

**North Carolina Department of Labor
Division of Occupational Safety and Health**

Administrative Information System

Administrative Procedure Notice 16D

Subject: Citation Review

- A. **Purpose.** This Administrative Procedure Notice describes the citation review process at the Director's Office level of review. The purpose of citation review by the Citation Review Committee is to assure that the state has a properly documented case file that will be legally defensible in the event that notice of contest is received, and that the file is complete in support of an informal conference with an employer. The citation review process also serves as a factual update and briefing for management, the Communications Division, and other interested parties. Often specific questions are received from the media, and the public relating to high profile cases.
- B. **Background.** The need for a management citation review process is typified by a division inspection that ultimately resulted in no citations being issued in a case in which an employee was killed. Initially the wrong employer was cited, and the citations for the correct employer were not sustainable. The situation was brought to the attention of the Commissioner of Labor by the next of kin who was understandably not satisfied with the investigation results. In response to this situation and to prevent similar cases in the future, the Commissioner of Labor created the Citation Review Committee.
- C. **Cases Requiring Citation Review.** Types of cases that could result in review by the Citation Review Committee are listed on the Citation or Settlement Authorization Form (attachment). A settlement authorization is required for all informal and formal settlement agreements that meet any applicable item listed on the form. If the case file went through the Citation Authorization Review process initially, any subsequent settlement agreement would also be required to go through the authorization review process. Because of determinations originating from the Citation Review Committee, a closing conference shall not be scheduled for these cases until the citation review process has been completed.
- D. **Actions Required Prior to Committee Meeting.**
 1. The field level case file review process shall be completed prior to submitting the file for review by the Citation Review Committee. This shall include the CSHO and District Supervisor review process. The complete case file material submitted to the Citation Review Committee must be accurate, correct and consistent with instructions documented in the Technical Writing Course. If it is apparent that a case file is not in final draft form, it will be returned to the CSHO, for correction and resubmittal.
 2. Contact must be made by the CSHO with an attorney in the AG's Office prior to citation review to begin the process of developing an effective investigation strategy, including proper documentation. The name of the assigned attorney and the initial and any subsequent contact dates must be noted on the Citation or Settlement Authorization Form. The assigned attorney should attend the citation review meeting in an effort to expedite the review process.

3. Certain settlement agreements may not require review by the committee based on the discretion of the Assistant Director. This would include those settlements with only penalty adjustments. If an inspection file was submitted for citation authorization, any subsequent settlement agreement shall also be submitted for authorization.

E. Preparing the Case File for Citation Review.

1. Cases are ready for review by the Citation Review Committee when they have already been reviewed and approved by the District Supervisor and Bureau Chief.
2. Citations shall not be submitted for review until the narrative, 1Bs, and other pertinent information have been shared with the assigned attorney and all agreed on revisions have been made.
3. The Citation or Settlement Authorization Form must be accurately completed including the must issue date and dates of Supervisor/CSHO availability. AG's Office availability will be confirmed once the case file has reached the Director's Office. An inaccurate must issue date could affect the completion of the citation review process within the required six months issuance deadline. If the availability section of the form is left blank, the case file will be sent back to the Supervisor for completion.
4. For cases that have been submitted for review, the Citation Review Committee meets on Wednesday and Friday of each week. Scheduling conflicts of committee members might result in meeting cancellations.
5. To schedule a case file for review on Wednesday, a complete case file must be received in the Assistant Director's Office by 12pm on Monday.
6. To schedule a case file for review on Friday, a complete case file must be received in the Assistant Director's Office by 12pm on Wednesday.
7. The case file package can be sent interoffice, hand delivered, faxed, or e-mailed. However, the submittal deadlines must be met to meet the Wednesday or Friday review days.
8. The six month statute of limitations shall be considered when scheduling a case file for review by the Citation Review Committee so that sufficient time will be available to complete the review process.
9. A completed package, including the following materials, must be submitted to permit scheduling for case file review:
 - a. Citation or Settlement Authorization Form with all items completed correctly including required approval signatures and availability dates for the CSHO and supervisor. (Only one case/inspection shall be included on a single form. Each case requires a separate completed Citation or Settlement Authorization Form. Related inspections shall be included on a separate form.)

- b. Completed 1b forms. (For settlement authorization 1bs are not required, only authorization form, citations, justification for all changes, and the proposed settlement document.);
- c. OSHA 1;
- d. Inspection narrative;
- e. Any items referenced in the narrative including relevant photos (if needed for clarification);
- f. Copies of the citation(s), except for settlement agreement, are optional as long as 1bs are provided.;
- g. OSHA 36 and 170 if accident or fatality report;
- h. A written justification or explanation must accompany a proposed settlement agreement along with all citations;
- i. Any other items that the CSHO will reference during the Citation review.
- j. The AG's Office shall submit formal settlement agreement documents associated with any case file that required case file review/authorization prior to citation issuance. A completed Settlement Authorization form shall accompany each formal settlement proposal submitted to the Assistant Director's Office. If the AG's office wishes to discuss a proposed formal settlement agreement prior to drafting a written document, they shall contact the administrative office of the Assistant Director to place the discussion on the calendar.

10. Once the complete citation or settlement agreement package is received in the Assistant Director's Office, copies are made for the committee participants. For this reason, materials submitted must be suitable for copying.

11. Faxed photos do not copy well. Photos can be e-mailed to the Assistant Director's Administrative Assistant. Only photos relevant to the citation review shall be submitted.

12. The Assistant Director will send the schedule of cases to be considered to committee participants.

F. Citation Review Process.

1. The Citation Review Committee includes participation by the Attorney General's Office, Legal Affairs Division, Director, Assistant Director, Bureau Chiefs, District Supervisors, Communications Division and the CSHO.
2. It is the responsibility of each participant in the citation review process to review the assigned case files prior to the meeting. Therefore, citations that have not been made available for review prior to the meeting will not be reviewed at the meeting.
3. The Director, Assistant Director, or their designee will direct the review of case file scheduled for consideration. As necessary, the oldest cases on the committee schedule will be reviewed first.

4. Participation is intended by the affected Bureau Chief, District Supervisor, and CSHO. Participation by the Bureau Chief and District Supervisor is particularly important if changes had been made to the case file after completion by the CSHO.
5. The CSHO, Supervisor, and/or Bureau Chief who have knowledge of the investigation will provide an overview of the case under review and shall be prepared to respond to any questions from the committee participants. Particular attention shall be given to any type of special situations or unique elements of the investigation that could be a point of contention at the appeals stage.
6. Most questions originating from the assigned attorneys will relate to questions of law such as employer knowledge, employer/employee and contractor/subcontractor relationships, and/or applicability of a particular standard. Consideration of these type of issues prior to citation review will expedite the process. The OSHNC Legal Training Manual and the FOM are helpful reference sources.
7. The CSHO and the assigned attorney will be the primary participants in the citation review process. Comments by others at the meeting will be limited to issues that may have been overlooked by the CSHO and the assigned attorney, or issues of clarification.
8. Any constructive criticism a case file receives by the Citation Review Committee is designed to minimize this level of scrutiny at the appeal level. All parties involved are expected to be cordial, cooperative, and respectful toward one another.
9. Required changes, as a result of the citation review process, to any case file documents will only be communicated to the CSHO during the citation review process.
10. In the interest of time, committee participants shall stick to the point. Discussion during the citation review process shall be limited to cases that are scheduled for that day's review.
11. Information requested during the citation review process may require additional contact with the affected employers.
12. Sometimes there will be disagreement between the CSHO/District Supervisor and the assigned attorney regarding issues that relate to an investigation and case file documentation. If this occurs and the issue can not be resolved through Bureau Chief intervention, the specific items can be scheduled for discussion at a citation review meeting through contact with the Assistant Director's Office. The case shall be scheduled for discussion when all affected parties are available to attend.

G. Post Citation Review Activity.

1. A Citation or Settlement Authorization Form signed by the Director/Assistant Director, documents the authorization for citations or a settlement agreement to be issued.

2. If any part of the case file is required to be changed as a result of the review process, the required file disposition will be documented on the Citation or Settlement Authorization Form and returned to the CSHO.
3. The district supervisor must track the progress being made by the CSHO to process the case file requiring changes or additional information as a result of the citation review.
4. If a case file must be resubmitted as a result of the case file review process, a complete package must be prepared and resubmitted as described at E. 8.
5. The complete package must be resubmitted to the Assistant Director as soon as possible in the interest of keeping citation lapse time to a minimum.
6. The goal of the Division is to complete a fatality investigation within 90 calendar days of the inspection open date. Fatality citation lapse time is tracked on a special report maintained in the Assistant Director's Office.

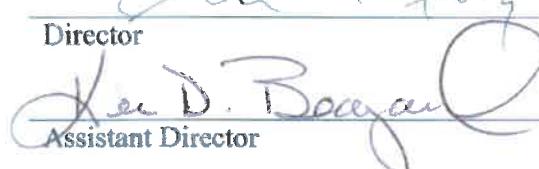
H. Expiration. This APN will remain in effect until updated or cancelled by the Director.



Director

3/13/09

Date



Assistant Director

3/12/09

Date