

Who is on the Hook for Costs in Paying Subpoenaed Peace Officers?

05-12-2011 by David J. McMahon

In [Maddox v. City of Costa Mesa](#), 2011 DJDAR 4373 (2011), the [California Fourth District Court of Appeal](#) decided a unique issue arising under the [California Government Code section 68097.2](#). That provision provides that when a peace officer is subpoenaed to testify that the party issuing the subpoena is required to reimburse the public entity for the full cost to pay the peace officer.

An attorney represented a client in a DMV proceeding. The attorney signed subpoenas for the appearance of police officers at the DMV administrative hearing. The attorney posted the required deposit of \$150 for each subpoena. The actual expenses incurred by the City of Costa Mesa exceeded the amount of the deposits.

The City sent the attorney invoices for the difference and he refused to pay the invoices and told the City to seek payment from his client. The attorney then filed a verified complaint for declaratory relief against the City, claiming that the fees were owed by the litigant in the action, not the litigant's attorney. The City moved for judgment on the pleadings, arguing that under Government Code Section 68097.2, both the litigant and the litigant's attorney are responsible for reimbursing the City's expenses. The trial court granted the motion and the court of appeal affirmed the lower court's ruling.

As referenced above, section 68097.2 provides that when a peace officer is subpoenaed to testify, "**the party at whose request the subpoena is issued**" must reimburse the public entity for costs incurred in paying the officer. If the actual expenses incurred exceed the amount deposited, that party must also pay the difference.

This court determined that the term "**the party at whose request the subpoena is issued**" means the litigant and the litigant's counsel, either of whom is responsible for paying costs to the public entity.

As such, the litigant and the litigant's counsel were both responsible for paying the City.