Supreme Court No. 90877-0

COA No. 43764-3-II

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

THE FILIPINO AMERICAN LEAGUE,

Appellant,

v.

LUCENA CARINO,

Respondent.

PETITION FOR DISCRETIONARY REVIEW

1102 Broadway Plaza, Suite 403
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Tacoma: (253) 627-0123

SMITH ALLING, P.S.

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I. IDENTITY OF PETITIONER

Pursuant to RAP 13.4, Petitioner, the Filipino American League, a non-profit, charitable organization, asks this Court to accept review of the decision designated in part II of this petition.

II. DECISION

A true and correct copy of the Court of Appeals Division II decision filed on August 19, 2014, is reproduced in the Appendix to this petition at pages A1 through A9.

III. ISSUES PRESENTED FOR REVIEW

1. Is an issue of substantial public interest involved where Washington statutory scheme, RCW 4.84 *et seq.*, is designed to "encourage out-of-court settlement of small claims" but, as in the case of Defendant Carino, a judgment debtor to a small claim may avoid the "penalty" of attorney's fees and costs by permitting a Small Claims Plaintiff to obtain a default judgment?

Answer: Yes

2. Is an issue of substantial public interest and/or a significant question of law involved where a Plaintiff's Notice of Small Claim makes no mention of any intent to recover attorney's fees and costs and RCW 12.40.105 does not require any prior notice to judgment debtor and provides that "... [i]f the losing party [in the small claims department] fails to pay the judgment within thirty days or within the period otherwise ordered by the court, the judgment shall be increased by ... any other costs incurred by the prevailing party to enforce the judgment, including but not limited to reasonable attorneys' fees"?

Answer: Yes

3. Is review warranted where a conflict or unreconciled issue of law exists in the present case where prior Supreme Court and Appellate Court decisions are distinguishable in that the plaintiff or judgment creditor had a meaningful opportunity to make an out-of-court settlement and/or avail him/her/itself the attorney's fees and costs provisions of RCW 4.84 *et seq.* *See Williams v. Tilaye*, 174 Wn. 2d 57, 272 P.3d 235 (2012); *Hertz v. Riebe*, 86 Wn. App. 102, 936 P.2d 24 (1997).

Answer: Yes

IV. STATEMENT OF THE CASE

This Court of Appeals Division-II's discretionary review arose from the award of attorney's fees and costs to the Filipino American League ("FAL"), as the prevailing party, in Ms. Carino's ("Petitioner" or "Ms. Carino") appeal of the Thurston County District Court's Order Denying [Petitioner's] Motion for Relief from Judgment to the Thurston County Superior Court.

Ms. Carino was the former President of FAL, a local nonprofit organization. After FAL properly filed and served its Small Claims Complaint, Petitioner failed to appear at the Small Claims Trial on August 26, 2010. CP 6. After considering the affidavit of service on file and evidence submitted by FAL in support of its claim, the Small Claims Court awarded a default judgment in favor of FAL in the amount of $5,079.00 ("Judgment"). CP 6.

Nearly one year after the Judgment was obtained and after FAL began executing on the Judgment (which it commenced only after attempting to settle the judgment with Ms. Carino by agreement), on August 25, 2011, Ms. Carino filed her Motion for Relief from Judgment with the Thurston County District Court. CP 6. After reviewing the evidence on record, the Thurston County District Court denied Ms. Carino's motion. In spite of the amount in controversy relative to the cost in proceeding, Ms. Carino timely filed a notice of appeal on October 10, 2011, and perfected her RALJ appeal. CP 4. Likewise, FAL timely filed its cross-appeal on the issue of the order denying its request for attorney's fee and costs as prevailing party on the motion to vacate.

By its April 16th Order Denying Appeal, the Superior Court expressly reserved the issue of FAL's request for attorney's fees on appeal. With the cooperation of counsel, the Court set a hearing date of May 4, 2012, to allow both parties to provide additional briefing on the issue of attorney's fees and costs on appeal, if desired. Neither FAL nor Petitioner elected to file additional briefing. On May 4, 2012, FAL presented its Declaration in Support of Attorney's Fees and Costs on Appeal and corresponding proposed order. Despite her participation in scheduling the hearing, Petitioner did not attend or otherwise submit further argument to the Superior Court.

Ms. Carino's RALJ appeal ultimately resulted in an Order and Judgment on Appeal entered by the Thurston County Superior Court on July 16, 2012. CP 33. The Order and Judgment on Appeal included an award of attorney's fees and costs to FAL, as the prevailing party, in an amount of $10,103.20, comprised of $10,000.00 in attorney's fees and $103.20 in costs (the "Award").

On July 26, 2012, Petitioner timely filed a Notice of Appeal with this Court with such Notice of Appeal, ultimately converted to and accepted by the Court of Appeals Division II as Discretionary Review. The Court of Appeals' published opinion on August 19, 2014, revised the Thurston County Superior Court's Award in favor of FAL.

V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

A. The construction and administration of RCW 4.84 *et seq.* and RCW 12.40.105, as statutes governing small claims, is of significant public interest and importance.

The Washington State Supreme Court should grant review because of the *substantial public interest* involved in the construction and administration of statutes governing small claims. In particular, where the intent and purpose of statutory schemes are acknowledged to encourage settlement of small claims without further need of judicial resources, the citizens of the state have an inherent interest in preserving judicial

economy, especially where, by definition, the amount in controversy is relatively small.

The statutory scheme embodied at RCW 4.84.250-330 involves multiple purposes of encouraging out-of-court settlements, penalizing parties who unjustifiably bring or resist small claims, and enabling a party to pursue a meritorious small claim without seeing the award diminished by legal fees. *Beckmann v. Spokane Transit Auth.*, 107 Wn.2d 785, 788, 733 P.2d 960 (1987) (citing *Valley v. Hand*, 38 Wn.App. 170, 684 P.2d 1341 (1984); *Northside Auto Serv., Inc. v. Consumers United Ins. Co.*, 25 Wn.App. 486, 492, 607 P.2d 890 (1980)).

One of the main underlying purposes of RCW 4.84.250-330 is to "'encourage out-of-court settlement of small claims, and to penalize parties who unjustifiably pursue or resist the claims.'" *Harold Meyer Drug v. Hurd*, 23 Wn. App. 683, 687, 598 P.2d 404 (1979). In the present case, where a default judgment is obtained, this purpose is not placed in jeopardy by an award of fees and costs on appeal because, by definition, the parties never had an opportunity for an out-of-court settlement. Further, where a defendant fails to answer a complaint and a default is obtained, a denial of an award of attorney's fees and costs under RCW 4.84.290 allows a defendant to remain idle without penalty.

In the case at issue, the Court of Appeals' decision and underlying analysis requires that a small claims plaintiff (necessarily *pro se*) make an offer of settlement pursuant to RCW 4.84.270 after filing a Notice of Small Claim but prior to trial or any formal answer from the small claims defendant (as duly noted by the Court of Appeals, no answer is due prior to the hearing date), if a small claims plaintiff is to recover attorney's fees and costs under RCW 4.84 *et seq.* Ironically, by not requiring a formal answer prior to the trial hearing, the Small Claims Court procedure effectively eliminates any meaningful opportunity for the parties to broker an out-of-court settlement prior to the small claims trial as well as any meaningful opportunity for a small claims plaintiff to avail itself of attorney's fees and costs under RCW 4.84 *et seq.*

Here, FAL caused its Notice of Small Claim to be served by the sheriff on Ms. Carino on July 1, 2010. The Notice of Small Claim provided that the small claims trial hearing was set for August 26, 2010. Thus, by the required timelines set forth in RCW 4.84.280, FAL would have had precisely 16 days, between August 1st (i.e., 30 days after service of the Notice) and August 16th (i.e., 10 days prior to the trial hearing).[1] By

[1] RCW 4.84.280 provides:

> Offers of settlement shall be served on the adverse party in the manner prescribed by applicable court rules **at least ten days prior to trial.** Offers of settlement **shall not be served until thirty days after the completion of the**

statutory definition, any offer of settlement made by FAL prior to filing and service of the Complaint would not be considered for purposes of RCW 4.84 *et seq.* Furthermore, the Court of Appeals' decision (and interpretation of RCW 4.84 *et seq.*) necessarily requires that FAL would have made its offer of settlement prior to receiving any response or answer from Ms. Carino. In essence, the Court of Appeals' decision requires FAL (or other similarly situated small claims plaintiffs) to compromise their small claim *prior* to receiving any indication that Ms. Carino actually contested the claim.

In ruling on the Award, (Superior Court) Judge Tabor expressly analyzed the cases primarily relied upon by Ms. Carino, *Williams v. Tilaye* and *Hertz v. Reibe*, and determined that they were distinguishable from the present case in that both cases involved parties who sought or were awarded attorney's fees and costs on appeal ***after a trial***. See *Williams v. Tilaye*, 174 Wn. 2d 57, 272 P.3d 235, 237 (2012); *Hertz v. Riebe*, 86 Wn. App. 102, 936 P.2d 24, 26 (1997); *see also* CP 33. Contrary to those cases, where a party had an opportunity to tender a settlement offer "at

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service and filing of the summons and complaint. Offers of settlement shall not be filed or communicated to the trier of the fact until after judgment, at which time a copy of said offer of settlement shall be filed for the purposes of determining attorneys' fees as set forth in RCW 4.84.250.

(Emphasis added.)

least 10 days before trial," FAL obtained a default at Small Claims Court and, as articulated above, had no such opportunity. RCW 4.84.250; *See* CP 33. Judge Tabor expressly reasoned that, even if it so desired, FAL could not meaningfully avail itself of an offer of settlement because it obtained a default judgment against Ms. Carino. *See* CP 33.

Washington state citizens routinely avail themselves of Small Claims court with the goal of recovering relatively small claims without the need of incurring expense above and beyond the amount sought. Furthermore, RCW 4.84 *et seq.* is intended to further "'encourage out-of-court settlement of small claims, and to penalize parties who unjustifiably pursue or resist the claims.'" See *Harold Meyer Drug v. Hurd*, 23 Wn. App. 683, 687, 598 P.2d 404 (1979). The Court of Appeals' decision does not serve these purposes and, with particular respect to the small claims system, does not serve judicial economy. Thus, a significant public interest is involved in this request.

B. The issue of whether or not RCW 12.40.105, as a statute governing small claims judgment, entitles a judgment creditor to attorney's fees and costs on appeal presents a significant issue of law and is of significant public interest and importance.

A prevailing party is entitled to attorney fees if fees are authorized by contract, statute, or a recognized equitable ground. *Seattle First Nat'l*

Bank v. Siebol, 64 Wn. App. 401, 409, 824 P.2d 1252, review denied, 119 Wn.2d 1010, 833 P.2d 386 (1992). RCW 12.40.105 provides:

> "If the ***losing party fails to pay the judgment*** within thirty days or within the period otherwise ordered by the court, ***the judgment shall be increased by... any other cost incurred by the prevailing party to enforce the judgment, including*** but not limited to ***reasonable attorneys' fees***..."

(Emphasis added.)

While the Court of Appeals' decision does acknowledge that FAL's Judgment was obtained via Small Claims Court and that FAL cited RCW 12.40.105 as part of the RALJ appeal proceedings, there is no further analysis as to why FAL is not entitled to its fees under the plain language of RCW 12.40.105. *See* Appellate Decision at p. 3, ¶ 3. Unlike RCW 4.84 *et seq.*, the plain language of RCW 12.40.105 does not require prior notice or an offer of settlement. Furthermore, with the exception of the Court of Appeals decision at issue, FAL's counsel is not aware nor could it locate any decision, whether published or unpublished, at any appellate court level that provided analysis on the application of RCW 12.40.105 in the case of an appeal of a small claims judgment. Thus, a novel issue is presented to the Court – whether or not RCW 12.40.105 entitles to a small claims judgment creditor to increase the judgment for reasonable attorney's fees and costs incurred in defending an appeal. Put in other terms, when is a small claims judgment subject to increase for

attorney's fees and costs incurred in enforcing a judgment if not in the instant case? The Washington State Supreme Court's review is necessary to reconcile RCW 12.40.105 and RCW 4.84 *et seq.* The Court of Appeals' analysis on RCW 4.84 *et seq.* would be reconciled if a small claims judgment creditor was entitled to recover attorney's fees and costs incurred on a default judgment, whether or not an offer was made. Without any analysis on these statutes governing small claims, there is an inherent conflict either in the statutes under FAL's result in the present action or future small claims actions by other citizens of the state.

Given the number of small claims actions, the purpose of the small claims court system, and the broader interest in judicial economy; the issues presented by the Court of Appeals decision at issue involve significant issues of law and are of significant public interest and importance.

> In deciding whether a case a presents issues of continuing and substantial public interest, [t]hree factors in particular are determinative: "(1) whether the issue is of a public or private nature; (2) whether an authoritative determination is desirable to provide future guidance to public officers; and (3) whether the issue is likely to recur". A fourth factor may also play a role: the "level of genuine adverseness and the quality of advocacy of the issues". Lastly, the court may consider "the likelihood that the issue will escape review because the facts of the controversy are short-lived".

Satomi Owners Ass'n v. Satomi, LLC, 167 Wn.2d 781, 796, 225 P.3d 213 (2009) (citing *In re Marriage of Horner*, 151 Wn.2d 884, 892, 93 P.3d 124 (2004) (citations omitted) (quoting *Westerman*, 125 Wn.2d at 286-87, 892 P.2d 1067)).

> The continuing and substantial public interest exception has been used in cases dealing with constitutional interpretation, see, e.g., *Federated Publications, Inc. v. Kurtz,* 94 Wn.2d 51, 54, 615 P.2d 440 (1980); **the validity and interpretation of statues and regulations**, see, e.g., *In re Wilson*, 94 Wn.2d 885, 887, 621 P.2d 151 (1980);...

Hart v. Dep't of Soc. & Health Servs., 111 Wn.2d 445, 449, 759 P.2d 1206, 1208 (1988) (emphasis added). In *In re Marriage of Horner*, the issues concerned the interpretation of a statute. The Washington State Supreme Court stated,

> This issue is of a public nature because it concerns the interpretation of RCW 26.09.520, and because the Court of Appeals opinion was not limited to the *Horner* facts, but contained an interpretation of the statute.

In re Marriage of Horner, 151 Wn.2d 884, 892, 93 P.3d 124, 129 (2004).

The present case involves interpretation of small claims statutes, RCW 12.40.105 and RCW 4.84 *et seq.* and the general public interest of maintaining judicial economy in the small claims court system by encouraging out-of-court settlement of claims. These issues of interpretation warrant review by the Washington State Supreme Court.

VI. CONCLUSION

FAL respectfully requests that this Court accept review of the Court of Appeals decision at issue for the reasons indicated in part V.

DATED this 18th day September, 2014.

SMITH ALLING, P.S.

By _____
Chad E. Ahrens, WSBA #36149
Attorneys for FAL

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of September, 2014, I caused to be served a true and correct copy of [this] Petition for Review upon counsel of record, via the methods noted below, properly addressed as follows:

Mr. Peter Kram	☒	Hand Delivery
Kram & Wooster	☐	U.S. Mail
1901 So. I Street	☐	Overnight Mail
Tacoma, WA 98405-3805	☐	Facsimile
Phone: (253) 272-7929	☒	Email
Fax: (253) 572-4167		

DATED this 18th day of September, 2014.

_____
Joseph M. Salonga, Legal Assistant

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DATED this 18th day of September, 2014.

Joseph M. Salonga, Legal Assistant

APPENDIX A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

THE FILIPINO AMERICAN LEAGUE, Respondent, v. LUCENA CARINO, Appellant.	No. 43764-3-II PUBLISHED OPINION

BJORGEN, A.C.J. — Lucena Carino appeals an award of reasonable attorney fees to the Filipino American League (League) based on a Thurston County District Court small claims default judgment against her. The League sued Carino for misappropriating funds during her presidency of the organization. Carino failed to appear and the small claims department entered a default judgment against her. She unsuccessfully moved to vacate the default judgment, and the League unsuccessfully sought reasonable attorney fees for defending against her motion. Carino appealed the denial of her motion to vacate the default judgment to the superior court, and the League cross appealed the denial of fees. The superior court ultimately granted the League reasonable attorney fees for work on the appeal under RCW 4.84.290. Carino sought

discretionary review by us, arguing that the League failed to comply with the prerequisites for invoking the fee-shifting scheme found in RCW 4.84.250-.290.[1,2] The League, in its response, requested attorney fees for defending this review. We agree with Carino and reverse the superior court's grant of reasonable attorney fees to the League under RCW 4.84.290 and deny the League's request for reasonable attorney fees on discretionary review.

FACTS

Carino served as the League's president and, after her tenure, the League sued her, claiming she had misappropriated funds during her tenure. The League's notice of small claim to Carino made no mention of seeking attorney fees, and the League never made an offer of settlement that might have alerted Carino to any intent to request fees.

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[1] RCW 4.84.250 provides that:

> Notwithstanding any other provision of chapter 4.84 RCW and RCW 12.20.060, in any action for damages where the amount pleaded by the prevailing party as hereinafter defined, exclusive of costs, is seven thousand five hundred dollars or less, there shall be taxed and allowed to the prevailing party as a part of the costs of the action a reasonable amount to be fixed by the court as attorneys' fees. After July 1, 1985, the maximum amount of the pleading under this section shall be ten thousand dollars.

[2] RCW 4.84.290 provides that

> If the case is appealed, the prevailing party on appeal shall be considered the prevailing party for the purpose of applying the provisions of RCW 4.84.250: PROVIDED, That if, on appeal, a retrial is ordered, the court ordering the retrial shall designate the prevailing party, if any, for the purpose of applying the provisions of RCW 4.84.250.
>
> In addition, if the prevailing party on appeal would be entitled to attorneys' fees under the provisions of RCW 4.84.250, the court deciding the appeal shall allow to the prevailing party such additional amount as the court shall adjudge reasonable as attorneys' fees for the appeal.

The small claims department entered a default judgment against Carino when she did not answer the League's complaint and failed to appear at the hearing. The League then began garnishment proceedings against Carino to satisfy the default judgment.

Carino later moved in the district court to vacate the judgment against her under CR 60(b).[3] In its response, the League requested attorney fees and costs under RCW 6.27.230 for what it characterized as work completed in responding to Carino's controversion of its garnishment attempts.[4] The district court denied both Carino's motion to vacate and the League's request for reasonable attorney fees, and both parties appealed to superior court.[5]

In its cross appeal to superior court, the League again sought attorney fees under RCW 6.27.230, and for the first time, requested fees under RCW 12.40.105.[6] The superior court rejected these requests, determining that the district court had properly exercised discretion in denying the League's request for attorney fees. However, the court stated,

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[3] CRLJ 60(b) allows the trial court to "relieve a party or his legal representative from a final judgment, order, or proceeding" for one of eleven enumerated reasons.

[4] RCW 6.24.230 provides that

> [w]here the answer is controverted, the costs of the proceeding, including a reasonable compensation for attorney's fees, shall be awarded to the prevailing party: PROVIDED, That no costs or attorney's fees in such contest shall be taxable to the defendant in the event of a controversion by plaintiff.

[5] The superior court denied Carino's appeal of the district court's denial of her motion to vacate judgment. Carino did not seek review of this decision and the propriety of the denial is not before us.

[6] RCW 12.40.105 provides, in relevant part, that

> [i]f the losing party [in the small claims department] fails to pay the judgment within thirty days or within the period otherwise ordered by the court, the judgment shall be increased by . . . any other costs incurred by the prevailing party to enforce the judgment, including but not limited to reasonable attorneys' fees.

> I have issues that I want to explore further about whether or not [the denial of fees in the garnishment action] precludes an award of attorney's fees for this appeal, that is, to this court from the district court, and I want some time to look at that, and so I'm not ruling on that today. You may present, if you wish, what you think you're entitled to only for this appeal. I will consider that. If either side wishes to submit additional briefing on whether or not this Court can split the issues -- which is what I'm saying is something I'm contemplating. I've ruled that there will be no attorney's fees awarded for the district court or the small claims court actions, but I will investigate further as to whether or not there will be an award for attorney's fees in this appeal.

Verbatim Report of Proceedings (Apr. 16, 2012) at 9-10.

The League responded by submitting a declaration from its attorney requesting an award of attorney fees for its appeal to superior court under RCW 6.27.230, RCW 12.40.105, and for the first time, RCW 4.84.250, "together with other applicable statute[s] and in equity." CP at 284-86. Carino contested any award of fees on each of these grounds, and argued that the lack of any settlement offer by the League before the initial trial precluded any award of fees under RCW 4.84.250 on appeal.

By letter opinion, the superior court awarded the League reasonable attorney fees under RCW 4.84.290 for its appeal from district court.[7] The superior court determined that, although the League had not made an offer of settlement as required for plaintiffs to receive fees under RCW 4.84.250 and RCW 4.84.290, Carino's default meant that the League "was not required . . . to make an offer of settlement." CP at 299. Consequently, the superior court awarded the League $10,000.00 in reasonable attorney fees and $103.20 in costs.

Carino moved for discretionary review of the superior court's award of reasonable attorney fees, and our commissioner granted her petition.

[7] Under RCW 4.84.290, a party prevailing on an appeal involving RCW 4.84.250 is entitled to reasonable attorney fees.

ANALYSIS

A. Attorney Fees on Appeal to Superior Court

Carino appeals the award of attorney fees to the League by superior court on two grounds. First, she argues that the legislature did not intend to apply RCW 4.84.250 or RCW 4.84.290 to default debtors because doing so deters their ability to access the courts and vacate the default. Second, she contends that an award of fees on appeal under RCW 4.84.290 requires eligibility for fees under RCW 4.84.250 and argues that the League was ineligible because it did not make an offer of settlement or provide Carino with notice of its intent to seek fees. We find no need to consider Carino's first claim, because a straightforward reading of RCW 4.84.250-.290 and our precedent show her second claim is correct. Accordingly, we reverse.

Carino's appeal requires us to review the superior court's award of reasonable attorney fees under RCW 4.84.290. Whether that statute authorizes an award of reasonable attorney fees in these circumstances requires us to examine its meaning, and the meaning of a statute is a question of law we review de novo. *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002).

When we interpret a statute, we attempt to ascertain and give effect to the legislature's intent. *Campbell & Gwinn*, 146 Wn.2d at 9-10. We ascertain the legislature's intent through the text of the statutory provision at issue, as well as the text of "related statutes which disclose legislative intent about the provision in question." *Campbell & Gwinn*, 146 Wn.2d at 11. Where the plain text of a statute and any related statutes has but one reasonable meaning, we must give effect to the legislature's intent as embodied in those statutory provisions. *Campbell & Gwinn*, 146 Wn.2d at 9-10. However, where the statute remains susceptible to more than one reasonable

meaning after analysis of the statutory scheme as a whole, we employ canons of statutory construction and extrinsic evidence of legislative intent to interpret the provision. *Campbell & Gwinn*, 146 Wn.2d at 12.

Washington follows the "American rule" and requires parties to bear their own attorney fees unless a "contract, statute, or a recognized ground in equity" alters the default rule. *Cosmopolitan Eng'g Grp., Inc. v. Ondeo Degremont, Inc.*, 159 Wn.2d 292, 296-97, 149 P.3d 666 (2006). RCW 4.84.250 alters the default rule and authorizes an award of fees in some circumstances through the following language:

> Notwithstanding any other provision of chapter 4.84 RCW and RCW 12.20.060, in any action for damages where the amount pleaded by the prevailing party as hereinafter defined, exclusive of costs, is seven thousand five hundred dollars or less, there shall be taxed and allowed to the prevailing party as a part of the costs of the action a reasonable amount to be fixed by the court as attorneys' fees. After July 1, 1985, the maximum amount of the pleading under this section shall be ten thousand dollars.

A plaintiff, such as the League, becomes the prevailing party for purposes of RCW 4.84.250 by recovering, excluding costs, "as much as or more than the amount" it offered in settlement.[8] RCW 4.84.260. These "[o]ffers of settlement shall be served on the adverse party in the manner prescribed by applicable court rules at least ten days prior to trial." RCW 4.84.280.

RCW 4.84.290 governs the award of attorney fees on appeal in cases subject to RCW 4.84.250. It provides that

> [i]f the case is appealed, the prevailing party on appeal shall be considered the prevailing party for the purpose of applying the provisions of RCW 4.84.250: PROVIDED, That if, on appeal, a retrial is ordered, the court ordering the retrial shall designate the prevailing party, if any, for the purpose of applying the provisions of RCW 4.84.250.

[8] A defendant becomes the prevailing party by satisfying the conditions found in RCW 4.84.270.

> In addition, if the prevailing party on appeal would be entitled to attorneys' fees under the provisions of RCW 4.84.250, the court deciding the appeal shall allow to the prevailing party such additional amount as the court shall adjudge reasonable as attorneys' fees for the appeal.

RCW 4.84.290.

As Carino contends, the unambiguous language of RCW 4.84.290 authorizes an award of fees on appeal only where the party is eligible for an award under RCW 4.84.250. RCW 4.84.250 and RCW 4.84.260 required the League to make an offer of settlement to become a prevailing party. The League made no such offer. Therefore, it is not the prevailing party within the meaning of RCW 4.84.250 and RCW 4.84.290.

The League argues that the superior court correctly awarded fees because it could not make an offer of settlement, since Carino had defaulted. RCW 4.84.260 and RCW 4.84.280 required the League to make an offer of settlement in accordance with the terms of the civil rules for courts of limited jurisdiction 10 days before the hearing in the small claims department. Since responsive pleadings are not required in the small claims department under RCW 12.40.090, Carino did not need to file an answer and did not default until she failed to appear at the hearing. Thus, Carino had not yet defaulted during the time the League was required to make an offer of settlement to be eligible for attorney fees under RCW 4.84.260 and RCW 4.84.280. The League's failure to make the necessary offer of settlement during that time means it is not eligible to receive an award of attorney fees under these statutes.

In addition, we have stated that, "[a]lthough not provided for in RCW 4.84.250, common law requires that the party from whom attorney fees are sought receive notice before trial that it may be subject to fees under the statute." *Lay v. Hass*, 112 Wn. App. 818, 824, 51 P.3d 130 (2002). This notice requirement is distinct from the statutory requirement of an offer of

settlement and applies even where a party need not make such an offer. *See Lay*, 112 Wn. App. at 824. Both the Supreme Court and our court have recognized that this notice requirement serves the purpose of RCW 4.84.250-.300 by providing an incentive to parties to settle small disputes by alerting parties to the possibility of a court awarding attorney fees. *Beckmann v. Spokane Transit Auth.*, 107 Wn.2d 785, 788-89, 733 P.2d 960 (1987); *Pub. Utils. Dist. No. 1 of Grays Harbor County v. Crea*, 88 Wn. App. 390, 393-94, 945 P.2d 722 (1997); *Toyota of Puyallup, Inc. v. Tracy*, 63 Wn. App. 346, 353-54, 818 P.2d 1122 (1991).

The record does not indicate that the League gave Carino notice of any intent to seek fees under RCW 4.84.250 or RCW 4.84.290 before the hearing at which the district court entered the default judgment against her. This lack of notice precluded an award of fees under RCW 4.84.250 and, consequently, an award under RCW 4.84.290. *Last Chance Riding Stable, Inc. v. Stephens*, 66 Wn. App. 710, 713-14, 832 P.2d 1353 (1992); *Toyota of Puyallup*, 63 Wn. App. at 354.

Because the League could not receive reasonable attorney fees under RCW 4.84.250, it could not receive reasonable appellate attorney fees under RCW 4.84.290. We reverse the superior court's award of attorney fees to the League.

B. Attorney Fees on Discretionary Review in the Court of Appeals

The League asks for attorney fees incurred in defending the request for discretionary review before us. While we may award fees to a prevailing party on appeal under RCW 4.84.290, the League did not prevail before us and is not entitled to an award of fees.

CONCLUSION

We reverse the superior court's grant of reasonable attorney fees to the League under RCW 4.84.290 and deny the League's request for reasonable attorney fees on discretionary review.

Bjorgen, A.C.J.
BJORGEN, J.

We concur:

Hunt, J.
HUNT, J.

Maxa, J.
MAXA, J.

APPENDIX B

RCW 12.36.020

Appeal — Procedure — Notice filing — Fee — Bond or undertaking — Service — Costs of record preparation.

(1) To appeal a judgment or decision in a small claims action, an appellant shall file a notice of appeal in the district court, pay the statutory superior court filing fee, post the required bond or undertaking, and serve a copy of the notice of appeal on all parties of record within thirty days after the judgment is rendered or decision made.

(2) No appeal may be allowed, nor proceedings on the judgment or decision stayed, unless a bond or undertaking shall be executed on the part of the appellant and filed with and approved by the district court. The bond or undertaking shall be executed with two or more personal sureties, or a surety company as surety, to be approved by the district court, in a sum equal to twice the amount of the judgment and costs, or twice the amount in controversy, whichever is greater, conditioned that the appellant will pay any judgment, including costs, as may be rendered on appeal. No bond is required if the appellant is a county, city, town, or school district.

(3) When an appellant has filed a notice of appeal, paid the statutory superior court filing fee and the costs of preparation of the complete record as set forth in *RCW 3.62.060(7), and posted the bond or undertaking as required, the clerk of the district court shall immediately file a copy of the notice of appeal, the filing fee, and the bond or undertaking with the superior court.

[1998 c 52 § 1; 1997 c 352 § 8; 1929 c 58 § 2; RRS § 1911. Prior: 1891 c 29 § 1; Code 1881 § 1859; 1873 p 367 §§ 157, 158; 1854 p 252 §§ 161, 162.]

Notes:

***Reviser's note:** RCW 3.62.060 was amended by 2009 c 372 § 1, changing subsection (7) to subsection (8). RCW 3.62.060 was subsequently amended by 2011 1st sp.s. c 44 § 4, changing subsection (8) to subsection (1)(h).

RCW 12.40.105
Increase of judgment upon failure to pay.

If the losing party fails to pay the judgment within thirty days or within the period otherwise ordered by the court, the judgment shall be increased by: (1) An amount sufficient to cover costs of certification of the judgment under RCW 12.40.110; (2) the amount specified in RCW 36.18.012(2); and (3) any other costs incurred by the prevailing party to enforce the judgment, including but not limited to reasonable attorneys' fees, without regard to the jurisdictional limits on the small claims department.

[2004 c 70 § 1; 1998 c 52 § 5; 1995 c 292 § 5; 1983 c 254 § 2.]

Notes:

Effective date -- 1983 c 254: See note following RCW 12.40.100.

Chapter 4.84 RCW
COSTS

RCW Sections

Notes:

Deposit of jury fee taxable as costs: RCW 4.44.110.

4.84.010
Costs allowed to prevailing party — Defined — Compensation of attorneys.

The measure and mode of compensation of attorneys and counselors, shall be left to the agreement, expressed or implied, of the parties, but there shall be allowed to the prevailing party upon the judgment certain sums for the prevailing party's expenses in the action, which allowances are termed costs, including, in addition to costs otherwise authorized by law, the following expenses:

(1) Filing fees;

(2) Fees for the service of process by a public officer, registered process server, or other means, as follows:

(a) When service is by a public officer, the recoverable cost is the fee authorized by law at the time of service.

(b) If service is by a process server registered pursuant to chapter 18.180 RCW or a person exempt from registration, the recoverable cost is the amount actually charged and incurred in effecting service;

(3) Fees for service by publication;

(4) Notary fees, but only to the extent the fees are for services that are expressly required by law and only to the extent they represent actual costs incurred by the prevailing party;

(5) Reasonable expenses, exclusive of attorneys' fees, incurred in obtaining reports and records, which are admitted into evidence at trial or in mandatory arbitration in superior or district court, including but not limited to medical records, tax records, personnel records, insurance reports, employment and wage records, police reports, school records, bank records, and legal files;

(6) Statutory attorney and witness fees; and

(7) To the extent that the court or arbitrator finds that it was necessary to achieve the successful result, the reasonable expense of the transcription of depositions used at trial or at the mandatory arbitration hearing: PROVIDED, That the expenses of depositions shall be allowed on a pro rata basis for those portions of the depositions introduced into evidence or used for purposes of impeachment.

[2009 c 240 § 1; 2007 c 121 § 1; 1993 c 48 § 1; 1984 c 258 § 92; 1983 1st ex.s. c 45 § 7; Code 1881 § 505; 1877 p 108 § 509; 1869 p 123 § 459; 1854 p 201 § 367; RRS § 474.]

Notes:

Court Improvement Act of 1984 -- Effective dates -- Severability -- Short title -- 1984 c 258: See notes following RCW 3.30.010.

Attorney fee in appeals from board of industrial insurance appeals: RCW 51.52.130, 51.52.132.

Process server fees: RCW 18.180.035.

4.84.015
Costs in civil actions for the recovery of money only — When plaintiff considered the prevailing party.

(1) In any civil action for the recovery of money only, the plaintiff will be considered the prevailing party for the purpose of awarding costs, including a statutory attorney fee, if: (a) The defendant makes full or partial payment of the amounts sought by the plaintiff prior to the entry of judgment; and (b) before such payment is tendered, the plaintiff has notified the defendant in writing that the full or partial payment of the amounts sued for might result in an award of costs.

(2) For the purposes of this section, "plaintiff" includes a counterclaimant, cross-claimant, and third-party plaintiff, and "defendant" includes a party defending a counterclaim, cross-claim, or third-party claim.

(3) A party may demand, offer, or accept the payment of statutory costs before the entry of judgment in an action.

(4) This section may not be construed to (a) authorize an award of costs if the action is resolved by a negotiated settlement or (b) limit or bar the operation of cost-shifting provisions of other statutes or court rules.

[2009 c 240 § 2.]

4.84.020
Amount of contracted attorneys' fee to be fixed by court.

In all cases of foreclosure of mortgages and in all other cases in which attorneys' fees are allowed, the amount thereof shall be fixed by the court at such sum as the court shall deem reasonable, any stipulations in the note, mortgage or other instrument to the contrary notwithstanding; but in no case shall said fee be fixed above contract price stated in said note or contract.

[1895 c 48 § 1; 1891 c 44 § 1; 1888 p 9 § 1; 1885 p 176 § 1; RRS § 475.]

4.84.030
Prevailing party to recover costs.

In any action in the superior court of Washington the prevailing party shall be entitled to his or her costs and disbursements; but the plaintiff shall in no case be entitled to costs taxed as attorneys' fees in actions within the jurisdiction of the district court when commenced in the superior court.

[1987 c 202 § 121; 1890 p 337 § 1; 1883 p 42 § 1; Code 1881 §§ 506, 507; 1854 p 201 §§ 368, 369; RRS § 476.]

Notes:

Intent -- 1987 c 202: See note following RCW 2.04.190.

4.84.040
Limitation on costs in certain actions.

In an action for an assault and battery, or for false imprisonment, libel, slander, malicious prosecution, criminal conversation or seduction, if the plaintiff recover less than ten dollars, he or she shall be entitled to no more costs or disbursements than the damage recovered.

[2011 c 336 § 120; Code 1881 § 508; 1877 p 108 § 512; 1869 p 123 § 460; 1854 p 202 § 370; RRS § 477.]

4.84.050
Limited to one of several actions.

When several actions are brought on one bond, undertaking, promissory note, bill of exchange, or other instrument in writing, or in any other case for the same cause of action against several parties, who might have been joined as defendants in the same action, no costs or disbursements shall be allowed to the plaintiff in more than one of such actions, which may be at his or her election, if the parties proceeded against in the other actions were, at the commencement of the previous action, openly within this state.

[2011 c 336 § 121; Code 1881 § 509; 1877 p 108 § 513; 1869 p 123 § 461; 1854 p 202 § 371; RRS § 478.]

4.84.060
Costs to defendant.

In all cases where costs and disbursements are not allowed to the plaintiff, the defendant shall be entitled to have judgment in his or her favor for the same.

[2011 c 336 § 122; Code 1881 § 510; 1877 p 109 § 514; 1869 p 123 § 462; 1854 p 202 § 372; RRS § 479.]

4.84.070
Costs to defendants defending separately.

In all actions where there are several defendants not united in interest, and making separate defenses by separate answers, and the plaintiff fails to recover judgment against all, the court may award costs to such defendants as recover judgments in their favor, or either of them.

[Code 1881 § 511; 1877 p 109 § 515; 1869 p 124 § 463; 1854 p 202 § 373; RRS § 480.]

4.84.080
Schedule of attorneys' fees.

When allowed to either party, costs to be called the attorney fee, shall be as follows:

(1) In all actions where judgment is rendered, two hundred dollars.

(2) In all actions where judgment is rendered in the supreme court or the court of appeals, after argument, two hundred dollars.

[2004 c 123 § 1; 1985 c 240 § 1; 1981 c 331 § 3; 1975-'76 2nd ex.s. c 30 § 2; Code 1881 § 512; 1877 p 108 § 516; 1869 p 124 § 464; 1854 p 202 § 374; RRS § 481.]

Notes:

Court Congestion Reduction Act of 1981 -- Purpose -- Severability -- 1981 c 331: See notes following RCW 2.32.070.

Costs: RCW 4.84.190.

Transmission of record on change of venue -- Costs, attorney's fees: RCW 4.12.090.

4.84.090
Cost bill — Witnesses to report attendance.

The prevailing party, in addition to allowance for costs, as provided in RCW 4.84.080, shall also be allowed for all necessary disbursements, including the fees of officers allowed by law, the fees of witnesses, the necessary expenses of taking depositions, by commission or otherwise, and the compensation of referees. The court shall allow the prevailing party all service of process charges in case such process was served by a person or persons not an officer or officers. Such service charge shall be the same as is now allowed or shall in the future be allowed as fee and mileage to an officer. The disbursements shall be stated in detail and verified by affidavit, and shall be served on the opposite party or his or her attorney, and filed with the clerk of the court, within ten days after the judgment: PROVIDED, The clerk of the court shall keep a record of all witnesses in attendance upon any civil action, for whom fees are to be claimed, with the number of days in attendance and their mileage, and no fees or mileage for any witness shall be taxed in the cost bill unless they shall have reported their attendance at the close of each day's session to the clerk in attendance at such trial.

[2011 c 336 § 123; 1949 c 146 § 1; 1905 c 16 § 1; Code 1881 § 513; 1877 p 109 § 517; 1869 p 124 § 465; 1854 p 202 § 375; Rem. Supp. 1949 § 482.]

Notes:

Witness fees and mileage: Chapter 2.40 RCW.

4.84.100
Costs on postponement of trial.

When an application shall be made to a court or referees to postpone a trial, the payment to the adverse party of a sum not exceeding ten dollars, besides the fees of witnesses, may be imposed as the condition of granting the postponement.

[Code 1881 § 515; 1877 p 109 § 519; 1854 p 203 § 377; RRS § 484.]

4.84.110
Costs where tender is made.

When in an action for the recovery of money, the defendant alleges in his or her answer, that, before the commencement of the action, he or she tendered to the plaintiff the full amount to which he or she is entitled, in such money as by agreement ought to be tendered, and thereupon brings into court, for the plaintiff, the amount tendered, and the allegation be found true, the plaintiff shall not recover costs, but shall pay them to the defendant.

[2011 c 336 § 124; Code 1881 § 516; 1877 p 109 § 520; 1854 p 203 § 378; RRS § 485.]

4.84.120
Costs where deposit in court is made and rejected.

If the defendant in any action pending, shall at any time deposit with the clerk of the court, for the plaintiff, the amount which he or she admits to be due, together with all costs that have accrued, and notify the plaintiff thereof, and such plaintiff shall refuse to accept the same in discharge of the action, and shall not afterwards recover a larger amount than that deposited with the clerk, exclusive of interest and cost, he or she shall pay all costs that may accrue from the time such money was so deposited.

[2011 c 336 § 125; Code 1881 § 517; 1877 p 110 § 521; 1854 p 203 § 379; RRS § 486.]

Notes:

Conflicting claims, deposit in court, costs: RCW 4.08.170.

4.84.130

Costs in appeals from district courts.

In all civil actions tried before the district court, in which an appeal shall be taken to the superior court, and the party appellant shall not recover a more favorable judgment in the superior court than before the district court, such appellant shall pay all costs.

[1987 c 202 § 122; Code 1881 § 518; 1877 p 110 § 522; 1854 p 203 § 380; RRS § 487.]

Notes:

Intent -- 1987 c 202: See note following RCW 2.04.190.

District court appeals: Chapter 12.36 RCW.

4.84.140
Costs against guardian of infant plaintiff.

When costs are adjudged against an infant plaintiff, the guardian or person by whom he or she appeared in the action shall be responsible therefor, and payment may be enforced by execution.

[2011 c 336 § 126; Code 1881 § 519; 1877 p 110 § 523; 1854 p 203 § 381; RRS § 488.]

4.84.150
Costs against fiduciaries.

In an action prosecuted or defended by an executor, administrator, trustee of an express trust, or a person expressly authorized by statute, costs shall be recovered as in an action by or against a person prosecuting in his or her own right, but such costs shall be chargeable only upon or collected of the estate of the party represented, unless the court shall direct the same to be paid by the plaintiff or defendant personally, for mismanagement or bad faith in such action or defense.

[2011 c 336 § 127; Code 1881 § 520; 1877 p 110 § 524; 1854 p 203 § 382; RRS § 489.]

Notes:

Actions by and against personal representatives, etc.: Chapter 11.48 RCW.

4.84.160
Costs against assignee.

When the cause of action, after the commencement of the action, by assignment, or in any other manner, becomes the property of a person not a party thereto, and the prosecution or defense is thereafter continued, such person shall be liable for the costs in the same manner as if he or she were a party, and payment thereof may be enforced by execution.

[2011 c 336 § 128; Code 1881 § 521; 1877 p 110 § 525; 1869 p 125 § 473; 1854 p 203 § 383; RRS § 490.]

4.84.170
Costs against state or county.

In all actions prosecuted in the name and for the use of the state, or in the name and for the use of any county, and in any action brought against the state or any county, and on all appeals to the supreme court or the court of appeals of the state in all actions brought by or against either the state or any county, the state or county shall be liable for costs in the same case and to the same extent as private parties.

[1971 c 81 § 22; 1959 c 62 § 1; Code 1881 § 522; 1877 p 110 § 526; 1854 p 203 § 384; RRS § 491.]

4.84.185
Prevailing party to receive expenses for opposing frivolous action or defense.

In any civil action, the court having jurisdiction may, upon written findings by the judge that the action, counterclaim, cross-claim, third party claim, or defense was frivolous and advanced without reasonable cause, require the nonprevailing party to pay the prevailing party the reasonable expenses, including fees of attorneys, incurred in opposing such action, counterclaim, cross-claim, third party claim, or defense. This determination shall be made upon motion by the prevailing party after a voluntary or involuntary order of dismissal, order on summary judgment, final judgment after trial, or other final order terminating the action as to the prevailing party. The judge shall consider all evidence presented at the time of the motion to determine whether the position of the nonprevailing party was frivolous and advanced without reasonable cause. In no event may such motion be filed more than thirty days after entry of the order.

The provisions of this section apply unless otherwise specifically provided by statute.

[1991 c 70 § 1; 1987 c 212 § 201; 1983 c 127 § 1.]

Notes:

Administrative law, frivolous petitions for judicial review: RCW 34.05.598.

4.84.190
Costs in proceedings not specifically covered.

In all actions and proceedings other than those mentioned in this chapter [and RCW 4.48.100], where no provision is made for the recovery of costs, they may be allowed or not, and if allowed may be apportioned between the parties, in the discretion of the court.

[Code 1881 § 525; 1877 p 111 § 529; 1854 p 204 § 387; RRS § 493.]

Notes:

Costs: RCW 4.84.080.

4.84.200
Retaxation of costs.

Any party aggrieved by the taxation of costs by the clerk of the court may, upon application, have the same retaxed by the court in which the action or proceeding is had.

[Code 1881 § 526; 1877 p 111 § 530; 1854 p 204 § 388; RRS § 494.]

4.84.210
Security for costs.

When a plaintiff in an action, or in a garnishment or other proceeding, resides out of the county, or is a foreign corporation, or begins such action or proceeding as the assignee of some other person or of a firm or corporation, as to all causes of action sued upon, security for the costs and charges which may be awarded against such plaintiff may be required by the defendant or garnishee defendant. When required, all proceedings in the action or proceeding shall be stayed until a bond, executed by two or more persons, or by a surety company authorized to do business in this state be filed with the clerk, conditioned that they will pay such costs and charges as may be awarded against the plaintiff by judgment, or in the progress of the action or proceeding, not exceeding the sum of two hundred dollars. A new or additional bond may be ordered by the court or judge, upon proof that the original bond is insufficient security, and proceedings in the action or proceeding stayed until such new or additional bond be executed and filed. The plaintiff may deposit with the clerk the sum of two hundred dollars in lieu of a bond.

[1929 c 103 § 1; Code 1881 § 527; 1877 p 111 § 531; 1854 p 204 § 389; RRS § 495.]

4.84.220
Bond in lieu of separate security.

In lieu of separate security for each action or proceeding in any court, the plaintiff may cause to be executed and filed in the court a bond in the penal sum of two hundred dollars running to the state of Washington, with surety as in case of a separate bond, and conditioned for the payment of all judgments for costs which may thereafter be rendered against him or her in that court. Any defendant or garnishee who shall thereafter recover a judgment for costs in said court against the principal on such bond shall likewise be entitled to judgment against the sureties. Such bond shall not be sufficient unless the penalty thereof is unimpaired by any outstanding obligation at the time of the commencement of the action.

[2011 c 336 § 129; 1929 c 103 § 2; RRS § 495-1.]

4.84.230
Dismissal for failure to give security.

After the lapse of ninety days from the service of notice that security is required or of an order for new or

additional security, upon proof thereof, and that no undertaking as required has been filed, the court or judge may order the action to be dismissed.

[1933 c 14 § 1; RRS § 495-2.]

4.84.240
Judgment on cost bond.

Whenever any bond or undertaking for the payment of any costs to any party shall be filed in any action or other legal proceeding in any court in this state and judgment should be rendered for any such costs against the principal on any such bonds or against the party primarily liable therefor in whose behalf any such bond or undertaking has been filed, such judgment for costs shall be rendered against the principal on such bond or the party primarily liable therefor and at the same time also against his or her surety or sureties on any or all such bonds or undertakings filed in any such action or other legal proceeding.

[2011 c 336 § 130; 1909 c 173 § 1; RRS § 496.]

4.84.250
Attorneys' fees as costs in damage actions of ten thousand dollars or less — Allowed to prevailing party.

Notwithstanding any other provisions of chapter 4.84 RCW and RCW 12.20.060, in any action for damages where the amount pleaded by the prevailing party as hereinafter defined, exclusive of costs, is seven thousand five hundred dollars or less, there shall be taxed and allowed to the prevailing party as a part of the costs of the action a reasonable amount to be fixed by the court as attorneys' fees. After July 1, 1985, the maximum amount of the pleading under this section shall be ten thousand dollars.

[1984 c 258 § 88; 1980 c 94 § 1; 1973 c 84 § 1.]

Notes:

Court Improvement Act of 1984 -- Effective dates -- Severability -- Short title -- 1984 c 258: See notes following RCW 3.30.010.

Effective date -- 1980 c 94: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect May 1, 1980." [1980 c 94 § 6.]

4.84.260
Attorneys' fees as costs in damage actions of ten thousand dollars or less — When plaintiff deemed prevailing party.

The plaintiff, or party seeking relief, shall be deemed the prevailing party within the meaning of RCW 4.84.250 when the recovery, exclusive of costs, is as much as or more than the amount offered in settlement by the plaintiff, or party seeking relief, as set forth in RCW 4.84.280.

[1973 c 84 § 2.]

4.84.270
Attorneys' fees as costs in damage actions of ten thousand dollars or less — When defendant deemed prevailing party.

The defendant, or party resisting relief, shall be deemed the prevailing party within the meaning of RCW 4.84.250, if the plaintiff, or party seeking relief in an action for damages where the amount pleaded, exclusive of costs, is equal to or less than the maximum allowed under RCW 4.84.250, recovers nothing, or if the recovery, exclusive of costs, is the same or less than the amount offered in settlement by the defendant, or the party resisting relief, as set forth in RCW 4.84.280.

[1980 c 94 § 2; 1973 c 84 § 3.]

Notes:

Effective date -- 1980 c 94: See note following RCW 4.84.250.

4.84.280
Attorneys' fees as costs in damage actions of ten thousand dollars or less — Offers of settlement in determining.

Offers of settlement shall be served on the adverse party in the manner prescribed by applicable court rules at least ten days prior to trial. Offers of settlement shall not be served until thirty days after the completion of the service and filing of the summons and complaint. Offers of settlement shall not be filed or communicated to the trier of the fact until after judgment, at which time a copy of said offer of settlement shall be filed for the purposes of determining attorneys' fees as set forth in RCW 4.84.250.

[1983 c 282 § 1; 1980 c 94 § 3; 1973 c 84 § 4.]

Notes:

Effective date -- 1980 c 94: See note following RCW 4.84.250.

4.84.290
Attorneys' fees as costs in damage actions of ten thousand dollars or less — Prevailing party on appeal.

If the case is appealed, the prevailing party on appeal shall be considered the prevailing party for the purpose of applying the provisions of RCW 4.84.250: PROVIDED, That if, on appeal, a retrial is ordered, the court ordering the retrial shall designate the prevailing party, if any, for the purpose of applying the provisions of RCW 4.84.250.

In addition, if the prevailing party on appeal would be entitled to attorneys' fees under the provisions of RCW 4.84.250, the court deciding the appeal shall allow to the prevailing party such additional amount as

the court shall adjudge reasonable as attorneys' fees for the appeal.

[1973 c 84 § 5.]

4.84.300
Attorneys' fees as costs in damage actions of ten thousand dollars or less — Application.

The provisions of RCW 4.84.250 through 4.84.290 shall apply regardless of whether the action is commenced in district court or superior court except as provided in RCW 4.84.280. This section shall not be construed as conferring jurisdiction on either court.

[1987 c 202 § 123; 1980 c 94 § 4; 1973 c 84 § 6.]

Notes:

Intent -- 1987 c 202: See note following RCW 2.04.190.

Effective date -- 1980 c 94: See note following RCW 4.84.250.

4.84.320
Attorneys' fees in actions for injuries resulting from the rendering of medical and other health care.

See RCW 7.70.070.

4.84.330
Actions on contract or lease which provides that attorneys' fees and costs incurred to enforce provisions be awarded to one of parties — Prevailing party entitled to attorneys' fees — Waiver prohibited.

In any action on a contract or lease entered into after September 21, 1977, where such contract or lease specifically provides that attorneys' fees and costs, which are incurred to enforce the provisions of such contract or lease, shall be awarded to one of the parties, the prevailing party, whether he or she is the party specified in the contract or lease or not, shall be entitled to reasonable attorneys' fees in addition to costs and necessary disbursements.

Attorneys' fees provided for by this section shall not be subject to waiver by the parties to any contract or lease which is entered into after September 21, 1977. Any provision in any such contract or lease which provides for a waiver of attorneys' fees is void.

As used in this section "prevailing party" means the party in whose favor final judgment is rendered.

[2011 c 336 § 131; 1977 ex.s. c 203 § 1.]

4.84.340
Judicial review of agency action — Definitions.

Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 4.84.340 through 4.84.360.

(1) "Agency" means any state board, commission, department, institution of higher education, or officer, authorized by law to make rules or to conduct adjudicative proceedings, except those in the legislative or judicial branches, the governor, or the attorney general except to the extent otherwise required by law.

(2) "Agency action" means agency action as defined by chapter 34.05 RCW.

(3) "Fees and other expenses" includes the reasonable expenses of expert witnesses, the reasonable cost of a study, analysis, engineering report, test, or project that is found by the court to be necessary for the preparation of the party's case, and reasonable attorneys' fees. Reasonable attorneys' fees shall be based on the prevailing market rates for the kind and quality of services furnished, except that (a) no expert witness shall be compensated at a rate in excess of the highest rates of compensation for expert witnesses paid by the state of Washington, and (b) attorneys' fees shall not be awarded in excess of one hundred fifty dollars per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee.

(4) "Judicial review" means a judicial review as defined by chapter 34.05 RCW.

(5) "Qualified party" means (a) an individual whose net worth did not exceed one million dollars at the time the initial petition for judicial review was filed or (b) a sole owner of an unincorporated business, or a partnership, corporation, association, or organization whose net worth did not exceed five million dollars at the time the initial petition for judicial review was filed, except that an organization described in section 501(c)(3) of the federal internal revenue code of 1954 as exempt from taxation under section 501(a) of the code and a cooperative association as defined in section 15(a) of the agricultural marketing act (12 U.S.C. 1141J(a)), may be a party regardless of the net worth of such organization or cooperative association.

[1995 c 403 § 902.]

Notes:

Findings -- 1995 c 403: "The legislature finds that certain individuals, smaller partnerships, smaller corporations, and other organizations may be deterred from seeking review of or defending against an unreasonable agency action because of the expense involved in securing the vindication of their rights in administrative proceedings. The legislature further finds that because of the greater resources and expertise of the state of Washington, individuals, smaller partnerships, smaller corporations, and other organizations are often deterred from seeking review of or defending against state agency actions because of the costs for attorneys, expert witnesses, and other costs. The legislature therefore adopts this equal access to justice act to ensure that these parties have a greater opportunity to defend themselves from inappropriate state agency actions and to protect their rights." [1995 c 403 § 901.]

Findings -- Short title -- Intent -- 1995 c 403: See note following RCW 34.05.328.

Part headings not law -- Severability -- 1995 c 403: See RCW 43.05.903 and 43.05.904.

4.84.350

Judicial review of agency action — Award of fees and expenses.

(1) Except as otherwise specifically provided by statute, a court shall award a qualified party that prevails in a judicial review of an agency action fees and other expenses, including reasonable attorneys' fees, unless the court finds that the agency action was substantially justified or that circumstances make an award unjust. A qualified party shall be considered to have prevailed if the qualified party obtained relief on a significant issue that achieves some benefit that the qualified party sought.

(2) The amount awarded a qualified party under subsection (1) of this section shall not exceed twenty-five thousand dollars. Subsection (1) of this section shall not apply unless all parties challenging the agency action are qualified parties. If two or more qualified parties join in an action, the award in total shall not exceed twenty-five thousand dollars. The court, in its discretion, may reduce the amount to be awarded pursuant to subsection (1) of this section, or deny any award, to the extent that a qualified party during the course of the proceedings engaged in conduct that unduly or unreasonably protracted the final resolution of the matter in controversy.

[1995 c 403 § 903.]

Notes:

Findings -- 1995 c 403: See note following RCW 4.84.340.

Findings -- Short title -- Intent -- 1995 c 403: See note following RCW 34.05.328.

Part headings not law -- Severability -- 1995 c 403: See RCW 43.05.903 and 43.05.904.

4.84.360

Judicial review of agency action — Payment of fees and expenses — Report to office of financial management.

Fees and other expenses awarded under RCW 4.84.340 and 4.84.350 shall be paid by the agency over which the party prevails from operating funds appropriated to the agency within sixty days. Agencies paying fees and other expenses pursuant to RCW 4.84.340 and 4.84.350 shall report all payments to the office of financial management within five days of paying the fees and other expenses. Fees and other expenses awarded by the court shall be subject to the provisions of chapter 39.76 RCW and shall be deemed payable on the date the court announces the award.

[1995 c 403 § 904.]

Notes:

Findings -- 1995 c 403: See note following RCW 4.84.340.

Findings -- Short title -- Intent -- 1995 c 403: See note following RCW 34.05.328.

Part headings not law -- Severability -- 1995 c 403: See RCW 43.05.903 and 43.05.904.

4.84.370

Appeal of land use decisions — Fees and costs.

(1) Notwithstanding any other provisions of this chapter, reasonable attorneys' fees and costs shall be awarded to the prevailing party or substantially prevailing party on appeal before the court of appeals or the supreme court of a decision by a county, city, or town to issue, condition, or deny a development permit involving a site-specific rezone, zoning, plat, conditional use, variance, shoreline permit, building permit, site plan, or similar land use approval or decision. The court shall award and determine the amount of reasonable attorneys' fees and costs under this section if:

(a) The prevailing party on appeal was the prevailing or substantially prevailing party before the county, city, or town, or in a decision involving a substantial development permit under chapter 90.58 RCW, the prevailing party on appeal was the prevailing party or the substantially prevailing party before the shoreline[s] hearings board; and

(b) The prevailing party on appeal was the prevailing party or substantially prevailing party in all prior judicial proceedings.

(2) In addition to the prevailing party under subsection (1) of this section, the county, city, or town whose decision is on appeal is considered a prevailing party if its decision is upheld at superior court and on appeal.

[1995 c 347 § 718.]

Notes:

Finding -- Severability -- Part headings and table of contents not law -- 1995 c 347: See notes following RCW 36.70A.470.