

Memorandum

TO: Vocational Rehabilitation Counselors
CC: Vocational Rehabilitation Specialists, Kris Peterson
FROM: Glenn Morton
DATE: July 17, 2006
SUBJECT: Meeting Announcement & Results of June 23, 2006 Meeting

The next informal meeting between court staff and certified vocational rehabilitation counselors is scheduled for Friday, August 4, 2006, at 2:00 pm. Please note that this is a specially scheduled meeting to discuss possible VR rule changes for consideration at a public hearing tentatively scheduled for November 16, 2006 (see attached agenda). The meeting will be held at the court's administrative offices at 1221 "N" Street, Suite 402, in Lincoln (TierOne Center). Regular quarterly meetings are also scheduled for September 22, 2006, and December 15, 2006.

The following are the results from the June 23, 2006 meeting. If you have questions or concerns about any of the discussions or decisions at this meeting please notify the court prior to the next meeting and they will be considered at that time.

1. Counselor Personal Information. Concerns were expressed at the March 17, 2006 meeting regarding a request from the court staff for updated counselor information for the court's certification files, including the social security number. Questions were raised as to why this information is needed, how it will be used, and how it will be safeguarded from inappropriate disclosure. After studying the issue with the court staff Glenn Morton announced that the counselor's social security number and date of birth will no longer be required by the court and will not be included in the computerized database of counselor certification information which is currently under development. This will apply for job placement specialists as well. The only exception is that a social security number or federal employer identification number is required before any payment can be made from the state's accounting system. However, payment information is stored within the state's accounting system, with extensive security protection, and is not retained in the court's certification files. With regard to existing certification records, it is the court's policy that information from the application and certification process can and will be withheld under the Nebraska public records laws, and, further, that social security numbers are redacted from any court records released to the public.

2. Illegal Social Security Numbers. A question was raised as to what a vocational rehabilitation counselor should do if the counselor is informed that the injured employee has an illegal social security number. The consensus was that there is no obligation on the part of the counselor to actively investigate whether or not a client is an illegal immigrant. However, if information to this effect should come to the counselor's attention then there is an obligation to disclose this information to the parties under Rule 39,E,3 (perhaps through a Rule 42,C,3 conference call). If necessary, one of the parties can then file a motion with the court and have a

judge resolve the matter in light of the Nebraska Supreme Court case of Ortiz v. Cement Products, Inc., 270 Neb. 787 (2005).

3. Private Short Term Basic Computer Courses. The court staff asked for input from the counselors regarding the appropriateness of private, short term basic computer courses for vocational rehabilitation plans. The consensus was that this type of training was really designed for something else (e.g., updating company staff skills), rather than our type of client, and in most cases this will not be an acceptable stand alone program. However, it was acknowledged that this could be appropriate in very limited circumstances, depending on the case and the client, although it would be an exceptional situation.

4. Changes In Job Placement Plans. The court staff raised an issue regarding changes in the start and stop dates for job placement plans, given discussions at the December 16, 2005 counselor/specialist meeting. At that meeting it was decided that any changes to a previously approved formal retraining plan, other than general directory type information and billing information, will require submission of a new plan document that will be forwarded on to the employer/insurer for its agreement. This includes changes to the proposed starting date and estimated completion date. However, the staff raised concerns as to whether this should also apply to job placement plans, given that the start date for such plans has often passed when the signed plan document is received back from the employer/insurer.

Consideration was given to various options, including having the court staff notify the parties of the start date after receiving employer/insurer agreement to the plan, and having the plan become effective upon employer/insurer agreement or a specified number of days after such agreement. While it was recognized that some flexibility in the plan dates is needed, it was also recognized that clearly established and understood start and end dates are needed to set the boundaries of the approved plan. No final resolution was reached, and it was decided that the staff would give further thought to this issue and bring it back for further consideration at a later meeting. In the meantime, however, the court will continue to follow the current practice of allowing the court specialist to amend the plan dates, if necessary, after consultation with the counselor and after receiving a telephone or e-mail confirmation from the employer/insurer. The parties will then be formally notified of the date changes when the approved plan paperwork is sent out. Once again, this process will apply to job placement plans only, and changes to formal retraining plans will be handled as decided at the December 16, 2005 meeting.

5. VR Rule Changes. Discussion was continued regarding possible changes to the court's vocational rehabilitation rules, to be considered at a public hearing tentatively scheduled for November 16, 2006. The focus at this meeting was on rules relating to counselor/JPS certification, with the following areas or issues identified for further consideration: (1) direct client services requirement, (2) LOE certification/reporting, (3) provisional certifications, (4) CEU's, (5) response to LOE rebuttals by the counselor of record (who pays), and (6) plan implementation without MMI (can it be done). A special meeting was also scheduled for August 4, 2004 to continue discussion of these and other possible rule changes. The goal for that meeting is to focus more clearly on those changes that will be pursued for the hearing, with an identification of the content or substance of the necessary changes. Language to implement

those changes will then be drafted and circulated for consideration at the September 22, 2006 meeting. Additional special meetings can also be scheduled if necessary. **An agenda/list of discussion items for the August 4, 2006 meeting is attached.** This reflects the items identified above (relating to counselor/JPS certification) and other items identified by the court staff. The list is not intended to be exclusive, and other items can be added and discussed as necessary.

6. Next meeting agenda items. The meeting on August 4, 2006 will be for continuing discussion of possible changes to the court's vocational rehabilitation rules to be considered at a public hearing tentatively scheduled for November 16, 2006. (See attached agenda.)

7. Future meeting agenda items. The following topics will likely be addressed at future meetings, not necessarily in this order. Any suggestions for additional agenda items are welcome.

a. Continuing Discussion of Possible VR Rule Changes.

b. Changes to the Vocational Rehabilitation Plan Form.

c. Changes to Case Closure Form. The legislature is increasingly requesting information regarding the vocational rehabilitation program and the success of vocational rehabilitation plans. However, existing data is insufficient to allow the court to respond fully to these requests. Could the Case Closure Form be amended to provide the necessary data, and if so, what data should be collected?

d. Job Placement Plans. What is the counselor's role and what are the counselor's obligations in a job placement plan?