

## Minutes of WC Section Council Meeting - June 20, 2013

**Members Present:** Martin, Palmer, Housefield, Rabideau, Esper, Conklin, Flynn, and Hamm. John Sims ex-officio.

1. Teresa Martin called the meeting to order at 4 p.m.
2. **Secretary's report:** Bill Housefield submitted the minutes of the May 10, 2013 Council meeting that contained corrections. Following discussion and motion to accept the minutes as corrected, the motion passed.
3. **Treasurer's report:** Chris Rabideau provided the most recent financial reports given to him by the State Bar of Michigan. He also provided council members with a copy of the past year's treasurer's report, which he was submitting to the Section membership at the Annual Meeting the following day. Following discussion and a motion to accept the treasurer's report as submitted, the motion passed.
4. **Director's report:** It was noted that the director's report was to be given to the general membership at the Annual Meeting the following day.
5. **MCAC report:** It was noted that the Jack Wheatley's report was to be given to the general membership at the Annual Meeting the following day.
6. **Magistrate's report:** It was noted that Chief Magistrate Lisa Klearen's report was to be given to the general membership at the Annual Meeting the following day.
7. **Old Business:**
  - A) **Subpoena Issues:** A general discussion was held on continuing issues and

problems with subpoenas. Chuck Palmer indicated that he would keep this as an agenda issue during his term with hopes that we could get some input and direction from the Agency with the help of Jack Nolish.

**8. New Business:**

**A) Facilitation Summaries:** Tim Esper requested this issue be placed on the agenda for discussion and thereafter related an experience that he recently had involving a defense counsel submitting a rather formal brief to the Magistrate ahead of facilitation/mediation without notice or providing a copy to his office. A colorful discussion was held with almost every member present voicing pros and cons of facilitation/mediation briefs. Chief Magistrate Klaeren's e-mail response was also discussed. It did not appear that the Agency would promulgate any type of formal rules or regulations. It also appeared that there was no general consensus among the Council members present about rules, guidelines, or forms which the Council could recommend on behalf of the Section.

**B) Printing Expenses for Summer Meeting:** Matt Conklin indicated that \$130.90 had been spent on printing expenses to put together the handout that was being given to all members at the Annual Meeting. A motion to approve the expenses and reimburse Member Conklin was seconded, and following discussion, the motion passed.

**C) Plaque Expenses:** Member Housefield provided members with a detailed invoice from Lachman Company regarding the Hall of Fame plaque and the plaque for the incoming chairperson. With shipping and engraving, the total was \$329.60. A motion to approve payment of the invoice by the treasurer was made and seconded, and following a discussion, the motion passed.

Tim Esper indicated that Murray Feldman was going to be unable to attend the Annual

Meeting. He indicated that Murray had asked him to make a few general comments at the Annual Meeting regarding Kids Charity. It was agreed by the Council that the Chair should yield the floor to Mr. Esper for brief comments during the Annual Meeting.

Thereafter, the meeting was adjourned at 5:15 p.m.

Respectfully submitted,

J. William Housefield, Jr.

WC Section Council Secretary

## Minutes of WC Section Annual Meeting - June 21, 2013

1. Chairperson Teresa Martin called the meeting to order at 9 a.m. She provided some opening remarks and welcomed everyone in attendance. She especially welcomed Kevin Elsenheimer, the Director; Jack Wheatley, Chair of the MCAC; and Lisa Klaeren, Chief Magistrate.
2. **Secretary's Report:** Bill Housefield indicated that a copy of the minutes of the Work Compensation Council meeting held May 10, 2013 was included in the handout provided to the members. He announced that copies of all minutes are available on-line following approval by the Council. Anyone interested can go to the State Bar of Michigan website, click on the link for Workers' Compensation Section, and there will be a list of the minutes by month and year. He also stated that the Council generally meets the first Friday of every month via video conference between Detroit and Dimondale. He advised that any Section member can attend a meeting at either location.

The secretary then discussed the proposed amendment of the Section's by-laws. Specifically, he went through the procedure that is required by the State Bar in order to amend the by-laws. The amendment that was being proposed would allow Council members to vote electronically as opposed to being present in the same location. He indicated that the Chairperson would call for a vote at the end of the meeting following questions and/or discussion.

3. **Treasurer's Report:** Chris Rabideau provided a treasurer's report for the past year. He stated that the Section's operating fund balance as of May 2013 was \$76,303.19. He also stated that the Council is very judicious in the expenditures that are made on behalf of the Section. He pointed out that the major expenditures are made for the Winter and Annual Meetings which are directed at benefitting the general membership as a whole.
4. **Director's Report:** Kevin Elsenheimer welcomed the members to the Annual

Meeting and continued to welcome interaction between the Section and the Agency. He provided an update on the Delphi litigation. He stated that the Funds Administration had not accepted liability because they believe there is another responsible party, that being Ace Insurance Company. However, there may be a need to create a mechanism for raising revenue. Nothing has been formalized or finalized, but there is discussion of an assessment of three percent to all self-insureds. There is also discussion with the legislature about tweaking the Funds Administration.

He also announced that this Fall, there will be a request for rule making (RFR) addressing certain issues. These issues include:

- 1) Opioid regulation
- 2) Compound prescriptions
- 3) Evidence-based medicine

He indicated that he may be more involved with rule making based upon his new position. He is Deputy Director of LARA, involving the Office of Regulatory Rule Making. The Director also acknowledged the ongoing discussion/issues that Section has with subpoenas. He suggested that the Section, through the Council, "speak in one voice." He acknowledged the effectiveness of the Council's work in coming up with Forms 105 and 105B. He did suggest that any suggestions reforming, or changes in the rules, governing subpoenas "be in writing."

Lastly, he stated the Agency continues to work on upgrading its software and computer systems.

5. **MCAC Report:** Jack Wheatley provided the Section with an updated status report concerning pending appeals involving both UIC and WC cases. He stated that currently there are 97 workers' compensation cases pending on appeal. Forty-six of those have been assigned to a panel for decision. He also pointed

out when the MCAC was created, there were approximately 4,500 unemployment compensation cases, and the normal time to process a decision was 176 days. Currently, there are 500 UC cases, and the time to process a decision has been cut to 40 days. He stated the majority of the cases on appeal currently involve either *Stokes* remands or attorney fees on unpaid medical. He indicated that as far as he knew, there were no cases yet in which application of the new statute was an issue. He advised the Section that there are nine commissioners that hear UIC and WC cases. During the first 18 months, only six of the commissioners reviewed WC cases. At the present time, eight out of nine commissioners review both.

6. **MAHS Update:** Chief Magistrate Lisa Klaeren provided an insight as to issues that currently are being addressed within MAHS. First and foremost seemed to be the formulation of new rules that will be used to govern all the departments under the MAHS umbrella. These would include tax, human resources, Department of Corrections, and MCAC. She noted that the rules processing starts in September.

Looking at the "dashboard matrix," she discussed some of the statistical numbers that would be relevant to the Section. In 2011, 48 percent of the cases pending were 12 months old or older. After the first quarter of 2013, only 32 percent of the pending cases are 12 months or older. She also pointed out that the time period from the application being filed to a decision being mailed currently is running 16 to 18 months. In cases that are redeemed, the time period is 20 to 21 months, reflecting probably more cases that are dealing with CMS. In 2010, of all the cases tried, the average time period before a decision was issued was 84 days. In 2012, there were 212 cases tried, and the average time for a decision to be issued was 30 days. Through the first quarter of 2013, there have been 44 decisions which have been issued, on average, 20 days following close of proofs.

She gave an update on "stipulated redemption." She advised the Section that

she herself had only had one or two. In her personal opinion, the parties would be better served by having a magistrate review those files involving a CMS issue. Specifically, she thought a magistrate's review of the amount allocated for a voluntary MSA might give some insulation to the parties. If the MSA is set up with CMS directives, she sees no reason why redemptions by stipulation could not serve the purposes of the Act.

She then announced a new policy change that will be adopted by all magistrates. The magistrates are going to require that each party set forth the issues they believe need to be decided. If those issues are not formally announced on the record, they are **waived**. In other words, having an allegation in the application for hearing or a boilerplate answer will not be sufficient to preserve the issue before the magistrate or the MCAC.

7. **Case Law Update:** Stephanie Marino of Conklin, Benham provided a case law summary update to the Section. The unpublished opinion of the Court of Appeals and the Michigan Supreme Court reversing portions of the Court of Appeals decision in *Scharnitzke v Coca-Cola Enterprises* was discussed in detail. The MCAC case involving *Barclay v General Motors Corporation* also was discussed.
  
8. **Keynote Speaker Diane Ebersole:** Diane Ebersole is a practice management adviser with the State Bar of Michigan. She provided a number of handouts for the Section membership. Her presentation was entitled "All Things iPad." Her presentation included a number of items and was highly informative. She first discussed security involving any mobile device. This would include your iPad, Nexus, or any of the current smart phones. She strongly suggested that a pass code be set up and used whenever operating a mobile device. She made the assumption that most of us correspond or communicate with clients and that sensitive data is transmitted either in the form of e-mails or attachments. She suggested that we had an obligation to our clients to protect such sensitive and

confidential communications. Just as important, she suggested, was the personal content that is contained on most of the devices.

She also suggested that the attorneys go to the State Bar of Michigan website and take advantage of all of the services provided, some of which are absolutely free. Specifically, she identified Casemaker as one of the best sources of legal research. All active members of the State Bar of Michigan have access to Casemaker, which provides legal research for all Michigan cases, statutes, rules, etc. She also mentioned that for a nominal price (\$40 to \$70 a month), depending upon the number of users on the account, one can have access to all 50 states and all federal statutes and decisions. Although not a lawyer herself, she stated she has been told that the Casemaker service is on par with Lexis-Nexis or Westlaw. She also pointed out that just recently, Casemaker has created a mobile app which allows access to Casemaker through any mobile device. Her handouts provided reference to a number of apps that can be quite helpful in managing one's practice.

Ms. Ebersole stated that she is always available by phone or e-mail for any questions concerning software or hardware as it relates to the practice of law. All conversations are free and provided by the State Bar of Michigan. She also indicated that she is available to come out to your office and review your network system for security and effectiveness relating to your practice. Unfortunately, there is a charge for this service.

9. **Membership Vote:** Chairperson Teresa Martin called for a motion to amend the by-laws. Chuck Palmer made the motion, which was followed by a second by Dennis Flynn. Following discussion, the motion to amend the by-laws was passed by a unanimous voice vote.

Secretary Bill Housefield provided the Section with the recommendation made by the Nominating Committee concerning the slate of officers to serve for the



upcoming year as well as appointments to Council positions in general. The Committee nominated Charles W. Palmer as Chairperson; J. William Housefield, Jr. as Vice-Chair; Christopher J. Rabideau as Secretary; and Ella S. Parker as Treasurer. For Council members with terms expiring June 2016, the Committee nominated Philip I. Frame, Andrea Lynnea Hamm, and Rosa Bava. Attorney John Combs was nominated to fill the vacant term of Ella S. Parker, whose term expires June 2014. Chairperson Martin inquired if there were any nominations from the floor. Hearing none, she called for a motion to approve all recommendations made by the Nominating Committee. Following discussion and motion to accept the Nominating Committee' s recommendations, the motion passed.

Chairperson Martin opened the floor to the members for any issues, comments or discussions. There being no one requesting recognition, she called for a motion to adjourn, which was passed.

Respectfully submitted,  
J. William Housefield, Jr.  
WC Section Council Secretary