

# Title 14 INDEPENDENT AGENCIES

## Subtitle 09 WORKERS' COMPENSATION COMMISSION

### Chapter 04 *Legal Representation and Fees*

14.09.01 (downloaded 11/08/12)

#### **[.23] .01 Legal Representation.**

[A. Who May Practice. Only an attorney admitted by the Court of Appeals to practice in this State or an out-of-State attorney specially admitted under Business Occupations and Professions Article, §10-215, Annotated Code of Maryland, may practice before the Commission.]

##### *A. Representation.*

(1) *A party may be represented before the Commission by:*

(a) *An attorney admitted by the Court of Appeals to practice in this State;*

(b) *An out-of-State attorney specially admitted by order of the circuit court pursuant to the Business Occupations and Professions Article, §10-215, Annotated Code of Maryland; or*

(c) *A party, who is an individual, may appear on the individual's own behalf pursuant to Business Occupations and Professions Article, §10-102, Annotated Code of Maryland.*

(2) *All parties, other than an individual electing to represent him or herself, may be represented only by an attorney.*

##### *B. Attorney Registration with Commission.*

(1) *An attorney wishing to practice before the Commission shall:*

(a) *Complete and file an Attorney Registration form; and*

(b) *Submit the attorney registration fee.*

(2) *Following verification and completion of the registration, the Commission shall issue the attorney a multiple digit attorney code.*

##### **[B.]C. Entry of Appearance.**

(1) An attorney representing a party in a claim shall complete and file an Entry of Appearance form with the Commission to establish an attorney of record.

(2) Within 10 days of the filing of issues by any party, an insurer[, as defined in COMAR 14.09.06.01B(2),] shall have an attorney complete and file an Entry of Appearance form with the Commission to establish an attorney of record.

(3) [Thereafter.] *After an Entry of Appearance has been filed by an attorney on behalf of the insurer, all papers filed on behalf of the insurer shall be filed by the attorney of record until the claim becomes undisputed.*

##### **[C.]D. Notices.**

(1) If a party is represented by an attorney, notices to the party may be mailed to the attorney of record only.

(2) An employer may designate a person who shall receive a courtesy copy of each Notice of Employee's Claim filed against the employer.

[D.]E. Termination of Representation. An attorney whose appearance has been entered on behalf of a party to a claim remains the attorney of record for the party to that claim until:

(1) The attorney:

(a) Files a [Withdrawal of Appearance] *Request to Strike Appearance* form;

(b) Certifies that a copy of the *Request to Strike Appearance* [withdrawal] was mailed to all parties; and

(c) Certifies that notice of any pending hearing was mailed to the attorney's client; or

(2) The party requests that the Commission strike the appearance of the attorney.

#### **[.24] .02 Attorney's Fee and Medical Evaluation Fee — Application or Petition for Approval.**

##### **A. [Application] Request for Fee Not in Excess of Schedule.**

[(1) When approval is sought for an attorney's fee not exceeding the maximum amount set forth in Regulation .25 of this chapter, the application for approval shall be made on a Claimant's Consent to Pay Attorney Fee and Doctor Fee form signed by the claimant.

(2) The application shall include the amount of any medical evaluation fee requested to be approved.

(3) The consent is not binding on the Commission.

(4) An award by the Commission approving an attorney's fee under this regulation shall be notice to the party responsible for payment to reserve in escrow the amount of fee approved. That party shall remit the approved fee to the attorney immediately after the expiration of the 30-day appeal period if an appeal is not filed. If an appeal is timely filed, the party responsible for payment shall continue to reserve in escrow the amount of the fee approved by the Commission pending final determination of the appeal. If the parties agree that an appeal will not be filed, the fee may be remitted to the attorney before expiration of the 30-day period.]

(1) An attorney seeking approval of an attorney's fee that does not exceed the maximum amount set forth in Regulation .03 of this chapter, may request approval of the fee by filing the Claimant's Consent to Pay Attorney and Doctor Fee form.

(2) A completed Claimant's Consent to Pay Attorney and Doctor Fee form shall:

- (a) Be signed by the claimant;
- (b) Include the amount of any medical evaluation fee requested to be approved;
- (c) Include any amount of costs advanced by claimant's attorney for which the attorney is seeking payment; and
- (d) Include any appeal fee requested under Regulation .03B(9) of this chapter.

(3) An attorney shall substantiate a request for medical evaluation fee, costs or a fee under Regulation .03B(9) of this chapter by:

- (a) Submitting medical bills, receipts, or other evidence of costs;
- (b) Submitting evidence establishing that:
  - (i) The prior compensation award was appealed to the circuit court and tried on appeal;
  - (ii) The prior compensation award was appealed to an appellate court, briefed and decided on the merits;
  - (iii) The prior compensation award was appealed to the circuit court but not resolved by trial;
  - (iv) The prior compensation award was appealed to an appellate court but not briefed and decided on the merits; or
  - (v) The prior order of the Commission on the issue of compensability of the claim was appealed to the circuit court

and the claim was determined to be compensable by the circuit court or jury.

(4) The claimant's consent to the fee is not binding on the Commission.

(5) An award by the Commission approving an attorney's fee under this regulation shall be notice to the party responsible for payment to reserve in escrow the amount of fee approved.

(6) If an appeal is not filed within 30 days, the party responsible for payment shall remit the approved fee to the attorney immediately after the expiration of the 30-day appeal period.

(7) If an appeal is filed timely, the party responsible for payment shall continue to reserve in escrow the amount of the fee approved by the Commission pending final determination of the appeal.

(8) If the parties agree that an appeal will not be filed, the fee may be remitted to the attorney before expiration of the 30-day appeal period.

#### B. Petition for Fee in Excess of Schedule.

(1) An attorney seeking an attorney's fee exceeding the maximum amount set forth in Regulation .03, shall draft and file with the Commission a written petition.

(2) The petition shall contain the following:

- (a) A clear and concise description of the legal services rendered to the claimant;
- (b) The amount of attorney's fee requested to be approved;
- (c) A detailed statement of the reasons for a fee in excess of the maximum amount set forth in Regulation .03;
- (d) A detailed statement establishing the exceptional circumstances that warrant an excess fee;

[d] (e) The claimant's signed acknowledgement of the fact that the attorney is requesting approval of an attorney's fee in excess of the schedule, in the amount specified and for the services described;

[e] (f) The amount of any medical evaluation fee requested to be approved; and

(g) A certificate of service indicating that a copy of the petition has been served on the claimant, as well as the other parties to the case.

[(3) The petition shall be accompanied by an original and the number of copies of a proposed order as may be specified from time to time by the Commission.]

[(4)](3) A petition for approval of an attorney's fee ordinarily shall be considered by the Commissioner who issued the award of compensation.

[C. Unreasonable Proceeding—Attorney Fee Award. Compliance with §A or B is not required for the Commission to award to an opposing party a reasonable attorney's fee under Labor and Employment Article, §9-734, Annotated Code of Maryland, for any proceeding that the Commission determines not to have been brought on a reasonable ground. A fee allowed under this section is immediately payable unless the award of the fee is appealed.]

#### C. Unreasonable Proceeding—Attorney Fee Award.

(1) Pursuant to Labor and Employment Article §9-734, Annotated Code of Maryland, the Commission may award to an opposing party a reasonable attorney's fee in any proceeding that the Commission determines not to have been brought on a reasonable ground.

(2) The Commission may make the attorney's fee award on its own initiative or at the request of any party.

(3) Unless the award of the fee is appealed, the fee allowed under this section is payable immediately.

[D. Judicial Review of Award of Attorney's Fees. A party seeking judicial review of a decision granting or denying attorney's fees shall:

(1) File a petition for judicial review in accordance with Maryland Rules 7-201—7-210; and

(2) Serve a copy of the petition for judicial review on the Assistant Attorney General assigned to represent the Commission at the Commission's principal office in Baltimore City.]

#### [.25] .03 Schedule of Attorney's Fees.

A. The Commission shall approve attorney's fees in accordance with the schedule of fees established by the Commission and set forth in § B of this regulation.

B. Schedule of Fees.

(1) Definitions.

(a) In this section, the following terms have the meanings indicated.

(b) Terms Defined.

(i) "Final award" means the award of compensation determined by the Commission after exhaustion of all applicable appeals, regardless of whether the award is increased or decreased as a result of any appeal.

(ii) "Formal set-aside allocation" means a document reflecting a comprehensive analysis and projection of future injury-related medical needs and associated costs.

(iii) "State average weekly wage" means the State average weekly wage in effect on the date of the accident or date of disablement.

(2) Fee in Excess of Limits. The Commission may approve an attorney's fee in excess of the limits set forth in this section only if exceptional circumstances are shown.

(3) Permanent Partial Disability.

(a) General. Except as otherwise provided in §B(3)(b), in a case in which a final award of compensation is made for permanent partial disability, the Commission may approve an attorney's fee in a total amount not exceeding 20 times the State average weekly wage and computed as follows:

(i) Up to 20 percent of the amount due for the first 75 weeks of an award of compensation awarded;

(ii) Up to 15 percent of the amount due for the next 120 weeks of an award of compensation; and

(iii) Up to 10 percent of the amount due for an award of compensation in excess of 195 weeks.

(b) Disability Due to Amputation or Loss of Vision. In a case in which a final award of compensation is made for permanent partial disability due to the amputation of an arm, leg, hand, or foot, or total loss of vision in one eye, and the sole issue before the Commission is the nature and extent of disability, the Commission may approve an attorney's fee in an amount up to 5 percent of the compensation awarded, but not exceeding 6 times the State average weekly wage.

(4) Permanent Total Disability.

(a) General. Except as otherwise provided in §B(4)(b), in a case in which a final award of compensation is made for permanent total disability, the Commission may approve an attorney's fee in an amount not exceeding 20 times the State average weekly wage.

(b) Special Cases. The Commission may approve an attorney's fee in a case in which:

(i) Compensability is not an issue;

(ii) An award of compensation is made for permanent total disability established pursuant to Labor and Employment Article, §9-636(b), Annotated Code of Maryland, for the loss of two or more scheduled members; and

(iii) In an amount not exceeding 13 times the State average weekly wage.

(5) Temporary Total and Temporary Partial Disability. The Commission may not approve an attorney's fee in a case in which final award of compensation is made for temporary total or temporary partial disability or temporary total disability paid while a claimant is receiving vocational rehabilitation services unless the claimant's right to the compensation is contested and the issue is resolved by evidentiary hearing or by stipulation. In such a contested case, the fee may be in an amount not exceeding 10 percent of the compensation that has accrued as of the date of the award.

(6) Dependency Claims.

(a) In a case involving a claim of dependency, if compensability is not contested, but the extent of dependency, partial or total, or the identity of a dependent, or both is contested, the Commission may approve a total attorney's fee for attorneys representing all dependents in an amount not exceeding five times the State average weekly wage in a case of partial dependency and not exceeding 12 times the State average weekly wage in a case of total dependency.

(b) In a case involving a claim of dependency, if neither compensability nor dependency is contested and a record is being made solely to determine to whom payments of compensation shall be made, the Commission may approve an attorney's fee in an amount not exceeding two times the State average weekly wage.

(c) In a case involving a claim of dependency, if compensability and dependency are contested, the Commission may approve an attorney's fee in an amount calculated under §B(3)(a) in a case of partial dependency and calculated under §B(4)(a) in a case of total dependency.

(7) Settlement Agreements.

(a) In a case in which an agreement of final compromise and settlement is approved, the Commission may approve an attorney's fee in accordance with this regulation.

(b) For a settlement amount that is less than or equal to 14 times the State average weekly wage, the attorney's fee shall be 20 percent of the amount of the settlement.

(c) For a settlement amount that is greater than 14 times the State average weekly wage but less than or equal to 35 times the State average weekly wage, the attorney's fee shall be:

(i) 20 percent of 14 times the State average weekly wage; plus

(ii) 15 percent of the difference between the settlement amount, and 14 times the State average weekly wage.

(d) For a settlement amount that is greater than 35 times the State average weekly wage, the attorney's fee shall be:

(i) 20 percent of 14 times the State average weekly wage; plus

(ii) 15 percent of 21 times the State average weekly wage; plus

(iii) 10 percent of the difference between the settlement amount and 35 times the State average weekly wage.

(e) The total amount of an attorney's fee in a case in which an agreement of final compromise and settlement is approved may not exceed 20 times the State average weekly wage.

(f) In calculating the attorney's fee, an attorney may not include as part of the settlement any amounts paid or payable in the case for medical services and prescription drugs including but not limited to:

(i) Any monies allocated to future medical expenses through a formal set-aside allocation;

(ii) Any monies apportioned to future medical benefits; and

(iii) Any monies already paid or owing for medical services and prescription drugs.

(g) The Commission may not regulate the attorney's fees charged for the administration of the formal set-aside allocation once a case is resolved by an agreement of final compromise and settlement.

(8) Increase in Last Award of Compensation for Permanent Partial Disability.

(a) Except as otherwise provided in §B(8)(b)—(c) of this regulation, if the claimant is entitled to additional compensation as a result of an increase in a permanent partial disability award, the Commission may approve an additional attorney's fee in an amount not exceeding the difference between the fee approved for all prior awards and the fee computed under §B(3) or (4)(a) of this regulation on the increased award.

(b) If the claimant is entitled to additional compensation as a result of a final compromise and settlement, and was previously awarded permanent partial disability, the Commission may approve an attorney's fee calculated using the methodology set forth in §B(7) of this regulation.

(c) If the claimant is entitled to additional compensation as a result of an increase in a permanent partial disability award or a final compromise and settlement, and the attorney previously was awarded the maximum fee authorized under §B(3) of this regulation, the Commission may approve an additional attorney's fee in an amount up to 5 percent of the difference between the prior awards of compensation and the increased award of compensation, but not to exceed five times the State average weekly wage.

(9) Additional Fees for Appeals of Compensation Awards.

(a) When a compensation award of the Commission is appealed to a circuit court and the case is tried on appeal, the Commission may approve an additional attorney's fee in an amount up to 5 percent of the *first* final *indemnity* award [of compensation] *issued following the circuit court action*, but not exceeding six times the State average weekly wage.

(b) When a decision of a circuit court on an appeal from a compensation award of the Commission is appealed to a higher appellate court and the appeal is briefed and decided on its merits, the Commission may approve an additional attorney's fee for each appeal in an amount up to 5 percent of the *first* final *indemnity* award *issued following the appellate action*, but not exceeding six times the State average weekly wage.

(c) When an appeal from a compensation award of the Commission to a circuit court is not tried, or an appeal to a higher appellate court is not briefed and decided on its merits, the Commission may approve an additional attorney's fee in an amount up to 2.5 percent of the *first* final *indemnity* award *issued following the appellate action or circuit court action*, but not exceeding three times the State average weekly wage.

(d) When a decision of the Commission on the issue of compensability of a claim is appealed to a circuit court, if the claim is determined on appeal to be compensable, the Commission, upon remand, may approve an additional attorney's fee in an amount up to 5 percent of the *first* final *indemnity* award issued following the remand, but not exceeding six times the State average weekly wage.

(e) *An attorney may be awarded an appeal fee under only one subparagraph of this subsection for a circuit court action or appellate court action.*

(f) *Once an appeal fee has been awarded for a circuit court action or appellate action, the Commission may not award an additional appeal fee based on the same circuit court action or appellate action.*

#### C. Attorney's Fee Not Allowed.

(1) Absent exceptional circumstances, the Commission may not approve an attorney's fee in a case in which it is determined that the claimant is not entitled to any compensation or benefits.

(2) Absent exceptional circumstances, the Commission may not approve an attorney's fee in a case involving issues such as medical care and treatment, or vocational rehabilitation, in which the claimant does not receive any monetary award.

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#### **.04 Attorneys' Fees for Multiple Counsel**

A. *An attorney who no longer represents a claimant and wishes to pursue a fee lien shall draft and file a petition for attorneys' fees.*

B. *The petition for attorneys' fees shall include:*

(1) *a statement of the work performed and the basis of the fee; and*

(2) *a certificate of service.*

C. *The filing of the petition for attorneys' fee constitutes a fee lien that shall be noted and held until the permanency award or settlement.*

D. *Unless the parties have otherwise agreed, upon the issuance of a permanency award or settlement, any attorney's fee awarded shall be held in escrow until the distribution of the fee to be resolved by:*

(1) *a hearing; or*

(2) *agreement of the attorneys on the division of the attorney's fee.*