

Chapter 12

ATTORNEY FEES

§ 12.01 Statutory Authority.

§ 12.02 Commission Regulations.

§ 12.03 Fee Petition Checklist.

§ 12.01 Statutory Authority.

Section 42-15-90 provides that fees of attorneys shall be subject to commission approval. This section probably also gives the commission authority to regulate and approve costs of litigation.

§ 12.02 Commission Regulations.

Regulation 67-1202 requires notice of representation to the commission. Failure to notify the commission could delay or prevent approval of attorney fees.

When attorney fees are based on an hourly charge or a retainer, the attorney must report these fees on the Form 19 at the close of the case. The fees are routinely approved and deemed reasonable as long as they meet the South Carolina Supreme Court's disciplinary rules on the computation of reasonable fees. See Regulations 67-1204(B) and 67-1205(A).

Contingent fees should be reported and submitted for approval on a Form 61. Have the client sign the Form 61 and send it to the commissioner assigned the claim, or, if no commissioner has been assigned, to the claims department. Mail the Form 61 to the South Carolina Workers' Compensation Commission, Post Office Box 1715, Columbia, South Carolina 29202-1715, marked "Personal and Confidential". Enclose a self-addressed, stamped envelope if you want a copy of the approved petition.

Regulation 67-1205(C) dictates how a reasonable fee is determined. The maximum allowed is one-third of the recovery, which is deemed to be reasonable and approved unless one of the

specific situations enumerated in the rule exist. If the claimant had an impairment rating from an authorized doctor before employing the attorney or received a written offer of settlement prior to retaining the attorney, the fee is limited to one-third of the difference between the original rating or offer and the settlement or award secured. Regulation 67-1205(C)(1) and (7).

The fee for obtaining past due temporary total compensation for the claimant is limited to one-third of the past due compensation paid under a Form 15, order, or settlement. An attorney cannot charge a fee from temporary total checks paid between approval of Form 15 and final settlement, but may charge up to a one-third fee from the final settlement. Regulation 67-1205(C)(2).

In death claims, the fee is limited to \$2,500.00, unless the carrier contests liability, compensability or beneficiary status. If either issue is contested, a fee of one-third may be charged. Regulation 67-1205(C)(3).

In cases of lifetime compensation the same limitations apply as in death claims, except that fees in contested cases are approved on a case by case basis. Regulations 67-125(C)(3) and 67-215.

Regardless of the number of attorneys representing the claimant, the total fee cannot exceed one-third. If an attorney is terminated or withdraws from a case (with permission of the commission) he may, and should, file a Form 61 with the commission at the time he is relieved. The commission will either approve a fee at that time, or withhold approval pending final disposition of the claim. Regulation 67-1203. The commission will pro-rate the fee among multiple attorneys. Regulation 67-1205(C)(6).

The commission has no authority in determining the attorney's fee on a third party claim resulting from the work related accident. The attorney has full discretion, subject to the ethical rules, in determining a reasonable fee on a third party claim.

The attorney is not entitled to reimbursement of costs from the settlement unless they are included on the Form 61 and approved by the commission. Costs, including witness fees,

depositions, service or evaluation fees require a listing only and are deemed to be approved. Other costs are chargeable only when included in the client contract, and then only in the commission's discretion. Regulation 67-1206. Many commissioners will not approve charges for copying, postage, and long distance telephone calls.

Lump sum attorney's fees are available under the regulations. The present value of the attorney's fee can be paid from the end of an award exceeding one hundred weeks when the award is not to be paid in a lump sum. Fees will be commuted by the commission according to the procedure set forth in regulation 67-1207. A hearing must be requested unless the carrier agrees to a lump sum attorney's fee, in which case a consent order may be submitted for approval.

Lump sum attorney fees are also available in cases in which the claimant has been awarded lifetime benefits due to paraplegia, quadriplegia, or permanent brain damage. In such cases the fee is deducted from the "back end" of the claimant's award. See Glover v. Suitt Construction Co., 318 S.C. 465, 458 S.E.2d 535 (1995).

§ 12.03 Fee Petition Checklist:

- Compute fee pursuant to regulation 67-1205(C).
- Prepare Form 61, with attached list of costs.
- Attach memorandum to Form 61 if unusual circumstances exist;
- Explain fee and costs to client giving actual dollar amount.
- Have client sign Form 61.
- If client refuses to sign Form 61, sign and submit Form 61 with a Motion for Approval of Fee pursuant to regulations 67-215 and 67-1205(D).
- Mail the Form 61, in duplicate, to the commission as specified above. Do not forget the self-addressed, stamped envelope.
- If you are settling on a clincher, remember that the clincher is not final until approved by the commission. Hold everything in your trust account until the clincher and fee petition are approved.