

$$\frac{\text{CPI-U-Year of Service}}{\text{CPI-U-Base Year}} \times \$125 \text{ (or } \$75\text{)}/\text{hr} = \text{Adjusted Rate}$$

(ii) The cost of living index to be used is the Consumer Price Index, All Urban Consumers, U.S. City Average, All Items (CPI-U). If legal services are provided during more than one year, each year shall be calculated separately. If an annual average CPI-U for a particular year is not yet available, the prior year's annual average CPI-U shall be used.

(2) No award to compensate an expert witness may exceed the highest rate that the Authority pays expert witnesses. However, an award may also include the reasonable expenses of the attorney, agent, or witness as a separate item, if the attorney, agent, or witness ordinarily charges clients separately for such expenses.

(b) In determining the reasonableness of the fee sought for an attorney, agent or expert witness, the following matters may be considered:

(1) If the attorney, agent or witness is in practice, his or her customary fee for similar services, or, if an employee of the applicant, the fully allocated cost of the services;

(2) The prevailing rate for similar services in the community in which the attorney, agent or witness ordinarily performs services;

(3) The time actually spent in the representation of the applicant;

(4) The time reasonably spent in light of the difficulty or complexity of the issues in the proceeding; and

(5) Such other factors as may bear on the value of the services provided.

(c) The reasonable cost of any study, analysis, engineering report, test, project or similar matters prepared on behalf of an applicant may be awarded, to the extent that the charge for the service does not exceed the prevailing rate for similar services, and the study or other matter was necessary for preparation of the applicant's case.

[46 FR 48623, Oct. 2, 1981, as amended at 64 FR 30861, June 9, 1999; 65 FR 10374, Feb. 28, 2000]

**§ 2430.5 Rulemaking on maximum rates for attorney fees.**

If warranted by special factors, attorney fees may be awarded at a rate higher than that established in § 2430.4. Any such increase in the rate for attorney fees shall be made only upon a petition submitted by the applicant, pursuant to § 2430.6. Determinations regarding fee adjustments are subject to Authority review as specified in § 2430.13.

[65 FR 10374, Feb. 28, 2000]

**§ 2430.6 Contents of application; net worth exhibit; documentation of fees and expenses.**

(a) An application for an award of fees and expenses under the Act shall identify the applicant and the proceeding for which an award is sought. The application shall state the particulars in which the applicant has prevailed and identify the positions of the General Counsel in the proceeding that the applicant alleges were not substantially justified. The application shall also state the number of employees of the applicant and describe briefly the type and purpose of its organization or business.

(b) The application shall include a statement that the applicant's net worth does not exceed \$5 million.

(c) The application shall state the amount of fees and expenses for which an award is sought.

(d) The application may also include any other matters that the applicant wishes the Authority to consider in determining whether and in what amount an award should be made.

(e) The application shall be signed by the applicant or an authorized officer or attorney of the applicant. It shall also contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application is true.

(f) Each applicant must provide with its application a detailed exhibit showing the net worth of the applicant

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when the proceeding was initiated. The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's assets and liabilities and is sufficient to determine whether the applicant qualifies under the standards in this part. The Administrative Law Judge may require an applicant to file additional information to determine its eligibility for an award.

(g) The application shall be accompanied by full documentation of the fees and expenses for which an award is sought. A separate itemized statement shall be submitted for each professional firm or individual whose services are covered by the application, showing the hours spent in connection with the proceeding by each individual, the rate at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services provided. The Administrative Law Judge may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed.

### **§ 2430.7 When an application may be filed; referral to Administrative Law Judge; stay of proceeding.**

(a) An application may be filed after entry of the final order establishing that the applicant has prevailed in the proceeding, or in a significant and discrete substantive portion of the proceeding, but in no case later than thirty (30) days after the entry of the Authority's final order in the proceeding. The application for an award shall be filed with the Authority in Washington, DC, in an original and four copies, and served on all parties to the unfair labor practice proceeding. Service of the application shall be in the same manner as prescribed in §§ 2429.22 and 2429.27. Upon filing, the application shall be referred by the Authority to the Administrative Law Judge who heard the proceeding upon which the application is based, or, in the event the proceeding had not previously been heard by an Administrative Law Judge, it shall be referred to the Chief Administrative Law Judge

for designation of an Administrative Law Judge, to consider the application. When the Administrative Law Judge to whom the application has been referred is or becomes unavailable, the provisions of § 2423.20 shall be applicable.

(b) Proceedings for the award of fees and other expenses, but not the time limit of this section for filing an application for an award, shall be stayed pending final disposition of the case, in the event any persons seeks Authority reconsideration or court review of the Authority decision that forms the basis for the application for fees and expenses.

### **§ 2430.8 Filing and service of documents.**

All pleadings or documents after the time the case is referred by the Authority to an Administrative Law Judge, until the issuance of the Judge's decision, shall be filed in an original and four copies with the Administrative Law Judge and served on all parties to the proceeding. Service of such documents shall be in the same manner as prescribed in §§ 2429.22 and 2429.27.

### **§ 2430.9 Answer to application; reply to answer; comments by other parties; extensions of time to file documents.**

(a) Within 30 days after service of an application, the General Counsel may file an answer to the application. The filing of a motion to dismiss the application shall stay the time for filing an answer to a date thirty (30) days after issuance of any order denying the motion.

(b) If the General Counsel and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate toward a settlement. The filing of such a statement shall extend the time for filing an answer for an additional 30 days.

(c) The answer shall explain in detail any objections to the award requested, and identify the facts relied on in support of the General Counsel's position. If the answer is based on alleged facts not already in the record of the proceeding, supporting affidavits shall be provided or a request made for further proceedings under § 2430.11.