

This is an amendment to 11.4.4 NMAC, Section 15, effective 4/7/2026.

11.4.4.15 APPROVAL OF ATTORNEY FEES AND LIENS:

A. Parties may request the award of attorney fees by application to a judge. The application must contain sufficient information to determine if the fee requested is appropriate. ~~[The] All~~ contested [application should indicate the date and terms of any offers of settlement made; the present value of the benefits awarded the worker, including, but not limited to medical expenses and past and future weekly benefits; the total number of hours reasonably expended by counsel to secure benefits for the worker; the hourly billing rate of counsel; and any other relevant information for the determination of fees.] and any other applications which seek an attorney fee equal to or greater than the attorney fee cap prescribed by Section 52-1-54 NMSA 1978 or 52-3-47 NMSA 1978, or as the judge may order, shall include a supporting discussion of statutory requirements, and the following factors as applicable to the application:

- (1) the chilling effect of miserly fees upon the ability of an injured worker to obtain adequate representation;
- (2) the time and effort expended by the attorney in the particular case;
- (3) the extent to which the issues were contested;
- (4) the novelty and complexity of the issues involved;
- (5) the fees normally charged in the locality for similar legal services;
- (6) the ability, experience, skill and reputation of the attorney;
- (7) the relative success of the workman in the court proceeding;
- (8) the amount involved;
- (9) the rise in the cost of living;
- (10) whether the worker suffered a subsequent injury or injuries that flowed from the primary workplace injury thereby justifying a fee cap multiple award;
- (11) the date and terms of any offers of settlement made, as well as the present value of the benefits awarded the worker, including but not limited to medical expenses and past and future weekly benefits; and
- (12) any other relevant information for the determination of the attorney fee award in question.

B. No attorney fees shall be paid until the case has been settled or adjudged. For purposes of the act, settled or adjudged includes:

- (1)** the entry of a compensation order; or
- (2)** the acceptance by both parties of a recommended resolution; or
- (3)** an order granting or denying any petition or application when no other cases are pending before the administration; or
- (4)** the WCA has administratively closed the file; or
- (5)** when there is a good faith belief that all pending issues or questions have been resolved, whether or not the jurisdiction of the administration has been invoked.

C. An attorney withdrawing from representation during the pendency of a case and before the case has been settled or adjudged shall assert a request for attorney fees, if any, within the motion to judge or application to director seeking to withdraw as counsel. The request for attorney fees shall not be decided until the case is settled or adjudged.

D. When a subsequent attorney requests attorney fees, the attorney shall give notice to the withdrawn attorney by serving on the withdrawn attorney a copy of all relevant pleadings at the time of filing.

E. No attorney fee lien shall be filed in a case until a judge has awarded fees pursuant to Section 52-1-54 NMSA 1978.

[11.4.4.15 NMAC - Rp, 11.4.4.15 NMAC, 1/1/2023; A, 4/7/2026]