



## Idaho Supreme Court Ushers In "Profound" Change to Idaho Law

January, 2017

On March 1, the standard for awarding attorney's fees in civil actions under Idaho Code § 12-121 will change significantly to allow attorney's fees in all civil actions "when justice so requires." The language of section 12-121 itself will not change. Section 12-121 provides that "[i]n any civil action, the judge may award reasonable attorney's fees to the prevailing party or parties." Rather, by a divided decision in *Hoffer v. Shappard*, 160 Idaho 870, 380 P.3d 681 (2016), the Idaho Supreme Court announced that Idaho Rule of Civil Procedure 54(e)—the rule that defines the scope of section 12-121—ignored the clear legislative intent behind the statute.

Rule 54(e) currently limits the award of attorney's fees under Idaho Code § 12-121 to instances where a case was "brought, pursued or defended frivolously, unreasonably or without foundation." The Idaho Supreme Court found this rule failed to confer the requisite amount of discretion to courts and adopted a new standard, which is based on an uncodified legislative statement of intent behind section 12-121: "It is the intent of the legislature of the state of Idaho that this act grant prevailing litigants in civil actions the right to be made whole for attorney's fees and costs when justice so requires." Under the new standard, rather than limiting awards of attorney's fees to only those instances in which the court deems that a party's claims or defenses are frivolous, courts may now award attorney's fees whenever the court determines that justice requires the granting of such an award.

Recognizing that its decision to amend Rule 54(e) may have "profound effects on litigants," the Supreme Court delayed the effective date of the new rule to March 1, 2017. The court also noted that the new standard will only apply prospectively to all cases that have not become final as of that date the new rule goes into effect. Noticeably absent from the *Hoffer* decision is any guidance regarding how trial judges should determine "when justice so requires" the award of attorney's fees.

This change should not affect insurance cases because the new rule does not affect the award of attorney's fees governed by other statutes. For example, the Idaho statute that governs attorney's fees for insurance cases (Idaho Code § 41-1839) provides the "exclusive remedy for the award of statutory attorney's fees in all actions or arbitrations between insureds and insurers involving disputes arising under policies of insurance." Courts will continue to maintain the ability in insurance cases to also award attorney's fees when a frivolous case is pursued. But in other cases not governed by an attorney's fee statute, like many tort cases, non-prevailing parties may now be exposed to a greater risk of having attorney's fees awarded against them.