

4. Plaintiff's objections to Defendant State's bill of cost, argued that to the effect "costs are not available as a matter of law" and other reasons why the Defendant State was not entitled to its costs.

5. Defendant State respectfully requests that it be allowed to file a reply memorandum addressing the points raised by the Plaintiff.

6. Defendant State respectfully requests that a hearing on the issue of the bill of costs be allowed and that the State be allowed to respond accordingly.

7. Up until most recently, Defendant State and Plaintiff have been engaged in discussions to forego the State's bill of costs in favor of the Plaintiff not filing an appeal.

8. Defendant State believes that it is entitled to its costs as Bruce v. City of Gainesville, Ga., 177 F.3d 949 (11th Cir. 1999) had set forth a three part test:

In determining whether case is "frivolous," for purposes of awarding attorney fees [costs] to prevailing defendant, courts consider, as general guidelines: (1) whether plaintiff established a prima facie case, (2) whether defendant offered to settle, and (3) whether trial court dismissed case prior to trial or held full-blown trial on the merits. [Word Bracketed Mine.]

I declare under penalty of perjury that the foregoing is true to the best of my knowledge and ability.

DATED: Honolulu, Hawaii, March 6, 2006.


REGINAD K. T. YEE