I.A.R. 41. Attorney Fees on Appeal

Idaho Appellate Rule 41. Attorney Fees on Appeal.

(a) Application for Attorney Fees - Waiver. Any party seeking attorney fees on appeal must assert such a claim as an issue presented on appeal in the first appellate brief filed by such party as provided by Rules 35(a)(5) and 35(b)(5); provided, however, the Supreme Court may permit a later claim for attorney fees under such conditions as it deems appropriate.

(b) Oral Argument on Attorney Fees. At the time of oral argument of an appeal, the parties may present argument as to whether or not the party claiming attorney fees has a legal right thereto.

(c) Adjudication of Right to Attorney Fees. The Supreme Court in its decision on appeal shall include its determination of a claimed right to attorney fees, but such ruling will not contain the amount of attorney fees allowed.

(d) Amount of Attorney Fees. If the Court determines that a party is entitled to attorney fees on appeal, the party claiming attorney fees shall file a claim concurrently with, or as part of, the memorandum of costs provided for by Rule 40. The claim for attorney fees, which at the discretion of the court may include paralegal fees shall be accompanied by an affidavit setting forth the method of computation of the attorney fees claimed. Attorney fees may also include the reasonable cost of automated legal research (Computer Assisted Legal Research), if the court finds it was reasonably necessary in preparing the party's case. The opposing party may object to the amount of attorney fees claimed in the same manner as provided for objections to a memorandum of costs in Rule 40. The Court shall determine the amount of attorney fees or remand this question to the district court or agency to hear additional evidence and determine the amount of attorney fees to be allowed. Upon the determination of the amount of attorney fees, the Clerk shall insert the amount thereof in the remittitur in the same manner as the Clerk inserts costs pursuant to Rule 40(f).

(e) Number of Copies. An original and six copies of the claim or memorandum for attorney fees, objections to attorney fees, and briefs in support of or in opposition thereto shall be filed with the Clerk of the Supreme Court.

(Adopted March 25, 1977, effective July 1, 1977; amended March 30, 1984, effective July 1, 1984; amended March 23, 1990, effective July 1, 1990.)

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