

**John R. Kasich, Governor**  
Thomas H. Bainbridge, *Chairman*  
Jodie M. Taylor, *Member*  
Karen L. Gillmor, Ph.D., *Member*  
Tim Adams, *Executive Director*

**Meeting Minutes**

**October 13, 2016**

**11:00 A.M.**

**TYPE OF MEETING**

Commission Meeting

**ATTENDEES**

Chairman Thomas H. Bainbridge  
Commissioner Jodie M. Taylor  
Commissioner Karen L. Gillmor  
Tim Adams, Executive Director  
Tom Connor, Director of Hearing Services  
Rachael T. Rentas-Black, Chief Legal Counsel  
Jacob Bell, Director of Operations/Legislation  
Casaundra Johnson, Administrative Assistant  
Kim Ferkany, Administrative Assistant  
Debbie Fodey, Administrative Assistant  
Greg Hickman, Assistant Legal Counsel  
Jennifer Rohrbaugh, Assistant Legal Counsel

**CALL TO ORDER**

The meeting was called to order by Chairman Bainbridge.

**ACTION BY**

Mr. Adams called the roll.

**ROLL CALL**

Commissioner Gillmor	Present
Commissioner Taylor	Present
Chairman Bainbridge	Present

**OLD BUSINESS**

Chairman Bainbridge recommended tabling the approval of the meeting minutes from Commission Meetings held on 06/15/2016, 06/29/2016, and 08/03/2016 as all sets are still being revised. Chairman Bainbridge stated the meeting minutes could be approved at the next Commission Meeting.

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## **NEW BUSINESS**

### **Five Year Rule Review – 2017**

Rachael Rentas-Black stated there were two meetings with the Rules Advisory Group where the rules that are due for the five year review were presented and discussed with the group. Ms. Rentas-Black recommended to continue the following rules without amendment: Ohio Adm.Code 4121-3-09 “Conduct of hearings before the commission and its staff and district hearing officers”; Ohio Adm.Code 4121-3-13 “Disputed self-insuring employers’ claims”; Ohio Adm.Code 4121-3-19 “Form reference”; Ohio Adm.Code 4121-3-26 “Effect of rules”; Ohio Adm.Code 4121-3-32 “Temporary disability”; and Ohio Adm.Code 4121-15-10 “Standards of conduct for adjudicators.” Ms. Rentas-Black recommended amending Ohio Adm.Code 4121-3-10 “Lump sum payments for attorney’s fees for securing an award,” Ohio Adm.Code 4121-3-15 “Percentage of permanent partial disability,” and Ohio Adm.Code 4121-3-34 “Permanent total disability.” Commissioner Gillmor posed the question of whether the Commission should discuss and vote on the rules individually or in a group. Chairman Bainbridge answered to review and vote on each rule individually.

- **4121-3-09 Conduct of hearings before the commission and its staff and district hearing officers.**

Ms. Rentas-Black recommended to the Commission to continue without amendment Ohio Adm.Code 4121-3-09 “Conduct of hearings before the commission and its staff and district hearing officers.” Commissioner Taylor asked the status of the medical release issue with the Cleveland Clinic and other hospitals, and Tom Connor responded that the Bureau of Workers’ Compensation was not keen on revising its medical release. Mr. Connor added that Kettering Hospital has made changes in its handling of medical releases and staff brought this issue to the attention of the Rules Advisory Group; its suggestion is to discuss the issue with the Ohio Hospital Association. Commissioner Taylor asked whether there was anything the Commission could do to make the Cleveland Clinic comply and added that she is aware that the current procedure is to have the Attorney General’s office enforce the Commission’s subpoena. Commissioner Taylor asked Ms. Rentas-Black if this practice was working. Ms. Rentas-Black replied that she has been successful with enforcing the Commission’s subpoenas, but not without push-back. Commissioner Taylor indicated this is a problem for the hearing room because it causes delays.

## **MOTION**

Chairman Bainbridge moved that, after the review required pursuant to R.C. 106.03, Ohio Adm.Code 4121-3-09 “Conduct of hearings before the commission and its staff and district hearing officers” be continued without amendment.

Commissioner Taylor seconded the motion.

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**ACTION BY**

Mr. Adams called the roll.

**ROLL CALL**

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

- **4121-3-10 Lump sum payments for attorney’s fees for securing an award**

Ms. Rentas-Black recommended amending Ohio Adm.Code 4121-3-10 “Lump sum payments for attorney’s fees for securing an award.” Ms. Rentas-Black indicated that, during the meetings with the Rules Advisory Group, the self-insuring employers requested a provision be added to the rule that would provide notice to self-insuring employers that the Bureau of Workers’ Compensation could provide them the same assistance it provides to state-fund employers. Chairman Bainbridge asked if all members of the Rules Advisory Group agreed to this change. Ms. Rentas-Black responded all members agreed to this change.

**MOTION**

Chairman Bainbridge moved that, after the review required pursuant to R.C. 106.03, Ohio Adm.Code 4121-3-10 “Lump sum payments for attorney’s fees for securing an award” be originally filed for amendment as presented today.

Commissioner Taylor seconded the motion.

**ACTION BY**

Mr. Adams called the roll.

**ROLL CALL**

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

- **4121-3-13 Disputed self-insuring employers’ claims**

Ms. Rentas-Black recommended that Ohio Adm.Code 4121-3-13 “Disputed self-insuring employers’ claims” continue without amendment.

**MOTION**

Chairman Bainbridge moved that, after the review required pursuant to R.C. 106.03, Ohio Adm.Code 4121-3-13 “Disputed self-insuring employers’ claims” be continued without amendment.



Commissioner Taylor seconded the motion.

**ACTION BY**

Mr. Adams called the roll.

**ROLL CALL**

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

• **4121-3-15 Percentage of permanent partial disability**

Ms. Rentas-Black indicated that Ohio Adm.Code 4121-3-15 “Percentage of permanent partial disability” was previously amended in 2012. Ms. Rentas-Black recommended amending Ohio Adm.Code 4121-3-15 in order to correct an incorrect cross reference. Ms. Rentas-Black explained Ohio Adm.Code 4121-3-15(D)(3) currently refers to paragraph (A)(7) of Ohio Adm.Code 4121-3-09; however, the correct reference is (A)(8).

Commissioner Gillmor stated in paragraph (D) there is reference to “injured or disabled injured worker.” Commissioner Gillmor suggested that this should be changed to “injured worker” in order to remain consistent. Ms. Rentas-Black agreed.

**MOTION**

Chairman Bainbridge moved that, after the review required pursuant to R.C. 106.03, Ohio Adm.Code 4121-3-15 “Percentage of permanent partial disability” be originally filed for amendment as presented today, with the change suggested by Commissioner Gillmor.

Commissioner Taylor seconded the motion.

**ACTION BY**

Mr. Adams called the roll.

**ROLL CALL**

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

• **4121-3-19 Form reference**

Ms. Rentas-Black recommended that Ohio Adm.Code 4121-3-19 “Form reference” be filed with no changes.

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**MOTION**

Chairman Bainbridge moved that, after the review required pursuant to R.C. 106.03, Ohio Adm.Code 4121-3-19 “Form reference” be continued without amendment.

Commissioner Taylor seconded the motion.

**ACTION BY**

Mr. Adams called the roll.

**ROLL CALL**

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

- **4121-3-26 Effect of rules**

Ms. Rentas-Black recommended that Ohio Adm.Code 4121-3-26 “Effect of rules” be filed with no changes.

**MOTION**

Chairman Bainbridge moved that, after the review required pursuant to R.C. 106.03, Ohio Adm.Code 4121-3-26 “Effect of rules” be continued without amendment.

Commissioner Taylor seconded the motion.

**ACTION BY**

Mr. Adams called the roll.

**ROLL CALL**

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

- **4121-3-32 Temporary total disability**

Ms. Rentas-Black recommended retaining Ohio Adm.Code 4121-3-32 “Temporary total disability” with no changes.

Commissioner Gillmor stated (B)(2)(a) through (d) only references a “district hearing officer.” However, Commissioner Gillmor added, temporary total disability compensation can be terminated by a staff

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hearing officer, deputy, and the Commission. Commissioner Taylor agreed and stated instead of “district hearing officer” the rule should reference “hearing officer.” Commissioner Gillmor added that the rule should also include “deputy and the Commission.”

**MOTION**

Chairman Bainbridge moved that, after the review required pursuant to R.C. 106.03, Ohio Adm.Code 4121-3-26 “Effect of rules” be originally filed for amendment as presented today, with the changes suggested by Commissioner Gillmor.

Commissioner Taylor seconded the motion.

**ACTION BY**

Mr. Adams called the roll.

**ROLL CALL**

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

• **4121-3-34 Permanent total disability**

Ms. Rentas-Black recommended amending Ohio Adm.Code 4121-3-34 “Permanent total disability” to include the recommendation, made by the Rules Advisory Group, to send the IC-2 application for permanent total disability and any supporting documentation to both an employer and its representative. Ms. Rentas-Black explained that, when an IC-2 application for permanent total disability is filed, the current procedure is to send a copy of the application to the employer, if the employer is not represented, or the employer’s representative, but not both. Ms. Rentas-Black indicated the representatives for the self-insuring employers requested that the application be sent to both the employer and its representative. Commissioner Taylor stated this practice was done in the past and questioned why this practice changed. Mr. Connor confirmed that it was the practice in the past, but that the Commission previously decided to discontinue the practice. Mr. Connor further stated that he did not agree with the proposed amendment. Mr. Connor explained that this practice is inconsistent with the procedure in the discovery rule and that there is no duty to provide a copy to both the employer and its representative. Mr. Connor added there is no due process violation if the Commission does not provide a copy of the application to the employer and its representative and he urged the Commission not to change the rule. Ms. Rentas-Black stated she agreed with Mr. Connor, but indicated the suggestion was made by majority vote of the Rules Advisory Group. Mr. Connor and Ms. Rentas-Black both added that the Rules Advisory Group did not seem to be too concerned regarding this change. Mr. Connor added that he has not received any complaints in the past. Chairman Bainbridge asked the group what they thought would be best. Commissioner Taylor responded it would be best not to accept the proposed amendment. Mr. Connor pointed out that it was the Rules Advisory Group that recommended amending this rule in the past to cease providing a copy of the



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IC-2 application to both the employer and its representative. Mr. Connor added that the proposed change does not follow the reduction of paper policy.

Commissioner Gillmor stated that the rule makes reference to “permanent total disability” and “permanent and total disability.” Commissioner Gillmor stated that the proper reference is “permanent total disability.” Commissioner Gillmor recommended remaining consistent throughout the rule. Commissioner Gillmor provided a copy of the rule with her recommended changes to make the reference correct. Commissioner Taylor reviewed the changes and then Commissioner Taylor provided the proposed copy of the rule to Ms. Rentas-Black.

Commissioner Gillmor recommended changing the word “finding” in (C)(3)(b) to “award” since it is discussing compensation. Commissioner Taylor agreed with Commissioner Gillmor.

Commissioner Gillmor recommended that “self-insured” in (D)(1)(f) be changed to “self-insuring.” Chairman Bainbridge agreed with Commissioner Gillmor.

**MOTION**

Chairman Bainbridge moved that, after the review required pursuant to R.C. 106.03, Ohio Adm.Code 4121-3-34 “Permanent total disability” be originally filed for amendment as presented today, without the change suggested by the Rules Advisory Group and with the changes suggested by Commissioner Gillmor.

Commissioner Taylor seconded the motion.

**ACTION BY**

Mr. Adams called the roll.

**ROLL CALL**

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

- **4121-15-10 Standards of conduct for adjudicators**

Ms. Rentas-Black recommended that Ohio Adm.Code 4121-15-10 “Standards of conduct for adjudicators” be continued without amendment.

**MOTION**

Chairman Bainbridge moved that, after the review required pursuant to R.C. 106.03, Ohio Adm.Code 4121-15-10 “Standards of conduct for adjudicators” be continued without amendment. Chairman Bainbridge further moved that the next rule review date of the aforementioned rules be February 1, 2022.

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Commissioner Taylor seconded the motion.

**ACTION BY**

Mr. Adams called the roll.

**ROLL CALL**

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

**Ethics Rule: 4121-15-03 – Standards of Conduct**

Ms. Rentas-Black started the discussion with providing a history of Ohio Adm.Code 4121-15-03 “Standards of conduct.” Ms. Rentas-Black indicated currently there is a zero tolerance policy of accepting anything of value. Ms. Rentas-Black stated the question was raised that the policy may be too strict. Ms. Rentas-Black indicated the proposed amendment was presented to the Rules Advisory Group and there was not any feedback. Ms. Rentas-Black stated she added language that defined “substantial” and replaced the phrase “of monetary value” with the phrase “exceeding twenty-five dollars.” Commissioner Taylor asked Ms. Rentas-Black how she determined that twenty-five dollars would be the definition of “substantial.” Ms. Rentas-Black responded she researched the Ohio Revised Code to determine how other state agencies defined “things of substantial value” and was unable to find any such definition. Ms. Rentas-Black added that the Joint Legislative Ethics Committee (JLEC) provides a rule that all members and employees of the general assembly that are required to file a financial disclosure must disclose a gift from a legislative agent when the value is more than twenty-five dollars.

Commissioner Taylor questioned whether there is a similar ethics rule for judges and, if so, what is the amount. Commissioner Gillmor also questioned what the government offices are allowed to accept.

Mr. Adams stated that the JLEC rule allows for gifts from anyone in the amount of seventy-five dollars in the aggregate before it must be disclosed on a financial disclosure statement. Commissioner Taylor asked whether the Commission’s rule would be for one gift, or if it would be the aggregate of all gifts. Commissioner Taylor reasoned that, if she has drinks with an attorney friend once a week and the friend pays, that amount will be reached very quickly. Mr. Adams stated other staff could possibly have similar concerns. Chairman Bainbridge stated he wants to be consistent with the state, and the Commission should be blending in with what other agencies are doing.

Chairman Bainbridge added he wanted the Commission’s rule to be similar to the Bureau of Workers’ Compensation’s rule. Ms. Rentas-Black replied that the complementary Bureau of Worker’s Compensation rule is due for review next year. Ms. Rentas-Black added that she spoke with Mr. Sico at the Bureau of Workers’ Compensation and he indicated the Bureau would follow the Commission rule.



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Commissioner Taylor stated she would like to see similar rules applicable to judges for comparison. Commissioner Taylor added that the rule in its current state is too restrictive, but wants a better idea of whether the rule will be in the aggregate.

Mr. Adams proposed three recommendations to the Commission. First, Mr. Adams suggested to the Commission members that more investigation is needed on the proposed changes to Ohio Adm.Code 4121-15-03. Mr. Adams added that there should be a discussion with Paul Nick at the Ethics Commission and Tony Bledsoe at JLEC. Mr. Adams also suggested reaching out to the Department of Administrative Services as well as other similarly situated agencies to ascertain their policies. Commissioner Taylor added that those adjudicating hearings are attorneys and held to a high standard to maintain their license to practice law. In response, Mr. Adams added that perhaps the courts should also be contacted as well to determine if any comparable rules exist for judges. Chairman Bainbridge agreed, but pointed out there are other employees that this affects, for example Jacob Bell, that are not attorneys. Chairman Bainbridge added that he receives a lot of complaints regarding this rule and wanted to get the discussion started. Mr. Adams stated that, if it was acceptable to the Chairman, the staff will research the issues presented at the meeting and provide an answer to the Commission. All Commission Members agreed.

### **IC Hearing Timeframes**

Ms. Rentas-Black indicated that she will be presenting the information regarding the hearing timeframes for Commission hearings in place of Scott Greene since he was attending required ethics training. Ms. Rentas-Black stated that it appears the Commission is not complying with R.C. 4123.511 when one reviews the numbers compiled by Mr. Greene. However, Ms. Rentas-Black added that, because there is a low volume of hearings at the Commission Level, any claims that fall outside of the statutory timeframe skew the results. Ms. Rentas-Black noted that the current report contains two claims in which the Commission did not accept the proposed Deputy order and the matter had to be reset for another hearing before the full Commission. Ms. Rentas-Black pointed out that, if one removes the two outlier claims from the results, Commission hearings would actually fall within the statutory timeframe. Ms. Rentas-Black recommended that, as soon as it is determined that the Commission will not accept a Deputy order, the claim should be fast-tracked for scheduling of a hearing. Commissioner Taylor added that, if the claim is expedited and scheduled and the Commission grants a request for a continuance, the claim would not fall under the statutory hearing timeline. Chairman Bainbridge stated this was something he wanted to discuss and is pleased to hear that, with the exception of the outliers, the Commission is complying with its statutory timeframes.

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**ADJOURNMENT**

Chairman Bainbridge moved to adjourn.  
Commissioner Taylor seconded the motion.

**ACTION BY**

Mr. Adams called the roll.

**ROLL CALL**

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

Respectfully submitted,



Tim Adams