

**3825 ATTORNEY'S FEES**

- 3825.1 Attorney's fees may be awarded to a party for fees incurred in the administrative adjudication of a petition before the Rent Administrator, the Office of Administrative Hearings, or the Rental Housing Commission, pursuant to § 902 of the Act (D.C. Official Code § 42-3509.02).
- 3825.2 The Office of Administrative Hearings may award attorney's fees, in accordance with this section, that are incurred in a contested case before it and may include fees incurred for substantial work done, if any, to contest the matter while it was pending before the Rental Accommodations Division. In accordance with § 3802.3(b), the filing of a notice of appeal stays the Office of Administrative Hearings from deciding a motion for attorney's fees until all appeals of its final order are exhausted and the prevailing party ultimately determined.
- 3825.3 The Commission may award attorney's fees that are incurred in an appeal before it and shall review awards of attorney's fees by the Office of Administrative Hearings pursuant to a notice of appeal from such an award filed in accordance with § 3802.
- 3825.4 A motion for an award of attorney's fees shall be submitted to the Commission within thirty (30) days after the later of either the issuance of a final decision and order or an order dismissing an appeal, or a motion for reconsideration of the decision or order is granted or denied in accordance with § 3823. The Commission shall not decide a motion for attorney's fees until any further administrative proceedings, including a remand of the case, and all judicial review are exhausted and the prevailing party determined.
- 3825.5 If a party did not prevail before the Office of Administrative hearings but does so in an appeal to the Commission, and the matter is not remanded by the Commission, the party may file a motion for attorney's fees incurred before the Office of Administrative Hearings with that office within the time provided by 1 DCMR § 2940 from the date on which the party prevails before the Commission.
- 3825.6 A presumption of entitlement to an award of attorney's fees is created by a prevailing tenant who is represented by an attorney.
- 3825.7 A prevailing housing provider represented by an attorney may be awarded attorney's fees where the Office of Administrative Hearings or the Commission, as applicable, finds that the claims raised by a tenant, or a specific part thereof, was frivolous, unreasonable, or without foundation, or the tenant continued to litigate the claim after it clearly became so, whether or not the litigation was brought in bad faith.

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- 3825.8 The Office of Administrative Hearings or Commission may deny an award of attorney's fees to either a housing provider or a tenant, if it is determined that the equities indicate.
- 3825.9 Attorney's fees may be awarded only for the services of an attorney, including the work of a law clerk, paralegal, or law student supervised by the attorney, who:
- (a) Is authorized to appear as an attorney under the rules, as applicable to the motion, of the Rental Accommodations Division, the Office of Administrative Hearings, or the Commission in § 3812.8 as a member in good standing of the bar, by *pro hac vice* admission, or as a supervised law student;
  - (b) Did not withdraw his or her appearance from the case prior to the issuance of a dispositive order by the Office of Administrative Hearings or the Commission, as applicable to the motion, unless the party was immediately represented by substitute counsel; and
  - (c) Is not a *pro se* party to a case who is incidentally an attorney.
- 3825.10 Attorney's fees may be awarded only for services performed after a party makes or is served with an initial filing in a contested case, and the filing or response to the filing is signed by an attorney of record. Fees may also be awarded for services within a reasonable period of time prior to a party's initial filing, as necessary to determine whether to represent the party, to investigate the basis for the claims, or to prepare the initial filing. For purposes of this section, an initial filing in a contested case shall be:
- (a) A tenant petition;
  - (b) Exceptions and objections to, or other notice of the intent to contest, a housing provider's petition or an application for approval of a voluntary agreement; or
  - (c) A notice of appeal.
- 3825.11 A party moving for an award of attorney's fees has the burden of proving the amount of the award with substantial evidence of the hours of services provided and the rates charged for those services, in accordance with § 3825.12. Substantial evidence may include an affidavit executed by the party's attorney itemizing the attorney's time and rates for legal services, a client engagement letter, or other memorialization of the attorney-client relationship that states the fee agreement.

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3825.12 An award of attorney's fees shall be calculated as follows, in accordance with the standards applied by courts in the District of Columbia under similar fee-shifting statutes:

- (a) A party shall be presumptively entitled to the lodestar amount, which shall be the product of:
  - (1) The number of hours reasonably expended on the matter, which shall be calculated as:
    - (A) The actual hours of work attributable to the matter, as supported by affidavits or other competent evidence; minus
    - (B) Any hours of work that are excessive, redundant, or otherwise unnecessary; minus
    - (C) Any hours of work that are attributable to, or a proportional reduction based on, any issue(s) upon which the party did not prevail; multiplied by
  - (2) A reasonable hourly rate, in consideration of:
    - (A) The attorney's billing practices, including whether the representation is pro bono or at a rate targeted to low- to moderate-income clients (commonly called "low bono");
    - (B) The attorney's skill, experience, and reputation; and
    - (C) The prevailing market rates in the District of Columbia, which may be determined using the fees matrix published by the United States Attorney's Office for the District of Columbia under the current methodology for the year(s) in which the hours were expended; and
- (b) In extraordinary circumstances, the lodestar amount may be increased or reduced based on specific evidence that the lodestar amount is not fair or reasonable because it does not reflect one or more of the following factors:
  - (1) The time and labor required;
  - (2) The novelty, complexity, and difficulty of the legal issues or questions;
  - (3) The skill requisite to perform the legal service properly;

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- (4) The preclusion of other employment by the attorney, due to acceptance of the case;
- (5) The customary fee;
- (6) Whether the fee is fixed or contingent;
- (7) The time limitations imposed by the client or the circumstances;
- (8) The amount involved and the results obtained;
- (9) The experience, reputation, and ability of the attorney;
- (10) The undesirability of the case;
- (11) The nature and length of the professional relationship with the client; or
- (12) The award in similar cases.

3825.13 No award of attorney's fees shall be granted in an action for eviction authorized under § 501 of the Act (D.C. Official Code § 42-3505.01).

3825.14 An award of attorney's fees may accrue interest from the date of the award, and the interest shall be calculated in accordance with § 3826.

3825.15 A motion for an award of attorney's fees may be decided by a single Commissioner.

SOURCE: Notice of Final Rulemaking published at 45 DCR 684-86 (February 6, 1998); as amended by Final Rulemaking published at 68 DCR 012634 (December 3, 2021).