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Workers' Compensation Board
2601 25th Street SE, Suite #150
Salem, OR 97302-1282

RE: Five Year Review of OAR 438-015-0125

Dear Board Members:

Thank you for asking for my input on the Board's five-year review of OAR 438-015-0125.

1. Did the rule achieve its intended effect?

I think the rule is beneficial to complex cases involving extraordinary efforts that are not always easily appreciated in the context of contingency practice. I also believe the rule is very helpful for those in the appellate world. I personally have only used the rule once in a case I shared with another appellate attorney, and she felt it was very helpful in quantifying our work. Having this rule in place simply follows standard practice of traditional civil court practice, makes sense, and brings a greater sense of understanding to the world of attorney's fees.

My colleagues who utilize rule feel that its application by the Board has not been as expeditious as it could be. They feel that it should not a tortured exercise to determine an attorney fee. They do not understand why there is such a fuss over this issue. Civil courts resolve fee issues quickly in my experience. The Board needs to understand the contingency nature of fees does create an economic urgency to get fees resolved. Plaintiff attorneys are not billing by the hour, and are not receiving a paycheck every month. So when they petition for fees, they need it to be done in an expeditious manner, which is required by the rule.

I think the rule should be voluntary, but will work well at all levels of litigation, especially at the hearing level. Complex multi-day cases with many depositions and witnesses are perfect opportunities for lawyers to properly quantify their work by bifurcation.

2. What is the anticipated fiscal impact of the rule underestimated or overestimated?

I cannot tell from the statement of need and fiscal impact, whether or not the rule had any bearing on increased fees. That question is better directed to appellate lawyers. It does

appear that there has been an incremental increase year by year in fees, but I do not believe the bifurcation rule is responsible for such versus just the organic increase in attorney fees that must adapt and respond to economic and inflationary realities. This rule plays a very small part of the puzzle. The greater part of the puzzle is an agency that understands the economics and realities of this very expensive kind of practice.

3. Not Applicable

4. Yes, I think the rule should continue to be in place. A similar process should be available for the hearing level.

5. All claimant attorneys in Oregon are small businesses. Anything that benefits the bottom line in the practice of law for small businesses is helpful. My understanding from my appellate colleagues is that there have been some appreciable small positive benefits.

I hope my answers give you some guidance. Thank you for the opportunity to make a comment, and please contact me if you need any further information.

Sincerely,

A handwritten signature in black ink, appearing to read "Art Stevens". The signature is fluid and cursive, with a horizontal line extending from the end.

Arthur W. Stevens III

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AWS:tlr