

## § 201.44

vouchers, receipts, or other substantiation for any fees or expenses claimed.

### **§ 201.44 When an application may be filed.**

(a) An application may be filed whenever the applicant has prevailed in the proceeding or in a significant and discrete substantive portion of the proceeding, but in no case later than 30 days after the Commission's final disposition of the proceeding.

(b) For purposes of this rule, final disposition means the date on which a decision or order disposing of the merits of the proceeding or any other complete resolution of the proceeding, such as a settlement or voluntary dismissal, becomes final and unappealable, both within the Commission and to the courts.

(c) If review or reconsideration is sought or taken of a decision as to which an applicant believes it has prevailed, proceedings for the award of fees shall be stayed pending final disposition of the underlying controversy.

[47 FR 610, Jan. 6, 1982, as amended at 54 FR 53052, Dec. 27, 1989]

### **§ 201.51 Filing and service of documents.**

Any application for an award or other document related to an application shall be filed and served in the same manner as other papers in proceedings under the Commission's Rules of Practice. In addition, a copy of each application for fees and expenses shall be served on the General Counsel of the Commission.

### **§ 201.52 Answer to application.**

(a) Within 30 days after service of an application, counsel representing the Office or Division of the Commission may file an answer to the application. Unless the Office or Division of the Commission counsel requests an extension of time for filing or files a statement of intent to negotiate under paragraph (b) of this section, failure to file an answer within the 30-day period may be treated as a consent to the award requested.

(b) If counsel for the Office or Division of the Commission and the applicant believe that the issues in the fee

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application can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 days, and further extensions may be granted upon request by agency counsel and the applicant.

(c) The answer shall explain any objections to the award requested and identify the facts relied on in support of that position. If the answer is based on any alleged facts not already in the record of the proceeding, it shall include supporting affidavits or a request for further proceedings under § 201.55.

### **§ 201.53 Reply.**

Within 15 days after service of an answer, the applicant may file a reply. If the reply is based on any alleged facts not already in the record of the proceeding, the applicant shall include with the reply either supporting affidavits or a request for further proceedings under § 201.55.

### **§ 201.54 Settlement.**

The applicant and counsel for the Office or Division of the Commission may agree on a proposed settlement of the award before final action on the application, either in connection with a settlement of the underlying proceeding or after the underlying proceeding has been concluded, in accordance with the Commission's standard settlement procedure. See 17 CFR 201.240. If a prevailing party and counsel for the Office or Division of the Commission agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement. If a proposed settlement provides that each side shall bear its own expenses, and the settlement is accepted, no application may be filed.

[54 FR 53052, Dec. 27, 1989, as amended at 60 FR 32795, June 23, 1995]

### **§ 201.55 Further proceedings.**

(a) Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or counsel for the Office or Division of the Commission, or on his or her own initiative, the administrative law judge may order further proceedings, such as an