

CHAPTER 549

COSTS, DISBURSEMENTS

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NOTE: For rules of civil procedure, district court, see Volume 9.

549.01 AGREEMENT AS TO FEES OF ATTORNEY.

A party shall have an unrestricted right to agree with an attorney as to compensation for services, and the measure and mode thereof; but certain sums may be allowed to the prevailing party for expenses in an action, which are termed costs.

History: (9470) *RL s 4337; 1986 c 444*

549.02 COSTS IN DISTRICT COURTS.

In actions commenced in the district court, costs shall be allowed as follows:

To plaintiff: (1) Upon a judgment in the plaintiff's favor of \$100 or more in an action for the recovery of money only, \$100. (2) In all other actions, including an action by a public employee for wrongfully denied or withheld employment benefits or rights, except as otherwise specially provided, \$100.

To defendant: Upon discontinuance or dismissal, or when judgment is rendered in the defendant's favor on the merits, \$100.

To the prevailing party: \$5.50 for the cost of filing a satisfaction of the judgment.

This section does not apply to actions removed to district court from conciliation court.

History: (9471) *RL s 4338; 1974 c 413 s 1; 1986 c 444; 1988 c 484 s 3; 1992 c 591 s 20*

549.03 ACTIONS FOR SERVICES; DOUBLE COSTS.

When any person who employed another to perform any labor or service neglects or refuses to pay the agreed price, or the reasonable value if there is no agreement, for 30 days after it is due and payment is demanded, and the payment is recovered by action, there shall be allowed to the plaintiff, and included in the judgment, all of the disbursements allowed by law and double the costs.

History: (9472) *RL s 4339; 1907 c 200 s 1; 1983 c 359 s 77; 1986 c 444*

549.04 DISBURSEMENTS; TAXATION AND ALLOWANCE.

In every action in a district court, the prevailing party, including any public employee who prevails in an action for wrongfully denied or withheld employment benefits or rights, shall be allowed reasonable disbursements paid or incurred, including fees and mileage paid for service of process by the sheriff or by a private person.

History: (9473) *RL s 4340; 1943 c 508 s 1; 1974 c 413 s 2; 1983 c 93 s 1*

549.05 COSTS IN CERTAIN CASES COMMENCED IN DISTRICT COURT OF FOURTH JUDICIAL DISTRICT COGNIZABLE BY MUNICIPAL COURT.

In any action commenced in the district court of the fourth judicial district, no costs or disbursements shall be allowed the plaintiff where there is a municipal court in the district where such action is brought, having jurisdiction of the subject matter and in which jurisdiction of the defendant or defendants could be acquired, and in case the amount of recovery by the plaintiff in such an action is less than \$200, the plaintiff shall pay the defendant's costs and disbursements.

History: (9473-1) 1925 c 326

549.06 SEVERAL ACTIONS; COSTS, HOW ALLOWED.

When several actions are brought on one instrument, or for the same cause of action, against several parties who might have been joined as defendants in the same action, costs shall be allowed to the plaintiff in but one of such actions, to be selected by the plaintiff, if at the commencement of such action the defendants in the other actions were openly within the state; but plaintiff's disbursements may be allowed as provided in section 549.04.

History: (9474) *RL s 4341; 1977 c 347 s 62; 1986 c 444*

549.07 EQUITABLE ACTIONS; SEVERAL DEFENDANTS.

In equitable actions, costs may be allowed or not, and, if allowed, may be apportioned between the parties on the same or adverse sides, in the discretion of the court. When there are several defendants not united in interest, and making separate defenses by separate answers, and plaintiff fails to recover judgment against all, the court may award costs to such defendants as have judgment in their favor, or any of them.

History: (9475) *RL s 4342*

549.08 ACTION ON JUDGMENT.

Costs shall not be allowed to plaintiff in an action upon a domestic judgment between the same parties, unless such action was brought with previous leave of the court for cause shown; but this shall not apply to an action upon the judgment of a justice brought in another county or in the same county where the summons was not served upon all the defendants, or in case of the death of a party, or the death, resignation, incapacity to act, or removal from the county of the justice, or the loss of the docket.

History: (9476) *RL s 4343; 1986 c 444*

549.09 INTEREST ON VERDICTS, AWARDS, AND JUDGMENTS.

Subdivision 1. **When owed; rate.** (a) When the judgment is for the recovery of money, including a judgment for the recovery of taxes, interest from the time of the verdict or report until judgment is finally entered shall be computed by the court administrator as provided in clause (c) and added to the judgment.

(b) Except as otherwise provided by contract or allowed by law, preverdict or pre-report interest on pecuniary damages shall be computed as provided in clause (c) from the time of the commencement of the action, or the time of a written settlement demand, whichever occurs first, except as provided herein. The action must be commenced within 60 days of a written settlement demand for interest to begin to accrue from the time of the demand. If either party serves a written offer of settlement, the other party may serve a written acceptance or a written counteroffer within 60 days. After that time interest on the judgment shall be calculated by the judge in the following manner. The prevailing party shall receive interest on any judgment from the time the action was commenced or a written settlement demand was made, or as to special damages from the time when special damages were incurred, if later, until the time of verdict or report only if the amount of its offer is closer to the judgment than the amount of the opposing party's offer. If the amount of the losing party's offer was closer to the

judgment than the prevailing party's offer, the prevailing party shall receive interest only on the amount of the settlement offer or the judgment, whichever is less, and only from the time the action was commenced or a written settlement demand was made, or as to special damages from when the special damages were incurred, if later, until the time the settlement offer was made. Subsequent offers and counteroffers supersede the legal effect of earlier offers and counteroffers. For the purposes of clause (3), the amount of settlement offer must be allocated between past and future damages in the same proportion as determined by the trier of fact. Except as otherwise provided by contract or allowed by law, preverdict or prereport interest shall not be awarded on the following:

(1) judgments, awards, or benefits in workers' compensation cases, but not including third-party actions;

(2) judgments for future damages;

(3) punitive damages, fines, or other damages that are noncompensatory in nature;

(4) judgments not in excess of the amount specified in section 487.30; and

(5) that portion of any verdict or report which is founded upon interest, or costs, disbursements, attorney fees, or other similar items added by the court.

(c) The interest shall be computed as simple interest per annum. The rate of interest shall be based on the secondary market yield of one year United States treasury bills, calculated on a bank discount basis as provided in this section.

On or before the 20th day of December of each year the state court administrator shall determine the rate from the secondary market yield on one year United States treasury bills for the most recent calendar month, reported on a monthly basis in the latest statistical release of the board of governors of the federal reserve system. This yield, rounded to the nearest one percent, shall be the annual interest rate during the succeeding calendar year. The state court administrator shall communicate the interest rates to the court administrators and sheriffs for use in computing the interest on verdicts.

When a judgment creditor, or the judgment creditor's attorney or agent, has received a payment after entry of judgment, whether the payment is made voluntarily by or on behalf of the judgment debtor, or is collected by legal process other than execution levy where a proper return has been filed with the court administrator, the judgment creditor, or the judgment creditor's attorney, before applying to the court administrator for an execution shall file with the court administrator an affidavit of partial satisfaction. The affidavit must state the dates and amounts of payments made upon the judgment after the most recent affidavit of partial satisfaction filed, if any; the part of each payment that is applied to taxable disbursements and to accrued interest and to the unpaid principal balance of the judgment; and the accrued, but the unpaid interest owing, if any, after application of each payment.

Subd. 2. Accrual of interest. During each calendar year, interest shall accrue on the unpaid balance of the judgment or award from the time that it is entered or made until it is paid, at the annual rate provided in subdivision 1. The court administrator shall compute and add the accrued interest to the total amount to be collected when the execution is issued and compute the amount of daily interest accruing during the calendar year. The person authorized by statute to make the levy shall compute and add interest from the date that the writ of execution was issued to the date of service of the writ of execution and shall direct the daily interest to be computed and added from the date of service until any money is collected as a result of the levy.

Subd. 3. Deductions. If an affidavit is filed pursuant to subdivision 4, a judgment creditor, or the judgment creditor's attorney or agent, is entitled to deduct from any payment made upon a judgment, whether the payment is made voluntarily by or on behalf of the judgment debtor, or is collected by legal process, all disbursements that are made taxable by statute or by rule of court, that have been paid or incurred by the judgment creditor or the judgment creditor's attorney, after the entry of judgment. Any remaining portion of the payment must be applied to the interest that has accrued upon

the unpaid principal balance of the judgment before any remaining part is applied to reduce the unpaid principal balance of the judgment.

Subd. 4. Affidavit. A judgment creditor, or the judgment creditor's attorney, may file an affidavit specifying the nature and amount of taxable disbursements paid or incurred by the judgment creditor, or the judgment creditor's attorney, after the entry of judgment. An execution issued by the court administrator must include increased disbursements as are included in the affidavit filed with the court administrator.

History: (9477) *RL s 4344; 1909 c 371 s 1; 1979 c 105 s 1; 1980 c 509 s 179; 1984 c 399 s 1; 1984 c 472 s 2; 1986 c 455 s 81; 1Sp1986 c 3 art 1 s 82; 1987 c 273 s 3; 1988 c 503 s 1; 1991 c 266 s 10; 1991 c 321 s 7; 1992 c 363 art 1 s 8*

549.10 [Repealed, 1974 c 394 s 12]

549.11 COSTS ALLOWED ON MOTION OR DEMURRER.

Costs may be allowed on motion, demurrer, or appeal from taxation of costs, in the discretion of the court or judge, not exceeding \$10, and may be absolute, or directed to abide the event of the action.

History: (9479) *RL s 4346*

549.12 AGAINST GUARDIAN OF INFANT PLAINTIFF.

When costs or disbursements are adjudged against an infant plaintiff, the guardian by whom the infant appears in the action shall be responsible for them, and judgment therefor may be entered against both infant and guardian.

History: (9480) *RL s 4347; 1986 c 444*

549.13 DEFENDANT AFTER TENDER.

When in an action on contract, express or implied, the defendant alleges in the answer that before the commencement of the action the defendant tendered to the plaintiff the full amount to which the plaintiff was entitled, and thereupon deposits in court for the plaintiff the amount so tendered, and the allegation is found true, the defendant shall be entitled to costs and disbursements.

History: (9481) *RL s 4348; 1986 c 444*

549.14 CHARGEABLE ON ESTATE OR FUND.

In an action prosecuted or defended by an executor, administrator, trustee of an express trust, or person expressly authorized by statute, costs and disbursements may be recovered as in an action by and against a person prosecuting or defending in the person's own right. The same shall be made chargeable only upon the estate, fund, or party represented, unless the court shall direct the same to be paid by the plaintiff or defendant personally, for mismanagement or bad faith in the action; but no costs or disbursements are recoverable against an executor or administrator unless it appears that the demand was first presented to the executor or administrator, verified by oath, and payment demanded.

History: (9482) *RL s 4349; 1986 c 444*

549.15 RELATOR ENTITLED TO, AND LIABLE FOR, COSTS.

When an action or proceeding is instituted in the name of the state on the relation or petition of any citizen, such relator or petitioner is entitled to, and liable for, costs and disbursements in the same cases and to the same extent as if such action or proceeding had been instituted in the relator's or petitioner's own name.

History: (9483) *RL s 4350; 1986 c 444*

549.16 [Repealed, 1983 c 359 s 151]

549.17 ADDITIONAL COSTS ON CHANGE OF VENUE; AMOUNT; PAYMENT OR WAIVER OF; TAXATION.

When service of summons is made upon a defendant within a county of which the defendant is an actual resident at the time of such service, and the place of trial of such action is thereafter changed to such county in the manner provided by section 542.10, or when service of summons is made upon a defendant in a county of which the defendant is not a resident, and the place of such trial is in like manner changed to a county of which the defendant has been an actual resident for more than one year immediately preceding such service, which fact shall be set forth in defendant's affidavit for change of venue, the plaintiff shall forthwith in either case, pay to each defendant demanding such change of venue the sum of \$10 as additional costs.

No judgment shall be entered by plaintiff in any cause, the venue of which has been changed as aforesaid, until the plaintiff shall have filed with the court administrator a receipt for, or a waiver of, such sum by all of the defendants who demanded such change of venue, or their respective attorneys. Such sums if not paid by plaintiff, or waived by defendant, may be taxed against plaintiff by defendant as other costs if defendant prevails, or deducted from plaintiff's judgment, if plaintiff prevails. The provisions of this section shall not apply to causes where there are several defendants residing in different counties, or an even number of defendants, and the place or trial is determined by joinder of demands or nearness to the county seat and not by actual residence of the defendants as of right.

History: (9487-1) 1925 c 242 s 1; 1986 c 444; 1Sp1986 c 3 art 1 s 82

549.18 SECURITY FOR COSTS.

When an action is begun in the district court by a plaintiff who is committed for a crime, or is a nonresident or a foreign corporation, or when such action is brought into the district court on appeal by defendant, such plaintiff shall file a bond to the court administrator, before service of summons, or in case of appeal within five days after perfecting the same, in the sum of at least \$75, conditioned for the payment of all costs and disbursements that may be adjudged against the plaintiff. If, after the commencement of the action or the taking of an appeal, all parties plaintiff therein become nonresidents, or the sureties on the bond remove from the state or become insolvent, the court, on motion, may require such bond, or an additional bond, to be filed, conditioned as aforesaid. This section shall not apply to any action brought for the recovery of wages or claims for personal services.

History: (9488) RL s 4355; 1986 c 444; 1Sp1986 c 3 art 1 s 82

549.19 NEGLECT TO FILE SECURITY; PROSECUTION OF BOND.

When any party shall commence an action without filing a bond, or fail to provide an additional bond when so required, the court, on motion of defendant, may order a stay of all proceedings in such action, or a dismissal thereof at the cost of the attorney commencing the same. When judgment is entered against any party who has given security as required, and the costs and disbursements adjudged against the party remain unpaid in whole or in part for ten days, such bond may be put in suit and prosecuted to final judgment.

History: (9489) RL s 4356; 1986 c 444

549.191 CLAIM FOR PUNITIVE DAMAGES.

Upon commencement of a civil action, the complaint must not seek punitive damages. After filing the suit a party may make a motion to amend the pleadings to claim punitive damages. The motion must allege the applicable legal basis under section 549.20 or other law for awarding punitive damages in the action and must be accompanied by one or more affidavits showing the factual basis for the claim. At the hearing on the motion, if the court finds prima facie evidence in support of the motion, the court shall grant the moving party permission to amend the pleadings to claim punitive

damages. For purposes of tolling the statute of limitations, pleadings amended under this section relate back to the time the action was commenced.

History: 1986 c 455 s 82

549.20 PUNITIVE DAMAGES.

Subdivision 1. (a) Punitive damages shall be allowed in civil actions only upon clear and convincing evidence that the acts of the defendant show deliberate disregard for the rights or safety of others.

(b) A defendant has acted with deliberate disregard for the rights or safety of others if the defendant has knowledge of facts or intentionally disregards facts that create a high probability of injury to the rights or safety of others and:

(1) deliberately proceeds to act in conscious or intentional disregard of the high degree of probability of injury to the rights or safety of others; or

(2) deliberately proceeds to act with indifference to the high probability of injury to the rights or safety of others.

Subd. 2. Punitive damages can properly be awarded against a master or principal because of an act done by an agent only if:

(a) the principal authorized the doing and the manner of the act, or

(b) the agent was unfit and the principal deliberately disregarded a high probability that the agent was unfit, or

(c) the agent was employed in a managerial capacity with authority to establish policy and make planning level decisions for the principal and was acting in the scope of that employment, or

(d) the principal or a managerial agent of the principal, described in clause (c), ratified or approved the act while knowing of its character and probable consequences.

Subd. 3. Any award of punitive damages shall be measured by those factors which justly bear upon the purpose of punitive damages, including the seriousness of hazard to the public arising from the defendant's misconduct, the profitability of the misconduct to the defendant, the duration of the misconduct and any concealment of it, the degree of the defendant's awareness of the hazard and of its excessiveness, the attitude and conduct of the defendant upon discovery of the misconduct, the number and level of employees involved in causing or concealing the misconduct, the financial condition of the defendant, and the total effect of other punishment likely to be imposed upon the defendant as a result of the misconduct, including compensatory and punitive damage awards to the plaintiff and other similarly situated persons, and the severity of any criminal penalty to which the defendant may be subject.

Subd. 4. **Separate proceeding.** In a civil action in which punitive damages are sought, the trier of fact shall, if requested by any of the parties, first determine whether compensatory damages are to be awarded. Evidence of the financial condition of the defendant and other evidence relevant only to punitive damages is not admissible in that proceeding. After a determination has been made, the trier of fact shall, in a separate proceeding, determine whether and in what amount punitive damages will be awarded.

Subd. 5. **Judicial review.** The court shall specifically review the punitive damages award in light of the factors set forth in subdivision 3 and shall make specific findings with respect to them. The appellate court, if any, also shall review the award in light of the factors set forth in that subdivision. Nothing in this section may be construed to restrict either court's authority to limit punitive damages.

History: 1978 c 738 s 4; 1986 c 444; 1990 c 555 s 15-18

549.21 REIMBURSEMENT FOR CERTAIN COSTS IN CIVIL ACTIONS.

Subdivision 1. **Acknowledgment in pleadings.** The parties by their attorneys in any civil action shall attach to and make a part of the pleading served on the opposite party or parties a signed acknowledgment stating that the parties acknowledge that costs, dis-

bursements, and reasonable attorney and witness fees may be awarded to the opposing party or parties pursuant to subdivision 2.

Subd. 2. Award of costs. Upon motion of a party, or upon the court's own motion, the court in its discretion may award to that party costs, disbursements, reasonable attorney fees and witness fees if the party or attorney against whom costs, disbursements, reasonable attorney and witness fees are charged acted in bad faith; asserted a claim or defense that is frivolous and that is costly to the other party; asserted an unfounded position solely to delay the ordinary course of the proceedings or to harass; or committed a fraud upon the court. An award under this section shall be without prejudice and as an alternative to any claim for sanctions that may be asserted under the rules of civil procedure. Nothing herein shall authorize the award of costs, disbursements or fees against a party or attorney advancing a claim or defense unwarranted under existing law, if it is supported by a good faith argument for an extension, modification, or reversal of the existing law.

History: 1978 c 738 s 5; 1982 c 601 s 2; 1986 c 455 s 83

549.23 [Repealed, 1990 c 555 s 23]

549.24 [Repealed, 1990 c 555 s 23]

549.25 FUTURE DAMAGES; PAYMENT.

Where a claimant is awarded an amount representing future damages greater than \$100,000, the court shall hold a hearing prior to ordering entry of judgment to allow the claimant to consider whether payment of the future damages over time as the damages are incurred is in the best interests of the claimant. The following factors may be considered at the hearing, as well as any others as justice requires:

- (1) the claimant's financial ability to meet obligations likely to be incurred as a result of the injury at issue in the trial;
- (2) the advantages, if any, to the claimant from voluntarily entering into a structured settlement; and
- (3) the interests of the claimant in self-determination over the claimant's financial affairs.

If the claimant decides, after the hearing, that structured payments of future damages would be in the claimant's best interests, the court shall make available information to assist the claimant in seeking an appropriate financial instrument to provide such payments. Judgment may not be entered until the claimant has notified the court that the claimant does not wish to enter into a structured settlement.

History: 1988 c 503 s 2