



Attachment 1

APPLICATION FOR ATTORNEYS FEES AND LITIGATION SUPPORT FUNDS UNDER 25 CFR PART 89

It is the general policy of the Department of the Interior not to use federally appropriated funds to pay for private counsel to represent Indian tribes. However, pursuant to 25 C.F.R. Part 89, the Assistant Secretary – Indian Affairs may authorize the expenditure of appropriated funds to pay reasonable attorney’s fees to allow an eligible Indian tribe to secure private legal representation under certain circumstances.

Attorney fee funds may only be used to pay for legal fees (not expenses) of private legal counsel hired by tribes to represent the tribe in litigation, negotiations, or administrative proceedings that involve the protection of tribal trust resources or tribal treaty rights (including water rights).

Litigation support funds may be available to tribes involved in litigation, negotiation or administrative proceedings to protect tribal trust resources or treaty rights. These funds may be used to cover costs associated with developing evidence, research services, or to procure the services of expert witnesses to support the tribe’s position. They may not be used to pay for legal services or to sue the Federal Government or to cover costs associated with water issues, funds for which are available instead from the BIA Water Rights Negotiation/Litigation Program.

To request attorney’s fee or litigation support funds, a tribe must submit an application to the Agency Superintendent and Area Director for submission to the Office of Trust Services by [DATE] of each fiscal year. Separate applications should be submitted for each request and for each matter.

25 CFR PART 89 APPLICATION REQUIREMENTS

A. Information to be included in <u>all</u> applications:
1. Identify whether the application is for attorney fee funds or litigation support funds.
2. Provide historical or other relevant/general background information regarding events leading to the current situation.
3. Provide a copy of the Tribal resolution authorizing the Tribe’s request for funds.
4. A current financial statement for the Tribe sufficient to show the Tribe’s capacity to pay for all or part of the legal services.
5. A statement that the tribe does not possess sufficient tribal funds or assets to pay for all or a part of the services sought.

B. Information to be included in <u>attorney fees</u> applications:
1. Identify the exception(s) under 25 CFR § 89.41 under which the application is submitted.
a. Include a description of how the request fully meets each identified exception.
2. Provide a statement of why the matter must be handled by a private attorney as opposed to attorneys from the Department of Justice or Department of Interior.
3. Provide a concise description of the issue and scope of work for which attorney fee funds are requested. Please include approximate court dates and/or time frames for negotiations, litigation, etc.
4. Provide a detailed breakdown of the services for which funds are sought, including:
a. costs of the services;
b. number of attorney hours; and
c. attorney hourly rates.
5. A copy of the relevant legal counsel contracts.
6. A certificate or statement of good standing from the bar association of each attorney for whom fees the applicant seeks funds.
C. Information to be included in <u>legal support services</u> applications:
1. Provide a detailed breakdown of the services for which funds are sought, including:
a. costs of the services;
b. number of hours; and
c. hourly rates.