

1400.8401 EXPENSES AND ATTORNEY FEES.

Subpart. 1. [Repealed, 26 SR 391]

Subp. 2. [Repealed, 26 SR 391]

Subp. 3. **Application.** A party seeking an award of expenses and attorney's fees shall submit to the judge an application that shows:

A. an itemization of the amount of fees and expenses sought. This shall include full documentation of fees and expenses, including an affidavit from each attorney, agent, or expert witness representing or appearing on behalf of the applicant stating the actual time expended and the rate at which fees have been computed and describing the specific services performed.

The affidavit shall itemize in detail the services performed by the date, number of hours per date, and the services performed during those hours. In order to establish the hourly rate, the affidavit shall state the hourly rate which is billed and paid by the majority of clients for similar services during the relevant time periods.

The documentation shall also include a description of any expenses for which reimbursement is sought and a statement of the amounts paid and payable by the applicant or by any other person or entity for the services provided;

B. a statement that explains with specificity how or why the position of the state agency was not substantially justified;

C. if the claim for attorney's fees exceeds \$125 per hour, a statement of facts showing that the excess award qualifies under Minnesota Statutes, section 15.471, subdivision 5, paragraph (c); and

D. a proof of service showing that the state agency and all other parties have been served, either personally or by first class mail, with a copy of the application.

The application must be signed and sworn to by the party and the attorney or other agent or representative submitting the application on behalf of the party, showing the addresses and phone numbers of all persons signing the application.

Subp. 4. **Response or objection to application.** The state agency or any other party may respond or object to all or any part of the application for expenses and fees. A response or objection must be sworn to and filed with the judge within 14 days following the service of the application and must show:

A. the name, address, and phone number of the party and the person submitting the response or objection on behalf of the party;

B. in detail any objections to the award requested and identify the facts relied on to support the objection. If the response or objection is based on any alleged facts not

already reflected in the record of the proceeding, the response or objection shall include either a supporting affidavit or affidavits or request for further proceedings under subpart 5b; and

C. a proof of service showing that all other parties have been served, either personally or by first class mail, with a copy of the response or objection.

Subp. 5. [Repealed, 11 SR 1385]

Subp. 5a. **Settlement.** A prevailing party and the agency may agree on a proposed settlement of an award before final action on the application. If a settlement occurs, a stipulation for settlement shall be filed with the judge together with a proposed order which shall be prepared for the judge's signature. Upon receipt of a stipulation for settlement and proposed order, the judge shall issue an order, serve all parties and the chief administrative law judge with a copy, and send the original to the agency for inclusion with the record of the contested case which gave rise to the application.

Subp. 5b. **Extensions of time and further proceedings.**

A. The judge may, on motion and for good cause shown, grant extensions of time, other than for filing an application for fees and expenses, after final disposition in the contested case.

B. Ordinarily, the determination of an award will be made on the basis of the written record of the underlying contested case and the filings required or permitted by this part. However, on the judge's own motion or on the motion of any party to the underlying contested case, further filings or other action can be required or permitted, such as an informal conference, oral argument, additional written submissions, or an evidentiary hearing. Any further action shall be allowed only when necessary for a full and fair resolution of the issues arising from the application and shall take place on the first date available on the judge's calendar which is also agreeable to all parties. A motion for further filings or other action shall specifically identify the information sought on the disputed issues and shall explain why the further filings or other action are necessary to resolve the issues.

C. In the event that an evidentiary hearing is required or permitted by the judge, the hearing and any related filings or other action required or permitted shall be conducted under parts 1400.8505 to 1400.8612.

Subp. 6. [Repealed, 26 SR 391]

Subp. 7. **Decision of the administrative law judge.** Within 30 days following the close of the record in the proceeding for the award of expenses and attorney's fees, the

administrative law judge shall issue a written order which shall also contain findings and conclusions on each of the following which are relevant to the decision:

- A. the applicant's status as a prevailing party;
- B. the applicant's qualification as a party under Minnesota Statutes, section 15.471, subdivision 6;
- C. whether the agency's position as a party to the proceeding was substantially justified;
- D. whether special circumstances make an award unjust;
- E. whether the applicant during the course of the proceeding engaged in conduct that unduly and unreasonably protracted the final resolution of the matter in controversy; and
- F. the amounts, if any, awarded for fees and other expenses, explaining any difference between the amount requested and the amount awarded.

The order shall be served on all parties and the state agency. The original order and the rest of the record of the proceedings shall be filed with the state agency at the time the order is served.

Statutory Authority: *MS s 3.764; 14.06; 14.51; 15.474; 116C.66; 216E.16*

History: *11 SR 334; 11 SR 1385; 15 SR 1595; 26 SR 391*

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