

Rule 10.0000

ATTORNEY FEES AND COSTS; ATTORNEY'S LIENS

10.1000 In addition to any compensation or other benefits awarded, the commissioner may award reasonable attorney fees to a prevailing claimant when an attorney representing a claimant submits a claim for attorney fees and costs within thirty (30) days following a decision in which the claimant prevails. [21 V.S.A. §678(e)]

10.1001 The fee agreement, including a contingency fee agreement, must be submitted before a request for fees will be considered. In all cases an itemized statement of attorney hours and work performed must be submitted before a request will be considered.

10.1100 Any amount awarded shall be paid by the employer/carrier directly to the claimant's attorney in a lump sum unless the commissioner stays such award.

10.1200 At the commissioner's discretion, an award may be based on either an hourly or contingency basis. Awards of attorney fees to a prevailing claimant shall not exceed:

10.1210 a charge of not more than **\$145.00** per hour, supported by an itemized statement, or

10.1220 a contingency fee to cover all legal services not to exceed **20%** of the compensation awarded.

10.1300 Awards to prevailing claimants are discretionary. An attorney representing a claimant must submit a claim for attorney fees and costs within 30 days following a decision in which the claimant prevails (See 21 V.S.A. §678(e)). Generally, awards are considered in proceedings involving formal hearing resolution procedures. An award may be made in a proceeding not requiring formal hearing resolution procedures where the claimant is able to demonstrate that:

10.1310 the employer or insurance carrier is responsible for undue delay in adjusting the claim, or

10.1320 that the claim was denied without reasonable basis, or

10.1330 that the employer or insurance carrier engaged in misconduct or neglect, or

10.1340 that legal representation to resolve the issues was necessary, and,

10.1350 the representation provided was reasonable, and,

10.1360 that neither the claimant nor the claimant's attorney has been responsible for any unreasonable delay in resolving the issues.

10.1370 Attorney fees may also be awarded in cases not involving formal hearing when the claimant is able to demonstrate that

10.1371 a formal hearing has been requested; and

10.1372 the case is resolved prior to formal hearing; and

10.1373 the claimant retained an attorney in response to an actual or effective denial of a claim; and

10.1374 thereafter, payments were made to the claimant as a result of the attorney's efforts.

(See 21 V.S.A. §678(d)).

10.2000 This Rule applies only to awards of attorney fees under 21 V.S.A. §678(a), §678(d) and §678(e) and is not intended to prohibit an attorney and client from agreeing to a different reasonable hourly or contingent fee.

10.3000 Necessary costs to be considered under 21 V.S.A. §678(a) shall include, but shall not be limited to, deposition expenses, subpoena fees and expert witness fees.

Liens

10.4000 Liens against compensation for attorney fees under 21 V.S.A. § 682 shall not exceed the limits established in **Rule 10.1200** above, and, in addition, liens against compensation for

contingent attorney fees shall not exceed \$15,000.00. Absent extenuating circumstances, an attorney's lien against compensation shall not be approved while a conflicting lien exists.

10.4010 A request for acknowledgement of a lien may be made to the commissioner in writing, with a copy to the claimant, at any time after the representation commences, and must be accompanied by a copy of the written fee agreement executed by the claimant.

10.4011 If the commissioner acknowledges the lien, the commissioner shall mail notice to the employer/carrier and to the claimant putting each on notice that a lien is claimed against future benefits.

10.4012 An employer/carrier that has been provided notice by the commissioner of an acknowledged attorney's lien and fails to reserve \$15,000.00 or 20% of the amount of any permanent disability compensation due, and/or any lump sum payment of retroactive temporary total disability benefits, whichever is less, shall be liable, in the commissioner's discretion, for payment to the attorney of the amount of an acknowledged lien. An employer/carrier with notice of an acknowledged lien shall notify the claimant's attorney prior to issuing payment to the claimant.

10.4020 A request for enforcement of a lien must be made to the commissioner in writing, with copies to the claimant and to the employer/carrier, prior to the date that benefits subject to the lien are due and payable, and must include:

- a copy of the written fee agreement executed by the claimant, and
- an itemized statement detailing both the work performed and the hours billed.

10.4021 If an attorney fails to request enforcement of a lien in a timely fashion, the enforcement request may be limited or denied, so as not to impede disbursement of benefit payments due to the claimant,

10.4030 If enforcement of the lien is approved, the commissioner shall direct the employer/carrier to deduct the amount approved and advance it to the attorney against the end of any permanent disability compensation due, and/or against any lump sum payment of retroactive temporary disability benefits.

10.5000 A check for a claimant's workers' compensation benefits may not be made payable either solely or jointly to the claimant's attorney unless approved, in writing, by the commissioner.