

MASSACHUSETTS WORKERS' COMPENSATION ADVISORY COUNCIL MINUTES

October 10, 2012
Department of Industrial Accidents
1 Congress Street, Suite 100
Boston, MA 02114-2017

Council Members Present: John Regan, Chairman; Stephen Joyce, Vice Chairman; Edmund Corcoran, Jr.; Antonio Frias (Ines Leonardo); Stephen Falvey; Mickey Long; Teri McHugh; John Pulgini; Bernie Mulholland; Todd Johnson (Michael Kelley).

Also Present: Philip L. Hillman, Director; Omar Hernandez, Senior Judge; George Noel, Deputy Director of the DIA; William Tattan, General Counsel; Bob Ford, Budget Director, Mike Doheny, General Counsel, Executive Office of Labor and Workforce Development; Ellen Keefe, Workers' Compensation Rating & Inspection Bureau of Massachusetts.

Advisory Council Staff: William S. Monnin-Browder; Evelyn Flanagan.

Absent: Dennis Hines; David Powell; William Corley; Executive Office of Labor and Workforce Development; Executive Office of Housing and Economic Development.

Agenda:

Chairman's Welcome

DIA Update

- Judicial Update – Omar Hernandez, Senior Judge
- Vital Statistics – George Noel, Deputy Director
- Update on Impartial Fee Increase – Philip Hillman, Director
- Update on IT Issues – Philip Hillman, Director

Action Items

- Minutes – September 12, 2012

Executive Director Update – William Monnin-Browder

Miscellaneous

CHAIRMAN'S WELCOME

Chairman John Regan began the meeting at 9:00 A.M.

DIA UPDATE

Vital Statistics

Deputy Director George Noel updated Council members on the information contained within the DIA's vital statistic report for October 2012. He offered the following statistics: Conference Queue: 948; Hearing Queue: 649; Reviewing Board Inventory: 36; Impartial Exams for FY' 13 (to date): 972 (15 waivers); Exam Fees Collected for FY' 13: \$369,825; Impartial Medical Examinations in FY' 12: 3,667 (48 waivers); Exam Fees Collected in FY' 12: \$1,474,788.

The Deputy Director updated the Council on the Stop Work Order (SWO) and Caseload Statistics, including the following: SWOs issued in September: 241 (20 SWOs were reissued as the result of

defaults of previous orders); total SWOs issued in FY' 13 (to date): 671; fine collection for September: \$83,839; total fines in FY' 13 (to date): \$309,026; SWOs issued in FY' 12: 2,637; total fines collected in FY' 12: \$1,381,085; compliance checks for September 2012: 7,622; estimated number of workers now covered by workers' comp. insurance as the result of a SWO: 1,093 (FY' 13).

Deputy Director Noel continued the update of the monthly vital statistics offering the following: total cases filed in September 2012: 867; total cases filed in FY' 13 (to date): 2,905; total cases filed in FY' 12: 12,589; total First Report of Injury Forms (FRI) filed in September 2012: 2,300; total FRI filed online in August 2012: 998 (43%); total FRI filed in FY' 13: (to date): 7,453; total FRI filed in FY' 12: 29,643 (9,034 online).

Deputy Director Noel proceeded with his update on uninsured claims (§65), offering the following: total §65 claims reported in FY' 13 (to date): 21; total amount of §65 claims paid by the Trust Fund in FY' 13 (to date): \$937,603; total §65 claims filed in FY' 12: 111; total amount of §65 claims paid by the Trust Fund in FY' 12: \$7,810,128; total recovery efforts against uninsured employers FY' 13: \$480,928; total recovery efforts against uninsured employers FY' 12: \$1,047,057.

Deputy Director Noel proceeded with the vital statistics for the Second Injury Fund (§37/37A), stating the following: total amount of §37/37A petitions paid in FY' 13 (to date): \$3,521,281; total amount paid on these claims in FY' 12: \$24,198,415; total COLA reimbursements to insurers in FY' 13 (to date): \$170,852; total COLA reimbursements to insurers in FY' 12: \$20,077,659.

The Deputy Director reported that as of September 2012, the number of employees whose salary is paid by either the Special Fund or the Trust Fund was 241 (193 DIA employees, 48 WCTF employees).

Director Philip Hillman noted that the DIA's forecast for FY' 14 is 255 authorized payroll positions (including all full and part-time positions). He explained that the 14 open positions include one ALJ, two AJs, one stenographer, two Counsel IIs, two investigators, and two clerk IVs.

Deputy Director Noel presented the following accounting and finance statistics: total referral fees collected in FY' 13 (to date): \$986,297; total referral fees collected in FY' 12: \$3,774,237; total first report fines in FY' 13 (to date): \$13,518; total first report fines in FY' 12: \$115,000; total assessment collections in FY' 13 (to date): \$18,134,675; total assessment collections in FY' 12: \$82,117,762; total SWO fines in FY' 13 (to date): \$309,026; total SWO fines in FY' 12: \$1,381,085.

Vice Chairman Steve Joyce updated Council members on the October 9, 2012 budget discussion. He indicated that, under the proposed budget, the DIA's funding would remain flat for FY' 14, except for the inclusion of additional funding for employee raises. Mr. Joyce stated that the group had also discussed IT, including the document transmission issues, and how it fits into the budget.

Update on IT Issues

Director Hillman stated that the impact of the size of the documents being uploaded to and downloaded from the DIA's system had not been anticipated. He indicated that the system's current design is insufficient for the task. He explained that the DIA had installed a T3 line to address the data transmission issues, but that it did not fix all of the problems. While it had made a difference in some areas, he said, it did not solve all of the issues. He explained that the plan is now to redesign the system to significantly increase its bandwidth. He indicated that the Agency's goal is not just to solve the current difficulties, but also to anticipate future needs. He stated that DIA has developed a plan that the Agency anticipates will meet both its short and long term needs. He agreed to ask the Secretariat's IT person to attend the Council's November meeting to further update the Council on IT issues.

Council member Ed Corcoran asked if IT understood the impact of the process being slow, noting that sometimes IT is unaware of some of the bigger issues involved.

Director Hillman explained the person who heads IT for the Secretariat is a former DIA employee who understands the Agency's business. Director Hillman also explained that the problem is a straight technology issue that has nothing to do with the merging of the departments. He explained that the Agency has simply reached the limits of what its system can handle.

Council member Mickey Long noted that other institutions, such as the federal courts, have gone online and do not have these types of problems, despite handling larger volumes of information. He questioned why some of these issues were not anticipated.

Judicial Update

Senior Judge Hernandez began by addressing the conference queue. The Senior Judge explained that, in an aggressive attempt to reduce the hearing queue, he and his managers had decided to swap out three hearing weeks with three conference weeks in the next twelve week judicial cycle, beginning in November. He noted that this change might cause strain on the staff, so he plans to move people from other units, as well as pulling two judges from Fall River to Boston to help out. He expects that this action will help bring the wait time closer to ten weeks.

Chairman Regan stated that he appreciates the effort to get the situation resolved, but that he is concerned that the schedule adjustment is a one-time fix that cannot be repeated on a regular basis. He indicated that once the queues decrease to the eight to twelve week mark, close attention should be paid to them to make sure that they do not tick back up again.

Mr. Michael Kelley stated that he had looked at a couple of cases before coming to the meeting and noticed that the time it took from conciliation to conference was 17 weeks. Mr. Kelley stated that he was glad the Senior Judge had decided to undertake the schedule adjustment because 17 weeks is way too long to wait. Mr. Kelley encouraged the Senior Judge to communicate the schedule adjustment to all the parties, including insurance companies, letting them know that this is coming. Mr. Kelley also asked the Senior Judge to explain the judges' cycle.

Senior Judge Hernandez explained that Dispute Resolution has a 12 week cycle, during which judges usually have six hearing weeks, four conference weeks, a continued week and a writing week. He noted that with the schedule adjustment, the schedule will now be three hearing weeks, seven conference weeks, one continued week and one writing week. The Senior Judge stated that he is drafting a memo to all the judges informing them that the schedule adjustment is coming. He indicated that the memos will be posted in all offices and that parties should be prepared and ready for conferences when scheduled.

Council member Teri McHugh agreed with the necessity for the schedule adjustment. She also raised a concern with scheduling technology that might cause problems if judges refuse requests for continuance. She explained that she sometimes receives notices to be in Boston, Worcester and Fall River on the same day, which is infeasible.

The Senior Judge explained that the system is designed to allow for multiple locations to be scheduled as long as there is a four hour gap. The Senior Judge stated that once a person gets a notice they have six weeks to notify the Agency about the conflict. The Senior Judge stated that continuances will be done on a case by case basis.

Ms. McHugh explained that she is also concerned with the tail end of the process, which is the Impartial Unit. She indicated she has called the unit in some cases to find out why she has not received a notice for an impartial, despite a significant amount of time passing, and was told it was because medicals had not been uploaded.

The Senior Judge explained that one of the reasons he had met with all four of his managers was to see what the impact would be of the schedule adjustment on each unit. He explained that the units are very connected and that each level has a significant impact on the next. He indicated that he is working to make the whole process function more smoothly.

Council member Mickey Long stated that he recalled seeing the queue down to four or five weeks in the past and inquired as to what was being done differently now to cause the current backlog.

Director Hillman reported that at one point, Dispute Resolution was down five judges, which created a backlog that was difficult to catch up on. The Director stated that this issue, combined with the technology problems, created a “perfect storm.” The Director stated that these two key issues are the major reasons why the wait times are longer.

With regard to judicial applications, Senior Judge Hernandez reported that all the applications are in and they are being processed. He stated that they are hopeful that within the next month this should be all set and sometime after the first of the year the Council should expect to get a list of candidates.

Vice Chairman Stephen Joyce noted that there are candidates that have gone through the process and are in the pool that could potentially be hired.

Council member Ed Corcoran noted this situation validates the concerns the Council has had in the past regarding the number of judges who should be sitting at the DIA.

Council member Falvey asked what the impact had been of the decision to share clerical staff among judges.

Senior Judge Hernandez said that the situation has presented many challenges both for the secretaries and the judges, but that they were working through it. In response to a question regarding coverage during vacation or sick time, the Senior Judge reported that he has some floaters and that he can pull some people from other units when necessary.

Chairman Regan asked the Senior Judge to rank the challenges (technology, staffing and judges) that have impacted the queues, listing them from most critical to least critical. The Chairman stated that the Council has seen this situation developing and that members probably have different opinions on the cause. He indicated that the collective goal of everyone is to get back to where things were. He also asked what the Council can do to help.

Senior Judge Hernandez stated that the number one critical issue is technology and that the decision with respect to staffing changes was based on technology that has not worked as expected. He indicated that his number two challenge is staffing. He indicated that the 50% cut in his staff has had an effect on morale and that he continues to work through the issue. He explained that scheduling has been a challenge, because the biggest complaints from the secretaries concern the work when both judges they work for have conferences at the same time. Senior Judge Hernandez cited judicial appointments as his third most critical concern.

Chairman Regan asked whether there has been a conversation since the staff reduction about its impact and asked if it was time to revisit the issue.

The Senior Judge stated that he had been charged to make the situation work with the staff that he has and if there are changes, it would be great, but he needs to move forward and not look at the past.

Chairman Regan stated that the Council relies on the administration to tell them what is happening inside the organization and that there has been a certain level of patience exhibited as the numbers have gone in the wrong direction. He noted that, now that they have identified these issues as concerns, it is time to put in place a process to deal with them. Chairman Regan recommended that they leave open the question of the right staffing level because everything needs to be part of the discussion if the goal is to make the DIA work right.

Mr. Mulholland stated that every aspect of the perfect storm contributing to the longer wait times resulted from decisions and policies made and implemented when the DIA was not ready for them or in the face of serious concerns that have subsequently come to fruition. Mr. Mulholland noted that the time has come for a message to be sent to the people making policy decisions that something needs to be done because this is not working. He stated that injured workers are waiting too long to get their day in court.

Chairman Regan stated that he feels like there is a short term strategy in place, which will be implemented in early November and continue for twelve weeks. He noted that the technology issue will be discussed in November and the judicial appointments are in process, so that leaves only the staffing issue as the open question. The Chairman stated that rather than force the issue today, the administration could come back in November with what they are willing to talk about on the staffing level. He indicated that he would like to have the conversation about what are the right numbers since employers are willing to pay.

Director Hillman expressed a desire to fix the technology issue and then see if the staffing continues to be an issue. He agreed with the Senior Judge that the technology issue is the number one issue impacting the system now.

Mr. Corcoran stated when the staffing issues were being contemplated, the Council heard from the workers' compensation bar in the person of Alan Pierce, as well as three Council members. He indicated the situation is moving in the wrong direction. He explained when there are morale issues with the best, most productive secretaries; it is a big red flag. He stated that he understood the patience for another month but agrees that at some point we should make this issue well known in regard to the position the Council will take.

Council member Long asked that the Concerns and Recommendations section of the Annual Report reflect this conversation.

Chairman Regan agreed that the report should reflect the Council's concerns regarding the decline in performance.

Update on Impartial Fee Increase

General Counsel Mike Doheny informed the Council that there had been progress on the proposed impartial fee increase. He explained that A&F had approved it and that he had received a call from the Governor's Legal Counsel and they had tentatively approved it. He stated that they would get final approval either today or tomorrow and that the next step in this process is filing with the Secretary of State's Office.

Chairman Regan asked that the Director if he could let the Council know when the regulations have been filed with the Secretary of State's office.

ACTION ITEMS

A motion was made to approve the September 12, 2012 minutes.

Motion seconded and carried.

EXECUTIVE DIRECTOR UPDATE

Executive Director Will Monnin-Browder stated that the new legislative session would be gearing up in January and that the Council has traditionally sat down in late November or early December to talk about the legislation for the upcoming session, usually in a subcommittee. Mr. Monnin-Browder suggested that it would be a good idea at the next meeting to set up a subcommittee in November to bring back recommendation in December.

Mr. Monnin-Browder stated that he and Evelyn Flanagan were working on a draft of the Annual Report. He noted that he anticipates that they would be on a similar schedule as last year and hopefully the report will be released in January.

MISCELLANEOUS

A motion was made to adjourn the meeting. Motion seconded and carried.

The next meeting of the Advisory Council is scheduled for Wednesday, November 14, 2012, at 9:00 AM, at the Department of Industrial Accidents, 1 Congress Street, Suite 100, Conference Room #10-140, Boston, MA 02114-2017.