

Memorandum

TO: Vocational Rehabilitation Counselors
CC: Vocational Rehabilitation Specialists, Kris Peterson
FROM: Glenn Morton
DATE: October 15, 2004
SUBJECT: Meeting Announcement & Results of August 27, 2004 Meeting

The next informal meeting between court staff and certified vocational rehabilitation counselors is scheduled for Friday, October 22, 2004, at 2:00 pm. The meeting will be held at the court's new administrative facilities at 1221 "N" Street, Suite 402, in Lincoln (TierOne Center). There will be no meeting in November, and the final meeting for this year will be on December 3, 2004 at the same location.

The following are the results of the discussions at the August 27, 2004 meeting. If you have questions or concerns about any of this please let me know prior to the next meeting and they will be addressed at that time.

The agenda for this meeting was reporting to the court and in particular the requirements of Rule 37. The various paragraphs of the rule were discussed, with the following outcomes:

1. Rule 37,A (and related Rule 42,A,2)

Rule 37,A requires that the court be notified within five working days of when the vocational rehabilitation counselor is "retained." The question is when does the 5 days start to run. It was also noted that Rule 42,A,2 requires that the counselor obtain written agreement of his or her "selection" and that the counselor will notify the court of his or her selection "pursuant to Rule 37." After discussion it was understood and agreed as follows:

a. Consistent with Rule 42,A,2, the word "retained" in Rule 37,A will be interpreted to mean the date the counselor was "selected", and "the date the counselor was selected" will be understood to mean the date written agreement was obtained pursuant to Rule 42,A,2.

b. The "Date Case Opened" box on the VR 42 form will be changed to refer instead to the "Date Employee Signed Agreement to Selection." See attached revision.

c. At the next rule change hearing the court staff will propose that Rule 37,A be amended to require that the court be notified within five working days of when the counselor is "selected pursuant to Rule 42,A,2", rather than from when the counselor was "retained" as currently stated in the rule. This will bring the wording of Rule 37,A in line with Rule 42,A,2.

d. It is not necessary for the counselor to submit a copy of the written agreement to the court on a routine basis, although the court's specialists may request a copy of the agreement in a particular case.

2. Rule 37,C (see below for discussion of Rule 37,B)

Rule 37,C addresses reporting of class schedules and grade transcripts / training progress reports, and there was discussion in two separate areas: (1) post secondary education, and (2) GED, ESL, ABE.

a. Post Secondary Education

Problems regarding the reporting of class schedules and grade information in connection with post secondary education have been the topic of discussion at several previous meetings. Procedures were first discussed and agreed to at the January 16, 2004 meeting, but were revisited at the June 25, 2004 meeting after court staff reported continuing problems in receiving this information in a timely manner. At that meeting court staff proposed the use of a new form in hopes of addressing the problems, but it was decided that use of the form would be voluntary rather than mandatory. It was also decided that the specialists would continue to follow the procedures agreed to at the January meeting, but that further steps would be taken should there be a continuing failure by a counselor to insure that the information be submitted in a timely manner. Concerns were again expressed at the July 30, 2004 meeting that the previous decisions had not gone far enough to insure that the needed information is obtained by the counselor and reported to the court in a timely manner. Nevertheless, it was again decided to stay with the decisions made at previous meetings, but that if problems persist this could be addressed again at a later date.

At the August 27, 2004 meeting the court's specialists again expressed concern and frustration with ongoing problems in receiving this information in a timely manner, and with the amount of time and effort it is taking them to obtain this information. Therefore, it was recommended that the procedures established at the January meeting (and reported in a memorandum from Kris Peterson on February 8, 2004) be revised to state that in the future a letter will be sent to the counselor, employee, and all other parties in any case in which the grades and schedules are not submitted by the first class day of the new term. This letter will remind the counselor and employee of their obligations, and will state that any further failure to submit the information in a timely manner will result in cancellation of the plan. Only one such warning letter will be sent in any given case, and any further failure to submit this information in a timely manner throughout the life of the plan will result in cancellation of the plan. No further warning letters will be sent prior to such a cancellation. This will not be applied retroactively to existing cases, meaning that the warning letter will be sent only if there is a failure to submit the information in a timely manner after the effective date of the revised procedures. Furthermore, if a counselor advises the court of extenuating circumstances in advance of the first class day of the new term (as contemplated in the procedures established in January), then the warning letter will not be sent.

A draft of the revised procedures incorporating the above changes is attached. Please bring any questions or concerns about this to my attention prior to the October 22, 2004 meeting and they will be addressed at that time. Absent any substantive modifications at that meeting these revised procedures will go into effect after that date.

b. GED, ESL, ABE

It was acknowledged that the attached policy regarding failure to submit grades and/or class schedules applies only to plans involving post secondary education, and not to GED, ESL, or ABE plans. For these kinds of plans it was recognized that the timing of report filing is not as critical, and that the reports may sometimes be a month in arrears. It was discussed that for these kinds of plans the court needs information regarding (1) attendance, (2) progress, (3) results of testing or when the next testing will occur, and (4) problems, difficulties, and/or concerns.

There was general consensus that in GED, ESL, and ABE plans the court's attendance and progress report has been working fairly well, although some tweaking is needed. It was agreed that the mileage report form will be revised to include (1) the maximum daily mileage, (2) clarification of "round trip", and (3) a signature block for the counselor. As with grades and class schedules, it was agreed that the counselor should be the point person to collect this information and report it to the court. A counselor signature block will also be added to the tutor reimbursement form.

Revisions to all of these forms will be drafted by the court staff and circulated for comment to all certified counselors (as a Word document).

3. Rule 37,D

Rule 37,D requires, in part, that the court be notified immediately if the employee is not making satisfactory progress. The questions are what is "immediately" and what is "satisfactory progress." It was recognized that the counselors cannot tell the court what they don't know. However, counselors should keep on top of things, and should let the court know within 24 hours of when the counselor becomes aware of a problem. If there is uncertainty as to whether satisfactory progress is being made counselors are encouraged to contact the court and discuss the matter.

4. Rule 37,E

Rule 37, E requires that the counselor notify the court within five working days of case closure. There was extensive discussion regarding the meaning and significance of case closure, with the underlying question being at what point, if any, does the counselor's role as the "designated" counselor end. Issues raised but not resolved were (1) when and under what circumstances, if any, does the written contact rule no longer apply, and (2) what is the counselor's role and what are the limitations, if any, with regard to rebuttal opinions. Some counselors indicated they were under the impression that when a case is closed all restrictions are off. In contrast, court staff said a case closure does not automatically remove a counselor from the case. It was agreed that

further research is needed regarding case law and positions previously announced by the court in related fact situations. This will be further considered at the next meeting on October 22, 2004.

5. Rules 37,B and 37,F

Rule 37,B provides that the counselor shall submit a monthly report showing the activity and type of services provided. Rule 37,F requires that reports prepared by a counselor shall be provided to all parties. Issues raised but not discussed or resolved were as follows:

- a. The current monthly status report table is essentially useless to the court
- b. Progress reports under Rule 37,F may satisfy Rule 37,B, depending on the information included and the timeliness of the report, but the court does not always receive these reports.
- c. Should the court's monthly status report be revised, and if so how, and/or should the requirements for progress reports be changed to satisfy Rule 37,B?
- d. Should there be different reports for different types of plans?

These and any other issues relating to 37,B and 37,F will be addressed at the next meeting on October 22, 2004.

6. Next meeting agenda item(s). At the next meeting on October 22, 2004 we will address:

- a. Revisions to the policy regarding reporting of grades and class schedules, as discussed during the August 27, 2004 meeting (see attached).
- b. Revisions to forms as drafted and proposed by the court staff in accordance with discussions during the August 27, 2004 meeting.
- c. The counselor's role and limitations, if any, following case closure. Consider research by court staff.
- d. Issues relating to Rules 37,B and 37,F including the monthly status report and progress reports.
- e. Information requests from court specialists when reviewing and monitoring a plan.

7. Future meeting agenda items. The following topics will be addressed at future meetings, not necessarily in this order. Please bring any suggestions for additional items to my attention.

- a. Procedural steps. What will be the steps for determining a violation of the newly revised NWCC ethical standards, and what role, if any, will the CRCC Ethics Committee play in considering possible violations of the CRCC Code of Professional Ethics? What are reasonable due process steps for addressing other alleged violations of a statute, rule, or

procedural requirement? [Note: For background information see the outcomes memorandum from the June 25, 2004 meeting.]

b. Transferable skills. Initial discussion began on this topic at the June 25, 2004 meeting, but no substantive decisions were reached.

c. Job goals for ESL/GED/ABE. The court's current policy for ESL and GED is that vocational goals are not mandatory since the focus is on general employability, and that if ESL or GED is a first step in formal retraining the counselor may submit one consolidated plan or two separate plans at the same time. The court's current position for ABE or remedial programs is that they may be a component of a retraining plan but do not constitute retraining in and of themselves. Should the policies for ESL, GED, and ABE be the same and why or why not? Is the court's current policy regarding ESL and GED consistent with statute section 48-162.01(3)(e) and Rules 44,B,3,e and 44,C?

d. Services outside a plan. Under what circumstances, if any, is it appropriate for a counselor to provide vocational rehabilitation services outside the context of an approved plan? If it is appropriate, what are the notice and reporting requirements? Rule 36,B provides that all voluntary vocational rehabilitation plans must have prior approval of the court's vocational rehabilitation specialists. Is this a question of what services are and are not part of a vocational rehabilitation plan? If so, what services are and are not in fact part of a plan? Is it acceptable for a counselor to provide job placement services before or after the date of an approved plan?

e. Counselor/job placement specialist certification process.