

Standards of Conduct

R04-1-01

Standards of Conduct of Non-Attorneys before the Commission and the Bureau June 2, 2004

WHEREAS, Section 4123.06 of the Revised Code provides that the Industrial Commission shall set reasonable standards for those attorneys, agents or representatives who practice before the bureau of workers' compensation, district or staff hearing officers, or the commission; and

WHEREAS, Ohio Administrative Code Rule 4121-2-01(A)(1) requires that any attorney, agent or representative who practices before the Commission or the Bureau shall make themselves competent to handle such matters by becoming familiar with the statutes, decisions of the courts, and rules of the Bureau and Commission relating to workers' compensation; and

WHEREAS, Ohio Administrative Code Rule 4121-2-01(A)(4) provides that such attorneys, agents and representatives shall abide by the rules of the Bureau or the Commission in appearing for a party or in filing applications; and

WHEREAS, Ohio Administrative Code Rule 4121-2-01(A)(5) provides that attorneys, agents and representatives that practice before the Commission and Bureau are in general to conduct themselves in accordance with the Code of Professional Responsibility as adopted by the Supreme Court of Ohio; and

WHEREAS, the statutory Commission hearing process is a unique forum established in the Ohio Constitution. It is recognized that the adjudication process at the Commission was designed so that injured workers and employers may participate in the process without using licensed attorneys; and

WHEREAS, for more than 33 years, this Commission and past Commissions have followed the 1970 Agreement entered into between the Unauthorized Practice of Law Committee of the Ohio State Bar Association and numerous actuarial service companies. Relevant portions of the agreement were set forth in Memo T6 of the Hearing Officer Manual dated January 1, 1989, and such policy was republished in Memo R4 of the Hearing Officer Manual dated May 7, 2001; and

WHEREAS, on April 7, 2000 the Board of Governors of the OSBA unanimously voted to support the recommendation of the Workers' Compensation Committee that the OSBA not withdraw from the December 31, 1970 agreement entered into between the Unauthorized Practice of Law Committee of the OSBA and several actuarial firms; and

WHEREAS, on May 18, 2004, recommendations were made to the Supreme Court in a report issued by the Board of Commissioners on the Unauthorized Practice of Law in the case of Cleveland Bar Association v. CompManagement, Inc., dated May 18, 2004, which is pending before the Ohio Supreme Court in Case No. 04-0817; and

WHEREAS, subsequent to the issuance of the recommendations within the May 18, 2004 report of the Board of Commissioners on the Unauthorized Practice of Law questions have arisen concerning the consistency and uniformity of the application of the guidelines by hearing officers that are set forth in existing Memo R4 of the Hearing Officer Manual, as well as those specific guidelines that are in the 1970 agreement entered into between the Unauthorized Practice of Law Committee of the OSBA and several actuarial companies, but are not expressly set forth in Memo R4 of the Hearing Officer Manual; and

WHEREAS, the Commission recognizes that the 1970 Agreement entered into between the Unauthorized Practice of Law Committee of the OSBA and several actuarial companies does not expressly address standards for union representatives that may appear before the Bureau and the Commission on behalf of injured workers, nor for employees of employers that may appear before the Bureau and the Commission, nor has such agreement reflected changes in the workers' compensation system that have developed over the last 33 years; and

WHEREAS, a number of organizations representing injured workers and employers in Ohio, including counsel for the Ohio Chamber of Commerce, the OATL, the Ohio AFL-CIO, the OMA, the OSIA, and the NFIB, have expressed the need for the Commission to adopt updated standards for third party administrators, union representatives, and employees of employers that may appear before the Commission and the Bureau; and

WHEREAS, after due consideration of the matter, the Commission finds it necessary and appropriate to issue interim standards for third party administrators, union representatives, or employees of employers who appear before the Bureau and Commission until permanent guidelines are issued by the Ohio Supreme Court in the case of Cleveland Bar Association v. Comp Management, Case No. 04-0817; and

WHEREAS, pursuant to Section 4121.03(E)(1) the Commission is responsible for establishing the overall adjudicatory policy and the management of the Commission.

THEREFORE BE IT RESOLVED that the following standards shall be established for conduct before the Commission and the Bureau:

(A) The following activities shall be permitted before the Industrial Commission or the Bureau of Workers' Compensation, to the extent performed by third-party administrators, by union representatives until permanent guidelines are provided by the Ohio Supreme Court, or employees of an employer:

1. Investigation, or assistance to injured workers and employers in investigating, the facts with respect to any claim, including discussing the facts and their relationship to the claim with employers, witnesses, and others, preparing and securing statements, and preparing and obtaining reports regarding the facts;
2. Assistance to injured workers and employers in the administration of a claim and the filing of claims and appeals, without making any legal determination respecting such claims or appeals, before the administrator of the Bureau of Workers' Compensation and/or the Industrial Commission of Ohio;
3. Attendance at any hearing before the Industrial Commission for the purposes of recording and reporting any action taken at such hearing, reporting the factual results of any claim investigation, apprising the hearing officer or officers of documents or parts thereof that are in the file or that are missing from the file, including medical reports, filing documents, requesting a postponement or continuance of the hearing, and discussing matters within the independent knowledge of the representative, subject to all the limitations as set forth below;
4. Completion and submission of any and all records and reports with the Bureau of Workers' Compensation or the Industrial Commission of Ohio regarding injured workers and employers, including, but not limited to, any and all forms promulgated and adopted by the Industrial Commission and the Bureau of Workers' Compensation, either written, verbal or electronically produced;
5. Completion and submission of records and reports dealing with job classifications pertinent to premium rates and other Bureau of Workers' Compensation premium programs;
6. Completion and submission of any and all reports or forms concerning, but not limited to, premiums, payroll rate adjustment protests, settlements, and handicap reimbursement requests before the Bureau of Workers' Compensation or the Industrial Commission;
7. Filing protests within the Bureau of Workers' Compensation to the Adjudicating Committee, the Self-Insured Review Panel, the Self-Insuring Employers Evaluation Board, or the Administrator, or his designee, as permitted by statute, and representation before any of these bodies, subject to the limitations set forth below;
8. Preparation of reports to employers dealing with the status of risks, status of reserves and actuarial analysis thereof;
9. Advise employers or injured workers to seek legal representation.

(B) In recognition that no person may practice law in Ohio who has not been admitted to the Bar by the Supreme Court of Ohio, and further recognizing that the practice of law is defined by the Ohio Supreme Court, non-lawyers

may not properly perform the following functions before the Industrial Commission or the Bureau of Workers' Compensation:

1. Examine or cross-examine the claimant or any witness, directly or indirectly;
2. Cite, file or interpret statutory or administrative provisions, administrative rulings or case law;
3. Make and give legal interpretations with respect to testimony, affidavits, medical evidence in the form of reports or testimony, or file any brief, memorandum, reconsideration or other pleading beyond the forms actually provided by the Commission or the Bureau;
4. Comment upon or give opinions with respect to the evidence, credibility of witnesses, the nature and weight of the evidence, or the legal significance of the contents of the claims file;
5. Provide legal advice to injured workers and employers;
6. Give or render legal opinions, or cite case law or statutes to injured workers and employers before, at or after the time when claims are initially certified or denied certification as valid claims by the employer upon the presentation of claim applications by employees;
7. Provide stand-alone representation at hearing by charging a fee specifically associated with such hearing representation without providing other services.

BE IT FURTHER RESOLVED that existing Memo R4 of the Hearing Officer Manual dated May 7, 2001 is hereby rescinded effective the date of the instant resolution.

Other Standard of Conduct Resolutions

R04-1-03
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December 21, 2004