

28 TAC §§152.1, 152.2, 152.3, 152.4, AND 152.5.

TEXT.

§152.1. Attorney Fees: General Provisions.

(a) To be eligible to earn a fee, an attorney representing any party must ~~[shall]~~ hold an active license to practice law in Texas and not be currently under suspension for any reason.

(b) An attorney may receive a fee for representation of any party before the division ~~[commission]~~ only after the division ~~[commission]~~ approves the amount of the fee. An attorney must ~~[shall]~~ not receive an amount greater than the fee approved by the division ~~[commission]~~, notwithstanding any agreements between the parties, including retainer fee agreements.

(c) The fee approved by the division will ~~[commission shall]~~ be limited to 25% of each weekly income benefit payment to the employee, up to 25% of the total income benefits allowed and will ~~[shall]~~ also be based on the attorney's time and expenses, subject to the guidelines and standards ~~[set forth]~~ in ~~[the]~~ Labor Code Title 5, Subtitle A [Texas Workers' Compensation Act (the Act)] and division ~~[commission]~~ rules. An attorney's fee for representing an injured employee becomes a lien against any unpaid income benefits due to the injured employee once the insurance carrier receives the division ~~[commission]~~ order approving the fee. The insurance carrier must begin payment out of the approved income benefits by mailing a check to the attorney within seven days after receiving the division ~~[commission]~~ order and thereafter when ~~[whenever]~~ income benefits are paid until the fee has been paid or income benefits cease.

(d) An attorney's fee for representing a claimant may on ~~[upon]~~ request by the attorney or insurance carrier and approval by the division, ~~[commission]~~ be commuted to a lump sum only out of a sum certain award or order to pay benefits. This commuted fee

may be discounted for present payment at the rate provided under Labor Code ~~[the Act,]~~ §401.023, and must ~~[shall]~~ not exceed 25% of the unpaid sum certain. A commuted fee will ~~[shall]~~ be recouped by the insurance carrier out of the future income benefits paid to the represented claimant, not to exceed more than 25% out of any single payment. The fee for representing a claimant for death benefits cannot be commuted where the only dispute involves identification of the proper beneficiaries.

(e) (No change.)

(f) An attorney for an employee who prevails when an insurance ~~[a]~~ carrier contests a division ~~[commission]~~ determination of eligibility for supplemental income benefits will ~~[shall]~~ be eligible to receive a reasonable and necessary attorney's fee, including expenses. This fee is payable by the insurance carrier, not out of the employee's benefits, and the fee will ~~[shall]~~ not be limited to a maximum of 25% of the employee's recovery. All provisions of these rules apply, except §152.4 of this title (~~[relating to]~~ Guidelines for Legal Services Provided to Claimants and Insurance Carriers)~~[- apply]~~.

§152.2. Attorney Fees: Representation of Claimants.

(a) An attorney who represents a claimant must ~~[shall]~~ notify the division ~~[commission]~~ in writing within 10 days of undertaking representation, and must ~~[shall]~~ provide a copy of the contract of employment if requested by the division ~~[commission]~~.

(b) For purposes of computing the maximum amount of a fee that may be fixed and approved for a claimant's attorney, "claimant's recovery" must ~~[shall]~~ not include:

(1) the amount of benefits paid to the claimant before ~~[prior to]~~ hiring the attorney;

(2) benefits initiated or offered by an insurance carrier when the initiation or offer is based on ~~[upon]~~ documentation in a claimant's file, and has not been the subject of a dispute with the insurance carrier;

(3) any undisputed portion of impairment benefits paid or offered to the claimant based on ~~upon~~ an impairment rating that is assessed by the insurance carrier[;]
under Labor Code §408.121(c) ~~[the Texas Workers' Compensation Act (the Act), §4.26(f)]~~;

(4) the value of medical and hospital benefits provided to the claimant; or

(5) lifetime income or death benefits when the insurance carrier admits liability on all issues involved, and when the maximum benefit is tendered in writing by an insurance ~~[a]~~ carrier, no later than the date on which the insurance carrier is required to contest the claim.

(c) An attorney must ~~[shall]~~ not represent multiple legal beneficiaries on a claim for death benefits if it is reasonably foreseeable that a judgment favorable to one legal beneficiary would impact unfavorably on another legal beneficiary.

(d) The total amount that the division ~~[commission]~~ approves for the attorney's time and expenses constitutes ~~[constitute]~~ the fee, and must ~~[shall]~~ not exceed 25% of the claimant's recovery, except as provided in Labor Code §408.147(c) ~~[the Act, §4.28(l)(2)]~~ and §152.1(f) of this title (~~[relating to]~~ Attorney Fees: General Provisions).

§152.3. Approval or Denial of Fee by the Division.

(a) To claim a fee, an attorney representing any party must submit to the division a complete and accurate application for attorney fees electronically through the division's online system ~~[in the form and manner prescribed by the division]~~.

(b) (No change.)

(c) The division may approve, partially approve, or deny an application for attorney fees based on the division's determination of whether the requested time and expenses are reasonable according to the guidelines for legal services and maximum hourly rate established in §152.4 of this title (Guidelines for Legal Services Provided to Claimants and Insurance Carriers), Labor Code §408.221 and §408.222, and written evidence presented

to the division. The division will issue an order approving, partially approving, or denying an application for attorney fees. Submission of an application requesting fees for the same services or expenses addressed in any previous application is prohibited. Attorneys are subject to review for compliance with the division's ~~[commissioner]~~ rules, Labor Code Title 5, Subtitle A ~~[the Act]~~, 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 Labor Code Title 5, Subtitle A ~~[the Act]~~. At any time, an attorney whose application is found to contain false or inaccurate information may be referred to Enforcement ~~[enforcement]~~ or other authorities, including licensing agencies, district and county attorneys, or the attorney general for investigation and appropriate proceedings.

(d) To contest a division order approving, partially approving, or denying an application for attorney fees, an attorney, claimant, or insurance carrier must request a contested case hearing through the dispute resolution process outlined in Chapters 140 - 144 of this title. A request must be submitted by personal delivery, first class mail, electronic transmission, or fax ~~[facsimile]~~ to the division no later than the 20th day after receipt of the division's order. A claimant may request a hearing by contacting the division in any manner no later than the 20th day after receipt of the division's order. A contesting party other than a claimant must send a copy of the request by personal delivery, first class mail, or electronic transmission to the insurance carrier and the other parties, including the claimant and attorney, on the same day the request is submitted to the division.

(e) - (g) (No change.)

(h) This section is effective DATE ~~[January 30, 2017]~~.

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

(a) - (c) (No change.)

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

(1) attorney--~~\$300~~ [\$200]; and

(2) legal assistant (not to include hours for general office staff)--~~\$85~~ [\$65].

(e) (No change.)

(f) This section is effective DATE ~~[January 30, 2017]~~.

§152.5. Allowable Expenses.

(a) As part of the application for attorney fees, an attorney must ~~[shall]~~ submit an itemized list of expenses incurred for the preparation and presentation of the client's case. The date, nature, and amount of the expense must ~~[shall]~~ be clearly identified.

(b) The division will ~~[commission shall]~~ allow those expenses necessary for the preparation and presentation of a person's claim or an insurance [a] carrier's defense before the division ~~[commission]~~, including:

(1) travel expenses, at the rate set for state employees by the Legislature ~~[legislature]~~ for state employees in the General Appropriation Act, if the attorney is required to attend a benefit review conference or hearing more than 25 miles from the attorney's office nearest to the location of the conference or hearing;

(2) expenses necessary to present a case at a hearing, including subpoena costs, a court reporter's fee, per diem witness fees incurred, and a translator's fee;

(3) the costs of records necessary to prepare or present a claim or defense, including copies of division ~~[commission]~~ files, a record check performed by the division ~~[commission]~~, medical reports (except medical reports required to be provided by division ~~[commission]~~ rule), and copies of certificates, licenses, and decrees necessary for perfecting a claim for death benefits;

(4) costs of long-distance [~~long-distance~~] telephone calls to[:] the client, an attorney or other representative of the other party, health care providers, or others necessary to prepare the claim or defense;

(5) costs of collect long-distance [~~long-distance~~] telephone calls from the client; and

(6) investigative services necessary to establish or dispute a claim.

(c) The division will [~~commission shall~~] not allow as attorney expenses those expenses that are not necessary for the preparation and presentation of a party's individual claim or defense before the division [~~commission~~], including:

(1) attorney travel, except as permitted in subsection (b)(1) of this section;

(2) overhead costs of operating a law office, including[:] rent, utilities, copies, fax, telecopier, postage, shipping, local telephone calls, long-distance [~~long-distance~~] calls to the division [~~commission~~], and salaries for general office staff; and

(3) medical reports and hospital records that division [~~commission~~] rules require to be sent to the claimant and insurance carrier.

(d) An attorney's payment of out-of-pocket expenses for items listed in subsection (b) of this section does not constitute a loan to the client as prohibited by Labor Code §415.007 [~~the Texas Workers' Compensation Act, §10.03~~].