

**§ 24.204**

(2) If no hourly rate is paid by the majority of clients because, for instance, the attorney or agent represents most clients on a contingency basis, the attorney or agent shall provide information about two attorneys or agents with similar experience, who perform similar work, stating their hourly rate.

(c) 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.

(d) The adjudicative officer may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed.

**§ 24.204 Time for submission of application.**

(a) An application must be filed no later than 30 days after final disposition of the proceeding. If review or reconsideration is sought or taken of a decision as to which an applicant believes it has prevailed, action on the award of fees shall be stayed pending final disposition of the underlying controversy.

(b) Final disposition means the later of:

(1) The date on which the final agency decision is issued,

(2) The date on which a petition for rehearing or reconsideration is disposed of, or

(3) The date of final resolution of the proceeding, such as settlement or voluntary dismissal, which is not subject to a petition for rehearing or reconsideration.

**Subpart C—Procedures for Considering Applications**

**§ 24.301 Filing and service of documents.**

An application for an award and any other pleading or document related to the application shall be filed and served on all parties to the proceeding in the same manner as other pleadings in the proceeding.

**§ 24.302 Answer to application.**

(a) Within 30 calendar days after service of the application, Department counsel may file an answer. If Department counsel fails to answer or otherwise fails to contest or settle the application, the adjudicative officer may upon a satisfactory showing of entitlement by the applicant make an award for the applicant's fees and other expenses under 5 U.S.C. 504.

(b) If Department counsel and applicant believe that they can reach a settlement concerning the award, Department counsel may file a statement of intent to negotiate. The filing of such a statement shall extend the time for filing an answer an additional 30 days.

(c) The answer shall explain in detail any objections to the award requested and identify the facts relied on to support the objection. If the answer is based on any alleged facts not already reflected in the record of the proceeding, Department counsel shall include with the answer either a supporting affidavit or a request for further filings or other action.

**§ 24.303 Comments by other parties.**

Any party to a proceeding other than the applicant and Department counsel may file comments on an application within 30 calendar days after it is served or on an answer within 15 calendar days after it is served.

**§ 24.304 Settlement.**

A prevailing party and Department counsel may agree on a proposed settlement of an award before final action on the application, either in connection with a settlement of the underlying proceeding or after the underlying proceeding has been concluded. If the party and Department counsel agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement.

**§ 24.305 Extensions of time.**

(a) The adjudicative officer 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 adversary adjudication.

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(b) Ordinarily, the determination of an award will be made on the basis of the written record of the underlying proceeding and the filings required or permitted by the foregoing sections of these rules. However, the adjudicative officer may *sua sponte* or on motion of any party to the proceedings require or permit further filings or other action, such as an informal conference, oral argument, additional written submissions, or an evidentiary hearing. Such further action shall occur only when necessary for full and fair resolution of the issues arising from the application and shall take place as promptly as possible. 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 is necessary to resolve the issues.

(c) In the event that an evidentiary hearing is required or permitted by the adjudicative officer, such hearing and any related filings or other action required or permitted shall be conducted pursuant to the procedural rules governing adversary adjudications conducted by the Department component in which the underlying adversary adjudication was conducted.

### § 24.306 Decision on application.

The adjudicative officer shall promptly issue a decision on the application which shall include proposed written findings and conclusions on such of the following as are relevant to the decision:

(a) The applicant's status as a prevailing party;

(b) The applicant's qualification as a "party" under 5 U.S.C. 504(b)(1)(B);

(c) Whether the Department'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 proceedings 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, with reasons for any difference between the amount requested and the amount awarded.

### § 24.307 Department review.

The decision of the adjudicative officer will be reviewed to the extent permitted by law by the Department in accordance with the Department's procedures for the type of proceeding involved. The Department will issue the final decision on the application.

### § 24.308 Judicial review.

Judicial review of final Department decisions on awards may be sought as provided in 5 U.S.C. 504(c)(2).

### § 24.309 Payment of award.

An applicant seeking payment of an award shall submit a copy of the final decision granting the award to the Department's Accounting Office for processing. A statement that review of the underlying decision is not being sought in the United States courts, or that the process for seeking review of the award has been completed, must also be included.

## PART 25—DEPARTMENT OF JUSTICE INFORMATION SYSTEMS

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SOURCE: Order No. 2186-98, 63 FR 58307, Oct. 30, 1998, unless otherwise noted.

### Subpart A—The National Instant Criminal Background Check System

#### § 25.1 Purpose and authority.

The purpose of this subpart is to establish policies and procedures implementing the Brady Handgun Violence