



Workers' Compensation Report

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Judicial Reviews in the New World of eFiling

Judicial reviews in workers' compensation cases have always presented some level of difficulty and confusion for practitioners. For most on the defense side, these difficulties have largely centered on the appeal or surety bond. As most practitioners know, section 19(f) of the Workers' Compensation Act (Act) provides that "[n]o ... summons shall issue unless the one against whom the Commission shall have rendered an award for the payment of money shall upon the filing of his written request for such summons file with the clerk of the court a bond conditioned that if he shall not successfully prosecute the review, he will pay the award and the costs of the proceedings in the courts." 820 ILCS 305/19(f). Questions such as who can sign the bond for the employer, how to obtain an employer's signature when the employer's business is no longer in business or in bankruptcy, and what surety is appropriate, have long plagued counsel. All these situations are made even more difficult by the strict 20-day filing period for judicial reviews. While some of these questions have been answered over time, others remain an open issue even today.

The recent adoption of electronic filing (eFiling) in Illinois has introduced yet another potential obstacle for defense counsel. On its face, the ability to instantly file a judicial review proceeding, without the need to file in person at the circuit court or to rely on the recently approved mailbox rule (see *Gruszeczka v. Illinois Workers' Compensation Comm'n*, 2013 IL 114212), seems like a blessing. But the new eFiling requirements can actually make matters more complex, especially for employers who must file an appeal bond.

Days of Old

In pre-electronic filing days, counsel would often appear in front of the clerk and present judicial review papers—the request to commence proceedings, the bond, three or more Rule 292 summonses, a file-stamped copy of the notice of intent (Form IC-25), and a certificate of mailing. In addition, counsel would present a check consisting of the filing fee and the cost of the certified mail, return receipt requested. As anyone who has practiced this knows, many circuit court clerks were unfamiliar with judicial reviews. Others were uncertain of the appropriate designation of the case—is it an "LM" filing, an "L" filing, or "MR"? While seemingly trivial, this designation can often change the filing fee. A call prior to going to the clerk's office might yield one answer, and the clerk in front of whom you were standing, now insisted it was another. In days past, this could be corrected by a credit card or handing the clerk some additional cash for the shortfall.

In other cases, due to the sparse number of judicial review filings in that county, the clerks would ask questions: what am I supposed to do with this pleading? Do I file this bond? Are we supposed to file-stamp the bond and sign it? In

short, many circumstances arose where the presence of the attorney standing in front of the clerk solved the problems and answered the questions.

The New Frontier

Today, eFiling has changed our filing practices for judicial reviews. Is this beneficial or problematic?

To begin with the obvious, the attorney is no longer present to guide the clerk through the filing process. This is problematic because many clerks' offices are understaffed and do not continuously review electronic filings once made. Moreover, some courts do not get back to the attorney regarding a deficiency for days. Thus, defects normally cured when the attorney filed in person are not so quickly remedied. Additionally, and perhaps most problematic, many of the circuit courts are taking the position that a filing not approved due to a deficiency is not considered filed on the date transmitted, but on the date the pleading is finally accepted. This can be a *significant* issue if the date transmitted to the circuit court is the date the judicial review is due. As noted earlier, ensuring tender of the appropriate fees can be important in those counties that are refusing to file a pleading and considering it "deficient" where excessive or insufficient fees are tendered.

Another area of concern with eFiling is the requirement that counsel "*exhibit* to the clerk of the Circuit Court proof of filing with the Commission of the notice of the intent to file for review in the Circuit Court or an affidavit of the attorney setting forth that notice of intent to file for review in the Circuit Court has been given in writing to the Secretary or Assistant Secretary of the Commission." 820 ILCS 305/19(f)(1)(emphasis added). To ensure that there is no question from the record that this step has been accomplished, the only safe way is to *actually file* with the circuit court a Commission-file-stamped copy of the Notice of Intent or affidavit. Otherwise, there is no way for the reviewing court to know whether this provision has been complied with by the party seeking review.

Then there is the bond. In a recent appeal, while looking through the circuit court's local rules, we determined that the local circuit rules required that a surety have a copy of its certification from the State of Illinois stating that it was authorized to issue surety bonds in Illinois on file. This sort of local rule is not uncommon—for example, similar rules can be found in the Second (Rule 11(b)) and Tenth Judicial Circuits (Rule 37). Cook, DuPage, and Lake County also have special requirements for filing surety bonds and for those who sign them. A simple phone call to the clerk's office will not always result in a clear answer to the question, "is my surety authorized to issue surety bonds in your circuit and is there a certificate on file?" Other bond issues include whether to file the original bond or an electronic copy. In the "good old days," we presented the original bond, which the circuit court kept during the duration of the appeal and, upon an order of release, dismissed and returned to the employer. Today, many counties proceed differently.

Practical Solutions

So what can be done to help protect your employer when filing a judicial review in today's eFiling world? The best answer is to eFile as early as possible to increase the window you have to correct any deficiency. Of course, given the 20-day period for filing a judicial review, this is easier said than done. Another related solution is to have conversations with your client before the Commission's decision is issued, so when it does arrive and you do not prevail, you are ready to move forward on the bond, obtain your surety, and eFile as soon as possible.

Addressing the electronic filing itself, be sure to call the circuit court clerk early to confirm the following matters:

- Is the section 19(f) judicial review an “LM,” “L,” or “MR” filing?
- Given the type of filing, what is the case filing fee? How does the court deal with overpayment or underpayment when filing electronically?
- What are the charges for mailing certified mail? How are these paid electronically in your county? Are there other mail or postage costs and how should those be paid?
- How does the county intend to handle the original surety bond? Is counsel to file an electronic version and retain the original, or as in some counties, is counsel to file the electronic copy and then separately submit the original via regular mail?
- If the circuit court maintains a local rule requiring a certificate of authority to be on file, does my intended surety have such a certificate on file? If not, can I file that certificate with my bond as an exhibit?

Each of these points can be followed up in an explanatory letter eFiled with the pleadings. And to be sure, it does not hurt to spell out exactly what you are requesting the clerk’s office to do. Something like this often works:

The employer has eFiled a judicial review of the Commission’s decision to this court under 820 ILCS 305/19(f). Please eFile all of the review documents and in particular, sign the surety bond and place the court seal on the bond. Please issue the individual Rule 292 summons to each of the noted party defendants and include in that mailing a copy of the written request to commence proceedings, surety bond, and notice of intent to review. Please note that the notice of intent to review has already been file-stamped by the Commission. It will need to be eFiled by this court as well.

Also note we have tendered a filing fee of \$___ based on an MR filing, which we were advised by a clerk of this court is the appropriate designation for a section 19(f) judicial review. We have also tendered payment for the cost of certified mail, return receipt requested, which we were advised is \$___ per mailing.

Finally, we have tendered a copy of the surety’s certificate of authorization stating that they have been approved by the State of Illinois to issue surety bonds in this State, in compliance with your local circuit rule ___.

If you have any questions, please contact us immediately.

This should answer a number of questions for court clerks and help replace the old days of counsel standing before the clerk.

As a further step in perfecting the judicial review, given the new eFiling requirements, “best practices” should have counsel file a “Notice of eFiling” pleading in addition to those documents required under section 19(f), which states that on a specific date, “we eFiled the following documents in the circuit court in support of our judicial review.” Then list all documents eFiled. You should then send a courtesy copy of the Notice of Filing to counsel of record in the Commission proceedings. Recall, the judicial review is a new pleading matter, and until summons is issued and an entry of appearance filed by the opposing counsel, no attorneys are listed in the court eFile system on the case. Therefore opposing counsel will be unaware of your eFiling until the summons is served.

Conclusion

Even if you follow all of the suggestions above and eFile well in advance of the deadline, call the court clerk after you eFile and check on the status until you have received word that the filing has been accepted. Remember, the circuit courts are not operating in the same manner on this issue as are the appellate courts—the appellate court issues a deficiency notice and allows time for correction before refusing to file the brief. This call to the court (and documentation of it) is important, if anything, for you to create your own paper trail of doing as much as possible to ensure a timely filing.

These tips will assist you in continuing to navigate the myriad of obstacles that all parties, but especially employers, face when filing a judicial review. In early 2016, draft legislation was presented to the Illinois General Assembly that offered a significant easing of the harshness of section 19(f) and provided counsel on both sides of the bar more flexibility in their filings and a clearer understanding of what must be done to perfect the review. See, S.B. 2942. Unfortunately, that non-partisan legislation went nowhere. Perhaps a renewed legislative offering, taking into account the recent eFiling mandates, can be enacted.

In the meantime, eFiling of judicial review documents can help us in our practice. But, being aware of and planning for those issues that can and will arise, will help reduce the stress of these actions and help ensure that you never receive the dreaded “motion to dismiss for lack of jurisdiction.”

About the Authors

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