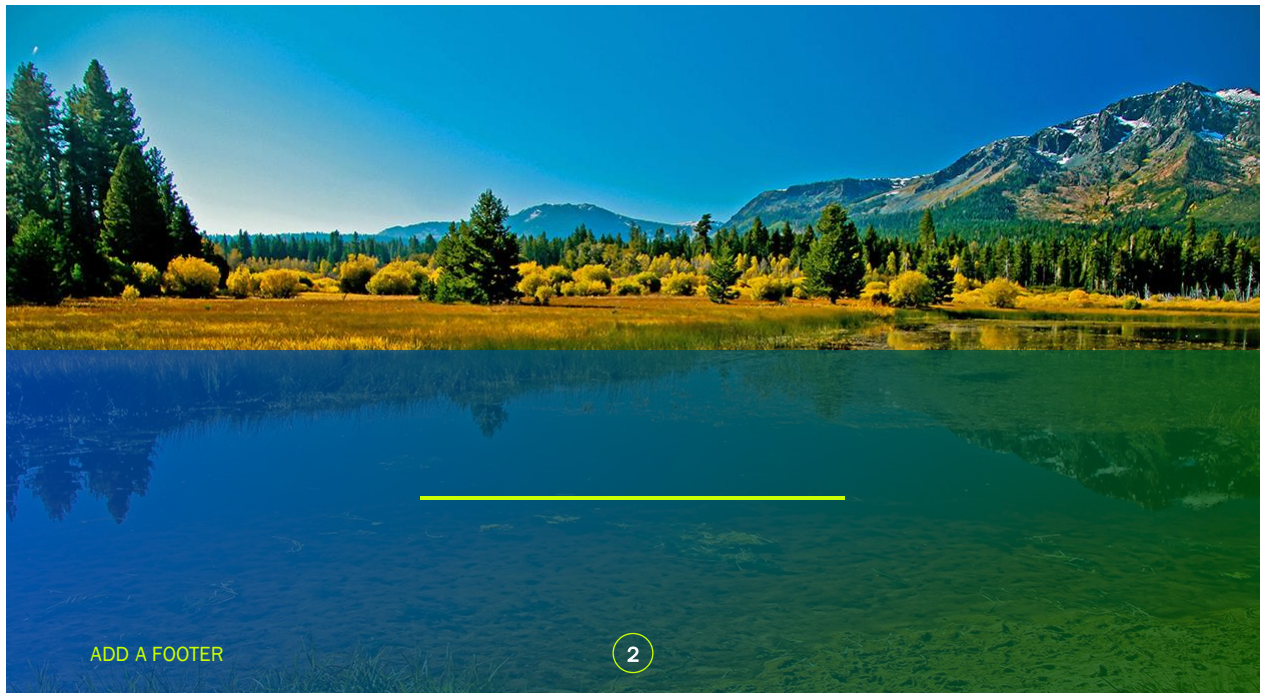


October 6, 2022

# Attorney Fees

Common issues in government and public sector law

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## The American Rule

- The “American Rule” requires that each party pay its own attorney fees unless otherwise provided by statute or contract.
- Idaho has numerous statutes addressing attorney fee awards, many of which apply to cases that government and public sector attorneys deal with.

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## Overview

- Frivolous Claims & Defenses
- Claims Involving Government Entities
- Bad Faith Tort Claims
- Public Records Requests
- Condemnation Proceedings
- Habeas Proceedings
- A Note on IAR 41

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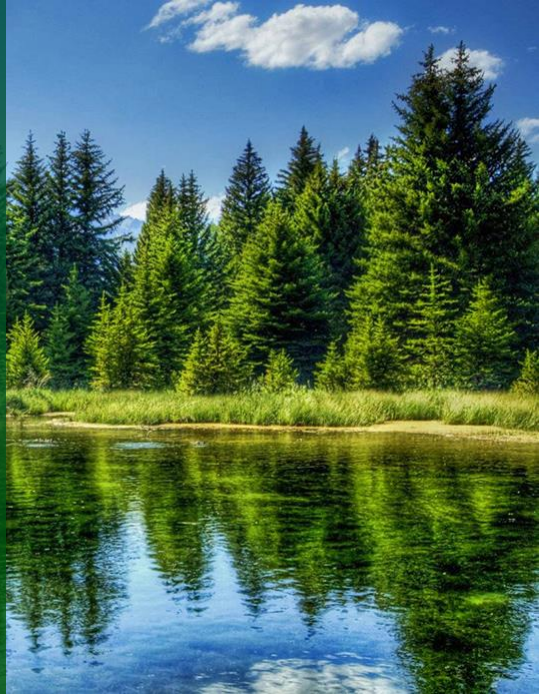
# Frivolous Claims & Defenses

Idaho Code § 12-121

- “In any civil action, the judge may award attorney’s fees to the prevailing party or parties when the judge finds that the case was brought, pursued, or defended frivolously, unreasonably or without foundation.”

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# Frivolous Claims & Defenses

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- “In any civil action, the judge **may** award attorney’s fees to the **prevailing party** or parties when the judge finds that the case was brought, pursued, or defended **frivolously, unreasonably or without foundation.**”

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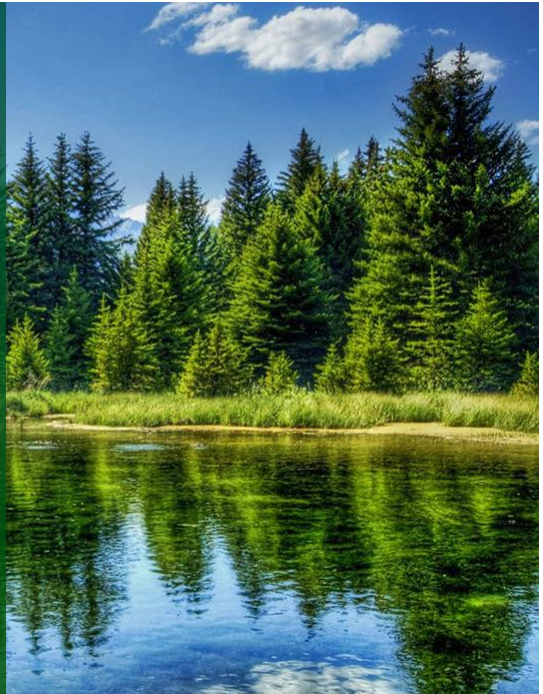
## Cases involving government entities

Idaho Code § 12-117

- Cases involving a government entity and a person;
- Cases involving two government entities;
- Cases involving administrative proceedings between licensing authorities and licensees

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## Cases involving government entities

Idaho Code § 12-117 – cases involving a government entity and a person

- Idaho Code § 12-117(1): Provides for awards of attorney fees in cases between persons and state agencies or political subdivisions if the court finds that the non-prevailing party acted without a reasonable legal or factual basis.

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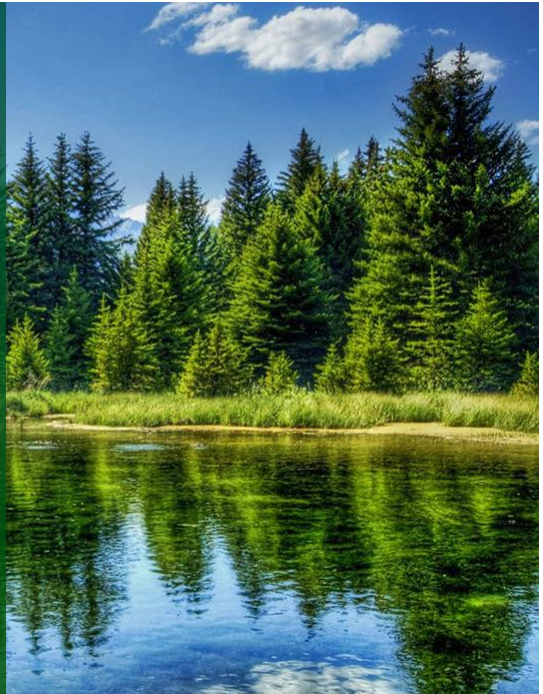
## Cases involving government entities

### Idaho Code § 12-117– cases involving a government entity and a person

- The dual purpose of 12-117's requirement to award attorney fees in any proceeding involving as adverse parties a state agency or a political subdivision and a person, if the court finds the non-prevailing party acted without a reasonable basis in fact or law, is to (1) deter groundless or arbitrary agency action and (2) to provide a remedy for persons who have borne an unfair and unjustified financial burden attempting to correct mistakes agencies should never have made. *City of Ririe v. Gilgen*, 2022, 2022 WL 3206113.

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## Cases involving government entities

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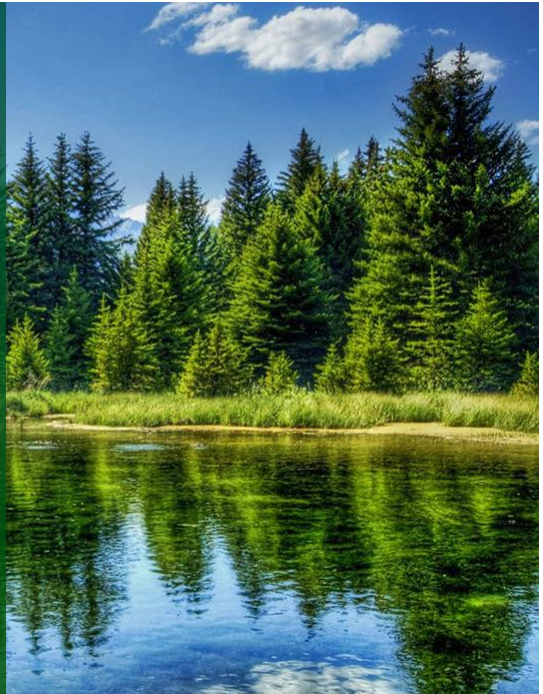
## Cases involving government entities

### Idaho Code § 12-117– cases involving two government entities

- Idaho Code § 12-117(4): in cases involving opposing government entities, the court shall award that prevailing party reasonable attorney fees.

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## Cases involving government entities

### Idaho Code § 12-117– cases involving two government entities

- Idaho Code § 12-117(4): in cases involving opposing government entities, the court shall award that prevailing party reasonable attorney fees.
- Does not require finding of unreasonableness

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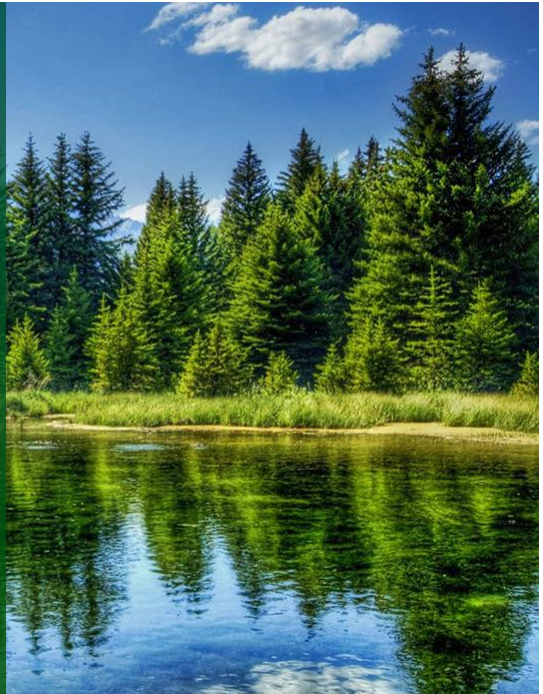
## Cases involving government entities

### Idaho Code § 12-117– proceedings between licensing authorities and licensees

- Idaho Code § 12-117(5): in administrative proceedings where a licensing authority and licensee are adverse, the prevailing party shall be entitled to recover attorney fees

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## Cases involving government entities

### Idaho Code § 12-117– proceedings between licensing authorities and licensees

- Idaho Code § 12-117(5): in administrative proceedings where a licensing authority and licensee are adverse, the prevailing party shall be entitled to recover attorney fees
- Does not require finding of unreasonableness

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## Cases involving government entities

### Idaho Code § 12-117

- Idaho Code § 12-117(2): Where a party prevails on only a portion of a case, the party can recover fees if the court finds that the other party acted without a reasonable basis in fact or law with respect to that portion of the case.

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## Cases involving government entities

### Idaho Code § 12-117

- Not an exclusive basis for fee awards

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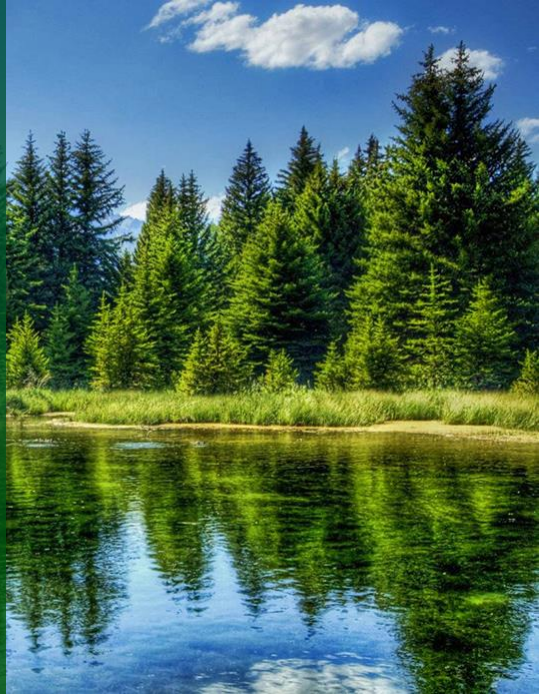
# Bad Faith Tort Claims

## The Idaho Tort Claims Act

- The Idaho Tort Claims Act (ITCA) is directed at cases involving liability of the state on tort matters.
- The ITCA addresses obligations for defense of employees, exceptions to liability, time and manner of filing claims, content of claims, time for allowance or denial of claims, recourse of suit for denied claims, limitation of actions, service of summons and complaint, and limits of liability.

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# Bad Faith Tort Claims

## The Idaho Tort Claims Act

### Idaho Code § 6-918A

- “Appropriate and reasonable attorney fees may be awarded to the claimant [or] government entity . . . upon petition and by showing of clear and convincing evidence that the party against whom the award is sought was guilty of bad faith in the commencement, conduct, maintenance, or defense of the action”

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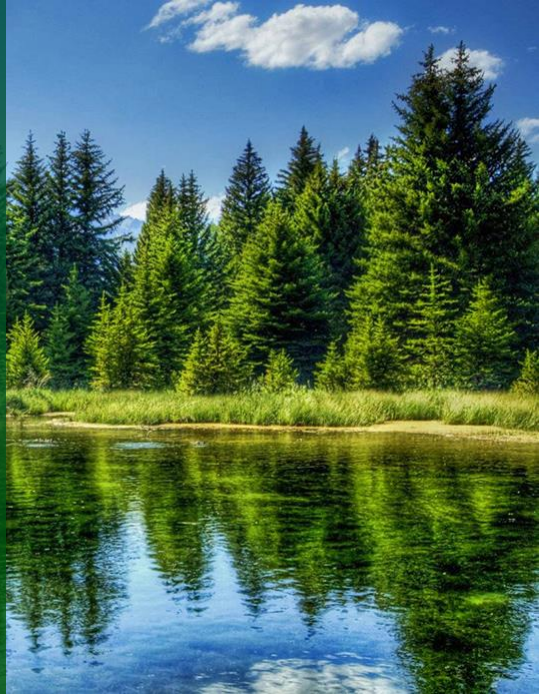
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- Discretionary call for the court

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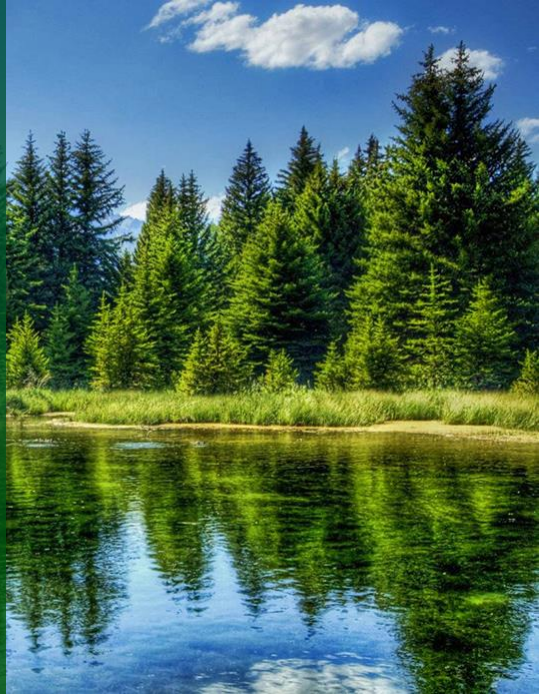
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- Discretionary call for the court
- Aggregate amount of any award for damages, judgment, and attorney fees cannot exceed statutory limitations on liability (I.C. 6-926 - Insurance policy limit or \$500k)

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# Bad Faith Tort Claims

## The Idaho Tort Claims Act Idaho Code § 6-918A

- Bad faith = “dishonesty in belief or purpose”

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# Bad Faith Tort Claims

## The Idaho Tort Claims Act Idaho Code § 6-918A

- Idaho Code § 12-117 does not provide a basis for attorney fee awards arising under the ITCA. *Block v. City of Lewiston*, 156 Idaho 484, 328 P.3d 464 (Idaho 2014).
- A party seeking an award of fees in an ITCA case is stuck with the harsh bad faith standard.
- Note that the ITCA standard that bad faith must be proven by clear and convincing evidence is a considerably harsher standard than that in § 12-117.

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# Public Records Act

## The Idaho Public Records Act

- The Idaho Public Records Act governs access to public documents in Idaho.

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# Public Records Act

Idaho Public Records Act

Idaho Code § 74-116

- When it appears that public records are being improperly withheld, a court can hold what is essentially a show-cause hearing and review the record at issue in camera
- In these actions, *if* the court determines that either the request for records or the refusal to provide records was frivolously pursued, the court “shall” award attorney fees.

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# Public Records Act

Idaho Public Records Act

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# Public Records Act

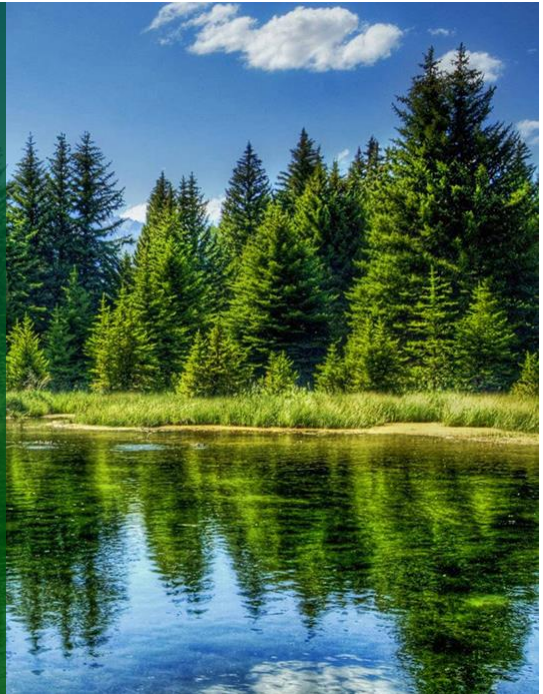
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# Public Records Act

## Idaho Public Records Act

### Idaho Code § 74-116

- Idaho Code § 74-116 provides the sole basis for attorney fee awards under the Idaho Public Records Act.

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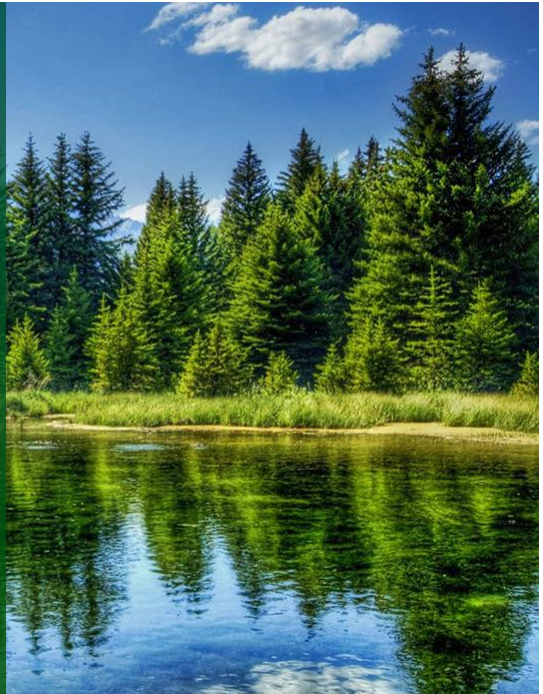
# Public Records Act

## Idaho Public Records Act Idaho Code § 74-116

- Idaho Code 74-116 provides the sole basis for attorney fee awards under the Idaho Public Records Act.
- *"To base an award on some other statute would be contrary to the legislature's intent in including in the Act an attorney fee provision with a specified standard for awarding attorney fees in proceedings to enforce compliance with the Act. That statute is the exclusive basis for such an award."* I.C. 74-116.

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# Condemnation Proceedings

## Eminent Domain Cases

- Idaho courts may award attorney fees in eminent domain proceedings
- However, courts tend to utilize Idaho Code § 12-121 rather than Idaho Code § 12-117

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# Condemnation Proceedings

## Eminent Domain Cases

- In this context, attorney fee awards are generally awarded to prevailing condemnees.
- However, in rare circumstances, courts will also award attorney fees to condemners.

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# Condemnation Proceedings

## Eminent Domain Cases

- In addition to considering the factors set forth in Idaho Code 12-121, courts also apply a series of factors to determine whether an award of attorney fees is appropriate . . .

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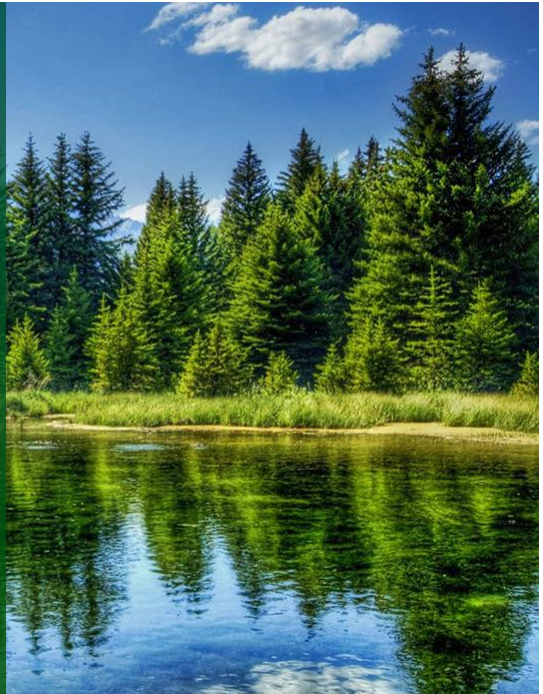
# Condemnation Proceedings

## Factors generally considered by the court

- Whether the condemner had extended a settlement offer of at least ninety percent of the eventual jury verdict;
- Whether the settlement offer was made in reasonably timely fashion
- Whether there was any dispute as to the actual public use and necessity of the condemned property
- Whether the condemnee voluntarily relinquished possession of the property at issue during the process of resolving a just compensation issue
- *Ada Co. Highway District v. Acarrequi*, 673 P.2d 1067, 105 Idaho 873 (1983) overruled on other grounds by *State Dep't of Transportation v. Grathol*, 343 P.3d 480, 158 Idaho 38 (2015).

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# Condemnation Proceedings

## Factors generally considered by the court

- Until 2014, only condemnees had received awards in condemnation proceedings.
- But in *State Dep't of Transportation v. Grathol*, the Idaho Supreme Court held that a condemner could be entitled to attorney fee awards. However, the Court noted that condemner awards were limited to "extreme and unlikely situations." 343 P.3d at 480.

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# Habeas Claims

## Habeas corpus defined

- A writ of habeas corpus orders a prison or jail to produce an individual and bring them before the court
- Inmates often attempt to use this proceeding as a last-ditch attempt to get out of custody

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# Habeas Claims

## Idaho Code § 12-122

- “In any habeas corpus action brought by a state penitentiary or county jail inmate, the judge shall award reasonable attorney’s fees to the respondent, if the habeas corpus action was brought frivolously by the petitioner.” § 12-122.

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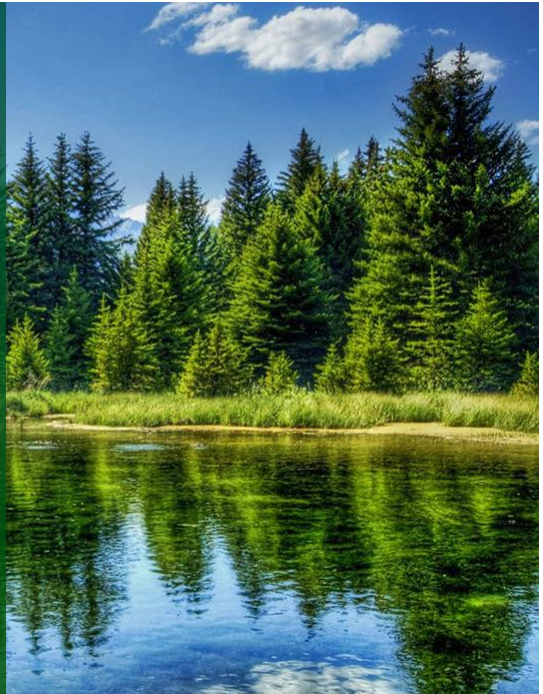
# Habeas Claims

## Idaho Code § 12-122

- “In any habeas corpus action brought by a state penitentiary or county jail inmate, the judge shall award reasonable attorney’s fees to the respondent, if the habeas corpus action was **brought frivolously** by the petitioner.” – § 12-122.

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# Habeas Claims

## Idaho Code § 12-122

- In order to be **brought frivolously**, a petition for writ of habeas corpus must be “**based upon claims with either had no basis in fact, or even if the allegations were true, they did not justify relief to the petitioner.**”

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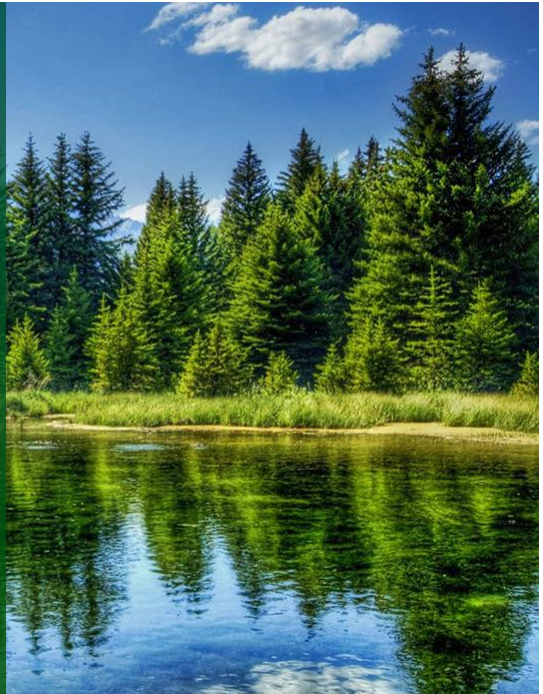
# Habeas Claims

## Idaho Code § 12-122

- Despite the “shall” language, courts can make discretionary call that a claim is not frivolous when it involves “a material issue of law that has not been settled by statute or by a Supreme Court decision in this state.” *Dopp v. Idaho Com’n of Pardons and Parole*, 139 Idaho 657, 84 P.3d 593 (2004).

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# A Note on Idaho Appellate Rule 41

## Idaho Appellate Rule 41

- Often, attorneys will make the mistake of citing to Idaho Appellate Rule 41 as a basis for attorney fee awards
- But Idaho Appellate Rule 41 sets forth the *procedural* steps that a party seeking an award of attorney fees must follow, e.g., requesting fees in their initial brief, the number of copies of a claim of attorney fees that must be filed with the Court, etc.
- I.A.R. 41 is not a substantive basis for an award of attorney fees on appeal.
- A party must cite a substantive basis for attorney fee awards on appeal

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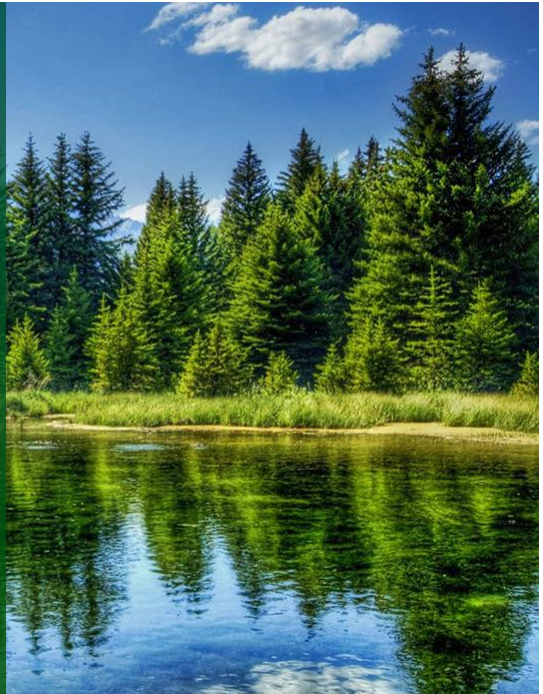
# A Note on Idaho Appellate Rule 41

## Idaho Appellate Rule 41

- “Davis seeks an award of attorney fees under Idaho Appellate Rules 40 and 41. He has not cited a statutory or contractual provision authorizing such award. I.A.R. 40 provides for the awarding of costs on appeal and Rule 41 specifies the procedure for requesting an award of attorney fees on appeal. Neither rule provides the authority for awarding attorney fees . . . Therefore, we will not address that issue.” – *Gillman v. Davis*, 183 Idaho 599, 67 P.3d 78 (Ct. App. 2003).

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# COMPARISON

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Maecenas porttitor congue massa

## Section 1 Title

- Lorem ipsum dolor sit amet, consectetur adipiscing elit. Maecenas porttitor congue massa. Fusce posuere, magna sed pulvinar ultricies, purus lectus malesuada libero
- Nunc viverra imperdiet enim. Fusce est. Vivamus a tellus.
- Pellentesque habitant morbi tristique senectus et netus et malesuada fames ac turpis egestas. Proin pharetra nonummy pede. Mauris et orci.

## Section 2 Title

- Lorem ipsum dolor sit amet, consectetur adipiscing elit. Maecenas porttitor congue massa. Fusce posuere, magna sed pulvinar ultricies, purus lectus malesuada libero, sit amet commodo magna eros quis urna.
- Nunc viverra imperdiet enim. Fusce est. Vivamus a tellus.
- Pellentesque habitant morbi tristique senectus et netus et malesuada fames ac turpis egestas. Proin pharetra nonummy pede

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# THANK YOU!

Ingrid Batey