

## 2005 Rules Committee Meeting

The 2005 Rules Committee Meeting was held at noon on June 15, 2005, at the Holiday Inn SunSpree Resort in West Yellowstone, Montana. The following people were in attendance:

Kevin Braun  
Steven Carey  
Tom Martello  
Kim Schulke  
Kelly Wills  
Stacey Tempel-St. John  
Nika Ebert  
Jennifer Hepfner  
Angie Rolando  
Charlie Adams  
Dick Martin  
Judge Mike McCarter  
Pat Kessner  
Jackie Bockman  
Guest: Hon. Dorothy McCarter

Since Larry Jones specifically asked that the meeting be rescheduled and then didn't show up for the meeting, the vote was unanimous that he be elected to head up the Rules Writing Committee for the Workers' Compensation Court's new e-filing project. The Rules Committee also voted to find and enact a rule that would specifically offend Larry - the Gray Line Rule (as opposed to the Bright and Clear Line Rule).

After the humorous beginning, the committee reviewed the Court's April 7, 2005 Minute Entry No. 3578 (attached hereto). The consensus of the committee was that the items set out in the minute entry regarding non-docketing of e-mails, only docketing of formal letters, vacating dates set in scheduling orders, and the use of telephone conferences in common fund cases do not need to be made into formal rules. The members were satisfied with the procedures outlined in the memo.

Discussion was held regarding e-filing rules. The Supreme Court will need to adopt rules before the Workers' Compensation Court can adopt its own rules. Judge McCarter will most likely be involved in that process. There are model rules from other states which cover, e.g., the deadline for filing of documents and signatures (use of password constitutes signature). Judge McCarter will start a process to begin writing the rules, but believes the Rules Committee should be involved. It was agreed the E-filing Committee will be merged with the Rules Committee to begin the writing process. Judge McCarter will send out a query to see who wishes to be involved in developing new e-filing rules. After drafted, the proposed rules will be brought to the Rules Committee for review.

Dick Martin asked about the budget for the proposed e-filing project. Judge McCarter noted that the Court did not have a legislative appropriation for e-filing. The Court's technology support is provided by the Department of Labor and Industry, which assistance is covered with the Court's agreement with the DLI. All of the changes to the Court's case management system have been made by DLI tech support. The Court may need to purchase a new server, but there are not many new costs. The Court has already purchased a scanner. There are systems which could be purchased as opposed to being built in-house, such as FileNet. There may be licensing fees to use FileNet. The E-Filing Committee wants to keep the e-filing project in-house. The federal courts have developed an in-house system called the Pacer System.

The committee discussed the use of developing complex litigation rules which would be used for the common fund cases. Judge McCarter is reluctant to create such rules as he wants to encourage a cooperative effort with the parties. Tom Martello noted that, having been involved in several common fund cases, he does not want to develop formal rules and believes that would slow the process down to a crawl. The general consensus of the committee - "if it ain't broke, don't fix it." The Rules Committee may revisit this issue later if problems develop.

Dick Martin observed that the requirement for mediation slows the process down. Judge McCarter noted that the parties could do whatever they agreed to and if they wanted, they could use arbitration instead of mediation. Steve Carey said that you need to mediate to get the insurer's file. Tom Martello responded, and finds it irritating when files are not produced - that there should be a process to go more directly to the attorney. Judge McCarter asked Martello to see if the State Fund could create a policy whereby a request for a file and the production of it would be faster.

The meeting was adjourned at 1:10 p.m.

JB

c: E-mailed to Rules Committee Meeting Members and E-Filing Committee Members on June 21, 2005.