

**CONTINUED MINUTES OF SPECIAL MEETING OF WC SECTION COUNCIL
MEETING-July 23, 2014**

Members Present: Housefield, Rabideau, Parker, Flynn, Conklin, Sesi, Hamm, Chizick, and Bava.

The continuation of the special meeting of Council was held to continue the discussion regarding the proposed Michigan Administrative Hearing Rules and specific motions regarding those rules from the Council.

Chairperson Housefield called the meeting at 4:05 p.m. He provided a brief summary of the prior discussions regarding the proposed rules and the presentation by Chief Magistrate Klaeren at the prior meeting. Council member Hamm moved to adopt the proposed minutes presented by Vice Chairperson Chris Rabideau, acting on behalf of Secretary Ella Parker, in her absence. The motion was seconded and passed by a majority.

Member Chizick introduced a motion that R792.10129(4) be amended to read: “In hearings held under the occupational code, 1980, PA 229, MCL 339.101 to 339.2919 **and Workers’ Disability Compensation Act of 1969, MCL 418.101 to 418.941**, the administrative law judge **and/or the magistrate** shall not issue an order of summary disposition.”

The motion was seconded and a discussion ensued regarding whether motions for summary dispositions were appropriate in the Workers’ Compensation cases. After a lengthy discussion on the issue, Chairperson Housefield called for a vote on the issue and a majority of the members present voted to notify the Chief Magistrate, the director of MAHS and the other appropriate parties of our recommendation on behalf of the Section that Rule 792.10129(4) be amended to include the Workers’ Disability Compensation Act. (6 Members voted in favor of the Motion and 3 Members voted against it.)

Thereafter, the Council discussed Attorney Robert J. MacDonald’s correspondence to Chairperson Housefield regarding his concerns with the proposed rules. Mr. MacDonald had previously sent correspondence to Chief Magistrate Klaeren on July 1, 2014 outlining his proposals. The Council also discussed those. Thereafter, Member Chizick moved to accept Mr. MacDonald’s changes to the proposed rules.

In particular, member Chizick moved that Rule 1301(2) read as follows: “Michigan Administrative Hearing Rules inconsistent with the Michigan Workers’ Disability Compensation Act, including, but not limited to Rule 102(3) shall not govern practice or procedure under the Act.” The motion was seconded and after a discussion, the majority of the Council voted not to incorporate the recommendation in correspondence to the appropriate parties.

Council then discussed whether we wished to address each of the other substantially similar recommended changes as a whole or individually as presented by Mr. MacDonald. The Council agreed to deal with them as a whole and member Chizick moved that Rule 1301(2) be changed to: “Michigan Administrative Hearing Rules inconsistent with the Michigan Workers’ Disability

Compensation Act, including but not limited to, Rules 105, 106(1)(k), 106(8)(a), 109(3)(iv)(b), 114, 115, 121, 125(5), 133(2), 135, and 136 shall not govern practice or procedure under the Act.” The motion was seconded and after a discussion by the parties, the majority of the Council voted not to request a change in the proposed rules as written regarding those sections.

Finally, Member Chizick moved that Rule 1313 be changed as follows as requested by Mr. MacDonald: “Limited discovery under Section 301 and Section 851 of the Workers’ Disability Compensation Act and the case law interpreting the Act which is necessary shall be equally available to all parties at the reasonable discretion and under the supervision of the Magistrate.” The motion was seconded and a discussion ensued. The terms of the proposal appeared vague to the Council and upon calling for a vote by Chairperson Housefield, the majority voted in favor of not recommending the change to the proposed rule.

Council agreed Chairperson Housefield will write a letter on behalf of the Council regarding our motions today and advise Mr. MacDonald we had considered his specific requests. Our recommended change pursuant to the motion will be sent out by an e-mail blast.

A brief discussion occurred regarding the first scheduled meeting in September will be a luncheon and discussed location of the December meeting which Andrea Hamm has volunteered to coordinate once again. The meeting was adjourned at 4:45 p.m.

Respectfully submitted,

Ella Parker, Secretary, Workers’ Compensation Section of the State Bar of Michigan