

# Memorandum

**TO:** Vocational Rehabilitation Counselors  
**CC:** Vocational Rehabilitation Specialists, Kris Peterson  
**FROM:** Glenn Morton  
**DATE:** September 16, 2005  
**SUBJECT:** Meeting Announcement & Results of June 24, 2005 Meeting

The next informal meeting between court staff and certified vocational rehabilitation counselors is scheduled for Friday, September 23, 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 the final meeting for this year scheduled for December 16, 2005. The 2006 schedule will be considered at the December meeting.

The following are the results from the June 24, 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. Job Goals for ESL/GED/ABE.**

In the past there has been some ambiguity regarding the court's requirements for ESL and GED on the one hand, and ABE and other less traditional remedial programs on the other. (See this agenda item from previous meeting memorandums for a further explanation.) It was decided that in the future all such programs will be treated the same. That is, these programs may be submitted as a separate plan, distinct and apart from formal retraining designed to lead to employment in another career field, and if so a specific job goal will not be required. However, it must also be recognized that all such programs, and especially ABE and other less traditional programs, will require greater scrutiny by the court specialists in order to determine their appropriateness.

## **2. Disciplinary Procedures.**

This issue relates to the procedural steps followed by the court in addressing alleged counselor/JPS violations of certification requirements. It was recognized that this will of necessity vary with the individual case. However, in general the court follows a consistent process before taking formal action under Rule 39, E.

First of all, the requirement itself must be clear and it must be communicated to the counselor/JPS. Where the requirement is set by statute, rule, or ethical standard this is presumed to be true. This is also the case if the requirement has been discussed at a counselor/court staff meeting and subsequently documented in an "outcomes" memorandum circulated to all certified counselors and job placement specialists. (These memorandums are also posted to the court's

web site for future reference.) In all other circumstances, clarification of the requirement and communication to the counselor is accomplished on a case by case basis.

Secondly, the counselor is given notice of the alleged violation and every reasonable effort is made to resolve the issue informally. Only then will formal action be considered under Rule 39,E. If formal action is taken under Rule 39,E, then the counselor/JPS has the opportunity to be heard by a judge under Rule 39,F.

Also discussed was the role of decisions made by the CRC Ethics Committee in the court's disciplinary process, given that the court's ethical standards incorporate the CRC Code of Professional Ethics. It was discussed and agreed that the court can and will consider any action by the CRC Ethics Committee in making its decisions, but that the court will make its own decisions independent of any action or lack of action by the CRC Ethics Committee. It was acknowledged that the CRC Ethics Committee would likely take a similar position, and that the CRC process is also largely informal with CRC member counselors expected to contact one another regarding ethical concerns.

### **3. Conflict of Interest Question.**

A question has been raised as to whether there is an obligation on the part of the counselor to obtain informed consent from the client in circumstances where (a) the counselor is providing or has provided medical case management involving the client, or (2) another counselor in the same firm is providing or has provided medical case management involving the client. There was discussion that the CRC Code of Professional Ethics requires the counselor to define the relationship with the client and the role of the counselor. Therefore, it was agreed that the CRC Code requires informed consent if the counselor is providing both vocational rehabilitation services and medical case management or has provided medical case management involving the client in the past. However, with regard to a counselor in the same firm, the group could identify nothing in the CRC Code or the court's rules or ethical standards that requires notice and informed consent in these circumstances. On the other hand, it was also recognized that many counselors and firms do provide notice and obtain informed consent in these circumstances, and that doing so can protect the counselor and avoid a potential objection or appearance of impropriety.

### **4. Fourteen Day Notice Rule.**

It has been suggested that failure of an employer/insurer to comply with the 14 day notice of plan acceptance rule can result from lack of correct contact information in the court's files. Therefore, counselors are asked to insure that correct contact information for the claims adjuster is submitted to the court. It was recognized that first report information is often incorrect and unreliable in this regard, and counselors are encouraged to contact the employer/insurer for this information. It was also acknowledged that contacting the employer/insurer directly for this purpose is not a violation of Rule 42.C.

### **5. Counselor Selection Requirements.**

There has been an assertion by an attorney that the counselor selection requirements of the statutes and rules need not be followed for loss of earning power evaluations. While contrary to the clear wording of the statute and rules, this argument was based on an a one judge opinion in which the court received into evidence a report from a counselor who was not selected according to the requirements, although the court refused to grant the presumption of correctness to the opinion because of the failure. However, the opposing counsel in that case had failed to object to the receipt of the report. In contrast, a review panel in the case of Carolyn J. Cate v. Driver Management, Doc. 195 No. 502, found that it was clear error for the trial court judge to receive and consider a loss of earning power report from a counselor who had not been selected according to the procedures established in the statute and rules. In this case the opposing counsel had objected to the entry of the report

Therefore, it is clear that the counselor selection requirements must be followed for both vocational rehabilitation services and loss of earning power evaluations, and that an opinion from a counselor not selected in accordance with the requirements will likely not be received into evidence.

#### **6. W-9's.**

Counselors were advised for their general information that effective June 20, 2005 changes were made in how the State of Nebraska reimburses vendors providing services to the State. Effective that date, a W-9 form is required from the vendor before a payment can be issued. Therefore, when a vocational rehabilitation plan is submitted the court staff will check to see if the vendor is already included in the state accounting system, and if not a W-9 form will be sent to the vendor along with the authorization letter.

#### **7. Legislation.**

It was announced that LB 13 from the past legislative session includes several changes to sections 48-162.01 and 48-162.02 relating to vocational rehabilitation. LB 13 is available on the Legislature's web site at [www.unicam.state.ne.us](http://www.unicam.state.ne.us).

#### **8. Proposed Changes to Job Placement Instructions.**

The attached and revised "Job Placement Information & Instructions" form was circulated for consideration. This will be considered for adoption at the September 23, 2005 meeting.

**9. Next meeting agenda items.** At the next meeting on September 23, 2005 we will address the following items as time permits:

- a. Amended plans. When is one needed in a formal retraining plan?
- b. Courtesy copies of draft plans. The practice of providing draft copies of plans to the parties is causing confusion in that the parties sometimes rely upon these drafts rather than

waiting for the plan as approved by the court. How can this be avoided?

c. “Active Participation” in a job placement plan. (Counselor request) How many job contacts/applications should an employee be required to make when engaged in a job placement plan, taking into consideration the location of the employee.

d. Internet Job Applications. (Counselor request) Discussion (sharing of ideas/methods) regarding how counselors are monitoring/following up with employers when the employee is making applications by the Internet, and when in some cases the human resource office is located regionally rather than locally.

e. Transferable skills. Are all transferable skills being identified and considered?

**10. 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. Counselor/job placement specialist certification process.