



I.R.C.P. 68. Offer of Judgments

Idaho Rules of Civil Procedure Rule 68. Offer of Judgments.

(a) Making an Offer; Judgment on an Accepted Offer. At least 14 days before the date set for trial, a party defending against a claim may serve on an opposing party, but not file in court, an offer to allow judgment on specified terms, which offer is deemed to include all costs and fees accrued. If, within 14 days after being served, the opposing party serves written notice accepting the offer, either party may then file the offer and notice of acceptance, plus proof of service. The clerk must then enter judgment in the amount of the offer without costs.

(b) Unaccepted Offer. An unaccepted offer is considered withdrawn, but it does not preclude a later offer. Evidence of an unaccepted offer is not admissible except in a proceeding to determine costs.

(c) Offer After Liability is Determined. When one party's liability to another has been determined but the extent of liability remains to be determined by further proceedings, the party held liable may make an offer of judgment. It must be served within a reasonable time, but at least 14 days, before the date set for a hearing to determine the extent of liability.

(d) Paying Costs After an Unaccepted Offer.

(1) Claims for Monetary Damages. In cases involving claims for monetary damages, any costs under Rule 54(d)(1) awarded against the offeree must be based upon a comparison of the offer and the "adjusted award."

(A) Adjusted Award Definition. The adjusted award is defined as:

(i) the verdict in addition to,

(ii) the offeree's costs under Rule 54(d)(1) incurred before service of the offer of judgment and,

(iii) any attorney fees under Rule 54(e)(1) incurred before service of the offer of judgment. Provided, in contingent fee cases where attorney fees are awardable under Rule 54(e)(1), the court will pro rate the offeree's attorney fees to determine the amount incurred before the offer of judgment in reaching the adjusted award.



(B) Adjusted Award Less than Offer. If the adjusted award obtained by the offeree is less than the offer, then:

(i) the offeree must pay those costs of the offeror as allowed under Rule 54(d)(1), incurred after the making of the offer;

(ii) the offeror must pay those costs of the offeree, as allowed under Rule 54(d)(1), incurred before the making of the offer; and

(iii) the offeror is not be liable for costs and attorney fees of the offeree awardable under Rules 54(d)(1) and 54(e)(1) incurred after the making of the offer.

(C) Adjusted Award More than Offer. If the adjusted award obtained by the offeree is more than the offer, the offeror must pay those costs, as allowed under Rule 54(d)(1), incurred by the offeree both before and after the making of the offer.

(D) Judgment to be Entered. After a comparison of the offer and the adjusted award, in appropriate cases, the district court must order an amount which either the offeror or the offeree must ultimately pay separate and apart from the amount owed under the verdict. A total judgment must be entered taking into account both the verdict and the involved costs.

(2) *Claims for Non-Monetary Relief.* In cases involving claims for relief other than monetary damages, any costs under Rule 54(d)(1) must be based on a comparison of the offer and the judgment.

(A) Judgment Not More Favorable than Offer. If the judgment, including attorney fees awardable under Rule 54(e)(1) incurred before service of the offer of judgment, and costs incurred before service of the offer of judgment, finally obtained by the offeree is not more favorable than the offer, the offeree must pay the offeror's costs, as allowed under Rule 54(d)(1), incurred after the making of the offer.

(B) Judgment More Favorable than Offer. If the judgment including attorney fees and costs is more favorable than the offer, the offeror must pay all costs of the offeree allowable under Rule 54(d)(1) both before and after the making of the offer.



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