

**481—11.11 (10A) Attorney fees, court costs, and contested case costs.**

**11.11(1) Attorney fees.** In a decision rescinding or sustaining the agency's denial, suspension, or revocation of the permit or otherwise granting a request to withdraw or dismiss the appeal, the administrative law judge shall determine whether a party is entitled to an award of attorney fees consistent with paragraph 11.11(1)"a" or "b." If a party is entitled to an award, the decision shall inform the parties of the applicable procedure provided in paragraph 11.11(1)"c" for determining the amount of such an award unless the administrative law judge determines the amount of an award in the decision as provided for in paragraph 11.11(1)"f."

*a.* If the administrative law judge rescinds the agency's denial, suspension, or revocation of the permit and determines the applicant or permittee is eligible to be issued or to possess the permit, the applicant or permittee shall be awarded any reasonable attorney fees. A dismissal of the appeal at the request of the agency under subrule 11.9(2) is not a determination that the applicant or permittee is eligible to be issued or to possess the permit and does not entitle the applicant or permittee to an award of attorney fees. An applicant or permittee who is not represented by an attorney in the contested case proceeding is not entitled to an award of attorney fees.

*b.* If the administrative law judge affirms the agency's denial, suspension, or revocation of the permit or grants the applicant's or permittee's request to withdraw or dismiss the appeal, the agency shall be awarded any reasonable attorney fees. Such an award to the agency shall be made to the political subdivision of the state representing the sheriff or to the state department representing the commissioner as applicable. An agency is not entitled to an award of attorney fees if the agency requests dismissal of the appeal under subrule 11.9(2) or if the agency is not represented by an attorney in the contested case proceeding.

*c.* Within 14 days of the date of a decision in which the administrative law judge determines that a party is entitled to an award of attorney fees, the party shall file a request for attorney fees and documentation supporting the request or a joint statement with the other party agreeing to the amount of reasonable attorney fees. Within 7 days of the filing of a request for attorney fees, the other party may file a resistance, including any relevant evidence, or a statement agreeing to the requested attorney fees. Upon request of either party or on the administrative law judge's own motion, a hearing may be scheduled on the issue of the attorney fee award.

*d.* If the party fails to file a request for attorney fees or a joint statement within 14 days, the administrative law judge shall issue an order determining that no attorney fees are awarded in the case. If the parties agree to the amount of reasonable attorney fees to be awarded, the administrative law judge shall issue an order awarding attorney fees consistent with the agreement. In all other cases, the administrative law judge shall issue a written order determining the reasonable attorney fees in the case.

*e.* The administrative law judge's decision is not final for purposes of rehearing under rule 481—11.14(17A) or judicial review under Iowa Code chapter 17A until the administrative law judge has issued a written decision determining the amount of any attorney fees to be awarded under this subrule or determining that no attorney fees are to be awarded.

*f.* If an application for rehearing under rule 481—11.14(17A) is denied, no additional attorney fees shall be awarded to either party. If an application for rehearing is granted, all the provisions of this subrule apply to the rehearing proceedings unless the only relief sought on rehearing relates to the attorney fee award. If the only relief sought relates to the attorney fee award, the order granting the application for rehearing shall provide that a party opposing the requested relief may file a resistance, including any relevant evidence, within 7 days of the date of the order and shall schedule a hearing or provide that a hearing may be scheduled upon the request of either party. In such a case, the administrative law judge shall issue a single final decision regarding the attorney fee award.

*g.* Any attorney fees awarded under this subrule shall be paid to the awarded party within 30 days of the issuance of an order determining the amount of attorney fees awarded unless an interested party seeks rehearing under rule 481—11.14(17A) or judicial review under Iowa Code chapter 17A or the parties agree to an alternative payment schedule. If a party seeks rehearing under rule 481—11.14(17A), the attorney fees shall be paid within 30 days of the denial of the application for rehearing or of any final

decision awarding attorney fees after the grant of an application for rehearing. If a party seeks judicial review under Iowa Code chapter 17A, the attorney fee award shall be stayed pending resolution of the judicial review action. A party awarded attorney fees is responsible for taking any necessary action to enforce the award if payment is not made.

**11.11(2)** *Court costs and attorney fees on judicial review.* Any request for the award of court costs or for attorney fees incurred after the entry of an order determining reasonable attorney fees may only be made to the court in a judicial review action under Iowa Code chapter 17A, unless a party requests rehearing under rule 481—11.14(17A), in which case reasonable attorney fees may be awarded by the administrative law judge related to the request for rehearing consistent with paragraph 11.11(1)“f.”

**11.11(3)** *Contested case costs.* Costs of the division in conducting a contested case proceeding arising out of a decision of the commissioner of public safety shall be charged to the department of public safety pursuant to Iowa Code section 10A.801(9).

This rule is intended to implement Iowa Code section 10A.801 as amended by 2017 Iowa Acts, House File 640, and section 724.21A as amended by 2017 Iowa Acts, House File 517.

[ **ARC 9299B** , IAB 12/29/10, effective 1/1/11; **ARC 9400B** , IAB 3/9/11, effective 4/13/11; **ARC 3217C** , IAB 7/19/17, effective 8/23/17]