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SENT VIA EMAIL: gc.clerk@wca.nm.gov

Workers' Compensation Administration
Office of General Counsel
2410 Centre Ave SE
Albuquerque, NM 87106

RE: **Written Comment regarding 2025 proposed rules changes**

Dear WCA/ General Counsel:

I am writing in response to the proposed rule changes and in advance of the July 24, 2025 public hearing regarding the same.

The proposed change to 11.4.4.14 NMAC (D) is:

> D. The attorney of record shall be subject to notice of hearings or other proceedings in a pending case until permitted to withdraw from the case as provided herein. Attorneys of record shall no longer be subject to service by the clerk after 90 days following a case being settled or adjudged at which point the attorney of record will be considered withdrawn.

I have concerns about automatically being withdrawn from representation for reasons stated below. And, I have an alternate proposal for a rule change that I believe may satisfy the procedural concerns of withdrawal while preserving representation of parties where appropriate.

At the outset, I recognize and appreciate the idea of making withdrawal simpler where it is appropriate. I believe that this can decrease some administrative burden on the WCA, attorneys, and parties to claims. So I am generally supportive of the concept. However, I have concerns about the automatic withdrawal based upon 1) my representation of my clients, 2) the clerk's role and burdens upon the clerk, and 3) docketing inefficiency.

My representation of my clients,

More personal to me and my clients, **and to me a very important issue**, is that I sign representation agreements with clients to assist them with their workers' compensation claims. I do not have expiration dates in my contracts. My office does not abandon clients at the first possible moment. My clients believe that I will continue to assist them with their claim until the claim is resolved or my work is necessarily concluded. This has meant decades of representation for certain clients. This has meant that claims that were dormant for years may be revived. However, by having a court-mandated automatic withdrawal of representation, this creates uncertainty in my representation of my clients. The automatic withdrawal creates an

administratively sanctioned procedure of the Administration ending my representation despite me having a contract with a client requiring my continued work (and a relationship with my client that should be honored and completed).

To be frank, I am very uncomfortable with an automatically triggering rule that would terminate my representation and would remove me for service of process when, ultimately, I have a legal and ethical responsibility to timely continue to represent my clients. At no point would I want to be placed in the position of a former client (former because by rule I was removed from a case) calling me asking me why I did not respond to an Application… or did not appear for a mediation… all because I was "timed out" of a claim.

Further, the rule change presents a procedural problem in requesting attorney's fees. There are many instances where I do not personally believe that a claim is resolved in such a fashion where I can ethically tell the court that issues are settled or adjudged to the extent that an attorney fee award becomes proper. But, if this rule change occurs, the clerk may enter an order automatically withdrawing my representation as a matter of course based upon a 90-day trigger. What do I do with 11.4.4.14(B) NMAC? Per that rule, I am required to make a claim to attorney's fees before withdrawal. What happens when I am automatically withdrawn in a case that I do not believe is over? Do I lose the opportunity to request attorney's fees since the newly proposed rule automatically withdraws my representation before I could ethically make my attorney fee request? The plain language of the new rule, in concert with existing rules, would result in an automatic forfeiture of the right to request attorney's fees when the automatic 90 day withdrawal is triggered.

Finally, significant representation and legal work can exist outside the confines of active litigation in a workers' compensation claim. There are cases where a mediation will resolve a discreet issue (thereby being adjudged) but my work will continue for months or years working behind the scenes with an adjuster and/or opposing counsel to continue shepherding a claim to MMI or appropriate final resolution of issues. Sometimes cases come back to the administration months, or years, later. If I am representing the client, certainly I need to be able to receive service of process in regard to a claim that I am actively working for a lengthy amount of time. Litigation, settlement, and adjudication or not necessarily the points where a representation agreement ends for an attorney representing injured workers. Accordingly, based upon my ongoing relationship with and duties to my clients, I request that the rule NOT be adopted as written.

The clerk's role and burdens upon the clerk

Often, there are very unique needs and very unique situations that arise in individual workers' compensation claims. For instance, sometimes a trial and final adjudication will resolve a claimant's entitlement to periodic benefits while ordering additional medical care be provided (i.e. order TTD be paid and medical care to get to MMI). In that instance, a final order may be entered… but the case is not resolved. Is the clerk being put in a position of having to decide, for the parties, whether the claim is actually done? Similarly, what would the effect be of a Clerk's Notice of Completion following accepted Recommended Resolutions? Since the claim is adjudged, would representation be automatically withdrawn 90 days later? Or, is the clerk tasked with making a discretionary call as to whether to remove attorneys from claims based on one filing (but not knowing individual circumstances)? Forcing the clerk to decide to end an attorney's representation puts the clerk in an untenable position.

There are countless examples of where a clerk would have to make these types of decisions, but likely only on very limited information. For instance, would a clerk know that a party was proceeding with Section 52-1-28.1 remedies after adjudication of a matter… or that an IME request was forthcoming… or that a change of condition meant an entitlement to future benefits… or an intervening injury occurred sufficient to stop benefits? Etc etc etc. It is incredibly difficult for the parties to a case (themselves) to reliably predict whether there is no need for any further work in the future. Placing this burden on the clerk to determine when something is "settled or adjudged" to trigger an automatic withdrawal of representation I believe will place the clerk in a tenuous situation, and will very likely lead to attorneys being incorrectly withdrawn from claims and removed from service of process. Despite the Clerk's best intentions and best work, having the clerk decide when to remove attorneys from cases is fraught with potential for errors and even potential harm to stakeholders in front of the WCA.

Docketing inefficiency

Similarly, automatic withdrawal will also cause delay in docketing. In the somewhat recent past (within the last ten years, but closer to ten years ago), stakeholders would claim that the Clerk's office did not serve documents that were filed with the Court. This led to a common practice of hearings being often rescheduled by someone appearing and saying: "Sorry - I never received a pleading…" This created holes in scheduling and tremendous delay and wastes of time in resetting matters and using up valuable docket time. I foresee this same type of situation herein, where a party may file something… and the involved attorney was removed from the claim… so the first setting will turn into a roll call of who is still involved in the claim and whether other previous counsel should be contacted. I believe that automatic withdrawal will impact scheduling and cause problems in docketing.

SUGGESTED ALTERNATIVE

As stated at the outset of this letter, I generally agree with the idea of a simplified withdrawal process where appropriate in claims where representation truly is completed, or representation should otherwise be severed.

I just do not agree with an automatic trigger of withdrawal and ending of service of process based upon "settled or adjudged" when those really are not the only factors that drive whether I should continue working for and representing a client in a workers' compensation claim.

To potentially satisfy both concerns, I offer the following as an alternative. Instead, could the rule change read:

> D. The attorney of record shall be subject to notice of hearings or other proceedings in a pending case until permitted to withdraw from the case as provided herein. Additionally, once a claim is settled or adjudged, an attorney may withdraw representation, without hearing or other administrative approval, by filing a Notice of Withdrawal on the approved form promulgated by the Administration.

This change would allow for streamlined withdrawal of representation. But, it removes the automatic suspension of representation and instead allows for the attorneys and their clients to

decide whether representation may be concluded based upon the unique circumstances of each claim and each representation agreement.

The required form promulgated by the Administration could then include required information, such as

1) current name/address/phone for contacting the now pro-se litigant. (Note, this information may not be accurate if attorneys are merely auto-removed from claims, causing the clerk problems in service of process for subsequent filings).

2) There could also be a line for an attorney to note any requested fees or liens – if appropriate – that is otherwise required to be filed by 11.4.4.14(B) NMAC. (Note, auto-withdrawal prior to an attorney making an appropriate fee request could have the unintended consequence of the Administration foreclosing an attorney from being paid for work performed in a claim). And,

3) An attorney's signature allowing an affirmative court filing for an attorney to make the conscious, correct assessment about conclusion of representation.

Thank you for your consideration of these concerns. I am troubled by the idea of being automatically withdrawn as counsel for my clients and not receiving service of process, so object to the rule as written. But, in the spirit of the efficiency that likely underlies the rule proposal, I urge the administration to adopt the alternative proposal contained herein.

Sincerely,

/s/ Derek Weems
Derek Weems