

# FROM THE CHAIRMAN

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PRESENTED BY ROBERT CORNEJO

# OVERVIEW

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- Public Member – Term Ends Summer 2024 -Robert Cornejo
  - Owned private law practice – Former legislator
- Employer Member – Term Ends Summer 2022 – Reid Forrester
  - Former small business owner – Wide ranging background in private and public sector
- Employee Member – Term Ends Summer 2026 – Shalonn “Kiki” Curls
  - Worked in real estate development – Former legislator

# NEW LOOK AT THE COMMISSION

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- Currently only 13 employees including the Commissioners
- April 2021 – New Chief Legal Counsel – Glen Webb
- July 2021 – New Commission Secretary – Karla Hogg
- First half of 2021 three different positions retired and another moved to Montana for family reasons

# KEEPING UP ON THE WORK

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- FY 2020 – July 1, 2019 – June 30, 2020 - Average number of Work Comp “Cases Submitted” to LIRC at the end of each month was 58.3
- End of May 2021 – Only 25 Work Comp “Cases Submitted” to LIRC
- Still had to handle fiscal notes for legislature and prevailing wage objections during first part of 2021
- Average age of unemployment cases has gone up but is still within the federal guidelines

# MORE “BY THE NUMBERS” AT THE LIRC

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- Eleven months in to FY 21
- Final Award Allowing Compensation
  - Affirm = 24
  - Modify = 8
  - Reverse = 2
- Final Award Denying Compensation
  - Affirm = 33
  - Modify = 0
  - Reverse = 5

# DWC MODERNIZATION PROJECT

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- DWC is working towards modernization and LIRC has been a part of that conversation from the first day
- Senate Bill 303 was Truly Agreed and Finally Passed which adds language to very end of 287.480.1 that “the commission may allow filing of applications for review, briefs, motions, and other requests for relief with the commission by electronic means, in such manner as the commission may, by regulation, prescribe.”
- Currently awaiting Governor’s signature

# LIRC REGULATIONS

## 8 C.S.R. 20

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- Title 8 Code of State Regulations (C.S.R.) – Labor and Industrial Relations
- Division 20 – Labor and Industrial Relations Commission
- Chapter 3 – Division of Workers Compensation matters in front of LIRC
- Please read these as they are very important and the LIRC routinely sees non-compliance
- In addition, check back every year as more changes will be coming as the DWC modernization project progresses and/or new Commissioners rotate on

## 8 C.S.R. 20-3.030(3)(C)

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- (C) Parties requesting an extension of time to file a brief, an extension of page length, or any other extraordinary request pertaining to briefing, may make such request to the commission, in writing, prior to the last date for filing their brief, such request to include the following:
  - 1. The number of additional days, pages, or other specific relief requested;
  - 2. A certification that a copy of the request has been served to all opposing parties upon the same date and time, and via the same means, that such request is sent to the commission;
  - 3. An indication whether the requesting party has conferred with opposing parties regarding the request, and if not, why;
  - 4. An indication whether opposing parties have registered any objection to the request; and
  - 5. The specific facts or circumstances motivating the request.



# BREAKING IT DOWN TO SIMPLER TERMS

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- Do NOT wait until the day your brief is due – file your request beforehand
- State what you want – request a specific number of days or pages
- Why do you want it – do NOT give boilerplate language – give at least some specifics (vacation, upcoming trial on separate case, etc.)
- Have you contacted the other party and what was the response – i.e. show some professional courtesy
- Serve the request to opposing party in same manner as sending to LIRC – see point above about professional courtesy

# GENERAL GUIDELINES FOR REQUESTS

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- For requests for extension of time – Commissioners have given general guidelines to the Commission Secretary to handle most requests
  - If you did everything in the previous slide and your request is “reasonable”, then the motion will be granted.
  - “Reasonable” means roughly the same amount of time you were given to file your brief (i.e. you have 30 days to file your brief and you request an additional 30 days or less) or longer requests with more specifics (i.e. attorney has a “personal medical procedure scheduled”)
- For requests for page extensions – every single request goes straight to the Commissioners for a vote

## 8 C.S.R. 20-3.010(5)(H)

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- **(H)** In cases where there is a prior award of benefits or a duly approved settlement that has finally resolved the parties' respective rights and duties with regard to periodic benefits payable in the claim, the commission cannot consider a joint motion for payment of a lump sum as a compromise settlement under section 287.390, RSMo, unless the parties are able to identify, in their motion, a legitimate, presently justiciable dispute, over which the commission would have jurisdiction. In the absence of such dispute, and where the parties desire merely to close out or redeem the remaining obligations under the award or settlement via payment of a lump sum, the commission will treat the motion as one for commutation pursuant to section 287.530, RSMo.

# DIFFERENCES BETWEEN SECTIONS 390 AND 530

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- 287.390 is for compromise settlements and sets a lower standard
  - Must be in accordance with the rights of the parties. For example, cannot make employee waive the right to attempt to reopen the claim
  - No undue influence or fraud
  - Employee fully understands his/her rights and benefits
  - Voluntarily agrees to accept the terms of the agreement
- 287.530 is for motions for commutations and sets a higher standard
  - Payment must be equal to the commutable amount of future installments due
  - Best interests of the employee (or dependents of a deceased employee) or avoid undue hardship/expense
  - In determining previous point, must have “unusual circumstances” – Current LIRC, future medical always qualifies as “unusual circumstances”

## 8 C.S.R. 20-3.010(5)(I)

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- Too long to include exact language in presentation
- Goes into extreme detail about what LIRC is going to look at in a joint motion for commutation
  - Life expectancy
  - Discount rates and actuarial assumptions
  - Specific facts of case at hand to show best interest, undue hardship, etc.
  - Potential funding of an annuity or MSA trust account

# LET'S GO BACK TO 8 C.S.R. 20-3.030

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- LIRC has a general policy as laid out in this section of regulation that LIRC will only review issues that have been raised by a party in an application for review (AR)
- When opposing party files an AR, you should take a close look at the claim and Award
  - Ask yourself: “if LIRC agrees with the opposing party’s point(s) in the AR, then am I going to be able to adequately represent my client on the other issues that flow from that decision?”
  - If you represent an employee (EE) and client receives an award of PTD against employer/insurer (E/I) based on primary injury causing PTD in isolation. E/I files an AR saying EE is not PTD. EE may want to strongly consider filing his/her own AR stating EE is PTD based on primary injury alone, but if LIRC decides otherwise, then EE is PTD based on primary and pre-existing, ratings for pre-existing injuries are XYZ, etc.
  - You represent E/I, you think claim is time-barred based on statute of limitations, but get an Award stating no compensable injury to EE for a different reason.. EE files an AR stating ALJ erred and E/I is liable for injury. E/I may want to strongly consider filing it’s own AR and bring the statute of limitations defense back up in front of the LIRC

# SOME OTHER ISSUES THAT ARE NOT UNCOMMON AT LIRC

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- Voluntary dismissal of claim
  - If a claim is voluntarily dismissed, then it is as if the claim was never even filed. As a result, LIRC does not have jurisdiction over the claim and cannot review the order dismissing the claim
- Appeals of temporary awards
  - If E/I wants to appeal a temporary award, E/I must deny ALL liability in order to appeal to the LIRC. If E/I agrees there is some liability, but disagrees as to the extent of it's liability, then it cannot be appealed to the LIRC

# SOME OTHER ISSUES THAT ARE NOT UNCOMMON AT LIRC (CONT'D.)

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- Trying to set aside a dismissal for failure to prosecute claim
  - Must show that you had good cause for missing the hearing in front of ALJ AND that employee has made a reasonable, recent effort to prosecute the claim
  - It is NOT good enough to just give the LIRC an excuse as to why the hearing was missed. You must also state what steps employee has taken recently to move the claim forward to a resolution
- Motions to withdraw as attorney of record
  - “I’m not making enough money” or “My client will not do exactly as I say” are not good enough reasons
  - Need to follow the Rules of Professional Conduct and make sure you are not leaving your client at a disadvantage if you withdraw



# LOOKING AHEAD - EMERGING ISSUES

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- COVID-19 has brought about a workplace revolution
- Some work sectors will “go back to normal” while others will continue on with a “new normal”
- As more people work from home, more injuries are going to happen in the homestead or other “unique” locations. More injuries are going to occur while employee is doing something that may be work-related but employee would have never encountered in a “traditional” office workplace environment
- Raises logical questions about what exactly fits the definition of “arisen out of and in the course of employment.” (Section 287.020.3(1))