



Stakeholder Meeting Minutes

September 11, 2020

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

Linda Williams
Isabel A.M. Cole
Jack S. Eng
Brian Watkins
Mark Jaffe
Knowrasa Patrick
Debra Hatzialexiou
Sarah Jackson

Lionel Greaves IV
Sarah Kortokrax
Leslie Johnson
Jane Dale
Katherine Mason
Robert Silber
Lonnie Ladenburg
Chris Bishop

Ryan Miller
Joe Kendo
Carrie Freeland
Richard Clyne
Bob Battles
Jay Raish

Remote Proceedings: Chair Williams reported the Board will make a decision next week about resumption of live proceedings, then opened the floor for questions.

Is the Board looking at it county by county? Yes and no. Resumption of government operations is considered Phase 4 in Governor Inslee's safe return plan.

We have several attorneys who are high risk. When we return to live proceedings, will the Board be flexible about allowing them to participate remotely? Absolutely.

Are you reconfiguring Board hearing rooms to address COVID concerns? We are looking at what our needs will be. It is a moving target. Governor Inslee's safe return plan is 12 pages long, and as a state agency, we have to follow those guidelines.

Attorneys have resources for Zoom. How has it worked for pro se parties? We have done some Zoom proceedings with pro se parties, including one with an interpreter, and it went fine. However, technology is a concern. Not everyone has it. We will continue to improve these services as we get your feedback.

Proposed WAC Change: Member Cole reported on a proposal to revise WAC 263-12-155 to specify that if a member must recuse and the two remaining members cannot agree on the disposition of the case, the findings and conclusions from the proposed decision will be adopted.

Mailing to Third Party Administrators: Member Eng reported on a planned change to mailing procedures. When a TPA is initially listed as an employer

representative and an employer attorney comes on the case, we will mail notices and orders to both.

The Department has a similar concern with WISHA cases. They do not receive the deny/grant orders on motions for stay of abatement. ACs Brian Watkins and Cheryl Carlson will review this and report back.

2014 Letter from Stakeholders: Chair Williams discussed the letter received in 2014, which contained litigation stakeholders' suggestions for improvement and apologized that these suggestions were not followed up on at the time. Member Cole emphasized that this letter is a jumping off place to determine the issues this group would like to address. Member Eng stressed the Board wants your input. He acknowledged that the prior stakeholder meetings did not work as well as we hoped, and there should be a different outcome now that the Board Members are active participants.

Mr. Silber reported there was a terse one-page response from the Board that essentially said changes would not be made.

Ms. Mason reported on the background to the letter, including many hours of meetings required for the attorney groups to reach consensus on the recommendations, only to be met with a "thanks but no thanks" response. She reported there is still tension when parties are presenting an agreed recommendation to a judge. When the litigants are doing what is best for the case, they are still getting pushback from some judges. It feels like there is too much emphasis on data and timelines and it's often used to push back.

Mr. Bishop concurred with Mr. Silber's and Ms. Mason's recollection regarding the lack of response to the stakeholders' 2014 letter.

Mr. Silber acknowledged that some things have evolved and gave the Board credit for making changes. It was frustrating to have consensus and not receive a response. Now it's time to move forward. He suggests going back to constituents to get input on big issues they want us to consider.

Mr. Bishop concurred with going back to constituents and appreciates the open dialog. He reported they are looking for consistency and predictability in how hearings are scheduled and conducted.

Mr. Clyne said, as a representative for state fund employers, it is nice to be invited to the table. This has improved in the last four to five years.

Chief Judge Jaffe emphasized to Mr. Silber and Ms. Mason that their concerns are not taken lightly, and he responded:

- Standardized training of judges should result in better consistency.
- We give the judges a lot of discretion, so now you should be seeing judges doing things differently.
- He reviews all interlocutory orders to ensure consistency.

- Are judges refusing to do the case scheduling suggested in the letter if you specifically request it during the scheduling conference?
- He and the assistant chiefs have an "open door" policy; you can call them with concerns.
- We're trying to get away from so much data. We pledge to do things in a timely manner, but we are trying not to be so driven by the timeline.
- He will emphasize to the judges that they need to be open to giving the parties more time. Judges won't be penalized.

Mr. Miller expressed appreciation for Chief Judge Jaffe and said he has seen a significant change in the attitude of judges—they are not forcing arbitrary case completion dates on parties.

Other Concerns: Member Cole opened the floor for other concerns and agenda items for the next meeting.

Ms. Kortokrax asked about expectations for agreed orders. She indicated sometimes the judge changed the language from the parties' agreed-upon stipulation. She said it is also sometimes not clear what changes were made and the parties have to read line by line. Sometimes the judge refers to "stipulation language in the email" rather than putting the factual stipulation in the order.

Chief Judge Jaffe responded that an agreed order has to be supported by the facts and the law. If the assistant chief finds something that is not supported, judges are instructed to go back to the parties. He will remind judges that the parties have to be informed of any changes before the Order on Agreement of Parties is issued. He said there are a couple of different ways we do OAPs. If the parties want the factual stipulation in the order, please emphasize that to the judge. He will also advise the judges.

Mr. Bishop shared a list of items to be addressed future meetings:

- Litigation orders set forth the confirmation rules and dates, yet some attorneys are sending in witness confirmations where they "reserve the right to call" a witness. Do litigation orders mean anything? There is inconsistent enforcement.
- There are some delays in interlocutory orders being addressed. The parties are not always getting a response prior to the start of litigation.
- There is a lot of bending over backwards for the pro se; they are given more leeway even though the rule says they will be treated the same.
- There is inconsistency in how judges apply evidentiary rules. The same piece of evidence will be treated differently by different judges.

Mr. Greaves offered kudos to AC Patrick for techniques regarding remote hearings and encouraged working together on best practices. The Board and

Department's technology is evolving, and he emphasized the need for the tech to evolve in a complementary way.

Ms. Kortokrax said the Department wants to receive electronic transmission from the Board rather than paper. Chief Judge Jaffe noted that we are continually looking for ways to be more electronic. We were going to make significant changes within the next two years, but those are now on hold due to budget restrictions. Judge Patrick noted that fully electronic transmission has always been our long goal.

Ms. Mason asked whether the Board would prioritize case assignments. Chief Judge Jaffe noted that we had a "Multi-Track" program south of Seattle for many years, which was discontinued because of various problems. He still thinks it is a good idea that we should pursue when we upgrade our case management system.

Ms. Hatzialexiou noted the Board and Department have discussed electronic communication for years. The Board started it but the Department couldn't accommodate it.

Mr. Ladenburg commented on the transferring of cases to a new judge after the evidence is heard—he is seeing less of it. Chief Judge Jaffe responded that we only transfer cases when it is absolutely necessary—we do it with as much care as possible. Although affidavits of prejudice are not available at this stage, if there is a concern send it to Chief Judge Jaffe as if filing a pleading.

Mr. Silber asked if the newly assigned judge talks to the previous judge? Chief Judge Jaffe answered yes, this often occurs.

Mr. Silber asked about BIIA goal planning, and Chief Judge Jaffe responded we update our Long Range Plan every year. We can share with this group as appropriate.

Next steps: Member Eng questioned how often the group would like to meet? Send your input and other ideas for future meetings to Jay Raish.

Adjournment: The meeting was adjourned at 12:03 p.m.

Respectfully submitted,

/s/

Jay Raish,
Confidential Secretary