

# In the Supreme Court of the State of Idaho

IN RE: AMENDMENTS TO IDAHO )  
RULES OF CIVIL PROCEDURE (I.R.C.P.) ) ORDER  
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The Court having legislation that was passed in the 2017 Legislative Session amending I.C. § 12-121, and the Court being fully informed;

NOW, THEREFORE, IT IS HEREBY ORDERED that the Idaho Rules of Civil Procedure, be and hereby are amended as follows:

## **Rule 54. Judgments; Costs.**

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### **e) Attorney Fees.**

(1) **Pursuant to Contract or Statute.** In any civil action the court may award reasonable attorney fees, including paralegal fees, to the prevailing party or parties as defined in Rule 54(d)(1)(B), when provided for by any statute or contract.

(2) Pursuant to Idaho Code Section 12-121. Pursuant to the statutory amendment effective March 1, 2017, attorney fees under Idaho Code Section 12-121 may be awarded by the court only when it finds that the case was brought, pursued or defended frivolously, unreasonably or without foundation, which finding must be in writing and include the basis and reasons for the award. No attorney fees may be awarded pursuant to Idaho Code Section 12-121 on a default judgment.

(~~2~~ 3) **Amount of attorney fees.** If the court grants attorney fees to a party or parties in a civil action it must consider the following in determining the amount of such fees:

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### **(~~3~~ 4) Pleading; Default Judgments.**

(A) **In General.** It is not necessary for any party in a civil action to assert a claim for attorney fees in any pleading.

(B) **In Default Judgment.** When attorney fees are requested pursuant to contract or a statute other than Idaho Code section 12-121 in a judgment by default, the amount of attorney fees in the event of default must be included in the prayer for relief in the complaint and the award must not exceed the amount in the prayer. An award of attorney fees under Idaho Code section 12-120 in default

judgments where the defendant has not appeared must not exceed the amount of the judgment for the claim, exclusive of costs.

(4 5) **Attorney Fees as Costs.** Attorney fees, when allowable by statute or contract, are costs in an action and processed in the same manner as other costs and included in the memorandum of costs. A claim for attorney fees as costs must be supported by an affidavit of the attorney stating the basis and method of computation.

(5 6) **Objection to Attorney Fees.** Any objection to a claim for attorney fees must be made in the same manner as an objection to costs as provided by Rule 54(d)(5). The court may conduct an evidentiary hearing, if it deems it necessary, regarding the award of attorney fees.

(6 7) **Settlement of Attorney Fees by Order of Court; Determination Not Binding on Attorney and Client.** After a hearing on an objection to attorney fees, or after the time for filing an objection has passed, the court must enter an order settling the dollar amount of attorney fees, if any, awarded to any party to the action. If there was a timely objection to the amount of attorney fees, the court must include in the order its reasoning and the factors it relied on in determining the amount of the award. The allowance of attorney fees by the court under this rule is not to be construed as fixing the fees between attorney and client.

(7 8) **Claims to Which Rule Applies.** Any claim for attorney fees, including claims pursuant to Idaho Code section 12-121, must be made pursuant to Rule 54(e) unless an applicable statute or contract provides otherwise.

IT IS FURTHER ORDERED, that this order and these amendments shall be effective *nunc pro tunc* March 1, 2017.

IT IS FURTHER ORDERED, that the above designation of the striking of words from the Rules by lining through them, and the designation of the addition of new portions of the Rules by underlining such new portion is for the purposes of information only as amended, and NO OTHER AMENDMENTS ARE INTENDED. The lining through and underlining shall not be considered a part of the permanent Idaho Rules of Civil Procedure.

IT IS FURTHER ORDERED, that the Clerk of the Court shall cause notice of this Order to be published in one issue of The Advocate.

DATED this 17 day of April, 2017.

ATTEST: Stephen Kaye  
Clerk

By Order of the Supreme Court

R. Burdick  
I, Roger S. Burdick, Clerk of the Supreme Court of the State of Idaho, do hereby certify that this is a true and correct copy of the order entered in the above entitled cause and now on record in my office.  
WITNESS my hand and the Seal of this Court. 4-17-17

STEPHEN W. KENYON

Stephen W. Kenyon  
Clerk  
By Steph  
Clerk Deputy