WEST VIRGINIA CODE: §14-2A-12

§14-2A-12. Investigation and recommendations by claim investigator.

(a) The clerk of the West Virginia Legislative Claims Commission shall transmit a copy of the application to the claim investigator within seven days after the filing of the application.

(b) The claim investigator, upon receipt of an application for an award of compensation from the clerk of the West Virginia Legislative Claims Commission, shall investigate the claim. After completing the investigation, the claim investigator shall make a written finding of fact and recommendation concerning an award of compensation. He or she shall file with the clerk the finding of fact and recommendation and all information or documents that he or she used in his or her investigation: Provided, That the claim investigator shall not file information or documents which have been the subject of a protective order entered under the provisions of subsection (c) of this section.

(c) The claim investigator, while investigating the claim, may require the claimant to supplement the application for an award of compensation with any further information or documentary materials, including any medical report readily available, which may lead to any relevant facts aiding in the determination of whether, and the extent to which, a claimant qualifies for an award of compensation.

The claim investigator, while investigating the claim, may also require law-enforcement officers and prosecuting attorneys employed by the state or any political subdivision thereof, to provide him or her with reports, information, witness statements or other data gathered in the investigation of the criminally injurious conduct that is the basis of any claim to enable him or her to determine whether, and the extent to which, a claimant qualifies for an award of compensation. The prosecuting attorney and any officer or employee of the prosecuting attorney or of the law-enforcement agency shall be immune from any civil liability that might otherwise be incurred as the result of providing such reports, information, witness statements or other data relating to the criminally injurious conduct to the claim investigator.

The claim investigator, while investigating the claim, may obtain autopsy reports including results from the Office of the State Medical Examiner to be used solely for determining eligibility for compensation awards.

Upon motion of any party, court or agency from whom such reports, information, witness statements or other data is sought, and for good cause shown, the court may make any order which justice requires to protect a witness or other person, including, but not limited to, the following: (1) That the reports, information, witness statements or other data not be made available; (2) that the reports, information, witness statements or other data may be made available only on specified terms and conditions, including a designation of time and place; (3) that the reports, information, witness statements or other data be made available only by

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a different method than that selected by the claim investigator; (4) that certain matters not be inquired into, or that the scope of the claim investigator's request be limited to certain matters; (5) that the reports, information, witness statements or other data be examined only by certain persons designated by the court; (6) that the reports, information, witness statements or other data, after being sealed, be opened only by order of the court; and (7) that confidential information or the identity of confidential witnesses or informers not be disclosed, or disclosed only in a designated manner.

However, in any case wherein the claim investigator has reason to believe that his or her investigation may interfere with or jeopardize the investigation of a crime by law-enforcement officers, or the prosecution of a case by prosecuting attorneys, he or she shall apply to the West Virginia Legislative Claims Commission, or a commissioner thereof, for an order granting leave to discontinue his or her investigation for a reasonable time in order to avoid such interference or jeopardization. When it appears to the satisfaction of the commission, or commissioner, upon application by the claim investigator or in its own discretion, that the investigation of a case by the claim investigator will interfere with or jeopardize the investigation or prosecution of a crime, the commission, or commissioner, shall issue an order granting the claim investigator leave to discontinue his or her investigation for such time as the commission, or commissioner, deems reasonable to avoid such interference or jeopardization.

(d) The finding of fact that is issued by the claim investigator pursuant to subsection (b) of this section shall contain the following:

(1) Whether the criminally injurious conduct that is the basis for the application did occur, the date on which the conduct occurred and the exact nature of the conduct;

(2) If the criminally injurious conduct was reported to a law-enforcement officer or agency, the date on which the conduct was reported and the name of the person who reported the conduct; or the reasons why the conduct was not reported to a law-enforcement officer or agency; or the reasons why the conduct was not reported to a law-enforcement officer or agency within seventy-two hours after the conduct occurred;

(3) The exact nature of the injuries that the victim sustained as a result of the criminally injurious conduct;

(4) If the claim investigator is recommending that an award be made, a specific itemization of the economic loss that was sustained by the victim, the claimant or a dependent as a result of the criminally injurious conduct;

(5) If the claim investigator is recommending that an award be made, a specific itemization of any benefits or advantages that the victim, the claimant or a dependent has received or is entitled to receive from any collateral source for economic loss that resulted from the conduct;

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(6) Whether the claimant is the spouse, parent, child, brother or sister of the offender, or is similarly related to an accomplice of the offender who committed the criminally injurious conduct;

(7) Any information which might be a basis for a reasonable reduction or denial of a claim because of contributory misconduct of the claimant or of a victim through whom he or she claims;

(8) Any additional information that the claim investigator deems to be relevant to the evaluation of the claim.

(e) The recommendation that is issued by the claim investigator pursuant to subsection (b) of this section shall contain the following:

(1) Whether an award of compensation should be made to the claimant and the amount of the award;

(2) If the claim investigator recommends that an award not be made to the claimant, the reason for his or her decision.

(f) The claim investigator shall file his or her finding of fact and recommendation with the clerk within six months after the filing of the application: Provided, That where there is active criminal investigation or prosecution of the person or persons alleged to have committed the criminally injurious conduct which is the basis for the claimant's claim, the claim investigator shall file his or her finding of fact and recommendation within six months after the first of any final convictions or other final determinations as to innocence or guilt, or any other final disposition of criminal proceedings. In any case, an additional time period may be provided by order of any commissioner upon good cause shown.

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