

CHAPTER 152: ATTORNEYS' FEES

Title 28 §152.3, §152.4, and §152.6

§152.3. Approval or Denial of Fee by the Division [~~Commission~~]

(a) To claim a fee, an attorney representing any party must [~~shall~~] submit to the division a complete and accurate application for attorney fees in the form and manner prescribed by the division. [~~Form TWCC-152, Application and Order for Attorney's Fees with time, hourly rate, and expenses itemized separately for the attorney and for any legal assistant. Additional justification, described in §152.4 of this title (relating to Guidelines for Legal Services Provided to Claimants and Carriers), must be attached to the application form for any fee which exceeds the guideline. The commission may also require additional justification for fees which do not exceed the guideline. A copy of the form shall be sent simultaneously to the attorney's client.~~]

(b) An application for attorney fees must include:

(1) each attorney's name and bar card number;

(2) the law firm name, phone number, and mailing address;

(3) the injured employee's name, date of injury, DWC claim number, and the employer contact information; the beneficiary type, contact information, and social security number, if applicable; and the name of the insurance carrier;

(4) the dates of legal service;

(5) the hourly rate and number of hours for each attorney and legal assistant providing legal services;

(6) an itemized list of each legal service performed and expense incurred representing the injured employee or insurance carrier that identifies the attorney or legal assistant who provided the service, the date the service was provided, and the hours or amount requested;

(7) a certification that every statement, numerical figure, and calculation in the application for attorney fees submitted to the division is within the attorney's personal knowledge, is true and correct, and represents services, charges, and expenses provided by the attorney or a legal assistant under the attorney's supervision;

(8) additional case-specific justification for any fee that exceeds the guidelines for legal services;
and

(9) any other information requested by the division, including additional case-specific justification for fees that do not exceed the guidelines for legal services.

(c)[(b)] The division may approve, partially approve, or deny an application for attorney fees based on the time and expenses that are reasonable according to written evidence presented to the division and the legal services guidelines established in §152.4 of this title. The division will issue an order approving, partially approving, or denying an application for attorney fees. Attorneys are subject to review for compliance with commissioner rules, this subtitle, and other laws under Labor Code Chapter 414. An order approving, partially approving, or denying an application for attorney fees does not limit the commissioner's authority to enforce a sanction, administrative penalty, or other remedy authorized by the Act. At any time, an attorney whose application is found to contain false or inaccurate information may be referred to enforcement or other authorities, including licensing agencies, district and county attorneys, or the attorney general for investigation and appropriate proceedings. [The commission shall review each fee application submitted. If the application is for actual time and expenses which are reasonable given the circumstances of the specific claim and which are equal to or less than those allowed by the guideline established in §152.4 of this title, the commission may approve the application, and, if approved, shall issue an order for payment. If the fee application is for more than the guidelines allow, the commission shall issue an order to pay the fees which

~~are reasonable given the circumstances of the specific claim and which are adequately justified in writing with any necessary supporting documentation. The commission shall deny any portion of the fee which exceeds the guideline and which is not adequately justified.]~~

~~(d)~~~~(e)~~ The aggregate attorney fee for representing a claimant may not ~~[shall not]~~ exceed 25% of the claimant's recovery. The division ~~[commission]~~ will ~~[shall]~~ apportion the fee between attorneys when more than one attorney claims a fee for representing the same party. The division ~~[commission]~~ will ~~[shall]~~ consider each claim based upon the factors and guidelines outlined in the Act and §152.4 of this title. ~~[these rules.]~~

~~(e)~~~~(d)~~ ~~[Except as provided in subsection (e) of this section,]~~ An ~~[an]~~ attorney, claimant, or insurance carrier who contests the division order approving, partially approving, or denying an application for attorney fees ~~[fee fixed and approved by the commission]~~ must ~~[shall]~~ request a benefit contested case hearing through the dispute resolution process outlined in Chapters 140 – 144 of this title. The request must ~~[shall]~~ be submitted by personal delivery, first class mail, or facsimile to ~~[made by personal delivery or first class mail and be filed with]~~ the division ~~[commission]~~ field office handling the claim or the central office of the division ~~[commission]~~ no later than the 20th ~~[15th]~~ day after receipt of the division's ~~[commission's]~~ order. A claimant may request a hearing by contacting the division ~~[commission]~~ in any manner no later than the 20th ~~[15th]~~ day after receipt of the division's ~~[commission's]~~ order. The contesting party other than a claimant must ~~[shall]~~ send a copy of the request by personal delivery, first class mail, or electronic transmission ~~[personal delivery or first class mail]~~ to the insurance carrier and the other parties, including the claimant and attorney.

~~(f)~~~~(e)~~ After a benefit contested case hearing under subsection (e), an ~~[An]~~ attorney, claimant, or insurance carrier who contests the division order approving, partially approving, or denying an application for attorney fees ~~[fee ordered by a hearing officer after a benefit contested case hearing]~~ must ~~[shall]~~ request

review by the appeals panel pursuant to the provisions of §143.3 of this title (relating to Requesting the Appeals Panel To Review the Decision of the Hearing Officer).

(g) [(f)] The division's [commission's] order approving, partially approving, or denying an application for [to pay] attorney fees is binding during the pendency of a contest or an appeal of the order. Notice of a contest or an appeal does [shall] not relieve the insurance carrier of the obligation to pay attorney fees according to the division [commission] order.

(h) [(g)] Following a contest or appeal of an order approving, partially approving, or denying an application for attorney fees under subsection (e) or subsection (f), the division will issue a final order or decision. If the final order or decision of the division or court requires an attorney to reimburse funds, the reimbursement must be made no later than the 15th day after receipt of the final order or decision. [If an attorney has been paid more than authorized by the final order of the commission, the commission shall order that the excessive amount be reimbursed.]

[(h) If the final order of the commission or a court requires an attorney to reimburse funds, the reimbursement shall be made no later than 15 days after receipt of the final order by mailing or personally delivering a check as directed by the commission or a court.]

(i) This section is effective XXXXXX.

§152.4. Guidelines for Legal Services Provided to Claimants and Insurance Carriers

(a) The division will consider the guidelines for legal services outlined in subsection (c), the maximum hourly rate for legal services in subsection (d), and Labor Code, §408.221 and §408.222, when approving, partially approving, or denying an application for attorney fees. [The guidelines outlined in this rule shall be

~~considered by the commission along with the factors, and maximum fee limitations, set forth in the Texas Labor Code, §408.221 and §408.222, and applicable commission rules.]~~

(b) An attorney may request, and the division [~~commission~~] may approve a number of hours greater than those allowed by the guidelines for legal services [~~these guidelines~~], if the attorney demonstrates to the satisfaction of the division [~~commission~~] that the higher fee was justified based on the circumstances of the specific claim and [~~the Texas~~] Labor Code, §408.221 and §408.222.

(c) The guidelines for legal services provided to claimants and insurance carriers shall be as follows:

Figure: 28 TAC §152.4(c)

	Service Maximum	Total Hours
1.	a. initial interview and research	1.0
	b. setting up file; completing and filing forms	0.5
2.	Communications per month (with client, health care providers, other persons involved in the case)	<u>3</u> [2-5]
3.	Direct dispute resolution negotiation with the other party (per month)	<u>3.5</u> [3-0]
4.	Preparation and submission of an agreement or settlement	<u>2</u> [1-0]

5.	Participation in <u>benefit</u> [Benefit] review conference	Actual time in BRC + 2.0
6.	Participation in <u>benefit</u> [Benefit] contested case hearing	Actual time in CCH + 4.0
7.	Participation in administrative appeal process	5.0
8.	Travel (per month)	Actual costs that are reasonable and necessary

(d) The maximum hourly rate for legal services shall be as follows. Hourly rate:

(1) attorney--\$200 [~~\$150~~]; and

(2) legal assistant (not to include hours for general office staff)--\$65 [~~\$50~~].

(e) Each attorney must bill for hours using that attorney's state bar card number.

(f) This section is effective XXXXXXXX.

§152.6. Attorney Withdrawal

(a) An attorney withdrawing representation must comply with the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas. On withdrawal, an attorney must surrender papers and property to the client.

(b) Except as provided in subsection (d), an attorney withdrawing representation must submit to the division a notice of withdrawal in the form and manner prescribed by the division no later than the 10th day following withdrawal. An attorney must provide a copy of the notice to the attorney's client and the opposing party by personal delivery, first class mail, or electronic transmission on the same day the notice is submitted to the division.

(c) The notice of withdrawal must include:

- (1) the attorney's name and contact information;
- (2) the injured employee's name, contact information, date of injury, and DWC claim number;
- (3) the insurance carrier name;
- (4) the beneficiary type, contact information, and social security number, if applicable;
- (5) the dates of legal service; and
- (6) the attorney's signature.

(d) An attorney withdrawing representation after notice of a scheduled benefit contested case hearing or benefit review conference has been received must:

- (1) submit a motion to withdraw to the presiding hearing officer; and
- (2) receive a division order granting the motion to withdraw.

(e) The motion to withdraw must provide good cause for withdrawing from the case and a certification that states:

- (1) the attorney's client has knowledge of and has approved or refused to approve the withdrawal; or
- (2) the attorney made a good faith effort to notify the attorney's client and the attorney's client cannot be located.

(f) An attorney must provide a copy of the motion to the attorney's client and the opposing party by personal delivery, first class mail, or electronic transmission on the same day the motion is submitted to the presiding hearing officer.

(g) The presiding hearing officer will determine whether good cause exists for the attorney's withdrawal based on Rule 1.15 of the Texas Disciplinary Rules of Professional Conduct and case specific facts, including:

(1) how close in time the attorney withdrawal is to a scheduled benefit contested case hearing or benefit review conference;

(2) the amount of attorney fees that have been requested and approved by the division;

(3) whether the attorney is willing to waive payment of any portion of the approved fees;

(4) the attorney's reason for the withdrawal; and

(5) whether the attorney's client refused to approve the withdrawal, if applicable.

(h) An attorney's client terminating the attorney-client relationship constitutes good cause.

(i) If the presiding hearing officer determines good cause does not exist for the attorney's withdrawal, the attorney must continue to represent the party until the hearing concludes or is canceled.

(j) This section does not prevent the attorney's client from notifying the division of the termination of the attorney-client relationship. If the attorney's client notifies the division of a termination, the attorney is not relieved of the duty to submit to the division a notice of withdrawal under subsection (b) or a motion to withdraw under subsection (d).