

Quinn & Heus, LLC**Attorneys:**

Julene M. Quinn
Theodore P. Heus

Law Offices
www.quinnheus.com

Phone: (503) 575-1253
Fax: (971) 925-8611

Mailing Address:

9450 SW Gemini Dr.
PMB 22366
Beaverton, OR 97008

November 7, 2025

Workers' Compensation Board
2601 25th Street, SE, Suite 150
Salem, OR 97302-1280

Re: OAR 438-015-0125
Five-year Review, 2025

Dear Board Members,

Thank you for soliciting input on this very important rule.

I am one of the attorneys who pressed for the rule and so appreciate the opportunity to comment. The simple reason for requesting the rule was that, prior to the enactment of the rule, in order to submit a statement of services, an attorney was required to submit a statement in each case before we know whether the injured worker prevailed. Since we claimants' attorneys are compensated in litigation only when we prevail, this caused additional and unnecessary unpaid time. The rule prevents this waste of time. There is no doubt that the need for this rule continues.

That being said, the rule needs an adjustment. The rule indicates that the Board will conduct "an expeditious review." OAR 438-015-0125(4). The law already requires the Board to issue its orders within 30 days. ORS 656.295(6). One would think that "expeditious" would be something faster than the usual requirement. After all, the attorney has already waited significant time without being paid. Nevertheless, the Board has typically been taking 4 months to issue its orders. In some cases, the Board has taken the better part of a year to make a decision. Such delay only works to starve out attorneys, which does not fit the definition of "expeditious," does not meet the legislature's policy of providing "adequate representation" per ORS 656.012(2), or the "broadest access" to representation per ORS 656.388(5), and serves to undercut the effectiveness of the rule promulgated by the Board.

The Board should consider amending the rule to provide that the Board will issue an order within the statutorily required 30 days after the statement, response and any reply are filed.

From my standpoint, the expected fiscal impact was two-fold. First, it was expected to allow settlement of attorney fees between the parties. This has been achieved more often after the rule, because there is a process that allows that conversation to occur after the parties know who has prevailed. The Board should already have statistics on the "BF" cases and the number of settlements since the enactment of the rule. That the parties resolve a matter is a positive result and supports a continuation of the rule.

Office Address: 4504 S Corbett Ave. Suite 120, Portland, Oregon 97239

Another fiscal impact of the rule should have been to allow attorneys to be reasonably paid considering the statutory mandates and the Board's rule factors, now that the Board may consider the fee separately. I do not believe this has been achieved, because the Board continues to award set fees at a highly reduced amount. The Board has enacted a broad set of factors that captures the legislature's intent to award reasonable attorney fees to consider the individual factors in a case, access to attorneys, contingent aspects of the practice, and a mechanism to extinguish the gap between claimant's Bar and the defense Bar. Yet, the Board more often still relies on its "discretion" instead of the rule factors. The bifurcation process should allow the Board to adjust historically low attorney fees to meet the actual work and risk that claimant's attorneys face. However, since capped fees have been historically awarded by the Board over many decades, and perhaps century, I suspect true lodestar awards through the bifurcation process will take some time and education. Any change in this area will likely occur through practice, not rule change.

All claimant's attorneys are small businesses, as we practice largely individually or with only a few of us together in a firm. As a small business – or small firms, to be more precise – there is not the same cushion for wasted time or money as there is with larger firms. Certainly, competing against the larger defense firms is difficult, not only because the injured worker must prevail for the attorney to be paid in litigation, but also because this system places a large burden on attorneys representing injured workers to accomplish significant unpaid time to assist the workers with their claims processing difficulties.

The bifurcation rule has assisted small businesses by lessening the time wasted on statements of services. This positive impact is a reason the rule should continue.

OAR 438-015-0125 has had a positive impact. I would request the Board to continue the rule.

Sincerely,

/s/ Julene M. Quinn

Julene M. Quinn, Attorney at Law