

**"CHAPTER 607
COSTS AND FEES**

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" **§607-1 Power of supreme court with respect to costs and fees.** The supreme court shall have power by rule of court, from time to time, to revise, amend, add to, or eliminate any of the items of costs and fees provided in this chapter, to prescribe such costs and fees as it deems reasonable in all cases not therein provided for, and to prescribe the amount to be paid in advance to the clerk of any court in any proceeding on account of the costs and fees. All fees prescribed by the supreme court by rule of court for electronic document certification, electronic copies of documents, and for providing bulk access to electronic court records and compilations of data shall be deposited into the judiciary computer system special fund. [CC 1859, §1282; RL 1925, §2554; RL 1935, §3803; am L 1935, c 55, §1; RL 1945, §9741; RL 1955, §219-1; HRS §607-1; am L 1974, c 145, §5; am L 2004, c 230, §§3, 6; am L 2006, c 21, §1; am L 2011, c 60, §2]

Case Notes

Cited: 35 H. 682, 684 (1940); 44 H. 147, 149, 355 P.2d 40 (1960); 51 H. 346, 348, 461 P.2d 140 (1969).

" **[§607-1.5] Court interpreting services revolving fund.**

(a) There is established in the state treasury the court interpreting services revolving fund, into which shall be deposited:

- (1) Fees, charges, and other moneys collected for programs relating to interpreter issues and training, screening, testing, and certification of court interpreters;
- (2) All moneys received from public or private sources for the purposes of this fund; and
- (3) Any interest accrued or investment earnings realized that are attributable to the moneys in the revolving fund.

(b) Moneys in the court interpreting services revolving fund shall be administered and expended by the administrative director of the courts to support the court interpreting services program's educational services and the program's activities relating to the training, screening, testing, and certification of court interpreters. [L 2005, c 184, §1]

" **§607-2 Fees to be accounted for.** With the exception of fees prescribed by the supreme court by rule of court for electronic document certification, electronic copies of

documents, and for providing bulk access to electronic court records and compilations of data, which shall be deposited into the judiciary computer system special fund, and fees intended to reimburse officers for actual expenditures made by them, all judges', clerks', sheriffs', and deputy sheriffs' fees provided for in this chapter and accruing from any action pending in any court shall be deposited to the credit of the general fund of the State. [CC 1859, pt of §1281; am L 1907, c 62, §1; RL 1925, §2555; RL 1935, §3804; RL 1945, §9742; am L 1945, c 57, §1; RL 1955, §219-2; am L 1965, c 97, §15; HRS §607-2; am L 1970, c 188, §28; am L 1972, c 88, §5(a); am L 1979, c 105, §60; am L 1989, c 211, §10; am L 1990, c 281, §§6, 11; am L 2004, c 230, §§4, 6; am L 2006, c 21, §1; am L 2011, c 60, §3]

Case Notes

Cited: 31 H. 242, 256 (1930); 35 H. 682, 684 (1940).

" **§607-2.5 Exemption of costs and fees.** Persons subject to domestic abuse, abuse of family or household members, stalking, or sexual assault shall be exempt from paying the costs and fees prescribed in this chapter in connection with filing, issuance, registration, or service of a protection order, or a petition for a protection order, warrant, or witness subpoena issued for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with or physical proximity to, another person. For purposes of this section, the term "protection order" means any temporary or final order of protection, a restraining order, or an injunction involving domestic abuse, abuse of family or household members, stalking, or sexual assault issued by a civil or criminal court, other than a support or custody order. [L 2003, c 65, §1]

" **§607-3 Court costs, waiver of prepayment, reduction or remission of.** The judges of all the courts of the State shall have discretionary power to waive the prepayment of costs or to reduce or remit costs where, in special or extraordinary cases, the cost of any suit, action, or proceeding may, to the judges, appear onerous. [L 1923, c 101, §§1, 2; RL 1925, §2545; RL 1935, §3794; am L 1939, c 19, §3; RL 1945, §9743; RL 1955, §219-3; HRS §607-3; am L 1970, c 188, §39; am L 1972, c 88, §5(b)]

Case Notes

Where payment of \$275 in fees well exceeded prisoner petitioner's meager earnings and "savings" and, thus, would be excessively burdensome, to require the payment of such costs under the circumstances clearly exceeded "the bounds of reason"; thus, it was an abuse of discretion for the trial court to deny petitioner's request to proceed in forma pauperis pursuant to this section. 113 H. 315, 151 P.3d 796 (2007).

In exercising discretion, court may consider movants' estate or their net worth. 2 H. App. 1, 625 P.2d 378 (1981).

Cited: 31 H. 242, 254 (1930); 32 H. 385, 386 (1932); 35 H. 563 (1940); 35 H. 564 (1940); 35 H. 682 (1940); 44 H. 613, 623, 359 P.2d 932 (1961).

" **§607-3.5 Security for costs.** The several courts shall have power to require either the plaintiff or defendant, upon the application of the opposite party, to give security for costs in any civil cause, upon such terms and conditions as the court deems just. [L 1972, c 88, §5(c)]

Cross References

Vexatious litigants; security, see chapter 634J.

Case Notes

There is a wide discretion in the matter of requiring security for costs. 26 H. 112, 116 (1921); 34 H. 308 (1937); 35 H. 907 (1941).

A circuit judge at chambers in proceedings for probate of a will may require of contestant security for costs. 29 H. 455 (1926).

See 22 H. 303 (1914), cited 29 H. 242, 243 (1926), as to necessity for finality of judgment in order to appeal.

" **§607-4 District court costs.** (a) The fees prescribed by subsection (b) shall be paid to the clerk of the district court as costs of court by the person instituting the action or proceeding, or offering the paper for filing, or causing the document to be issued or the services to be performed in the district court; provided that nothing in subsection (b) shall apply to cases of adults charged with commission of a crime, or minors referred to the district court by the family court; provided further that for the purposes of subsection (b), "judgment" includes an order from which an appeal lies; and provided further that the fees prescribed by subsection (b)(10)

shall be deposited by the clerk of the district court into the judiciary computer system special fund pursuant to section 601-3.7. One-half of the fees collected pursuant to paragraphs (7), (8), and (9) of subsection (b) also shall be deposited into the fund.

- (b) The fees referred to in subsection (a) are:
 - (1) Except for petitions for temporary restraining order under section 604-10.5, the fee for which shall be the same as that provided in section 607-5(b)(19), for the institution of each action or proceeding, to include all charges except as provided by paragraphs (2) to (6).....\$100
 - (2) Intervention; answer containing one or more cross-claims or counterclaims; third-party complaint, for each such matter.....\$10
 - (3) Demand for jury trial.....Fee prescribed by section 607-5
 - (4) Filing of notice of appeal, to be paid in addition to the deposit of appellate court costs.....\$100
 - (5) Making of a copy; comparing of copy with original.....Fees prescribed by section 92-21
 - (6) Posting notice; service fees; garnishee fees; mileage charges; or other services actually performed.....Amounts necessary to cover actual costs or disbursements
 - (7) Administrative costs associated with the processing of traffic citations that involve stopping (when prohibited), standing, or parking.....\$10 for each violation in addition to any fine imposed by the court, and whether or not such fine is suspended
 - (8) Administrative costs associated with the processing of traffic citations which do not involve stopping, standing, or parking.....\$40 for each violation in addition to any fine imposed by the court, and whether or not such fine is suspended
 - (9) Administrative costs associated with the processing of traffic citations issued for violations of a statute or ordinance relating to vehicles or their drivers, or owners, except those as provided by paragraphs (7) and (8).....\$30 for each violation in addition to any fine imposed by the court, and whether or not such fine is suspended

(10) Administrative costs associated with the processing of all civil filings except those brought by the State or any of the various counties and political subdivisions of the State, those commenced by a petition for temporary restraining order under section 604-10.5, and those commenced and conducted in the small claims division of the district court.....\$20.

(c) The court, in taxing costs, may assess not only the costs of court, but also all reasonable disbursements as provided by section 607-9.

(d) *[Repeal and reenactment of subsection on June 30, 2020. L 2015, c 101, §4.]* Fees of sheriff, deputy sheriff, police officer, or independent civil process server from the department of public safety's list under section 353C-10 shall be as provided under section 607-8(a).

(e) Anything in this section or any other law to the contrary notwithstanding, when any process or subpoena is served by a subordinate of the sheriff or chief of police, it shall be illegal for the sheriff or chief of police, (1) if and so long as the sheriff or chief of police is being paid a salary by the State or the county to receive or collect from such subordinate any portion of the fees, mileage, or other expenses collected by such subordinate, or (2) if and so long as the sheriff or chief of police is not being paid any such salary, to collect or receive from such subordinate more than ten per cent of the fees accruing from such service, or any portion of the mileage or other expenses collected by such subordinate. Where a subpoena is served in behalf of the State or any county by a nonsalaried subordinate of the sheriff or chief of police, the regular fee for such service shall be payable to such subordinate. Nothing herein contained shall be deemed to prohibit the police commission of any county from requiring all such fees, mileage, and expenses to be paid into a police benefit fund. [CC 1859, §1278; am imp L 1903, c 63, §1; am L 1919, c 58, §1; am L 1923, c 229, §1; RL 1925, §2541; am L 1933, c 47, §1; RL 1935, §3790; am L 1935, c 177, §1; RL 1945, §9744; am L 1945, c 55, §1; am L 1949, c 387, §1; RL 1955, §219-4; am L 1957, c 235, §1; am L 1963, c 85, §3; HRS §607-4; am L 1968, c 61, §2; am L 1969, c 23, §1; am L 1970, c 188, §39; am L 1972, c 88, §5(d), (e), (f); am L 1973, c 55, §1; am L 1974, c 145, §6 and c 149, §1; am L 1975, c 112, §1; am L 1978, c 127, §1; am L 1979, c 111, §24; am L 1980, c 96, §1; am L 1984, c 52, §1; gen ch 1985; am L 1989, c 211, §10; am L 1990, c 10, §1, c 58, §1, and c 281, §11; am L 1991, c 140, §2; am L 1998, c 128, §1; am L 1999, c 92, §1; am L 2001, c 214, §2; am L 2003, c 216, §2; am L 2004, c 202, §61 and c 231, §2; am L 2005, c 22, §42; am L 2006, c 94, §1; am L 2010,

c 109, §1; am L 2012, c 142, §3; am L 2013, c 116, §§5, 25(4);
am L 2015, c 125, §1]

Note

The L 2015, c 125 amendment is exempt from the repeal and reenactment condition of L 2013, c 116, §25. L 2015, c 125, §5.

Cross References

Assessment for bench warrant issuance, see §607-8.5.

Rules of Court

Taxation of costs, district courts, see DCRCP rule 54(d).

Attorney General Opinions

Sheriff entitled to fee upon levy of execution even though there is no subsequent sale. Att. Gen. Op. 65-1.

Case Notes

The cost for one summons for two defendants is the same as that for one summons. 32 H. 518 (1932).

Cited: 29 H. 539, 540 (1926).

" **§607-5 Costs; circuit courts.** (a) The fees prescribed by the schedule in this section shall be paid to the clerk of the circuit court as costs of court by the person instituting the action or proceeding, or offering the paper for filing, or causing the document to be issued or the services to be performed in the circuit court; provided that nothing in the schedule shall apply to cases of adults charged with commission of a crime, or to proceedings under section 571-11(1), (2), or (9), to proceedings under chapter 333F or 334, to small estates including decedents' estates and protection of property of minors and persons under disability when the amount payable is fixed by another statute; provided further that the fees prescribed by subsection (c)(32) shall be deposited by the clerk of the circuit court into the judiciary computer system special fund pursuant to section 601-3.7; provided further that the fees prescribed by subsection (b)(1a) shall be deposited by the clerk of the circuit court as provided in section 667-53(a)(6).

For the purpose of this section, "judgment" includes a decree and any order from which an appeal lies.

SCHEDULE

In the application of this schedule, each case assigned a new number or filed under the number previously assigned to a probate, trust, guardianship, or conservatorship, shall carry a fee for the institution or transfer of the action or proceeding as prescribed by part I, and in addition the fees prescribed by part II unless otherwise provided.

(b) **PART I**

Action or proceeding, general:

- (1) Civil action or special proceeding, unless another item in part I applies.....\$200
- (1a) Petition for conversion of nonjudicial foreclosure to judicial foreclosure.....\$250
- (2) Appeal to a circuit court.....\$100
- (3) Transfer of action to circuit court from district court, in addition to district court fees.....\$125

Trusts:

- (4) Proceeding for (A) appointment of trustee; (B) appointment of successor; (C) resignation of trustee; (D) instructions; (E) approval of investment; (F) approval of sale, mortgage, lease, or other disposition of property; (G) approval of compromise of claim, for each such matter.....\$100
- (5) Proceeding for (A) removal of trustee; (B) order requiring accounting; (C) invalidation of action taken by trustee; (D) termination of trust, for each such matter.....\$100
- (6) Accounting, this fee to be paid for each account filed and to include the settlement of the account.....\$10
- (7) Vesting order.....no charge under part I
- (8) Allowance of fees of trustees, attorneys, or other fees for services incurred in a proceeding for which a fee has been paid under this section.....no charge under part I
- (8a) Registration of a trust, or release of registration, under chapter 560.....\$3
- (9) Any other proceeding relating to a trust.....\$15

Conservatorship:

- (10) Proceeding for (A) appointment; (B) appointment of successor; (C) resignation; (D) instructions, unless included in one of the foregoing proceedings; (E), (F), (G) approval of any matter listed in (E), (F), or (G) of item (4) in relation to a trust, for each such matter.....\$100

- (11) Proceeding of the nature listed in (A), (B), (C), or (D) of item (5) in relation to a trust, for each such matter.....\$15
- (12) Accounting, same as provided by item (6) in relation to a trust.....\$10
- (13) Any other proceeding relating to a conservatorship.....no charge under part I Guardianship:

- (13a) Guardianship, including all matters of the nature listed in items (4) to (9), whether in family or circuit court\$100
- Probate (decedents' estates). These fees include all matters of the nature listed in items (4) to (9), without additional charge:

- (14) Probate, administration, domiciliary foreign personal representative, or ancillary administration, this fee to be paid once only for each decedent's estate.....\$100
- Family court cases:

- (15) Matrimonial action (annulment, divorce, separation, or separate maintenance).....\$100
- (16) Adoption.....\$100
- (17) Guardianship, including all matters of the nature listed in items (4) to (9)...As provided in item 13(a)
- (18) Termination of parental rights...no charge under part I
- (19) Any other family court proceeding, except motions or other pleadings in matrimonial, adoption, and guardianship actions, but including without limitation custody proceedings even if in the form of an habeas corpus proceeding.....\$15

(c) **PART II**

The fees prescribed by this part apply without exception.

Jury trial:

- (21) Demand for jury trial, including without limitation probate cases, appeals to the circuit court, and cases transferred to the circuit court from the district court, this fee to be paid to the court in which the demand is filed by the party first making the demand.....\$200
- (22) Remand to district court in cases transferred to circuit court from district court on demand for jury trial, where jury trial is waived and a remand of such cases to district court is allowed.....\$50

Miscellaneous:

- (23) Filing of notice of appeal, to be paid in addition to the deposit of appeal costs.....\$100
- (24) Search of records by the clerk.....\$2

- (25) Making of copy; comparing of copy with original; certification or authentication of notaries
.....Fees prescribed by section 92-21
- (26) Certification under seal of copy of pleading or other paper subsequent to the initial filing of the pleading or paper, except record on appeal.....\$1
- (27) Exemplification, instead of item (26).....\$2
- (28) Filing of copy of notice of completion of contract, with affidavit of publication.....\$3
- (29) Filing of initial paper under section 507-43 by person asserting mechanic's or materialman's lien (this fee to be additional to the fee prescribed by part I for bringing an action under section 507-47).....\$15
- (30) Filing of any other paper not in a pending proceeding.....\$3
- (31) Printing, publishing, or posting notice; service fees; garnishee fees; mileage charges; or other services actually performed.....Amounts necessary to cover actual costs or disbursements
- (32) For administrative costs associated with the processing of all civil filings except those brought by the State or any of the various counties or political subdivisions of the State....\$50.
[RL 1935, pt of §3791; am L 1939, c 19, pt of §1; am L 1941, c 229, pt of §1; RL 1945, §9745; am L 1945, c 94, §1; RL 1955, §219-5; am L 1957, c 316, §§14 to 22; am L 1966, c 22, §6; HRS §607-5; am L 1972, c 88, §5(g) to (j); am L 1974, c 145, §7; am L 1976, c 200, pt of §1; am L 1986, c 34, §1; am L 1990, c 34, §17; am L 1991, c 140, §3; am L 1998, c 128, §§2, 3; am L 1999, c 92, §2; am L 2003, c 216, §§3, 4; am L 2004, c 3, §1 as superseded by c 202, §62 and c 161, §35; am L 2006, c 20, §2 and c 94, §1; am L 2010, c 109, §1; am L 2011, c 48, §15; am L 2012, c 182, §11]

Cross References

Assessment for bench warrant issuance, see §607-8.5.
 Fees for other court documents, see §92-21.
 Publication of notice, see §601-13.

Rules of Court

See RCC rule 26.

Attorney General Opinions

No fee is required under subsection (b) for an amended complaint. Att. Gen. Op. 61-77.

Case Notes

Failure to deposit cost at time of filing suit is not fatal to case. 9 H. 630 (1895).

"Costs" must be considered as used in the statute in its broad comprehensive sense and to include not alone the statutory costs included in the section eo nomine but also all costs incidentally incurred in the execution by the circuit judge of the duties imposed upon the judge by law pertaining to statutory partition. 35 H. 262, 297 (1939).

In an equity proceeding an award of an attorney's fee as damages may not be made where no injunctive relief has been granted, unless expressly sanctioned by statute. 35 H. 595, 606 (1940).

Nonpayment of costs did not render ineffective a timely filed notice of appeal. 57 H. 168, 552 P.2d 355 (1976).

Cited: 35 H. 682, 684 (1940); 35 H. 779, 782 (1941); 44 H. 613, 622, 359 P.2d 932 (1961).

" **§607-5.5 REPEALED.** L 2004, c 3, §5.

Note

L 2004, c 202, §63 purports to amend this section.

" **§607-5.6 Surcharge for parent education for separating parties in matrimonial actions, where either party has a minor child, and for parties in parentage actions; special fund.** (a) In addition to the fees prescribed under section 607-5 for a matrimonial action where either party has a minor child, or a family court proceeding under chapter 584, the court shall collect a surcharge of \$50 at the time of filing the initial complaint or petition. In cases where the surcharge has been initially waived, the court may collect the surcharge subsequent to the filing with such surcharge to be assessed from either party or apportioned between both parties.

(b) No surcharge shall be assessed:

(1) Against any party who has received an initial waiver of filing fees, except that the court may subsequently determine that a party has the financial ability to pay the surcharge; or

(2) Against any party proceeding on behalf of the State or any of the various counties.

(c) Surcharges subject to this section shall be limited to one surcharge per case.

(d) There is established within the state treasury the parent education special fund into which shall be deposited revenues assessed under subsection (a), interest and investment earnings, grants, donations, and contributions from private or public sources. The fund shall be administered by the judiciary, subject to the conditions specified in subsection (e).

(e) The special fund shall be used solely for expenditures related to providing education on all islands for separating parents in matrimonial actions and parties in parentage actions and their minor children. Revenues deposited into the special fund may be used for existing or enhanced parent education programs administered by the judiciary, or for grants or purchases of service pursuant to chapter 42F. All appropriations or authorizations from the special fund shall be expended by the judiciary.

(f) The judiciary shall submit an annual financial report to the legislature, prior to the convening of each regular session, which shall include an accounting of all deposits and expenditures from the fund. [L 1997, c 274, §2; am L 2003, c 41, §1]

" **§607-5.7 Surcharge for indigent legal services.** (a) In addition to the costs and fees prescribed in section 607-5, any person in a civil action in the circuit court who is required to pay an initial filing fee shall pay an additional surcharge at the time of the person's initial filing as follows:

(1) Effective January 1, 2012, \$50; and

(2) Effective January 1, 2014, \$65.

(b) In addition to the costs and fees prescribed in section 607-4, any person in a civil action in the district court who is required to pay an initial filing fee shall pay an additional surcharge at the time of the person's initial filing as follows:

(1) Effective January 1, 2012, \$25; and

(2) Effective January 1, 2014, \$35.

(c) Any person in a civil action in the courts of appeal who is required to pay an initial filing fee also shall pay an additional surcharge at the time of the person's filing as follows:

(1) Effective January 1, 2012, \$50; and

(2) Effective January 1, 2014, \$65.

(d) Initial filings for which surcharges in this section shall be assessed include:

- (1) Complaints, petitions, interventions, applications for special proceedings, and answers containing one or more cross-claims or counter-claims; and
- (2) Third-party complaints, but shall not include post-judgment civil process.

(e) No surcharge in this section shall be assessed against:

- (1) Small claims cases;
- (2) Petitions for temporary restraining orders;
- (3) Petitions for protective orders;
- (4) Any party who has received the court's permission to proceed in forma pauperis; or
- (5) Any party proceeding on behalf of the county or State.

Surcharges subject to this section shall be limited to one payment per party.

(f) There is established a special fund to be known as the indigent legal assistance fund. The funds raised under subsections (a), (b), (c), and (d) shall be transmitted to the administrative director of the courts and deposited in the indigent legal assistance fund.

(g) This fund shall be administered by the administrative director of the courts, or pursuant to contract with the administrative director of the courts. If the fund is administered pursuant to contract with the administrative director of the courts, the contractor shall be a nonprofit organization that has at least one year's experience in administering grants to providers of civil legal services for indigents. The fund administrator shall receive not more than five per cent of the total amount collected under this section each fiscal year as compensation for performing the duties under this section.

(h) The fund administrator shall annually accept applications for grants funded from the indigent legal assistance fund from organizations that provide civil legal assistance to indigent persons. Applications shall be received no later than April 15 for assistance in the following fiscal year. The fund administrator shall determine the specific information required of the applicant and, at a minimum, shall require applicants to provide information concerning:

- (1) Their governance, staffing, and total annual budget;
- (2) Other funding sources;
- (3) Geographic area of service;
- (4) The number of clients served in the previous fiscal year; and
- (5) The nature and scope of services provided.

(i) To be eligible for assistance from the indigent legal assistance fund, an applicant shall meet all of the following standards at the time of application:

- (1) Be either a nonprofit organization incorporated and operated exclusively in Hawaii and determined by the Internal Revenue Service to be exempt from federal income tax or a program operated exclusively in Hawaii by an accredited nonprofit law school; provided that the organization or program provides as its primary purpose and function civil legal services to indigent persons;
- (2) Have a governing board whose members have no material conflict of interest and serve without compensation;
- (3) Have bylaws or policies that describe the manner in which business is conducted, and policies that relate to nepotism and management of potential conflict of interest situations;
- (4) Have at least one year's experience in providing civil legal services to indigents;
- (5) Be licensed and accredited, as applicable, in accordance with the requirements of federal, state, and county governments;
- (6) Agree not to charge client fees for services that are funded in any part by a grant from the indigent legal assistance fund, except that token payments for costs and expenses shall not be considered fees;
- (7) Agree to use any grant received under this section exclusively to provide civil legal services to indigent persons; and
- (8) Have in place sound financial management systems, a client grievance procedure, a method of ensuring the quality of service provided, and a policy that provides that no person may interfere with any attorneys funded in whole or in part by this section in carrying out their professional responsibilities to their clients, as established by the Hawaii rules of professional conduct.

(j) The administrative director of the courts, or the contractor administering the fund pursuant to contract with the administrative director of the courts, shall review, on a biennial basis, the indigent legal assistance fund to determine whether it is meeting the civil legal needs of indigent persons and shall report its findings and recommendations to the legislature no later than twenty days prior to the convening of the regular session of the legislature in each even-numbered year beginning with the regular session of 2014.

(k) Funds shall be distributed on a pro rata basis to organizations that meet the criteria in subsection (i), based upon the portion of their total budget expended in the prior year for civil legal services to indigent persons as compared to the combined total expended in the prior year for legal services by all qualifying organizations applying for funding. An applicant that provides services other than civil legal services to indigent persons may establish its proportionate entitlement to funds based upon financial statements that strictly segregate the portion of the organization's expenditures in the prior year that were devoted exclusively to the provision of civil legal services for indigents.

(1) As used in this section, unless the context otherwise requires:

"Civil legal services" means direct legal services provided by attorneys or by attorney-supervised staff to clients in civil matters, including pro bono, judicial, and administrative advocacy relating to the civil legal problems of indigents.

"Indigent person" means:

- (1) Any individual whose income is not greater than one hundred twenty-five per cent of the official poverty line established by the Secretary of Health and Human Services under the Community Services Block Grant Act, 42 U.S.C. section 9902;
- (2) Any individual who is eligible for free services under the Older Americans Act or Developmentally Disabled Act; or
- (3) Any organization or client group whose purpose is to further the interests of indigent persons and which is at least fifty per cent composed of persons who meet the requirements of paragraph (1) or (2). [L 1996, c 305, §2; am L 1998, c 121, §§1, 2, 4; am L 2001, c 131, §§1, 2, 4; am L 2011, c 180, §2]

Note

L 1996, c 305, §3, as amended by L 1998, c 121, §3 and L 2001, c 131, §3 provides:

"SECTION 3. The commission on access to justice shall review on a biennial basis the filing fee surcharge program created by Act 305, Session Laws of Hawaii 1996, to determine whether it is meeting the civil legal needs of indigent persons and shall present its findings and recommendations to the legislature no later than January 1 of that year."

" **§607-6 Appellate court costs.** (a) All proceedings in the courts of appeal shall be filed in the office of the clerk of the supreme court. Upon the filing of any appeal or the institution of any original suit, action, or other proceeding in the supreme court or the intermediate appellate court, there shall be paid by the person filing such appeal, or instituting the suit, action, or other proceeding, as appellate court costs, the sum of \$100. For purposes of this section, applications for transfer and applications for writs of certiorari to the intermediate appellate court shall not be deemed other proceedings.

(b) In addition to the costs of court enumerated in subsection (a), the clerk of the supreme court shall charge and collect, for miscellaneous services performed by the clerk, the following sums:

- (1) For filing any paper not in a pending suit, action, or other proceeding.....\$3
- (2) For issuing any subpoena, for each witness to be served.....\$3
- (3) All amounts necessary to cover actual costs or disbursements for printing, publishing, or posting notice, service fees, mileage charges, or other services actually performed. [RL 1935, pt of §3791; am L 1939, c 19, pt of §1; am L 1941, c 229, pt of §1; RL 1945, §9746; RL 1955, §219-6; am L 1957, c 316, §23; HRS §607-6; am L 1972, c 88, §5(k); am L 1974, c 145, §8; am L 1979, c 111, §5(2); gen ch 1985; am L 1989, c 44, §1; am L 1998, c 128, §4; am L 2004, c 3, §2 and c 202, §64; am L 2006, c 94, §1; am L 2010, c 109, §1]

Rules of Court

Costs, see HRAP rules 39, 45(e).

Case Notes

Filing of bond to cover further cost must be in time. 5 H. 591 (1886).

" **§607-7 Deposit and payment of fees and costs on appeal.** [(a)] All fees and costs required to be paid upon the filing of a notice of appeal from a court shall be paid to the clerk of the court from which the appeal is taken. The clerk of the court shall immediately transmit a record of the payments and deposits, along with a copy of the notice of appeal, to the

clerk of the supreme court. The required fees and costs for an appeal shall be payable only once upon the initial filing of the appeal. The deposit shall be made at the time of filing the notice of appeal.

[(b)] Where the appeal is from a governmental official or body other than a court, the required costs and fees for filing the appeal shall be made payable to the clerk of the court to which the appeal is taken and transmitted by the government official or body upon receipt to the clerk of the court to which the appeal is taken, along with a copy of the notice of appeal. If an appeal from a government official or body is taken directly to the intermediate appellate court, the required costs and fees for the appeal shall be payable only once, upon the initial filing of the appeal. [RL 1935, pt of §3791; am L 1939, c 19, pt of §1; RL 1945, §9747; RL 1955, §219-7; HRS §607-7; am L 1970, c 188, §29; am L 1972, c 88, §5(1); am L 1979, c 111, §5(3); am L 2004, c 3, §3 as superseded by c 202, §65; am L 2006, c 91, §5 and c 94, §1; am L 2010, c 109, §1]

Rules of Court

Dismissal for nonpayment, see HRCP rule 72(h).

Case Notes

Nondeposit of costs did not render ineffective a timely filed notice of appeal. 57 H. 168, 552 P.2d 355 (1976).

" **§607-8 Fees of sheriff, deputy sheriff, police officer, serving or levying officer, or independent civil process server.** [Repeal and reenactment on June 30, 2020. L 2015, c 101, §4.]

(a) For all necessary travel in making the service, per mile for every mile more than one... 60 cents provided that:

- (1) No allowance shall be made where the serving individual uses a conveyance furnished the serving individual by the State, or any political or municipal subdivision thereof;
- (2) Where the serving individual serves more than one person in the course of one trip, the serving individual shall not charge, in the aggregate for all services more than the mileage for the entire trip; and
- (3) As far as practicable, in order to minimize the mileage fees for the service, the sheriff or chief of police of the serving police officers, or independent civil process server from the department of public

safety's list under section 353C-10 shall cause the process to be transmitted to the sheriff, deputy sheriff, the chief of police, a police officer, or an independent civil process server upon the island of service who shall make the service upon receipt of the process; and the service shall be valid, notwithstanding that the process may not be addressed to the individual actually making the service or to the individual's superior.

For serving criminal summons or any other criminal process except a subpoena, for each person served therewith..... \$30 effective July 1, 2001.

Service of criminal summons or any other criminal process shall be made only by persons authorized to serve criminal summons.

For serving civil summons, subpoena, subpoena duces tecum, or any other civil process, except a garnishee summons, for each person served therewith..... \$43 effective July 1, 2015.

For serving: garnishee summons, for each person..... \$30 effective July 1, 2015.

For returning as unserved after due and diligent search any process when it has been found that the person to be served has left the State \$10 effective July 1, 2015.

For serving any execution or other process for the collection of money, for every dollar collected up to \$10,000..... 5 cents.

And for every dollar over \$10,000 ... 2-1/2 cents.

All fees paid to any printer for publishing an advertisement of the sale of any property.

For every bill of sale..... \$4.

For executing and acknowledging a deed pursuant to a sale of real estate to be paid by the grantee in the deed..... \$10.

For drawing any bond required by law..... \$4.

For serving writ of possession or restitution, putting any person entitled into the possession of premises, and removing a tenant pursuant to order of court..... \$40.

Together with all necessary expenses incurred by the individual serving the writ, incident to the eviction.

For selling any property on an order from the court other than an execution, the same allowance as for service and sales by execution.

The fees for service of executions, attachments, and collection of judgments, together with all costs incurred after judgment rendered, not included in the judgment, in all courts

of the State, shall be collected in addition to the sum directed to be levied and collected in the writ.

In lieu of any fee under this subsection, the fee may be an hourly rate of not less than \$50 per hour agreed upon in advance between the party requesting the service and the sheriff, deputy sheriff, police officer, or independent civil process server performing the service.

(b) Notwithstanding anything in this section or any other law to the contrary, when any process or subpoena is served by a subordinate of the sheriff or chief of police, it shall be illegal for the sheriff or chief of police:

- (1) If and so long as the sheriff or chief of police is being paid a salary by the State or the county, to receive or collect from the subordinate any portion of the fees, mileage, or other expenses collected by the subordinate; or
- (2) If and so long as the sheriff or chief of police is not being paid any salary, to collect or receive from the subordinate more than ten per cent of the fees accruing from the service, or any portion of the mileage or other expenses collected by the subordinate.

Where a subpoena is served in behalf of the State or any county by a nonsalaried subordinate of the sheriff or chief of police, the regular fee for the service shall be payable to the subordinate. Nothing in this section shall be deemed to prohibit the police commission of any county from requiring that all fees, mileage, and expenses be paid into a police benefit fund. [RL 1935, pt of §3791; am L 1939, c 19, pt of §1; RL 1945, §9748; am L 1949, c 387, §2; RL 1955, §219-8; am L 1963, c 85, §3; HRS §607-8; am L 1968, c 61, §3; am L 1969, c 23, §2; am L 1972, c 88, §5(m); am L 1973, c 55, §2; am L 1974, c 149, §2; am L 1975, c 112, §2; am L 1978, c 127, §2; am L 1979, c 111, §5(4); am L 1980, c 96, §2; am L 1984, c 52, §2; gen ch 1985; am L 1989, c 211, §10; am L 1990, c 58, §2 and c 281, §11; am L 2001, c 214, §3; am L 2012, c 142, §4; am L 2013, c 116, §§6, 25(5); am L 2015, c 125, §2; am L 2016, c 55, §21]

Note

The L 2015, c 125 amendment is exempt from the repeal and reenactment condition of L 2013, c 116, §25. L 2015, c 125, §5.

Case Notes

Cited: 34 H. 363, 375 (1937).

" **[\$607-8.5] Assessment for bench warrant issuance.** The court, when issuing a bench warrant for any person who fails to appear or who otherwise fails to comply with a court order, may assess that person a sum not to exceed \$50 for the cost of issuing the bench warrant. [L 1999, c 92, §3]

" **§607-9 Cost charges exclusive; disbursements.** [(a)] No other costs of court shall be charged in any court in addition to those prescribed in this chapter in any suit, action, or other proceeding, except as otherwise provided by law.

[(b)] All actual disbursements, including but not limited to, intrastate travel expenses for witnesses and counsel, expenses for deposition transcript originals and copies, and other incidental expenses, including copying costs, intrastate long distance telephone charges, and postage, sworn to by an attorney or a party, and deemed reasonable by the court, may be allowed in taxation of costs. In determining whether and what costs should be taxed, the court may consider the equities of the situation. [RL 1935, pt of §3791; am L 1939, c 19, pt of §1; RL 1945, §9749; RL 1955, §219-9; HRS §607-9; am L 1972, c 88, §5(n); am L 1989, c 4, §1]

Cross References

Taxation of costs, see §§607-12 to 607-16.

Rules of Court

Costs of previously dismissed action, see HRCP rule 41(d).

District courts, see DCRCP rule 54(d).

Taxation of costs, see HRCP rule 54(d).

Case Notes

Determination of reasonable disbursements rests in discretion of trial judge. 39 H. 482, 487 (1952).

Time for taxation of costs. See HRCP rule 58; 49 H. 311, 313, 417 P.2d 636 (1966).

Costs of copies of depositions not allowable. 59 H. 319, 582 P.2d 710 (1978).

Under circumstances of case, court did not exceed bounds of reason or disregard principles of law or practice to substantial detriment of defendants in awarding taxable costs. 86 H. 214, 948 P.2d 1055 (1997).

As §607-13 specifically addresses awarding of traveling expenses to a prevailing defendant, it controls over this general statute; defendant's traveling expenses thus limited to that mandated in §607-13. 88 H. 46, 961 P.2d 611 (1998).

Costs incurred after conclusion of circuit court proceeding, solely for purpose of preparing motion for reimbursement of costs already incurred, are not themselves taxable costs. 88 H. 46, 961 P.2d 611 (1998).

When costs are awardable to a prevailing party under HRCP rule 54(d) and a particular taxable cost is allowed by statute or precedent, then actual disbursements for this purpose are presumptively reasonable; the adverse party has the burden of challenging the reasonableness of a particular cost request; in the absence of a challenge to a particular request, no abuse of discretion for court to award cost requested as cost presumptively reasonable. 88 H. 46, 961 P.2d 611 (1998).

Reading this section and HRCP rule 68 in pari materia, the term "costs" in rule 68 refers to all actual disbursements deemed reasonable by the court. 89 H. 292, 972 P.2d 295 (1999).

Under this section, a prevailing party is entitled to recover for intrastate long distance telephone charges, postage, and other incidental expenses--such as facsimile expenses--deemed reasonable by the court. 96 H. 327, 31 P.3d 184 (2001).

Where a prevailing party has "obtained" "a final judgment" "against the State", the court may award the prevailing party its "actual disbursements" pursuant to §607-24, this section, and HRAP rule 39. 110 H. 269, 132 P.3d 378 (2006).

As decision to award costs is discretionary and the trial court "may", but need not, "consider the equities of the situation", trial court did not abuse discretion in refusing to grant plaintiffs' motion to disallow costs awarded to defendants as prevailing parties. 112 H. 3, 143 P.3d 1205 (2006).

Specified costs and expenses disallowed. 2 H. App. 400, 633 P.2d 556 (1981).

Where writ of attachment has not been discharged, whether charges for the attachment bond is allowable cost is governed by this section and HRCP rule 54(d). 3 H. App. 89, 641 P.2d 989 (1982).

This section is not an exclusive list; thus, trial court did not abuse discretion in awarding the cost of photo enlargements. However, messenger fees are not taxable costs and should have been excluded from amount awarded. 110 H. 204 (App.), 130 P.3d 1069 (2006).

Attorney's fees.

In divorce or separation suits. 5 H. 175 (1884); 19 H. 463, 466 (1909); 30 H. 61 (1927). In equity cases. 17 H. 489

(1906); cf. 10 H. 462 (1896); 13 H. 237 (1901); 13 H. 328 (1901) (decided before 1905 Am.). On appeal. 22 H. 20 (1914); cf. 16 H. 635 (1905). Effect of discontinuance. 7 H. 3 (1887). Of nonsuit. 21 H. 408 (1913). Of dismissal for failure to give security for costs. 19 H. 258 (1908). Whether classed as "costs". 21 H. 368 (1912); cf. 16 H. 635 (1905); 33 H. 456 (1935); 39 H. 448 (1952). Attorney conducting own case. 16 H. 803 (1905). Counsel fees on dissolution of temporary injunction. 21 H. 368 (1912). Considered. 42 H. 490 (1958); 44 H. 147, 335 P.2d 40 (1960); 44 H. 297, 353 P.2d 820 (1960); 44 H. 365, 355 P.2d 40 (1960); 46 H. 475, 382 P.2d 920 (1963). Fees of foreign attorney taking deposition. 49 H. 311, 417 P.2d 636 (1966). Against the government. 2 U.S.D.C. Haw. 210, 213 (1904).

Ordinarily attorney's fees not allowed as damages or costs where not so provided by statute, stipulation or agreement. 56 H. 111, 530 P.2d 7 (1974).

Bond premium.

On new trial bond. 31 H. 352 (1930).

Costs and expenses of attorneys.

Attorney intrastate travel expenses for depositions are allowable as taxable costs and should be awarded if deemed reasonable by the court. 88 H. 46, 961 P.2d 611 (1998).

Expenditures for parking, rental car, and gas are within scope of intrastate travel expenses and presumptively recoverable; hotel expenses reasonable only if necessary due to the scheduling of court proceedings or depositions but should not be allowed for convenience of counsel. 88 H. 46, 961 P.2d 611 (1998).

Routine expenses related to operating law practice generally not taxable costs; party would have to show compelling rationale for court to grant "office supplies" expense; meals also not taxable costs. 88 H. 46, 961 P.2d 611 (1998).

Although expenditures for airfare, parking, rental car, and gas clearly fall within this section's "intrastate travel expenses" category, meals are not taxable costs and should have been deducted from attorney's award of costs for travel expenses. 114 H. 202, 159 P.3d 814 (2007).

Trial court did not abuse its discretion in awarding attorney costs for "messenger services" where it was reasonable for trial court to have allowed a portion of the cost for the expense of mailing the numerous filings from Oahu to Hawaii, the trial court had actually reduced the amount of the requested costs, and despite having detailed itemized invoice information for these services, defendants did not provide any evidence that any

specific delivery costs were unnecessary or unreasonable. 114 H. 202, 159 P.3d 814 (2007).

Trial court did not abuse its discretion in awarding attorney court reporter expenses where, despite having detailed itemized invoice information for this service, defendants only made a general objection and did not indicate which of the depositions were unreasonably obtained or unnecessary; defendants thus failed to carry their burden of showing that the trial court abused its discretion. 114 H. 202, 159 P.3d 814 (2007).

Although refusing to assess the costs of the depositions against non-prevailing party petitioner was within the court's discretion if the court found that the depositions were not necessarily obtained for use at trial or that to do so would be inequitable, it was error under this section for the court to deny costs to the prevailing party respondent without justification, unless the circumstances justifying the denial of the costs were plain from the record; thus, issue remanded to allow the court to set forth the reasons for not assessing petitioner the deposition costs of petitioner and two doctors. 128 H. 423, 290 P.3d 493 (2012).

Lawyers' disbursements for using WESTLAW are expenses included within attorney fees and are not taxable costs. 81 H. 105 (App.), 912 P.2d 602 (1996).

Reasonable disbursements for FAX transmissions are taxable costs. 81 H. 105 (App.), 912 P.2d 602 (1996).

Circuit court did not abuse discretion in awarding attorney's costs motion for photocopies, facsimile, telephone, depositions, travel and postage, but, as attorney was not entitled to reimbursement for messenger costs, as such costs are considered part of office overhead, court should have awarded attorney courier costs and nothing for messenger costs. 123 H. 82 (App.), 230 P.3d 382 (2009).

Discontinuance.

Effect on power to tax costs. 31 H. 147 (1929). On attorney's fees. 7 H. 3 (1887).

Equity.

Discretion of trial judge. 17 H. 326 (1906). Expenses and compensation of master. 21 H. 428 (1913). Attorney's fees, see above.

On appeal.

As to attorney's fees or commissions. 16 H. 635 (1905); 22 H. 20 (1914).

Costs paid by defendant on plaintiff's successful appeal to U.S. Supreme Court where defendant finally prevailed in litigation. 19 H. 179 (1908).

Transcript of evidence. 20 H. 467 (1911); 21 H. 166 (1912); cf. 21 H. 462 (1913); 29 H. 853 (1927) (where agreement to share cost); 32 H. 67 (1931) (prepared from day to day).

Expense of comparing, certifying and typing record. 21 H. 166 (1912).

Unnecessary portions of record. 21 H. 166 (1912); 21 H. 462 (1913); 22 H. 753, 757 (1915), aff'd 239 F. 836 (1917); 24 H. 426 (1918).

Party prevailing on appeal entitled to. 21 H. 462 (1913).

"Petition, plea or paper".

Includes original exhibits and certified copies and other documents; applies to supreme court. 20 H. 467 (1911).

Separate bills.

19 H. 258 (1908).

Sheriff's fees.

Auctioneer's expenses or commissions. 4 U.S.D.C. Haw. 137, 139 (1912).

Travel fees of marshal or sheriff for serving a summons or other process (except a subpoena) are taxable. 11 H. 188 (1897).

Witness fees.

Witness fees taxable as costs even though subpoena served by officer not authorized. 20 H. 203, 214 (1910). If witness fees not taxable under §607-12, not taxable in part as "actual disbursements" under this section. 31 H. 177 (1929).

Expert witness fees not taxable. 51 H. 346, 461 P.2d 140 (1969).

Cited: 29 H. 250, 255 (1926); 57 H. 378, 557 P.2d 788 (1976).

" **§§607-10 and 607-11 REPEALED.** L 1972, c 88, §5(x).

" **§607-12 Witnesses' fees, mileage; taxation.** [(a)] The fees of witnesses shall be as follows: Every witness attending and testifying, or subpoenaed and attending, upon the trial of any civil cause, in any court, shall be paid the sum of \$4 for each day's attendance in court, and traveling expenses at the

rate of 20 cents a mile each way. Every such witness, coming to attend upon court from any island other than that upon which the court is holding session, shall be entitled to \$6 for each day's attendance in addition to the actual round trip cost of plane or ship travel and 20 cents for each mile actually and necessarily traveled on the ground each way.

[(b)] The fees of witnesses may be taxed in the bill of costs as provided by section 607-9. [CC 1859, pt of §1280; am L 1884, c 30, §1; am imp L 1903, c 63, §1; am L 1919, c 5, §1; RL 1925, §2549; am L 1925, c 24, §1; RL 1935, §3798; RL 1945, §9752; RL 1955, §219-12; HRS §607-12; am L 1972, c 88, §5(o)]

Case Notes

As to disallowance of witness fee. 7 H. 1 (1887).

Cost of bringing witnesses cannot be taxed against the other party when it is not authorized. 9 H. 597 (1895).

Expert witnesses. 21 H. 408 (1913).

Necessity for subpoena under former statute. 21 H. 408, 422 (1913); cf. 20 H. 203 (1910) (unauthorized service of subpoena); of witnesses summoned before trial. 10 H. 398 (1896) (both decided under former statute), questioned on other grounds. 14 H. 301, 302 (1902).

Called by opposing party. 30 H. 100 (1927).

Subpoenaed but not called. 31 H. 147 (1929); 31 H. 177 (1929).

Expert witness fees not taxable as costs. 51 H. 346, 461 P.2d 140 (1969).

This section does not direct payment of out of state traveling expenses to a witness from a foreign state testifying in a civil case. 57 H. 378, 557 P.2d 788 (1976).

Out-of-state witnesses. 59 H. 319, 582 P.2d 710 (1978).

Subpoenaed witness who did not testify must have been in actual attendance at trial to be entitled to fees. 59 H. 319, 582 P.2d 710 (1978).

Expert witness fees are not taxable as costs, absent a statute specifically allowing such an expense. 69 H. 192, 738 P.2d 85 (1987).

" **§607-13 Costs; defendant's traveling expenses taxable items in certain events.** Whenever any cause or proceeding, other than criminal, probate, or divorce, is discontinued or dismissed in any court, the defendant therein shall be entitled to have the defendant's traveling expenses, to be charged at the rate of 10 cents a mile each way in going to and returning from the court, taxed as costs. [L 1915, c 16, §1; RL 1925, §2550; RL

1935, §3799; RL 1945, §9753; RL 1955, §219-13; HRS §607-13; am L 1972, c 88, §5(p); gen ch 1985]

Case Notes

Section specifically addresses awarding of traveling expenses to a prevailing defendant and controls over general statute §607-9; defendant's traveling expenses thus limited to that mandated in this section. 88 H. 46, 961 P.2d 611 (1998).

" **§607-14 Attorneys' fees in actions in the nature of assumpsit, etc.** In all the courts, in all actions in the nature of assumpsit and in all actions on a promissory note or other contract in writing that provides for an attorney's fee, there shall be taxed as attorneys' fees, to be paid by the losing party and to be included in the sum for which execution may issue, a fee that the court determines to be reasonable; provided that the attorney representing the prevailing party shall submit to the court an affidavit stating the amount of time the attorney spent on the action and the amount of time the attorney is likely to spend to obtain a final written judgment, or, if the fee is not based on an hourly rate, the amount of the agreed upon fee. The court shall then tax attorneys' fees, which the court determines to be reasonable, to be paid by the losing party; provided that this amount shall not exceed twenty-five per cent of the judgment.

Where the note or other contract in writing provides for a fee of twenty-five per cent or more, or provides for a reasonable attorney's fee, not more than twenty-five per cent shall be allowed.

Where the note or other contract in writing provides for a rate less than twenty-five per cent, not more than the specified rate shall be allowed.

Where the note or other contract in writing provides for the recovery of attorneys' fees incurred in connection with a prior debt, those attorneys' fees shall not be allowed in the immediate action unless there was a writing authorizing those attorneys' fees before the prior debt was incurred. "Prior debt" for the purposes of this section is the principal amount of a debt not included in the immediate action.

The above fees provided for by this section shall be assessed on the amount of the judgment exclusive of costs and all attorneys' fees obtained by the plaintiff, and upon the amount sued for if the defendant obtains judgment.

Nothing in this section shall limit the recovery of reasonable attorneys' fees and costs by a planned community

association and its members in actions for the collection of delinquent assessments, the foreclosure of any lien, or the enforcement of any provision of the association's governing documents, or affect any right of a prevailing party to recover attorneys' fees in excess of twenty-five per cent of the judgment pursuant to any statute that specifically provides that a prevailing party may recover all of its reasonable attorneys' fees. "Planned community association" for the purposes of this section means a nonprofit homeowners or community association existing pursuant to covenants running with the land. [L 1872, c 29, §5; RL 1925, §2551; RL 1935, §3800; am L 1935, c 26, §1; RL 1945, §9754; RL 1955, §219-14; HRS §607-14; am L 1972, c 88, §5(q); am L 1993, c 200, §1; am L 1994, c 74, §1; am L 1997, c 132, §2]

Cross References

Planned community associations, see chapter 421J.

Law Journals and Reviews

Rethinking Attorney's Fees in Assumpsit Actions. 13 HBJ, no. 13, at 115 (2009).

Case Notes

In a diversity based breach of contract action involving California guaranty law and federal securities laws, Hawaii court properly applied California law on attorney's fees. 557 F.2d 1351 (1977).

Error to find section inapplicable solely because tort claims included in complaint. 673 F.2d 284 (1982).

Presumption that complaint sounds in assumpsit and not in tort. 673 F.2d 284 (1982).

District court appropriately determined that plaintiffs' action, where complaint alleged negligence, breach of contract, breach of express and implied warranty, and legal malpractice, and prayer for relief requested attorney fees and costs, was "in the nature of assumpsit" for purposes of this section. 105 F.3d 530 (1997).

District court correctly deemed individual plaintiffs to be "losing parties" within meaning of this section. 229 F.3d 877 (2000).

District court did not err in awarding employer attorneys' fees, where employees argued that employer's claim for breach of employees' duty of loyalty was not an assumpsit action because

the remedy awarded, disgorgement, was not a proper remedy for breach of contract. 338 F.3d 1082 (2003).

Bankruptcy court did not err in applying the twenty-five per cent limit on attorneys' fees where appellant debtor requested only damages and attorneys' fees for debtor's breach of contract claim; further, the monetary damages for the contract claim were easily discernible as debtor's lost equity in debtor's property; moreover, debtor's election of remedies did not render the value returned to debtor an "economic incident of the judgment" that can escape the twenty-five per cent limit. 674 F.3d 1083 (2012).

Recovery upon rescission of contract is in assumpsit. 225 F. Supp. 474 (1964); 5 H. App. 174, 683 P.2d 883 (1984).

This section applicable where plaintiff sued on insurance policy under clause of policy permitting suit by one recovering judgment against insured. 255 F. Supp. 710 (1966).

Court did not have jurisdiction and therefore could not reach whether defendants were "prevailing parties" for purposes of this section. 679 F. Supp. 2d 1220 (2010).

Because defendant obtained judgment in the action, the twenty-five per cent limitation on attorneys' fees should be based upon the amount sued for, i.e., the value of the loan amount. 933 F. Supp. 2d 1264 (2013).

In order to be deemed the prevailing party for purposes of this section, defendant must have obtained final judgment in its favor. Insofar as the court entered final judgment in defendant's favor, there could be no dispute that defendant was the prevailing party. 933 F. Supp. 2d 1264 (2013).

Where two of the five claims in the complaint were in the nature of assumpsit, the court could not practicably apportion between the assumpsit and non-assumpsit claims because the claims were inextricably intertwined. Moreover, the hours expended in the action and motions practice were not directed at any specific claims. 933 F. Supp. 2d 1264 (2013).

Necessity for final determination of cause. 12 H. 348 (1900) (summons or service quashed); 19 H. 258 (1908) (dismissal for failure to give security for costs); 21 H. 408 (1913) (nonsuit for failure of proof); 39 H. 254 (1952) (judgment sustaining demurrer); cf. 16 H. 783 (1904) (judgment for defendant on special demurrer).

After appeal from district court computed on circuit court judgment. 14 H. 495 (1902).

Effect of partial reduction of judgment on appeal. 16 H. 635 (1905).

Where plaintiff is attorney. 16 H. 803 (1905). Whether classed as "costs". 21 H. 368 (1912); cf. 16 H. 635 (1905). Payable as part of judgment. 24 H. 16 (1917).

Not allowed against government. 20 H. 112 (1910).

"Assumpsit" defined. 21 H. 583 (1913); 29 H. 376, 386 (1926); 40 H. 92 (1953).

Where an appeal judgment for appellee is vacated and case remanded for new trial, appellee not entitled to attorney's fees. 62 H. 34, 609 P.2d 137 (1980).

Claim was in the nature of assumpsit. 67 H. 433, 690 P.2d 279 (1984).

Where there is a specific contractual provision for attorney's fees, §607-17 should be applied. 72 H. 4, 803 P.2d 199 (1990).

Section inapplicable where claim sounds in tort rather than assumpsit. 74 H. 1, 837 P.2d 1273 (1992).

Appellants entitled to award of reasonable attorneys' fees incurred in bringing appeal on the action for breach of the covenant against encumbrances. 76 H. 396, 879 P.2d 501 (1994).

Supreme court has jurisdiction to award reasonable attorneys' fees incurred on appeal, and supreme court may do so if requirements of HRAP rule 39(d) and this section are met; decisions about fees incurred at trial level more properly within trial court's discretion. 76 H. 396, 879 P.2d 501 (1994).

Where plaintiff's claim for specific enforcement of agreement was not action in assumpsit, trial court's denial of plaintiff's request for attorney's fees against defendant proper. 85 H. 19, 936 P.2d 655 (1997).

Under this section, an action in the nature of assumpsit does not need a clause in writing providing for attorneys' fees in order for attorneys' fees to be granted. 86 H. 21, 946 P.2d 1317 (1997).

Under this section, attorneys' fees may be awarded in three types of cases: all actions in the nature of assumpsit; all actions on a promissory note; and contracts in writing that provide for an attorney's fee. 86 H. 21, 946 P.2d 1317 (1997).

Further waiver of sovereign immunity not necessary for this section to apply to the State and its agencies in matters in which, by virtue of the express waiver of sovereign immunity set forth in §661-1, the State has become a party. 87 H. 37, 951 P.2d 487 (1998).

Where Oregon law firm did not "practice law within the jurisdiction" of Hawaii, it did not violate §605-14 nor §605-17; thus plaintiff could recover fees under this section for services rendered by firm. 87 H. 37, 951 P.2d 487 (1998).

Where plaintiffs prevailed "on the disputed main issue", they were entitled to recoup all of their litigation expenses pursuant to this section. 87 H. 37, 951 P.2d 487 (1998).

As this section does not expressly or obviously manifest an intent to be applied retroactively, the 1993 amendment does not

apply retroactively to litigation terminated prior to the effective date of the amendment, July 1, 1993. 88 H. 46, 961 P.2d 611 (1998).

Proper cap on the maximum amount of attorneys' fees that can be awarded as a result of circuit court action where final judgment was entered in 1992 is that found in the statute in effect in 1992; this statutory cap is the maximum total amount that can be awarded, not an amount that can be awarded to each prevailing party. 88 H. 46, 961 P.2d 611 (1998).

Where the maximum possible judgment is capable of determination, it should serve as a limit on the amount of the defendant's attorney's fees pursuant to this section. 88 H. 115, 962 P.2d 374 (1998).

Where reduction of the attorneys' fees requested was supported by the record, trial court's reduction of fees without explanation was not abuse of discretion. 90 H. 25, 975 P.2d 1145 (1998).

Award of attorneys' fees for defendant erroneous where plaintiff's claims against defendant stemmed primarily from allegations of fraud, breach of fiduciary duty, and statutory violations, not breach of contract. 92 H. 243, 990 P.2d 713 (1999).

Where purchaser prevailed on its claim to the contract deposit and successfully defended against plaintiff's specific performance/breach claim, purchaser, "on balance", was the prevailing party on the issues in the case and was thus entitled to reasonable attorneys' fees under this section. 92 H. 482, 993 P.2d 516 (2000).

Plaintiff not entitled to attorneys' fees pursuant to this section for plaintiff's appeal as an appeal is not a distinct "action" but a continuation of the original action and plaintiff's underlying action in the trial court sounded in tort and not assumpsit. 93 H. 1, 994 P.2d 1047 (2000).

A defendant who succeeds in obtaining a judgment of dismissal is a prevailing party for the purposes of fees under this section. 96 H. 327, 31 P.3d 184 (2001).

In appropriate cases, a request or award of attorneys' fees may include compensation for separately billed legal services performed by a paralegal, legal assistant, or law clerk; the reasonableness of legal assistant fees must be reviewed on a case by case basis for the value of services rendered and an award of such fees must be limited to charges for work performed that would otherwise have been required to be performed by a licensed attorney at a higher rate. 96 H. 327, 31 P.3d 184 (2001).

As proceedings under §431:15-323 are not in the nature of assumpsit, trial court did not err in denying insurance

commissioner attorneys' fees under this section in suit against customer of liquidated mutual benefit society. 99 H. 53, 52 P.3d 823 (2002).

Section applies only to court actions and not arbitration proceedings; thus, section does not affect disputes submitted in arbitration. 102 H. 210, 74 P.3d 33 (2003).

The plain language of this section does not require a judgment on the merits; a dismissal of plaintiff's action, albeit voluntary, was sufficient to deem a defendant to be the prevailing party and the plaintiff the losing party; thus defendant was the "prevailing party" and plaintiff was the "losing party" for the purpose of awarding attorneys' fees pursuant to this section. 103 H. 26, 79 P.3d 119 (2003).

Trial court erred in awarding attorneys' fees to insurer pursuant to this section as this section does not provide for attorneys' fees in declaratory judgment actions; relief sought by insured and insurer was a declaration as to the applicability of insurance coverage for insured's injuries, not money damages, and was thus not in the nature of assumpsit. 103 H. 263, 81 P.3d 1178 (2003).

Where record on appeal did not reflect whether the trial court apportioned fees between assumpsit and non-assumpsit claims, appellate court could not effectively review whether trial court abused its discretion in awarding attorneys' fees as it did; thus, case vacated and remanded for redetermination. 107 H. 106, 111 P.3d 1 (2005).

Where allowing insurer to seek attorney's fees under this section would have contravened the attorney's fee award scheme set forth in §431:10C-211, trial court did not abuse its discretion in denying insurer's motion for attorney's fees and costs. 109 H. 537, 128 P.3d 850 (2006).

Where underlying appeal involved an adjudication of rights in which no monetary liability was in issue, the twenty-five per cent limitation was inapplicable to the case. 110 H. 217, 131 P.3d 500 (2006).

Where plaintiff's allegations were that engineering firm's and State's negligent failure to protect plaintiff from "dangerous and/or defective conditions" legally caused plaintiff's injuries, plaintiff's claims sounded in tort, not assumpsit; thus, plaintiff was not entitled to attorney's fees under this section. 110 H. 269, 132 P.3d 378 (2006).

Plaintiff entitled to attorneys' fees under this section where plaintiff successfully defended claim of breach of contract; trial court did not abuse discretion in awarding attorneys' fees where amount was well within twenty-five per cent of the judgment, was well-documented, and trial judge had personal knowledge of the complexity of the litigation and the nature and

quality of the legal services rendered before it. 111 H. 286, 141 P.3d 459 (2006).

Trial court did not abuse discretion in denying defendants' motion for attorneys' fees under this section where lien application was brought pursuant to the mechanic's lien statute, §507-47, and, as such, was not a common law action, and the action was for the attachment of a mechanic's lien to the subject property, not for damages based upon the underlying contract; thus, the action was not in the nature of assumpsit. 111 H. 349, 141 P.3d 996 (2006).

Where plaintiffs' claims for relief did not involve monetary damages based upon the non-performance of a contractual agreement for legal services between defendants and hotel operator, but primarily requested a declaration and injunction, the "essential character" of the action was not in the nature of assumpsit; thus, trial court abused its discretion in granting attorneys' fees to defendants. 113 H. 251, 151 P.3d 732 (2007).

Where homeowner association was a nonprofit organization and the covenants in its first declaration ran with the land, it was a "planned community association" for purposes of this section; thus, association was not subject to the twenty-five per cent cap on its attorneys' fees incurred on appeal. 114 H. 361, 162 P.3d 1277 (2007).

Based on the plain language of this section and, because the amount the jury awarded terminated attorney plaintiff differed from the amount sued for, the amount of attorneys' fees awarded varied when the prevailing party changed from plaintiff to defendant law firm; as law firm limited its fee request to its assumpsit claim, the calculation of which was dictated by this section, it was unnecessary for the trial court to apportion fees between assumpsit and non-assumpsit claims; and, as there was adequate documentation, trial court did not abuse its discretion in granting law firm's motion for attorneys' fees. 117 H. 92, 176 P.3d 91 (2008).

The plain language of §658A-21(b) and its related commentary from the Uniform Arbitration Act established that awards of attorneys' fees can be valid and authorized based on a party agreement, even if the resulting award exceeds the twenty-five per cent of the judgment limitation included in this section. 123 H. 476, 236 P.3d 456 (2010).

Section did not apply to plaintiff's suit for specific performance, but applied to defendant's counterclaim in the nature of assumpsit. 2 H. App. 400, 633 P.2d 556 (1981).

Under circumstances, attorney's fees should have been awarded in accordance with this section rather than §607-17. 2 H. App. 551, 634 P.2d 1052 (1981).

Action in the nature of reformation does not fall within scope of this section. 3 H. App. 101, 641 P.2d 1361 (1982).

Where contract fully performed, action on contract for sum certain is "in the nature of assumpsit". 3 H. App. 624, 656 P.2d 1353 (1983).

When calculating "amount sued for", life expectancy tables and present value of future benefits may be used. 4 H. App. 455, 667 P.2d 844 (1983).

Error to award fees based on punitive damages counterclaim. 5 H. App. 174, 683 P.2d 833 (1984).

Action to collect on judgment rendered in proceeding to confirm arbitrator's award not an assumpsit action. 5 H. App. 315, 690 P.2d 1310 (1984).

Under circumstances, attorney's fees should have been awarded in accordance with this section rather than §607-17. 5 H. App. 581, 704 P.2d 930 (1985).

Computation of fees on complaint and counterclaim; exclusion where fees based on duplicative claim. 5 H. App. 603, 705 P.2d 67 (1985).

In making attorney's fee awards under §666-14 and this section, the trial court must designate the specific amount awarded pursuant to each statute to prevent duplicative awards and permit effective appellate review of awards. 85 H. 501 (App.), 946 P.2d 609 (1997).

Landlord entitled to include partial rental payments received from tenant after landlord initiated suit as part of judgment for purpose of computing attorney's fees under this section. 85 H. 501 (App.), 946 P.2d 609 (1997).

Pursuant to this section, attorney's fees may be awarded under a sublease as a sublease is contractual in nature and this section authorizes such an award in all actions on "contract[s] in writing that provides for an attorney's fee". 85 H. 501 (App.), 946 P.2d 609 (1997).

The amount of the judgment upon which attorneys' fees are calculated under this section should include prejudgment interest. 85 H. 501 (App.), 946 P.2d 609 (1997).

Under §666-14, a landlord may, incident to a summary possession action, seek attorney's fees attributable to the summary possession action which are in addition to, but not duplicative of, any fees awarded under this section. 85 H. 501 (App.), 946 P.2d 609 (1997).

Section places a twenty-five per cent maximum total combined limit that can be taxed against a losing party by both the trial and appellate courts. 87 H. 350 (App.), 956 P.2d 1282 (1998).

Where counterclaim clearly sued for the amount of additional storage fees to be incurred for detained vehicle, twenty-five per cent of this amount was properly included in the amount

prevailing counterclaim defendant was entitled to in attorneys' fees under this section. 97 H. 47 (App.), 33 P.3d 543 (2001).

Where attorney, as an individual, was not involved in the appeal and did not conduct "his own case", but was involved in the case as trustee and as the attorney for the trustee, the court could not award attorney fees to an attorney for representing a trustee when the same person was both the attorney and trustee as (1) there was the problem of double recovery (of trustee fees and attorney fees) and (2) there was the problem presented by rule 1.7 of the Hawaii rules of professional conduct--the general rule regarding conflict of interest. 112 H. 231 (App.), 145 P.3d 774 (2006).

Trial court did not err in awarding attorneys' fees based on the unjust enrichment award where plaintiffs' unjust enrichment claim was appropriately tried to the court (with the jury sitting in an advisory capacity), thereby essentially ruling that the action was an equity action within the realm of assumpsit. 116 H. 42 (App.), 169 P.3d 994 (2007).

Where the circuit court granted plaintiff's complaint for declaratory judgment, which effectively stopped defendants from continuing with their plans, plaintiff was the prevailing party and was properly awarded attorneys' fees and costs. 123 H. 500 (App.), 236 P.3d 1236 (2010).

A law firm that prevails in a court action to collect fees from a client may also be awarded attorney fees under this section for the work of an attorney employed with the law firm who represents the firm in the collection action. 124 H. 187 (App.), 238 P.3d 714 (2010).

Based on the facts and issues raised in plaintiff's complaint, the nature of the grievance, and the relief sought, where the essential character of the underlying action was one of equitable contribution under §483-2 and was not an action in the nature of assumpsit under this section, the circuit court abused its discretion in awarding attorney's fees and costs to defendants under this section. 128 H. 366 (App.), 289 P.3d 1002 (2012).

Cited: 654 F. Supp. 2d 1142 (2009); 2 U.S.D.C. Haw. 210, 213 (1904); 5 H. 283, 284 (1885); 35 H. 907, 910 (1941); 37 H. 295, 304 (1946); 48 H. 306, 328, 402 P.2d 440 (1965); 49 H. 241, 243, 413 P.2d 242 (1966).

Discussed: 853 F. Supp. 2d 1031 (2011); 871 F. Supp. 2d 1040 (2012); 9 H. App. 591, 855 P.2d 858 (1993).

Mentioned: 76 H. 487, 879 P.2d 1070 (1994).

Referred to: 49 H. 578, 586, 587, 615, 426 P.2d 298 (1967).

" **§607-14.5 Attorneys' fees and costs in civil actions.** (a) In any civil action in this State where a party seeks money damages or injunctive relief, or both, against another party, and the case is subsequently decided, the court may, as it deems just, assess against either party, whether or not the party was a prevailing party, and enter as part of its order, for which execution may issue, a reasonable sum for attorneys' fees and costs, in an amount to be determined by the court upon a specific finding that all or a portion of the party's claim or defense was frivolous as provided in subsection (b).

(b) In determining the award of attorneys' fees and costs and the amounts to be awarded, the court must find in writing that all or a portion of the claims or defenses made by the party are frivolous and are not reasonably supported by the facts and the law in the civil action. In determining whether claims or defenses are frivolous, the court may consider whether the party alleging that the claims or defenses are frivolous had submitted to the party asserting the claims or defenses a request for their withdrawal as provided in subsection (c). If the court determines that only a portion of the claims or defenses made by the party are frivolous, the court shall determine a reasonable sum for attorneys' fees and costs in relation to the frivolous claims or defenses.

(c) A party alleging that claims or defenses are frivolous may submit to the party asserting the claims or defenses a request for withdrawal of the frivolous claims or defenses, in writing, identifying those claims or defenses and the reasons they are believed to be frivolous. If the party withdraws the frivolous claims or defenses within a reasonable length of time, the court shall not award attorneys' fees and costs based on those claims or defenses under this section. [L 1980, c 286, §1; am L Sp 1986, c 2, §13; am L 1992, c 47, §1; am L 1999, c 237, §3]

Cross References

Vexatious litigants, see chapter 634J.

Rules of Court

Frivolous appeals, see HRAP rule 38.

Case Notes

Attorney fees were denied; leasing car to foreign national does not in itself constitute negligence on the part of the car lessor. 750 F. Supp. 439 (1990).

Denial of motion for sanctions based on this section was not clearly erroneous, where appellant sought a tax refund. 76 H. 1, 868 P.2d 419 (1994).

Where appellant engaged in a pattern of frivolous and vexatious litigation, court abused its discretion in failing to award appellees reasonable costs and attorney's fees. 87 H. 446, 958 P.2d 1136 (1998).

Trial court abused discretion in granting attorney's fees under this section where, notwithstanding that plaintiff's attorney may have made untrue or inaccurate statements regarding extent of plaintiff's injuries, the question of whether defendant's negligence caused the accident still remained unsolved. 89 H. 292, 972 P.2d 295 (1999).

Where it was apparent that plaintiffs' claims were neither frivolous nor pursued in bad faith, as required for an award of attorneys' fees and costs under this section, trial court did not err in denying defendant's motion for attorneys' fees and costs under this section. 98 H. 309, 47 P.3d 1222 (2002).

Where legal principles addressed in the case were not firmly established, defendants' actions were not frivolous; thus, attorneys' fees under this section were denied. 110 H. 327, 132 P.3d 1238 (2006).

Applies to counterclaim brought after statute's effective date. 4 H. App. 439, 667 P.2d 834 (1983).

Respondent's request for attorneys' fees under this section did not constitute a waiver of its jurisdictional defense or a consent to the circuit court's jurisdiction. 82 H. 405 (App.), 922 P.2d 1018 (1996).

Family court abused its discretion by awarding attorney's fees and costs to father where mother had the right, pursuant to federal and state law, to petition the child support enforcement agency for a review of the child support amount, and such actions on mother's part were not so "manifestly and palpably without merit, so as to indicate bad faith", and there was no evidence that mother filed her motion to enforce in bad faith. 118 H. 268 (App.), 188 P.3d 782 (2008).

Under the circumstances of the case--including that defendant agreed with plaintiff's argument that claims against defendant did not fall within the ambit of the medical claims conciliation panel--where the filing of plaintiff's complaint was not so manifestly and palpably without merit, the circuit court did not abuse its discretion in denying defendant an award of attorney's fees pursuant to this section. 121 H. 235 (App.), 216 P.3d 1258 (2009).

" **§607-14.7 Attorney's fees, costs, and expenses; judgment creditors.** In addition to any other attorney's fees, costs, and expenses, which may or are required to be awarded, and notwithstanding any law to the contrary, the court in any civil action may award to a judgment creditor, from a judgment debtor, reasonable attorney's fees, costs, and expenses incurred by the judgment creditor in obtaining or attempting to obtain satisfaction of a money judgment, whether by execution, examination of judgment debtor, garnishment, or otherwise. The court may award attorney's fees that it determines are reasonable, but shall not award fees in excess of the following schedule:

- (1) Twenty-five per cent on the first \$1,000 or fraction thereof;
- (2) Twenty per cent on the second \$1,000 or fraction thereof;
- (3) Fifteen per cent on the third \$1,000 or fraction thereof;
- (4) Ten per cent on the fourth \$1,000 or fraction thereof;
- (5) Five per cent on the fifth \$1,000 or fraction thereof; and
- (6) 2.5 per cent on any amount in excess of \$5,000.

The fees shall be assessed on the amount of judgment, exclusive of costs and all other attorney's fees. [L 1985, c 288, §2; am L 2016, c 55, §22]

" **[§607-14.9] Actions to enforce covenants not to compete.** In a civil action which involves the interpretation or enforcement of an agreement or alleged agreement which purportedly restricts an employee from competing with an employer, or former employer, or working for a competitor of an employer or former employer, any employee or former employee who prevails shall be awarded reasonable attorneys' fees and costs. [L 1992, c 56, §1]

" **§607-15 REPEALED.** L 1972, c 88, §5(x).

" **[§607-15.5] Attorneys' fees in tort actions.** In all tort actions in which a judgment is entered by a court of competent jurisdiction, attorneys' fees for both the plaintiff and the defendant shall be limited to a reasonable amount as approved by the court having jurisdiction of the action. In any tort action in which a settlement is effected, the plaintiff or the defendant may request that the amount of their respective

attorneys' fees be subject to approval of the court having jurisdiction of the action. [L Sp 1986, c 2, §11]

" **§607-16 In both courts, when; set off against judgment, when.** Whenever costs are awarded to the appellant, the appellant shall be allowed to tax as part thereof, the costs in the lower court, in addition to the costs of the court appealed to. If, upon an appeal, a recovery for any debt or damages is had by one party, and costs are awarded to the other party, the court shall set off such costs against such debt or damages, and render judgment for the balance. [CC 1859, §1014; RL 1925, §2553; RL 1935, §3802; RL 1945, §9756; RL 1955, §219-16; HRS §607-16; am L 1972, c 88, §5(r); gen ch 1985]

Case Notes

Final liability to pay costs is not determined until final judgment. 5 H. 181 (1884).

Costs on appeal. 32 H. 426 (1932); 32 H. 430 (1932).

Allowance of circuit court costs to party prevailing on appeal in supreme court. 43 H. 130 (1959).

Cited: 19 H. 433, 434 (1909).

" **§607-17 REPEALED.** L 1993, c 200, §2.

" **§607-18 Compensation of trustees.** (a) Unless the trust instrument otherwise provides, or the settlor and trustee otherwise agree, or, after the settlor's death, all the beneficiaries and the trustee otherwise agree, the trustee shall be entitled to the compensation set forth in this section and the compensation shall be deemed to be reasonable. For good cause shown, the court may also approve any other fee arrangement that it deems reasonable.

(b) Banks, trust companies, and individuals who in the ordinary course of business serve as fiduciaries shall, when serving as trustees, be entitled to reasonable compensation, which may be set forth in their published fee schedules and may be amended from time to time; provided that advance written notice of any amendment to the fee schedule is provided to the settlor or, after the settlor's death, to all beneficiaries who are vested at the time of the notice.

(c) Except as provided in subsections (a) and (b), individuals serving as trustees shall be entitled to the following compensation:

- (1) Compensation Upon Inception of the Trust:
 - (A) One per cent based upon the gross fair market value of the trust assets on the date of the trustee's acceptance shall be payable to the first trustee who is not the settlor of the trust; and
 - (B) One per cent based upon the gross fair market value of the trust assets of the trust created under the revocable living or administrative trust on the date of the trustee's acceptance shall be payable to the first trustee of any trust created under a revocable living trust after the settlor's death or other administrative trust; provided that the trustee shall not also be the trustee of the revocable living trust or administrative trust that is the source of funding for the newly-created trust;
- (2) Annual Compensation:
 - (A) Upon all moneys and other property received in the nature of revenue or income of the trust, such as rents, interest, dividends, and general profits, five per cent of the income received during the year shall be payable to the trustee, and paid not more than once per quarter;
 - (B) Upon the principal trust, the trustee shall be compensated no more than once per quarter, based on the following:
 - (i) One-half of one per cent of the first \$5,000,000;
 - (ii) One-third of one per cent of the next \$3,000,000;
 - (iii) One-fifth of one per cent of the next \$2,000,000; and
 - (iv) One-tenth of one per cent of assets in excess of \$10,000,000, based upon the gross fair market value of the principal assets as of the first day of the trust's fiscal year; and
 - (C) Notwithstanding subparagraphs (A) and (B), a trustee shall be entitled to a minimum total annual compensation of \$3,000;
- (3) Compensation Upon Termination of the Trust:

One per cent based upon the gross fair market value of the trust assets as of the termination date of the trust pursuant to the terms of the trust, shall be payable to the trustee at any time after the

termination date, up to and including the date the trust assets are finally distributed; and

(4) Compensation for Special Services:

Further compensation may be made as the court deems just and reasonable for services performed in connection with assuming the trusteeship, sales or leases of real estate, contested or litigated claims against the estate, the adjustment and payment of extensive or complicated estate or inheritance taxes, the preparation of estate and income tax returns, the carrying on of the decedent's business pursuant to an order of court or under the provisions of any will, litigation in regard to the property of the estate, and such other special services as may be necessary for the trustee to perform, prosecute, or defend; provided that if all of the beneficiaries agree to the trustee's compensation for special services, then court approval shall not be required;

provided that if more than one individual serves as trustee, then the compensation due pursuant to paragraphs (1), (2), and (3), as applicable, shall be divided equally between the then-acting trustees, unless otherwise agreed by the trustees. If one or more individuals are serving as trustees with a bank or trust company, then the individual trustees shall be entitled to fifty per cent of the compensation due pursuant to paragraphs (1), (2), and (3), as applicable, which shall be divided among the then-serving individual trustees as they may agree. An individual who in the ordinary course of business serves as a fiduciary, serving together with one or more individuals as trustees, or a bank or trust company serving together with one or more individuals as trustees, shall be entitled to the compensation described in subsection (b).

(d) For purposes of any agreement between the trustee and the beneficiaries regarding the trustee's compensation, the agreement shall be binding upon incapacitated, minor, unborn, and unascertained beneficiaries if the applicable provisions of section 560:1-403(2)(B) and (C) are satisfied.

(e) The following terms, or comparable language in the provisions of a trust, unless otherwise limited or modified, authorize compensation to the trustee under this section: "reasonable compensation", "compensation in accordance with applicable law", "compensation", "reasonable compensation commensurate with the services performed", and "statutory compensation".

(f) This section shall apply to future accounting periods of existing trusts as well as to new trusts. This section shall not apply to charitable trusts. [RL 1935, pt of §3793; am L

1935, c 124, §1; am L 1943, c 88, §1 and c 149, §1; RL 1945, §9757; am L 1947, c 100, §1; am L 1951, c 170, §1; RL 1955, §219-17; am L 1959, c 169, §1; HRS §607-18; am L 1976, c 200, pt of §1; am L 1988, c 362, §1; am L 1992, c 85, §1; am L 1993, c 34, §2; am L 2014, c 212, §2; am L 2015, c 133, §1]

Cross References

Guardians, see §§560:5-209 and 560:5-312.

Personal representatives, see §§560:3-719 to 560:3-721.

Trustees, see §560:7-205.

Law Journals and Reviews

Trustee Fees Under the Hawaii Probate Code: Can the Court Approve Trustee Fee Schedules? 10 HBJ, no. 13, at 121 (2007).

Case Notes

Generally.

Based on the plain language of and legislative history underlying §560:7-205, courts may review the reasonableness of a trustee's determination as to what constitutes "income"; trustee's determination that property tax payments were "income" was reasonable. 104 H. 267, 88 P.3d 202 (2004).

Appraised value.

33 H. 226 (1934). Disallowance of because of neglect of duties. 8 H. 472 (1892); 9 H. 512 (1894); 11 H. 420 (1898); 11 H. 495 (1898); 13 H. 202 (1900); 13 H. 242 (1901); 13 H. 388 (1901); 13 H. 630 (1901); 14 H. 443 (1902); 17 H. 517 (1906); 18 H. 542 (1908); 26 H. 243, 247 (1922); 28 H. 590, 598 (1925). Administrator under former statute. 9 H. 453 (1894). Dishonesty. 33 H. 445 (1935).

Commissions.

Trustee should be allowed reasonable compensation for trustee's time and trouble. 5 H. 196 (1884). Trustees entitled to same fees as executors, administrators and guardians. 24 H. 414 (1918); 27 H. 780, 783 (1924); 28 H. 329 (1925); 31 H. 78 (1929). Of guardian. 7 H. 368 (1888). On principal collections. 16 H. 512 (1905). On final payment. 16 H. 512 (1905); 29 H. 169 (1926); cf. 25 H. 121 (1919) (investment of money representing capital); 27 H. 736 (1924) (effected by exchange of receipts); cf. 16 H. 159 (1904). On income from capital assets into which final payments have been previously converted. 37 H. 111 (1945). On money realized. 13 H. 317

(1901). On new loan or exchange of securities. 16 H. 512
(1905). On chattels transferred in kind. 3 H. 288 (1871); 16
H. 159 (1904). Whether paid out of corpus or income. 23 H. 335
(1916). Whether taxes paid by lessee are income. 28 H. 502
(1925). Death before completion of administration. 3 H. 178
(1869). Statutory fees and compensation under will mutually
exclusive. 3 H. 384 (1872). Computation. 37 H. 111 (1945).
Not allowed on co-owner and beneficiary savings bonds. 39 H. 76
(1951). Trustees accepting settlor's nomination are bound by
settlor's compensation and not entitled to statutory
compensation; successor trustee appointed by court, entitled to
statutory rates. 51 H. 548, 465 P.2d 996 (1970).

Executors and administrators.

Legal expenses, of. 3 H. 522 (1874); 26 H. 243 (1922).
Expense of establishing contested will. 16 H. 575 (1905).
Expenses of contestant. 26 H. 337 (1922). Double commissions.
33 H. 666 (1936). Counsel fees disallowed for legal services
performed when neither necessary nor for benefit of the estate.
37 H. 447 (1947). For professional services rendered by the
attorney for the executor not legal but purely executorial, no
allowance. 37 H. 447 (1947).

Further allowances.

Realtor. 27 H. 780, 790 (1924). Stockbroker. 24 H. 414
(1918). Attorney. 11 H. 204 (1897); 15 H. 394 (1904). Not if
services unnecessary. 27 H. 343, 353 (1923); 27 H. 439 (1923).
Or if within ordinary duties. 27 H. 343, 351 (1923). Neglect
of duties effect on commissions. 14 H. 443 (1902); 17 H. 517
(1906); 26 H. 243, 274 (1922); 26 H. 774 (1923); 27 H. 343
(1923); 28 H. 590, 684 (1925); 32 H. 943 (1934); 26 F.2d 609
(1928); 31 F.2d 553 (1929). No reduction under particular
circumstances. 26 H. 774 (1923). Attorney's fees to defend
action to recover excessive trustee commissions denied. 51 H.
548, 465 P.2d 996 (1970).

Masters.

33 H. 220 (1934); 36 H. 728 (1944).

Trustees.

Additional compensation. 24 H. 414, 418 (1918) (special or
professional services); 27 H. 780 (1924) (services as realtor).
Costs, expenses and attorney's fees. 23 H. 694 (1917)
(proceeding for benefit of estate); 25 H. 786 (1921) (litigation
of interest of beneficiaries); 24 H. 573 (1918) (construction of
will); 24 H. 573 (1918) (suit by other than trustee); 23 H. 245
(1916) (of unsuccessful claimant to trust estate); right of

appeal. 25 H. 786 (1921). Employment of realtor. 29 H. 169 (1926). Administrative expenses. 34 H. 417 (1937), questioned on other grounds. 36 H. 403, 440 (1943). See also 36 H. 518 (1943); 36 H. 631 (1944); 36 H. 686 (1944). Trustees; effect of breach of trust on right to commissions. 47 H. 548, 393 P.2d 96 (1964); 47 H. 629, 394 P.2d 432 (1964).

Cited: 234 F.2d 221, 226, 227 (1956); 33 H. 666, 671 (1936).

" **§607-19 REPEALED.** L 1976, c 200, pt of §1.

" **§607-20 Charitable trusts, special provisions.** (a) Notwithstanding any other provisions, in the case of a charitable trust, the compensation of the trustees shall be limited to an amount that is reasonable under the circumstances.

(b) This section shall apply to existing and new charitable trusts established after January 1, 1999; provided that any provisions in existing trust agreements regarding trustees' compensation shall supersede this section. [L 1943, c 149, §§1, 2; RL 1945, §9758; RL 1955, §219-19; am L 1959, c 169, §2; HRS §607-20; am L 1998, c 310, §2]

Revision Note

"January 1, 1999" substituted for "the effective date of this Act".

Case Notes

Sums collected from lessees of estate and paid to State for real property taxes are income. 53 H. 604, 499 P.2d 670 (1972).
Cited: 37 H. 111, 139 (1945).

" **§607-21 Expense of bond.** Any receiver, assignee, guardian, trustee, committee, personal representative, commissioner, or other fiduciary required by law or the order of any court to give a bond, or other obligation as such, may include as a part of the lawful and chargeable expense of executing the individual's trust a reasonable sum, to be paid to a company authorized under the laws of the State to become surety on the bond or obligation for becoming the individual's surety thereon, as may be allowed by the court in which the individual is required to account, not exceeding one per cent a year on the amount of the bond. [RL 1935, pt of §3793; RL 1945,

§9759; RL 1955, §219-20; HRS §607-21; am L 1972, c 88, §5(u); am L 1976, c 200, pt of §1; am L 2016, c 55, §23]

" **§607-22 REPEALED.** L 1972, c 88, §5(x).

" **§607-23 Fees of commissioners, appraisers, etc.** Fees of commissioners and appraisers shall be such as the court deems just and reasonable, together with actual and necessary traveling expenses at the same rate paid for traveling expenses to witnesses subpoenaed, and all actual disbursements for surveying, plans, etc. [RL 1935, pt of §3793; am L 1941, c 293, §1; RL 1945, §9761; am L 1945, c 37, §2; RL 1955, §219-22; am L 1963, c 85, §3; HRS §607-23; am L 1972, c 88, §5(v)]

" **§607-24 No bonds or costs to be filed or paid by government.** Neither the State nor any county or any political subdivision, board, or commission thereof, nor any officer, acting in the officer's official capacity on behalf of the State or any county or other political subdivision, board, or commission thereof, shall be taxed costs or required to pay or make any deposit for the same or file any bond in any case whether for costs, on motion for new trial, or on appeal, or for any other purpose whatsoever. In all cases in which a final judgment or decree is obtained against the State, county, or other political subdivision or any board or commission thereof, any and all deposits for costs made by the prevailing party shall be returned to the prevailing party, and the prevailing party shall be reimbursed by the State, county, or other political subdivision, board, or commission thereof, as the case may be, all actual disbursements, not including attorney's fees or commissions, made by the prevailing party and approved by the court. [L 1907, c 63, §1; RL 1925, §2546; am L 1933, c 212, §1; RL 1935, §3795; am L 1937, c 126, §1; RL 1945, §9762; RL 1955, §219-23; HRS §607-24; am L 1972, c 88, §5(w); gen ch 1985]

Rules of Court

See HRCP rules 37(e), 54(d), 62(e).

Case Notes

Attorney's commissions and fees not chargeable against Territory. 20 H. 112 (1910).

Costs not chargeable against public officers. 20 H. 359 (1911) (sheriff in habeas corpus). 21 H. 274 (1912) (sheriff in replevin). 20 H. 455 (1911); 23 H. 187 (1916) (superintendent of public works); not (prior to am.) against county. 20 H. 112 (1910); 23 H. 524, 527 (1916).

Not applicable to bond on writ of error. 32 H. 111 (1931) (former law).

Return of costs to successful plaintiff. 34 H. 245 (1937).

Section does not apply to the receiver of a national bank. 34 H. 308 (1937).

Not applicable to criminal prosecutions. 36 H. 546 (1943).

"Final judgment". 36 H. 603 (1943); 39 H. 1 (1950).

Where State is successful in condemning property under chapter 101, condemnee is not "prevailing party" and cannot recover "actual disbursements". 53 H. 582, 499 P.2d 663 (1972).

Where a prevailing party has "obtained" "a final judgment" "against the State", the court may award the prevailing party its "actual disbursements" pursuant to §607-9, this section, and HRAP rule 39. 110 H. 269, 132 P.3d 378 (2006).

" **§607-25 Actions based on failure to obtain government permit or approvals; attorney's fees and costs.** (a) As used in this section, "development" includes:

- (1) The placement or erection of any solid material or any gaseous, liquid, solid, or thermal waste;
- (2) The grading, removing, dredging, mining, pumping, or extraction of any liquid or solid materials; or
- (3) The construction or enlargement of any structure requiring a discretionary permit.

(b) As used in this section, "development" does not include:

- (1) The transfer of title, easements, covenants, or other rights in structures or land;
- (2) The repair and maintenance of existing structures;
- (3) The placement of a portable structure costing less than \$500; or
- (4) The construction of a structure which only required a building permit and for which a building permit could be granted without any discretionary agency permit or approval.

(c) For purposes of this section, the permits or approvals required by law shall include compliance with the requirements for permits or approvals established by chapters 6E, 46, 54, 171, 174C, 180C, 183, 183C, 184, 195, 195D, 205, 205A, 266, 342B, 342D, 342F, 342H, 342J, 342L, and 343 and ordinances or rules adopted pursuant thereto under chapter 91.

(d) For purposes of this section, compliance with the procedural requirements established by chapter 343 and rules pursuant to chapter 343 constitute a discretionary agency approval for development.

(e) In any civil action in this State where a private party sues for injunctive relief against another private party who has been or is undertaking any development without obtaining all permits or approvals required by law from government agencies:

- (1) The court may award reasonable attorneys' fees and costs of the suit to the prevailing party;
- (2) The court shall award reasonable attorneys' fees and costs of the suit to the prevailing party if the party bringing the civil action:
 - (A) Provides written notice, not less than forty days prior to the filing of the civil action, of any violation of a requirement for a permit or approval to:
 - (i) The government agency responsible for issuing the permit or approval which is the subject of the civil action;
 - (ii) The party undertaking the development without the required permit or approval; and
 - (iii) Any party who has an interest in the property at the development site recorded at the bureau of conveyances; and
 - (B) Posts a bond in the amount of \$2,500 to pay the attorneys' fees and costs provided for under this section if the party undertaking the development prevails;
- (3) Notwithstanding any provision to the contrary in this section, the court shall not award attorneys' fees and costs to any party if the party undertaking the development without the required permit or approval failed to obtain the permit or approval due to reliance in good faith upon a written statement, prepared prior to the suit on the development, by the government agency responsible for issuing the permit or approval which is the subject of the civil action, that the permit or approval was not required to commence the development. The party undertaking the development shall provide a copy of the written statement to the party bringing the civil action not more than thirty days after receiving the written notice of any violation of a requirement for a permit or approval; and

- (4) Notwithstanding any provision to the contrary in this section, the court shall not award attorney's fees and costs to any party if the party undertaking the development applies for the permit or approval which is the subject of the civil action within thirty days after receiving the written notice of any violation of a requirement for a permit or approval and the party undertaking the development shall cease all work until the permit or approval is granted. [L 1986, c 80, §2; am L 1990, c 20, §1; am L 1995, c 69, §15; am L 1996, c 82, §6; am L 1997, c 2, §12]

Revision Note

Pursuant to §23G-15, in:

- (1) Subsection (e)(1), (2)(A)(iii) and (B), and (3), punctuation changed; and
- (2) Subsection (e)(2)(A)(iii) and (3), "and" added after ending punctuation.

Law Journals and Reviews

Enforcement of Environmental Laws in Hawai'i. 16 UH L. Rev. 85 (1994).

Ala Loop and the Private Right of Action Under Hawai'i Constitution Article XI, Section 9: Charting a Path Toward a Cohesive Enforcement Scheme. 33 UH L. Rev. 367 (2010).

The Moon Court's Environmental Review Jurisprudence: Throwing Open the Courthouse Doors to Beneficial Public Participation. 33 UH L. Rev. 581 (2011).

Case Notes

Under this section, attorneys' fees may be awarded to: (1) a member of the public who prevails against a private party who has been or is undertaking development without obtaining all permits or approvals required by law from governmental agencies; and (2) a defendant private party who prevails against a plaintiff who has brought a frivolous suit. 86 H. 132, 948 P.2d 122 (1997).

Where plaintiff's claims were not frivolous, award of attorneys' fees to defendants not warranted under this section. 86 H. 132, 948 P.2d 122 (1997).

Where nothing in this section indicates that this section should provide the exclusive means for awarding attorney's fees and costs against a party for a violation of chapter 343, this section was not the exclusive means for awarding attorney's fees

and costs for violations of chapter 343; also, this section did not prevent an award of attorney's fees against defendant Superferry pursuant to the private attorney general doctrine. 120 H. 181, 202 P.3d 1226 (2009).

Where there was no record in the case that defendant Superferry qualified under subsection (e) as a private party that was "undertaking development without obtaining all permits or approvals required by law", trial court erred in awarding plaintiff attorney's fees and costs against defendant based on this section. 120 H. 181, 202 P.3d 1226 (2009).

In the circumstances of the case, art. XI, §9 of the Hawaii constitution created a private right of action to enforce chapter 205, and the legislature confirmed the existence of that right of action by enacting this section, which allows for the recovery of attorneys' fees in such actions; chapter 205 is a law relating to environmental quality within the meaning of art. XI, §9, section 9 is self-executing, and §205-12 imposes "reasonable limitations and regulations" that were applicable to the case which allowed the private right of action to enforce chapter 205. 123 H. 391, 235 P.3d 1103 (2010).

" **[§607-26] Limit on supersedeas bond.** (a) In any civil action brought under any legal theory, the amount of a supersedeas bond or other form of security necessary to stay execution of a judgment granting legal, equitable, or any other form of relief during the entire course of all appeals or discretionary review of that judgment by all appellate courts shall be set in accordance with applicable law, except that:

- (1) The total amount of the supersedeas bond or other form of security that is required of any party shall not exceed \$25,000,000, regardless of the amount or any other provision of the judgment that is appealed;
- (2) If the party posting the supersedeas bond is a "small business concern" as defined by section 210-1, the supersedeas bond shall not exceed \$1,000,000; and
- (3) If a party in whose favor the judgment has been entered proves to a court by a preponderance of the evidence that an appellant who has posted a supersedeas bond is intentionally dissipating assets outside the ordinary course of its business for the purpose of avoiding payment of the judgment, a court may require the appellant to post a supersedeas bond in an amount up to the total amount of the judgment appealed. Dissipation of assets shall not include expenditures, including payments to the owners of a business, of the kind that the appellant made in the

regular course of business prior to entry of the judgment being appealed.

(b) This section shall not apply to the limitation on bonds for tobacco master settlement agreement signatories and their successors and affiliates under section 328L-7.

(c) For purposes of this section:

"Civil action" includes, without limitation, cases involving individual, aggregated, class action, or otherwise joined claims.

"Legal, equitable, or any other form of relief" means all forms of relief, including without limitation, compensatory, special, punitive, exemplary or other damages, injunctive relief, or any other form of relief. [L 2006, c 11, §1]