

30 Tips in 60 Minutes

Montgomery County Bar Association
Workers' Compensation Committee

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Know Your Case

- It's your case, not somebody else's.
- Know its facts and its status.
- If you need to consult someone else, do so – don't waste the hearing.

K.I.S.S. (Keep it simple Sally)

- There are only 16 questions on a claim petition.

Daniel Monahan, Esq.

- If you are litigating an employer's petition, most of those answers are already established.
- How many times have you presented your client on a termination petition and asked:
 - 1) Are you fully recovered?
 - 2) Why not?



Immigration Status – “The Reinforced Earth” doctrine

- 810 A.2d 99 (Pa.2002)





Know your client

- Literally, know what he/she looks like.
- Assume they are coming to the hearing even when you told them not to come.
- Don't make the WCJ deal with an "orphan" at the end of the day.

Simply, It's About Credibility

- Your credibility – candor and respect to the tribunal.
- Your client's credibility -
 - A credible client (or witness) cannot win a poor claim

BUT

- A client (or witness) with poor credibility can kill a good claim
- 80 – 90 % of our cases are Cyclops cases if appealed – manage credibility from day one or suffer the consequences.



2-4-6-8 Please Do Not Spoilate

- *Minto v. J.B. Hunt Transport*, (Pa. Super. 4/17/09)





Know Your Evidence Know Your Law

- Know what has been submitted and when
- Don't have to ask the WCJ what is in the record
- Know the law that applies to your case
- Be prepared to discuss controlling authority – whether it is favorable or not

Simply, It's About “Yes” & “No”

- “Let your 'Yes' mean 'Yes,' and your 'No' mean 'No.' Anything more is from the evil one.”

(Sermon on the Mount, Matthew 5:24)

- The more times you or your client can answer a question with a “Yes” or a “No,” the more credibility will soar.
- If an explanation is required, say “Yes” or “No” first – otherwise, it appears one is avoiding the question and credibility falters.



It May Never be “Too Late” to Join

- *Birmingham Fire Ins. Co. v WCAB*, 657 A.2d 96 (Pa. Cmwlth 1995).





Tell the Judge Everything

- Be candid with the tribunal.
- Failure to disclose negative facts or authority harms your credibility.
- Your word is your bond.
- You are an officer of the Court.

Keeping it Simple on Cross – Don't be Categorical

- When preparing the claimant to discuss ADLs, tell them not to be categorical.
- Always avoid “always.” Never say “never.”
- The pain cycle is not categorical. It is situational. Pain rarely precludes. Mostly, it limits.
- If the claimant forgets, tell them to look for the surveillance van.



Answer – Even if You Are Not Correctly Named

- *Brady v. WCAB*, 923 A.2d 529 (Pa.Cmwlth 2007).





Use Mail Professionally

- Avoid resolving disputes through “dueling correspondence.”
- Request a hearing or telephone conference.
- Always copy your opponent.
- Always state your opponent’s position fairly and objectively.
- Do not present evidence by mail unless specifically allowed by the WCJ.
- Always send a hard copy of any fax.

Keeping it Simple on Cross – Be a Candy Machine

- The machine always takes a few seconds to spit out your item. (*Think about the Q.*)
- The machine only dispenses the requested item. (*Answer only the Q.*)
- The machine never offers an additional or different item. (*Don't volunteer.*)
- The machine never worries why it was asked for the item. (*Leave the "spin" to me.*)



Selectively Argue Laches

- *Mitchell v WCAB*, 796 A.2d 1015 (Pa. Cmwlth 2002).





Request Continuances on Time

- The rules require 10 days
- Secretaries will process agreed written requests received more than 24 hours before.
- Requests received later than that unduly inconvenience office staff.
- Things happen, but lawyers earn reputations that can work against them.

The Devil is in the Details – The K.I.S.S. Corollary

- Petitioners - master the details, simplify the presentation. (The more “explaining” you have to do, the weaker your case.)
- Respondents - complicate, complicate. Details are the Respondent’s friend.
- Handle weaknesses on direct, cross or redirect?



Preserve SS Fund – always file a petition

- Sections 413 & 443(a)





Choose Your Mediator

- All Malvern Judges have agreed to mediate each others cases.
- Pick the WCJ with the right style for your case.
- Request a mandatory mediation only as a last resort.
- Have your client available and prepared to mediate.

Keeping it Simple With the Client

- No matter how brilliant you are, your client is your best resource.
- Stay present in the moment. Listen to your client. FOCUS.
- Try to avoid thinking of anything other than what your client is saying.
- You will be a better advocate and you will enjoy your profession more.



Don't Stipulate and Expect a SS Fund Reimbursement

- *BWC v. WCAB*, 538 A.2d 587 (Pa. Cmwlth 1997).





Stipulations of Fact vs. Compromises and Releases – Know the Difference

- In Stipulations, the agreed-upon facts must support the award of the Judge.
- In Compromise and Releases, the facts don't need to support the award.
- Whenever money is being exchanged without admission of liability, use a C&R.
- Remember C&Rs can be used to resolve issues, not just cases.

Never Concede the Details

- A claimant who refuses to attempt the offer of a modified duty job, concedes the details about that job to the employer.
- A claimant's lawyer who does not hire a rebuttal VE concedes the details to the Employer's VE.
- A claimant's lawyer who does not read the history (and PMH) of every medical note concedes the cross examination to his opponent.



Payment of Meds is not an admission of liability

- *Bellefonte Area SD v. WCAB*, 627 A.2d 250 (Pa. Cmwlth 1993).





Be On Time and Be Efficient

- Respect the courtesy of the call of the list by being on time.
- Call in advance if you know you are going to run late.
- Respect your colleagues' time – be efficient with your presentation.
- Consider a partial presentation with an adjournment for a deposition when the list is long.

Simplify Your Life – It's About Your Systems

- Use checklists, outlines and forms to make sure the rote, the routine, and the details are covered, *every time*.
- Delegate tasks to the least specialized person who can do them.
- Think like McDonald's – can a 16 year old do it?
- Be efficient, so you can be effective.
- When you free yourself of the routine and mundane, you can concentrate on the truly important.



Do Not Panic if Your UR Was NOT “Provider Specific”

- *Bucks Co. CC v. Nemes*, 918 A.2d 150 (Pa.Cmwlth 2007).





Don't Raise New Issues On Appeal

- Raise all legal issues before the WCJ
- Doctrine of “strict waiver” may preclude your argument if you do not.
- If your argument is allowed, it will result in a remand.
- The WCJ will not enjoy writing two decisions when he could have written one.

Simplify Your Findings – “Rolling Your Own”

- Proposed FOF = Statement of Facts
- First pass, summarize the testimony
- Second pass, edit and argue
- Be a reductionist. Break your draft down into short declarative sentences in active voice.
- Don't clutter your FOF with “stated,” “testified,” “opined,” etc.
- Use “admitted” and “conceded” moderately for emphasis.
- Use a “Legal Analysis” section rarely – no boilerplate.
- No one should have to guess the relief you are seeking.
- Standard 3 transcript case = 15 page FOF, double spaced



Challenge Frivolous Appeals

- *Phillips v WCAB*, 721 A.2d 1091 (Pa. 1999);
Karotka v. WCAB, 879 A.2d 332 (Pa. Cmwlth 2005).

