

ADMINISTRATIVE PROCEDURES ACT OF 1969 (EXCERPT)
Act 306 of 1969

24.323 Awarding costs and fees; finding; hearing; evidence; reduction or denial of award; final action; amount of costs and fees; applicability of section.

Sec. 123.

(1) The presiding officer that conducts a contested case shall award to a prevailing party, other than an agency, the costs and fees incurred by the party in connection with that contested case, if the presiding officer finds that the position of the agency to the proceeding was frivolous. To find that an agency's position was frivolous, the presiding officer shall determine that at least 1 of the following conditions has been met:

- (a) The agency's primary purpose in initiating the action was to harass, embarrass, or injure the prevailing party.
- (b) The agency had no reasonable basis to believe that the facts underlying its legal position were in fact true.
- (c) The agency's legal position was devoid of arguable legal merit.

(2) If the parties to a contested case do not agree on the awarding of costs and fees under this section, a hearing shall be held if requested by a party, regarding the awarding of costs and fees and the amount thereof. The party seeking an award of costs and fees shall present evidence establishing all of the following:

- (a) That the position of the agency was frivolous.
- (b) That the party is a prevailing party.
- (c) The amount of costs and fees sought including an itemized statement from any attorney, agent, or expert witness who represented the party showing the rate at which the costs and fees were computed.
- (d) That the party is eligible to receive an award under this section. Financial records of a party shall be exempt from public disclosure if requested by the party at the time the records are submitted pursuant to this section.
- (e) That a final order not subject to further appeal other than for the judicial review of costs and fees provided for in section 125 has been entered in the contested case regarding the subject matter of the contested case.

(3) The presiding officer may reduce the amount of the costs and fees to be awarded, or deny an award, to the extent that the party seeking the award engaged in conduct which unduly and unreasonably protracted the contested case.

(4) The final action taken by the presiding officer under this section in regard to costs and fees shall include written findings as to that action and the basis for the findings.

(5) Subject to subsection (6), the amount of costs and fees awarded under this section shall include those reasonable and necessary costs actually incurred by the party and any costs allowed by law or by a rule promulgated under this act. Subject to subsection (6), the amount of fees awarded under this section shall be based upon the prevailing market rate for the kind and quality of the services furnished, subject to the following:

(a) The expenses paid for an expert witness shall be reasonable and necessary as determined by the presiding officer.

(b) An attorney or agent fee shall not be awarded at a rate of more than \$75.00 per hour unless the presiding officer determines that special circumstances existed justifying a higher rate or an applicable rule promulgated by the agency provides for the payment of a higher rate because of special circumstances.

(6) The costs and fees awarded under this section shall only be awarded to the extent and amount that the agency caused the prevailing party to incur those costs and fees.

(7) This section does not apply to any agency in its role of hearing or adjudicating a case. Unless an agency has discretion to proceed, this section does not apply to an agency acting ex rel on the information and at the instigation of a nonagency person who has a private interest in the matter nor to an agency required by law to commence a case upon the action or request of another nonagency person.

(8) This section does not apply to an agency that has such a minor role as a party in the case in comparison to other nonprevailing parties so as to make its liability for costs and fees under this section unreasonable, unjust, or unfair.

History: Add. 1984, Act 196, Imd. Eff. July 3, 1984

Popular Name: Act 306

Popular Name: APA