Memorandum

TO: Vocational Rehabilitation Counselors
CC: Vocational Rehabilitation Specialists, Kris Peterson
FROM: Glenn Morton
DATE: April 9, 2004
SUBJECT: Meeting Announcement & Results of March 26, 2004 Meeting

The next informal meeting between court staff and certified vocational rehabilitation counselors is scheduled for Friday, April 23, 2004, at 2:00 pm. The meeting will be held in the conference room of the court's offices at 525 South 13th street in Lincoln.

The following are the results of the discussions at the March 26, 2004 meeting.

1. Previous meeting outcomes. The memorandum from Glenn Morton dated March 1, 2004 documenting the outcome of the meeting on February 20, 2004 was raised for discussion. There were no questions, corrections, deletions, or additions. Detailed minutes of the meetings have been discontinued in favor of simply documenting the decisions and points of agreement arrived at during the meetings. This was done partly due to time constraints and partly to avoid confusion between matters of discussion only versus decision/agreement points.

2. Counselor obligations if employee disagrees with a plan. The CRCC advisory opinion letter of March 16, 2004 (circulated previously) was considered and discussed extensively. This was issued in response to an inquiry from Judy Brookover, and addressed the question of whether it is appropriate for a counselor to submit a proposed vocational rehabilitation plan that the injured worker does not agree with and has not signed. The response of the CRCC Ethics Committee was that it is appropriate to submit such a plan in states where a counselor is required to do so. In addition, the letter said it is imperative that counselors inform clients at the outset of the relationship that this may occur and address the potential ramifications should this occur. It is also equally important to document that such disclosure was made and why the client chose not to sign a plan.

It was noted that the court's ethical standard (1)(g) currently states that before presenting any vocational plan to the court, the counselor must ensure the client agrees to the vocational goals being proposed. It was recognized that this is not consistent with the CRCC letter or with the court's previous statements in this regard. It was agreed that court staff will draft recommended changes to this standard for consideration by the group at the next meeting. The redraft will include what notice counselors should give to clients on this issue.

3. CRCC ethical standards. It was recommended that the court consider the CRCC Code of Professional Ethics for Rehabilitation Counselors as the generally accepted standards of conduct

for all counselors providing services under the Nebraska Workers' Compensation Act . All certified counselors are invited to submit comments regarding this proposal to Kris Peterson by Thursday, April 22nd. Comments will then be reviewed at the next meeting on April 23rd, and further action will be considered.

4. Plan justification. There was discussion and agreement on the following points regarding plan justification, with discussion to continue at the next meeting (see future agenda items listed in paragraph 5 below).

a. Job placement goals. In order to support a goal of placing the employee in a new job with a new employer, there must be justification for why the lower priorities (including a new job with the same employer) were ruled out. A statement should be submitted explaining what was done to rule out the lower priorities.

b. Projected wage. Nebraska case law refers to restoring the employee to "the approximate level"of the salary he was earning when he was injured" and to restoring the employee to "comparable" employment. (See, e.g., Yager v. Bellco Midwest, 236 Neb.888, 464 N.W.2d 335 (1991). If the projected wage is "significantly less" than the pre-injury wage there should be a statement explaining why the projected wage is acceptable (e.g., the employee doesn't want to go to school, doesn't want to move, etc.).

c. Testing:

i. Required placement tests (standard requirements of the Nebraska Department of Education):

GED: TABE, including scores and interpretation. Must be completed during development of the plan.

ESL: BEST, including scores and interpretation, or other standardized assessment utilized by the ESL training provider. If BEST is used, must be completed during development of the plan.

Post Secondary Training (community college): COMPASS and/or ASSET if required for admission, including scores and interpretation. Must be completed during development of the plan.

ii. Testing must relate to the proposed plan.

iii. Narrative interpretation of all testing results must be provided. Do not provide raw data only.

iv. Aptitude testing and interpretation must support the employee's ability to get through the program and do the job.

v. Significant variances between the individual's aptitude and achievement test results must be explained.

5. Future agenda items. The following topics will be addressed at future meetings, beginning with the next meeting on April 23rd.

a. Previous meeting outcomes. Review outcomes memorandum from previous meeting for corrections, deletions, or additions.

i. Court staff would like to clarify the meaning of "interpretation" in 4.c.i. above so that expectations are understood: for TABE, "including scores and grade level interpretation;" for BEST, "including scores and functioning educational level interpretation;" for COMPASS and/or ASSET, "including scores and identification of developmental/remedial courses."

ii. Court staff would like to discuss the addition of achievement and cognitive ability testing to 4.c.iv. above.

iii. Court staff would also like to suggest that significant variances between test results and the proposed goal must be explained as opposed to variances between aptitude and achievement test results as currently stated in 4.c.v. above.

b. NWCC ethical standards. Review draft changes to NWCC ethical standard (1)(g) and discuss further action (see paragraph 2 above).

c. CRCC ethical standards. Review comments on accepting CRCC as generally accepted standards of conduct and discuss further action (see paragraph 3 above).

d. Hybrid plans. Generally the court will not approve ESL/JP or GED/JP concurrently, but will consider this on a case by case basis with appropriate justification. What justification is reasonable and appropriate?

e. ESL - Classwork vs. Tutoring. The court's position is that tutoring is for supplementing ESL classes, to be used concurrently with classes, and should not be the only component of a plan. What is the appropriate number of hours of class work versus tutoring?

f. Labor market information. The courts' position is that a full survey including documentation of each employer contacted is not necessary but may be requested depending on the case.

g. Plan of study.

h. Transferable skills.

i. Reporting to the court. What type of reporting to the court is appropriate on a regular basis? Rule 37,B addresses monthly reports, Rule 37,D addresses notice to the court if an employee fails to make satisfactory progress or discontinues participating in an approved plan, and Rule 37,E addresses notification to the court upon termination of services or case

closure. Are there questions regarding the current requirements for these reports and are changes needed? What type of reporting or updating is it appropriate for the court's specialists to request in monitoring a plan?

j. 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?

k. 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, and if so what services are and are not in fact part of a plan?