

**453.260 Additional costs in certain civil actions -- Causes for denial of additional costs -- Award of attorney fees and other expenses -- Computation of fees of attorneys and expert witnesses -- Exceptions to application of provisions.**

- (1) In addition to any costs which are awarded as prescribed by statute, a court shall award costs to any party which prevails by a final adjudication on the merits in any of the following:
  - (a) A civil action brought by the Commonwealth against the party; and
  - (b) A civil action brought by the party against the Commonwealth to challenge the assessment or collection of taxes.
- (2) The court in its discretion may deny the award provided for in this section, or may reduce the award, if it finds that:
  - (a) During the course of the proceeding the prevailing party unduly and unreasonably protracted the final resolution of the matter;
  - (b) The reason that the party other than the Commonwealth has prevailed is an intervening change in the applicable statutes, regulations, or case law;
  - (c) The prevailing party refused an offer of civil settlement which was at least as favorable to the party as the relief ultimately granted; or
  - (d) The position of the Commonwealth was substantially justified or a special circumstance would make an award unjust provided, however, that the burden of proof of substantial justification or special circumstance shall rest with the Commonwealth.
- (3) A party may apply pursuant to the applicable Rules of Civil Procedure for an award of attorney fees and other expenses authorized under this section and shall include as part of the application evidence of the party's eligibility for the award and the amount sought, including an itemized and attested statement from the attorneys and experts stating the actual time expended in representing the party and the rate at which the fees were computed. The party shall also allege in such application that the Commonwealth acted without substantial justification.
- (4) The court shall base any award of fees as provided in this section on prevailing market rates for the kind and quality of services furnished, except that:
  - (a) An expert is not eligible for compensation at a rate in excess of the prevailing rate of compensation for similar experts paid by the Commonwealth;
  - (b) The award of attorney fees may not exceed the amount which the prevailing party has paid or has agreed to pay the attorney or a maximum amount of forty dollars (\$40) 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 proceeding involved, justifies a higher fee;
  - (c) No award shall be greater than ten thousand dollars (\$10,000) to each party, except that no award shall be made to any party who voluntarily intervenes in any such action.
- (5) This section does not:
  - (a) Apply to an action arising from a proceeding before the Commonwealth in

which the role of the Commonwealth was to determine the eligibility or entitlement of an individual to a monetary benefit or its equivalent, or to adjudicate a dispute or issue between private parties or to establish or fix a rate. As used in this subsection, monetary benefit or its equivalent shall not include a license, permit, charter, or similar instrument that the Commonwealth may require to engage in a business, profession, or similar activity;

- (b) Apply to proceedings brought by the Commonwealth pursuant to KRS Chapters 218A, 431 to 439, and 500 to 534;
- (c) Apply to proceedings involving eminent domain, foreclosure, collection of judgment debts, or proceedings in which the Commonwealth is a nominal party;
- (d) Personally obligate any officer or employee of the Commonwealth for the payment of an award entered under this section; and
- (e) Apply to proceedings brought pursuant to KRS Chapters 209, 342, and 625.

**Effective:** July 15, 1994

**History:** Amended 1994 Ky. Acts ch. 190, sec. 13, effective July 15, 1994. -- Amended 1986 Ky. Acts ch. 423, sec. 194, effective July 1, 1987; and ch. 494, sec. 25, effective July 15, 1986. -- Amended 1984 Ky. Acts ch. 111, sec. 165, effective July 13, 1984. -- Created 1982 Ky. Acts ch. 213, sec. 2, effective July 15, 1982.