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association®


# **Workers' Compensation Retrospective- 1982-2019**

**William L.S. Ross, Esq.**



CALFEE

Cleveland Cincinnati Columbus Washington, D.C.

# "Workers' Compensation Retrospective: 1982-2018"



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Akron Bar Association  
Las Vegas, Nevada  
Date 5/17/19

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**The 1980s  
("The Way it Was")**

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- > Appearances of Impropriety/Undue Familiarity
- > Ex Parte Communications
- > Late Evidence at the Hearing Table
- > Regional Boards: "Affirm and Deny"
- > *Blankenship v Cincinnati Milacron Chemicals, Inc.*  
69 Ohio St. 2d 608 (1982)



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**The 1990s  
("The Era of Change")**

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- > MCOs and Conflicts of Interest
- > Group Rating and Who is Your Client?
- > New Three Member Commission and a New Building!
- > Issue II – an Anti-Lawyer Bill?
- > Workers' Compensation Specialization Certification
- > *Fyffe v Jenos, Inc.* 59 Ohio St. 3d 115 (1991)



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**The 2000s**  
**("A New Landscape")**

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- > Unauthorized Practice of Law
  - *Cleveland Bar Association v CompManagement, Inc.* 104 Ohio St. 3d 168 (2004)
  - IC Resolutions Nos. R04-1-01 & R04-1-03
- > "Coin Gate" and New Ethical Rules

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**The 2000s**  
**("A New Landscape" (cont'))**

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- > Demise of Individual Claim Values
  - *San Allen/Rate reforms*
  - Sysco Fund
  - C-92s and C-92As
  - BWC Settlement Values
- > *Subrogation and MSAs*
- > *Kaminski v. Metal & Wire Prods. Co., 125 Ohio St. 3d 250 (2010)*



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**Professionalism Observations**  
**(1982-2018)**

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- > Communications and Civility with Opposing Counsel
- > Settlement versus Trial
- > Members of the Bar as "Officers of the Court"
- > Reputation is Everything
- > Value of Continuing Legal Education (beyond CLE hour requirements)

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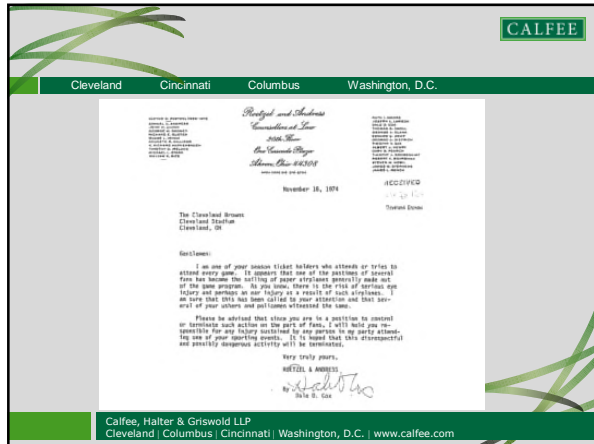
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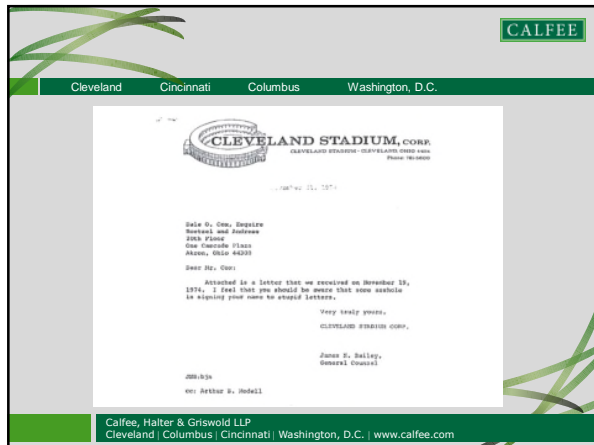
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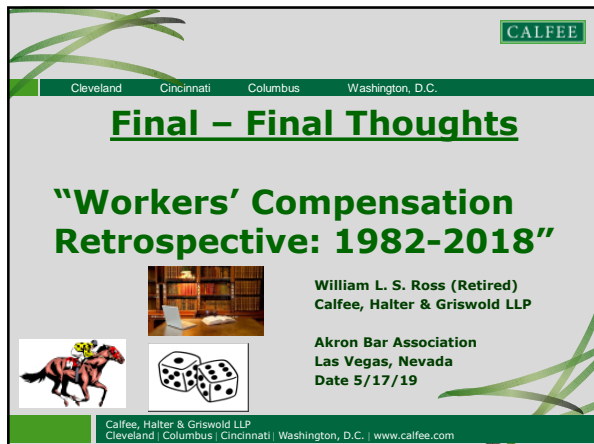
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**Standards of Conduct**

**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

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

Standards of Conduct of Non-Attorneys before the Commission and the Bureau  
December 21, 2004

**Standards of Conduct**

**R04-1-03**

**Standards of Conduct of Non-Attorneys before the Commission and the Bureau  
December 21, 2004**

WHEREAS, the Industrial Commission issued Resolution R04-1-01 dated June 2, 2004 that set forth interim standards for conduct before the Industrial Commission and the Bureau of Workers' Compensation by third party administrators, by union representatives, and by employees of an employer until permanent guidelines were established by the Ohio Supreme Court; and

WHEREAS, on December 15, 2004, the Supreme Court of Ohio issued a decision in the case of *Cleveland Bar Assn. v. CompManagement, Inc.*, 104 Ohio St.3d 168, 2004-Ohio-6506, and the syllabus of the decision states:

"Nonlawyers who appear and practice in a representative capacity before the Industrial Commission and the Bureau of Workers' Compensation in conformity to Industrial Commission Resolution No. R04-1-01 are not engaged in the unauthorized practice of law."

WHEREAS, Ohio Administrative Code Rule 4121-2-01(A)(1) requires that any attorney, agent or representative who practices before the Industrial Commission or the Bureau of Workers' Compensation shall make themselves competent to handle such matters by becoming familiar with the statutes, decisions of the courts, and rules of the Bureau of Workers' Compensation and Industrial 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 of Workers' Compensation or the Industrial 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 Industrial Commission and Bureau of Workers' Compensation are in general to conduct themselves in accordance with the Code of Professional Responsibility as adopted by the Supreme Court of Ohio; and

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

WHEREAS, in light of the December 15, 2004 decision in the *Cleveland Bar Assn. v. CompManagement, Inc.*, 104 Ohio St.3d 168, 2004-Ohio-6506, the Industrial Commission desires that the standards of conduct for third party administrators, union representatives, or employees of employers who appear before the Industrial Commission and the Bureau of Workers' Compensation in a representative capacity, that are set forth in Resolution R04-1-01, be established on a permanent basis.

THEREFORE BE IT RESOLVED that the standards of conduct for third party administrators, union representatives, or employees of employers who appear before the Industrial Commission and the Bureau of Workers' Compensation in a representative capacity, that are set forth in Resolution R04-1-01, be established on a permanent basis.

**Other Standard of Conduct Resolutions**

**R04-1-01**

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



