

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

LARRY HARTS,

Plaintiff,

v.

MICHAEL JOHANNNS, Secretary of the  
United States Department of Agriculture,

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Defendant.

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Case No. 05-1066-WEB

**MEMORANDUM AND ORDER**

Now before the Court is Plaintiff's motion for attorney's fees pursuant to 28 U.S.C. § 2412. (Doc. 26); Fed. R. Civ. P. 54(d)(2).<sup>1</sup> Defendant objects and makes the following arguments: Plaintiff failed to comply with Local Rule 54.2; Defendant's position was substantially justified; and Plaintiff's requested fee is unreasonable. (Doc. 30). Plaintiff filed no reply.

Defendant argues that Plaintiff's motion for attorney fees was not made in accordance with the local rules. Local Rule 54.2 states:

The court will not consider a motion to award statutory attorney's fees made pursuant to Fed. R. Civ. P. 54(d)(2) until the moving party shall have first advised the court in writing that after consultation promptly initiated by the moving party, the parties have been unable to reach an agreement with regard to the fee award. The statement of consultation shall set forth the date of the consultation, the names of those who participated, and the specific

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<sup>1</sup> Title 28 of the United States Code, Section 2412(d)(1)(A) reads as follows:

Except as otherwise specifically provided by statute, a court shall award to a prevailing party other than the United States fees and other expenses, in addition to any costs awarded pursuant to subsection (a), incurred by that party in any civil action (other than cases sounding in tort), including proceedings for judicial review of agency action, brought by or against the United States in any court having jurisdiction of that action, unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust.

results achieved.

If the parties reach an agreement, they shall file an appropriate stipulation and request for an order. If they are unable to agree within 30 days of the filing of the motion under Fed. R. Civ. P. 54(d)(2), the moving party shall file the statement of consultation required by this rule and a memorandum setting forth the factual basis for each criterion which the court is asked to consider in making an award.

D. Kan. R. 54.2.

After reviewing Plaintiff's motion, there is no statement showing a consultation as required by the above rule. Consequently, the Court declines to rule on Plaintiff's request for attorney's fees until the requirements in Local Rule 54.2 are met.

IT IS THEREFORE ORDERED that Plaintiff have 30 days to comply with Local Rule 54.2. If the parties are unable to agree to the amount of the fee within 30 days of this order, Plaintiff shall file the statement of consultation as required by Local Rule 54.2.

SO ORDERED this 29th day of August 2006.

s/ Wesley E. Brown

Wesley E. Brown, U.S. Senior District Judge