

What are the Costs of Litigation? *

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Abstract

While legal costs and certain types of filings are rising steadily, there is no general litigation "explosion," despite a general perception that the United States is experiencing a rapid growth in legal costs. Empirical research indicates that Americans settle more than 90% of all legal claims without resorting to filing lawsuits, and a typical lawsuit still costs \$10,000 or less. Much of the perceived increase in costs result from highly publicized, large award cases, but these cases represent only a small percentage of actual litigation.

One result of increased costs that have occurred, and changes in the legal market, has been efforts to cut costs. Some clients have aggressively monitored outside counsel and implemented stricter procedures for accepting and paying bills. Other clients have begun to let out work on a competitive bid, flat rate basis. Law firms themselves have begun to make significant use of contract attorneys to cut costs and meet short-term needs. They have also begun to explore creative methods of having both parties in an action share common costs or services such as copying, stenography and indexing services.

Another side effect of actual and perceived cost increases in legal services is an increase over the last fifteen years in *pro per* filings. In California, for example, the cost of a low-end divorce has jumped from \$1,500 in the late 1980's to \$5,000 now. The result is that many in need of basic legal intervention, for divorces, landlord/tenant disputes, and so on, have decide to represent themselves as a matter economy and necessity.

* This paper is one in a series of six papers in this volume on issues relating to reducing litigation costs. The other papers are: *Discovery Reform, Local Rules, Alternative Dispute Resolution, Using New Technologies, and Appeals.*