

Our Work and Our Clients

Special points of interest:

- The Benefits of "Being Nice"
- Helpful Hints for the Claimant's Attorney
- Prehearing Statement Tips
- Notes from the Commission
- Calendar of Events

Letter From the Section Chair

Greetings from the Workers Compensation Section! This is the third issue of our section newsletter, which was started by the section in December, 2008. We hope you find this edition useful. Inside you will find "helpful hints for the claimant's attorney" by Tommy Dulin and an article about the benefits of "being nice" in your law practice by Pepper Cosser (from the employer and carrier's perspective). Finally, Judge Trey Arnold has contributed a very helpful article with regard to the proper filing of prehearing statements, which we can all use.

Special thanks go out to Amanda Green Alexander for putting this edition together and for "hounding" us to get everything completed in a timely fashion. In the future, we hope to make these e-mail newsletters a regular publication, so please let us know if you

would like to contribute an article or have any suggestions or issues you would like to have discussed.

New officers for 2010-2011 are as follows: Richie Edmonson, chair, Tommy Dulin, vice-chair, Carlos Moore, secretary, Amanda Green Alexander, treasurer. Executive committee members are George Read (term expires 7/11), Chad Shook (term expires 7/12), Roxanne Case (term expires 7/13) and Lindsay Varnadoe, past chair.

Section officers and board members do expect to meet soon to discuss the upcoming year. We would like to work toward having more participation from the section members and we encourage each of you to let us know if you have any suggestions or "bright" ideas which may be useful. Be sure to mark your calendars for the Kid's Chance



Richie Edmonson

mediator training seminar which is scheduled for November 4, 2010 in Oxford, MS. Further details will be provided. The "Power Behind the Throne" seminar for paralegals is currently being planned for the spring of 2010 and, of course, the MWCC annual educational conference is scheduled for April 20-22, 2011 at the Beau Rivage in Biloxi, MS.

Thank you,
Richie Edmonson

A View from the Employer/Carrier's Counsel: *The Benefits of "Being Nice"* By Pepper Cossar

When asked by Amanda Green Alexander, our faithful Treasurer of the Workers' Compensation Division of the Mississippi Bar, to prepare an "article" from the "Employer and Carrier's" side of the Workers' Compensation Section, I had no idea as to what type of article I would be qualified to write. After a brief conversation with my friend, Tommy Dulin, regarding his thoughts regarding his "article," it was decided that the best subject on which I should write should be something in which I had a little experience. As most of you know reading this correspondence, workers' compensation is basically my only area of practice. Although, I certainly do not consider myself to be qualified to give advice on how to win every workers' compensation claim (because that is obviously impossible), I do believe that I am qualified to give suggestions on how to get along with counsel opposite.

This could be an extremely short article in which my only instructions would be "be nice," or, as my high school football coach, Joe Bradshaw, would say, "Just do right". If all counsel would follow those two small bits of advice, everyone's life would be much easier.

I am sure that we all have attorneys with whom we enjoy working. Likewise, there are those attorneys that just seem to give us headaches every time we speak with them. Regardless of the size of the headache, it is most important to remember to "be nice." You can certainly be nice and be right, while at the same time representing your client in the most efficient manner. I have found that an attorney can be aggressive and still be polite. There are those attorneys that feel they have to be demeaning or agitated in order to make their point and it is this behavior that often strikes a nerve with

counsel opposite and quickly results in hostilities by both counsel. It is so easy to fight fire with fire; however, you can often get burned, if you choose that option.

An excellent example, in my opinion, of an attorney who is capable of "being nice" and still representing his client admirably, is Gary Jones. I am sure that almost all of the Plaintiff's Bar in the Workers' Compensation Section have dealt with Gary on one occasion or another. Sometimes, he will take a position with which you may disagree; however, you often find it difficult to get mad at him because you know he is simply doing his job in as nice of a manner as possible.

As we are all aware, there are attorneys in the Plaintiff's Bar that are extremely successful and extremely aggressive. (I am told there are some attorneys that represent the employer and carrier that have these same traits as well...at least the aggressive trait!) I enjoy working even with these individuals because over the years we have developed a mutual trust and understanding of how we can best represent our clients and still mutually receive the desired results. In my opinion, it is normally much better to settle a claim and close medicals for \$35,000 within six months of receiving a file and keep attorneys' fees low than it is to take a case to a final hearing, get hit with an award for \$35,000 while leaving medicals open and costing your client three times as much in attorney's fees. There should be no attorney that should want to take his claim to a final hearing simply to prove his point to the detriment of his client or to financially benefit his firm.

Although the workers' compensation practitioner will occa-



Pepper Cossar

sionally have novel questions of law, it normally does not take a rocket scientist to practice this type of law as we deal with basically the same situations over and over again. If we know how a particular Administrative Judge feels about a carpal tunnel claim, there is no need to litigate a matter ad nauseam resulting in exorbitant attorneys' fees when the case can be settled within a month or two of the claimant reaching maximum medical improvement. We all know the factors that the Administrative Judges (as well as the Commission and the appellate courts) take into consideration and, unless your client is absolutely forcing you to take a matter to a Hearing, it is your obligation to explain to your client that the best possible solution may be simply to settle this claim currently as opposed to doubling or tripling your attorneys' fees during the course of litigation. I have found, that in the long run, clients often appreciate your honesty and will reward you by continuing to forward to you new files.

I have been told by friends who represent claimants that there are also individuals with whom they have extreme difficulty dealing on the employer and carrier's side. I have likewise been informed that it is the belief of some of the Plaintiff's Bar that

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The Benefits of “Being Nice,” continued

these specific attorneys just simply enjoy being difficult. I have found that “being nice” in these situations can result in more success concerning settling a claim than responding to agitated aggression with agitated aggression. If someone is being difficult, it is often our “knee jerk” response to be just as difficult. However, after biting your tongue and “being nice” on repeated occasions, as well as being knowledgeable in doing what is best for your client, that respect will grow between both parties much quicker.

Please do not interpret this article as a recommendation to just “roll over” on important issues. ALWAYS do what is best for your client within the parameters of what is allowed by law. Aggression, in my opinion, is a good thing. Hostile aggression is not.

It is my recommendation that you should not only be “be nice” to counsel opposite, but, likewise, to the Administrative Judges, Commissioners, as well as all Judiciary. There have been numerous occasions where I have had to bite my tongue and smile and say “Thank you, Your Honor,” when I really wanted to explain to him/her how “the cow ate the cabbage.” (To those of you who did not grow up in small town USA, that phrase simply means, in this instance, that I really wanted to explain to the Administrative Judge how they were not even close to the right decision. For a deeper and more thorough explanation regarding that phrase, contact Dave Peterson!) However, I have found that by being nice to the Administrative Judge at the time of an adverse ruling can subsequently result in a better relationship with the Administrative Judge.

I have seen occasions when people who do not practice often in the workers’ compensation field will come into a Hearing and not give an Administrative Judge the respect that he/she deserves. I have likewise seen the dire consequences that are

quickly dealt to the unassuming attorney who believes that an “Administrative” Judge should not be given the same respect as any other Judge. Once again, it has taken years to develop a good relationship with some of the Administrative Judges. However, the perseverance of “being nice” will usually pay off at some time, hopefully, sooner than later. Conversely, I have yet to see an aggressive, mean-spirited attitude ever result in anything positive.

After practicing workers’ compensation law fairly exclusively for approximately 20 years, I have come to enjoy handling files with the likes of Roger Doolittle and Charlie Baglan. These attorneys are known for their successful results and their aggressive manner. I likewise consider both of these individuals good friends and would do anything I could to assist them. However, our relationships did not begin as “buddies” and it took numerous years for us to develop our current relationship. During the years of our early relationship, we found ourselves in Court quite often. However, it subsequently became obvious that we could achieve our desired results often without the assistance of an Administrative Judge and without the need for hostilities. We have come to know that we would not intentionally mislead the other. Once that level of trust is developed, you are capable of accomplishing so much more on behalf of your client with so much less effort and at a lower cost to your client.

I have come to find that the Workers’ Compensation Section of the Mississippi Bar is a fairly close section with most attorneys knowing each other. Therefore, there is absolutely no reason for us not to “be nice” to the other one, if at all possible, thus, resulting in a reduction in aggravation, agitation and high blood pressure. Please note that “being nice” will take a large amount of effort on some occasions. However, I found that taking

the time to take a breath and not respond in kind to a threat or aggressive comment will normally result in eventually feeling much better and not regretting any statements that were made in haste (as well as saving money on high blood pressure medication!). As your Sunday School teachers taught you, “Do unto others as you would have them do unto you.” If you think about it, it is the best way to handle your practice and your life. Now, before I start quoting scripture, I will end this article.

By the way, if I may ever be of assistance to any of you regarding workers’ compensation issues, please do not hesitate to call. I look forward to seeing you in the near future.

About the Author: Pepper Cossar is a Shareholder with the firm of Markow Walker, P. A. His practice consists almost exclusively of Workers Compensation Law. He is licensed to practice in all State and Federal Courts in Mississippi. He is a Past President of the Madison County Bar, a past member of the Board of the Workers Compensation Section of the Mississippi State Bar, an approved Mediator and a member of the University of Mississippi Law Alumni Board.

A View from the Claimant's Counsel: *Helpful Hints for the Claimant's Attorney* By Tommy Dulin Edited by Victor Cobb, summer intern



Tommy Dulin

After thirty-three years of active practice of Mississippi Workers' Compensation Act proceedings, I continue to acquire new techniques and strategies useful to the representation of Claimants. Periodic changes to the Act, the Rules of Procedure, and the composition of the Commission require revisions to claim techniques and strategies.

The primary objective of claims representation is successful resolution. While successful resolution is a single concept in theory, it is far more complicated in practice.

Successful resolution of a claim is largely dependent upon the Claimant's expectations; therefore, the sooner the Claimant accepts reasonable expectation, the more likely the claim will be favorably resolved.

Claimants rarely understand the Mississippi Workers' Compensation Act. Claimant's involvement in every step of the claims process will increase the probability that the Claimant will achieve reasonable expectations.

Begin the claims process with an explanation of the Act, including practices and procedures. Provide the Claimant with copies of all relevant information, and discuss the implications of that information with the Claimant. Thorough explanations combined with courteous patience will enhance the likelihood of the Claimant's attainment of reasonable expectations.

HINT: INTAKE TELEPHONE CALL

Develop an Intake Form that allows your assistant to obtain useful information. Ensure that the assistant remains friendly and helpful to the caller. Once the Intake Information is collected, the Attorney or Paralegal should promptly review the information and either schedule an appointment or suggest a referral to the caller.

HINT: SCHEDULING FIRST APPOINTMENT

Discuss the Intake Information with the caller. Flush out details, including third party. Select a mutually convenient date and time to meet. Allow one to two hours for the first appointment. Request the caller to bring all employer, medical, wage, compensation, and any other relevant documents to the first appointment. Provide driving directions, including landmarks.

HINT: FIRST APPOINTMENT

Make the new Client comfortable. Offer coffee, water, soft drink, doughnuts, etc. Inquire if the temperature is pleasant. Offer the Client a comfortable chair in a private setting. Start the discussion with informal subjects, then review the Intake Information with the Client. Discuss the basics of the Act, including no fault, computation of average weekly wage, cap on weekly benefits, 450 weeks of indemnity, medical authorization process, composition of the Com-

mission, practice and procedures for claims, medical causation, and identify the potential controversies in the claim. Discuss Social Security Disability, Medicaid, Medicare, Short Term Disability, and Long Term Disability. Identify any potential third-party claims and discuss details with Client. Discuss Employer's Medical Examination, Independent Medical Examination, and surveillance. Explain the motion, trial, and appeal process. Review the Employment Contract, HIPAA forms, and Petition to Controvert with the Client. Discuss the channel of communications open between the Claimant, the Attorney, and the Attorney's staff. Discuss risks of litigation.

HINT: INVESTIGATION

Order the physicians' records. Review the Commission's website for information about the Client, the Employer, and the Carrier. Investigate any third-party liability. Review the physician's records and forward a copy to your Client. Then, discuss any medical issues with your Client.

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Helpful Hints for the Claimant's Attorney, continued

HINT: FILING

If you are comfortable with the claim and prepared to represent the Claimant, file your Employment Contract with the Commission and request the Commission to provide you with a copy of its file. Upon receipt, review and forward a copy to your Client. Then, discuss any issues with your Client, including risks.

HINT: COMMUNICATIONS

Contact the Adjuster or defense Attorney to discuss the status of the claim and any issues, including third-party liability. Determine if a Petition to Controvert is needed. Discuss the possibility of settlement if the Claimant has attained maximum medical improvement. Ask the Adjuster or defense Attorney for copies of wage and medical records.

HINT: PETITION TO CONTROVERT

Review the draft Petition to Controvert prepared at the first appointment with the Client and finalize for filing. File the Petition to Controvert with copies to Adjuster or defense counsel as well as Client. Upon receipt of the Answer, forward a copy to your Client and begin drafting discovery requests. If medical controversies exist, request appropriate medical records under affidavit. File any necessary motions and schedule a hearing on motions. Schedule any depositions. Discuss settlement and mediation with the Client. An appointment may be useful. Discuss risks of trial versus settlement.

HINT: LITIGATION

Once the claim has matured, discuss 9(i) settlement with Claimant and defense Attorney, including mediation. Discuss the risks with Claimant. If settlement discussions fail, proceed to file the Pretrial Statement. Simultaneously, discuss mediation with defense Attorney. All cases, except

those where the claim has been denied, should be mediated. If the claim has been denied, it is unlikely that mediation will result in any offer other than nuisance value.

CONCLUSION

Every new Client presents a new opportunity to provide useful assistance to an injured individual who is probably worried, frightened, and in pain.

Every new Client also presents an opportunity to demonstrate your professional and personal skills.

Treat each Client as you would like to be treated and rest easy at night.

About the Author: Tommy Dulin is President of the Gulfport law firm of Dulin and Dulin, LTD. Mr. Dulin graduated from Millsaps College in 1974, and he receives his Juris Doctorate from the University of Mississippi School of Law in 1977. He practices workers' compensation and personal injury law with his wife, Sue Esther Dulin. Mr. Dulin is a member of the County, State, and American bar associations, as well as the Mississippi Trial Lawyers Association, American Trial Lawyers Association, Southern Association of Workmen's Compensation Administrators and Fifth Circuit Bar Association. He is vice-chair of the Board of the Workers Compensation Section of the Mississippi Bar, an approved Chance Mediator and a recipient of the Kenneth G. Perry Award for 2010

A View from the Bench: *Prehearing Statement Tips* *By Administrative Judge Robert “Trey” Arnold*



**Administrative Judge
Robert “Trey” Arnold**

1. Please use colored pages to separate the proposed exhibits under Attachment 6 (and in between the seven individual attachments if the PHS is more than a few pages long). Caveat: dark or neon colors copy too darkly for any text that is printed on them to be read. Please use lighter colored paper.
2. Please supply a list of all proposed exhibits on the colored page separating Attachment 6 from the other attachments or on the first white sheet of paper behind the colored sheet of paper. We simply need to verify that you attached all your proposed exhibits.
3. Number each proposed exhibit separately. If you have four sets of physicians' records, each of which totals 30 pages, you should have four sets numbered 1-30, not one set numbered 1-120. Also, there is never any need to renumber deposition pages as 1/83, 2/83, 3/83, etc...
4. Please do not use Exhibit stickers on the proposed exhibits under Attachment 6. Just use pastel-colored pages to separate the proposed exhibits.
5. The 50-page limit on individual medical records is intended to encourage counsel to be issues-focused when offering exhibits. If permanent disability is the only issue, hospital records are likely superfluous. If not, agree with counsel to extract admission and discharge summaries, operative and scan reports, and claimant's ER history from the hospital records.
6. Please acknowledge the absence of any attachments, e.g., if a party does not attach a vocational report as Attachment 4, include a page titled "Attachment 4: Vocational/Labor Market Reports – None at this time." Otherwise, our legal assistants assume these pages were misplaced and page through the entire PHS in search of the unaccounted-for attachment.
7. The General Instructions specifically state that medical records may be attached to the PHS under an unsigned affidavit if the affidavit has been sent to the expert for signature. Obviously, the unsigned affidavit with records should also be attached to opposing counsel's copy of the PHS. Signed affidavits will be required by the date of the hearing absent a stipulation to the records' admission.
8. You may be bound by what you fail to attach as proposed exhibits, so be careful when assuming that opposing counsel will attach to his PHS what you did not take the time or expense to attach as a proposed exhibit to your PHS.
9. Please do not fax or e-mail PHSs. We hope to soon offer electronic filing.
10. Except for Number 18 on the PHS, never answer a request for information on the PHS with "See attached." If we wanted to "see attached," we would not have asked for the information on the face of the PHS.

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Prehearing Statement Tips, continued

11. Do not forget to supplement PHSs, especially with updated medical records, vocational reports and work search lists. Failure to do so may result in the judge's sustaining opposing counsel's objection to the updated records as untimely.

12. Just as you are asked to title an amended PHS as "AMENDED PHS," please title a PHS filed in anticipation of a compensability hearing as a "COMPENSABILITY PHS." Also, when asked to list ratings and restrictions or to attach a final medical report, note "Information Unavailable Because Claimant Not At MMI - Compensability Hearing Requested."

LAGNIAPPE

1. Please bring hard copies of all proposed exhibits to the evidentiary hearing even if you have previously filed them with the Commission. This allows the judge and the parties to verify the content of all actual exhibits to the record.

2. File a motion before you call the Commission to set a hearing on the motion. After the motion is filed, it is the moving party's responsibility to call the judge's legal assistant for hearing dates, confirm a hearing date with opposing counsel, call the judge's legal assistant back to verify the hearing date, and file a notice of hearing.

3. Always call opposing counsel to coordinate the date for a motion hearing, even when setting a hearing on a regularly scheduled motion day. Procedural Rule 22 states that a moving party "desiring oral argument on motion day shall coordinate the date of hearing on a particular motion with counsel opposite, but at least five (5) calendar days before the motion day. . . ." A motion may be heard in less than five days only by agreement of counsel.

4. Before requesting an extension of the discovery deadline or any other request that opposing counsel may oppose, please telephone opposing counsel to elicit her response.

If opposing counsel does not object to your request, note this fact in your letter requesting the extension. This significantly improves if not cinches your prospects for success.

If opposing counsel objects to your request, skip the letter and file a motion requesting the extension and then set it for hearing by telephone.

About the Author: Robert J. (Trey) Arnold, III is an Administrative Judge with the Mississippi Worker's Compensation Commission. Prior to joining the Commission in 2009, he was engaged in the practice of law for more than twenty-two years. Judge Arnold is a member of the Mississippi Bar, the Administrative Law and Workers' Compensation Section and the Hinds County Bar. Judge Arnold is active in his church where he is an Elder and an adult Sunday School teacher.

Notes from the Commission:

MWCC Welcomes New Medical Cost Containment Director

Mississippi Workers' Compensation Commission is proud to announce and welcome Connie Mills as its new Medical Cost Containment Director. Ms. Mills brings with her over 17 years of medical case management experience in the workers' compensation arena and in the private sector.

She is a graduate of Gilfoy School of Nursing and received her BSN from Mississippi College. Ms. Mills holds a Certified Case Manager (CCM) certificate as well as a Certified Nurse Life Care Planner (CNLCP) certificate. Ms. Mills is currently a member of the Case Management Society of America and is active in the local CMSA chapter.

She is married to Johnny Mills of Batesville, MS and has 3 adult daughters.

Ms. Mills may be reached at 601-987-4280 or by e-mail at cmills@mwcc.state.ms.us.

Notice That The Commission Does Not Have An "Inactive" Docket Or "Inactive" Status February 1, 2010

The Commission no longer has an "inactive" docket or "inactive" status (computer designation "NJ") for controverted claims.

If, however,

1. Claimant is temporarily totally disabled or temporarily partially disabled
- and
2. Employer/Carrier is currently paying medical and indemnity benefits,

the claim may be placed in "temporary disability" status ("TD") for up to 90 days upon a letter request from either party indicating both parties' agreement to this status. Either party may ask to extend "temporary disability" status ("TD") for up to 90 days in the same manner.

At any time while a claim is in "temporary disability" status, the parties may initiate or continue discovery, request a status conference with the judge, and file Prehearing Statements as well as motions regarding disputed issues.

Please note that if Employer/Carrier is not providing all medical and indemnity benefits, the claim will not be placed in "temporary disability" status but will be placed in the customary "discovery period" status ("DP") during which the parties are expected to prepare for hearing on all disputed issues that are ripe for determination. A claim will also be placed in "discovery period" status ("DP") at the end of "temporary disability" status ("TD") status, absent the need to place it in another status at that time.

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Calendar of Events

Worker's Compensation Section Meeting
TBA
MWCC Full Commission hearing room in Jackson, MS

The Power Behind the Throne Seminar
Spring 2010

Kid's Chance Mediator Training
November 4, 2010
Oxford, MS

**MS Workers' Compensation Commission
Annual Educational Conference**
April 20-22, 2011
Beau Rivage
Biloxi, MS

Kid's Chance Benefit Tennis Tournament
TBA

If you are interested in submitting an article or would like to announce upcoming worker's compensation events, please forward this information to Amanda Green Alexander, Alexander & Watson, P.A. at aga@alexanderandwatson.com

About the Editor - Amanda Green Alexander

About the Editor: Amanda Green Alexander, a native of Kokomo, Mississippi, is a shareholder of Alexander & Watson, P.A. in Jackson, Mississippi. She represents both self-insured employers and insurance companies in the areas of worker's compensation, labor and employment law. She is a member of the Mississippi Bar Association, the District of Columbia Bar Association, the Hinds County Bar Association, Young Lawyers Division of the Mississippi Bar, the Magnolia Bar Association, Treasurer of the Worker's Compensation Section, MS Bar Ethics Committee and Immediate Past Chair of the Women in the Profession of the Mississippi Bar. She is a certified "Kids Chance" mediator of the Mississippi Worker's Compensation Commission and has been recently nominated to the Board of National Conference of Women Bar Associations, the first person Mississippian to serve.



Amanda Green Alexander

Special Thanks:
Special Thanks to our contributing writers and to Rene Garner at the Mississippi Bar for assisting with editing and distribution of our issues of "Our Work and Our Clients."