

1 Rule 68. ~~Offer of judgment~~ Settlement offers.

2 (a) Unless otherwise specified, an offer made under this rule ~~by a party defending~~  
3 ~~against a claim to allow judgment to be entered in accordance with the offer~~ is an offer  
4 to resolve all claims between the parties to the date of the offer, including costs, interest  
5 and, if attorney fees are permitted by law or contract, attorney fees.

6 (b) If the adjusted award is not more favorable than the offer, the offeror is not liable  
7 for costs, prejudgment interest or attorney fees incurred by the offeree after the offer,  
8 and the offeree shall pay the offeror's costs incurred after the offer. The court may  
9 suspend the application of this rule to prevent manifest injustice.

10 (c) An offer made under this rule shall:

11 (c)(1) be in writing;

12 (c)(2) expressly refer to this rule;

13 (c)(3) be made more than 10 days before trial;

14 (c)(4) remain open for at least 10 days; and

15 (c)(5) be served on the offeree under Rule 5.

16 Acceptance of the offer shall be in writing and served on the offeror under Rule 5.  
17 Upon acceptance, either party may file the offer and acceptance with a proposed  
18 judgment under Rule 58A.

19 (d) "Adjusted award" means the amount awarded by the finder of fact and, unless  
20 excluded by the offer, the offeree's costs and interest incurred before the offer, and, if  
21 attorney fees are permitted by law or contract and not excluded by the offer, the  
22 offeree's reasonable attorney fees incurred before the offer. If the offeree's attorney  
23 fees are subject to a contingency fee agreement, the court shall determine a reasonable  
24 attorney fee for the period preceding the offer.

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