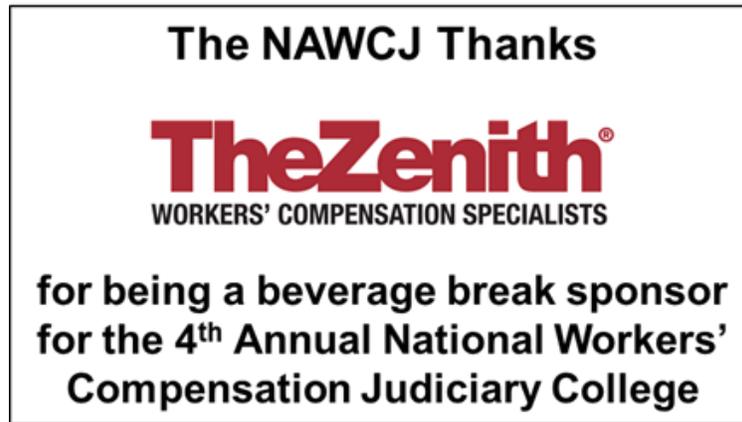


# Fourth Annual NAWCJ Judiciary College

August 20-23, 2012



- I. Judicial Writing and Editing, Professor Terrel
- II. Comparative Law Panel
- III. Credibility of Medical Evidence, Professor McCluskey
- IV. Evidence
  - a. Electronic Evidence, Professor Ehrhardt
  - b. Evidence for Adjudicators, Ehrhardt
- V. Live Surgery, Biographies
- VI. To Tell the Truth, Ms. Constantine
- VII. Keeping the Case on Track, Judge Jones
- VIII. Social Networking, Rissman Wieland
- IX. Technology
  - a. Technology, Judge Rosen
  - b. Technology, I phone Article
- X. Appellate Roundtable
  - a. Appellate Roundtable, Alvey
  - b. Appellate Roundtable, Jones

## JUDICIAL TECHNOLOGY

### **Honorable Steve Rosen**

Since being admitted to the Florida Bar in 1974, Judge Rosen has spent his entire legal career in the area of workers' compensation law. He began his practice in the Tampa office of Marlow, Mitzel & Ortmyer and will leave Stephen L. Rosen, P.A. to serve his term as Judge of Compensation Claims. He has represented insurance carriers in the past, but since 1976 has represented the rights of injured and uninsured employer. Judge Rosen was a member of the initial Florida Bar Workers' Compensation Board Certification Committee, and has been Chair of The Florida Bar Workers' Compensation Section. From 1990 to 1993, he had the honor of acting as Chair of the Statewide Judicial Nominating Committee for Judges of Compensation Claims. He is also a founding member of the Florida Workers Advocates. In 2005, Judge Rosen was honored to have been nominated to the Governor for the position of Deputy Chief Judge for workers compensation. He has been a frequent lecturer and author on workers' compensation issues. He has appeared before the Florida legislature to propose amendments to the workers' compensation laws and has served on legislative advisory committees. He been continuously listed in The Best Lawyers in America since 1995, "AV" rated by Martindale-Hubbell, Superlawyers" in Florida since 2005, and is the recipient of the W. L. "Bud" Adams Award for excellence in the field of workers' compensation, 1991.



## Tips on the Video Teleconferencing Process

Stephen L. Rosen  
Judge of Compensation Claims, St. Petersburg

June, 2011

1. This technology has been in effect with DOAH for several years. The purpose is to help district offices with case overload move those cases through the system so that the litigants can have their day in court within the provisions of Chapter 440 and the Workers Compensation Rules of Procedure. See Rule 60 Q.-6.116.
2. There are approximately 15 JCCs who have been dubbed "visiting Judges ". We are assigned cases that are either in existence or that are newly filed, mostly in Miami and Fort Lauderdale districts.
3. The Workers Compensation Rules of Procedure are uniform throughout the state. Each Judge has some nuances with their interpretation of these rules but we do not have anything called "local rules".
4. Clearly, electronic filing is primary-- 60 Q.-6.108 (1) (a). All documentary evidence and trial memoranda must be filed electronically before the final hearing. Rule 60 Q.-6.108 and its subsections clearly lay out the obligations of the attorneys and their staffs for naming and uploading documentary evidence. While some Judges prefer hard copies of depositions, VTC Judges will most likely not require the parties to box up the hard evidence and send it out of the venue district.

When a Judge reads the documentary evidence online, it is very cumbersome if the document is listed "notice of filing, claimant's exhibit" and then have three or four depositions, medical records, etc. included without being specifically delineated. The better way is to delineate depositions as "deposition of Dr. Robert Jones taken May 1, 2011", "deposition of John Smith taken April 20, 2011 or "medical records of South Florida Baptist Hospital". Naming the specific exhibit or deposition is much more efficient during the VTC process. Rule 60 Q.-6.108 (1) (g).

5. At times, documentary evidence may appear at the hearing. The visiting JCC can actually zoom the camera right up to the document and read it reasonably clearly through video. It will still have to be marked and electronically filed at some point---possibly the Judge's secretary at the remote site can upload during the proceeding or your own staff can immediately upload after the hearing. Obviously, documents presented for the first time at the hearing will be subject to objection.
6. At the remote end of the transmission, there are at least one, usually two, triangular listening devices on the conference table. If it is a portable device, then the sound devices

will probably be on the cart with a video screen. They are very sensitive and there is a button that, when pushed, lights up red and means that your words cannot be heard by the Judge. The Judge has the same capability. So if conferences are necessary between the parties and/or their clients, the Judge, upon request, can be blocked out by pressing the button on the device.

7. The process is being recorded onto the visiting Judge's computer and if the sound is turned off at either site of the video teleconference, the recording device will not pick it up.

8. When the parties come into the room, in addition to the lawyers, most Judges will explain that this is a video teleconferencing process. The parties will see the Judge on a screen before them and they may or may not see themselves in a picture-in- picture in one of the corners of the screen. The Judge will most likely have the parties on the main screen with a picture-in-picture showing both the Judge and what the parties see at the remote site. The Judge will put the parties at ease that, after a few minutes, they will really not be intimidated by the Judge being at another site.

9. There is an ever so slight lag in the spoken words being transmitted at either site. So, as you are getting used to the process, be prepared for the visiting Judge to speak at the same time as the parties at the remote site are speaking. Just a slight pause before beginning to speak will let the remote site speaker complete his or her sentence.

10. The interpreter, if one is needed, will have to realize that the interpretations will be picked up by the listening device and possibly affect the recorded testimony for purposes of transcription on appeal. Most Judges will stop in midsentence so that interpretation can be done and then pick up again so the interpreter and the Judge are not speaking at the same time.

11. I must emphasize that the microphones are very sensitive. Rattling papers, slamming books, moving chairs or the table, clicking pens or pencils on the table will all be picked up. This can interrupt the proceedings and cause parties to have to repeat their statements. You should refrain from any unnecessary noisemaking.

Most Judges will allow beverages in the room during the proceedings at the remote site.

12. The visiting Judge can control the camera at the remote site. The Judge is able to zoom, retreat, angle, zero in on one particular person while another is speaking across the room, and even mute the sound in the Judge's hearing room if his or her staff knocks on the door.

13. However, the parties at the remote site may only control the sound and not anything to do with the camera movement itself.

14. The parties' and the attorney's body language at the remote site will most likely be the same as if they were in the same room as the JCC. However, the attendees at the remote site may notice strange body language and posture by the JCC, who is probably sitting alone at the visiting side. The JCC's can see themselves in the picture in picture on the screen at the visiting side and should be aware that they are being viewed at the remote site. The JCC can position himself or herself prior to the hearing and know what the parties will see at the remote site.

15. Finally, a note on safety and security during VTC proceedings. The visiting Judge is in control of the video proceedings but has absolutely no control over the actual occurrences in the courtroom at the remote site. Unforeseen emergencies or violence during the proceedings are totally in control of the attorneys and participants. The attorneys should be aware of the possibility of unforeseen occurrences during the proceeding. Security is available and should be alerted prior to the proceeding beginning. DOAH is in the process of establishing guidelines for safety and security during VTC proceedings.

### **New OJCC RULES Are on the Website:**

<http://www.fljcc.org/jcc/>

Highlights include:

1. E-Filing is mandatory for attorneys - 60Q-6.108(1)(a).
2. DO NOT SEND PAPER to the District Offices - 60Q-6.108(1)(a).
3. DO NOT SEND correspondence to the OJCC - 60Q-6.108(1)(c).
4. Name Your Uploaded Documents Appropriately - 60Q-6.108(1)(g).
5. Reschedule those mediations early - 60Q-6.110(2).
6. Motion Hearings will be rare - 60Q-6.115(4), plead thoroughly, but succinctly.
7. All Evidence is to be e-filed before trial - 60Q-6.116(7).
8. The burden is on the attorneys or parties to compile and submit records to the EMA 60Q-6.116(11); involve the Judge when you have disagreements.
9. Voluminous or cumbersome trial exhibits SHALL NOT BE RECEIVED unless unavoidable. 60Q-6.121.