

Revenue and Transportation Interim Committee
(February 18, 2014, at 3:30 p.m., Room 102, Capitol Building)

1) Brief background on Court, maybe including climate that led to its creation:

As to the climate that led to the Workers' Compensation Court's (WCC) creation, I have no personal knowledge other than the Legislature created the Workers' Compensation Court in 1975 to provide an efficient and effective forum for the resolution of disputes arising under the Workers' Compensation Act and the Occupational Disease Act.

The WCC is a court of record, but only became a court of record when the Legislature amended § 3-1-102, MCA, in 2007. The Montana Supreme Court pointed this out in *Thompson*.¹

The official courtroom of the WCC is located in Helena; however, the WCC also conducts trials statewide in five major Montana cities, which venue is determined by the venue of the claimant's injury.

2) Overview of Staff and their roles.

Judge: The WCC judges serve a six-year term and are appointed by the Governor from a list of applicants submitted by the Judicial Nomination Commission. The qualifications for a WCC judge are the same as those for district court judges. Statutes grant the judge all of the privileges and other emoluments afforded a district judge. The judge is the finder of fact and juries are not utilized. The judge employs such employees as required to carry out the duties under the Workers' Compensation Act, and all employees report directly to the judge.

Clerk of Court/Pretrial Hearing Examiner: This position is responsible for the operation of the Workers' Compensation Court. Work involves a full range of Clerk of Court duties by performing legal, administrative, and clerical work in support of the Court's office operations; acting as an assistant to the judge at trial; administering oaths to witnesses; ensuring that all legal documents and related materials are processed and documented accurately within established timelines and legal parameters; preparing a docket of cases for trial; securing information for the judge, other members of the staff, and the public; identifying and responding to the judge's inquiries in a timely and efficient

¹ [*Thompson v. State*, 2007 MT 185, 338 Mont. 511, 167 P.2d 867](#) Since the WCC does not appear in the list of courts of record enumerated in this statute, it cannot be "read into" the list. The fact that MAPA requires stenographic records is not sufficient to transform the WCC into a court of record for purposes of § 27-8-201, MCA. The WCC and other administrative tribunals may produce records which this Court or a district court may review on appeal. However, courts that produce records are not the same as courts of record, and the WCC is not presently authorized to issue declaratory judgments under the UDJA and § 27-8-201, MCA.

manner; contacting attorneys and pro sé litigants; and responding to questions about procedural issues concerning cases and legal actions. In addition, this position works as the liaison between the budget office as well as the Human Resource Department in support of the Court's office operations; as well as functions as a Pretrial Hearing Examiner, performing legal, administrative, and clerical tasks.

Deputy Clerk of Court/Pretrial Hearing Examiner: Work involves a full range of Court Clerk duties by performing legal, administrative, and clerical work in support of the Court's office operations; acting as an assistant to the judge at trial; administering oaths to witnesses; ensuring that all legal documents and related materials are processed and documented accurately within established timelines and legal parameters; preparing a docket of cases for trial; securing information for the judge, other members of the staff, and the public; identifying and responding to the judge's inquiries in a timely and efficient manner; contacting attorneys and pro sé litigants to obtain information for the WCC; and responding to questions about procedural issues concerning cases and legal actions. In addition, this position functions as a Pretrial Hearing Examiner, performing legal, administrative, and clerical tasks.

Deputy Clerk of Court/Receptionist: Answers telephone inquiries including questions regarding Court rules and procedures. Refers complex inquiries to Court staff and other state agencies as appropriate. Processes incoming mail; docketed pleadings, motions, briefs, notices, correspondence, orders, decisions, judgments, and other filings by utilizing the Court's computerized case management system in Oracle; and performs a full range of duties essential to the Court's office operations.

Law Clerks/Mediators (2): The Law Clerk is an advanced legal professional providing legal research and support to the Workers' Compensation Court Judge and court staff. Work involves the preparation of memoranda, draft opinions, and orders concerning cases before the judge. The Law Clerk reviews minute entries and makes determinations regarding emergency trials. The Law Clerk also conducts settlement conferences and mediations at the request of the judge or parties of a case.

3) Types of Cases and Who Hears Them. The WCC resolves disputes in workers' compensation and occupational disease cases. Subsequent Legislatures have increased the WCC's exclusive jurisdiction to include matters such as disputes involving independent contractor exemptions, civil penalties for theft of workers' compensation benefits, and the two-year return to work preference specified in § 39-71-317(2), MCA. The WCC decides requests for judicial review from final orders of the Montana Department of Labor and Industry. All proceedings and hearings before the Court are governed by the appropriate provisions of the Montana Administrative Procedure Act. The Court is bound by common law and the statutory rules of evidence. In workers' compensation regulatory matters over which the Department of Labor & Industry has original jurisdiction, the Court acts as an appellate court, conducting judicial review. The rules of the Court can be found in the Administrative Rules of Montana (ARM) at 24.5.301, *et seq.*

The Court does not have jurisdiction to hear a case in which an employee has brought a direct cause of action against the employer. Under § 39-71-516, MCA, that type of case must be brought in District Court.

4) How Mediation Works. The Court urges parties to engage in settlement discussions and offers settlement conference/mediation services on a case-by-case basis heard by a WCC law clerk/mediator upon request. There is no requirement at this level for mediation.

In all but a few instances, mediation is statutorily required at the department level (Department of Labor & Industry/Employment Relations Division/Workers' Compensation Claims Assistance Bureau/Mediation Unit) prior to the WCC retaining jurisdiction. One example where mediation is not required is the two-year preference to return to work (§ 39-71-317, MCA).

5) How a person accesses the Court including whether attorneys are generally used, filing fees, and any other requirements. Once mediation is completed at the department, the mediator provides to the parties his/her recommendation advising that should either party dispute the mediator's recommendations, they may file a petition here at the WCC. The workers' compensation bar is a fairly small, specialized group of attorneys and most are familiar with the procedures of the Court. For those new to workers' compensation or unrepresented parties, they may call the Court and any of the clerks can answer procedural questions. We mail the Court's Rules as well as a "Pro Se" Brochure, which is a small self-help guide, attached. The Court also has an extensive website which includes links to the Court's Rules (<http://wcc.dli.mt.gov/rules.asp>), helpful hints, and forms. <http://wcc.dli.mt.gov/> The Court posts its published decisions and any substantive Orders on its website. The law clerks compose topics in each published decision for research purposes which are uploaded onto the Court's website.

There is no filing fee for any party. When a petition is filed at the Court, the Petitioner is required by the WCC rules to provide service information on the Respondent. The Court prepares a scheduling order setting forth the date of the pretrial conference and the trial week, as well as setting interim deadlines such as discovery, attached. (During the pretrial conference, the exact date and time of trial is determined.) The Court then mails a copy of the petition and scheduling order to the Respondent – which is how service is effected. In instances where the Uninsured Employers' Fund (UEF) is a named party and wishes an alleged uninsured employer be brought into an action for indemnification purposes, the UEF must effect service itself.

Declaration of Public Policy (§ 39-71-105, MCA). The objective of the workers' compensation system is to provide, without regard to fault, wage-loss and medical benefits to a worker suffering from a work-related injury or disease. Wage-loss benefits are not intended to make an injured worker whole but are intended to provide assistance to a worker at a reasonable cost to the employer. The workers' compensations systems are intended to be primarily self-administering, and are

designed to minimize reliance upon lawyers and the courts to obtain benefits. Parties are not required to retain an attorney except when an entity is incorporated.²

6) What is the timeframe for resolution of cases? Trials are heard on an expedited schedule and normally trials are held within 70 days from the date the petition was filed. The Court's goal is to maintain the average time between trial and decision within 90 days of trial or submission. In recent years, this Court has been at or under that stated goal.

7) How does the Court interact with state agencies and other courts? As mentioned above, the WCC decides requests for judicial review from final orders of the Montana Department of Labor and Industry and, in workers' compensation regulatory matters over which the Department of Labor & Industry has original jurisdiction, the Court acts as an appellate court, conducting judicial review. Appeals of decisions of the WCC go directly to the Supreme Court. The WCC is attached to the Montana Department of Labor and Industry for administrative purposes only. Hiring and pay scales are set by the Department of Labor & Industry.

8) How many cases does the Court hear? The WCC keeps statistics and publishes those statistics on its website. <http://wcc.dli.mt.gov/stats.asp> In fiscal year 2013, 218 petitions were filed with the WCC. The Court held 16 regular trials, 5 evidentiary hearings, attended 3 depositions, heard 25 oral arguments, and heard an additional 25 oral arguments which resulted in a partial bench ruling or a bench ruling followed by a written order. In FY 2013, the Court published 25 decisions, issued 174 miscellaneous judgments, issued 3 orders on appeal, issued 40 substantive orders (interlocutory, discovery, show cause, new trial, reconsideration, etc.), issued 5 attorney fee orders, and issued 7 orders on costs.

9) What is the Court's budget? The Court has a personal services budget for FY 2014 of \$511,621 and an operating budget of \$145,856).

10) Miscellaneous Additional Information:

Each injury case is governed by the version of the Montana Workers' Compensation Act (WCA) by the law in effect at the time of the industrial accident. An employee's last day of work governs which version of the WCA controls the claim in occupational disease cases.

² See *Weaver v. Law Firm of Graybill*, 246 Mont. 175, 803 P.2d 1089 (1990).