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MEETING NOTICE:

The Advisory Council on Workers' Compensation and Occupational Disease Disablement will meet 2:30 p.m., Thursday, March 14, at 2410 Centre SE, Albuquerque, NM 87106. See <https://workerscomp.nm.gov/Advisory-Council> for more information..

HM83 Task Force Preparing Final Report for Advisory Council

By Diana Sandoval-Tapia

The Workers' Compensation Administration Attorney Fees Task Force (the Task Force) – the legislatively created task force that has been studying the statutorily set cap on fees collected by attorneys in workers' compensation cases (§52-1-54(I)) – has been working since May 2023 and will soon deliver its report to the Advisory Council on Workers' Compensation and Occupational Disease Disablement by the April 30, 2024 deadline.

During the 2023 legislative session, Rep. Pamela Herndon (D-Bernalillo) introduced a bill with several key provisions. House Bill 455 would have: (1) raised the current attorney fee cap maximum of \$22,500 to a new maximum of \$32,500; (2) raised the employer-paid discovery advance to a worker from the current maximum of \$3,000 to a new maximum of \$10,000; and (3) provided new discretionary authority to workers' compensation judges to exceed the proposed \$32,500 increased fee cap by up to an additional \$10,000 where "good cause" is present to justify a higher attorney fee, such as when the worker's case involves injuries that are "serious;" involve a permanent and total disability; or involve additional litigation after the \$32,500 fee cap had been reached, including when said case is appealed.

While HB 455 died in the House Committee on Labor, Veterans and Military Affairs, it spawned interest in further study, which led Rep. Herndon to then introduce House Memorial 83 (HM83), which essentially created a task force to study the issues presented in the original bill. HM83 charged the director of the Workers' Compensation Administration (WCA) to convene a task force that included two workers' attorneys, two employers' at-

torneys, two insurer representatives, two employer representatives, two labor union representatives, and two injured workers whose claims had been resolved.

With the help of WCA staff, the Task Force issued both a data call to commercial insurers and self-insured entities, and a survey of workers' compensation attorneys. The Task Force collected data on nearly 100,000 claims from 2013-2022. WCA staff then began the filtering and cleaning process to assure validity of the data by matching information received against its claims database before proceeding toward an analysis of claims data received. Claims that could not be reliably matched, or that were from outside of the determined time frame for the study were scrubbed, resulting in a sample of nearly 5,400 claims.

The attorney survey was conducted between October and November 2023, with the goal of examining key factors such as the impact of attorney fees on stakeholders' ability to obtain legal representations, as well as to identify other issues that may have been overlooked in other analyses. The survey sought to gather opinions relating to six main issues, including professional characteristics; attorney fee cap experience among individual respondents; attorney sentiment regarding the fee cap, judicial discretion, access to justice and discovery advances. The survey was emailed to 272 attorneys with a case filed with the WCA's Clerk of Court within the last three years, which then resulted in 74 valid responses. Roughly 27 percent of total, active attorneys submitted a response to the survey, with two-thirds of those indicating a caseload of 11 or more.

WCA Welcomes Back Ned Fuller to its Adjudication Bureau

New Mexico Governor Michelle Lujan Grisham has appointed Ned S. Fuller to serve as a workers' compensation judge for the Workers' Compensation Administration (WCA). Fuller will assume his position on February 17, 2024, filling a vacancy created by the departure of Reginald Woodard in October 2023.

Fuller is very familiar with the workers' compensation system and community in New Mexico having previously served as an assistant director from March 2000 to March 2001, and WCA judge from March 2001 to December 2003, then returning to the WCA as Director in January 2011. Fuller left the WCA Director's Office in December 2013 to work at New

Mexico General Services Department (GSD), first as litigation bureau chief of GSD's Risk Management Division, then as acting cabinet secretary until December 2018. More recently, Fuller has served as a deputy district attorney for New Mexico's 11th Judicial District in Farmington, N.M.

"I'm excited to return," Fuller said. "I enjoyed my time before and feel like it's a good match. I look forward to coming back and working with the workers' comp community."

Fuller is married to Julie Jensen Fuller. They have four daughters, six granddaughters and one grandson between the ages of 5 years and 1 month, all scattered across the U.S., from Massachusetts to Hawaii.



Ned Fuller

*Workers' Compensation Administration
Director Robert E. Doucette, Jr., would like
to invite the workers' compensation
community to witness the swearing-in
of the WCA's newest judge, Ned S. Fuller
at 3 p.m., Monday, February 19, 2024,
at the WCA, 2410 Centre Ave. SE,
Albuquerque, NM 87106.*



NM Workers' Comp. Adm. Quarterly Bulletin

Robert E. Doucette, Jr., Director
Diana Sandoval-Tapia, Public Information Officer

The Bulletin is electronically published in January, April, July and October by the Public Information Office of the New Mexico Workers' Compensation Administration. The Bulletin is available free of charge. Send changes of e-mail address and requests to receive the Bulletin to Diana Sandoval-Tapia in the Public Information Office, New Workers' Compensation Administration, WCA-PIO@state.nm.us. Suggestions for articles are welcome. Call Diana Sandoval-Tapia at (505) 841-6052. Recent issues of the Quarterly Bulletin can be viewed on the Internet at <https://workerscomp.nm.gov/NMWCA-Publications>.

WCA Releases Tentative Timeline for 2024 Rules Promulgation

The Workers' Compensation Administration (WCA) will promulgate rule changes again this year, with any new rules becoming effective January 1, 2025. The WCA plans to follow the same process as in 2023, seeking input and suggestions from the workers' compensation community both in proposing rule changes and during the consideration process.

Look for more information on this in the coming weeks/months, via email communications and website postings.

What is the Advisory Council?

The Advisory Council on Workers' Compensation and Occupational Disease Disablement is a task force created by statute, comprised of six members, three representing workers and three representing employers. The primary role of the Council is to advise the governor and legislature on the status of the workers' compensation system in New Mexico. The Advisory Council is required to meet at least twice annually. Scheduled meetings of the Council are announced on the WCA website, <https://www.workerscomp.nm.gov/Advisory-Council>.

Paul Martinez Named Manager of the Quarter

Safety Bureau Chief Paul Martinez was named the manager of the quarter for the last quarter of 2023. Martinez has been employed with the Workers' Compensation Administration since March 2017, originally hired as a safety consultant, but was promoted to program manager just five months later.

Previously, Martinez held a variety of positions with a focus on workplace safety. Originally from San Diego, he worked as a safety administrator for 17 years at a community college there. Upon relocated to New Mexico, Martinez worked for Bernalillo County's Safety Department for four years. He has also worked as a safety and risk manager for Sandoval County, as well as a safety and loss prevention manager for the City of Albuquerque.

There was a brief return to San Diego, said Martinez. "My Family and I were thinking of relocating back to San Diego, so I accepted a position with the County of San Diego as a Safety Administrator and worked there for two years. We decided not to relocate back to San Diego, so I resigned and began my employment with WCA in 2017."

Recently, the Safety Bureau's

Risk Reduction Program (RRP) was rejuvenated upon direction of WCA Director Robert Doucette. Martinez and his team established a comprehensive risk assessment process to identify employers with a high accident frequency, experience modifier, or severity of injuries caused by accidents. This new risk assessment process helps identify those employers that would benefit by being placed on the Risk Reduction Program.

Martinez' nominator wrote, "Paul has supported management directives and made great strides in reviving and improving the Risk Reduction Program. His monthly RRP roundtable meetings have developed into a great networking/training tool for his staff, and it's a pleasure to see the safety consultants interact as they evaluate potential candidates. Paul has found a great balance between leading the meeting and giving his staff room to participate and speak for themselves. Under Paul, the safety program has really thrived."

"The RRP's objective is to assist employers with injury and illness prevention, hazard identification, mitigation strategies, implementation



Safety Bureau Chief Paul Martinez

of hazards and control measures to reduce work injuries and illnesses in the workplace," Martinez explained. "Although employers use various strategies and approaches to deal with risk, some eliminate them, and others can only minimize or reduce risk in the workplace."

"Paul's contributions and dedication have significantly impacted the Safety Bureau and our Agency's ability to reach out to so many businesses regarding safety matters. I extend my appreciation and congratulations to Paul for his hard work and commitment," said Martinez' supervisor, Heather Jordan.

"It's an honor to be recognized as Manager of Quarter by our WCA Team and it's deeply appreciated," Martinez said.

Teanna Neddo of the WCA's Santa Fe Field Office Named Employee of the Quarter

Business Operations Specialist Teanna Neddo was voted Employee of the Quarter for the final quarter of 2023.

Neddo's nominator wrote, "Teanna has been an enthusiastic addition to the WCA since day one. She was eager to become certified to monitor court proceedings. She has become one of our most reliable monitors, who is happy to help out when scheduled, or in an emergency. She is reliable, professional and friendly with customers and coworkers. Additionally, she represented the WCA well at the Governor's 'Trunk or Treat' event in October, and she was a hit with the kids. The space alien she made for the event

has been residing in the Director's office ever since. She is interested in learning, and joins in meetings and conversations with meaningful contributions. Teanna has a ton of potential, and I'm glad to see her grow in her position with the WCA."

Neddo joined the WCA's Santa Fe office in September 2022. Prior to that, she worked in retail management.

"I want to say my sincere thanks to all the people that have helped me to get to this point. Since I have been working for the WCA I have enjoyed coming to work, excited for all the new information that I am going to learn everyday. Thank you for selecting me for employee of the quarter," Neddo said.



Teanna Neddo, Business Operations Specialist, Santa Fe Field Office

"Teanna has grown so much in the short time she has been here," said Santa Fe Office Manager Charlene Cde Baca. "She is a great asset to our office, always ensuring the needs of the office are taken care of. I am proud of her and the fact that others notice her greatness as well."

HM83 Task Force Preparing Final Report for Advisory Council

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The WCA includes on its website a page dedicated to the Attorney Fees Task Force, which includes meeting agendas and notes as well as the attorney survey and results of the data call. For more specific information than what is reported here, visit: <https://workerscomp.nm.gov/Attorney-Fee-Cap-Task-Force>

Does the attorney fee cap violate principles of “separation of powers?”

Meanwhile, two consolidated workers’ compensation cases are pending before the New Mexico Supreme Court revolving around a challenge by workers’ attorneys that the \$22,500 fee cap set in Section 52-1-54(I) of the New Mexico Workers’ Compensation Act (the Act) is unconstitutional in that it violates the principles of “separation of powers.” The workers’ attorneys argue that the New Mexico Constitution gives the New Mexico Supreme Court “exclusive power to regulate the practice of law,” and that the cap set in the Act, therefore is unconstitutional.

Employers who oppose this claim counter with an argument that the 1986 constitutional amendment that essen-

tially created the Workers’ Compensation Administration to adjudicate the work-related injury disputes between workers’ and employers moved those disputes into the executive branch of government, making the New Mexico Supreme Court’s “superintending control over all inferior courts,” inapplicable. Employers further contend that the fee cap provision is substantive, rather than procedural; therefore it is not in conflict with any high court rule.

“Changes to workers’ compensation laws can be difficult given that stakeholders have different opinions of how existing statutory language should be changed,” said WCA General Counsel Michael Holt, the Director’s designee to the task force. “A task force created

by a house memorial provides early stakeholder involvement into potential statutory changes, and this increases the likelihood of an agreed bill that the legislature approves. HM 83 also involves the Advisory Council, which will play an important role once the task force work is complete.”

As of this writing, the New Mexico Supreme Court has not issued a ruling on this matter, and it is doubtful that a ruling will be issued before the April 30 deadline for the Task Force report. Nonetheless, the Task Force’s work and report should prove helpful in further discussion and deliberations, especially if a future legislature must undertake a “fix” in the event the fee cap is ruled unconstitutional.

REMINDER TO INSURERS: AER SUBMISSIONS DUE

Annual Expenditure Reports (AER) for 2023 data are due by February 15, 2024. Reports can be filed at <https://workerscomp.nm.gov/WCA-eServices>. New users can register for an account. Call Charles Cordova at (505) 841-6896 or email him with questions at Charles.Cordova@wca.nm.gov.

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