

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF TRANSPORTATION

ADMINISTRATIVE RULES OF PRACTICE AND PROCEDURE
RELATIVE TO CHAPTER 42-92-1
OF THE RHODE ISLAND GENERAL LAWS

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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.

1.2 Scope: These rules and regulations govern the application and award of reasonable litigation expenses to prevailing parties in adjudicatory proceedings conducted by the state agency promulgating the regulations, the Department of Transportation.

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.

2.0 POLICY

- 2.1 It is hereby declared to be the official policy of the state agency promulgating these rules and regulations that individuals and small businesses should be encouraged to contest unjust administrative actions in order to further the public interest and toward that end, such parties should be entitled to state reimbursement of reasonable litigation expenses when they prevail in contesting an agency action which is, in fact, unfair and unjust.

3.0 DEFINITIONS

- 3.1 "Adjudicative Officer" means the presiding officer or deciding official of any adversary adjudicatory proceeding of the department promulgating these regulations, without regard to whether the official is designated as an administrative law judge, hearing officer, examiner, or otherwise.
- 3.2 "Adversary Adjudicatory Proceeding" means any proceeding conducted by or on behalf of the state agency promulgating these regulations, 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, or permit, or which may result in the compulsion or restrictions of the activities of a party.
- 3.3 "Agency" means the Department of Transportation, including any board, commission, or officer of the department.
- 3.4 "Party" means any individual whose net worth is less than two hundred fifty thousand dollars (\$250,000) at the time the adversary 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 employ one hundred (100) or fewer persons at the time the adversary adjudicatory proceeding was initiated.
- 3.5 "Reasonable Litigation Expenses" means those expenses which were reasonably incurred by a party in adversary 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; and
- 3.6 "Substantial Justification" means that the initial position of the agency, as well as the agency, as well as the agency's position in the proceeding, has a reasonable basis in law and fact.

4.0 PROCEDURES GOVERNING APPLICATIONS FOR AWARDS OF LITIGATION EXPENSES

4.1 Any eligible party who intends to file a claim for an award of reasonable litigation expenses if it prevails, pursuant to these rules and regulations and Rhode Island General Laws, Chapter 42-92-1 shall notify the director of the department conducting the adjudicatory proceeding by certified mail, within thirty (30) days after the date the proceeding is concluded.

4.2 All claims for an award of reasonable litigation expenses shall be made on an application form to be supplied by the agency rendering the decision or order, and shall be filed with the agency within thirty (30) days 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 agency or adjudicative officer renders a ruling or decision.

4.3 The adjudicative officer may, in his or her discretion, permit a party to file a claim out of time upon a showing of proof and finding by such administrative officer that good and sufficient cause exists for allowing a claim to be so filed, and that such action will not substantially impede the adjudication of substantive issues.

4.4 All claims filed pursuant to these Regulations shall conform to the general filing requirements of the agency and shall contain:

- 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.

5.0. ALLOWANCE OF AWARDS

5.1 Whenever a party which has provided the agency 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 proceeding itself:

an award shall be made of reasonable litigation expenses.

5.2 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 the same is represented by an attorney, in which case the decision shall be sent to the attorney of record.

6.0 DISALLOWANCE OF AWARDS

- 6.1 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.
- 6.2 The adjudicative officer may, at his or her discretion, deny fees or expenses if special circumstances made an award unjust.
- 6.3 The adjudicative officer may deny, in whole or in part, any application for award of fees and expenses where justice so requires, or which is considered to be excessive.
- 6.4 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.
- 6.5 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, provided however, that if the party is represented by an attorney said notice shall be sent by regular mail to the attorney of record.

7.0 APPEALS

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

8.0 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 or these rules and regulations are declared to be severable.

8.1 EFFECTIVE DATE

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

CERTIFICATION

I hereby certify that the within Administrative Rules of Practice and Procedure relative to R.I.G.L. 42-92-1, have been adopted by the Department of Transportation and that this is a true copy of said rules and regulations.

Date: _____

William D. Ankner, Ph.D.
DIRECTOR

RHODE ISLAND DEPARTMENT OF TRANSPORTATION
APPLICATION FOR AWARD OF LITIGATION EXPENSES

NAME OF APPLICANT: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP: _____

ATTORNEY FOR APPLICANT: _____

ADDRESS OF ATTORNEY: _____

CITY: _____ STATE: _____ ZIP: _____

SUMMARY OF CLAIM: (Describe legal and factual basis for claim)

WITNESSES: (List witnesses Applicant expects to call to substantiate claim, if hearing is conducted.)

1. _____
2. _____
3. _____

LITIGATION EXPENSES: (List in detail litigation expenses incurred by Applicant in the Adjudicatory Proceedings and attached all relevant bills, invoices, affidavits and other documents necessary to substantiate Application.)

SIGNATURE OF APPLICANT

DATE

STATE OF RHODE ISLAND
CITY OF PROVIDENCE

Before me on the _____ day of _____, 19 ____
appeared _____ who swore that the
statements contained in the above application are true and accurate and he subscribed
such application in my presence.

Notary Public

