



MINNESOTA DEFENSE
LAWYERS ASSOCIATION

MDLA Presentation

WORKERS' COMPENSATION ADVISORY COUNSEL

MARCH 8, 2023

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MDLA's GOALS



CREATE EFFICIENCIES IN THE LITIGATION SYSTEM



CREATE COHESION BETWEEN STATUTES AND RULES



MAINTAIN A BALANCED LITIGATION SYSTEM

DLI PROPOSED CHANGES TO §176.081

- ▶ Agree with March 7, 2023 DOLI draft as written
- ▶ Worked with DOLI to propose some clarifications including:
 - ▶ Serving disputes on attorneys when known
 - ▶ Including health care providers in information requests
 - ▶ Allowing additional time to respond and review information submitted to avoid holiday and long weekends preventing this
- ▶ Oppose MAJ proposed insertion
 - ▶ Their language is too vague and broad
 - ▶ Shifting the burden and asking employer and insurer to pay the employee's attorney to prove the employee's claims

SYSTEM EFFICIENCIES – ATTORNEY'S FEE STATEMENTS

- ▶ **PROPOSAL #1: REQUIRE ALL FEE STATEMENTS TO BE SERVED ON ALL PARTIES – INCLUDING COUNSEL FOR EMPLOYER AND INSURER**
- ▶ Makes statute consistent with Minn. R. 1415.3200, which requires service of parties in litigation and consistent with Rules of Professional Conduct, requiring attorneys to have no direct contact with a represented party.
- ▶ Workers' Compensation Court of Appeals encouraged legislature to resolve this issue in Alli v. Great Pacific Enters, LLC.

SYSTEM EFFICIENCY – EXPEDITED HEARINGS

- ▶ **PROPOSAL #2: ALLOW EXPEDITED HEARINGS BY MOTION**
- ▶ Current statute requires matters be set for an expedited hearing if an Answer is not filed within 20 days.
- ▶ Neither Petitioner or Defense typically want this
 - ▶ Does not alleviate burden of proof, only expedites
 - ▶ Usually result in an agreement to continue hearing

SYSTEM BALANCE – DISCONTINUANCE HEARINGS

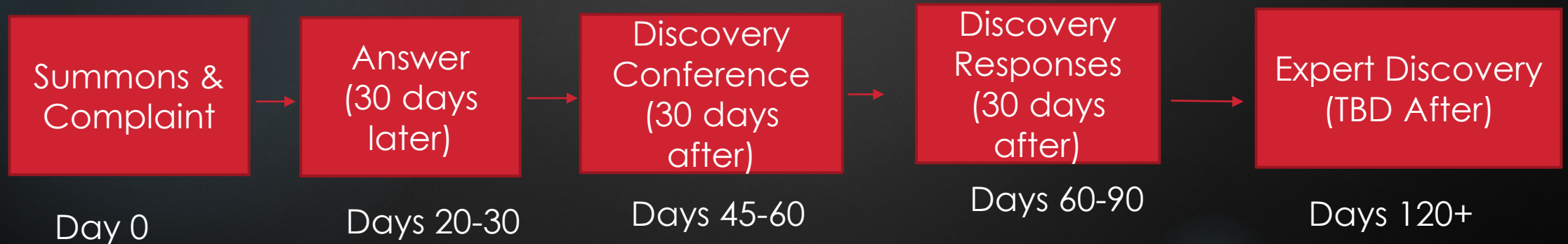
- ▶ **PROPOSAL #3: ALLOW EACH SIDE TO INTRODUCE EXHIBITS AND EVIDENCE AT INFORMAL DISCONTINUANCE HEARINGS**
- ▶ Currently limited to initial filing which creates an unbalanced system
 - ▶ Typically held 15-30 days after discontinuance filed

Workers' Compensation Litigation Process

Workers Compensation:



Personal Injury



SYSTEM EFFICIENCY – UPDATED PLEADING STANDARDS

- ▶ **PROPOSAL #4: UPDATE CLAIM PETITION STANDARDS**
- ▶ Vague Petition standards cause undue delays to hearings
- ▶ Incomplete Petitions can hang around in the system for years without being dismissed.
- ▶ Directly addresses concerns about process being “too slow”

Current Authorization Process

- ▶ Non-litigated:
 - ▶ May or may not return authorizations.
 - ▶ Providers may not give records without HIPPA compliant authorizations, even for treatment insurer is paying for.
- ▶ Litigated:
 - ▶ Received 30 days after discovery, days 45-50 after Claim Petition.
 - ▶ Discovery may also indicate sent to employee, will provide upon receipt
 - ▶ Up to a Compensation Judge how much time to give employee to provide, requires motion to compel.
 - ▶ Delays litigation process, can take longer than 9.0 days post petition to get authorizations.
- ▶ Takes 30-60 days to get medical records with an authorization.

SYSTEM EFFICIENCY – TIMING FOR AUTHORIZATIONS

- ▶ **PROPOSAL #5: TIMING FOR AUTHORIZATIONS**
- ▶ Currently a vague requirement that employees “cooperate” with the system.
- ▶ Medical providers do not always provide records without authorizations. Without them, treatment can slow or grind to a halt.
- ▶ Will speed up IME and litigation process.
- ▶ Avoids delays and motion practice

RESPONSE TO MAJ PROPOSALS

- ▶ Their Proposal # 1: Timeline for Independent Medical Evaluators
- ▶ Legislature should not be for worst case scenario but to improve system
- ▶ Unrealistic Expectations
 - ▶ The timelines are not realistic when taking into account timeline to receive authorizations, obtain records, time to evaluate employees, review medical records, and writing reports for busy doctors
- ▶ Our proposals directly address these issues without impacting the balance of the system

RESPONSE TO PROPOSALS CONT'D

- ▶ Attorney's fees
 - ▶ Currently no actual cap with excess fee claims
 - ▶ Actually takes money out of Employee's pockets
- ▶ Penalty Claims
 - ▶ Enforcement versus legislative
 - ▶ Penalties are certainly sufficient and proportional
 - ▶ Penalty on a \$20,000.00 settlement paid one day late can be \$5,000-\$11,000.00. On \$100,000.00 its \$25,000.00-\$55,000.00
 - ▶ Automatically eliminates cases where there is no fault, a reasonable excuse, or the employee is at fault
 - ▶ Recommend consideration of a study as to how many claims this impacts

QUESTIONS?

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