

REVISED JUDICATURE ACT OF 1961 (EXCERPT)
Act 236 of 1961

600.2421c Awarding costs and fees; determining frivolous position of state; motion; matters to be established; reduction or denial of award; amount of costs and fees; applicability of section.

Sec. 2421c.

(1) The court that conducts a civil action brought by or against the state as a party, except for a civil infraction action, shall award to a prevailing party other than the state the costs and fees incurred by that party in connection with the civil action, if the court finds that the position of the state to the civil action was frivolous. To find that the state's position was frivolous, the court shall determine that at least 1 of the following conditions has been met:

- (a) The state's primary purpose in initiating the action was to harass, embarrass, or injure the prevailing party.
- (b) The state had no reasonable basis to believe that the facts underlying its legal position were in fact true.
- (c) The state's legal position was devoid of arguable legal merit.

(2) If the parties to an action do not agree on the awarding of costs and fees under sections 2421a to 2421f, a motion may be brought regarding the awarding of costs and fees and the amount thereof. The party seeking an award of costs and fees under sections 2421a to 2421f shall establish all of the following:

- (a) That the position of the state was frivolous.
- (b) That the party was the prevailing party.
- (c) The amount of costs and fees sought including an itemized statement from any attorney, agent, or expert witness who represented the party showing the rate at which the costs and fees were computed.
- (d) That the party is eligible to receive an award of costs and fees under sections 2421a to 2421f. For good cause shown a party may seek a protective order regarding the financial records of that party.

(3) The court may reduce the amount of the costs and fees to be awarded, or deny an award, to the extent that the party seeking the award engaged in conduct which unduly and unreasonably protracted the civil action.

(4) Subject to subsection (5), the amount of costs and fees awarded under this section shall include those reasonable costs actually incurred by the party and any costs allowed by law or by court rule. Subject to subsection (5), the amount of fees awarded under this section shall be based upon the prevailing market rate for the kind and quality of the services furnished, except that an attorney fee shall not be awarded at a rate of more than \$75.00 per hour unless the court determines that special circumstances existed justifying a higher rate or an applicable law or court rule provides for the payment of a higher rate.

(5) The costs and fees awarded under this section shall only be awarded to the extent and amount that the state caused the prevailing party to incur those costs and fees.

(6) This section does not apply to an agency or department in establishing a rate; in approving, disapproving, or withdrawing approval of a form; nor in its role of hearing or adjudicating a case. Unless an agency had discretion to proceed, this section does not apply to an agency or department acting ex rel on the information and at the instigation of a nonagency or nondepartmental person who has a private interest in the matter nor to an agency or department required by law to commence a case upon the action or request of another nonagency or nondepartmental person.

(7) This section does not apply to an agency or department that has such a minor role as a party in the case in comparison to other nonprevailing parties so as to make its liability for costs and fees under this section unreasonable, unjust, or unfair.

History: Add. 1984, Act 197, Imd. Eff. July 3, 1984