

# BELOW THE RED LINE

## WORKERS' COMPENSATION UPDATE "WE'VE GOT YOU COVERED!"

February 2024

### A WORD FROM THE PRACTICE CHAIR

I've been getting those little spring tastes lately, which is a good thing after a long and cold winter. I know winter is not done with us yet, but the sun and warmer temperatures will always make me smile. Walking outside without my winter coat and seeing green starting to pop up is a beautiful thing. I hope you look forward to the spring warm-up, which will be here before you know it.

I look forward to the spring because it kicks off the season of our client visits and trips. It is always a good practice to wait for the nasty weather, which can be dicey in the winter, before making plans to hit the road and see our clients. It is never too early to contact me and set up a visit. These can be for a claims review or a lunch to catch up on all things workers' compensation, or we can design a presentation for you and your Team. Yes, we most certainly can conduct these meetings remotely if that is your preferred method. But I will admit, it is always great to hit the open road and see our friends in person. As always, let me know how we can help set up something for the Spring/Summer of 2024.

[Jacob Welch](#) joined Heyl Royster in 2023 after a lateral move and several years of workers' compensation experience. He is in our Champaign office and works a great deal with me in taking care of our clients and delivering excellent results. This month, Jacob has written about how the

Illinois Workers' Compensation Commission stepping into the electronic age has indeed changed the landscape as to the issue of notice. Since the IWCC introduced the CompFile system, all filings are now electronic. The question has come up regarding properly calculating notice when dealing with deadlines. We are all aware of deadlines, and no one is more so than an attorney dealing with statutory deadlines. In the e-mail age of notice, the Court in *South Berwyn School District #100* answers the question of how proper notice is calculated as it applies to the CompFile system. This article reminds us of how to make those calculations and what is considered notice per the new, post-COVID standards now in place due to the IWCC CompFile system. If you ever have questions about notice and statutory deadlines for something like filing a timely appeal, then ask that question quickly because some deadlines will be upon you fast. So, open and answer those e-mails, and please make designations on those e-mails to set them apart from others so the reader is aware of the critical nature of the content. One of my mentors taught me many years ago that if it really is that important, then an e-mail is not enough. Take a "belts-and-suspenders" approach and call the person and talk through the deadline and what you need. It never hurts in our business to be thorough. Failing to meet an important deadline may be the difference between moving a claim and your defenses forward and getting stuck with a poor outcome with no ability to carry on the fight.

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BY JACOB WELCH

**O**n January 26, 2024, the Illinois Appellate Court, First District examined the growing pains inherent in the transition from a hard copy-based system to the Illinois Workers' Compensation Commission's digital CompFile system. In *South Berwyn School District #100 v. Illinois Workers' Comp. Comm'n*, 2024 IL App (1st) 230722WC-U, the appellate court issued a Rule 23 opinion and provided insight into how the Commission and Illinois courts should view the issue of proper notice in the digital age.

As a brief refresher, unlike the type of decision that we're all used to hearing about in the news, where the court will decide an issue of law that will bind subsequent cases in one way or another, a decision filed pursuant to Illinois Supreme Court Rule 23(b) does not bind any subsequent case to it. It is effectively a way for the appellate court to decide the single case before it, without setting precedent for future cases. While a Rule 23(b) decision does not set a legal precedent, decisions entered after January 1, 2021, can be cited to persuade future courts to follow the same reasoning. Ill. S. Ct. R. 23(1) (effective Jan.

1, 2021).

In *South Berwyn*, the Illinois Appellate Court, First District decided a case that hinged on a single question: when, precisely, did the clock to file an appeal of the court's decision start running? Put more succinctly: when did the attorney receive proper Notice, with a capital 'N'?

The petitioner in this case, Brigid Dowdle, sustained injury during a student-teacher basketball game. *South Berwyn* ¶ 5. The Commission denied petitioner's claim for workers' compensation benefits and concluded the claim was barred by the recreational exception in the Illinois Workers Compensation Act ("Act"). Section 11 of the Act makes clear that injuries which occur while participating in voluntary recreational programs such as exhibition games and company picnics do not arise out of and in the course of employment. 820 ILCS 305/11. Dowdle appealed the Commission's decision to the circuit court. On January 20, 2021, the circuit court reversed the Commission's decision and remanded it back with instructions to enter findings on medical causation and disability benefits. *South*

*Berwyn* ¶ 7. On January 26, 2022, the Commission issued a decision, without calling for briefs or hearing oral arguments, and emailed the decision to the parties via the CompFile system. *Id.* ¶ 8. The school district appealed the Commission’s decision, but not until May 11, 2022, 105 days after the notice of the decision was emailed to the parties. *Id.* ¶ 9. Dowdle filed a Motion to Dismiss the school’s appeal, alleging the appeal was not filed within twenty (20) days after electronically receiving the decision, as is required by the Act, and therefore the circuit court did not have jurisdiction over the case. *Id.*

The first issue evaluated by the appellate court was whether the Commission was under a deadline of 60 days to issue their decision pursuant to Section 19(e) of the Act. The court recognized the Act provided a timeline for issuing decisions on review of an arbitrator’s findings, but was silent as to any deadline on the Commission’s duties regarding its decisions on remand. *Id.* ¶ 13. Further, the appellate court



confirmed the Act imposed a statutory deadline on the school district for seeking judicial review of the Commission’s decision; “review shall be commenced within 20 days of the receipt of notice of the decision

of the Commission.” 820 ILCS 305/19(f). Candidly, the Court reasoned that had the school filed their appeal within twenty days of receiving notice of the Commission’s decision on remand, the school could have challenged the timeliness of the Commission’s decision. Put in other words: the appellate court reasoned the school missed their deadline to challenge the Commission’s lack of a deadline and also missed their deadline to seek review of the Commission decision. *South Berwyn* ¶¶ 14-16.

The second issue assessed by the Court was *when* the school’s 20-day deadline started to seek judicial review of the Commission decision *Id.* ¶¶ 17-18. The Act plainly states “[a] proceeding for review shall be commenced within 20 days of the receipt of notice of the decision of the Commission.” 820 ILCS 305/19(f)(1). However, the Act does not define what constitutes “receipt of notice.” In this case, the attorneys for both parties received notice via e-mail through the CompFile system, containing an embedded link to the Commission’s decision. *South Berwyn* ¶ 8.

The school argued that the Act, as well as the Commission’s prior practices, dictate notice was required to be delivered either by personal service or certified mail. *Id.* ¶ 20. See 820 ILCS 305/19(i). The school further argued that just because the e-mail landed in its attorney’s computer, does not mean its attorney read either the e-mail or the attached decision. *South Berwyn* ¶ 26. They cited the Illinois Administrative Code to argue that even if its attorney received an e-mail containing a link to the Commission’s decision, its attorney did not receive the decision, for, to quote Section 9015.20(c): “[t]he external material behind the link is not considered part of the filing or basic record.” 50 Ill. Adm. Code 9015.20(c) (2016). Essentially, the school argued that because their attorney did not receive the notice personally or through certified mail, the clock on their deadline never started running, and therefore their appeal was timely. *South Berwyn* ¶ 26.



Dowdle and her counsel argued the Commission adopted and implemented a cloud-based electronic filing and case management system in 2020 called CompFile to allow paperless filing and processing of court documents for workers' compensation cases in Illinois. *Id.* ¶ 23. Dowdle also argued that by subscribing to CompFile, the parties agreed to receive notices and other communications electronically. *Id.* ¶ 24. Receipt of an email notifying the parties a



decision has been rendered by the Commission fits within the plain language of the phrase “receipt of notice of the decision of the Commission” as used in the Act. 820 ILSC 305/19(f)(1). Dowdle illustrated that if the school’s attorney was excused from clicking the link, it would be comparable to excusing him from opening a mailed envelope containing the Commission’s decision to avoid receiving notice. *South Berwyn* ¶ 29. Further, the subject line of the email proclaimed: “A Decision has been filed in CompFile” and the first sentence in the body of the email stated “[t]his email is to inform you that a decision has been filed in the case below,” and proceeded to identify the case. *Id.* The Court adopted Dowdle’s arguments and reasoned when the school’s attorney received the email containing the link to the notice, that began the running of the 20-day period for seeking judicial review. *Id.*

This case highlights the pains inherent in administrative bodies and courts switching from a paper system to an electronic system when it comes to matters of timeliness and notice. While this case

was filed under a Rule 23(b) order, and cannot be cited as precedential, the reasoning and process the court demonstrated therein is beneficial for evaluation of future cases. Ill. S. Ct. R. 23(1) (effective Jan. 1, 2021). Parties who subscribe to electronic systems must be aware of the effects of doing so. As we all recognize, attorneys must be diligent in analyzing the information transmitted to them by electronic means and discern what action needs to be taken upon receipt. With the introduction of CompFile and the immediate notification of filings, this case makes clear that attorneys must be even more attentive to correspondence received in their electronic inbox, work with their staff to ensure that court notices received via email are properly docketed and managed, engage with their clients sooner, and work quickly to make decisions as to plans of action for claims.

The case of *South Berwyn School District v. Illinois Workers’ Comp. Comm’n*, 2024 IL App (1st) 230722WC-U emphasizes the continued need for maintaining updated litigation strategies in careful preparation of all potential outcomes, to address possible requirements for quick turnarounds to meet litigation deadlines. The attorneys in the workers’ compensation practice group at Heyl Royster are ready and able to assist you in defense of your workers’ compensation claims. If you need assistance or advice with any aspect of your claim, do not hesitate to reach out to one of our very competent attorneys.



## ABOUT THE AUTHOR



### Jacob Welch

#### Associate in Champaign, IL

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*Jacob is committed to thoroughly preparing each case, comprehending his client's needs, and finding efficient and effective solutions.*

Jacob Welch is an Associate attorney at Heyl Royster's Champaign office, focusing on civil casualty/tort litigation and workers' compensation. With years of experience in these practice areas, he has helped clients with cases related to automobile accidents, house fires, product liability, wrongful deaths, medical malpractice, contract violations, and general negligence. He has also handled numerous workers' compensation cases for employers and employees.

Jacob has an impressive background in legal writing and advocacy. He served as writer/editor on the American College of Legal Medicine's Journal of Medicine, contributed as a staff writer to the Law Journal at Southern Illinois University School of Law, and held an Executive Member position on the SIU Moot Court Board. Jacob's skills were recognized when he won an American Bar Association Appellate Advocacy Regional Championship and was inducted into the Order of the Barristers.

Jacob spends his free time pursuing his passion for music and loves spending quality time with his family. In addition to his construction and home renovation hobbies, he enjoys playing tabletop games with his friends.

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If your business, organization, or you as an individual need premier defense services from an industry-leading workers' compensation defense firm, the dedicated legal minds at Heyl Royster are ready to provide you with the legal advice and legal services that you deserve. From complex claims to disputes, causation, and more, our workers' compensation attorneys are experienced litigators ready to come to your defense.

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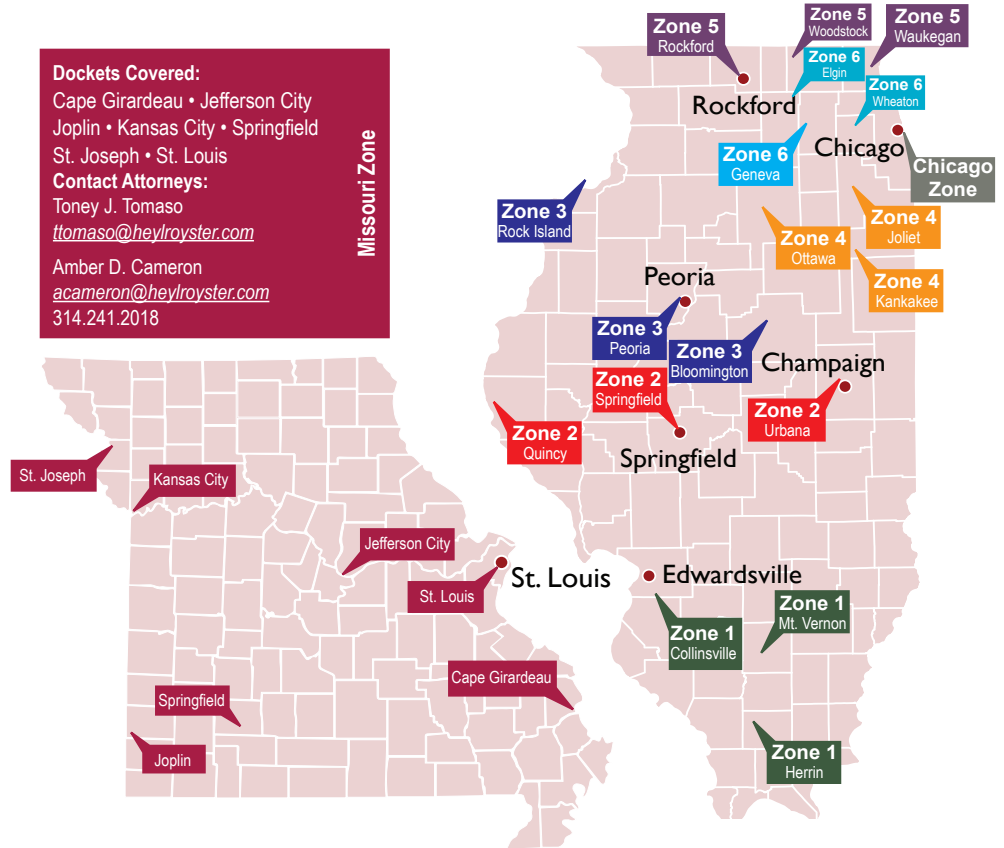
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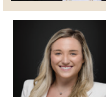
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