

## Federal Labor Relations Authority

## § 2429.24

(1) Applications for review under 5 CFR 2422.31(a) through (c);

(2) Oppositions to applications for review under 5 CFR 2422.31(d);

(3) Exceptions to Administrative Law Judges' decisions under 5 CFR 2423.40(a);

(4) Oppositions to exceptions to Administrative Law Judges' decisions under 5 CFR 2423.40(b);

(5) Cross-exceptions under 5 CFR 2423.40(b);

(6) Exclusive representatives' petitions for review under 5 CFR 2424.22;

(7) Agency statements of position under 5 CFR 2424.24;

(8) Exclusive representatives' responses under 5 CFR 2424.25;

(9) Agency replies under 5 CFR 2424.26;

(10) Exceptions to arbitration awards under 5 CFR part 2425; and

(11) Oppositions to exceptions to arbitration awards under 5 CFR part 2425.

(12) Petitions under 5 CFR part 2422.

(13) Cross-petitions under 5 CFR part 2422.

(14) Charges under 5 CFR part 2423.

(15) Documents submitted to the Office of Administrative Law Judges under 5 CFR part 2423, including answers to complaints, motions, briefs, pre-hearing disclosures, stipulations, and any other documents as permitted by the eFiling system for the Office of Administrative Law Judges.

(g) As another alternative to the methods of filing described in paragraph (e) of this section, you may file the following documents by facsimile ("fax"), so long as fax equipment is available and your entire, individual filing does not exceed 10 pages in total length, with normal margins and font sizes. You may file only the following documents by fax under this paragraph (g):

(1) Motions;

(2) Information pertaining to pre-hearing disclosure, conferences, orders, or hearing dates, times, and locations;

(3) Information pertaining to subpoenas;

(4) Appeals of a dismissal of an unfair labor practice charge; and

(5) Other matters that are similar to those in paragraphs (g)(1) through (3) of this section.

(h) You must legibly print, type, or otherwise duplicate any documents that you file under this section. For purposes of documents that are filed electronically through use of the FLRA's eFiling system under paragraph (f) of this section, "legibly \* \* \* duplicated" means that documents that you upload as attachments into the eFiling system must be legible.

(i) Documents, including correspondence, in any proceedings under this subchapter must show the title of the proceeding and the case number, if any.

(j) Except for documents that are filed electronically through use of the FLRA's eFiling system, the original of each document required to be filed under this subchapter must be signed by either the filing party or that party's attorney, other representative of record, or officer, and also must contain the address and telephone number of the person who signs the document. Documents that are filed electronically using the FLRA's eFiling system must contain the mailing address, email address, and telephone number of the individual who files the document, but not that individual's signature.

(k) A return postal receipt may serve as acknowledgement that the Authority, General Counsel, Administrative Law Judge, Regional Director, or Hearing Officer has received a filed document. Otherwise, the FLRA will acknowledge receipt of filed documents only if the filing party:

(1) Asks the receiving FLRA officer to do so;

(2) Includes an extra copy of the document or the letter to which the document is attached, which the receiving FLRA office will date-stamp and return to the filing party; and

(3) For returns that are to be sent by mail, includes a self-addressed, stamped envelope.

[45 FR 3516, Jan. 17, 1980, as amended at 51 FR 45752, Dec. 22, 1986; 58 FR 53105, Oct. 14, 1993; 62 FR 40924, July 31, 1997; 68 FR 10953, Mar. 7, 2003; 68 FR 23885, May 6, 2003; 73 FR 27459, May 13, 2008; 77 FR 26436, May 4, 2012; 77 FR 37762, June 25, 2012; 80 FR 9190, Feb. 20, 2015; 88 FR 80092, Nov. 17, 2023; 89 FR 11702, Feb. 15, 2024]

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**§ 2429.25 Number of copies and paper size.**

(a) *General rule.* Except as discussed in paragraph (b) of this section, and unless you use an FLRA-prescribed form, any document that you file with the Authority, General Counsel, Administrative Law Judge, Regional Director, or Hearing Officer, including any attachments, must be on 8½ by 11-inch size paper, using normal margins and font sizes. You must file one original document, but you may substitute for the original document a clean copy of that document, so long as the copy is capable of being used as an original for purposes such as further reproduction.

(b) *Exceptions.* You are not required to comply with paragraph (a) of this section if and only if:

(1) You file documents electronically through use of the FLRA’s eFiling system;

(2) The Authority or the General Counsel, or their designated representatives, allow you not to comply; or

(3) Another provision of this subchapter allows you not to comply.

[77 FR 26437, May 4, 2012, as amended at 89 FR 11702, Feb. 15, 2024]

**§ 2429.26 Other documents.**

(a) The Authority or the General Counsel, or their designated representatives, as appropriate, may in their discretion grant leave to file other documents as they deem appropriate.

(b) A copy of such other documents shall be served on the other parties.

**§ 2429.27 Service; statement of service.**

(a) Except as provided in §2423.10(c) and (d), any party filing a document as provided in this subchapter is responsible for serving a copy upon all counsel of record or other designated representative(s) of parties, upon parties not so represented, and upon any interested person who has been granted permission by the Authority pursuant to §2429.9 to present written and/or oral argument as *amicus curiae*. Service upon such counsel or representative shall constitute service upon the party, but a copy also shall be transmitted to the party.

(b) If you are serving a document under paragraph (a) of this section,

then you must use one of the following methods of service:

(1) Certified mail;

(2) First-class mail;

(3) Commercial delivery;

(4) In-person delivery;

(5) Facsimile (“fax”) service, but only for the types of documents listed in §2429.24(g) and only where fax equipment is available; or

(6) Electronic mail (“email”), but only when the receiving party has agreed to be served by email.

(c) If you serve a document under this section, then you must file, with the appropriate FLRA office, a statement indicating that the party has served that document (a “statement of service”). If you are filing documents electronically using the FLRA’s eFiling system, then you must certify, in the FLRA’s eFiling system and at the time of filing, that you have served copies of the filing and any supporting documents on the appropriate individual(s) specified in paragraph (a) of this section. Regardless of how you file a statement of service with the FLRA, you must ensure that your statement of service includes the names of the parties and persons that you served, their addresses, the date on which you served them, the nature of the document(s) that you served, and the manner in which you served the parties or persons that you served. You must also sign and date the statement of service, unless you are using the FLRA’s eFiling system.

(d) *Date of service.* For any documents that you serve under this section, the date of service depends on the manner in which you serve the documents. Specifically, the date of service shall be the date on which you have: deposited the served documents in the U.S. mail; delivered them in person; deposited them with a commercial-delivery service that will provide a record showing the date on which the document was tendered to the delivery service; transmitted them by fax (where allowed under paragraph (b)(5) of this section); or transmitted them by email (where allowed under paragraph (b)(6) of this section).

[45 FR 3516, Jan. 17, 1980, as amended at 62 FR 40924, July 31, 1997; 74 FR 51745, Oct. 8, 2009; 77 FR 26437, May 4, 2012]

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### § 2429.28 Petitions for amendment of regulations.

Any interested person may petition the Authority or General Counsel in writing for amendments to any portion of these regulations. Such petition shall identify the portion of the regulations involved and provide the specific language of the proposed amendment together with a statement of grounds in support of such petition.

### § 2429.29 Content of filings.

With one exception, if you file any document with the Authority or the Office of Administrative Law Judges in a proceeding covered by this subchapter—including any briefs that you upload into the FLRA's eFiling system as attachments—and that document exceeds 10 double-spaced pages in length, then you must ensure that the document includes a table of contents. The one exception is that, if you use the fillable forms in the FLRA's eFiling system, then you are not required to submit a table of contents to accompany the fillable forms.

[77 FR 26437, May 4, 2012]

## PART 2430—AWARDS OF ATTORNEY FEES AND OTHER EXPENSES

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AUTHORITY: 5 U.S.C. 504.

SOURCE: 46 FR 48623, Oct. 2, 1981, unless otherwise noted.

### § 2430.1 Purpose.

The Equal Access to Justice Act, 5 U.S.C. 504, provides for the award of attorney, agent, or witness fees and other expenses to eligible individuals and entities who are parties to Authority adversary adjudications. An eligible party may receive an award when it prevails over the General Counsel, unless the General Counsel's position in the proceeding was substantially justified, or special circumstances make an award unjust. The rules in this part describe the parties eligible for awards, and the Authority proceeding that is covered. They also set forth the procedures for applying for such awards, and the procedures by which the Authority will rule on such applications.

[51 FR 33837, Sept. 23, 1986]

### § 2430.2 Proceedings affected; eligibility for award.

(a) The provisions of this part apply to unfair labor practice proceedings pending on complaint against a labor organization at any time since October 1, 1981.

(b) A respondent in an unfair labor proceeding which has prevailed in the proceeding, or in a significant and discrete portion of the proceeding, and who otherwise meets the eligibility requirements of this section, is eligible to apply for an award of attorneys fees and other expenses allowable under the provisions of § 2430.4 of these rules.

(1) Applicants eligible to receive an award in proceedings conducted by the Authority are any partnership, corporation, association, or public or private organization with a net worth of not more than \$5 million (\$7 million in cases involving adversary adjudications pending on or commenced on or after August 5, 1985) and not more than 500 employees.

(2) For the purpose of eligibility, the net worth and number of employees of an applicant shall be determined as of the date the complaint was issued.

(3) The employees of an applicant include all persons who regularly perform services for remuneration for the

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applicant, under the applicant’s direction and control. Part-time employees shall be included on a proportional basis.

(4) An applicant that participates in a proceeding primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

[46 FR 48623, Oct. 2, 1981, as amended at 51 FR 33837, Sept. 23, 1986]

**§ 2430.3 Standards for awards.**

(a) An eligible applicant may receive an award for fees and expenses incurred in connection with a proceeding, or in a significant and discrete portion of the proceeding, unless the position of the General Counsel over which the applicant has prevailed was substantially

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justified. The burden of proof that an award should not be made to an eligible applicant is on the General Counsel, who may avoid an award by showing that its position in initiating the proceeding was reasonable in law and fact.

(b) An award will be reduced or denied if the applicant has unduly or unreasonably protracted the proceeding or if special circumstances make the award sought unjust.

**§ 2430.4 Allowable fees and expenses.**

(a)(1)(i) No award for the fee of an attorney or agent under this part may exceed \$125.00 per hour, or for adversary adjudications commenced prior to March 29, 1996, \$75.00 per hour, indexed to reflect cost of living increases as follows:

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

(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.

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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. 23, 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 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