

Workers' Compensation Advisory Council Meeting

December 9, 2008, 9:30a.m. to 12:00p.m.

LABI Conference Center

Meeting began at 9:30a.m.

Chair and Members Present:

Chris Broadwater, Director, OWCA
Ken Hawkins
Charles Davoli
Jim Patterson
Denis Juge
Dickie Patterson
Clark Cosse
Dr. Mark Kruse
Dr. Joe Laughlin
Troy Prevot
Michael Morris
Bob Gisclair
Cherie Pinac
Julie Cherry

In addition, attending from OWCA:

Sheral Kellar, Chief Judge, Hearings
Larry White, Systems Manager
Teresa Boeneke, Asst. to the Director

The meeting was called to order by Chris Broadwater, Director.

The Director outlined the goals for the meeting as being:

- Presentation of proposed rule changes presented by Director Chris Broadwater and Chief Judge Shellar Kellar
- Discussion of Agenda for January 6, 2009 meeting of the W. C. Advisory Council

Minutes of 11-18-08 W. C. Advisory Council meeting were presented.

Jim Patterson pointed out some typos on the 11-18-08 minutes.

Dickie Patterson moved to adopt the minutes from the 11-18-08 Council meeting adopting the suggested amendments by Jim Patterson. Seconded by Troy Prevot. Minutes approved.

Presentation of proposed changes to the Hearing Rules

Sheral Kellar/Chris Broadwater

Suggested amendments to the current hearing rules were presented by Chief Judge Sheral Kellar. General discussion followed each proposed change. Among the topics discussed were the following:

1. HR 5529

The denial of a motion to recuse is an interlocutory order which may not be immediately appealable. Some appellate courts do not believe CCP Art. 1913 applies to WC. How then do you handle the denial of a motion to recuse if you want the judge removed before further proceedings?

2. HR 5701(C)

"forward"- what does this mean exactly and shouldn't the rules spell that out? The general understanding is that forward means to place in the mail rather than actual receipt of?

The sanction for failing to comply with the fax filing rule and the filing fee requirement should be the same as in district court - the pleading has no effect.

The Director and the Council will decide.

3. HR 5511(B)

Who is the claims adjustor? Does he/she represent the payor or the employer and how will OWCA ensure that the proper person is served?

4. HR 5533

What is the attorney's responsibility when appointed to represent a claimant who the court believes lacks capacity to proceed pro se?

Should there be some written procedure for this?

It was suggested that we ask Jane Thomas to address the council to advise us in this area. This may assist us in drafting a rule to govern this kind of appointment.

Additionally, the council members may want to revise section (B)2 of this rule to ensure that an attorney who is appointed to advise the court if a settlement is in the best interest of a pro se litigant understands that the attorney fee will be a reasonable one set by the court and not the statutory limit.

5. HR 5705

Generally, the ex parte dismissal works against the claimant. Usually, when the WC judge dismisses a claim based on an ex parte motion or on the court's own motion the claimant does not become aware of any problems causing the dismissal until the notice of dismissal is received. This causes the claimant to hurriedly request reinstatement. One example presented by a claimant's attorney is this: A 1008 is filed and served. The attorneys agree to extend the delay for answering. It shows up on the 60 day no activity list and is dismissed pursuant to this HR. Another example is this: A 1008 is filed and the service information is inaccurate or incomplete. It shows up on our 60 day no activity list and is dismissed pursuant to this HR.

Chris suggested that in the former example, the claimant's attorney send to the OWC a copy of the informal agreement. Larry White suggested that we can create a code which would preclude this docket no. from showing up on the 60 day list. In the latter example, Chris suggested that the OWC call the claimant's attorney to request better service information or seek the approval of a private process server.

Note that the dismissal with prejudice will require a contradictory hearing no less than 30 days after the dismissal without prejudice. A recent 2nd circuit case seems to approve of this procedure.

6. HR 5709

The council will decide if we keep the language regarding submission of the LDOL-WC 1007.

7. HR 5813

Same concern regarding "authorized claims adjustor".

8. HR 6103

The suggestion that "only one uncontested motion for continuance shall be granted" was received without much comment. It was suggested that we consider amending section D(2) to read, "Subsequent motions for continuance ..." instead of "Subsequent uncontested motions for continuance ..."

The members were asked to review the suggested changes and prepare comments for follow up discussion at future meetings.

Next Meeting Agenda topics

Next meeting of the Council will be January 6, 2009 at LABI. Anyone wanting to add an item to the agenda must have it to the Director 7 days prior to January 6.

Denis Juge suggested we proceed by working on the adoption of evidence based medical treatment guidelines, then tackle UR rules, and relate them to the guidelines that have been adopted.

Cherie Pinac requested that we consider the possibility of electronic payment (debit cards) of indemnity benefits and look at La. R.S. 23:1035(A) regarding election by sole proprietors to not be covered by the Act.

Chuck Davoli requested that we discuss ways to address premium fraud by employers and encouraging insurers to report any suspected fraudulent activity. Cheri Pinac suggested we look at mandatory reporting to OWCA of suspected premium fraud rather than only to Dept. of Insurance.

Dr. Joe Laughlin encouraged us to consider the myriad of causes for continued disability, including lack of education and obesity.

Jim Patterson reminded the council that we need to invite Representative Chris Roy to address the council and work with him to address his concerns regarding La. R.S. 23:1209.

Public Comment

Dale Cronin, La. Municipal Association: Addressed some of the suggested amendments to the hearing rules and provided areas of concern that should be taken into consideration.

Jim Patterson moved to adjourn. Cherie Pinac seconds the motion.

Meeting adjourned at 11:35 a.m.