

Memorandum

TO: Vocational Rehabilitation Counselors and Job Placement Specialists
CC: Vocational Rehabilitation Specialists, Nancy Sedlacek
FROM: Glenn Morton
DATE: October 17, 2011
SUBJECT: Meeting Announcement & Results of August 19, 2011 Meeting

The next informal meeting between court staff and certified vocational rehabilitation service providers is scheduled for Friday, October 28, 2011, at 2:00 pm. The meeting will be held at the court's administrative offices at 1221 "N" Street, Suite 402, in Lincoln. Meetings are held on a quarterly basis, and tentative dates for the 2012 quarterly meetings will be determined at the October 28, 2011 meeting.

The following are the results from the August 19, 2011 meeting. If there are questions or concerns about any of the discussions or decisions, please notify the court's Vocational Rehabilitation Section prior to the next meeting and they will be considered at that meeting.

1. Student Instruction Forms: The substantial changes at recent meetings relating to plan types and supportive services have also required changes to various court forms relating to vocational rehabilitation. These include the student instruction forms for formal training and job placement. Revised versions of these forms were circulated to all certified counselors and specialists on May 11, 2011, and were approved for use at that time at the counselor's discretion. However, these forms were still in the draft stage at that time, and they were further considered and finally approved at the August 19, 2011 meeting. Copies of the final revised forms are attached, and are available on the court's web site at http://www.wcc.ne.gov/vr/vr44_sia.pdf and http://www.wcc.ne.gov/vr/vr44_sib.pdf. A revised Vocational Rehabilitation Plan form (VR-44) was previously approved as well, and may be found on the courts' web site at <http://www.wcc.ne.gov/vr/vr44.pdf>. Previous versions of these forms should no longer be used.

In discussing revisions to the student instruction forms it was noted that the "mileage" section no longer states that mileage will not be paid for trips to buy books, meet with advisors, or register for classes. However, it was stressed that such mileage will not be paid if abuse is noted, and that counselors should provide an explanation when the request is submitted for any mileage which may appear questionable. The court will also pay mileage for multiple trips on any one day only if there is more than four hours between the classes or other events for which mileage is being requested. No mileage will be paid for trips prior to the plan start date.

2. Case Closure Form: Draft revisions to the case closure form were also forwarded to all certified counselors prior to the August 19, 2011 meeting, and were considered and approved at that meeting. A copy of the final revised form is attached and may be found on the court's web site at <http://www.wcc.ne.gov/vr/vr37e.pdf>. The revisions include changes required by the new

approach to plan types and supportive services, and by modifications to the court's computer system. Other changes were included at the request of one or more users of the form. Once again, previous versions of the form should no longer be used.

In discussing revisions to the form concerns were expressed that counselors are not always providing the costs of the counselor's services, as required on the form. It was agreed that such costs must be included, and that the form will be returned to the counselor if the cost information is not provided.

3. Multiple VR Plans: In a number of recent cases counselors have been asked to develop multiple vocational rehabilitation plans based on differing physical restrictions. This typically occurs when the parties cannot agree on the restrictions to be used. It was announced that the court will not administratively review multiple plans, and that the plan form instructions (see instruction # 4) provide that if there are multiple physician opinions with differing permanent restrictions, then the permanent restrictions used must be agreed upon by the parties or determined by a judge. Therefore, the proper recourse is for the parties to submit the issue to a judge for a determination before a plan is written.

A discussion then followed. Some counselors were of the opinion that it is unethical for a counselor to submit two separate plans. Others inquired as to the propriety of a counselor providing different scenarios at the request of the parties, so that alternatives could be presented to a judge. Others indicated that they had provided different scenarios to the parties, but had not developed different rehabilitation plans.

It was recognized that counselors are vocational rehabilitation experts, and will be asked to provide services and opinions beyond just developing and submitting a vocational rehabilitation plan for review by a specialist of the court. Therefore, the court will not administratively take a position at this time regarding the propriety of a counselor providing alternative scenarios or opinions at the request of the parties. However, the court will not administratively review multiple plans, and it should be noted that statute section 48-162.01(3) provides that a plan shall be evaluated by a specialist of the court prior to implementation.

4. Rule 37,A Reports: The court's specialists have a need for information in order to monitor the status of ongoing vocational rehabilitation plans. This need is typically satisfied by a Rule 37,A progress report to the parties, which must also be provided to the court. However, this is not always the case, and requests for additional information from the counselor are often time consuming for all involved. Therefore, the specialists have suggested that any plan related correspondence generated by the counselor to all of the parties, other than solely to the client, should qualify as a Rule 37,A report that must also be provided to the court specialist.

A further discussion ensued, with several counselors expressing concern with such a requirement. It was recognized that there is no definition for what constitutes a Rule 37,A report, and no time frame for when such a report must be completed. Some counselors noted the sheer volume of such correspondence, and questioned whether the court would really want to receive copies of every communication with the parties. Others noted the practical difficulties

and costs of complying with such a requirement. Alternatives were explored, including developing criteria for what constitutes a Rule 37,A report, and identifying what correspondence would qualify as such a report.

No firm policy was established at this time. However, counselors are asked to ensure that Rule 37,A progress reports also include sufficient information for the court specialists to monitor the status of the plan and follow the client's progress. Counselors should also use their best judgment in deciding what additional correspondence with the parties or their attorneys should be copied to the specialists, with special attention being given to correspondence which provides information regarding the status of the case. As always, counselors must also respond promptly and fully to any inquiries from the specialists.

5. Next meeting agenda items. At the next meeting on October 28, 2011 the following will be addressed as time permits:

a. Future Meeting Schedule: Establish tentative dates for the 2012 quarterly meetings. Proposed dates for consideration are January 27, 2012, April 20, 2012, July 27, 2012, and October 26, 2012.

b. Job Placement Specialists: General discussion regarding the use of job placement specialists in workers' compensation cases. How frequently and extensively are such specialists being utilized and for what purposes? (Compare Rule 41,B and C, and Rule 44,A,2.) What are the counselors' expectations of such specialists? How are such specialists being supervised by the counselors? Are services to be provided by such specialists being identified in the vocational rehabilitation plan? Are such specialists preparing Rule 37,A reports, and, if so, are copies being provided to the court? Are counselors or job placement specialists employed by a state agency being utilized as job placement specialists in workers' compensation cases?

6. Future meeting agenda items. No additional agenda items are currently identified for future meetings. Suggestions are welcome.