

**HAMMER, FERRETTI & SCHIAVONI**  
408 W. King Street  
Martinsburg, West Virginia 25401  
Tel. (304) 264-8505  
Fax (304) 264-8506  
www.hfslawyers.com  
FEIN: 55-0718047

David M. Hammer, Esquire  
Joseph R. Ferretti, Esquire  
Robert J. Schiavoni, Esquire

Krista L. Kidwell, Legal Assistant  
Courtney Lambert, Legal Assistant  
Christina Berulhard, Legal Assistant  
Catherine Ryan, Legal Assistant

Direct Dial: (304) 264-8505  
Writer's e-mail: dhammer@hfslawyers.com

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West Virginia Racing Commission  
900 Pennsylvania Avenue, Suite 533  
Charleston, WV 25302

By United States Mail and Fax (304) 558-6319

Re: Comment Upon Proposed Amendment to 178  
CSR 6: Security Fee Increase for Appeals

Dear Commissioners:

I represent the Charlestown Horsemen's Benevolent and Protective Association ["HBPA"] and am writing to comment on the proposed revision of 178 CSR 6.3.10.d which would increase the security fee to be paid to the Racing Commission at the same time as an appeal is filed from \$100.00 to \$500.

The purpose of the security fee increase is to "deter frivolous appeals and appeals over small fines." Form 1 – Notice of Public Hearing or Comment Period on a Proposed Rule, p. 2. This is an entirely new purpose from the purpose stated in the existing rule which is "to cover the anticipated costs of holding the appeal hearing." 178 CSR 6.310.d. Under the existing rule the Commission already has the ability to "assess the costs of the appeal hearing incurred in excess of the security fee." *Id.* Thus, a permit holder facing a potential imposition of costs for a losing appeal, is already obliged under the existing Rule to carefully weigh whether to file an appeal. The proposed rule amendment will not raise revenue and does not reference a problem collecting costs of appeal hearings from non-prevailing appellants.

The express purpose of the proposed rule is to burden permit holders with the payment of up-front costs regardless of the merits of an appeal. This is extraordinarily flawed reasoning as the notion of burdening an appeal in order to discourage it from being filed at all, and without

regard to the appeal's merit, is fundamentally unjust as its core purpose is to discourage the exercise of due process rights in necessary to protect a permit holder's property interest in his occupational license.

In addition to being unjust, the burden of the proposed rule perversely falls the heaviest on those small businesses least able to bear larger up-front security costs; after all, this proposed rule will apply to actions against horsemen's permits, including suspensions, which directly impact not only the horsemen's ability to earn a living, but also the livelihoods of those employed by the horseman.

Lastly, I observe that the more that West Virginia's due process procedures deviate from the due process provided in other states with horse racing, the more you discourage horsemen in other jurisdictions from coming to West Virginia. This is, quite simply, because a license action in West Virginia can cause reciprocal action in other jurisdictions in which a horseman is licensed. Thus, irregular or unusual due process procedures in West Virginia cause horsemen to avoid our state. This hurts racing and revenues.

The HBPA is and remains willing to work with the Commission to meaningfully revise the Rules in order to assure due process and equal protection under the law in a manner consistent with the process employed by other states. But increasing the security cost of appeals in order to discourage appeals, without regard to an appeal's merit, is simply bad public policy.

Thank you for your consideration of this comment.

Sincerely,



David Hamner, Esq.