

RULES AND REGULATIONS
RELATING TO
EQUAL ACCESS TO JUSTICE
(R42-92-EAJ)

(RHODE ISLAND GENERAL LAWS 1993 REENACTMENT)
CHAPTER 42-92

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DEPARTMENT OF HEALTH

March 1996

As Amended:
**January 2002 (re-filing in
accordance with the
provisions of section 42-35-
4.1 of the Rhode Island
General Laws, as amended)**

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Section 1.0 *Purpose, Scope And Authority*

1.1 *Purpose*

The purpose of these rules and regulations is to carry out the statutory requirements contained in Chapter 92 of Title 42 of the Rhode Island General Laws and provide equal access to justice for small businesses and individuals.

1.2 *Scope*

These rules and regulations govern the application and award of reasonable litigation expenses to qualified parties in adjudicatory proceedings conducted by the Department of Health.

1.3 *Authority*

The rules and regulations herein contained are promulgated pursuant to Chapters 35 and 92 of Title 42 of the Rhode Island General Laws.

Section 2.0 *Definitions*

Wherever used in these rules and regulations, the following terms shall be construed as follows:

- 2.1 **"Adjudicative Officer"** means the deciding official(s) without regard to whether the official is designated as an administrative law judge, hearing officer, examiner, or otherwise, who presided at the adversary adjudication.
- 2.2 **"Adjudicatory Proceeding"** means any proceeding conducted by or on behalf of the Department of Health, whether administratively or quasi-judicially, which may result in the loss of benefits, the imposition of a fine, the suspension or revocation of a license, registration, certification and/or permit, or which may result in the compulsion or restrictions of the activities of a party.
- 2.3 **"Agency"** means the Department of Health, any officer thereof, and any board or commission lodged within the department.
- 2.4 **"Department"** means the Rhode Island Department of Health, any agent thereof, and any board or commission lodged therein.
- 2.5 **"Party"** means any individual whose net worth is less than five hundred thousand dollars (\$500,000) at the time the adjudicatory proceeding was first initiated; and any individual, partnership, corporation, association, or private organization doing business and located in the state, which is independently owned and operated, not dominant in its field, and which employs one hundred (100) or fewer persons at the time the adjudicatory proceeding was initiated.
- 2.6 **"Reasonable Litigation Expenses"** means those expenses which were reasonably incurred by a party in adjudicatory proceedings, including but not limited to, attorney's fees, witness fees of all necessary witnesses, and other such costs and expenses as were reasonably incurred, except that:
 - A. The award of attorney's fees may not exceed seventy-five dollars (\$75.00) per hour;

- B. No expert witness may be compensated at a rate in excess of the highest rate or compensation for experts paid by this state.

2.7 "**Substantial Justification**" means that the initial position of the agency, as well as the agency's position in the proceeding, has a reasonable basis in law and fact. Any agency charged by statute with investigating complaints shall be deemed to have substantial justification for the investigation and for the proceedings subsequent to the investigation.

Section 3.0 *Procedures Governing Applications For Awards Of Litigation Expenses*

- 3.1 All claims for an award of reasonable litigation expenses shall be made on an application form to be supplied by the Department and shall be filed with the adjudicative officer within thirty (30) days of the date of the conclusion of the adjudicatory proceeding which gives rise to the right to recover such an award. The proceeding shall be deemed to be concluded when the adjudicative officer renders a written ruling or decision, an informal disposition, termination of the proceedings by the agency and/or any other act which brings finality to the adjudicatory proceeding.
- 3.2 The adjudicative officer may, at his or her discretion, permit a party to file a claim out of time upon a showing of proof and finding by such adjudicative officer that good and sufficient cause exists for allowing a claim to be so filed.
- 3.3 All claims filed hereunder shall be submitted on the approved application form which is obtained from the adjudicative officer. All claims must be postmarked or delivered to the adjudicative officer no later than thirty (30) days from the date of the conclusion of the adjudicatory procedure, that is, the date of the final written decision and/or order. These claims must contain, at a minimum, the following information:
 - A. A summary of the legal and factual basis for filing the claim;
 - B. A list of witnesses, if any, that the claimant expects to be called to substantiate the claim if a separate hearing on said claim is conducted by the agency;
 - C. A detailed breakdown of the reasonable litigation expenses incurred by the party in the adjudicatory proceeding, including copies of invoices, bills, affidavits, or other documents, all of which may be supplemented or modified at any time prior to the issuance of a final decision on the claim by the adjudicative officer;
 - D. A notarized statement swearing to the accuracy and truthfulness of the statements and information contained in the claim, and/or filed in support thereof. In this statement the claimant must also certify that the legal fee time amounts were contemporaneously kept and that attempts were made to minimize the time spent.

Section 4.0 *Allowance Of Awards*

- 4.1 Whenever a party which has provided the Department with timely notice of the intention to seek an award of litigation expenses as provided in these rules, prevails in contesting an agency action, and the adjudicative officer finds that the agency was not substantially justified in:
- A. The actions leading to the proceedings; and
 - B. In the proceedings itself: an award shall be made of reasonable litigation expenses actually incurred.
- 4.2 The decision of the adjudicatory officer to make an award shall be made a part of the record, shall include written findings and conclusions with respect to the award, and shall be sent to the claimant, unless same is represented by an attorney, in which case, the decision will be sent to the attorney of record.

5.0 *Disallowance Of Awards*

- 5.1 No award of fees or expenses may be made if the adjudicative officer finds that the agency was substantially justified in the actions leading to the proceeding and in the proceeding itself. Any action initiated as the result of a statutory-mandated complaint investigation shall be deemed to have substantial justification for the investigation and the proceedings subsequent to the investigation.
- 5.2 A claim for fees or expenses should be denied if the party is not actually the prevailing party.
- 5.3 The adjudicative officer may, at his discretion, deny fees or expenses if special circumstances make an award unjust.
- 5.4 Whenever substantially justified, the adjudicative officer may recalculate the amount to be awarded to the prevailing party, without regard to the amount claimed to be due on the application for an award.
- 5.5 Notice of the decision disallowing an application for an award of fees and expenses shall be sent to the party by the agency via regular mail and certified mail; provided, however, if the party is represented by an attorney, said notice shall be sent by regular and certified mail to the attorney of record.

6.0 *Appeals*

- 6.1 Any party aggrieved by the decision to award reasonable litigation expenses may bring an appeal to the Superior Court in the manner provided by the Administrative Procedures Act, Rhode Island General Laws Section 42-35-1 et seq.

7.0 *Severability*

If any provision of these Rules and Regulations or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the provisions or application of the rules and regulations which can be given effect, and to this end, the provisions of these rules and regulations are declared to be severable.

8.0 *Effective Date*

These Rules and Regulations shall become effective twenty (20) days after filing with the office of Secretary of State.

September 17, 2001
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