

September 12, 2016

Ronald Rascia
General Counsel
Illinois Workers' Compensation Commission
100 W. Randolph, Suite 8-200
Chicago, IL 60601

Dear Mr. Rascia:

On behalf of the members of the Illinois Chamber of Commerce, we offer the following comments on the proposed rule changes published in the July 29, 2016 edition of the Illinois Register:

Freedom of Information Act: 2 Ill. Admin. Code 2026 (Repeal)

Access to Records of the Workers' Compensation Commission: 2 Ill. Admin. Code 2026

We have no issues with these proposed changes and agree that they will assist the Commission in complying with the Illinois Freedom of Information Act.

Electronic Filing: 50 Ill. Admin. Code 9015

This is a good and much-needed change. However, clarification is required as to how the E-filing might actually be implemented. Proposed Section 9015.10 b) indicates that users must register with the Commission and that procedures will be put in place by the Chairman for pro se non-attorney litigants. One could interpret the proposed change to allow only attorneys to register individually to utilize the e-filing system. Clarification is recommended to state that prose, non-attorney litigants will receive instructions regarding the e-filing procedure such that non-attorney representatives from law firms also will be able to register as users. Administrative assistants typically handle the administrative filing on behalf of the attorneys.

Pre-Arbitration: 50 Ill. Admin. Code 9020

We concur with the change in 9020.10 b) that "any documents or written communication not submitted in compliance with this subsection constitutes an ex parte communication and therefore will be disregarded."

Changes to 9020.20 c) will provide employers a better understanding of circumstances of the alleged injury and should expedite the process.

We believe the changes in 9020.50 b) should be revised to allow a case venue to be moved that is convenient to the parties and not just the arbitrator. We propose the following change to the paragraph:

“Upon receipt of an Application for Adjustment of Claim, the Commission shall fix ~~a place for hearing and~~ a date and place for initial status before an Arbitrator of the Commission in accordance with the applicable Act. The place designated shall be a hearing site located in or nearest geographically to the vicinity in which the alleged accident or exposure occurred, subject to the Commissions discretion to balance Arbitrator case loads. When a case is moved to balance an arbitrator’s case load, a new venue shall be convenient to the parties. When ~~Where~~ the accident occurs ~~occurred~~ outside the State ~~state~~ of Illinois and the applicant resides in Illinois, the case shall be set at the hearing site geographically nearest to where the applicant resides. When ~~Where~~ the accident occurs outside of Illinois and the applicant resides outside of Illinois, ~~then~~ the case shall be set at a hearing site most convenient to the parties.”

Arbitration: 50 Ill. Admin. Code 9030

9030.10- We support the assignment of multiple claims to the same Arbitrator and agree that the motions to consolidate should be heard by the arbitrator assigned to the earliest claims. However, in subsection d), we recommend an additional sentence be added to clarify that Arbitrators cannot reject motions to consolidate if they meet the normal criteria. To avoid arbitrator shopping, we prefer that a refiled case be reassigned to the previous arbitrator. We recommend the paragraph read as follows:

“In the event a Petitioner has an Application for Adjustment of Claim pending and files one or more Applications for Adjustment of Claim against the same Respondent, or against different Respondents alleging accidental injuries to the same part of the body, subsequent cases shall, on motion of any party, be assigned to the Arbitrator of the case filed first, unless there is a showing of good cause by the objecting party. Motions to consolidate that meet the sufficient criteria set forth above shall not be rejected. If a case is dismissed or otherwise closed and the Petitioner files an Application for Adjustment of Claim relating to the same accident, the case will be assigned to the Arbitrator assigned to the first case filed involving that accident.”

We are concerned that the changes to 9030.20 (c)1 may allow a petitioner attorney to complete their stipulation sheet any time up to the time of the hearing and thus not allow a respondent to adequately prepare for what is

being claimed on the stipulation sheet. We recommend the following be added:

~~“c)3)~~ The motions for trial dates shall be filed and heard pursuant to 50 Ill. Adm. Code 9020.70 and 9020.60.

1) The Arbitrator shall set the matter for trial on a date certain if:

A) ~~if~~ the Arbitrator determines that proper and timely ~~fifteen (15)~~ days notice was given of the motion for trial date to the opposing party;

B) the opposing party was provided with a completed Request for Hearing; ~~said~~

C) the case appears on the monthly status call on the date the motion is heard, or if the case is not on the status call, the Arbitrator has determined that the case falls within the exceptions in 50 Ill. Adm. Code 9020.60(b)(2)(B); ~~and~~

D) the Arbitrator determines that the matter should proceed to trial; ~~the Arbitrator shall set the matter for trial on a date certain.~~

When an addition or change is made to the stipulations, a respondent shall be provided a reasonable time to respond to the addition or change. The moving party must complete their portion of the Request for Hearing Form (a/k/a Stipulation Sheet) and forward to the opposing party at the same time and accompanying the Notice of Motion Requesting a hearing.”

9030.20 d): We question the merit of extending the time to 9:30 as we believe such a change will only encourage chronically late attorneys to appear even later, causing a greater inconvenience to the on-time party. One of the more common complaints we receive about hearing calls is the inconsideration of parties to show up on time or even show up. When employers have employees attend a hearing as witnesses, it can be disruptive and adds costs to an employer. This is especially frustrating when an arbitrator fails to recognize the value of time of any witness to have to attend an additional hearing(s) due to the tardiness or lack of appearing by the other party.

Review: 50 Ill. Admin. Code 9040

We support the proposed changes.

Oral Arguments: 50 Ill. Admin. Code 9050

We support the proposed changes.

Judicial Review: 50 Ill. Admin. Code 9060

We support the proposed changes.

Settlement Contracts & Lump Sum Petitions: 50 Ill. Admin. Code 9070

We support the proposed changes.

Disciplining of Attorneys; Agents: 0 ILL. Admin. Code 9090

We support the proposed changes.

Insurance Regulation: 50 Ill. Admin. Code 9100

We support the proposed changes.

Miscellaneous: 50 Ill. Admin. Code 9110

We support the proposed changes.

We appreciate consideration of our comments and will be pleased to discuss any of our comments or suggestions for change.

Sincerely,

Jay Dee F. Shattuck, CAE
Executive Director

Cc: Todd Maisch, President Illinois Chamber of Commerce