



## **Guidelines with Respect to Attorneys Fees Awards in Civil Default Judgments**

**Hon. Debra L. Givens  
Judge of the Superior Court  
August 10, 2005**

As confusion has arisen among local practitioners with respect to attorneys fees awards in civil default judgments, the following are guidelines, which will be employed in the making of such awards:

### **When the Clerk Will Enter Judgment for Attorneys Fees:**

**Open Book Fees:** If the complaint pleads a cause of action on Open Book Account for a debt owing by a natural person for goods, money or services, which were primarily for personal, family, or household purposes, the clerk, will enter a requested award of attorneys fees of \$800, or 25% of the obligation, whichever is less. For all other book accounts, attorneys fees will be \$1,000, or 25% of the obligation, whichever is less. Civil Code § 1717.5(a). If, however, there is a written agreement between the parties signed by the party to be charged, open book fees will not be entered unless the agreement contains a statement that the prevailing party in any action between the parties is entitled to fees provided by § 1717.5. Persons requesting that the clerk enter an award of open book fees must submit a declaration identifying the paragraph of the parties' agreement compliant to the requirements of § 1717.5. If the agreement is not appended to the complaint, it must be appended to the declaration.

**All Other Cases:** Because the Yuba County Superior Court does not have an attorneys fees schedule, the Clerk will not ministerially enter an award of attorneys fees in any other circumstance. Rather, the Court will determine the amount of the reasonable fee. Code of Civil Procedure § 585(a).

### **When the Court Will Enter Judgment for Attorneys Fees:**

**Contract/Statutory Fees:** Because the Yuba County Superior Court does not have an attorneys fee schedule, in contract cases where the contract provides for attorneys fees to the prevailing party, or in cases where entitlement to fees is established by statute (excluding open book accounts), application must be made for the Court to fix the amount of the reasonable fee. C.C.P. § 585(a).

**Sufficiency of Showing:** A showing sufficient to support an award of attorneys fees must be verified by counsel, and must conform to the requirements enunciated in *Serrano v. Priest* (1977) 20 Cal.3d 25, 48-49. Declarations which state a claim for fees with no itemization, or which otherwise present insufficient evidence for the court to make the so-called "lodestar" determination will be rejected.