

TITLE 12
COSTS AND MISCELLANEOUS MATTERS IN CIVIL ACTIONS

CHAPTER 1
COSTS

12-101. COSTS. Costs shall be awarded by the court in a civil trial or proceeding to the parties in the manner and in the amount provided for by the Idaho Rules of Civil Procedure.

[12-101, added 1977, ch. 4, sec. 1, p. 9.]

12-107. COSTS ON APPEAL. In the following cases the costs of appeal are in the discretion of the courts:

1. When a new trial is ordered.
2. When a judgment is modified. In all other cases the prevailing party shall recover costs, including his costs below when the appeal is to the district court.

[(12-107) C.C.P. 1881, sec. 698; R.S., R.C., & C.L., sec. 4906; C.S., sec. 7212; I.C.A., sec. 12-107.]

12-114. TAXATION OF COSTS ON APPEAL IN SUPREME COURT. Whenever costs are awarded to a party by an appellate court, if he claims such costs he must tax the same before the clerk of the Supreme Court, subject to exception and review by the Supreme Court or the judges thereof, within such time and subject to such regulations as the Supreme Court shall by rule direct, and the same when taxed shall be certified by the clerk of the Supreme Court to the clerk of the court from which the appeal was taken, to be there entered as a judgment and to be enforced by execution as in the case of other judgments.

[(12-114) C.C.P. 1881, sec. 704; R.S. & R.C., sec. 4913; am. 1911, ch. 204, sec. 1, p. 673; reen. C.L., sec. 4913; C.S., sec. 7219; I.C.A., sec. 12-114.]

12-116. ASSIGNMENT OF JURY COSTS. (1) If a civil action is settled by the parties involved therein within twenty-four (24) hours of the time for which the civil action is scheduled for trial, and/or notice of settlement is not given to the court at least twenty-four (24) hours before the scheduled trial time, the court may, based upon the circumstances of such settlement, assess and apportion as costs between and among the parties to the action, in the sound discretion of the court, all jury fees and expenses incurred by the county arising from impaneling or furnishing jurors for the civil action.

(2) The costs provided for in subsection (1) of this section shall be in addition to any costs which may be assessed pursuant to the Idaho rules of civil procedure.

(3) Moneys collected by the court pursuant to this section shall be deposited in the county treasury from which the jurors were paid.

[12-116, added 1985, ch. 217, sec. 1, p. 528.]

12-117. ATTORNEY'S FEES, WITNESS FEES AND EXPENSES AWARDED IN CERTAIN INSTANCES. (1) Unless otherwise provided by statute, in any proceeding involving as adverse parties a state agency or a political subdivision and

a person, the state agency, political subdivision or the court hearing the proceeding, including on appeal, shall award the prevailing party reasonable attorney's fees, witness fees and other reasonable expenses, if it finds that the nonprevailing party acted without a reasonable basis in fact or law.

(2) If a party to a proceeding prevails on a portion of the case, and the state agency or political subdivision or the court hearing the proceeding, including on appeal, finds that the nonprevailing party acted without a reasonable basis in fact or law with respect to that portion of the case, it shall award the partially prevailing party reasonable attorney's fees, witness fees and other reasonable expenses with respect to that portion of the case on which it prevailed.

(3) Expenses awarded against a state agency or political subdivision pursuant to this section shall be paid from funds in the regular operating budget of the state agency or political subdivision. If sufficient funds are not available in the budget of the state agency, the expenses shall be considered a claim governed by the provisions of section [67-2018](#), Idaho Code. If sufficient funds are not available in the budget of the political subdivision, the expenses shall be considered a claim pursuant to [chapter 9, title 6](#), Idaho Code. Every state agency or political subdivision against which litigation expenses have been awarded under this act shall, at the time of submission of its proposed budget, submit a report to the governmental body which appropriates its funds in which the amount of expenses awarded and paid under this act during the fiscal year is stated.

(4) In any civil judicial proceeding involving as adverse parties a governmental entity and another governmental entity, the court shall award the prevailing party reasonable attorney's fees, witness fees and other reasonable expenses. For purposes of this subsection, "governmental entity" means any state agency or political subdivision.

(5) Notwithstanding any other provision of law, in any administrative proceeding or administrative judicial proceeding involving as adverse parties a licensing authority and a licensee, the prevailing party shall be entitled to recover its reasonable attorney's fees and reasonable investigative or defense costs, as the case may be, necessarily and actually incurred. "Prevailing party," for the purpose of this subsection, means a party that prevailed on the claims or allegations that constituted the gravamen of the claims and allegations as a whole. An assessment of fees and costs made pursuant to this section is subject to judicial review. Notwithstanding any other provision of law, the failure of a licensee to pay an award of costs or attorney's fees awarded under this subsection shall not be deemed a violation of a licensure requirement, as long as the licensee is in compliance with a payment arrangement made with the licensing authority.

(6) For purposes of this section:

(a) "Licensee" means any person holding a license, registration, certificate, permit or other authorization to practice a profession or occupation.

(b) "Licensing authority" means any agency, bureau, commission, department, division, or professional or occupational licensing board charged with granting, suspending or revoking the license, certificate, registration, permit or other authorization of any person to practice a profession or occupation.

(c) "Person" means any individual, partnership, limited liability partnership, corporation, limited liability company, association or any other private organization.

(d) "Political subdivision" means a city, a county, any taxing district or a health district.

(e) "Proceeding" means any administrative proceeding, administrative judicial proceeding, civil judicial proceeding or petition for judicial review or any appeal from any administrative proceeding, administrative judicial proceeding, civil judicial proceeding or petition for judicial review.

(f) "State agency" means any agency as defined in section [67-5201](#), Idaho Code.

(7) If the amount pleaded in an action by a person is twenty-five thousand dollars (\$25,000) or less, the person must satisfy the requirements of section [12-120](#), Idaho Code, as well as the requirements of this section before he or she may recover attorney's fees, witness fees or expenses pursuant to this section.

[12-117, added 1984, ch. 204, sec. 1, p. 501; am. 1993, ch. 216, sec. 1, p. 589; am. 1994, ch. 36, sec. 1, p. 55; am. 2000, ch. 241, sec. 1, p. 675; am. 2010, ch. 29, sec. 1, p. 49; am. 2012, ch. 149, sec. 1, p. 419; am. 2018, ch. 348, sec. 1, p. 796; am. 2019, ch. 212, sec. 1, p. 643.]

12-118. COSTS AGAINST THE STATE -- HOW PAID. When the state is a party and costs are awarded against it, they must be paid out of the state treasury, and the state controller shall draw his warrant therefor on the general fund.

[(12-118) C.C.P. 1881, sec. 708; R.S., R.C., & C.L., sec. 4917; C.S., sec. 7223; I.C.A., sec. 12-118; am. 1994, ch. 180, sec. 9, p. 428.]

12-119. COSTS AGAINST A COUNTY -- HOW PAID. When a county is a party and costs are awarded against it, they must be paid out of the county treasury.

[(12-119) C.C.P. 1881, sec. 709; R.S., R.C., & C.L., sec. 4918; C.S., sec. 7224; I.C.A., sec. 12-119.]

12-120. ATTORNEY'S FEES IN CIVIL ACTIONS. (1) Except as provided in subsections (3) and (4) of this section, in any action where the amount pleaded is thirty-five thousand dollars (\$35,000) or less, there shall be taxed and allowed to the prevailing party, as part of the costs of the action, a reasonable amount to be fixed by the court as attorney's fees. For the plaintiff to be awarded attorney's fees, for the prosecution of the action, written demand for the payment of such claim must have been made on the defendant not less than ten (10) days before the commencement of the action; provided, that no attorney's fees shall be allowed to the plaintiff if the court finds that the defendant tendered to the plaintiff, prior to the commencement of the action, an amount at least equal to ninety-five percent (95%) of the amount awarded to the plaintiff.

(2) The provisions of subsection (1) of this section shall also apply to any counterclaims, cross-claims or third party claims which may be filed after the initiation of the original action. Except that a ten (10) day written demand letter shall not be required in the case of a counterclaim.

(3) In any civil action to recover on an open account, account stated, note, bill, negotiable instrument, guaranty, or contract relating to the

purchase or sale of goods, wares, merchandise, or services and in any commercial transaction unless otherwise provided by law, the prevailing party shall be allowed a reasonable attorney's fee to be set by the court, to be taxed and collected as costs.

The term "commercial transaction" is defined to mean all transactions except transactions for personal or household purposes. The term "party" is defined to mean any person, partnership, corporation, association, private organization, the state of Idaho or political subdivision thereof.

(4) In actions for personal injury, where the amount of plaintiff's claim for damages does not exceed thirty-five thousand dollars (\$35,000), there shall be taxed and allowed to the claimant, as part of the costs of the action, a reasonable amount to be fixed by the court as attorney's fees. For the plaintiff to be awarded attorney's fees for the prosecution of the action, written demand for payment of the claim and a statement of claim must have been served on the defendant's insurer, if known, or if there is no known insurer, then on the defendant, not less than sixty (60) days before the commencement of the action; provided that no attorney's fees shall be allowed to the plaintiff if the court finds that the defendant tendered to the plaintiff, prior to the commencement of the action, an amount at least equal to ninety percent (90%) of the amount awarded to the plaintiff.

The term "statement of claim" shall mean a written statement signed by the plaintiff's attorney, or if no attorney, by the plaintiff which includes:

(a) An itemized statement of each and every item of damage claimed by the plaintiff including the amount claimed for general damages and the following items of special damages: (i) medical bills incurred up to the date of the plaintiff's demand; (ii) a good faith estimate of future medical bills; (iii) lost income incurred up to the date of the plaintiff's demand; (iv) a good faith estimate of future loss of income; and (v) property damage for which the plaintiff has not been paid.

(b) Legible copies of all medical records, bills and other documentation pertinent to the plaintiff's alleged damages.

If the plaintiff includes in the complaint filed to commence the action, or in evidence offered at trial, a different alleged injury or a significant new item of damage not set forth in the statement of claim, the plaintiff shall be deemed to have waived any entitlement to attorney's fees under this section.

(5) In all instances where a party is entitled to reasonable attorney's fees and costs under subsection (1), (2), (3) or (4) of this section, such party shall also be entitled to reasonable postjudgment attorney's fees and costs incurred in attempting to collect on the judgment. Such attorney's fees and costs shall be set by the court following the filing of a memorandum of attorney's fees and costs with notice to all parties and hearing.

(6) In any small claims case resulting in entry of a money judgment or judgment for recovery of specific property, the party in whose favor the judgment is entered shall be entitled to reasonable postjudgment attorney's fees and costs incurred in attempting to collect on the judgment. Such attorney's fees and costs shall be set by the court following the filing of a memorandum of attorney's fees and costs with notice to all parties and an opportunity for hearing. The amount of such attorney's fees shall be determined by the court after consideration of the factors set out in rule 54(e)(3) of the Idaho rules of civil procedure, or any future rule that the supreme court of the state of Idaho may promulgate, but the court shall not

base its determination of such fees upon any contingent fees arrangement between attorney and client, or any arrangement setting such fees as a percentage of the judgment or the amount recovered. In no event shall postjudgment attorney's fees exceed the principal amount of the judgment or value of property recovered.

[12-120, added 1970, ch. 44, sec. 1, p. 91; am. 1975, ch. 65, sec. 1, p. 131; am. 1986, ch. 205, sec. 1, p. 511; am. 1987, ch. 204, sec. 1, p. 431; am. 1988, ch. 343, sec. 1, p. 1020; am. 1994, ch. 353, sec. 1, p. 1113; am. 1996, ch. 383, sec. 1, p. 1305; am. 2001, ch. 161, sec. 1, p. 569; am. 2012, ch. 94, sec. 1, p. 257; am. 2018, ch. 244, sec. 2, p. 568.]

12-121. ATTORNEY'S FEES. In any civil action, the judge may award reasonable attorney's fees to the prevailing party or parties when the judge finds that the case was brought, pursued or defended frivolously, unreasonably or without foundation. This section shall not alter, repeal or amend any statute that otherwise provides for the award of attorney's fees. The term "party" or "parties" is defined to include any person, partnership, corporation, association, private organization, the state of Idaho or political subdivision thereof.

[12-121, added 1976, ch. 349, sec. 1, p. 1158; am. 1987, ch. 263, sec. 2, p. 555; am. 2017, ch. 47, sec. 2, p. 76.]

12-122. ATTORNEY'S FEES IN HABEAS CORPUS ACTIONS. In any habeas corpus action brought by a state penitentiary or county jail inmate, the judge shall award reasonable attorney's fees to the respondent, if, in the judgment of the court, the habeas corpus action was brought frivolously by the petitioner.

In all habeas corpus actions which result in a denial or dismissal of a writ of habeas corpus, the court shall make a specific finding whether or not the habeas corpus action was brought frivolously by the petitioner.

For purposes of this section, "brought frivolously," shall mean that the petitioner petitioned the court for a writ of habeas corpus based upon claims which either had no basis in fact or, even if the factual allegations were true, they did not, as a matter of law, justify any relief to the petitioner; provided, however, that the court, in its discretion, may determine that the action was not brought frivolously when the action involves a material issue of law that has not been settled by statute or by supreme court decision in this state.

[12-122, added 1983, ch. 248, sec. 1, p. 669.]

12-123. SANCTIONS FOR FRIVOLOUS CONDUCT IN A CIVIL CASE. (1) As used in this section:

(a) "Conduct" means filing a civil action, asserting a claim, defense, or other position in connection with a civil action, or taking any other action in connection with a civil action.

(b) "Frivolous conduct" means conduct of a party to a civil action or of his counsel of record that satisfies either of the following:

(i) It obviously serves merely to harass or maliciously injure another party to the civil action;

(ii) It is not supported in fact or warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law.

(2) (a) In accordance with the provisions of this section, at any time prior to the commencement of the trial in a civil action or within twenty-one (21) days after the entry of judgment in a civil action, the court may award reasonable attorney's fees to any party to that action adversely affected by frivolous conduct.

(b) An award of reasonable attorney's fees may be made by the court upon the motion of a party to a civil action, but only after the court does the following:

(i) Sets a date for a hearing to determine whether particular conduct was frivolous; and

(ii) Gives notice of the date of the hearing to each party or counsel of record who allegedly engaged in frivolous conduct and to each party allegedly adversely affected by frivolous conduct; and

(iii) Conducts the hearing to determine if the conduct was frivolous, whether any party was adversely affected by the conduct if it is found to be frivolous, and to determine if an award is to be made, the amount of that award. In connection with the hearing, the court may order each party who may be awarded reasonable attorney's fees and his counsel of record to submit to the court, for consideration in determining the amount of any such award, an itemized list of the legal services necessitated by the alleged frivolous conduct, the time expended in rendering the services, and the attorney's fees associated with those services. Additionally, the court shall allow the parties and counsel of record involved to present any other relevant evidence at the hearing.

(c) The amount of an award that is made pursuant to this section shall not exceed the attorney's fees that were both reasonably incurred by a party and necessitated by the frivolous conduct.

(d) An award of reasonable attorney's fees pursuant to this section may be made against a party, his counsel of record, or both.

(3) An award of reasonable attorney's fees pursuant to this section does not affect or determine the amount of or the manner of computation of attorney's fees as between an attorney and the attorney's client.

(4) The provisions of this section do not affect or limit the application of any civil rule or another section of the Idaho Code to the extent that such a rule or section prohibits an award of attorney's fees or authorizes an award of attorney's fees in a specified manner, generally, or subject to limitations.

[12-123, added 1987, ch. 278, sec. 8, p. 580.]

CHAPTER 2

PROCEEDINGS AGAINST JOINT DEBTORS -- [REPEALED]