

# Lex and Verum



Number XVI, 1210

## The National Association of Workers' Compensation Judiciary



By John Lazzara

## Great Expectations

Final President's Messages are generally tough to write since they're suppose to sum up all the wonderful things that happened during your tenure without appearing to take credit for any accomplishments. This is especially true during my two (2) year inaugural term as President of the National Association of Workers' Compensation Judiciary (NAWCJ). The association owes its meteoric success to the efforts, time and dedication of so many people that to name them all would involve numerous pages.

NAWCJ, the only national organization devoted exclusively to the educational needs and interests of the nation's workers' compensation adjudicators, was simply a concept of a few in November of 2008 when some workers' compensation judges, appellate judges and lawyers first met at the office of The Florida of Workers' Compensation Institute (FWCI), a not-for-profit, non-partisan organization dedicated to the educational needs of workers' compensation professionals. The meeting was the genesis of NAWCJ, a non-profit association created to provide educational opportunities exclusively to the country's workers' compensation judiciary at both the trial and appellate level. NAWCJ presented its First Judiciary College in Orlando, Florida on August 17-18, 2009 with nine (9) states sending their workers' compensation adjudicators. Membership grew from the initial 39 to over 60. In a short period of time, the association was able to achieve exceptional quality and content in its college curriculum and facility, even though registration fees for the judiciary college were the lowest in the nation due to the generosity of FWCI and the NAWCJ associate members. Capitalizing on the momentum and enthusiasm of the first college presentation, the Second Judiciary College was held on August 16-18, 2010 and the number of states who sent attendees increased from 9 states to 15.

In addition to sponsoring the Annual Judiciary College, NAWCJ publishes a monthly newsletter, *LEX & VERUM*, containing information and articles of interest to workers' compensation adjudicators and attorneys. Deputy Chief Judge David W. Langham, Florida, the newsletter publisher/editor along with the newsletter's contributing authors are owed our gratitude for all their time and effort in making monthly news letter a success and a valuable resource material.

In addition to its educational goals, NAWCJ hopes to lay the foundation for a forum capable of encouraging dialogue between workers' compensation adjudicators of differing jurisdictions. As Yogi Berra was once to have said "our similarities are different." This is so true in the field of workers' compensation judging. Although as adjudicators we are all decision makers and operate in a quasi-judicial fashion with similar tasks and responsibilities; how we are appointed, retained and carry out our duties vary from state to state based on state law and procedures. Sharing this information with out-of state colleagues is both interesting and informative as well as encourages the sharing of techniques and technology in improving judicial efficiency and skills all to the benefit of litigants and the workers' compensation system.

I can't stress enough the immeasurable strides NAWCJ has made in the past two (2) years. However, none of these accomplishments would have been possible without the enormous contributions in time and talent from our officers, board members, associate members, FWCI and the invaluable assistance of Kathy Shelton and her staff. With the Holiday Season, I'm reminded of a Charles Dickens' passage in his novel whose title is above, that I, like Pip, have great expectation for NAWCJ. With our incoming officers, Judge Ellen Lorenzen (FL), President; Judge David Torrey (PA), Vice-President; Judge Melodie Belcher (GA), Secretary; and Chief Judge Robert Cohen (FL), Treasurer; I know these expectations will be realized. I sincerely thank the association and its board for the honor bestowed on me as its first inaugural president and I look forward to continuing to work for the betterment of NAWCJ.

John J. Lazzara



# Social Networking and Workers' Compensation Law at the Crossroads



Gregory M. Duhl\*\* and Jaclyn S. Millner\*

Pace Law Review, vol. 31

## I. INTRODUCTION

Workers' compensation<sup>1</sup> provides a backdrop against which to examine how lawyers and judges can use evidence from social networking sites to help resolve civil disputes. An employee<sup>2</sup> alleging a workplace injury could communicate feelings, information, or photographs on a social networking site that contradict her claim. While the employee's attorney should counsel her client to exercise caution in making such communications, defense counsel<sup>3</sup> faces the challenge of gathering and introducing such communications into evidence.<sup>4</sup>

Despite this potential for social networking evidence, its use in workers' compensation cases and civil litigation more generally is uncommon. Consequently, there is a relative absence of cases, statutes, rules, and ethics opinions that prescribe attorney conduct in gathering and introducing such evidence. Because workers' compensation systems are discrete, efficient, and discretionary, they are ideal systems within which to explore how social networking and other new technologies can be used in the resolution of disputes.

Workers' compensation laws are no-fault, providing compensation for job-related injuries<sup>5</sup> and offering an efficient mechanism for claim resolution.<sup>6</sup> They protect employees by providing assured and prompt compensation for work-related injuries and consequential loss of income without the parties and attorneys expending the excessive time and resources typical of state and federal court litigation.<sup>7</sup>

Similarly, social networking sites enable individuals to exchange information efficiently over the internet.<sup>8</sup> Social networking provides a structure for people to express their personalities and identities, and meet people with similar interests.<sup>9</sup> Individuals can have online profiles,<sup>10</sup> friends,<sup>11</sup> blogs, discussions, and groups.<sup>12</sup> Users may also post pictures, videos, and other information to their social networking profiles.<sup>13</sup> By facilitating connections with friends, relatives, and those with similar interests, social networking creates a sense of intimacy and community for users.<sup>14</sup>

Nearly half of adult Americans have a social networking profile,<sup>15</sup> with Facebook and MySpace the most popular sites.<sup>16</sup> As social networking continues to play an increasingly prevalent role in society, lawyers and judges involved in workers' compensation have to confront discovery, professional responsibility, privacy, and evidentiary issues that arise in connection with social networking evidence.<sup>1</sup>

Part II of this article discusses legal issues related to gathering information stored on a social networking site from both the employee and social networking site operator. Part III goes on to address professional responsibility issues that arise for plaintiffs' and defense attorneys in connection with an employee maintaining, and defense counsel gathering, information stored on a social networking site. Part IV discusses issues relating to admitting social networking evidence at the time of a workers' compensation hearing or trial, after it has been obtained by defense counsel. We conclude in Part V that workers' compensation systems should use the existing rules governing the discovery and admissibility of electronic and non-electronic information as a starting point in addressing issues that arise at the crossroads of social networking and workers' compensation law. As efficient systems, providing considerable discretion to the judge workers' compensation laws offer lawyers and judges the ability to address and explore the role of social networking evidence in dispute resolution.

## II. DISCOVERING EMPLOYEE INFORMATION STORED ON SOCIAL NETWORKING SITES

This Part explores the legal issues that can arise when defense counsel seeks an employee's communications and other information stored on a social networking site.

*Continued, Page 3.*

We address two topics: (A) the extent to which an employee's information stored on a networking site is discoverable from the employee in a workers' compensation case; and (B) the extent to which an employee's information stored on a social networking site is discoverable from the third-party site operator in a worker's compensation case. The employee's privacy and the Stored Communications Act, part of the Electronic Communications Privacy Act, potentially limit discovery from the site operator.

**A. DISCOVERY OF SOCIAL NETWORKING INFORMATION FROM THE EMPLOYEE**

This Part focuses on the rules regulating discovery<sup>18</sup> in workers' compensation cases and the few state and federal cases that suggest defense counsel can acquire relevant information stored on a social networking site from an employee.

**1. Background of E-Discovery and the Scope of Discovery**

The discovery process makes relevant information available to litigants.<sup>19</sup> Electronic discovery allows parties to obtain "electronically stored information" ("ESI"),<sup>20</sup> a term adopted by the amendments to the Federal Rules of Civil Procedure in 2006.<sup>21</sup> ESI includes digital information that can be accessed only by computer.<sup>22</sup> The rules regulating discovery more generally also govern ESI.<sup>23</sup>

Federal Rule of Civil Procedure 26(b)(1) outlines the scope of discovery, including the discovery of ESI. The scope of discovery is broad, and non-privileged information that is "relevant to any party's claim or defense" is discoverable.<sup>24</sup> States that follow more limited rules of discovery for workers' compensation claims also use a relevancy standard with respect to discovery of surveillance evidence,<sup>25</sup> which includes information stored on a social networking site. The standard for determining "relevance is 'whether there is any possibility that the information sought may be relevant to the subject matter of the action.'"<sup>26</sup>

As social networking continues to become more popular and widespread, information relevant to employee's workers' compensation claims could be available on Facebook and other social networking sites.<sup>27</sup> Such sites serve as a significant information source because, "[a]lthough [they] provide users with a sense of intimacy and community, they also create a potentially permanent record of personal information that becomes a virtual information bonanza about a litigant's private life and state of mine."<sup>28</sup> An employee alleging a workplace injury could post photographs, communications, or other information that either contradict a workplace injury claim, or alert defense investigators of times and places to engage in surveillance.<sup>29</sup>

*Continued, Page 5.*



# Meet Your Board

**Hon. Jennifer Hopens**

Jennifer Hopens received her undergraduate and law degrees from the University of Texas at Austin. She was licensed to practice law in Texas in 2002. In 2007, she joined the Texas Department of Insurance, Division of Workers' Compensation (TDI-DWC) as a Hearing Officer. She has traveled extensively for the Division, holding contested case hearings in workers' compensation matters in the Austin, Bryan/College Station, Dallas, Fort Worth, Lufkin, Missouri City, Houston East, Houston West, San Antonio, and El Paso Field Offices of TDI-DWC. She was previously a Hearing Officer for the Texas Workforce Commission.

In her free time, Jennifer enjoys reading, traveling and photography.

Judge Hopens joined the NAWCJ in 2009 and accepted appointment to the Board in 2011

“Those who do not read are no better off than those who cannot.”

Proverb

“An education isn't how much you have committed to memory, or even how much you know. It's being able to differentiate between what you know and what you don't.”

Anatole France

“It is the mark of an educated mind to be able to entertain a thought without accepting it.”

Aristotle

# NAWCJ Judicial College 2011

August 21 through 24, 2011

Up to Twenty-one Hours of Judicial Education available for only \$200.00!

## MULTISTATE COMPARATIVE LAW PANEL

Our distinguished panel of Judges from multiple jurisdictions will describe and discuss similarities and differences among the states' workers' compensation laws and procedures. This highly interactive program will provide insight, perspective and analysis of the variety found in workers' compensation.

## LIVE ORAL ARGUMENT



Two actual cases will be argued live before a panel of Judges of the Florida First District Court of Appeal. The decision of the Court will be posted on the Court's website several weeks after the oral arguments take place. Although this presentation is part of Breakout for Adjusters, everyone is invited to attend.

## The 2011 Judicial College Tuition:

### NAWCJ Members

\$200.00 if paid on or before July 31, 2011

\$225.00 if paid on or after August 1, 2011

### Non-Members

\$240.00 if paid on or before July 31, 2011

\$265.00 if paid on or after August 1, 2011

## LIVE SURGERY!

In 2008 an arthroscopic surgery was performed live for the conference. In 2009 a live spine surgery was performed. At the 2010 conference, two procedures were performed, a carpal tunnel release and an arthroscopic meniscus. This feature presentation returns in 2011 with another live spine surgery. Be part of the action! You will observe the procedure as surgery is performed through a live video feed to the Worker's Compensation Educational Conference. It is education at the highest level — an event unlike any before! This program consistently receives rave reviews, and provides an unprecedented opportunity for advancing your knowledge of the surgical medical practice.

## And Much More, Including:

- Advanced Mediation Techniques
  - A Nine-hour program, including Mediator ethics, Diversity, and Domestic Violence.
- Multi State Workers' Compensation Law program, featuring Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Texas.
- Advanced Medicare Implications
  - This program brings "the" national experts from around the country for a full-day program.

## More Information At:

[www.NAWCJ.org](http://www.NAWCJ.org)

[www.FWCIweb.org](http://www.FWCIweb.org)

President Lazara JIL@NAWCJ.org

## 2. Informal Discovery

Social networking information can be discovered both formally and informally. Attorneys can informally discover information by searching on Google, Yahoo! or any other search engine for the employee and seeing if a link to an employee's social networking account comes up in the results.<sup>30</sup> In addition, attorneys can search individual social networking sites, such as Facebook and MySpace, by the name of the employee.<sup>31</sup>

Whether an individual's social networking profile and information can be publicly viewed depends on the particular social networking website and the individual's specific security settings. By using the site's control settings, users of Facebook, MySpace, and other social networking sites are able to control whether the information provided on their profile is public or private.<sup>32</sup> A user may place his or her security settings on a spectrum ranging from a completely public profile, which may be viewed by anyone, to a private profile, which is accessible only to individuals the user accepts as "friends" or "connections."<sup>33</sup> Just as a workers' compensation attorney may use informal discovery to observe an employee in a public place, such as a park or a restaurant,<sup>34</sup> so too is a workers' compensation attorney able to use informal discovery to observe and search information publicly available online. When conducting informal discovery, however, attorneys should be cognizant of professional responsibility obligations.<sup>35</sup>

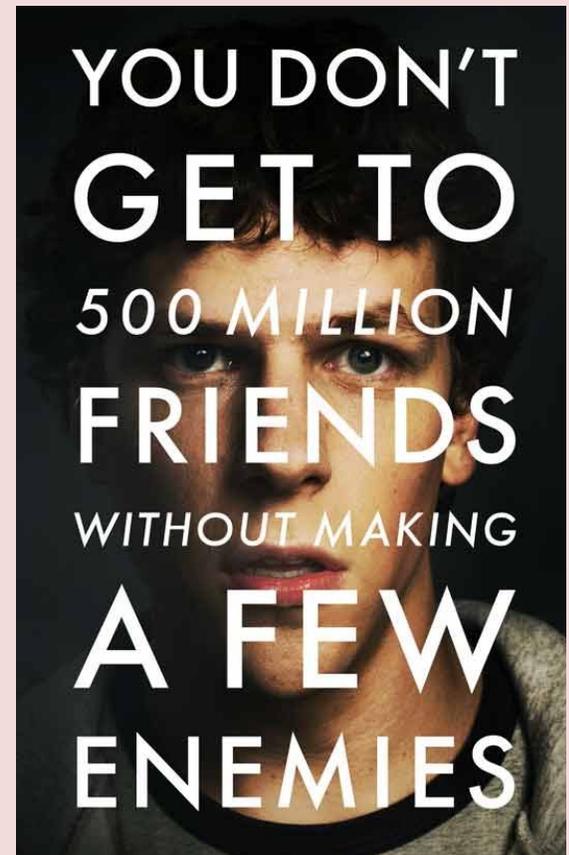
## 3. Formal Discovery

Social networking information that is not publicly available can be obtained through the formal discovery process. Rule 34(a)(1)(A) allows a party to request "any designated documents or electronically stored information – including “. . . data or data compilations)stored in any medium” in “the responding party’s possession, custody, or control.”<sup>36</sup> Accordingly, defense counsel may request any information posted and stored on social networking websites, including discussion and message postings, pictures, and videos relevant to the employee's claim.

Employees in workers' compensation cases should disclose such relevant information in response to narrowly tailored discovery requests.<sup>37</sup> If a plaintiff's attorney objects to the production of this information, the defense attorney must demonstrate its relevance.<sup>38</sup> If a document request for social networking information is at least facially relevant and the plaintiff is able, but does not wish, to produce the relevant document, the plaintiff's attorney has the burden of establishing that the document is not relevant in order to avoid producing it.<sup>39</sup>

In *EEOC v. Simply Storage Management, LLC*, an employment law case, a magistrate judge ordered employees to produce social networking profile information from their Facebook and MySpace accounts in response to a discovery request.<sup>40</sup> The EEOC filed a sexual harassment complaint on behalf of two employees against their supervisor.<sup>41</sup> It requested a discovery conference because counsel disagreed about the proper scope of discovery involving social networking documents, including items from Facebook and MySpace<sup>42</sup> The EEOC objected to the demand for the production of all documents related to the plaintiff's social networking accounts and to deposition testimony about the employee's social networking profiles on the grounds that the requests were overbroad, not relevant, unduly burdensome, harassing, and embarrassing toward the employees.<sup>43</sup> Magistrate Judge Debra Lynch found that the standard for discovery's scope is broad,<sup>44</sup> and noted that where relevance is in doubt, the court should be permissive.<sup>45</sup>

However, she also emphasized that the scope of discovery is not limitless.<sup>46</sup> The EEOC argued that discovery of Facebook and MySpace profiles should be limited to information that directly relates to issues raised in the complaint.<sup>47</sup> Ultimately, Magistrate Judge Lynch found all social networking content revealing, relating, or simply referring to allegations raised in the complaint to be discoverable.<sup>48</sup>



*Continued, Page 6.*

Judge Lynch also found that the fact that a user's profile is private and not available to the public does not shield information in that user's profile from discovery.<sup>49</sup>

Similarly, in *Bass v. Miss Porger's School*, a case involving harassment of a high school student at an elite boarding school, the plaintiff objected to a discovery request for information from his Facebook profile.<sup>50</sup> Again, the court found a low threshold for the discovery of social networking information. The court held:

Facebook usage depicts a snapshot of the user's relationships and state of mind at the time of the content's posting and that the content's relevance to both liability and damages would be "more in the eye of the beholder than subject to strict legal demarcations" of what one party determines might be "reasonably calculated to lead to the discovery of admissible evidence.

The court in *Bass* upheld the broad relevancy standard for discovery of social networking information, and the result should be no different in the workers' compensation context. Defense counsel should be able to discover information that is relevant to allegations raised in the employee's initial pleading,<sup>52</sup> including information relating to the employee's alleged work injuries or employment abilities.

Moreover, a federal magistrate judge in New Jersey found writings shared on social networking sites to be discoverable.<sup>53</sup> In *Beye v. Horizon Blue Cross Blue Shield*,<sup>54</sup> an insurer sought production of all e-mails, journals, diaries and communications involving minor children's eating disorders or manifestations and symptoms of the eating disorders.<sup>55</sup> Magistrate Judge Patty Shwartz ordered the minors to produce all entries on web pages, such as Facebook and MySpace, which the minors had shared with others.<sup>56</sup> Again, *Beye* indicates that there is precedent for workers' compensation courts to permit discovery of all entries on social networking sites that relate to an employee's physical abilities.

#### **4. Defenses to Formal Discovery**

Even if a party establishes that discovery of an employee's social networking profile information is relevant, a court may exclude it from discovery if it is privileged, if its production would impose an undue burden on the employee, or if the employee "has superseding privacy interests in the account."<sup>57</sup> Rule 26(b)(5) states that discoverable information may be withheld if it is privileged.<sup>58</sup> Privileged information may include information subject to the attorney-client privilege, commercial trade secrets, private settlement agreements, and employment confidentiality agreements.<sup>59</sup>

*Continued, Page 7.*

## Your 2010 NAWCJ Board of Directors

Hon. John J. Lazzara, President  
Tallahassee, Florida  
Florida Office of Judges of Compensation Claims

Hon. James R. Wolf, Secretary  
Tallahassee, Florida  
Florida First District Court of Appeal

Hon. R. Karl Aumann  
Baltimore, Maryland  
Maryland Workers' Compensation Commission

Hon. Robert S. Cohen  
Tallahassee, Florida  
Florida Division of Administrative Hearings

Hon Paul M. Hawkes  
Tallahassee, Florida  
Florida First District Court of Appeal

Hon. David Imahara  
Atlanta, Georgia  
Georgia State Board of Workers' Compensation

Hon. David Langham  
Pensacola, Florida  
Florida Office of Judges of Compensation Claims

Hon. Ellen Lorenzen  
Tampa, Florida  
Florida Office of Judges of Compensation Claims

Honorable David Torrey  
Pittsburg, Pennsylvania  
Pennsylvania Department of Labor and Industry

## If I Were A Judge...

By Madeleine Begun Kane

Your argument doesn't make sense.  
It's absurd and illogical. Hence,  
I must find for the plaintiff.  
You've lost this insane tiff.  
You simply don't have a defense.

Only 251 Days Until  
Judicial College 2011!

Additionally, a party need not produce ESI that is “not reasonably accessible because of undue burden or cost.”<sup>60</sup>

## 5. Suggestions for Workers’ Compensation Attorneys Relating to Formal Discovery

In order to generate disclosure of social networking information from the employee through the formal discovery process, workers’ compensation defense attorneys should ask in their interrogatories, or other form of discovery demand pursuant to their state’s rules governing discovery, for the names of any social networking sites used by the employee and request copies of all relevant photographs, videos, postings, communications, and discussions from social networking sites relating to the employee’s physical or employment abilities.<sup>61</sup> Defense attorneys should include similar questions during the employee’s deposition.<sup>62</sup> In order to comply with the rules governing discovery, plaintiffs’ attorneys should encourage employees to disclose relevant social networking photographs, videos, postings, and other communications in response to a valid discovery request from defense counsel.

The foregoing is excerpted from an article originally published in the Pace University Law Review. This is republished here with permission of the author and Law Review and may not be reproduced without their written consent.

\* Jaelyn S. Millner is an attorney at Fitch, Johnson, Larson & Held, a workers’ compensation defense firm in Minneapolis, Minnesota. She is licensed to practice in Wisconsin and Minnesota. She has a B.A. from the University of Michigan and a J.D., magna cum laude, from the William Mitchell College of Law in St. Paul, Minnesota. She was an editor of the William Mitchell Law Review.

\*\* Gregory M. Duhl is an Associate Professor of Law at the William Mitchell College of Law in St. Paul, Minnesota, as well as the executive editor of *The Business Lawyer*, the flagship publication of the ABA Section of Business Law. Professor Duhl received a B.A., summa cum laude, from Yale University, a J.D., cum laude, from Harvard Law School, and an LL.M. in Legal Education from the Temple University James E. Beasley School of Law. He thanks Kathleen Byrne, Nicky Kurtzweil, and Jill Schrader for their excellent research assistance.

### Citations for Social Networking

1. Each state has its own workers; compensation system governed by state statute and administrative rules, see Office of Disability Employment Policy, U.S. DEPT OF LABOR, <http://www.dol.gov/odep/pubs/fact/employ.htm> (last visited Aug. 22, 2010). In this article, we focus on the common elements of those systems.
2. We use “employee” and “plaintiff” interchangeably in this article to refer to the workers’ compensation claimant. The claimant could be a former employee, if employed at the time the alleged injury occurred..
3. In workers’ compensation litigation, the “defense:” includes both the employer and insurer. The employer contracts with the insurer to provide workers’ compensation coverage. We use “defense counsel” in this article to refer to counsel for the employer and the insurer, whether the same or different. The insurer typically controls the litigation, as the insurer is the party paying Workers’ compensation benefits to the employee. See, e.g., Herring v. Jackson, 122 S.E.2d 366, 371-72 (N.C. 1961) ; Russell v. Md. Casualty Co., 174 S.E. 101, 104 (N.C. 1934)
4. See, Shannon Awsumb, *Social Networking Sites: The Next E-Discovery Frontier*, 66 Minn. Bench & B., Nov. 2009, at 10, 23 (Nov. 2009), available at <http://www.mnbar.org/benchandbar/2009/nov09/networking.html>.
5. See, e.g., Cal. Const. art. XIV, § 4; Curtis v. G.E. Capital Modular Space, 155 S.W.3<sup>rd</sup> 877, 884 (Tenn. 2005). 6. See, United Airlines, Inc. v. Indus. Claim Appeals Office, 993 P.2d 1152, 1161 (Colo. 2000).
7. See, Ruggery v. N.C. Dept. of Corrections, 520 S.E.2d 77, 81 (N.C. Ct. App. 1999).
8. See, Kristi L. Gustafson, *Social Networks Alter Reunion Dynamics*, ALBANY TIMES UNION (Apr. 29, 2010, 5:28 PM)/
9. See, Daniel Nations, *What Is Social Networking?*, About.COM, <http://webtrends.about.com/od/socialnetworking/a/social-network.htm> (last visited Aug. 20, 2010).
10. Profiles include basic information, including a person’s age, location, and interests, *See id.*
11. Friends are “trusted members of [an individual’s profile] [who] are allowed to post comments on [the] profile or send [the individual] private messages.” *Id.* When a person sends an invitation to someone to become a “friend” on Facebook or other social networking site, if the individual accepts, the inviter and invitee have access to each other’s information and can communicate with one another. *See, Definition of Friending*, PCMAG.COM, [http://www.pcmag.com/encyclopedia\\_term/0,2542,t=friending&i=61604,00.asp](http://www.pcmag.com/encyclopedia_term/0,2542,t=friending&i=61604,00.asp)
12. *See*, Nations, *supra*, note 9. Groups enable social networking users on a site to find people with similar interests or backgrounds. *See id.* A group can have any sort of focus, from “Diet Coke Lovers” to Valley High School Class of 1999” o a particular book, television show, or movie. *See id.*
13. *See id.*

Continued, Page 8.

*Social Networking, from P.7*

14. See, Awsumb, *supra* note 4, at 23.
15. See, Tom Webster, The Social Habit\Frequent Social Networkers: The Edison/Arbitron Internet and Multimedia Study 2010, at 4 (2010), available at: [http://www.edisonresearch.com/The\\_Social\\_Habit\\_Edison\\_Social\\_Media\\_Study\\_2010.pdf](http://www.edisonresearch.com/The_Social_Habit_Edison_Social_Media_Study_2010.pdf)
16. See, Awsumb, *supra* note 4, at 23.
17. See *id.*
18. This Part uses the Federal Rules of Civil Procedure to discuss discovery in state workers' compensation courts. To date, the majority of states have adopted the Federal Rules of Civil Procedure, with minimal changes. See, *Rules of Civil Procedure*, USLEGAL.COM, <http://civilprocedure.uslegal.com/rules-of-civil-procedure/> (last visited Aug. 20, 2010)(Thirty-five states have adopted the federal rules as their own procedural code"). In most states , though workers' compensation courts are governed by administrative rules, they have adopted the state's rules of civil procedure with regard to discovery. See, e.g., FLA. ADMIN. CODE ANN. r. 60Q-6.114 (2010) (applying the Florida Rules of Civil Procedure to workers' compensation proceedings); GA. CODE ANN. § 34-9-102(d)(1) (2008 & Supp. 2009) ("Discovery Procedures shall be governed and controlled by Chapter 11, Title 9, the "Georgia Civil Practice Act").
19. See, Aaron Blank, *On the Precipe of E-Discovery; Can Litigants Obtain Employee Social Networking Website Information Through Employers?*, 18 CATH. U. COMMLAW CONSPECTUS 487, 495 (2010) (citing FED. R. CIV. P. 26 advisory committee's note (1983). "Discovery" describes evidence obtained during the pre-trial stage of a lawsuit. See, Ken LaMance, *Electronic Discovery – Can Contents of My Electronic Communications Be Used as Evidence in Court?* EZINE ARTICLES, <http://ezinearticles.com/?Electronic-Discovery---Can-Contents-of-My-Electronic-Communications-Be-Used-As-Evidence-in-Court?&id=3962081> (last visited Aug. 20,2010).
20. See, FED. R. CIV. P. 26(a)(1)(A)(ii), 33(d), 34(a)(1)(A); see also, LaMance, *supra*, note 19.
21. Blank, *supra* note 19, at 495-96; LaMance, *supra* note 19; see FED. R. CIV. P. 26. The advisory committee found the amendments to be necessary for two primary reasons:  
First, electronically stored information has important differences from information recorded on paper. The most salient of these differences are that electronically stored information is retained in exponentially greater volume than hard-copy documents; electronically stored information is dynamic, rather than static; and electronically stored information may be incomprehensible when separated from the system that created it. Second, these differences are causing problems in discovery that rule amendments can helpfully address. CIVIL RULES ADVISORY COMM., REPORT OF THE CIVIL RULES ADVISORY COMMITTEE 18 (July 25, 2005), available at SL061 ALI-ABA 1101, 1103 (Westlaw).
22. LaMance, *supra* note 19. Examples of ESI include e-mails, websites, and digitally stored documents and pictures. *Id.*
23. See *id.*
24. FED. R. CIV. P. 26(b)(1).
25. See, MINN. R. 1420.2200, subp. 8(A) (2006) (indicating that *relevant* surveillance evidence is discoverable).

*Continued, Page 9.*

## Interested in Information Technology and Social Networking?

Past issues of the Lex and Verum that have information on social networking websites:

### **December 2009**

*Making the Paperless Office Work*, By Rick Jeffries, Esq.

### **January 2010**

*Investigating Social Networking Web Site Pages*, John P. Ratnaswamy, Esquire

*Why Can't We Be "Friends?"*

Per Curium

### **March 2010**

*Skydiver Sentenced for Comp Fraud*, Workcompcentral.com

### **October 2010**

*How Did We Get Here, and Where Are We Going Next?* Hon. David Langham

## Workers' Compensation Resources

### National Association of Workers' Compensation Judiciary

[www.NAWJC.org](http://www.NAWJC.org)

### Past Lex and Verum

[www.nawcj.org/EdArtsandPubs.htm](http://www.nawcj.org/EdArtsandPubs.htm)

### Florida Workers' Compensation Institute

[www.fwciweb.org](http://www.fwciweb.org)

### Workers' Compensation Service Center

[www.workerscompensation.com](http://www.workerscompensation.com)

### Judge Tom Talks

<http://judgetom.blogspot.com/>

### Judge Torrey

<http://www.davetorrey.info/>

### The National Institute of Occupational Safety

<http://www.cdc.gov/niosh/>

26. AM Int'l, Inc. v. Eastman Kodak Co., 100 F.R.D. 255, 257 (N.D. Ill. 1981); *see also*, TBG Ins. Servs. Corp. v. Superior Court, 117 Cal. Rptr. 2d 155, 160 (Ct. App. 2002) ; Blank, *supra* note 19, at 496 (“The test for relevance is whether there is any possibility that the information sought may be relevant to the subject matter of the action.” (quoting AM Int’t, 100 F.R.D. at 257).
27. *See*, Awsumb, *supra* note 4, at 22.
28. Blank, *supra* note 19, 1t 497 (quoting Levine & Swatski-Lebson, *supra* note 14).
29. *See*, Roberto Cenicerros, *Comp Cheats Confess All on Social Networking Sites*, WORKFORCE MGMT. ONLINE (Sept. 2009), <http://www.workforce.com/section/02/feature/26/66/08>.
30. *See*, Awsumb, *supra* note 4, at 23.
31. *See id.*
32. *See id.*
33. *See id.*
34. *See*, Baumann v. Joyner Silver & Electroplating, 47 W.C.D. 611, 1992 MN Wrk. Comp\_\_LEXIS 622, at \*15 n.3 (W.C.C.A. Sept. 1, 1992)/
35. *See Infra*, Part III.
36. FED. R. CIV. P 34(a)(1).
37. *See*, Awsumb, *supra* note 4, at 24.
38. *See* Oakes, Podolny & Woods, *supra* note 36, at 1
39. *See* Scott v. Leavenworth Unified Sch. Dist. No. 453, 190 F.R.D. 583, 585 (D. Kan. 1999)
40. Order on Discovery Issues Raised During April 21 Conference, EEOC v. Simply Storage Mgmt., LLC, No. 1:09-cv-1223-WTL-DML, at 1 (S.D. Ind. May 11, 2010); *available at* [http://www.scribd.com/full/31921843?access\\_key=key-2i8jdf9a1tammq659sv](http://www.scribd.com/full/31921843?access_key=key-2i8jdf9a1tammq659sv) [hereinafter Order on Discovery].
41. *Id.*
42. *Id* at 2.
43. *Id* at 3.
44. *Id* at 4.
45. Order on Discovery, *supra* note 40, at 4; *see also* Truswal Sys. Corp. v. Hydro-Air Eng’g., Inc., 813 F.2d 1207, 1211Q12 (Fed. Cir. 1987) (discussing the scope of Rule 26(b)(1)).
46. *See* Order on Discovery, *supra* note 40, at 4 (citing Rozell v. Ross-Holst, No. 05 Civ. 2936(JGK)(JCF), 2006 WL 163143, at \*2 (S.D.N.Y. Jan. 20, 2006)). Federal Rule of Civil Procedure 26(b)(2)(C).
47. Order on Discovery, *supra* note 40, at 5.
48. *Id* at 9-10. This content included third-party communications, videos, and photographs posted on Facebook and MySpace. *Id.*
49. *Id* at 6.
50. No. 3:08cv1807(JBA), 2009 WL 3724968, at \*1 (D. Conn. Oct. 27, 2009).
51. *Id.* *See also*, Oakes, Podolny & Woods, note 36, at 1.
52. The plaintiff’s initial pleading in non-workers’ compensation state court matters is typically known as the “complaint,” pursuant to the state’s rules of civil procedure. Workers compensation courts and rules, however, refer to the employee’s first pleading by different terms, including “Claim Petition” and “Employee Claim” (citations omitted).
53. Order Denying Motion for Reconsideration, Beye v. Horizon Blue Cross Blue Shield of N.J., No. 2:06-cv-5377-FSH-PS, at 5Q6 (D.N.J. Dec. 14, 2007), *Available at* <http://www.onpointnews.com/docs/anorexia2b.pdf> [hereinafter Order Denying Motion for Reconsideration]. *Id.* At 5-6.
54. Nos. 06-5337 & 06-6219, 2008 WL 3064757 (D.N.J. July 29, 2008).
55. Order Denying Motion for Reconsideration, *supra* note 53, at 5-6.
56. *Id.*
57. Blank, *supra* note 19, at 506; *see also Infra* Part II.B.2. (discussing employee’s defense of privacy).
58. FED. R. CIV. P. 26(b)(5).
59. *See* Blank, *supra* note 19, at 506. Such forms of privileged information are generally not Applicable to workers’ compensation litigation, where information is obtained from either the employee or social networking provider directly, and the employer previously signed an insurance policy agreeing to provide information to the insurer to assist in the defense of any workers’ compensation claim.
60. FED. R. CIV. P. 26(b)(2)(B). In practice, courts use a balancing test to weigh the benefit and relevance of the information versus the burden and cost of producing it. *See* Blank, *supra* note 19, at 506.
61. *See*, Awsumb, *supra* note 4, at 22.
62. *See id.*



# NAWCJ

## National Association of Worker’s Compensation Judiciary

P.O. Box 200, Tallahassee, FL 32302; 850.425.8156 Fax 850.521-0222

In Keeping with our mission to facilitate and encourage education, collegiality and interaction for those who adjudicate workers' compensation disputes, the National Association of Workers' Compensation Judiciary is pleased to provide the following information on an upcoming program jointly sponsored by the Tort, Trial and Insurance Section and the Labor and Employment Law Section of the American Bar Association.

**American Bar Association  
2011 Workers' Compensation  
Midwinter Seminar and Conference  
Boston, MA  
Intercontinental Hotel**

**April 7 – April 9, 2011**

## Tentative Topics:

### Thursday, April 7, 2011

Health Care in the Obama age: a lightning strike look at health care topics affecting workers' compensation, including an update on 24 hour coverage, genetic testing under GINA, and the ABA's Taskforce on the American Medical Association's 6<sup>th</sup> Edition Guides for the Rating of Permanent Impairment.

The Business of Workers' Compensation: If you've ever wondered if you could learn anything from your competition, here's your chance to get an insider's look at the business of law, and specifically how to be more efficient and improve your performance and results, from each perspective. Topics will include the latest in law office technology that actually makes life easier. This will be presented from Claimant's, Defense, and Judicial perspectives.

Historical reflections on the origins, development and future of workers' compensation in the 21<sup>st</sup> century.



### Friday, April 8, 2011

Employment Extravaganza: Update and practice tips on ADA, AADA, FMLA, Fitness for Duty Exams; Georgia's Mohawk case involving legal workers suit against their employer for allegedly using undocumented workers to reduce wages of legal workers; what employment lawyers wish that workers' compensation lawyers knew about employment law, and what workers' compensation lawyers wish employment lawyers knew about workers' compensation.

Medicare Set Asides: A dialogue about proposed solutions, what's being done to solve the problems surrounding MSAs? The latest developments and ideas, including proposed legislative remedies.

Mass Disasters: how workers' compensation responds.

### Saturday, April 9, 2011

Cutting Edge Case Law Updates.

Immigration.

Judges' Panel: "Ethics and Professionalism in the Litigation and Adjudication of Workers' Compensation Matters."





## Group Petitions ACOEM for Review of Mold Guidelines

By Greg Jones, Reporter

A group of physicians, attorneys and concerned citizens is asking the American College of Occupational and Environmental Medicine to allow the public to review and comment on proposed revisions to the college's position paper on the health effects of mold exposure.

More than 90 individuals have signed the petition, which was submitted to ACOEM and a number of governmental officials, including President Barack Obama, Health and U.S. Human Services Secretary Kathleen Sebelius, U.S. Attorney General Eric Holder and the chairpersons and ranking members of the House and Senate labor committees. The petition calls for a two-week review period before revisions are finalized. "I feel almost certain that if public comment is not allowed, what they're going to continue to attempt to promote is that moldy workplaces are not a source of injury for workers who were not immunocompromised prior," said Sharon Kramer, a mold activist who organized the petition. "The spin in this document is going to be that prior healthy workers are not at risk from mold." Kramer said the paper amounts to "aiding and abetting interstate insurer unfair advantage in workers' comp claim handling practices," and that it also "legitimized a litigation defense argument."

Dodd Fisher, an attorney with the Fisher Davis firm in Grosse Pointe, Mich., who handles toxic tort and mold exposure cases, said the paper is commonly cited by defense attorneys and courts tend to give it greater credit than they should. "It makes it sound like 5,000 or 6,000 doctors are backing up this statement, at least from the appearance of a scientific consensus statement," he said. "The argument the defense makes is this is a universally accepted position document that expresses the general or universal acceptance of environmental physicians."

Kramer, Dodd and the other signatories claim that ACOEM's position paper on mold wasn't properly reviewed and isn't based on scientific evidence. ACOEM confirmed that it is revising the 2002 position paper, but did not return calls asking for additional information about the reasons for the revisions, when the revisions will be finalized or who is involved in the revision process.

The ACOEM position paper, titled "Adverse Human Health Effects Associated with Molds in the Indoor Environment," relied in part on a test in which mice were exposed to a specific strain of mold and suffered no significant health effects. That test was extrapolated to reach the conclusion that exposure to mold will have no effects on humans. The paper states that exposure to mold, and specifically secondary metabolites they produce called mycotoxins, does not harm human health. It urges treating physicians to evaluate other possible diagnoses when a patient claims to suffer from a health condition caused by exposure to mold.

Additionally, it says the possibility that mold exposure caused a symptom should be entertained only after all other possible causes are excluded "and when mold exposure is known to be uncommonly high." The paper says mold exposure is a problem only for people with severely impaired immune systems, and concludes with the claim that "scientific evidence does not support the proposition that human health has been adversely affected by inhaled mycotoxins in home, school or office environments." That conclusion is challenged by a study by the Institute of Medicine (IOM), published in 2004, reporting a link between "mold and other factors related to damp conditions in homes and buildings to asthma symptoms in some people with the chronic disorder, as well as to coughing, wheezing and upper respiratory tract symptoms in otherwise healthy people." The IOM report does caution that there is not sufficient evidence to draw conclusions about other health implications related to mold.

Kramer agreed that the research into the health effects of mold exposure is incomplete, but that doesn't mean that there are no effects. "Absence of evidence is not the same thing as evidence of absence," she said. "While it is perfectly acceptable to say this is plausible and more research is needed -- that would be absence of evidence -- what is not science is to take math, add it to a rat study and profess to prove evidence of absence."

*Continued, Page 12*

The U.S. Government Accountability Office (GAO) also looked into the issue in 2008 and determined that additional research was necessary, but that there was some evidence to link adverse health effects with exposure to mold.

Dodd, the Grosse Pointe attorney who also teaches a toxic torts class at the University of Detroit Mercy School of Law, said his concern is for attorneys and clients unaware of all the articles criticizing the ACOEM paper. Without knowing about the alleged deficiencies, an attorney will have a hard time overcoming the apparent weight of the mold statement, he said. The International Journal of Occupational and Environmental Health and Wall Street Journal published articles critical of the ACOEM mold statement, which Dodd says has helped his cause. "Since the Wall Street Journal article and since the IOEH articles, it's not as difficult for me to deal with the issues, but if you're a litigator and you don't have the information I have to combat that position statement, you're going to have a very difficult time addressing the court," he said.

The articles questioned the use of Bruce Kelman and Bryan Hardin to author the ACOEM paper, because they were toxicologists and defense witnesses who testified that there was no health effect caused by exposure to mold. Additionally, ACOEM was criticized for not disclosing this fact. The Wall Street Journal article, published in September 2007, notes that Ted Guidotti, president of ACOEM at the time, said there was no need to disclose that information because doing so would suggest that the paper expressed Hardin and Kelman's position rather than a consensus opinion of the organization.

Hardin and Kelman now work for Washington-based Veritox, an expert witness and toxicology consulting company. Calls to Veritox were not returned. The company went by the name GlobalTox before it was called Veritox. In an article in the International Journal of Occupational and Environmental Health, Dr. James Craner, a board certified occupational and environmental medicine practitioner based in Reno, Nev., notes that the focus of GlobalTox and its expert witnesses "was on dismissing mold as a toxicological hazard." The article, titled, "A Critique of the ACOEM Statement on Mold," published in 2008, concludes with a call for a transparency policy at ACOEM and a more rigorous system of peer review at ACOEM's Journal of Occupational and Environmental Medicine, where the mold statement was first published.

Craner, who is an ACOEM member, told WorkCompCentral that the overall tone and focus of the mold statement is incorrect and it should be withdrawn and completely rewritten. "The foundation of the writing of that paper is so corrupt that to quote-unquote rewrite it is almost an impossible task; it's almost an insult," he said. "Developing organizational guidelines and position statements needs to start with the constituent holders."

In a lawsuit against the Roswell (N.M.) Independent School District, the San Antonio-based law firm of Chunn, Price and Harris, relied on these articles as part of a motion to exclude or limit the testimony of an expert who relied on the ACOEM paper. David Harris, a partner with the firm, said on the morning he and Lonnie Chunn were expecting to argue the motion to exclude, the judge dismissed the case. The judge said Paige Taylor, the student claiming exposure, would graduate by the time the court could issue an order and because Taylor was not seeking monetary damages, the court would lack jurisdiction to issue an injunction in that case. "If I ever get on the plaintiff's side again, I feel very confident that anyone who tries to rely on the ACOEM paper, they're just going to be in for a world of hurt," Harris said. "It's just nonsensical the extrapolations that were made."

Kramer said she does not expect ACOEM to respond to her petition or to calls for more transparency in the drafting of position papers. She said the occupational medicine field is conflicted because it has to balance the interest of patients while also limiting liability for employers and insurers. "One way to do that is to make the workplace safe for the workers so there is limited injury, but another way to do that is to write papers that deny the workplace is causing injury," she said. "Occupational physicians sit on a fence and have to look at what's in the best interest of the workers and the employer. With the mold statement, they fell off the fence."

The 2002 ACOEM mold paper can be viewed here: <http://www.acoem.org/guidelines.aspx?id>.

The 2008 GAO report can be viewed here: <http://www.gao.gov/new.items/d08980.pdf>

The 2004 IOM report can be viewed here: <http://www.iom.edu/Reports/2004/Damp-Indoor-Spaces-and-Health.aspx>

The foregoing was published on workcompcentral.com and is reprinted here with permission of workcompcentral.com. This work may not be duplicated or re-distributed without permission of the copyright holder, workcompcentral.com.

The NAWCJ thanks WorkCompCentral for their consistent support of this newsletter and the Association's ideal of promoting professionalism and collegiality among the nation's workers' compensation adjudicators.

# NIOSH Update: Aging Workers at Higher Risk of Death, Severe Injury, Conference Report Suggests Ways to Keep Workers Healthy and Productive

A report of conference presentations and discussions among participants from the National Academies of Science, universities and research institutions, and representatives of professional associations, industry and labor, recommends attention to workplace environments to maintain “work ability” as workers age, along with legislative fixes and research to fill in knowledge gaps for keeping workers healthy and productive.

According to researchers using U.S. Bureau of Labor Statistics (BLS) data, older workers are more severely injured and die with greater frequency from work-related injuries than younger workers. Older workers also have longer recovery periods than younger workers. These findings raise health care delivery and economic issues for the nation, as more workers are choosing to delay retirement due to collapsed 401(k) plans and savings. BLS uses workers age 55 and older in its calculations, although the rates rise sharply for those workers over age 65. Other agencies and organizations define the term as age 50 or 55 and up. The Department of Labor uses age 40 as a starting point for “older worker.”

“The issue of healthy aging is critically important as the U.S. economy is revitalized. As we go forward in time, the demand for workers will grow but fewer workers will be entering the workforce and a larger proportion of the workforce will be older. This is a simple reality of demographics,” said National Institute for Occupational Safety and Health (NIOSH) Director John Howard, M.D. “Having a healthy, productive workforce will help sustain economic growth in the decades ahead. We must take steps now to help all workers stay safe and healthy at work as they age. We must also take steps to address the special needs of older workers who, more and more, will be staying on the job past traditional retirement age.”

The conference, held Feb. 17-18, 2009, at the National Labor College in Silver Spring, Md., paid particular attention to workers in physically demanding jobs, such as construction and health care. Health care cost-containment has meant longer work hours and increased stress among health care workers, which has led to a shortage of nurses. Thirty-nine percent of RNs were 45 years or older in 2002.

Construction workers already suffer the highest number of fatalities in any U.S. industry. But the death rate among construction workers 55 years and older was nearly 80% higher than that of construction workers under 35 in 2007. And like the rest of the workforce, the average age of a construction worker is rising; it was 40.4 in 2008, which is 4.4 years older than in 1985. The average retirement age among construction workers is 61.

“Our nation loses an average of four construction workers every workday to a job-related incident – and that’s been consistent for more than a decade,” said Pete Stafford, executive director of CPWR – The Center for Construction Research and Training, one of the conference’s co-sponsors. “As we start to rebuild our nation’s crumbling infrastructure and venture into green jobs, we want to make sure jobsites do not become a source of pain and death for older workers who have so much to contribute, especially in mentoring younger workers.”

Howard believes the conference confirms and expands on a 2004 report from the National Academies of Science that recognized the deteriorating conditions facing an aging workforce, to the detriment of workers, their families, and businesses. “Health and Safety Needs of Older Workers” made clear recommendations to increase research efforts toward preventing work-related injury, illness and fatality among aging workers. These recommendations have yet to be adopted.

“The discussions and recommendations from the conference point to steps that can be taken to address needs identified in the 2004 report that were never acted upon,” said Jordan Barab, acting Assistant Secretary of Labor for the Occupational Safety and Health Administration (OSHA). “As those discussions make clear, a sustainable workforce will be a critical component of a secure and prosperous 21st century economy. The work we do now is an investment in a stronger workforce for tomorrow.”

The Healthy Aging for Workers conference was funded through grants from NIOSH and CPWR. The Association of Occupational and Environmental Clinics and the Society for Occupational and Environmental Health were conference sponsors. Additional co-sponsors were AARP, OSHA, the American Public Health Association, the Veterans Administration, and the University of Maryland Work and Health Research Center.

The full conference report and presentations from national and international researchers on occupational health and safety issues can be found on the Society for Occupational and Environmental Health’s Web site, [www.soeh.org](http://www.soeh.org). For videos of conference presentations, please go to the Association of Occupational and Environmental Clinics’ site, <http://www.aoecdata.org/AoecVideos.aspx>. Republished from the website of the NIOSH.

## “Second Fridays Seminars”

The National Association of Workers' Compensation Judiciary continues its program of monthly educational seminars, presented on the second Friday of each month at lunchtime program.

This year, the NAWCJ and Florida Office of Judges of Compensation Claims is joined by the Florida Workers' Compensation Institute (FWCI) to present a diverse and interesting 2010-11 program. The schedule for 2010-11 will include the programs listed below. Plan now to join us for these exceptional programs, at no charge to NAWCJ members.

January 14, 2011

### The Anatomy of The Injury

Bruce M. Berkowitz, M.D.

Orthopaedic Center of South Florida, Plantation, FL

Tim G. Joganich, M.S., CHFP, ARCCA Inc.

Penns Park, PA

February 11, 2011

### What is Cultural Diversity in Healthcare? Increase Your Understanding for Improved Patient Outcomes

Adam Scott Middleman,

Vice President of Sales and Marketing, Black

Diamond Services, Pompano Beach, FL

March 11, 2011

### Tendinitis, Compressive Neuropathy and Trigger Finger in the Workplace

Tosca Kinchelow, MD, Miami International Hand

Surgical Services, North Miami Beach, FL

April 8, 2011

### Economic Advantages of Timely Orthopedic Subspecialty Care: Hand Surgery and Beyond

Alejandro Badia, MD, Badia Hand to Shoulder Center

OrthoNOW, Miami, FL

May 13, 2011

### Rotator Cuff Tear in the Injured Worker

Avi Kumar, MD, Coastal Orthopedics & Pain

Management, Bradenton, FL

June 10, 2011

### Kneecaps - Therapy First: Treatments for Patellofemoral Joint Injury and Pain Syndrome

Theodore Evans, MD

South Dade Orthopaedic Associates

Miami, FL

## A Look Back at Judicial College 2010



# Judicial Discipline and the Appearance of Impropriety: What the Public Sees is What the Judge Gets

Hon. Ray McKoski\*

Judges are required to forego a litany of professional and personal behaviors deemed to be inconsistent with the role of the neutral magistrate. For example, codes of judicial conduct prohibit ex parte communications, the misuse of office, public commentary on prohibited topics, and participation in certain civic, religious, and political activities.

In addition to specific rules barring actual improprieties, it is commonly believed that a broader disciplinary standard is necessary to fully safeguard the public's faith in the judiciary. As a result, under virtually every state judicial code, discipline may be imposed upon a judge for conduct which violates no particular rule but which is thought to create an "appearance of impropriety".

This Article examines the disciplinary use of the appearance of impropriety standard from a theoretical and practical standpoint. The history of the standard is explored together with the most debated aspect of the rule - whether the appearance of impropriety prohibition can survive a vagueness challenge. The inescapable conclusion is that it cannot. A cost-benefit analysis further discloses that the disadvantages of the rule clearly outweigh its oft-touted but, nevertheless, illusory benefits. It is proposed that the use of the appearance standard as a disciplinary rule should be discontinued or, in the alternative, that a limiting construction should be placed on the "appearance of impropriety" thereby supplying the specificity needed to meet due process requirements.

The preceding abstract summarizes an article found at:  
94 Minn. L. Rev. 1914, June 2010.

\* Circuit Judge, Nineteenth Judicial Circuit, Lake County, Illinois and the Vice-Chair of the Illinois Judicial Ethics Committee and a member of the American Bar Association.

Only 251 Days Until  
Judicial College 2011!

# Hold the DATES!

## NAWCJ Judicial College 2011

### August 21 through 24, 2011

### A funny thing happened on the way to Court . . .

"A judge walks into a bar and launches into a stand-up routine. The bartender asks, 'Is this a joke?' The judge says, 'Let me check with the Advisory Committee on Extrajudicial Activities.'

That's not exactly how South Hackensack, N.J., Judge Vincenzo Sicari -- alias comic "Vince August" -- got into an ethics pickle. But he did make the inquiry, and the outcome wasn't so funny: The panel that regulates New Jersey municipal judges' moonlighting said he can't decide cases by day and do shtick by night."

Quoted from Law.com

<http://www.law.com/jsp/article.jsp?id=1202473389395&rss=newswire>

Opinion at:

<http://pdfserver.amlaw.com/nj/ACEA-Op12-08.pdf>

## WE NEED **YOU**, YOUR **WRITINGS**, YOUR **IDEAS**

Do you write about topics that would be of interest to our members? Have you entered a decision in which Judges around the country would be interested? The NAWCJ communicates monthly with approximately 1,000 workers' compensation adjudicators and appellate review officials across the country. If you have ideas for articles or would like to submit a case note or article, contact Hon. John Lazzara at [JL@NAWCJ.org](mailto:JL@NAWCJ.org)

# THE NATIONAL ASSOCIATION OF WORKERS' COMPENSATION JUDICIARY

## APPLICATION FOR MEMBERSHIP

THE NAWCJ MEMBERSHIP YEAR IS A FOR 12 MONTHS FROM YOUR APPLICATION MONTH. MEMBERSHIP DUES ARE \$75 PER YEAR OR \$195 FOR 3 YEARS. IF 5 OR MORE APPLICANTS FROM THE SAME ORGANIZATION, AGENCY OR TRIBUNAL JOIN AT THE SAME TIME, ANNUAL DUES ARE REDUCED TO \$60 PER YEAR PER APPLICANT.

NAME: \_\_\_\_\_ DATE: \_\_\_\_/\_\_\_\_/\_\_\_\_

OFFICIAL TITLE: \_\_\_\_\_

Organization: \_\_\_\_\_

PROFESSIONAL ADDRESS: \_\_\_\_\_

PROFESSIONAL E-MAIL: \_\_\_\_\_

ALTERNATE E-MAIL: \_\_\_\_\_

PROFESSIONAL TELEPHONE: \_\_\_\_\_ Fax: \_\_\_\_\_

YEAR FIRST APPOINTED OR ELECTED? \_\_\_\_\_

CURRENT TERM EXPIRES: \_\_\_\_\_

HOW DID YOU LEARN ABOUT NAWCJ? \_\_\_\_\_

DESCRIPTION OF JOB DUTIES / QUALIFICATIONS FOR MEMBERSHIP:

IN WHAT WAY WOULD YOU BE MOST INTERESTED IN SERVING THE NAWCJ:

Mail your application and check to: Hon. John J. Lazzara, NAWCJ President  
Office of the Judges of Compensation Claims  
1180 Apalachee Parkway Suite A  
Tallahassee, FL 32301 - 4574  
850.488.2110 850.922.3661 (Fax)  
Email: [jjl@nawcj.org](mailto:jjl@nawcj.org)

# THE NATIONAL ASSOCIATION OF WORKERS' COMPENSATION JUDICIARY

## APPLICATION FOR ASSOCIATE MEMBERSHIP

THE NAWCJ ASSOCIATE MEMBERSHIP YEAR IS A FOR 12 MONTHS FROM YOUR APPLICATION MONTH. ASSOCIATE MEMBERSHIP DUES ARE \$250 PER YEAR.

NAME: \_\_\_\_\_ DATE: \_\_\_\_/\_\_\_\_/\_\_\_\_

Firm or Business: \_\_\_\_\_

PROFESSIONAL ADDRESS: \_\_\_\_\_

\_\_\_\_\_

PROFESSIONAL E-MAIL: \_\_\_\_\_

ALTERNATE E-MAIL: \_\_\_\_\_

PROFESSIONAL TELEPHONE: \_\_\_\_\_ Fax: \_\_\_\_\_

HOW DID YOU LEARN ABOUT NAWCJ? \_\_\_\_\_

Mail your application and check to: Hon. John J. Lazzara, NAWCJ President  
Office of the Judges of Compensation Claims  
1180 Apalachee Parkway Suite A  
Tallahassee, FL 32301 - 4574  
850.488.2110 850.922.3661 (Fax)  
Email: [jjl@nawcj.org](mailto:jjl@nawcj.org)

## THE NATIONAL ASSOCIATION OF WORKERS' COMPENSATION JUDICIARY

There are opportunities for sponsorship of the 2011 NAWCJ Judicial College August 21 through 24, 2011, in Orlando, Florida. If you are interested in sponsoring any of the following:

**WELCOME LUNCHEON PRIME SPONSOR**

**JUDICIAL RECEPTION PRIME SPONSOR**

**JUDICIAL ATTENDANCE SCHOLARSHIP**

Please Contact: Shirley Kendall  
P.O. Box 200, Tallahassee, FL 32302;  
850.425.8156 Fax 850.521-0222  
[Shirley@fwciweb.org](mailto:Shirley@fwciweb.org).