086(a)(1)(B) provides the fee for proceedings lasting over an hour. The statute is silent as to the fee for proceedings lasting exactly an hour. Charging no fee for proceedings lasting exactly one hour would be an absurd result, inconsistent with the intent of the amendment to the statute, which was to provide a fee for proceedings not previously covered by section 68086. Accordingly, a court would likely be acting consistent with the intent of the statute by charging the \$30 fee for proceedings lasting exactly an hour. In addition, we understand that possible clarifying legislation is being considered, which may specify that the court collects the \$30 fee for proceedings lasting exactly an hour.
6.7	Q: Should the court charge the fee if the court does not provide a court reporter?	A: No. The intent of the amendment to section 68086 is to encourage courts to continue providing court reporters in civil proceedings by providing additional revenue to help offset the costs of providing those services. (“[A] fee of thirty dollars (\$30) shall be charged <i>for the reasonable cost of the services of an official court reporter</i>” [Gov. Code, § 68086(a)(1)(A), emphasis added.]) If the court is not providing the services, there is no basis for charging the fee under this amendment.
6.8	Q: Should the court charge the fee if the parties specifically state in advance that they do not want a court reporter at the proceedings?	A: Yes. Section 68086(a)(1)(A) states that the fee <i>shall</i> be charged; it does not make payment of the fee subject to the request of the party. A discretionary fee would lead to strategic non-payment; some parties could decline to pay the fee, knowing that others would pay it, and that the proceedings would still be reported.

6.9	Q: If a party files several motions to be heard at the same hearing, should the court collect a fee for each motion?	A: Yes. Section 68086(a)(1)(A) states that the \$30 fee is charged “[f]or each proceeding.” Each motion would be a separate proceeding, even if they are all heard during the same hearing.
6.10	Q: Should the court charge a separate \$30 fee if a proceeding is continued?	A: Section 68086(a)(1)(A) does not address this question. The fee is imposed, “[f]or each proceeding.” If the proceeding is continued to a later hearing, then it is unlikely that a court should charge an additional fee, even if the continuance was put on the record at the first hearing.
6.11	Q: Should the court charge for hearings on matters initiated by the court, such as case management conferences?	A: Section 68086(a)(1)(A) requires a \$30 fee to be charged for “proceedings” lasting less than one hour. The definition of the word “proceedings” is ambiguous, but in most contexts involves matters that may be contested, such as an action, petition, or a motion. It likely does not include matters such as case management conferences. Accordingly, the fee likely should not be charged for hearings on matters initiated by the court. In addition, we understand that possible clarifying legislation is being considered which may specify that the court collects the fee only from the <i>party</i> initiating the proceeding, which would exclude a fee where the court initiates the proceeding.
6.12	Q: May the court waive the \$30 fee because of a party’s financial condition?	A: Yes. Under rule 3.56(6) of the California Rules of Court, a court may (but is not required to) waive “other fees and expenses itemized in” an application for fee waiver. The \$30 fee likely may also be waived under rule 3.55(7) and 3.56(4), although this is less certain because rule 3.55(7) refers to “daily fees.” An amendment to these rules could clarify their application to all fees required by Government Code section 68086.

VII. WILL DELIVERY FEE (Gov. Code, § 70626(d))		
7.1	Q: Is a separate fee charged for each will accepted by the court for lodging under Probate Code section 8200, or is the fee charged for one or more wills concurrently accepted for lodging from the same attorney?	A: A separate \$50 fee is charged for each will the court accepts for lodging under Probate Code section 8200. Government Code section 70626(d) states “The fee for delivering a will to the clerk of the superior court . . . is fifty dollars (\$50).” If the fee were to be charged for accepting multiple wills delivered at the same time, the statute would have read “the fee for delivering wills . . .” or “the fee for delivering one or more wills . . .” But section 70626(d) refers to a fee for a will in the singular, “the fee for delivering <u>a will</u> . . .” (Underline added.) That language supports the conclusion that the fee is charged for each will accepted by the court for lodging.
7.2	Q: What is the difference between the \$20 fee set under Government code section 70660(a) and the new \$50 fee set under Government Code section 70626(d)?	A: Government code section 70660(a) sets a \$20 fee for an attorney transferring any estate planning document (not just a will) to a superior court in order to terminate a deposit under Probate Code section 732(c). If the document is a will and the attorney seeking to transfer it to the superior court has actual notice that the original depositor-testator (who deposited it with the attorney) has died, the transfer may be made only under Probate Code sections 734(b) and 8200. The fee for a court accepting delivery of a will to the superior court under Probate Code section 8200 is \$50.00 under the new amendment to the law. (Gov. Code, § 70626(d).)
7.3	Q: Should the court charge the \$50 fee set under Government Code section 70626 when an original will is lodged with the court along with the filing of a petition for the probate of that will?	A: No. The fee is only charged for accepting delivery of a will under Probate Code section 8200. If the original will of a decedent is lodged with the superior court along with the filing of a petition for its probate, the only fee the court should charge is the fee for filing a petition under Government Code section 70650 (and a fee for making a copy of previously lodged will, if requested). Under those circumstances, the court should not charge a separate \$50 fee for delivering a will under Probate Code section 8200.

7.4	Q: Should the court also charge the \$50.00 fee for accepting the delivery of codicils of a will under Probate Code section 8200?	A: A codicil is an amendment of a will. A will and all of its codicils constitute one will. If they are delivered at one time, the court should charge one fee of \$50.00 for accepting them for lodging. If an attorney delivers the will with the fee and then, at a later time delivers a codicil to that will, the court should not charge an additional fee for accepting that codicil for lodging. The same is also true if, for some reason, a codicil of a will is the first document delivered followed by the later delivery of the will to which it is a codicil. But if two wills of the same person are delivered (one is not the codicil of the other), the court should charge two fees for accepting the documents for lodging.
VIII. COMPLEX CASE FEE (Gov. Code, § 70616)		
8.1	Q: If a cases was designated as complex, or determined to be complex, prior to June 28, 2012 and the \$10,000 cap on fees from the defendants had already been met, should the court charge the \$1000 fee to defendants who appear on or after June 28, 2012 until it meets the \$18,000 cap?	A: Yes. If a defendant first appears today in a case already designated complex, or determined to be complex, that defendant pays the increased \$1,000 fee (even if the old cap had previously been reached). The court should continue collecting the fee until the new cap of \$18,000 is reached. However, the court has no basis for collecting any fee from defendants who appeared prior to June 28 and who had not paid a fee because the cap had already been met.