

Robert Martin  
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Dear Board Members:

I am writing to voice my concerns about a contingent hourly rate. The Board has operated without a contingent hourly rate for decades without an issue. The trouble with a contingent hourly rate is that there are those of us who can in accomplish better results in shorter hours. Meanwhile, those who are less efficient, and even those who would be willing to spend our waste hours to accomplish a greater fee, will be rewarded. Frankly, the contingent hourly fee has a built in reward system for those who would go so far as to exaggerate hours, or for those who would seek to justify a rate above market value.

The Board's current factor approach to determining a fee more consistently can arrive at the market value of the lawyer's services. Moreover, the market value of the services is easily arrived at in workers' compensation given the well prescribed benefits system. Giving the flexibility to the ALJ and Board makes it easy to provide a reasonable fee. On the other hand, if we were to use a contingent hourly fee uncomfortable issues of proof would need to be addressed whenever there are challenges to the fee and hours component of the requested fee.

I would suggest that if the Board were to make changes to the factors used for fee determination, it should be to better approximate the market value of the services in the case, and to reduce litigation of fees. This would be accomplished by focusing on the case itself, rather than the practitioner, or the hours spent or wasted.

Respectfully, Adian Martin