

# MASSACHUSETTS WORKERS' COMPENSATION ADVISORY COUNCIL MINUTES

October 8, 2014

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

*Council Members Present:* Stephen Joyce; Mickey Long; Frank Ruel; John Pulgini; Stephen Falvey; Bill Corley; Todd Johnson; Bernie Mulholland.

*Also Present:* George Noel, Director; Linda Turner, Deputy Director; Omar Hernandez, Senior Judge; William Tattan, General Counsel; John Riordan, Deputy General Counsel; Ray Marchand, Director of Investigations; Bob Ford, Budget Director (EOLWD); Michael Kelley, Hub International, NE; Ellen Keefe, Workers' Compensation Inspection Bureau (WCRIB).

*Advisory Council Staff:* William S. Monnin-Browder.

*Absent:* John Regan; Teri McHugh; Dennis Hines; Executive Office of Housing and Economic Development; Executive Office of Labor and Workforce Development.

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## *Agenda:*

Chairman's Welcome

DIA Update

- Judicial Update – Omar Hernandez, Senior Judge
- Vital Statistics – William Taupier, Deputy Director of Administration

Action Items

- Minutes – September 10, 2014

Executive Director Update – William Monnin-Browder

Miscellaneous

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## **CHAIRMAN'S WELCOME**

Chairman Stephen Joyce began the meeting at 8:00 A.M. The Chairman asked Senior Judge Omar Hernandez to provide the judicial update.

## **DIA UPDATE**

### Judicial Update

The Senior Judge stated that with respect to the reappointment process, all four judges up for reappointment have been scheduled for interviews with the Governor's Legal Counsel. He stated that he has not received an update on the other candidates. He indicated that he expects the process will move forward quickly.

Senior Judge Hernandez noted that the Agency has posted for an Administrative Judge position, as one of the sitting AJs was recently appointed to the District Court. He explained that the Nominating Panel is in

the process of determining which applicants it will interview. He explained that the ballots are due back by October 10<sup>th</sup>, after which time the Nominating Panel will schedule interviews.

The Senior Judge stated the conference queue has increased slightly. He explained that the increase was caused by a number of factors, including: (1) one judge's departure to become a District Court Judge; (2) one judge's upcoming medical absence of four to six weeks; and (3) upcoming vacation time and holidays. Judge Hernandez stated that conference queues currently stand at three months in Fall River and Worcester; two months in Springfield; four months in Lawrence; and three and a half months in Boston. He explained that he has moved judges to different offices to address the vacancy and leave issues.

Council member Todd Johnson asked the Senior Judge if he has a target number for the conference queue.

The Senior Judge stated that he would like to keep the queue under 1,000. He noted that the queue is currently slightly elevated at 86 over this level and that the Agency will need to monitor the queue closely.

Council member Mickey Long expressed concerns about the length of time between conciliation and conference, particularly in the Lawrence office. He asked for an explanation of how many injured workers are waiting up to 4.5 months without receiving benefits. He explained that when queues get long, a "walking wounded culture" develops, as many injured workers cannot wait for benefits and, therefore, return to work injured.

Mr. Bill Taupier explained that the chart in the slide deck does not capture whether employees waiting for a conference are being paid benefits. Mr. Taupier noted that the slide was originally designed to capture a number at a certain moment in time—at the conference. Mr. Taupier explained that there is no definitive answer until the conference, so that is the number captured. He stated that it is probably possible to look from the period of conciliation, but he would need to raise the issue with IT.

Council member Mickey Long asked if there was a way to move injured workers not receiving benefits up in the queue.

The Senior Judge stated that it is possible to make a request for speedy conferences, which, under certain circumstances, he approves. He explained that he too is concerned and does not want to have injured workers waiting. He stated that he monitors the queue week to week and attempts to make adjustments, while keeping the overall system in balance.

Mr. Long stated that given 85% of claims filed with the DIA are employee claims, his concern is for those employee claims potentially affected by the 4.5 month wait. He said that these are the only people involved in the process who are not getting paid or who are getting paid less than they believe they are entitled to be paid. He stated that for the injured worker waiting 4.5 months to get benefits to which they are entitled, the system is not working.

Mr. Joyce noted that Mr. Long keeps a close eye on the queues, which he appreciates. He stated that the conference queue is up and that people should not have to wait too long for a determination on their benefits. He indicated that in the past, when the queue has risen, the Senior Judge has taken the necessary actions to bring it down.

#### Vital Statistics

Bill Taupier updated Council members on the information contained within the DIA's vital statistic report for October 2014. He offered the following statistics: Conference Queue: 1,086; Hearing Queue: 684; Reviewing Board Inventory: 31; Impartial Exams for FY'15 (to date): 882 (17 waivers); Exam Fees Collected for FY'15: \$472,533; Impartial Medical Examinations in FY'14: 4,376 (22 waivers); and Exam Fees Collected in FY'14: \$2,018,883.

Mr. Taupier updated the Council on the Stop Work Order (SWO) and Caseload Statistics, including the following: SWOs issued in September: 192 (13 SWOs were reissued as the result of defaults of previous orders); total SWOs issued in FY'15 (to date): 567; fine collection for August: \$116,302; total fines in FY'15 (to date): \$328,302; SWOs issued in FY'14: 2,345; total fines collected in FY'14: \$2,018,883; compliance checks for September: 8,479; estimated number of workers now covered by workers' comp. insurance as the result of a SWO: 5,954 (FY'15, to date).

Mr. Tattan stated that Ray Marchand, Director of Investigations, would be retiring on October 17, 2014. He noted that Mr. Marchand has done a tremendous job managing that department.

The Chairman agreed and thanked Mr. Marchand for all the work he has done.

Mr. Taupier continued the update of the monthly vital statistics offering the following: total cases filed in September 2014: 890; total cases filed in FY'15 (to date): 2,908; total cases filed in FY'14: 11,960; total First Report of Injury Forms (FRI) filed in September 2014: 2,523 (2,207 filed electronically; 87%); total FRI filed in FY'14: (to date): 31,384 (11,937 online). In September the number of claims filed: 756; number of claims filed in FY'15: 2,459; number of discontinuances filed: 132; the total number of discontinuances filed in FY'15: 441; the number of third party claims filed: 2; total number of third party claims filed in FY'15: 8.

Bill Taupier proceeded with his update on uninsured claims (§65), offering the following: total §65 claims reported in FY'15 (to date): 20; total amount of §65 claims paid by the Trust Fund in FY'15 (to date): \$1,582,480; total §65 claims filed in FY'14: 107; total amount of §65 claims paid by the Trust Fund in FY'14: \$8,648,776; total recovery efforts against uninsured employers FY'15 (to date): \$475,132; total recovery efforts against uninsured employers FY'14: \$1,013,557.

Mr. Taupier proceeded with the vital statistics for the Second Injury Fund (§37/37A), stating the following: total amount of §37/37A petitions paid in FY'15 (to date): \$5,779,142; total amount paid on these claims in FY'14: \$28,413,548; total COLA reimbursements to insurers in FY'15 (to date): \$478,911; total COLA reimbursements to insurers in FY'14: \$14,509,275.

Mr. Taupier reported that as of August 2014, the number of employees whose salary is paid by either the Special Fund or the Trust Fund was 243 (189 DIA employees, 54 WCTF employees).

Mr. Taupier presented the following accounting and finance statistics: total referral fees collected in FY'15 (to date): \$1,144,076; total referral fees collected in FY'14: \$3,612,740; total first report fines in FY'15 (to date): \$18,775; total first report fines in FY'14: \$129,474; total assessment collections in FY'15 (to date): \$12,273,013; total assessment collections in FY'14: \$50,224,950; total SWO fines in FY'15 (to date): \$104,720; total SWO fines in FY'14: \$1,327,628.

#### Director's Update

Director Noel expressed his gratitude for Ray Marchand's work as Director of the Investigations Unit. He indicated that Mr. Marchand faced many challenges when he started and that his work has been exemplary. He said Mr. Marchand would be sorely missed.

Director Noel stated that everything is being done that can be done to expedite the process for the appointment of the new judges, noting that the Nominating Panel would forward its recommendations to the Council as soon as possible.

Council member Steve Falvey asked that, when applicable, a productivity list be included in the judicial information packages distributed to Advisory Council members.

Director Noel stated that the Agency is working with Greater Boston Legal Services to improve language access at DIA. The Director explained that Translation Services is currently working on a brochure with information for the injured worker. The Director also stated that the investigators will be provided with cards to hand out during their site visits. He mentioned that the cards will explain who the investigators are, their role, and that the workers have nothing to fear when an investigator arrives on the job site.

### **ACTION ITEMS**

A motion was made to approve the September 10, 2014 minutes.

Motion seconded and carried.

Chairman Joyce stated that the Council also needed to review minutes from the September Executive Session.

A motion was made to approve the minutes. Motion seconded. Council Member Mickey Long inquired about a clerical error on the second page of the draft minutes.

A motion was made to approve the minutes from the September 10, 2014 Executive Session, subject to an amendment to correct the clerical error.

Motion seconded. The motion did not carry.

Council Member Mickey Long inquired as to whether it was permissible for him to vote on the minutes for a meeting he was unable to attend.

The Chairman indicated that Council Member Long could vote.

A motion was made for reconsideration.

Motion seconded and carried.

A motion was made to approve the minutes from the September 10, 2014 Executive Session, subject to an amendment to correct the clerical error.

Motion seconded and carried.

Council member Mickey Long made a motion to go into Executive Session to consider a motion for reconsideration of a particular judicial applicant as highly qualified.

Chairman Joyce explained that he did not find the motion in order. He noted that the questions before the Council at the September meeting were required to be completed within seven days of receiving the notification from the Nominating Panel. He explained that an extension was granted until September 12<sup>th</sup>

and on September 10<sup>th</sup> the Council interviewed and rated candidates. He indicated that the ratings were then sent to the Governor's Office. He indicated that those questions are no longer before the Council.

Mr. Long asked if the Chairman's point goes to the underlying motion rather than procedure. He stated that he would not challenge the ruling of the Chair, but was unaware of this procedure and requested that the rules be provided to him for the next meeting.

#### **EXECUTIVE DIRECTOR UPDATE**

Executive Director William Monnin-Browder informed the Council that he expects to distribute a draft Annual Report at the Council's November meeting.

#### **MISCELLANEOUS**

A motion was made to adjourn the meeting.

Motion seconded and carried.

Meeting Adjourned.

**The next meeting of the Advisory Council is scheduled for Wednesday, November 12, 2014, at 9:00 A.M., at the Department of Industrial Accidents, 1 Congress Street, Suite 100, Conference Room #10-140, Boston, MA 02114-2017.**