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**E-87-10 Reimbursement for costs and expenses  
in worker's compensation proceedings**

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**Facts**

Under section 102.26 of the Wisconsin Statutes, the department may provide in its order or award in any worker's compensation proceeding that an attorney's fee not greater than 20 percent of the amount recovered for the injured employee be paid directly to the employee's attorney from the order or award. The amount of fees charged and received is subject to scrutiny and approval by the department under subsection (2) of the Statute. Under section 102.26(3)(b)2, Stats., "[a]t the request of the claimant medical expense, witness fees and other charges associated with the claim may be ordered paid out of the amount awarded." There is no provision in the Statutes for departmental scrutiny of the amount or nature of costs, as there is for fees under section 102.26(2). Under section 102.26(4), Stats., "[t]he charging or receiving of any fee in violation of this section shall be unlawful, and the attorney or other person guilty thereof shall forfeit double the amount retained by him, the same to be collected by the state in an action in debt, upon complaint by the department."

**Question**

May a lawyer ethically seek to recover unreimbursed costs directly from a worker's compensation claimant-client outside of the worker's compensation proceedings?

**Opinion**

Yes, assuming that: (1) the unreimbursed costs were reasonable and necessary to adequate representation and were not expenditures ordinarily viewed by courts as components of attorney's fees [*See generally* Committee on Professional Ethics Formal Opinion E-84-6]; and (2) that recovery of the specific costs or expenses in question is not otherwise proscribed by law consistent with judicial authority and standards in regulating the practice of law. *See, e.g., State ex rel. Reynolds v. Dinger et al.*, 14 Wis. 2d 193, 206, 109 N.W. 2d 685 \_\_\_\_\_ (1961).

Further assuming that the specific unreimbursed costs and expenses in question ordinarily would not be deemed an element of attorney's fees in representation involving litigation, the committee concludes that the standards of professional conduct for attorneys will continue to require that the client remain ultimately liable for payment of such costs and expenses under SCR 20:1.8(e), unless it has been agreed that reimbursement will be contingent on a recovery in a matter. *Compare* SCR 20.26(2) [Code of Professional Responsibility] and SCR 20:1.8(e) [Rules of Professional Conduct for Attorneys].