



Stakeholder Meeting Minutes

September 17, 2021

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

Isabel A.M. Cole	Sarah Jackson	Lonnie Ladenburg
Jack S. Eng	Lionel Greaves IV	Chris Bishop
Brian Watkins	Sarah Kortokrax	Ryan Miller
Mark Jaffe	Leslie Johnson	Kris Tefft
Lynn Hendrickson	Jane Dale	Bob Battles
Bob Liston	Katherine Mason	Richard Clyne
Debra Hatzialexiou	Robert Silber	Jay Raish

Reopening: Member Eng reported we had planned to begin live hearings on October 1. With the COVID-19 Delta variant, we determined we would put live hearings on hold till at least the end of the year. Because it is such a moving target, we did not specify a reopening date.

Mr. Bishop asked if we look at any particular matrix for reopening. Clients are wondering why restaurants and Seahawks can be open but the BIIA can't.

We have various items we have to look at, such as whether our offices are reconfigured and the Governor's vaccine mandate that requires court reporters and interpreters be vaccinated. We get a [Roadmap to Recovery](#) from the Governor's office and OFM that includes directions we must follow before opening our offices. Each roadmap has been different than the other. We have remote locations that are not BIIA facilities, so we would have to find a location that falls within the Governor's requirements. Another concern is who polices the vaccine mandate and masking. Our hearing rooms are small so social distancing is impossible. We had ordered plastic shields but now the studies are saying they may be more harmful.

Mr. Silber asked what is the feedback from the judges?

- It is very important that you and staff read the notice to determine how the proceeding will be held—each judge may do it differently.
- We have run changes coming up and live hearings we have to convert, so you will be receiving a lot of change notices.
- Technical problems with Zoom, some parties don't have good internet. Get on top of that early, if they can't connect a phone proceeding may be preferred.

Proceedings Survey: Member Cole reported on the results of the stakeholder survey we conducted in June. The AGO were 58% of the respondents. Almost 80% were in the western part of the state. We asked what were the challenges with Zoom and hands down it is connectivity. Zoom is better than phone if there are a lot of exhibits. We received a couple of complaints of who is supposed to call whom for the proceeding and inconsistency on how judges handle early submission of exhibits.

We asked what's better with Zoom. Parties indicated less travel stress and more events can be scheduled because there's no travel time. Witnesses are less stressed and it's easier to get them to appear and better for workers to appear because they don't have to take so much time off. It's easier to schedule doctors and pro ses have appeared more frequently. 40% of respondents want to see 81-100% of proceedings done on Zoom. The majority prefer Zoom over long travel time.

We asked what types of cases are better live. Consensus was that cases that are document heavy are better live. Some replied that cases with translators are better live. One person responded that all mediation should be by phone and hearings should be live.

We asked if you experienced gaps in customer service. Most responded that they did not experience gaps, but they wished we could send orders electronically.

We also surveyed our judges. Some had parties that preferred phone over Zoom and they echoed stakeholders that Zoom can be cumbersome with interpreters or with parties with connectivity issues.

We are taking to heart your comments about consistency in how judges handle exhibits. Reminder to read your notices, which specify whether the judge will initiate the call or whether you should call in.

Ms. Mason asked opposing counsel what can we do to make Zoom more palatable? Mr. Bishop noted there are technical difficulties with Zoom, such as when Ms. Mason cut out and he couldn't hear all of the question. This is an example of how there can be gaps in the testimony. Regarding exchange of exhibits prior to hearing, he noted he often doesn't receive discovery requests before the hearing. Having to share exhibits early takes away the surprise element. Claimant's attorney and client in the same room disadvantages employer's counsel because they're not in the same room. He noted he had a case where the claimant was in the room with their spouse and he had to make a motion to exclude that testimony.

Mr. Miller noted he has heard rumors that there is witness coaching. What is the Board doing to potentially penalize this behavior?

Mr. Silber noted it's a concern on both ends. The judges need to consistent in explaining there is zero coaching. He stated he has been in two proceedings where he had no doubt there was coaching. He suggests the judges state at the beginning of each witness that there can be no one else in the room.

Ms. Kortokrax noted they've told their attorneys to ask the judge to have the witness scan the room so you can physically see if anyone is in the room.

Chief Judge Jaffe responded:

- We will instruct the hearings judges to give a statement before each witness.
- We can suggest to them that if the technology is there they can ask witness to scan the room.
- We won't instruct the judges what kind of sanctions, but all sanctions are available. If sanctions are imposed, we will instruct judges to put sanctions in interlocutory order.

Ms. Mason noted she has never been in the same room as a client; if the client is at her office they are in a conference room and she is in her office.

Hiring: Chief Judge Jaffe reported we have half a dozen new judges since the pandemic and starting interviews to hire two more. The first thing we look for is L&I experience, but it is rare. Then we look for trial experience. Rules of Evidence and Civil Rules can be a challenge, so we value that experience. Our training is more extensive than it used to be; we emphasize BIIA procedures and the law. We have four new Assistant Chiefs. Most PDO changes are due to retirement. Appeals are down but the complexity of the cases—such as WISHA and assessment—has increased. Mr. Bishop and Mr. Ladenburg noted they have seen more claims coming in to their office and suspect appeals will increase.

Member Eng reported we conducted interviews for an Executive Director reporting to the Board Members. Due to circumstances beyond our control, we put the hiring process on hold.

WAC Update: Chief Legal Officer Brian Watkins gave an overview of changes:

- Clarifying Rule – Representation WAC 263-12-020 is modified to clarify that an employer's corporate officer may represent the employer.
- Pro Tem IAJs WAC 263-12-045 is amended to permit the Board to hire pro tem judges to respond to increases in workload.
- CRSAs – Relaxed and Appeals Automatically Stayed WAC 263-12-052 is amended to relax the requirements to include certain statements in the agreement as long as the agreement conforms with the requirements of the statute, RCW 51.04.063. Also, all related appeals are stayed upon CRSA filing.

- With the new rule of automatic stay, they will still be written orders so we can track them.
- CRSA — Amendments New WAC 263-12-05301 permits parties to file amendments to CRSAs.
- Much Requested: Affidavits of Prejudice (Notice of Disqualification) Remove reference to RCW 4.12.050 concerning disqualification; allows the filing of a notice of disqualification if an appeal is assigned to a new industrial appeals judge for the writing of the proposed decision and order.
 - If we accidentally assign a judge to write a PDO that you previously had disqualified, please immediately let us know our mistake so we can fix it.
- Team Interpreter Rule doesn't apply at the BIIA The recent CR change requiring the use of team interpreters doesn't apply to BIIA proceedings.
- Perpetuation Deposition Transcripts – Don't file paper copy.
- Rulemaking Suggestions:
 - Formal: <https://ofm.wa.gov/sites/default/files/public/legacy/reports/petition.pdf>
 - Informal: Email brian.watkins@biia.wa.gov with the suggestion and the reason the change is needed. The Board will consider the request the next time they consider rulemaking.

Ms. Kortokrax asked if we would be promulgating new rules regarding the new WISHA complaint retaliation statute. We are looking at the statute to determine if rules are necessary.

Stakeholder Q&A:

Ms. Kortokrax shared a virtual hearing protocol with the BIIA.

Ms. Mason noted PDOs are taking longer, some are 180 days after last event. Chief Judge Jaffe will look at this today. We continued many cases because of the pandemic; many judges had cases come due in the double figures.

Ms. Hatzialexiou announced that Vickie Kennedy is retiring in March or April after 50 years at L&I.

Next meeting: The next meeting is January 28 at 9 a.m. Reminder, if you cannot make it substitutions are allowed.

Adjournment: The meeting was adjourned at 10:35 a.m.

Respectfully submitted,

/s/

Jay Raish,
Confidential Secretary