

## **CHAPTER 28-26 COSTS AND DISBURSEMENTS**

### **28-26-01. Attorney's fees by agreement - Exceptions - Awarding of costs and attorney's fees to prevailing party.**

1. Except as provided in subsection 2, the amount of fees of attorneys in civil actions must be left to the agreement, express or implied, of the parties.
2. In civil actions the court shall, upon a finding that a claim for relief was frivolous, award reasonable actual and statutory costs, including reasonable attorney's fees to the prevailing party. Such costs must be awarded regardless of the good faith of the attorney or party making the claim for relief if there is such a complete absence of actual facts or law that a reasonable person could not have thought a court would render judgment in that person's favor, providing the prevailing party has in responsive pleading alleged the frivolous nature of the claim. This subsection does not require the award of costs or fees against an attorney or party advancing a claim unwarranted under existing law, if it is supported by a good-faith argument for an extension, modification, or reversal of the existing law.

### **28-26-02. Amount of costs in specific cases.**

Costs in the district courts and in the supreme court must be as follows:

1. To the plaintiff for all proceedings before trial, ten dollars, and for each additional defendant served with process not exceeding ten, one dollar.
2. To the defendant, for all proceedings before trial, five dollars.
3. For every trial of an issue of fact, five dollars.
4. Superseded by N.D.R.App.P., Rule 38.
5. To either party for every term not exceeding five, at which the cause is necessarily on the calendar of the district court and is not tried or is postponed by order of the court, three dollars, and for every term not exceeding five, excluding the term at which the cause is argued in the supreme court, five dollars. Term fees are not taxable as costs when a cause, properly on the calendar, is not reached for trial during the term, nor in case a continuance is had upon the application of, or stipulation with, the party in whose favor costs are to be taxed.

### **28-26-03. Costs on appeal from county justice.**

Repealed by S.L. 1981, ch. 320, § 111.

### **28-26-04. Attorney's fee in instrument void.**

Any provision contained in any note, bond, mortgage, security agreement, or other evidence of debt for the payment of an attorney's fee in case of default in payment or in proceedings had to collect such note, bond, or evidence of debt, or to foreclose such mortgage or security agreement, is against public policy and void.

### **28-26-05. Costs on foreclosure of liens.**

Repealed by S.L. 1975, ch. 106, § 673.

### **28-26-06. Disbursements taxed in judgment.**

In all actions and special proceedings, the clerk of district court shall tax as a part of the judgment in favor of the prevailing party the following necessary disbursements:

1. The legal fees of witnesses; sheriffs; clerks of district court; the clerk of the supreme court, if ordered by the supreme court; process servers; and of referees and other officers;
2. The necessary expenses of taking depositions and of procuring evidence necessarily used or obtained for use on the trial;
3. The legal fees for publication, when publication is made pursuant to law;

4. The legal fees of the court reporter for a transcript of the testimony when such transcript is used on motion for a new trial or in preparing a statement of the case; and
5. The fees of expert witnesses. The fees must be reasonable fees as determined by the court, plus actual expenses. The following are nevertheless in the sole discretion of the trial court:
  - a. The number of expert witnesses who are allowed fees or expenses;
  - b. The amount of fees to be paid such allowed expert witnesses, including an amount for time expended in preparation for trial; and
  - c. The amount of costs for actual expenses to be paid the allowed expert witnesses.

**28-26-07. When costs allowed to plaintiff.**

Costs must be allowed of course to the plaintiff upon a recovery in the following cases:

1. In an action for the recovery of real property or when a claim of title to real property arises on the pleadings or is certified by the court to have come in question at the trial.
2. In an action to recover the possession of personal property.

**28-26-07.1. Notice of no personal claim.**

In the case of a defendant in a civil action in a district court against whom no personal claim is made, the plaintiff may deliver to such defendant with the summons a notice subscribed by the plaintiff or the plaintiff's attorney, setting forth the general object of the action and a brief description of the property affected by it, if it affects specific real or personal property, and stating that no personal claim is made against such defendant. If a defendant on whom such notice is served unreasonably defends the action, the defendant shall pay costs to the plaintiff.

**28-26-08. Costs specially limited.**

In an action for assault, battery, false imprisonment, libel, slander, malicious prosecution, criminal conversation, or seduction, if the plaintiff recovers less than fifty dollars damages, the plaintiff may recover no more costs and disbursements than damages. In an action to recover the possession of personal property, if the plaintiff recovers less than fifty dollars damages, the plaintiff may recover no more costs and disbursements than damages, unless the plaintiff recovers property also, the value of which with the damages amounts to fifty dollars, or the possession of property is adjudged to the plaintiff, the value of which with the damages amounts to fifty dollars. Such value must be determined by the jury, court, or referee by whom the action is tried. When several actions are brought on one bond, recognizance, promissory note, bill of exchange, or other instrument in writing, or in any other case for the same claim for relief against several parties who might have been joined as defendants in the same action, no costs other than disbursements may be allowed to the plaintiff in more than one of such actions, which must be at the plaintiff's election, if the party or parties proceeded against in such action or actions, at the time of the commencement of the previous action or actions, has been openly within this state and not secreted.

**28-26-09. When costs allowed to defendant.**

Costs must be allowed of course to the defendant in the actions mentioned in sections 28-26-07 and 28-26-08 unless the plaintiff is entitled to costs therein.

**28-26-10. Costs in discretion of court.**

In actions other than those specified in sections 28-26-07, 28-26-08, and 28-26-09, costs may be allowed for or against either party in the discretion of the court. In all actions, when 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 of the defendants as have judgment in their favor.

**28-26-11. Costs of appeal - When discretionary.**

In the following cases, the costs of an appeal are in the discretion of the court:

1. When a new trial is ordered; or

2. When a judgment is affirmed in part and reversed in part.

**28-26-12. Costs on dismissal of action.**

When an action is dismissed from any court for want of jurisdiction or because it has not been transferred regularly from an inferior to a superior court, the costs must be adjudged against the party attempting to institute or bring up the action.

**28-26-13. Interest on verdict.**

When the judgment is for the recovery of money, interest, from the time of the verdict or report of a referee until judgment finally is entered, must be computed by the clerk and added to the costs of the party entitled thereto.

**28-26-14. Notice of taxing costs - Verification - Items.**

Superseded by N.D.R.Civ.P., Rule 54.

**28-26-15. Notice of retaxation - Procedure.**

Superseded by N.D.R.Civ.P., Rule 54.

**28-26-16. Taxation reviewed on motion.**

A taxation or a retaxation of costs may be reviewed by the court upon motion. The order made upon such motion may allow or disallow any item objected to before the taxing officer, in which case it has the effect of a new taxation.

**28-26-17. Costs of postponement.**

When an application is made to a court or referee to postpone a trial, the payment of costs occasioned by the postponement may be imposed in the discretion of the court or referee as a condition of granting the same.

**28-26-18. Costs on motion.**

Upon a motion in an action or proceeding, costs may be awarded, not to exceed twenty-five dollars, either absolutely or to abide the event of the action, to any party, in the discretion of the court.

**28-26-19. Taxing costs.**

In all actions, motions, and proceedings in the supreme and district courts, the costs of the parties must be taxed and entered on record separately.

**28-26-20. Payment of costs against infant plaintiff.**

When costs are adjudged against a plaintiff who is an infant or a person of unsound mind, the guardian by whom the plaintiff appeared in the action must be responsible therefor and payment thereof may be enforced in the manner provided in section 28-26-30.

**28-26-21. Payment of costs from trust funds.**

In an action prosecuted or defended by a personal representative, trustee of an express trust, or a person expressly authorized by statute, costs must be recovered as in an action by and against a person prosecuting or defending in the person's own right, but such costs, by the judgment, must be chargeable only upon or collected of the estate, fund, or party represented, unless the court directs the same to be paid by the plaintiff or defendant personally for mismanagement or bad faith in such action or defense.

**28-26-22. Payment of costs against state - Exception.**

In a civil action prosecuted in the name of the state by an officer duly authorized for that purpose, the state is liable for the costs in the same cases and to the same extent as a private party. If a private person is joined with the state as plaintiff, that person is liable in the first

instance for the defendant's costs, which may not be recovered of the state until after execution is issued therefor against such private party and returned unsatisfied.

**28-26-23. Action in name of state - Costs charged against party in interest.**

In an action prosecuted in the name of the state for the recovery of money or property, or to establish a right or claim for the benefit of any corporation, limited liability company, or person, costs awarded against the party plaintiff must be charged against the party for whose benefit the action was prosecuted and not against the state.

**28-26-24. Liability for costs on judgment against assignee.**

In an action in which the claim for relief, by assignment after the commencement of the action or in any other manner, becomes the property of a person not a party to the action, such person is liable for the costs in the same manner as if the person were a party.

**28-26-25. Nonresident must furnish surety.**

Repealed by S.L. 1983, ch. 364, § 1.

**28-26-26. Responsibility of surety.**

The surety for costs is bound for the payment of all costs which may be adjudged against the plaintiff in the court in which the action is brought or in any other to which it may be carried, and for costs of the plaintiff's witnesses, whether the plaintiff obtains judgment or not.

**28-26-27. Dismissal when surety not given.**

An action in which surety for costs is required and has not been given must be dismissed on motion and notice by the defendant at any proper time before judgment, unless in a reasonable time to be allowed by the court such surety for costs is given.

**28-26-28. Surety on becoming nonresident.**

If the plaintiff in an action after its commencement becomes a nonresident of the state, the plaintiff shall give surety for costs in the same manner as is required of a nonresident in commencing an action.

**28-26-29. When additional surety demanded.**

In an action in which surety for costs has been given, the defendant at any time before judgment, after reasonable notice to the plaintiff, may move the court for additional surety on the part of the plaintiff, and if on such motion the court is satisfied that the surety has removed from this state or is not sufficient, the action may be dismissed, unless in a reasonable time to be fixed by the court sufficient surety is given by the plaintiff.

**28-26-30. Judgment against surety.**

After final judgment has been rendered in an action in which surety for costs has been given as required by this chapter, the court, on motion of the defendant, or any other person having a right to such costs or any part thereof, after ten days' notice of such motion, may enter judgment in the name of the defendant or the defendant's legal representatives against the surety for costs, or against the defendant's executors or administrators, for the amount of the costs adjudged against the plaintiff, or so much thereof as may be unpaid. Execution may be issued on such judgment as in other cases for the use and benefit of the person entitled to such costs.

**28-26-31. Pleadings not made in good faith.**

Allegations and denials in any pleadings in court, made without reasonable cause and not in good faith, and found to be untrue, subject the party pleading them to the payment of all expenses, actually incurred by the other party by reason of the untrue pleading, including a reasonable attorney's fee, to be summarily taxed by the court at the trial or upon dismissal of the action.