



## State of New Jersey

DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT  
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CHRIS CHRISTIE  
*Governor*

KIM GUADAGNO  
*Lt. Governor*

HAROLD J WIRTHS  
*Commissioner*

### MEMORANDUM

November 28, 2011

To: All Judges and Attorneys

From: Peter J. Calderone, Director and Chief Judge

Subject: Counsel Fees

Pursuant to N.J.S.A. 34:15-64, judges of compensation have the discretion to award a reasonable counsel fee not to exceed 20% of the award entered. The judge should in all matters determine a reasonable fee based on the circumstances of the case and the value of the services performed.

In the 2005 Final Report of the Counsel Fee Review Committee, which report is available on the Division of Workers' Compensation website, the Committee recommended a \$35,000.00 counsel fee threshold concept for calendar year 2006. Further, the Committee found that the threshold should be adjusted periodically by the percentage increase or decrease in the state average wage rounded up or down to the nearest \$1,000.00. This is consistent from a percentage standpoint with the process for annual changes to the workers' compensation charts. The Committee Report was accepted by this office for implementation. The last adjustment was effective January 1, 2009 when the counsel fee threshold was increased to \$40,000.00. Considering the changes in state average weekly wage since then (two increases and a 2011 decrease), the state average wage increased approximately 4.675%. Applying this increase to the current \$40,000.00 threshold and rounding up to the nearest \$1,000.00, the 2012 counsel fee threshold will increase to \$42,000.00.

Based on the Committee Report and acceptance and effective January 3, 2012, in those cases where a counsel fee allowance is greater than \$42,000.00, judges of compensation are required, in addition to whatever other procedures a judge may set, to include in the record an affidavit of services, testimony and/or other information on which the judge's counsel fee allowance is based. It should be recognized that the \$42,000.00 figure is not intended as a cap or a maximum counsel fee allowance. In those cases where the benefits received by the petitioner allow for a counsel fee greater than \$42,000.00, a judge of compensation has the discretion of following the procedure outlined above to award a fee greater than \$42,000.00.

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This process provides discretion to judges of compensation in reviewing requests for an allowance greater than the \$42,000.00 threshold. At one time, an affidavit of services was the only mechanism for allowing fees above the threshold amount. A judge may now utilize other processes for setting a counsel fee greater than the threshold as long as the basis for the determination is clearly provided in the record.

C: Christopher L. Leavey, Administrator