
A BILL FOR AN ACT

RELATING TO ATTORNEY'S FEES AND COSTS IN HAWAII FAMILY COURT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The supreme court held in *Cox v. Cox*, SCWC-12-
2 0000762, (Haw. Aug. 16, 2016) (2016 W.L. 4367248) that Hawaii
3 Family Court Rules (HFCR) rule 68 is invalid because it is not
4 consistent with section 580-47, Hawaii Revised Statutes (HRS).
5 HFCR rule 68 authorizes the family court to award attorney's
6 fees and costs in certain types of cases to a party that extends
7 a settlement offer if the offer is not accepted and the final
8 judgment in its entirety is patently not more favorable to the
9 offeree than the settlement offer. The supreme court
10 invalidated HFCR rule 68 in *Cox v. Cox* without a motion or
11 briefing by the parties and, therefore, the parties, the general
12 public, and the Hawaii State Bar Association had no opportunity
13 to be heard.

14 The legislature finds that HFCR rule 68 should not have
15 been invalidated and that section 580-47, HRS, should be
16 clarified to incorporate the offer of settlement provisions of
17 HFCR rule 68.



1 SECTION 2. Section 580-47, Hawaii Revised Statutes, is
2 amended by amending subsection (f) to read as follows:

3 "(f) Attorney's fees and costs~~[-]~~ shall be allowed as
4 follows:

5 (1) The court hearing any motion for orders either
6 revising an order for the custody, support,
7 maintenance, and education of the children of the
8 parties, or an order for the support and maintenance
9 of one party by the other, or a motion for an order to
10 enforce any such order or any order made under
11 subsection (a) [~~of this section~~], may make such orders
12 requiring either party to pay or contribute to the
13 payment of the attorney's fees, costs, and expenses of
14 the other party relating to such motion and hearing as
15 shall appear just and equitable after consideration of
16 the respective merits of the parties, the relative
17 abilities of the parties, the economic condition of
18 each party at the time of the hearing, the burdens
19 imposed upon either party for the benefit of the
20 children of the parties, the concealment of or failure
21 to disclose income or an asset, or violation of a



H.B. NO. 78

1 restraining order issued under section 580-10(a) or
2 (b), if any, by either party, and all other
3 circumstances of the case[-]; and
4 (2) At least twenty days before any contested hearing is
5 scheduled to begin pursuant to section 571-11, 571-12,
6 571-13, or 571-14, excluding law violations, criminal
7 matters, and child protection matters, any party may
8 serve upon the adverse party an offer to allow a
9 judgment to be entered to the effect specified in the
10 offer. The offer may be made as to all or some of the
11 issues, including custody and visitation. The offer
12 shall be filed with the court only if it is accepted.
13 If within ten days after service of the offer the
14 adverse party serves written notice that the offer is
15 accepted, any party may then file the offer and notice
16 of acceptance together with proof of service thereof
17 and thereupon the court shall treat those issues as
18 uncontested. An offer not accepted shall be deemed
19 withdrawn and evidence thereof shall not be
20 admissible, except in a proceeding to determine costs
21 and attorney's fees. If the judgment, in its



H.B. NO. 78

1 entirety, finally obtained by the offeree is patently
2 not more favorable than the offer, the offeree shall
3 pay the costs, including reasonable attorney's fees
4 incurred after making the offer, unless the court
5 shall specifically determine that the award would be
6 inequitable."

7 SECTION 3. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

9 SECTION 4. This Act shall take effect on August 15, 2016.

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INTRODUCED BY: Robert F. Orr

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H.B. NO. 78

Report Title:

Family Court Rules; Settlement Offer; Award of Attorney's Fees and Costs

Description:

Establishes a procedure to tender settlement offers in certain family court cases so that the party extending the offer may be entitled to its attorney's fees and costs if the offer is not accepted and the offeree does not obtain a judgment that, in its entirety, is patently more favorable than the offer.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

