

1 Office of Administrative Hearings

2

3 Adopted Rule Relating to Awards of Expenses and Fees in

4 Contested Cases

5

6 Rule as Adopted

7 1400.8401 EXPENSES AND ATTORNEY FEES.

8 Subpart 1. Authorization. Pursuant to Minnesota Statutes,
9 sections 3.761 to 3.765, expenses and attorney's fees may be
10 awarded to a prevailing party, other than the state, in a
11 contested case in which the position of the state is represented
12 by counsel, but excluding a contested case conducted for the
13 purpose of establishing or fixing a rate or for granting or
14 ~~reviewing~~ renewing a license. Expenses and fees shall be
15 awarded following compliance with this part if the prevailing
16 party other than the state shows that the position of the state
17 was not substantially justified, unless special circumstances
18 make an award unjust.

19 Subp. 2. Definitions. For the purpose of this part, the
20 following terms have the meanings given them in this subpart:

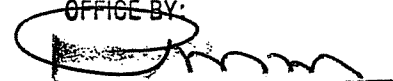
21 A. "Expenses" means the costs incurred by the party
22 in the litigation, as defined in Minnesota Statutes, section
23 3.761, subdivision 4.

24 B. "Fees" means the reasonable attorney fees or other
25 fees defined in Minnesota Statutes, section 3.761, subdivision 5.

26 C. "Party" means a person named or admitted as a
27 party as defined in Minnesota Statutes, section 3.761,
28 subdivision 6.

29 D. "State" means the state of Minnesota or any agency
30 or official of the state of Minnesota acting in an official
31 capacity.

32 E. "Substantially justified" is the statutory
33 standard by which an administrative law judge determines whether
34 a prevailing party is entitled to expenses or fees, and is as
35 defined in Minnesota Statutes, section 3.761, subdivision 8.



1 Subp. 3. **Application.** A party seeking an award of
2 expenses and attorney's fees shall, within 30 days of a final
3 disposition in the contested case, submit to the judge an
4 application that shows:

5 A. that the party is a prevailing party and is
6 eligible to receive an award under this part;

7 B. the amount sought, including an itemized statement
8 from any attorney, agent, or expert witness representing or
9 appearing on behalf of the party stating the actual time
10 expended, listing specific dates and the services performed on
11 those dates and the rate at which fees and other expenses were
12 computed;

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

16 D. if the claim for attorney's fees exceeds \$100 per
17 hour, a statement of facts showing that the excess award
18 qualifies under Minnesota Statutes, section 3.761, subdivision
19 5, paragraph (c); and

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

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

27 The application must be received at the office no later
28 than 4:30 p.m. on the ~~30th~~ 40th day following the date of
29 issuance of the final disposition.

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

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

1 the party;

2 B. a statement showing the parts of the application
3 being responded or objected to showing specific reasons or facts
4 to support the response or objection;

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

8 D. if the state agency requests a hearing, the
9 response or objection must include the request.

10 Subp. 5. **Hearing on application.** A hearing on the
11 application will be conducted if the state agency requests a
12 hearing or if the judge determines that a hearing is necessary
13 to gather additional facts or evidence, or for a full and fair
14 resolution of the issues arising from the application. The
15 hearing shall take place on the first date available on the
16 judge's calendar which is also agreeable to all parties. It
17 shall be conducted pursuant to the procedures for conference
18 contested cases, parts 1400.5100 to 1400.8300.

19 Subp. 6. **Stay-of-proceedings-pending Applications when**
20 **appeal is filed.** In the event that an appeal from all or any
21 part of the final agency decision in the contested case which
22 gives rise to the application for expenses and attorney's fees
23 has been taken to the appropriate court, ~~all-proceedings-under~~
24 ~~this-part-shall-be-stayed-and-all-time-limits-imposed-shall-be~~
25 ~~tolled-pending-a-final-judicial-determination~~ the application
26 for fees and expenses shall be made to the court as provided by
27 Minnesota Statutes, section 3.764, subdivisions 1 and 3.

28 Subp. 7. **Decision of the administrative law judge.** Within
29 30 days following the close of the record in the proceeding for
30 the award of expenses and attorney's fees, the administrative
31 law judge shall issue a written order which shall also contain
32 findings and conclusions. The order shall be served on all
33 parties and the state agency. The original order and the rest
34 of the record of the proceedings shall be filed with the state
35 agency at the time the order is served.

36

1 APPLICATION. Pursuant to the provisions of Laws of
2 Minnesota 1986, chapter 377, section 7, part 1400.8401 applies
3 to all contested cases that are pending on or commenced after
4 August 1, 1986.

APPROVED IN THE
REVISOR OF STATUTES
OFFICE BY:
