

Full text of Rules (with proposed Changes)

WAC 263-12-092. Mediation and claim resolution ~~structured~~ settlement agreement conferences.

~~(1) A statement made by any party, representative or other participant in the course of mediation conducted pursuant to RCW 51.52.095 or a claim resolution structured settlement agreement conference conducted pursuant to RCW 51.04.063, whether verbal or written, is privileged as provided in subsection (2) of this section and is not subject to discovery or admissible in evidence in a proceeding unless waived or reduced to writing and made part of a settlement agreement. Except as otherwise required by law, subsection (3) of this rule, or by expressed agreement of the parties, all mediation and claim resolution settlement agreement conferences conducted pursuant to RCW 51.52.095 or RCW 51.04.063, including communications, statements, and disclosures made by any participant shall be confidential. Such communications, statements, and disclosures shall not be reported, placed in evidence, or disclosed to anyone not a party to the appeal. Such communications, statements, and disclosures shall not be construed as an admission or declaration against interest. No party shall be bound by anything done or said during such events unless a settlement or other agreement is reached in writing or reduced to writing by the mediator or judge.~~

~~(2) In a proceeding, the following privileges apply:~~

~~(a) A party may refuse to disclose and may prevent any other person from disclosing a statement;~~

~~(b) A mediator or structured settlement conference judge may refuse to disclose and may prevent any other person from disclosing a statement from the mediator or judge; and~~

~~(c) A nonparty participant may refuse to disclose and may prevent any other person from disclosing a statement of the nonparty participant. — Despite any agreement of the parties to the contrary, a mediation or claim resolution settlement agreement conference judge is prohibited from disclosing any communications, statements, disclosures or representations identified in subsection (1) of this section, and shall not be called as a witness or deponent in any later proceeding for the purpose of making such disclosures.~~

(3) Evidence or information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely by reason of its disclosure or use in a mediation. ~~unless otherwise privileged by subsection (2) of this section.~~

(4) Mediation and claim resolution ~~structured~~ settlement agreement conferences are confidential and nonparties may be excluded from ~~the proceedings~~ the events.

(5) Mediation and claim resolution ~~structured~~ settlement agreement conferences may not be recorded by any type of recording device.

WAC 263-12-115 Procedures at hearings

(10) **Telephone and video testimony.** At hearings, the parties may present the testimony of witnesses by telephone or video if agreed to by all parties and approved by the industrial appeals judge. For good cause the industrial appeals judge may authorize telephone or video testimony over the objection of a party after weighing the following nonexclusive factors:

- The need to weigh a witness's demeanor or credibility.
- Difficulty in handling documents and exhibits.
- The number of parties participating in the hearing.
- Whether any of the testimony will need to be translated.
- Ability of the witness to travel.
- Feasibility of taking a perpetuation deposition.
- Availability of quality telecommunications equipment and service.

When telephone or video testimony is permitted, the industrial appeals judge presiding at the hearing will swear in the witness testifying by phone or video as if the witness appeared live at the hearing. For rules relating to telephone and video deposition testimony, see WAC **263-12-117**.

WAC 263-12-117(2) Perpetuation depositions

(2) **Telephone and video depositions:** When testimony is taken by perpetuation deposition, it may be taken by telephone or video if all parties agree. For good cause the industrial appeals judge may permit the parties to take the testimony of a witness by telephone or video deposition over the objection of a party after weighing the following nonexclusive factors:

- The need of a party to observe a witness's demeanor.
- Difficulty in handling documents and exhibits.
- The number of parties participating in the deposition.
- Whether any of the testimony will need to be translated.
- Ability of the witness to travel.
- Availability of quality telecommunications equipment and service.

If a perpetuation deposition is taken by telephone or video, the court reporter transcribing the deposition is

authorized to swear in the deponent, regardless of the deponent's location within or outside the state of Washington.

Remove the word structured from WAC 263-12-01501, WAC 263-12-020, WAC 263-12-054, 263-12-092, and WAC 263-12-165

WAC 263-12-01501 Communications and filing with the board.

(1) **Where to file communications with the board.** Except as provided elsewhere in this section all written communications shall be filed with the board at its headquarters in Olympia, Washington. With written permission of the industrial appeals judge assigned to an appeal, depositions, witness confirmations, motions (other than motions for stay filed pursuant to RCW 51.52.050), briefs, stipulations, agreements, and general correspondence may be filed in the appropriate regional board facilities located in Tacoma, Spokane, or Seattle.

(2) **Methods of filing.** Unless otherwise provided by statute or these rules any written communication may be filed with the board by using one of four methods: Personally, by mail, by telephone facsimile, or by electronic filing. Failure of a party to comply with the filing methods selected by the party for use under this section, or as otherwise set forth in these rules or statute for filing written communications may prevent consideration of a document.

(a) **Filing personally.** The filing of a written communication with the board personally is accomplished by delivering the written communication to an employee of the board at the board's headquarters in Olympia during customary office hours.

(b) **Filing by mail.** The filing of a written communication with the board is accomplished by mail when the written communication is deposited in the United States mail, properly addressed to the board's headquarters in Olympia and with postage prepaid. Where a statute or rule imposes a time limitation for filing the written communication, the party filing the same should include a certification demonstrating the date filing was perfected as provided under this subsection. Unless evidence is presented to the contrary, the date of the United States postal service postmark shall be presumed to be the date the written communication was mailed to the board.

(c) **Filing by telephone facsimile.**

(i) The filing of a written communication with the board by telephone facsimile is accomplished when a legible copy of the written communication is reproduced on the board's telephone facsimile equipment during the board's customary office hours. All facsimile communications must be filed with the board via fax numbers listed on the board's website.

(ii) The hours of staffing of the board's telephone facsimile equipment are the board's customary office hours. Documents sent by facsimile communication comments outside of the board's customary office hours will be deemed filed on the board's next business day.

(iii) Any written communication filed with the board by telephone facsimile should be preceded by a cover page identifying the party making the transmission, listing the address, telephone and telephone facsimile number of such party, referencing the appeal to which the written communication relates, and indicating the date of, and the total number of pages included in, such transmission. A separate transmission must be used for each appeal. Transmissions containing more than one docket number will be rejected and filing will not be accomplished, unless the multiple docket numbers have been previously consolidated by the board.

(iv) The party attempting to file a written communication by telephone facsimile bears the risk that the written communication will not be received or legibly printed on the board's telephone facsimile equipment due to error in the operation or failure of the equipment being utilized by either the party or the board.

(v) The board may require a party to file an original of any document previously filed by telephone facsimile.

(d) **Electronic filing.** Electronic filing is accomplished by using the electronic filing link on the board's website. Communication sent by email will not constitute or accomplish filing. Communication filed using the board's website outside of the board's customary office hours will be deemed filed on the board's next business day. A separate transmission must be used for each appeal. Transmissions containing more than one docket number will be rejected and filing will not be accomplished,

unless the multiple docket numbers have been previously consolidated by the board.

(3) **Electronic filing of a notice of appeal.** A notice of appeal may be filed electronically when using the appropriate form for electronic filing of appeals as provided on the board's website. An electronic notice of appeal is filed when it is received by the board's designated computer during the board's customary office hours pursuant to WAC 263-12-015. Appeals received via the board's website outside of the board's customary office hours will be deemed filed on the board's next business day. The board will issue confirmation to the filing party that an electronic notice of appeal has been received. The board may reject a notice of appeal that fails to comply with the board's filing requirements. The board will notify the filing party of the rejection.

(4) **Electronic filing of application for approval of claim resolution ~~structured~~ settlement agreement.** An application for approval of claim resolution ~~structured~~ settlement agreement must be filed electronically using the form for electronic filing of applications for approval of claim resolution ~~structured~~ settlement agreement as provided on the board's website. An electronic application for approval of claim resolution ~~structured~~ settlement agreement is filed when received by the board's designated computer during the board's customary office hours pursuant to WAC 263-12-015. Applications received by the board via the board's website outside of the board's customary office hours will be deemed filed on the board's next business day. The board will issue confirmation to the filing party that an electronic application for approval of claim resolution ~~structured~~ settlement agreement has been received. An electronic copy of the signed agreement for claim resolution ~~structured~~ settlement agreement must be submitted as an attachment to the application for approval. The board will reject an application for approval of claim resolution ~~structured~~ settlement agreement that fails to comply with the board's filing requirements. The board will notify the filing party of the rejection.

(5) **Sending written communication.** All correspondence or written communication filed with the board pertaining to a particular case, before the entry of a proposed decision and

order, should be sent to the attention of the industrial appeals judge assigned to the case. Interlocutory appeals should be sent to the attention of the chief industrial appeals judge. In all other instances, written communications shall be directed to the chief legal officer of the board.

(6) **Form requirements.** Any written communications with the board concerning an appeal should reference the docket number assigned by the board to the appeal, if known. Copies of any written communications filed with the board shall be served on all other parties or their representatives of record, and the original shall demonstrate compliance with the requirement to serve all parties. All written communications with the board shall be on paper 8 1/2" x 11" in size.

[Statutory Authority: RCW 51.52.020. WSR 21-15-042, § 263-12-01501, filed 7/14/21, effective 8/14/21; WSR 18-24-123, § 263-12-01501, filed 12/5/18, effective 1/5/19; WSR 17-24-121, § 263-12-01501, filed 12/6/17, effective 1/6/18; WSR 16-24-054, § 263-12-01501, filed 12/2/16, effective 1/2/17; WSR 14-24-105, § 263-12-01501, filed 12/2/14, effective 1/2/15; WSR 11-23-154, § 263-12-01501, filed 11/22/11, effective 12/23/11; WSR 10-14-061, § 263-12-01501, filed 6/30/10, effective 7/31/10; WSR 06-12-003, § 263-12-01501, filed 5/25/06, effective 6/25/06; WSR 04-22-047, § 263-12-01501, filed 10/28/04, effective 11/28/04; WSR 04-16-097, § 263-12-01501, filed 8/3/04, effective 9/3/04; WSR 98-20-109, § 263-12-01501, filed 10/7/98, effective 11/7/98; WSR 91-13-038, § 263-12-01501, filed 6/14/91, effective 7/15/91.]

WAC 263-12-020 Appearances of parties before the board.

(1) **Who may appear?** Any party to any appeal may appear before the board at any conference or hearing held in such appeal, either on the party's own behalf or by a representative as described in subsections (3) and (4) of this section.

(2) **Who must obtain approval prior to representing a party?** A person who is disbarred, resigns in lieu of discipline, or is presently suspended from the practice of law in any jurisdiction, or has previously been denied admission to the bar in any jurisdiction for reasons other than failure to pass a bar examination, shall not represent a party without the prior approval of the board. A written petition for approval shall be filed sixty calendar days prior to any event for which the person seeks to appear as a representative. The board may deny

any petition that fails to demonstrate competence, moral character, or fitness.

(3) Who may represent a party?

(a) A worker or beneficiary may be represented by:

(i) An attorney at law with membership in good standing in the Washington state bar association or a paralegal supervised by an attorney at law with membership in good standing in the Washington state bar association.

(ii) An attorney at law with membership in good standing in the highest court of any other state or the District of Columbia.

(iii) A lay representative so long as the person does not charge a fee, is not otherwise compensated for the representation except as provided in (a)(iv) of this subsection, and files a declaration or affidavit with the board certifying compliance with this rule. The industrial appeals judge may alternatively permit this certification to be made under oath and reflected in a transcript or report of proceeding.

(iv) A lay representative employed by the worker's labor union whose duties include handling industrial insurance matters for the union, provided the person files a declaration or affidavit with the board certifying this status. The industrial appeals judge may alternatively permit this certification to be made under oath and reflected in a transcript or report of proceeding.

(v) Any lay representative seeking to represent a worker or beneficiary who has not provided the certification required under (a)(iii) and (iv) of this subsection will be excluded from serving as a worker's or beneficiary's representative.

(b) An employer or retrospective rating group may be represented by:

(i) An attorney at law with membership in good standing in the Washington state bar association or a paralegal supervised by an attorney at law with membership in good standing in the Washington state bar association.

(ii) An attorney at law with membership in good standing in the highest court of any other state or the District of Columbia.

(iii) A lay representative who is a corporate officer or an employee of the employer or retrospective rating group.

(iv) A firm that contracts with the employer or retrospective rating group to handle matters pertaining to industrial insurance.

(c) The department of labor and industries may be represented by:

(i) An attorney employed as assistant attorney general or appointed as a special assistant attorney general.

(ii) A paralegal supervised by an assistant attorney general or special assistant attorney general.

(iii) An employee of the department of labor and industries designated by the director, or his or her designee, in a claim resolution ~~structured~~ settlement agreement under RCW 51.04.063.

(d) A licensed legal intern may represent any party consistent with Washington state admission to practice rule 9(e).

(4) Appeals under the Washington Industrial Safety and Health Act.

(a) In an appeal by an employee or employee representative under the Washington Industrial Safety and Health Act, the cited employer may enter an appearance as prescribed in subsection (7) of this section and will be deemed a party to the appeal.

(b) In an appeal by an employer, under the Washington Industrial Safety and Health Act, an employee or employee representative may enter an appearance as prescribed in subsection (7) of this section and will be deemed a party to the appeal.

(c) A lay representative appearing on behalf of an employee or an employee representative in an appeal under the Washington Industrial Safety and Health Act is not subject to the compensation restrictions of subsection (3) of this section.

(5) May a self-represented party be accompanied by another person? Where the party appears representing himself or herself, he or she may be accompanied, both at conference and at hearing, by a lay person of his or her choosing who shall be permitted to accompany the party into the conference or hearing room and with whom he or she can confer during such procedures. If the lay person is also a witness to the proceeding, the industrial appeals judge may exclude the lay person from the proceeding as provided by Evidence Rule 615.

(6) **Assistance by the industrial appeals judge.** Although the industrial appeals judge may not advocate for either party, all parties who appear either at conferences or hearings are entitled to the assistance of the industrial appeals judge presiding over the proceeding. Such assistance shall be given in a fair and impartial manner consistent with the industrial appeals judge's responsibilities to the end that all parties are informed of the procedure to be followed and the issues involved in the proceedings. Any party who appears representing himself or herself shall be advised by the industrial appeals judge of the burden of proof required to establish a right to the relief being sought.

(7) **How to make an appearance.**

(a) Appearance by employer representative. Within fourteen days of receipt of an order granting appeal, any representative of an employer or retrospective rating group must file a written notice of appearance that includes the name, address, and telephone number of the individual who will appear.

(b) Appearances by a worker or beneficiary representative shall be made either by:

(i) Filing a written notice of appearance with the board containing the name of the party to be represented, and the name and address of the representative; or by

(ii) Appearing at the time and place of a conference or hearing on the appeal, and notifying the industrial appeals judge of the party to be represented, and the name and address of the representative.

(8) **Notice to other parties.**

(a) The appearing party shall furnish copies of every written notice of appearance to all other parties or their representatives of record at the time the original notice is filed with the board.

(b) The board will serve all of its notices and orders on each representative and each party represented. Service upon the representative shall constitute service upon the party. Where more than one individual associated with a firm, or organization, including the office of the attorney general, has made an appearance, service under this subsection shall be satisfied by serving the individual who filed the notice of appeal, or who last filed a written notice of appearance or, if

no notice of appeal or written notice of appearance has been filed on behalf of the party, the individual who last appeared at any proceeding concerning the appeal.

(9) **Withdrawal or substitution of representatives.** An attorney or other representative withdrawing from a case shall immediately notify the board and all parties of record in writing. The notice of withdrawal shall comply with the rules applicable to notices of withdrawal filed with the superior court in civil cases. Withdrawal is subject to approval by the industrial appeals judge or the chief legal officer. Any substitution of an attorney or representative shall be accomplished by written notification to the board and to all parties of record together with the written consent of the prior attorney or representative. If such consent cannot be obtained, a written statement of the reason therefor shall be supplied.

(10) **Conduct.** All persons appearing as counsel or representatives in proceedings before the board or before its industrial appeals judges shall conform to the standards of ethical conduct required of attorneys before the courts of the state of Washington.

(a) Industrial appeals judge. If any such person does not conform to such standard, the industrial appeals judge presiding over the appeal, at his or her discretion and depending on all the circumstances, may take any of the following actions:

(i) Admonish or reprimand such person.

(ii) Exclude such person from further participation or adjourn the proceeding.

(iii) Certify the facts to the appropriate superior court for contempt proceedings as provided in RCW 51.52.100.

(iv) Report the matter to the board.

(b) The board. In its discretion, either upon referral by an industrial appeals judge as stated above or on its own motion, after information comes to light that establishes to the board a question regarding a person's ethical conduct and fitness to practice before the board, and after notice and hearing, the board may take appropriate disciplinary action including, but not limited to:

(i) A letter of reprimand.

(ii) Refusal to permit such person to appear in a representative capacity in any proceeding before the board or its industrial appeals judges.

(iii) Certification of the record to the superior court for contempt proceedings as provided in RCW 51.52.100. If the circumstances require, the board may take action as described above prior to notice and hearing if the conduct or fitness of the person appearing before the board requires immediate action in order to preserve the orderly disposition of the appeal(s).

(c) Proceedings. If any person in proceedings before the board disobeys or resists any lawful order or process, or misbehaves during a hearing or so near the place thereof as to obstruct the same, or neglects to produce, after having been ordered so to do, any pertinent book, paper or document, or refuses to appear after having been subpoenaed, or upon appearing refuses to take oath as a witness, or after having the oath refuses to be examined according to law, the industrial appeals judge may, at his or her discretion and depending on all the circumstances:

(i) Admonish or reprimand such person.

(ii) Exclude such person from further participation or adjourn the proceeding.

(iii) Certify the facts to the appropriate superior court for contempt proceedings as provided in RCW 51.52.100.

(iv) Report the matter to the board for action consistent with (b) of this subsection.

[Statutory Authority: RCW 51.52.020. WSR 21-15-042, § 263-12-020, filed 7/14/21, effective 8/14/21; WSR 16-24-054, § 263-12-020, filed 12/2/16, effective 1/2/17; WSR 14-24-105, § 263-12-020, filed 12/2/14, effective 1/2/15; WSR 10-14-061, § 263-12-020, filed 6/30/10, effective 7/31/10; WSR 04-16-009, § 263-12-020, filed 7/22/04, effective 8/22/04; WSR 00-23-021, § 263-12-020, filed 11/7/00, effective 12/8/00; WSR 98-20-109, § 263-12-020, filed 10/7/98, effective 11/7/98; WSR 91-13-038, § 263-12-020, filed 6/14/91, effective 7/15/91. Statutory Authority: RCW 51.41.060(4) and 51.52.020. WSR 83-01-001 (Order 12), § 263-12-020, filed 12/2/82. Statutory Authority: RCW 51.52.020. WSR 82-03-031 (Order 11), § 263-12-020, filed 1/18/82; Order 7, § 263-12-020, filed 4/4/75; Order 6, § 263-12-020, filed 9/29/72; Order 4, § 263-12-020, filed 6/9/72; General Order 2, § 3.1,

filed 6/12/63; General Order 1, filed 3/23/60; General Order 3, § 3.1(b), Subsection (2), filed 10/29/65.]

WAC 263-12-054 Petition to enforce terms of claim resolution ~~structured~~ settlement agreement. A petition to enforce the terms of a claim resolution ~~structured~~ settlement agreement must include:

- (1) A copy of the agreement;
- (2) A copy of the board order approving the agreement;
- (3) A statement setting forth the basis for the parties' failure to comply with the agreement; and
- (4) The current mailing address of each party to the agreement.

[Statutory Authority: RCW 51.52.020. WSR 11-23-154, § 263-12-054, filed 11/22/11, effective 12/23/11.]

WAC 263-12-092 Mediation and claim resolution ~~structured~~ settlement agreement conferences. (1) A statement made by any party, representative or other participant in the course of mediation conducted pursuant to RCW 51.52.095 or a claim resolution ~~structured~~ settlement agreement conference conducted pursuant to RCW 51.04.063, whether verbal or written, is privileged as provided in subsection (2) of this section and is not subject to discovery or admissible in evidence in a proceeding unless waived or reduced to writing and made part of a settlement agreement.

- (2) In a proceeding, the following privileges apply:
 - (a) A party may refuse to disclose and may prevent any other person from disclosing a statement;
 - (b) A mediator or ~~structured~~ settlement conference judge may refuse to disclose and may prevent any other person from disclosing a statement from the mediator or judge; and
 - (c) A nonparty participant may refuse to disclose and may prevent any other person from disclosing a statement of the nonparty participant.

- (3) Evidence or information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely by reason of its disclosure or use in a mediation unless otherwise privileged by subsection (2) of this section.

(4) Mediation and claim resolution ~~structured~~ settlement agreement conferences are confidential and nonparties may be excluded from the proceedings.

(5) Mediation and claim resolution ~~structured~~ settlement agreement conferences may not be recorded by any type of recording device.

[Statutory Authority: RCW 51.52.020. WSR 14-24-105, § 263-12-092, filed 12/2/14, effective 1/2/15; WSR 08-01-081, § 263-12-092, filed 12/17/07, effective 1/17/08.]

WAC 263-12-165 Attorney's fees. (1) Applications for attorney's fees.

(a) For the fixing of attorney fees as provided by RCW 51.52.120, the board shall fix a reasonable attorney fee to be paid by the worker, crime victim or beneficiary for services rendered before the board, or before the department in a claim resolution ~~structured~~ settlement agreement, if written application therefor is made by the attorney, worker, crime victim or beneficiary, within one year after the board's final decision and order, or approval of the claim resolution ~~structured~~ settlement agreement, is communicated to the party making the application. If such application for fixing of a fee is made by the attorney, it shall set forth therein the monetary amount which the attorney considers reasonable for all services rendered before the board in an appeal, or before the department in a claim resolution ~~structured~~ settlement agreement, and the justification supporting the requested fee. The board shall afford to all parties affected a minimum of ten days in which to submit comments and material information which may be helpful to the board in setting a fair and reasonable fee.

(b) For the ordered payment of attorney fees as provided by RCW 51.32.185 and 51.32.187, the board shall set the attorney fee in a manner consistent with applicable provisions of subsections (2) and (3) below.

(2) **Fee fixing criteria.** All attorney fees fixed by the board, where application therefor has been made, shall be established in accordance with Rule 1.5 of the Rules of Professional Conduct and the following general principles:

(a) Only one fee shall be fixed for legal services in any one appeal or claim resolution ~~structured~~ settlement agreement regardless of the number of attorneys representing the worker,

crime victim or beneficiary, except that in cases of multiple beneficiaries represented by one or multiple attorneys the board has the discretion to set more than one attorney fee if so requested.

(b) The board shall defer fixing a fee until such time as information, which it deems sufficient upon which to base a fee, is available.

(c) A fee shall be fixed only in those cases where the attorney's services are instrumental in securing additional benefits to the worker, crime victim or beneficiary, sustaining the worker's or beneficiary's right to benefits upon an appeal by another party, or in securing a claim resolution ~~structured~~ settlement agreement.

(d) Where increased compensation is obtained, the fee may be fixed without regard to any medical benefits secured.

(e) In setting all fees, the following factors shall be carefully considered and weighed:

(i) Nature of the appeal or the claim resolution ~~structured~~ settlement agreement.

(ii) Novelty and complexity of the issues presented or other unusual circumstances.

(iii) Time and labor expended.

(iv) Skill and diligence in conducting the case or in securing the claim resolution ~~structured~~ settlement agreement.

(v) Extent and nature of the relief. In computing the extent of additional benefits, or the retention of benefits awarded by the department, the cost to the worker, crime victim or beneficiary of the litigation, i.e., medical examination and witness fees, shall be first deducted and the net benefits considered.

(vi) The amount of accrued time-loss payments as a result of proceedings before the board.

(vii) The prevalent practice of charging contingency fees in cases before the board.

(viii) The worker's or crime victim's circumstances and the remedial social purposes of the Industrial Insurance Act and of the Crime Victims Compensation Act, which are intended to provide sure and adequate relief to injured workers and crime victims and their families.

(f) In those cases where the payment of accumulated benefits is insufficient to allow payment of the fee set and allow the worker, crime victim or beneficiary to retain a reasonable monetary amount, the board may also set the schedule and manner in which such fee shall be payable.

(3) **Amount of fees.**

(a) Where additional compensation for permanent partial disability, loss of earning power, or total temporary disability is obtained as a result of settlement of the appeal on agreement of the parties prior to presentation of testimony, a fee of from 10 to 25 percent of the increased compensation due the worker, crime victim or beneficiary on the date of the board's order on agreement of the parties and by reason thereof shall be fixed after considering all factors.

(b) Where additional compensation for permanent partial disability, loss of earning power or total temporary disability is obtained after the presentation of testimony, a fee of from 10 to 30 percent of the increased compensation shall be fixed after considering all factors. This provision shall also apply to retroactive permanent total disability (pension) benefits.

(c) Where no additional compensation is obtained, but the worker or crime victim is relieved of the payment for medical benefits, a fee of from 10 to 25 percent of the amount the worker or crime victim is so relieved of paying shall be fixed after considering all factors.

(d) Where permanent total disability (pension) benefits are obtained for the worker or crime victim, or death benefits are obtained for survivors of a deceased worker or crime victim, 10 percent of the first \$40,000.00 of the pension reserve as calculated by the department of labor and industries, and 15 percent of the pension reserve in excess of \$40,000.00 shall constitute the usual fee, which may be decreased or increased after weighing all factors.

(e) Where indeterminate additional compensation is obtained because the claimant is successful in establishing a proper claim for benefits which was previously rejected or for which responsibility was denied, a fee in accordance with the preceding principles and factors shall be fixed.

(f) Where, upon an appeal by a party other than the worker or his or her beneficiary, the right to receive the benefits

awarded by the department is affirmed, a fee in accordance with the preceding principles and factors shall be fixed.

(g) Where a claim resolution ~~structured~~ settlement agreement is approved by the board, fees for attorney's services are limited to fifteen percent of the total amount to be paid to the worker after the agreement becomes final.

(h) When a firefighter, law enforcement officer, or Hanford site worker has prevailed and the final decision is to allow the claim, making the opposing party responsible for the payment of reasonable costs, including attorney fees, the fees may be established based on an hourly rate.

(i) The number of hours expended must be supported by documentation. The board will disregard inflated hours or hours reflecting reimbursement for clerical functions.

(ii) All requests for costs must be accompanied by invoices and documentation including hourly breakdowns where applicable.

(4) **Excess fee unlawful.** Where the board, pursuant to written application by an attorney, worker, crime victim or beneficiary, fixes a reasonable fee for the services of the attorney in proceedings before this board, or before the department in securing a claim resolution ~~structured~~ settlement agreement, it is unlawful for the attorney to charge or receive any fee for such services in excess of that fee so fixed, per RCW 51.52.132.

[Statutory Authority: RCW 51.52.020. WSR 18-24-123, § 263-12-165, filed 12/5/18, effective 1/5/19; WSR 11-23-154, § 263-12-165, filed 11/22/11, effective 12/23/11; WSR 08-01-081, § 263-12-165, filed 12/17/07, effective 1/17/08; WSR 95-12-062, § 263-12-165, filed 6/5/95, effective 7/6/95; WSR 91-13-038, § 263-12-165, filed 6/14/91, effective 7/15/91; WSR 82-03-031 (Order 11), § 263-12-165, filed 1/18/82; Order 7, § 263-12-165, filed 4/4/75; Order 4, § 263-12-165, filed 6/9/72; Subsection 1 from General Order 3, Rule 9.1, filed 10/29/65; General Order 2, Rule 9.2, filed 6/12/63; General Order 1, Rule 6.4, filed 3/23/60; Subsection (2), General Order 3, Rule 9.2, filed 10/29/65; General Order 9.1, filed 6/12/63; General Order 1, Rule 6.4, filed 3/23/60. Formerly WAC 296-12-165.]