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Legislative Document

No. 276

H.P. 217

House of Representatives, January 27, 1995

An Act to Adopt the English Rule with Exceptions and Limitations.

Reference to the Committee on Judiciary suggested and ordered printed.

JOSEPH W. MAYO, Clerk

Presented by Representative RICHARDSON of Portland. Cosponsored by Representatives: CAMPBELL of Holden, POVICH of Ellsworth.

Be it enacted by the People of the State of Maine as follows: 2 Sec. 1. 14 MRSA §1502-B, sub-§§4 and 5, as enacted by PL 1985, c. 384, $\S4$, are amended to read: 4 6 4. Travel expenses. Reasonable expenses of travel within the State to the place of trial for the prevailing party or his the prevailing party's attorney of record, as provided by rule of 8 the Supreme Judicial Court, or as directed by court, in the absence of that rule; and 10 12 5. Other costs. Such other costs as the Supreme Judicial Court may direct by rule-; and 14 Sec. 2. 14 MRSA §1502-B, sub-§6 is enacted to read: 16 6. Attorney's fees. The reasonable attorney's fees 18 incurred by the prevailing party in prosecuting or defending the action. 20 A. This subsection does not apply to the following: 22 (1) Class action cases; 24 (2) Cases seeking redress for violations of 26 constitutional rights or cases brought under any civil rights or human rights law; 28 (3) Tort cases; 30 (4) Cases in which the State or any of its officers or 32 agencies are parties; 34 (5) Cases where attorney's fees are governed by a separate provision of the laws; and 36 (6) Cases in which the party against whom attorney's fees would be assessed is proceeding in forma pauperis 38 pursuant to the Maine Rules of Civil Procedure, Rule 40 91, or is otherwise indigent. 42 B. A party seeking attorney's fees pursuant to this subsection shall file affidavits setting forth the applicable fee arrangement and itemizing the legal services 44 performed by activity, date and number of hours. Upon 46 motion by the party against whom attorney's fees are to be assessed, the court shall determine the amount of attorney's 48 fees that are reasonable, but in no case may the amount of attorney's fees allowed exceed 50% more than the lower of the attorney's fees incurred by the prevailing party and the attorney's fees incurred by the other party.

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- C. For purposes of this section, if a party obtains less than the full amount of relief sought or prevails on less than all the claims asserted, the court may allocate attorney's fees between the parties based on the extent to which specific parties have prevailed on different issues.
- 10D. If a party makes an offer of judgment pursuant to the
Maine Rules of Civil Procedure, Rule 68, and the relief12ultimately obtained is not more favorable than the offer,
the offeree shall pay the reasonable attorney's fees of the14offeror from the date of the offer regardless of who
otherwise prevails in the action.

STATEMENT OF FACT

20 This bill makes the "English rule," that is, that the losing party in civil litigation should pay the attorney's fees of the 22 winning party, applicable to many forms of civil litigation in Maine. While existing Maine law allows a prevailing party to 24 recover certain costs, these are generally limited to such minor costs as filing fees and exclude attorney's fees, which are the 26 largest and most significant costs.

28 This bill includes specific exemptions from the English rule in certain cases. Among these are cases where the English rule 30 might overly discourage litigation that is important to society and cases where the existing economic incentives to prevent 32 unnecessary litigation may be adequate.

This bill also contains provisions designed to protect against 2 of the perceived abuses of the English rule. The first situation is that the losing party could be forced to pay excessive fees if the prevailing party has spared no expense in litigating the case. This bill instructs the court to award attorney's fees only to the extent that such fees are reasonable.

This bill also provides a mechanism to address the problem 42 that may be created when a party prevails on only a small portion of the case. This bill allows the court to allocate the attorney's fees based on the extent to which specific parties 44 prevailed on different issues. In a case where a party prevailed 46 on a small part of the relief requested, the court could determine that the other party was entitled to attorney's fees on 48 the major part of the case and could allocate the fee award based on the extent to which each party prevailed. A party who 50 prevailed on only a small part of the case, therefore, could be required in an appropriate case to pay most of the opposing 52 party's attorney's fees.

Finally, the bill also preserves and strengthens the offer of judgment procedure in the Maine Rules of Civil Procedure, Rule 68, by providing that a party who declines an offer of judgment that is equal to or more favorable than the relief actually obtained has to pay the opposing party's attorney's fees from the date of the offer.