



ADMINISTRATIVE RULES OF MONTANA



24.29.3802 ATTORNEY FEE REGULATION

- (1) An attorney representing a claimant on a workers' compensation claim shall submit to the department within 30 days of undertaking representation of the claimant on forms supplied by the department, a contract of employment stating specifically the terms of the fee arrangement. An attorney substituting for another attorney previously representing a claimant must submit a new contract conforming with this rule within 30 days of undertaking representation of the claimant. The contract of employment shall be signed by the claimant and the attorney, and must be approved by the department. The department shall return the contract to the attorney along with a notification that the contract has been approved or disapproved.
- (2) Except as provided in (6), an attorney representing a claimant on a workers' compensation claim who plans to utilize a contingent percentage fee arrangement to establish the fee with the claimant, may not charge a fee above the following amounts:
 - (a) For cases that have been settled without an order of the workers' compensation judge or the supreme court, 20% of the amount of compensation payments claimant receives due to the efforts of the attorney.
 - (b) For cases that go to a hearing before the workers' compensation judge or the supreme court, 25% of the amount of additional compensation payments the claimant receives from an order of the workers' compensation judge or the supreme court due to the efforts of the attorney. However, a settlement approved by the workers' compensation judge which could have been submitted to the department for approval is subject to the limits set forth in (a).
- (3) The fee schedule set forth in (2) does not preclude the use of other attorney fee arrangements, such as the use of a fee system based on time at a reasonable hourly rate, but the total fee charged may not exceed the schedule set forth in (2) except as provided in (6). When such fee arrangement is utilized, the contract of employment shall specifically set forth the fee arrangement, such as the amount charged per hour.
- (4) The following benefits shall not be considered as a basis for calculation of attorney fees:
 - (a) The amount of medical and hospital benefits received by the claimant unless the workers' compensation insurer has denied all liability, including medical and hospital benefits, or unless the insurer has denied the payment of certain medical and hospital costs and the attorney has been successful in obtaining such benefits for the claimant.
 - (b) Benefits received by the claimant with the assistance of the attorney in filling out initial claim forms only.
 - (c) Any undisputed portion of impairment benefits received by the claimant based on an impairment rating.

- (d) Benefits initiated or offered by the insurer when such initiation or offer is supported by documentation in the claimant's file and has not been the subject of a dispute with the claimant.
 - (e) Any other benefits not obtained due to the actual, reasonable and necessary efforts of the attorney.
- (5) Nothing prevents an attorney from charging a fee below the fee guidelines set forth in (3) and (4). An attorney may reduce the attorney's fee from what was originally established in the approved fee contract without the further approval of the department.
- (6) For good cause shown, the department may approve a variance providing for fees in excess of the guidelines of fees as set forth in (3) and (4).
 - (a) To obtain approval of a variance, an attorney has the burden of providing clear and convincing evidence of entitlement to a greater fee by documenting the following factors in regard to the specific claimant and the specific case:
 - (i) The anticipated time and labor required to perform the legal service properly.
 - (ii) The novelty and difficulty of legal issues involved in the matter.
 - (iii) The fees customarily charged for similar legal services.
 - (iv) The possible total recovery if successful.
 - (v) The time limitations imposed by the client or circumstances of the case.
 - (vi) The nature and length of the attorney-client relationship.
 - (vii) The experience, skill and reputation of the attorney.
 - (viii) The ability of the client to pay for the legal services rendered.
 - (ix) The risk of no recovery.
 - (x) The market value of the lawyer's services at the time and place involved.
 - (b) If a variance requested under (6)(a) is not approved, an attorney may request that the administrator or the administrator's designee review the matter and issue an order of determination pursuant to procedures set forth in ARM 24.29.230.
- (7) Attorney compensation shall be determined by the approved fee arrangement and shall be paid out of the funds received in settlement or recovery or other funds available to the claimant. Upon the occurrence of a hearing before the workers' compensation court or the supreme court, the workers' compensation court shall have exclusive jurisdiction for the award of attorney's fees on the claim against the insurer or employer, which shall be credited to the fee due from the claimant.
- (8) In the event a dispute arises between any claimant and an attorney relative to attorney's fees in a workers' compensation claim, upon request of either the claimant or the attorney or upon notice of any party of a violation of 39-71-613, MCA, or this rule, the workers' compensation court shall review the matter and issue an order resolving the dispute. The fee contract must clearly identify the rights granted by this section.
- (9) Attorneys subject to this rule must report to the department as required by ARM 24.29.4332.

- (10) If an attorney violates a provision of 39-71-613, MCA, this rule, or an order fixing an attorney's fee, the attorney shall forfeit the right to any fee which the attorney may have collected or have been entitled to collect.

Authorizing statute(s): 39-71-203, MCA

Implementing statute(s): 39-71-225, 39-71-613, 39-71-2905, MCA

History: NEW, 1988 MAR p. 2390, Eff. 11/11/88; AMD, 1995 MAR p. 675, Eff. 5/1/95; AMD, 2004 MAR p. 78, Eff. 1/16/04; AMD, 2013 MAR p. 841, Eff. 5/24/13; AMD, 2024 MAR p. 1066, Eff. 5/11/24.