

CHAPTER 57
COURT COSTS

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57.011 Costs; security by nonresidents.—When a nonresident plaintiff begins an action or when a plaintiff after beginning an action removes himself or herself or his or her effects from the state, he or she shall file a bond with surety to be approved by the clerk of \$100, conditioned to pay all costs which may be adjudged against him or her in said action in the court in which the action is brought. On failure to file such bond within 30 days after such commencement or such removal, the defendant may, after 20 days' notice to plaintiff (during which the plaintiff may file such bond), move to dismiss the action or may hold the attorney bringing or prosecuting the action liable for said costs and if they are adjudged against plaintiff, an execution shall issue against said attorney.

History.—s. 8, Nov. 23, 1828; s. 4, Nov. 21, 1829; RS 1301; GS 1733; RGS 2948; CGL 4672; s. 13, ch. 67-254; s. 310, ch. 95-147.

Note.—Former s. 58.01.

57.021 Costs; taxing.—The clerk or the judge shall tax the costs accruing in each action when it is determined and shall keep a duplicate of the costs bill on file among the original papers in the action. Each item of costs shall be enumerated in the bill.

History.—ss. 5, 6, ch. 78, 1847; RS 1302; GS 1734; RGS 2949; CGL 4673; s. 13, ch. 67-254.

Note.—Former s. 58.02.

57.031 Costs; record.—All officers who are allowed to charge fees and costs shall keep a book in which they shall record an itemized account of all the costs and fees which they charge against parties having business with them. The book shall be open at all times for inspection of parties wishing to examine the costs charged for any service rendered by the officers.

History.—ss. 1, 2, ch. 3252, 1881; RS 1303; GS 1735; RGS 2950; CGL 4674; s. 13, ch. 67-254.

Note.—Former s. 58.03.

57.041 Costs; recovery from losing party.—

(1) The party recovering judgment shall recover all his or her legal costs and charges which shall be

included in the judgment; but this section does not apply to executors or administrators in actions when they are not liable for costs.

(2) Costs may be collected by execution on the judgment or order assessing costs.

History.—s. 71, Nov. 23, 1828; s. 7, ch. 73, 1847; RS 1304; GS 1736; RGS 2951; CGL 4675; s. 13, ch. 67-254; s. 311, ch. 95-147.

Note.—Former s. 58.04.

57.051 Costs; prohibition against unlawful exaction.—

(1) PROHIBITION.—No officer shall make two charges for the same official act or service, nor charge for any constructive service. No fee shall be charged for any official service performed or claimed to be performed by any officer unless the fee is specifically authorized and its amount is specified by law.

(2) PENALTY.—When any officer willfully charges or levies more than he or she is entitled to, the officer shall forfeit and pay to the party injured 4 times the amount unjustly claimed which may be recovered on motion in the court where the services were rendered.

History.—ss. 2, 8, ch. 73, 1847; ss. 3, 4, ch. 1535, 1866; RS 1305; GS 1737; RGS 2952; CGL 4676; s. 13, ch. 67-254; s. 312, ch. 95-147.

Note.—Former s. 58.05.

57.061 Costs; recovery of illegally exacted; procedure.—

(1) SUMMARY PROCEEDINGS.—Any person aggrieved by any charge for costs by any officer may have its correctness determined by a court and jury by giving 5 days' notice to the officer making the charge, stating in the notice the time and place of trial. The judge shall enter the action for trial on the day specified in the notice unless he or she extends the time.

(2) VERDICT AND JUDGMENT.—If the jury finds for plaintiff, it shall find the amount which has been improperly collected and the court shall enter judgment for 4 times the amount on which execution shall issue.

History.—ss. 4, 5, 6, Mar. 10, 1843; s. 2, ch. 73, 1847; RS 1305; GS 1737; RGS 2952; CGL 4676; s. 13, ch. 67-254; s. 313, ch. 95-147.

Note.—Former s. 58.06.

57.071 Costs; what taxable.—If costs are awarded to any party the following shall also be allowed:

(1) The reasonable premiums or expenses paid on all bonds or other security furnished by such party.

(2) The expense of the court reporter for per diem, transcribing proceedings and depositions, including opening statements and arguments by counsel.

(3) Any sales or use tax due on legal services provided to such party, notwithstanding any other provision of law to the contrary.

History.—s. 1, ch. 16246, 1933; CGL 1936 Supp. 4680(1); s. 13, ch. 67-254; s. 42, ch. 87-6.

Note.—Former s. 58.08.

57.081 Costs; right to proceed where prepayment of costs waived.—

(1) Any indigent person who is a party or intervenor in any judicial or administrative agency proceeding or who initiates such proceeding shall receive the services of the courts, sheriffs, and clerks, with respect to such

proceedings, without charge. Such services are limited to filing fees, service of process, certified copies of orders or final judgments, a single photocopy of any court pleading, record, or instrument filed with the clerk, examining fees, mediation services and fees, court-appointed counsel fees, subpoena fees and services, service charges for collecting and disbursing funds, and any other cost or service arising out of pending litigation. In any appeal from an administrative agency decision, for which the clerk is responsible for preparing the transcript, the clerk shall waive the cost of preparing the transcripts and the cost for copies of any exhibits in the record. No prepayment of costs to any judge, clerk, or sheriff is required in any action when the party has obtained from the clerk in each proceeding a certification of indigency, based on an affidavit of the applicant claiming that the applicant is indigent and unable to pay the charges otherwise payable by law to any of such officers and providing the details of the applicant's financial condition. However, when the person is represented by an attorney, the person need not file an affidavit in order to be exempt from payment of charges under this subsection. A represented person is exempt from charges under this subsection, if the attorney of such person files a written certificate, signed by the attorney, certifying that the attorney has made an investigation to ascertain the financial condition of the client and has found the client to be indigent; that the attorney has investigated the nature of the applicant's position and in the attorney's opinion it is meritorious as a matter of law; and that the attorney has not been paid or promised payment of any remuneration for services and intends to act as attorney for applicant without compensation. On the failure or refusal of the clerk to issue a certificate of indigency, the applicant is entitled to a review of the application for the certificate by the court having jurisdiction of the cause of action.

(2) Any sheriff who, in complying with the terms of this section, expends personal funds for automotive fuel or ordinary carfare in serving the process of those qualifying under this section may requisition the board of county commissioners of the county for the actual expense, and on the submission to the board of county commissioners of appropriate proof of any such expenditure, the board of county commissioners shall pay the amount of the actual expense from the general fund of the county to the requisitioning officer.

(3) If an applicant prevails in an action, costs shall be taxed in his or her favor as provided by law and, when collected, shall be applied to pay costs which otherwise would have been required and which have not been paid.

History.—ss. 1, 2, 3, ch. 17883, 1937; CGL 1940 Supp. 4680(2); s. 15, ch. 29615, 1955; s. 1, ch. 57-251; s. 13, ch. 67-254; s. 14, ch. 73-334; s. 1, ch. 80-348; s. 18, ch. 94-348; s. 1362, ch. 95-147.

Note.—Former s. 58.09.

57.091 Costs; refunded to counties in certain proceedings relating to state prisoners.—All lawful fees, costs, and expenses hereafter adjudged against, and paid by, any county in all competency proceedings and all criminal prosecutions against state prisoners imprisoned in a state correctional institution, and in all habeas corpus cases brought to test the legality of the imprison-

ment of state prisoners of such correctional institutions, shall be refunded to the county paying the sum from the General Revenue Fund in the State Treasury in the manner and to the extent herein provided, to wit: between the 1st and 15th of the month next succeeding the month in which the fees, costs, and expenses have been allowed and paid by the county, the clerk of the court shall make requisition on the Department of Corrections for the fees, costs, and expenses so allowed and paid during the preceding month, giving the style of the cases in which fees, costs, and expenses were incurred and the amount and items of cost in each case; providing a certified copy of the judgment adjudging the fees, costs, and expenses against the county and showing that the amount represented thereby has been approved by the presiding judge, paid by the county, and verified by the clerk; and attaching a certified copy of the bill as approved and allowed by the board of county commissioners of the county. If the Department of Corrections finds the bills legal and adjudged against and paid by the county, the department shall submit a request to the Comptroller to draw a warrant in the amount thereof, or in the amount the department finds legal and adjudged against and paid by the county, in favor of the county paying the fees, costs, and expenses, which shall be paid by the State Treasurer from the general revenue funds of the state.

History.—s. 1, ch. 19272, 1939; CGL 1940 Supp. 8489(1); s. 13, ch. 67-254; s. 3, ch. 76-287; s. 17, ch. 79-164; s. 314, ch. 95-147; s. 23, ch. 95-312.

Note.—Former s. 58.10.

57.101 Costs in Supreme Court; certain not taxable.—The costs of copies of the record of any paper on file in the Supreme Court shall not be taxed as costs against the losing party unless the copies have been ordered by the party or his or her attorney.

History.—s. 5, ch. 1137, 1861; RS 1340; GS 1775; RGS 2999; CGL 4733; s. 13, ch. 67-254; s. 315, ch. 95-147.

Note.—Former s. 58.11.

57.104 Computation of attorneys' fees.—In any action in which attorneys' fees are to be determined or awarded by the court, the court shall consider, among other things, time and labor of any legal assistants who contributed nonclerical, meaningful legal support to the matter involved and who are working under the supervision of an attorney. For purposes of this section "legal assistant" means a person, who under the supervision and direction of a licensed attorney engages in legal research, and case development or planning in relation to modifications or initial proceedings, services, processes, or applications; or who prepares or interprets legal documents or selects, compiles, and uses technical information from references such as digests, encyclopedias, or practice manuals and analyzes and follows procedural problems that involve independent decisions.

History.—s. 1, ch. 87-260.

57.105 Attorney's fee.—

(1) The court shall award a reasonable attorney's fee to be paid to the prevailing party in equal amounts by the losing party and the losing party's attorney in any civil action in which the court finds that there was a complete absence of a justiciable issue of either law or fact

raised by the complaint or defense of the losing party; provided, however, that the losing party's attorney is not personally responsible if he or she has acted in good faith, based on the representations of his or her client. If the court finds that there was a complete absence of a justiciable issue of either law or fact raised by the defense, the court shall also award prejudgment interest.

(2) If a contract contains a provision allowing attorney's fees to a party when he or she is required to take any action to enforce the contract, the court may also allow reasonable attorney's fees to the other party when that party prevails in any action, whether as plaintiff or defendant, with respect to the contract. This act shall take effect October 1, 1988, and shall apply to contracts entered into on said date or thereafter.

History.—s. 1, ch. 78-275; s. 61, ch. 86-160; ss. 1, 2, ch. 88-160; s. 1, ch. 90-300; s. 316, ch. 95-147.

157.111 Civil actions and administrative proceedings initiated by state agencies; attorneys' fees and costs.—

(1) This section may be cited as the "Florida Equal Access to Justice Act."

(2) The Legislature finds that certain persons may be deterred from seeking review of, or defending against, unreasonable governmental action because of the expense of civil actions and administrative proceedings. Because of the greater resources of the state, the standard for an award of attorney's fees and costs against the state should be different from the standard for an award against a private litigant. The purpose of this section is to diminish the deterrent effect of seeking review of, or defending against, governmental action by providing in certain situations an award of attorney's fees and costs against the state.

(3) As used in this section:

(a) The term "attorney's fees and costs" means the reasonable and necessary attorney's fees and costs incurred for all preparations, motions, hearings, trials, and appeals in a proceeding.

(b) The term "initiated by a state agency" means that the state agency:

1. Filed the first pleading in any state or federal court in this state;

2. Filed a request for an administrative hearing pursuant to chapter 120; or

3. Was required by law or rule to advise a small business party of a clear point of entry after some recognizable event in the investigatory or other free-form proceeding of the agency.

(c) A small business party is a "prevailing small business party" when:

1. A final judgment or order has been entered in favor of the small business party and such judgment or order has not been reversed on appeal or the time for seeking judicial review of the judgment or order has expired;

2. A settlement has been obtained by the small business party which is favorable to the small business party on the majority of issues which such party raised during the course of the proceeding; or

3. The state agency has sought a voluntary dismissal of its complaint.

(d) The term "small business party" means:

1.a. A sole proprietor of an unincorporated business, including a professional practice, whose principal office is in this state, who is domiciled in this state, and whose business or professional practice has, at the time the action is initiated by a state agency, not more than 25 full-time employees or a net worth of not more than \$2 million, including both personal and business investments; or

b. A partnership or corporation, including a professional practice, which has its principal office in this state and has at the time the action is initiated by a state agency not more than 25 full-time employees or a net worth of not more than \$2 million; or

2. Either small business party as defined in subparagraph 1., without regard to the number of its employees or its net worth, in any action under s. 72.011 or in any administrative proceeding under that section to contest the legality of any assessment of tax imposed for the sale or use of services as provided in chapter 212, or interest thereon, or penalty therefor.

(e) A proceeding is "substantially justified" if it had a reasonable basis in law and fact at the time it was initiated by a state agency.

(4)(a) Unless otherwise provided by law, an award of attorney's fees and costs shall be made to a prevailing small business party in any adjudicatory proceeding or administrative proceeding pursuant to chapter 120 initiated by a state agency, unless the actions of the agency were substantially justified or special circumstances exist which would make the award unjust.

(b)1. To apply for an award under this section, the attorney for the prevailing small business party must submit an itemized affidavit to the court which first conducted the adversarial proceeding in the underlying action, or to the Division of Administrative Hearings which shall assign a hearing officer, in the case of a proceeding pursuant to chapter 120, which affidavit shall reveal the nature and extent of the services rendered by the attorney as well as the costs incurred in preparations, motions, hearings, and appeals in the proceeding.

2. The application for an award of attorney's fees must be made within 60 days after the date that the small business party becomes a prevailing small business party.

(c) The state agency may oppose the application for the award of attorney's fees and costs by affidavit.

(d) The court, or the hearing officer in the case of a proceeding under chapter 120, shall promptly conduct an evidentiary hearing on the application for an award of attorney's fees and shall issue a judgment, or a final order in the case of a hearing officer. The final order of a hearing officer is reviewable in accordance with the provisions of s. 120.68. If the court affirms the award of attorney's fees and costs in whole or in part, it may, in its discretion, award additional attorney's fees and costs for the appeal.

1. No award of attorney's fees and costs shall be made in any case in which the state agency was a nominal party.

2. No award of attorney's fees and costs for an action initiated by a state agency shall exceed \$15,000.

(5) If the state agency fails to tender payment of the award of attorney's fees and costs within 30 days after the date that the order or judgment becomes final, the prevailing small business party may petition the circuit court where the subject matter of the underlying action arose for enforcement of the award by writ of mandamus, including additional attorney's fees and costs incurred for issuance of the writ.

(6)(a) This section does not apply to any proceeding involving the establishment of a rate or rule or to any action sounding in tort.

(b) This section only applies to actions initiated by state agencies after July 1, 1984.

History.—ss. 1, 2, 3, 4, 5, 6, ch. 84-78; s. 43, ch. 87-6; s. 7, ch. 87-224; s. 21, ch. 92-315; s. 8, ch. 95-196.

Note.—Section 55, ch. 95-196, provides that "[n]othing in this act shall be construed to authorize a state agency to discontinue the collection and maintenance of information contained in any required report repealed or modified by this act, unless the state agency is specifically authorized to discontinue such collection and maintenance pursuant to this act or another section of law."

57.115 Execution on judgments; attorney's fees and costs.—

(1) The court may award against a judgment debtor reasonable costs and attorney's fees incurred thereafter by a judgment creditor in connection with execution on a judgment.

(2) In determining the amount of costs, including attorney's fees, if any, to be awarded under this section, the court shall consider:

(a) Whether the judgment debtor had attempted to avoid or evade the payment of the judgment; and

(b) Other factors as may be appropriate in determining the value of the services provided or the necessity for incurring costs in connection with the execution.

History.—s. 13, ch. 87-145.