# Memorandum

**TO:** Vocational Rehabilitation Counselors
**CC:** Vocational Rehabilitation Specialists, Kris Peterson
**FROM:** Glenn Morton
**DATE:** April 1, 2005
**SUBJECT:** Meeting Announcement & Results of March 25, 2005 Meeting

The next informal meeting between court staff and certified vocational rehabilitation counselors is scheduled for Friday, June 24, 2005, at 2:00 pm. The meeting will be held at the court's administrative facilities at 1221 "N" Street, Suite 402, in Lincoln (TierOne Center). Meetings are now held on a quarterly basis, with future meetings tentatively scheduled for September 23, 2005, and December 16, 2005.

The following are the results from the March 25, 2005 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. Fourteen Day Notice Rule.

Glenn addressed a question received from a defense attorney regarding the continuing application of the 14 day rule found in Rule 36,B,2 in light of the Supreme Court's Bixemann decision. The court's position is that the portion of Rule 36 which the Supreme Court objected to in the Bixemann decision was the presumption formerly found in Rule 36,B,3. This has now been removed from the rule, but the 14 day requirement remains in Rule 36,B,2. Therefore, while failure of an insurer or other payer to respond within 14 days no longer creates a presumption of acceptance of the proposed plan and agreement to pay temporary benefits, repeated failure to comply with this obligation may constitute a violation of section 48-146.02.

Glenn also discussed a report from this attorney that some counselors are under the impression it is their responsibility to track compliance with the 14 day requirement. The court's vocational rehabilitation section is now tracking compliance with this rule, and there is no expectation by the court that counselors will do this. At the same time, there is nothing inappropriate about a counselor monitoring this as part of the management of the case.

## 2. Case Closure/Counselor of Record Status.

There has been a marked increase in the number of case closures since the clarification at the 12/3/2004 meeting that closing a case does not terminate "counselor of record" status. Counselors are again encouraged to close a case if there is no reasonable expectation that further services will be required in the foreseeable future.

**3. Services outside the statutes and court rules.** The court's policy regarding the circumstances under which a certified counselor can provide services without complying with the workers' compensation statutes and rules was circulated with the outcomes memorandum from the 12/3/2004 meeting. This was raised for discussion but there were no questions or issues regarding this policy.

**4. Monthly Activity Reports (Rule 37,B).** There was significant discussion regarding the decisions at the October 22, 2004 meeting relating to monthly activity reports under Rule 37,B. Questions and issues continued to arise, and compliance continues to be a problem with some counselors despite repeated notices from court staff. The specialists requested further discussion and guidance regarding the content of this report and whether a reason and estimated end date should be required for cases placed in abeyance (in inactive status, on hold, etc.).

Content of the Report: There was little or no interest by the counselors or specialists in developing a form for this report, even for use on an optional basis. However, there was a consensus that this report should include the activity and type of services provided over the past month, as well as the results that came out of those activities and services. Beyond that, it was agreed that the sufficiency of these reports must be decided on a case by case basis depending on the circumstances of the case. It was also recognized that this requires and allows a significant amount of discretion by the court specialist in deciding whether a particular report meets these requirements. It was noted that court is now tracking the number of times a counselor fails to file an appropriate report on a timely basis, and that failure to satisfy these requirements may be grounds for action pursuant to Rules 37,G and 39,E,5.

Timeliness and Tracking of the Report: The court specialists explained that the date a monthly report is received is entered in the case record. If the next monthly report is not received within 35 days following that received date, a first notice of delinquent report is sent to the counselor and the date of that request is also entered in the case record. At this time, every 7 days the report remains delinquent another request for the report is sent to the counselor. When the next monthly report is received, either within the original 35 day period or in response to a delinquent report request, that received date is then recorded and the process for monitoring starts again. A cumulative number of times delinquent reports must be requested on each case is also recorded, along with whether the requests are the first requests, second requests, or higher.

Report Designation: The specialists noted that it is sometimes difficult to tell whether a particular document is intended by the counselor to satisfy the monthly report requirement. This is due to the wide variation in how counselors are attempting to satisfy this requirement, and to the large number and variety of communications received by the court on a daily basis. Therefore, the staff suggested that counselors designate on the document that it is intended to satisfy this requirement, perhaps by simply noting "MAR" on the document.

There was concern, however, that this would create additional and unnecessary work, especially for those counselors who choose to simply copy the court on progress reports sent to the insurer or other payer. As a result, it was agreed that counselors are encouraged, although not required, to designate when a document or other communication is intended to satisfy the Rule 37,B

requirement. Counselors who do not include such a designation must understand that the court staff may fail to recognize a letter, report, e-mail, etc. as a monthly report. If so, a notice of failure to file a report will go out to the counselor, and this will be tracked as noted above.

Cases Placed in Abeyance: With regard to cases placed in abeyance (in inactive status, on hold, etc.) it was agreed that counselors must give a reason for the abeyance and something to allow the court to establish a review date. While a specific end date is preferred, the court will set a review date if sufficient information is provided to allow this (e.g., "in six months", "pending the outcome of litigation", etc.). If the counselor does not give a reason and something to allow the court to establish a review date, a notice of failure to file a report will go out to the counselor on a monthly basis, and this will be tracked as noted above.

**5. Courtesy Plan Copies.** There was a request to add courtesy copies of plans sent to the parties as a future agenda item. This can cause problems when, for example, an insurer approves or disapproves a plan based on a draft rather than the final version approved by the court specialist.

4. **Next meeting agenda items**. At the next meeting on June 24, 2005 we will address the following items as time permits:

a. 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 Rules 44,B,3,e and 44,C and statute section 48-162.01(3)(e)?

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

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

a. Transferable skills.

b. Counselor/job placement specialist certification process.

c. Courtesy copies of plans to the parties.