



Stakeholder Meeting Minutes

January 29, 2021

Call to Order: The meeting convened at 9:00 a.m. with the following participants:

Linda Williams
Isabel A.M. Cole
Jack S. Eng
Dave Threedy
Mark Jaffe
Knowrasa Patrick
Meng Li Che

Debra Hatzialexiou
Sarah Jackson
Lionel Greaves IV
Sarah Kortokrax
Leslie Johnson
Jane Dale
Katherine Mason

Rachel Hamar
Lonnie Ladenburg
Chris Bishop
Ryan Miller
Carrie Freeland
Bob Battles
Jay Raish

Structured Settlements: Assistant Chief Che reported all orders are posted on our website and she described the search function; she noted that parties can reach out to a mediator or assistant chief to review a proposed agreement before it is filed. It was suggested that compiling the most frequent reasons for rejection would be helpful to practitioners.

Follow-up to Concerns from September 11, 2020 Meeting: Chief Judge Jaffe reported:

- *Flexible scheduling.* File a request for interlocutory review asking for relief.
- *Litigation Order Enforcement.* This is an ongoing issue and it's one of the things we discuss with the judges because it is a case management tool and they should follow through.
- *Interlocutory Orders Close to Hearings.* When filing please highlight your hearing date. We strive to get them out as soon as possible.
- *PDO Transfers.* We only do it in limited instances, although we just did four or five for good reason. We ask for volunteers who have time to write. You can't file an affidavit of prejudice but you can send a letter to Mark Jaffe and tell him why you object to the transfer.
- *PDO Timelines.* It is taking 2-5 days longer to issue a PDO, but we have had a lot of continuances and stuff is coming to roost. Normally the average days to issue a PDO is 31 days. In December judges had 5 PDOs and were up to 46 days. January so far they have 4.5 PDOs and they are at 48 days. Stuff is piling up. We keep stats on hours set and hours held. April 1, 2019, to January 2020, we set 44000 hours and held 15000. April 1, 2020, we set 72000 hours and have held 16000. We hired two new judges who start February 1 and that will take some of the

pressure off. We are going to add a new state overflow hearing run. So, yes, there will also be some PDO transfers.

Ms. Mason asked what goes in to determining the length of time it takes to issue a PDO. Chief Judge Jaffe reported that when all transcripts and depositions have been received the case is made ready and the clock starts for the judge. You may finish the hearings but sometimes the depositions are weeks out so the judge's time to write doesn't start until all the materials are in. The judicial assistant has 10 days from the receipt of materials to get the file to the judge. We have a lot of consolidated appeals and those can skew the stats. If a 15-case consolidated appeal takes 50 days, it can affect the stats.

Ms. Mason asked if it is possible to do case reassignment in advance of taking of evidence. Can you reasonably anticipate the backlog and change the judge? Chief Judge Jaffe responded that it's hard to anticipate. Stuff settles. Anytime a judge asks for help we take a look at it and do it. I don't think trying to anticipate before hearings would work. As ACs we try to stay on top of our judges' caseloads and watch what's coming up and what is going on their lives. Also, taking over the whole case is a different matter than just writing the PDO. Before a judge retirement or promotion we go through their entire caseload. We are sensitive to passing on the knowledge to the person who is taking over the caseload when we can. We are incorporating comments from the last meeting in our new training.

Access to Justice/Accommodations: Chair Williams described a case where our judge did the best to help the worker through the process and make a record, but the superior court judge found that our record was silent as to any steps we took and ordered us to provide an attorney. Chair Williams then described a case where we outlined our steps and analysis and the court sent it back and said we abused our discretion in not appointing an attorney.

We are trying to highlight that the courts are heading one way with this issue. Then we have some justifiable political pressure from agencies who favor legal representation, and there are groups who promote access to justice for the injured. They are appearing and assisting people who appear before us. A lot of times the requests for attorneys mirror the language used by these groups.

Ms. Dale questioned, when we're talking about clients with significant cognitive issues, would the Board consider appointing a Guardian ad Litem so attorneys are more comfortable representing them?

The Board doesn't have the authority to appoint or pay for a GAL, which leaves the attorney petitioning the superior court to appoint the guardian.

Mr. Greaves noted that the representative from the Office of the Attorney General might see the need for accommodations early. How do we raise the issue to the judge to trigger the conversation? Chief Judge Jaffe responded

that the representative should first contact the judge's AC because it could raise an issue of fairness in the case. The AC can then decide how much info the judge should have.

Mr. Greaves asked if the Board approached the Access to Justice Board to engage some more of their institutional resources. Chief Judge Jaffe noted that our former employee Laura Bradley is on the Access to Justice Board.

Mr. Bishop noted that a concern is maintaining impartiality. Often a pro se litigant starts filing medical records regarding disability when that disability is part of the case as well as the request for accommodations. We don't want the presiding judge to see those before hearing the case. Chief Judge Jaffe reported that we have an Accommodations Committee and we set up a separate accommodations file. Those documents should not be in the appeal file. If the accommodations appeal goes to the Board they see only the accommodations part they don't see the appeal file. The judges are very careful about any documents sent in. They will not look at medical records without a motion to admit.

Live Proceedings: Member Eng reported that live hearings remain suspended through the end of June 2021. Our main focus for when and how we open is the safety of all participants and our employees. There are many factors we have to consider before we open, starting with our directions from the Governor. We are working to meet the requirements issued by L&I on workplace safety. We have to get PPE, increase physical distancing, meet cleaning requirements, potentially screen for symptoms, improve HVAC, install touchless sinks, doors, and toilets, and we need to obtain physical barriers and determine where witnesses are going to wait until they can enter the hearing rooms. When we reopen it will be gradual and it will probably be a hybrid mode where we continue to use Zoom and telephone proceedings.

WAC Changes. Within the next couple of months we will file for some WAC changes. A lot of them are administrative, for example updating the title "Executive Secretary" to "Chief Legal Officer" and in our lay representative rule adding corporate officers to be able to appear on behalf of their employer. We also contemplate a change on when we can appoint a pro tem judge and we're looking at rules we generated on structured settlements. Some changes might be required by anticipated changes in the law, but also this rule was promulgated before we had a single structured settlement in the agency so there are things we can look at to make the process less onerous. We'd like to get your input; we'll follow up in writing to you. Member Eng talked about video and telephone hearings and we may make adjustments in our rule to allow the judge to have discretion on when it is appropriate. The rule requires depositions in paper and we don't need that anymore because they are filed electronically.

We're looking at what to do when we don't have three board members who can participate and the two remaining don't agree. We are contemplating a rule to allow the PDO findings and conclusions to become the final order of the board.

Mr. Bishop noted he has faced situations where the other attorney does not want to appear live for a deposition and doesn't want anyone to appear live for it. If this is going to be a new normal it would be helpful to have a rule that addresses those situations. They shouldn't be able to force everyone to be by Zoom because they don't want to be live.

Mr. Ladenburg suggested we consider an automatic stay on the active appeal when a structured settlement is filed, rather than requiring a separate motion.

Ms. Dale noted she agreed with Mr. Bishop about objecting to parties being in person. The follow-up issue is now that everyone is more comfortable with the video deposition push and pull they only want to do telephonic. The issue with telephonic is that we want to see the witness and exchange exhibits. We've had to figure out other ways to do things. There are disagreements where they won't agree to Zoom depositions. Can we force them?

Mr. Bishop asked if we can combine the two conference notifications (notice and letter). Chief Judge Jaffe noted we instituted the process in a hurry (extra letter) and we can continue refining the process.

Mr. Bishop noted he is seeing continuances being granted on brief oral motions from pro ses. At a conference recently a worker was out of breath and running to his car and forgot about his conference and the judge continued it for five weeks. Also, where is the line where the mediation judge is giving legal advice or explaining the process? Judges have emailed pro se litigants the questions to ask their provider to establish burden of proof or advised the worker to get an FCE to improve their claim for a pension.

It was suggested that we address Zoom etiquette; parties are sometimes seeing a judge in their living room and possibly doing things (eating/drinking) you wouldn't normally see in a live hearing. Chief Judge Jaffe will raise this with judges right away.

Ms. Hamar noted that on notices of disqualification parties can send Mark a letter to object to a transfer for writing a PDO. Those letters would be a public record. Are they going to be provided to the judge we are objecting to? Chief Judge Jaffe noted the letter is not necessarily provided to the judge but he has to respond to the objection so that order would be in the file. We will think more about it.

Chair Williams thanked the participants and reminded that after these meetings we meet with the management team to review your suggestions. Also,

reminder that when you contact an AC or file a request for interlocutory review, it can lead to change because ACs discuss these issues.

Member Eng noted we will schedule another meeting next quarter. Email jay.raish@biia.wa.gov with any conflicts for Fridays in May.

Adjournment: The meeting was adjourned at 11:22 p.m.

Respectfully submitted,

/s/

Jay Raish,
Confidential Secretary