ALASKA WORKERS' COMPENSATION BOARD

P.O. Box 115512 **Juneau, Alaska 99811-5512**

BETTY CAREY, Employee, Claimant, v. VECO, INC., Employer, and ALASKA INSURANCE GUARANTY ASSOCIATION, and NORTHERN ADJUSTERS, INC., Defendants.	)	INTERLOCUTORY DECISION AND ORDER AWCB Case No. 198933971 AWCB Decision No. 14-0101 Filed with AWCB Juneau, Alaska, on July 29, 2014

Numerous preliminary petitions, "motions" and "requests" were heard on July 13-16, 2010, in Juneau, Alaska, a date selected on June 14, 2010. Betty Carey (Employee) appeared, represented herself and testified. Attorney Nina Mitchell appeared telephonically, and represented VECO, Inc. and its insurer (Employer). Other witnesses, all of whom testified in person, included Lynda Gillespie, Steven Ryals, William Endicott, Janel Wright, and Michael Monagle. Nicole Gomez testified telephonically. Interim decisions and court proceedings related to a guardian to handle Employee's claim delayed this decision. New participants since the July 2010 hearing include: Attorney Krista Maciolek represents Dawn Pedersen, who is Employee's conservator; and Margaret McWilliams supervises Pedersen. The panel initially closed the record on September 7, 2010. The designated chair reopened the record on July 22, 2014, to allow the parties an

opportunity for additional evidence or briefing, and when parties declined to offer any additional evidence or briefing the record closed again on July 22, 2014.

At hearing on July 13, 2010, Employer's September 23, 2009 "guardian or other representative" petition was the first issue heard and was orally denied but later reconsidered and vacated in *Carey v. VECO, Inc*., AWCB Decision No. 10-0168 (October 7, 2010) (*Carey VII*). *Carey VII* asked the division director to seek a guardian or other representative for Employee. The superior court ultimately appointed a conservator for Employee's claim, and for this decision's purposes, the guardianship issue is resolved. All other issues were held in abeyance until the court decided the guardianship issue.

On April 15, 2013, the superior court issued an order appointing the Office of Public Advocacy (OPA) as Employee's conservator for this case. At a June 13, 2013 prehearing conference, the parties stipulated to continue holding any decision on the 2010 hearing in abeyance until such time as the newly appointed conservator could seek legal counsel. In February 2014, the parties advised they had settled Employee's claim. However, when months elapsed without a settlement agreement being presented, the chair on July 22, 2014, convened a prehearing conference. Because *Carey VII* questioned Employee's mental capacity, she had already represented herself at the 2010 hearing and the superior court later assigned a conservator, the chair at the July 22, 2014 prehearing conference re-opened the July 2010 hearing record and allowed the parties an opportunity to submit any additional evidence or briefing on the remaining issues raised at the July 2010 preliminary hearing. No party desired additional argument. The hearing record closed again on July 22, 2014.

This decision examines the implicit denial of Employee's request for all issues to be heard in the order in which they were filed, the oral order denying Employee's venue change request and decides the remaining preliminary issues from the July 2010 hearing.

The issues heard during the July 2010 hearing were roughly established and limited at a June 14, 2010 prehearing conference, chaired by former hearing officer Talis Colberg. Colberg listed the issues in a summary as he discerned them from Employee's oral statements and her numerous

letters, facsimiles, pleadings and emails and from Employer's pleadings. Notwithstanding repeated instruction and her failure to follow it, Employee was given leeway in filing, taking into account she is not legally trained, and her filings were frequently not in petition format and were often hard to decipher.

ISSUES

Employee contended all issues at the July 2010 hearing should have been heard in the order in which Employee filed her requests. She contended this was critical to her case presentation because one issue's resolution could render subsequent issues moot or might strengthen her case.

Employer contended the panel's order for hearing the issues was correct. It contended guardianship, venue, an issue concerning the previously ordered second independent medical evaluation (SIME) and discovery disputes should have been heard in that order, followed by remaining issues as set forth in the controlling prehearing conference summary.

1) Was the implicit order denying Employee's request to hear the issues in filing order correct?

Employee contended venue should be changed back to Anchorage but would reconsider her request if "games at Juneau DOL would cease." She conceded Juneau venue is more convenient for her for the reasons she argued successfully for the venue change from Anchorage to Juneau in 2009. Nevertheless, Employee contended former hearing officer Briggs' alleged intentional interference with her claim forced her to seek a change back to Anchorage. She contended repeated mis-filings and a "barrage of mistreatment" from Juneau "DOL" including "animosity," rude treatment and claim "undermining" prompted her request.

Employer contended Employee previously argued successfully for a venue change from Anchorage to Juneau, for her convenience. It contended Employee got what she asked for and has no right to request another change, though Employer "might absolutely" agree to a venue change if it provided for a "speedier remedy."

2) Was the oral order denying Employee's request to change venue from Juneau back to Anchorage correct?

Employer contends Walter Ling, M.D., should not be part of the SIME panel because he is a professor with the University of California Los Angeles (UCLA), and Employee's physician James Dahlgren, M.D., is an Assistant Clinical Professor of Medicine at UCLA. Consequently, Employer contends Dr. Ling has personal or financial conflicts of interest and cannot be impartial. Employer further contends a mere statement from Dr. Ling saying he can "be impartial" is insufficient to determine impartiality and "additional facts" are needed to make such a finding.

Employee initially contended she knew little about Dr. Ling. She expressed no objection to him and assumed *Carey v. VECO, Inc.*, AWCB Decision No. 09-0148 (September 9, 2009) (*Carey I*) selected an impartial SIME doctor. However, Employee later contended she had a "better-qualified" physician, Asef Duracovic, M.D., and "nominated" him to perform the SIME.

3) Should *Carey I*'s choice of Dr. Ling for the SIME panel be modified?

Employee contends the designee erred in the April 29, 2010 prehearing conference discovery orders. She contends Employer "planted" information or otherwise "skewed" records. Employee contends Employer's doctors "twisted" her statements, and for her to provide more information through discovery, for example about poker winnings, would produce "misleading" data without adequate "explanation." She contends Employer "improperly" obtained records and may use signed releases to cover its wrongs, all of which illustrate why the designee should not have ordered Employee to sign more releases.

Employee contends she will, however, sign all required releases but wants any records filed in her case to come to the file from her, not from Employer. She contends a clause in Employer's releases stating she has the right to obtain simultaneous copies of any records obtained by Employer through a release would be acceptable, so long as she does not have to pay for any costs associated with the copies. She further contends Employer should be required to provide a single release for each medical provider listing only the provider's name, and should be prohibited from using "blanket" releases. Employee contends she has no objection to signing Social Security releases, though she says she already signed them, but asks Employer to send new releases for her review and signature.

Employee contends the designee erred by requiring her to identify audio recordings she made related to claims or defenses in her case. She contends she should not have to identify recordings she made to support her "fraud" allegations as it might adversely affect her ability to use such recordings for impeachment. Employee contends she should not have to identify diaries, journals or other records she created related to her claims or to Employer's defenses, or describe any "privilege" she contends protects such documents, as she is unable to do so without "assistance."

As to the designee's protective order in her favor, Employee objected to the extent it could be construed to prevent her from producing and filing material at her option. For the designee's discovery orders to which she did not object, Employee contends she needed 30 days to comply.

Employer has no objection to adding language to its releases stating whatever was sent to Employer in response to a release would also be sent to Employee simultaneously, so long as it does not have to pay any costs associated with extra copies. It contends the designee reasonably analyzed the law and facts and properly ordered Employee to sign the modified releases attached to its May 10, 2010 letter. Employer contends the law does not require individual releases naming only one provider and does not prohibit listing a provider category from which it can request records. It contends Employee's request for separate releases is "burdensome." Employer further contends it has complied fully with its obligations under the Act to file and serve Employee's medical records and is offended by Employee's allegations it is intentionally hiding relevant medical records.

Employer contends the designee correctly ordered Employee to identify any recordings related to her claims or to Employer's defenses. It contends the order should require Employee to identify the recordings at least by name, date and subject matter. Employer also contends the designee correctly ordered Employee to identify any diaries, journals or other records she created related to her claims or to Employer's defenses. As for the Social Security releases, Employer had no objection to sending Employee new copies of the two releases from its May 10, 2010 letter, so she could sign and deliver them. Employer contends Employee should respond fully to interrogatories about her earnings as this is relevant to her disability claims on their merits.

4) Should the designee's April 29, 2010 discovery order be affirmed?

Employer contends Employee has not willingly complied with most discovery requests and orders in the past. Therefore, expecting the same behavior in the future, it seeks an order compelling Employee to comply with the April 29, 2010 discovery order.

Employee seeks an order reversing the designee's April 29, 2010 discovery order for the most part. Accordingly, she seeks an order denying Employer's petition to compel her to comply with it.

5) Should Employee be compelled to comply with the designee's April 29, 2010 discovery order?

Employee contends Employer or someone on its behalf intentionally altered her medical records. Accordingly, she contends Employer should be ordered to attach to the medical records, copies of releases it used to obtain the records, so she can determine from where the records came, so there can be some "accountability." She further contends "other people's" records have been filed in her case in an effort to make her appear as a "drunk" or a "smoker." Employee does not contend medical records Employer allegedly obtained "unlawfully" should be excluded from the record. Rather, Employee contends it should be her "choice" as to which records should be expunged from the record, so she can properly rely on records supporting her claim. Further, she contends Employer "culled" important medical records by failing to file them, as required by law. This, she contends, is worse than actually altering records. Employee contends Employer should provide "foundation" to show from where it obtained her medical records. Employee also contends a medical release "index" and releases from Employer show the releases were "altered" after she signed them. Some, she contends, had "x" marks in boxes not containing an "x" when she signed them, while some had "x" marks "whited out" after she signed them. Employee contends the latter was done so Employer could "shape" or "misshape" her medical records to suit its purposes.

Employer contends Employee failed to file a timely request for cross-examination on records she claims were altered, and thus waived her right to object to their admissibility. Alternately, it contends Employee's objections to the records are irrelevant because she merely presented evidence showing possible mistakes made by medical providers, not "alteration" evidence. Employer contends it proved through affidavit neither it nor its agents altered records or misrepresented their

contents. It contends there is no legal support for Employee's request it re-copy Employee's medical records and attach the releases through which the documents were obtained.

6) Should Employer be compelled to state from where it obtained Employee's medical records?

Closely related to the above contention, Employee contends Employer's or it agents' shenanigans will be revealed if Employer is required to demonstrate which records it obtained with which release. She seeks an order requiring Employer to correlate the records it filed with the releases it used to obtain the records.

Employer contends it complied with the designee's directive and provided a medical release "index," and from this Employee should be able to determine from where the records came. It contends if Employee believes records are missing or "culled," she should supplement the record with medical summaries as allowed by law. Alternately, Employer contends Employee can depose medical providers to discover what records they reviewed as they formed their opinions. It seeks an order denying Employee's request.

7) Should Employer be compelled to correlate Employee's medical records with a particular medical release used to obtain the records?

Employee next contends she requested and received a non-redacted copy of the adjuster's claim file in 2001, requested another copy several years later and received a redacted copy, which was about twice as thick as the first, in which some of the previously non-redacted copies had been redacted. Employee contends Employer may try to slip papers into its file later for some unspecified end. She requests an order compelling Employer to produce an unredacted, complete adjusting file.

Employer contends Employee concedes she already has a non-redacted adjuster's file, so her request is moot. Furthermore, it contends she is not entitled to a non-redacted copy and asserts its attorney-client privilege and the attorney work-product doctrine to prevent disclosing additional protected information. Employer asks for an order denying Employee's request.

8) Is Employee entitled to a copy of the claim adjusting file?

Employee contends Employer wrongfully used a subpoena from her Longshoreman's claim to obtain her credit union records, immediately after Employee's external hard drive was stolen. She contends financial information from 2004 forward was included on this hard drive, and right after it was stolen, Employer subpoenaed her financial records from only 2004 forward, and knew the correct financial institutions from which to inquire. Employee contends this is "suspicious," shows Employer's counsel engaged in "attorney misconduct," and seeks an order stating these financial records cannot be relied upon in her case.

Employer contends to the extent these credit union records were filed, without timely objection, Employee waived her right to object now. It contends the question how the credit union records were obtained is irrelevant to any claims or defenses. Employer contends any remedy in respect to the subpoena lies with the forum issuing it.

9) Should Employee's credit union and other financial records be relied upon?

Employee contends Employer's medical evaluators' (EME) opinions should be stricken from the record and not relied upon. She contends Emil Bardana, M.D., and Donna Wicher, Ph.D., wrote their reports with a "personal agenda" intended to mislead other physicians who will read them. Employee contends she was never given an opportunity "to examine" or "authenticate" the documents upon which they relied. She contends Dr. Bardana has a reputation of being biased against injured workers and is the insurance company "go-to doctor." She contends Dr. Wicher became "irate" at her for audio recording the EME and then could not complete it, relying instead upon a technician. Employee contends Dr. Wicher's secretary called her "stupid," which shows "unprofessionalism, bias, agenda." She contends Dr. Wicher is married to Brent Burton, M.D., a subsequent EME physician who examined her and they have "the same insurance driven agenda" to defeat her claims. Employee contends their records are inaccurate, constitute a "personal assault" against her, and should be corrected now, before Exxon uses them against her in a separate matter. Most importantly, Employee contends she was intentionally "poisoned during the February 6th, 2008, exam done by Dr. Bardana and Dr. Burton," and their records are an effort to "cover up that poisoning." Lastly, she contends her former attorney was "ineffective" at EME depositions, and had "some type of friendship with opposing counsel," showing "collusion" between attorneys.

Employer disclaims any wrongdoing. Employer contends Employee's points go to the weight accorded a report or deposition, not its admissibility. It contends Employee can depose the EME doctors at her expense if she wants to question them further.

10) Should the Bardana, Wicher and Burton EME reports and depositions be stricken from the record or otherwise not relied upon?

As mentioned above, Employee contends EME Dr. Bardana "poisoned" her with thallium, tributyltin or tin, altered lab records showing Employee's hemoglobin levels, and altered his and Dr, Burton's EME reports to cover it all up. She contends Dr. Bardana gave her water, which must have contained the poison; or she may have been poisoned through an aerosol. She contends these EME doctors are guilty of "gross negligence and fraud" and should be criminally sanctioned.

Employer contends this decision has no jurisdiction over Employee's request for criminal sanctions. It further contends she "watches too much CSI" and her theory is a "layperson's fantasy." Employer contends Dr. Bardana refuted Employee's poisoning allegations against him, and proved they are false in all respects. It seeks an order denying this request.

11) Does this decision have jurisdiction to impose criminal sanctions on Dr. Bardana or Dr. Burton?

Employer contends Employee's "personally transcribed" EME audio recording excerpts should not be considered for any purpose, as they lack reliability associated with a certified transcriptionist, and contain "argument." It seeks an order pulling the excerpts from the record or requiring Employee to pay for a certified transcript.

Employee contends she swore an oath to tell the truth and printed this on each "transcript." She contends she accurately transcribed the recordings, to the extent she made excerpts, and these excerpts should be relied upon.

12) Should uncertified audio recording transcripts be relied upon?

Employer contends Employee's photographs and personal letters filed on medical summaries are inappropriate as these are not "medical records." For the same reason, it contends the photographs should not be included in the second independent medical evaluation (SIME) binders.

Employee contends she has the right to share her "diagnostic" photographs and her "transcript" excerpts with physicians. She contends the latter will inform what "really" occurred at the EME appointments, and she should be allowed to use the tapes or transcripts for impeachment.

13) How should Employee's non-medical evidence be filed, and for what purpose may it be used?

Employee next contends she filed certain documents with colored print, which she contends were intentionally culled, removed, altered or otherwise destroyed by either opposing counsel or someone at the Juneau Department of Labor. She contends there should be an independent investigation into these allegations.

Employer contends Employee's allegations are unsubstantiated and a waste of time. It contends Employee should not be allowed to provide testimony to support her allegations.

14) Does this decision have jurisdiction to order an independent investigation into alleged activities by Employer, its counsel or by staff at the Juneau Department of Labor in respect to Employee's agency file?

Employee next contends defense lawyers in the past have been given unfettered access to agency files and have taken them from the division's Juneau office to photocopy them. She contends, if it happened in her case, such practice would have allowed defense counsel opportunities to cull or alter documents. This "breach," she contends, ruined file integrity. Employee seeks an order requiring the division to provide a "list of disclosures," *i.e.*, a list of those with access to her file.
Employer offered no evidence or arguments concerning these allegations. It did not take a position on Employee's request.

15) Is Employee entitled to a list of persons having access to her agency file?

Employee next contends because documents in her agency file have been "altered," "culled," "stolen," "manufactured" and in some instances are "somebody else's" medical records, she should be able to "scrutinize" every medical record for two minutes with the SIME physicians during her SIME examinations. She contends while it is "impossible" for her to "go through all" the records and determine which have "inaccuracies" and "alterations," Employee should be allowed to address record accuracy "right with the doctor" so she knows he is looking at "accurate records."

Employer contends Employee seeks "inappropriate contact" with the SIME physicians, in the role of an "advocate" rather than a "claimant." It contends Employee's contact with the SIME physicians should be limited to what the regulations provide. Employer contends with Employee's then-current SIME records at approximately 1,240 pages, a figure hotly contested by Employee as "far too low," Employee's request would require each SIME appointment to exceed 41 hours.

16) Should Employee be allowed to spend at least two minutes discussing each medical record with each physician during her SIME?

Employee contends there "is absolutely no assistance" with her claim from the Department of Labor. She contends not only is there no "assistance," there is "interference" and there "is no remedy for it." When pressed for a statement of the relief sought through this request, Employee contended she wanted "the benefits . . . requested" in her pending claim.

Employer offered no evidence or arguments concerning these allegations. It did not take a position on Employee's request.

17) Has the Workers' Compensation Division properly assisted Employee?

Employee next contends the EME physicians' reports should be photocopied onto colored paper to differentiate them from the rest of Employee's medical records. She contends this will allow SIME and other doctors to recognize those physicians who have been "hired by the defense and paid by the insurance company." Employee contends Employer should bear associated costs.

Employer offered no evidence or arguments concerning these allegations. It did not take a position on Employee's request.

18) Should Employer be ordered to copy EME records onto colored paper?

Employee next contends she filed and served two, white, evidence binders, which "went missing" at the division's Juneau offices. She contends Employer should be ordered to replace these with its service copy, and re-file and re-serve them.

Employer contends it is Employee's burden to file and serve evidence, and prove she filed and served it. It declines to be responsible for determining what evidence Employee claims is missing from her agency file and for providing another copy. Lastly, Employer contends there is no legal authority to order what Employee wants.

19) Should Employer be ordered to copy, re-file and re-serve two white binders, which Employee claims she filed and which she claims subsequently "went missing" from her agency file?

Employee contends Employer intentionally used "unfair tactics" to cause unnecessary delays and "deprive" her of benefits to which she is entitled. She contends her case is "fraught with fraud" and it is time "to just put down the gavel" in her favor. Accordingly, she seeks sanctions against Employer under "Civil Rule 11," and asks for an order awarding "summary judgment."

Employer denies committing any fraud and contends the rules upon which Employee relies are not applicable in workers' compensation cases. It seeks an order denying this request.

20) Should summary judgment in Employee's favor be ordered against Employer under Civil Rule 11, or under any other legal authority?

Employee contends Employer should be ordered to not disseminate her records to any other person or entity. She contends her records lack foundation and are so inaccurate they will "contaminate" other actions she is maintaining or may maintain in the future. Employee invokes her "right to privacy" and seeks an order allowing her to determine if documents are accurate, before Employer may provide or use them elsewhere.

Employer contends it is already bound by laws restricting medical record use and dissemination. It contends this decision lacks jurisdiction to fashion the order Employee seeks. To the extent

Employee may be asking for an order "sealing" her file, Employer contends no one can obtain records from a workers' compensation claimant's file without a release signed by the injured Employee, so there is no good reason to enter the requested order.

21) Should Employee's file be "sealed," or an order issued limiting Employer's ability to disseminate Employee's records?

Employee contends both former hearing officer Robert Briggs and former workers' compensation officer Lynda Gillespie should have been disqualified from working on Employee's case before they left State employment. As to Briggs, Employee contends he intentionally manipulated the evidence, was untimely with issuing his prehearing conference summaries, and did not accurately record in prehearing conference summaries what transpired at the conferences. She contends Briggs and Gillespie deliberately rescheduled prehearing conferences to a day earlier than had been previously noticed, and this caused her to "nearly" miss the prehearing conferences.

Employer offered no evidence or arguments concerning these allegations. It did not take a position on Employee's request.

22) Should former hearing officer Briggs or former workers' compensation officer Gillespie have been disqualified from working on Employee's case?

Employee contends Briggs said, through another Division employee, Employee had a "good lawsuit" against the EME physicians, but then deliberately took her file and sequestered it in his office purportedly to "make an index" for it. Employee contends Briggs was intentionally "stalling" so she would miss the statute of limitations to sue the EME physicians. She contends Briggs worked "behind the scenes" against her with Director Monagle. Specifically, Employee contends someone with access and control over her agency file removed pages from the University of Washington "Fact Book," dealing with Exxon's and VECO's alleged contributions to the university. Since Briggs had control over her file, she concludes it was he who removed the documents, under direction from Monagle. She seeks an order paying her benefits as requested, sanctions against someone, and an independent investigation. Employee further requests an order awarding her penalties and interest from Employer for Briggs' and Gillespie's alleged wrongdoing.

Employer initially took no position on this issue. However, after Employee stated Employer benefited from the alleged wrongful acts, it contends Employee has no evidence Employer played any role in any alleged wrongdoings on the part of either Briggs or Gillespie.

23) Should benefits be awarded, sanctions imposed, or an independent investigation ordered to address Employee's concerns about former hearing officer Briggs or former workers' compensation officer Gillespie?

Employee contends she objected to the December 2, 2009 prehearing conference summary because Briggs presided over the conference and wrote the summary after she had asked for his recusal or disqualification. She contends she objected to the summary even before the conference occurred, when she asked for Briggs' recusal or disqualification. Employee's requested remedy on this issue is unclear.

Employer contends Employee failed to make any timely objection to the prehearing conference summary. It otherwise took no position on Employee's request.

24) Does Employee have a remedy in respect to her objection to the December 2, 2009 prehearing conference summary?

FINDINGS OF FACT

The following facts and factual conclusions are established by a preponderance of the evidence:

1) Employee was given leeway in filing documents, taking into account she is a self-represented litigant. Employee filed many pleadings not in proper format or on the correct form and it was often difficult to determine the relief she requested (observations).

2) Employee claims she had an injury on or about July 18, 1989, while working for Employer on the Exxon Valdez oil spill cleanup in Prince William Sound. Employee alleges toxic exposures (Workers' Compensation Claim, October 3, 2006).

3) On October 3, 2006, Employee filed a claim seeking various benefits resulting from this exposure (*id.*).

4) The following is a brief summary of Employee's general allegations and is not intended to be an exhaustive factual finding: While working for Employer, Employee hauled bags of oil-spill "waste" and avers at times various parts of her body were unprotected and exposed to toxic

substances in the waste. Among other things, Employee contends she manually cleaned oil spill equipment and contaminated booms with undiluted cleaning solvents. At times, she worked in a non-ventilated supply area positioned close to a "decontamination process" and claims she involuntarily inhaled "fumes," "vapors," "contaminated mists," "contamination" from decomposed organic matter, and breathed "solvents and oil additives." Employee also reported exposure to fumes generated by a diesel engine with an exhaust situated close to a window in a room where Employee was working. Employee may also claim other work-related causes of her alleged injury or illness. In short, Employee claims "systemic" injuries including nervous system damage (*id*.; inferences drawn from all the above).

5) Specifically, Employee alleges work-related: Loss of intelligence and continuity of thinking, memory problems, systemic pain throughout her body, cancer, depression, cognitive impairments, weight gain, fear, loss of mobility and motion, loss or damage to reproductive organs, "pre-birth exposure" of her *in utero* child to toxic materials, hormonal changes and glandular issues, muscular twitching and seizure-like activities, numbness and abnormal sensations, vision problems, tumors, cysts and abnormal lesions, premature infertility, bone problems, reduced lifespan and loss of quality of life, fatigue, tiredness and sleeplessness, sleep disturbances, scarring and disfigurement, psychological injuries, allergies and chemical sensitivities, collagen, vascular and connective tissue damage, blood abnormalities, heart and other major organ damage, medication dependency, and predisposition to other disease and illness (Workers' Compensation Claim, October 3, 2006, at 1, and attachment).

6) Employee may also allege additional, work-related conditions or symptoms not included in this summary, which is not intended to be all-inclusive (observations and inferences drawn from all the above).

7) Employee is not represented by an attorney, is not an attorney, is not legally trained and has not worked under an attorney's supervision in this claim (Employee; observations).

8) On October 6, 2008, Employee requested a hearing on her claim (Affidavit of Readiness for Hearing, October 6, 2008).

9) On June 11, 2009, Employee successfully argued for a change of venue from Anchorage to Juneau, to better manage her file and claim. She contended venue in Juneau would reduce her costs to travel to hearings, minimize costs to present her local doctors' testimony at hearings, eliminate problems teleconferencing with Anchorage Board staff, allow her to better observe how her

pleadings were filed and maintained, ensure her filings were not misfiled or misdirected to other cities, eliminate facsimile issues she experienced with Anchorage, prevent issues related to carrying heavy boxes to Anchorage for hearings, end issues with "pilfered" luggage at airports, minimize opportunities for "foul play" against her by Employer and its agents and assuage her general fear of traveling in light of claims against Exxon and Employer (*Carey v. VECO, Inc*., AWCB Decision No. 09-0148 (September 9, 2009) (*Carey I*).

10) On September 9, 2009, *Carey I* also ordered an SIME (*id.*).

11) On October 2, 2009, Employer filed a petition seeking an order directing the division director to petition the superior court for appointment of a "guardian or other representative" for Employee for her workers' compensation case and for an order staying all proceedings before the board until the guardianship process was completed (Petition, September 23, 3009).

12) On June 14, 2010, former Hearing Officer Talis Colberg chaired a prehearing conference at which he and the parties tried to identify the issues set for hearing. These included, insofar as Colberg could discern them:

> The issues at Hearing will be limited to:
>
> (1) 11/20/06 EE Letter (filed 11/20/06) still seeking the following claims made in that letter:
>
> - alleging alteration of unspecified records
> - requesting production of claims examiners' /adjusters' file notes,
> - EE has redacted copies of the notes and believes she should have unredacted copies
> - ER does not believe EE should have unredacted notes
>
> (2) 7/6/09 Claimant's Addendum to Brief / Conclusion / Prayer for Relief, alleging:
>
> (a) wrongfully-obtained credit union records
> (b) alteration of records, 'phony documents,' incomplete evidence
>
> (3) 7/31/09 EE Motion to Strike IME(s) and/or Depositions
>
> (4) 08/20/09 ER Opposition to EE Motion to Strike IME(s) and/or depositions
>
> (5) EE's 09/14/09 EE Petition for the remaining outstanding issues:
>
> (a) declare fraudulent conduct by IME and issue criminal sanctions

(b) compel ER/IR to answer interrogatories propounded by the employee
(c) compel ER/IR to produce copies of medical records given to IME physicians
(d) William Soule and Kiana Peacock to preside over all further proceedings in the case

(6) ER's 09/18/09 Objections to EE submission of personal letters/photos as medical records and filing of excerpts of tape recordings to IME panels

(7) ER's 09/21/09 Petition objecting to EE's use of excerpts and personal letters and photographs as medical evidence for purposes of litigation

(8) 10/6/09 EE Petition to change of venue from Juneau to Anchorage

(9) ER's 09/23/09 Petition for Appointment of guardian for EE

(10) 10/16/09 EE Objection to ER's Petition dated 9/23/09 to appoint guardian/representative [filed on/with a Petition form] and the remaining issues:

(a) Objecting to 'thousands of pages of medical records being spuriously added to her file' with 'a likelihood that some of records were obtained by theft' from Claimant's private luggage;
(b) Petition for guardianship will cause delay and is meritless

(11) 10/20/09 EE's Objection to Board's Record as it is Filed, including:

(a) Allegation of altered medical records
(b) Allegation that board file is missing large binders with claimant's confidential medical records and other evidence
(c) Allegation that board file fails to contain color copies of certain documents, that were exchanged with illegible black & white copies
(d) Board file contains altered, obscured, black and white copies of Exxon Valdez timesheets, instead of color copies of same
(e) Board has permitted removal of Board files for copying without Board oversight
(f) Request for opportunity to 'scrutinize all documents sent to SIME doctors for a time period of two minutes per document while simultaneously in conference with said SIME doctors'
(g) Objection to not being able to contact anyone at Board for assistance
(h) Repeated withdrawal of request for change of venue
(i) Repeated request of return of case to original panel in Anchorage

(12) 10/26/09 ER Objection (letter) to Dr. Ling as an SIME examiner

(13) 10/30/09 EE's Response to ER/IR's 10/26/09 Letter regarding conflict of interest of SIME Dr. Ling, including:

(a) Repeated withdrawal of request for change of venue, and for Anchorage panel to resume adjudication of the case
(b) Petition to copy IME doctors' testimony on separately colored paper
(c) Request that Ms. Mitchell copy and send to Board a copy of documents previously served on ER/IR's counsel: 'two large sets of white binders beginning with a Nov. 11, 1992 letter on Exxon stationary to Thomas Lampman'

• **AWCB should note that the SIME preparation is largely complete and can proceed when the AWCB makes a determination about whether or not Dr. Ling should conduct the exam. In order for the November final hearing to occur in a timely manner the AWCB should address how and when the SIME should proceed as soon as possible as the result of that exam would be pertinent to the final Hearing in November.**

(14) 10/30/09 EE's Response to ER/IR's 10/26/09 Letter regarding **conflict of interest of SIME Dr. Ling**

(15) 10/30/09 ER Opposition to EE 10/30/09 Petition

(16) 2/12/2010 EE's Petition Re: Allegation of Gross Negligence and Fraud of IME Doctors

(17) 3/1/2010 EE's Petition to Seal

(a) Nina Mitchell's (Employer's) medical file of Betty Carey, and
(b) All financial records obtained by Nina Mitchell / staff

(18) 3/1/2010 EE's ARH on 3/1/2010 petition and all prior petitions

(19) 03/12/10 EE's repeated request for recusal of Mr. Briggs

(20) 03/25/10 EE Petition objecting to the prehearing summary of 12/02/09

(21) 04/28/10 EE Petition for all issues to be heard in the order in which they were filed

(22) 05/19/10 EE 'Notice of Intent to Rely' which includes an objection to the prehearing summary and order of 04/29/10 which is actually an appeal of that order

EE is appealing the prehearing discovery order of 04/29/10 and has not complied with the order. ER does not oppose the AWCB ruling on EE's appeal as ER has also filed a 06/11/10 petition to Compel EE to comply with the order.

(23) 05/24/10 EE Petition for a Rule 11 Petition

> (24) 05/26/10 EE 'Notice of Intent to Rely' which includes an objection to the 04/29/10 prehearing order
>
> - It should be noted ER objects to EE's misuse of the Notice of Intent to rely document to create appeals and objections for other purposes. ER further objects to board Designee allowing EE's improper application of Notice of Intent to Rely documents as notice of an appeal of a prehearing discovery order.
>
> - EE asserts that as a self-represented party without counsel she is entitled to some flexibility in her filings and how they are treated.
>
> (25) 10/24/06 ER/IR Controversion Notice, denying all benefits
>
> (26) 02/9/07 ER/IR Controversion for all benefits (emphasis in original; Prehearing Conference Summary, June 14, 2010).

13) At hearing on July 13, 2010, evidence and argument was presented concerning Employer's September 23, 2009 petition for appointment of a guardian or other representative for Employee for her workers' compensation claim (record).

14) The board orally denied Employer's petition for a guardian or other representative for Employee, finding she was intelligent, articulate, and appeared able to adequately present her arguments (*id.*).

15) However, as the hearing progressed, and as events unfolded post-hearing, the panel reassessed its factual findings and conclusions in respect to the petition for guardianship, based upon its further experience with and observations of Employee, particularly through her post-hearing pleadings and e-mail correspondence (experience, judgment, observations, and inferences drawn from all the above).

16) The hearing issues were not heard in the order in which Employee requested relief, over her objection, but there was no oral order expressly denying her request. Employee's request that the issues be heard in the order she filed them was implicitly denied (observations).

17) In respect to her appeal of the April 29, 2010 prehearing conference discovery order, Employee testified and argued:

- Her former attorney and Employer's current defense counsel "colluded" with each other against her in this case (Employee).
- Documents have "gone missing" from her medical files kept by her medical providers in their respective offices (*id.*).

- She needed to know from where records were obtained before she could determine if they had been "altered" (*id.*).
- Exxon's lawyers and Employer had an agenda to change her records, and had changed them inappropriately (*id.*).
- Employer or its agents altered some of her medical record releases after she signed them, including some that had hand-drawn "Xs" on them and others, which had "whited-out" "Xs" for release of material Employee said should not have been released (*id.*).

18) Employee ultimately stated she had no objection to signing medical releases so long as the medical records came to the board directly from the providers and not from Employer's attorney, and duplicate records concurrently came to her (Employee).

19) Employer had no objection to adding language stating Employee had the right to simultaneously receive copies so long as she paid for them (Employer's hearing statements).

20) Employee objected to having to pay for duplicate copies and also objected to the "blanket releases" sent to numerous providers. She would sign specific releases to specific, individual providers (Employee).

21) Colberg had ordered Employee to identify and list any tape-recordings she made related to her case. Employee objected noting perhaps she had a tape-recording with her former attorney which would be privileged. She also was claiming fraud and may have tapes related to this allegation, which she did not want to disclose the parties and thus tip her hand (*id.*).

22) Employer demanded at least a list setting forth all recordings and a statement whether Employee asserted a privilege (Employer's hearing statements).

23) Similarly, Colberg ordered Employee to identify any diaries, journals or other records Employee created related to her claims or Employer's defenses, and list any privileges. Employee was reluctant to comply because if she forgot to list something, Employer might use this against her saying she was being dishonest. Employer wanted an order compelling Employee to provide the list. Colberg also issued a protective order on Employee's behalf stating she did not have to produce tape recordings, diaries, journals or other records he wanted her to identify in the previous discovery orders until the tapes, diaries, journals or other records were identified and Employer requested copies, subject to any applicable privileges. Employee objected to the extent Colberg's

order might prevent her from filing something she wanted to rely upon. Colberg next ordered Employee to sign Social Security releases. Employee had no objection to signing specific Social Security releases, so long as Employer provided new copies. Colberg ordered Employee to answer any interrogatory requesting the source and amount of all income since her injury with Employer through the present. Employee had no objection to responding but needed 30 days in which to do so. He also ordered Employee to state the name, date and location of poker tournaments she has played in since her injury with Employer. Employee had no objection. However, Colberg ordered Employee did not have to identify poker games she played in that were not part of any tournaments, the names of individuals participating in these games or cities she had visited since her work injury and Employee had no objection to this protective order. Colberg ordered Employee to produce documents supporting the income list sources she previously agreed to produce. Employee had no objection, but needed 30 days to comply. Colberg further ordered Employee did not have to produce documents related to poker tournaments or games in which Employee played but she said she would produce the documents anyway (Employee).

24) Employer argued for order compelling Employee to comply with the above-referenced discovery orders (Employer's hearing arguments).

25) At hearing on July 14, 2010, Employee testified and argued:

- She needed to know precisely from where medical and other records came because she perceived a "concerted effort" against her on the part of many entities, which "goes beyond this system," including "attorney misconduct," "medical malpractice," and "workers' compensation fraud" (*id.*).
- Exxon or some other Employer agent altered her medical records intentionally so she would miss the statute of limitations for one or more lawsuits (*id.*).
- As evidence of alleged "fraud," a February 26, 1967 medical record was altered because "her" was "typed funny" (*id.*).
- As further evidence of "fraud," Employee cited two other medical records and disputed in one instance the record should have said "gland" rather than "tumor" and questioned why a certain word was scratched out (*id.*).
- One of her "best examples" of "altered records" included a December 18, 1973 report, which stated to the effect Employee "smoked and drank in moderation."

Employee disputed this and testified she had never smoked in her life. Employee testified and argued Employer or its agents subsequently "interjected" this false statement into this report to show she had "problems" Employer could later rely upon to account for her current illness (*id.*).

- Employer's EME physicians intentionally "poisoned" her and then culled hemoglobin records from her chart to cover up the poisoning (*id.*).
- As further evidence of "culled" or "altered records," Employee pointed to certain hand-written notes she opined "did not look like medical records" and referred to other records where she alleged Exxon added material to protect it in her litigation against Exxon (*id.*).

26) Employee testified and argued the EME reports were the "product" of "false records" (*id.*).

27) Employee testified and argued a color copy of a radiographic scan had been stolen from her doctor's office and Exxon wanted her original copy (*id.*).

28) None of the records Employee specifically referenced on July 14, 2010, were credibly shown to be intentionally altered by anyone for purposes of affecting Employee's workers' compensation case, or any other case arising from her 1989 work-related event while employed with Employer (experience, judgment, observations and inferences drawn from all the above).

29) Employee testified her computer hard drive was stolen in January 2009, and implied Employer or its agents were responsible (Employee).

30) Employer witness Nicole Gomez testified she was a legal assistant familiar with Employee's case and was unaware of any stolen computer hard drive (Gomez).

31) Employee argued she wanted Employer to admit there were no records showing she had acquired immunodeficiency syndrome (AIDS) or suffers from alcoholism, even though no records stating or implying she does exist in the record (Employee).

32) In respect to her request to strike EME reports from the record, Employee testified and argued the EME physicians had an "agenda" both "corporate" and "personal" against her, with intent to mislead. Employee was concerned the EME reports may be used elsewhere, the EME doctors made "personal attacks" against her and Dr. Bardana intentionally "poisoned" her in 2008 (*id.*).

33) Employee testified and argued her former attorney was "ineffective" and colluded with Employer's current attorney after he withdrew from her representation (*id.*).

34) In respect to her request for "criminal sanctions," Employee reiterated EME Dr. Bardana or perhaps another EME physician intentionally "poisoned her," using aerosolized tin or Thallium, and tried to cover it up by hiding hemoglobin lab records. Specifically, Employee testified Dr. Bardana filled a paper cup with water and implied he somehow placed poison in the water (*id.*).

35) As a preliminary matter at hearing on July 15, 2010, Employee testified and argued she had just learned the Juneau Division offices, in which the July 2010 hearing was held, was a "sick building," which might affect her "mental acuity." Employee alleged mold and ventilation issues with the building and argued her work-related condition causes her to have an autoimmune reaction to such environments. Though Employee sought no specific relief, such as moving the hearing to a different building as a result of this discovery, she wanted to "mention it" for the record (*id.*).

36) In response to Employee's allegations about the alleged "sick building," the panel called State of Alaska Division Operations Manager William Endicott. Independent studies showed air quality inside the Juneau Department of Labor building was cleaner than the air outside (Endicott; *see also* Hearing Ex. 1).

37) Employee also testified and argued there were not enough or adequate breaks during the course of the four-day hearing (Employee).

38) Numerous, sometimes lengthy breaks were taken during the course of the four-day July 2010 hearing, and on each and every occasion Employee requested a break, or appeared to need one, a break was taken (experience, judgment, observations).

39) At hearing on July 15, 2010, Employee testified and argued she met with hostility from Division Director Michael Monagle, and similar behavior from Division staff was a "common problem." She questioned why in her view she was "singled out" for special restrictions at the Juneau Division office, such as having to make an appointment before viewing her file (Employee).

40) Ryals Bates-stamped some material placed in Employee's agency file, including a 1500+ page document stack. He saw Director Monagle put a rubber band around the large stack, and place it on a co-worker's desk. Ryals did not add or remove any pages, alter any pages, or alter any numbering on the pages. He conceded not everyone needs an appointment to come to the division's Juneau office, but he was aware, "unfortunately," Employee needs an appointment to come in. By Ryals' definition of "out of line," Employee at multiple times has been out of line, a "little flustered" and would raise her voice. Ryals noticed Employee's 1500+ page filing was "missing" a

few pages, or at least pages were not sequentially numbered. He reported this to Gillespie and Chief Wright (Ryals).

41) Chief Wright told Ryals to accept the filing as he received it from Employee and Bates-stamp it, as it was not for the division to question whether or not Employee chose to remove documents. Employee's file integrity was "at the forefront" of the division's concerns, as Employee had raised questions about it. No one at the division would have had any reason to remove documents from Employee's filings. When Employee alleged "two very large binders" she had filed went missing, Chief Wright investigated by personally looking through all boxes containing Employee's files and the two notebooks could not be located. Chief Wright photocopied documents Employee handed her during the hearing, made the number of copies Employee requested, and did not rearrange them, notwithstanding Employee's protestations to the contrary. Employee's file had been the only claimant's file Bates-stamped, short of preparing the case for an appeal. Employee's file was Bates-stamped because she had a "huge concern" about her file's integrity, so the division put additional precautions in place to give her confidence her file was accurate and in order. Chief Wright could never determine whether the two binders to which Employee referred were ever actually filed (Wright).

42) Director Monagle did not remove, insert, alter, change or direct anyone else to do any of those things to any document in Employee's file. He never observed anyone else doing so. He established a procedure for Employee to make appointments for office visits. In reference to filing the 1500+ page document stack, Director Monagle told Employee to return when she had an appointment in conformance with the procedure he had previously given her. Employee left the documents on the counter. Director Monagle put a rubber band around them and placed them on an employee's desk for processing. The office visit policy was made because Employee was a frequent customer sometimes tying up office staff for two or three hours. The office visit policy was necessary so staff could plan their day knowing whether or not Employee would be in. Director Monagle has no personal interest in or animosity toward Employee or her case (Monagle).

43) Employee contended she always complied with discovery requirements to the best of her ability (Employee).

44) Division employee Steven Ryals credibly testified that at times he observed Employee at the Juneau Division offices and she acted "out of line," meaning she became "flustered" and "raised her voice" inappropriately on "multiple occasions" (Ryals).

45) Chief Wright made photocopies of documents for Employee at her request. Employee subsequently testified and argued Chief Wright intentionally made the wrong number of copies and mixed the documents up to confuse Employee (Employee).

46) Wright made the exact number of copies Employee requested, did not mix up the documents, and gave them back to Employee in the precise order in which she had received them (Wright).

47) Employee's agency file was carefully organized and Bates-stamped because, unlike most injured workers with pending claims, Employee had concerns about file maintenance and integrity. Given these concerns, Chief Wright felt it prudent to organize Employee's agency file and Bates-stamp each document in chronological order, as much as possible, to protect file integrity and resolve any ongoing concerns (*id.*).

48) Chief Wright did not remove, insert, cull, alter, modify or otherwise change any documents in Employee's agency record, and did not direct any Division employees to do so (*id.*).

49) Chief Wright is highly respected at the division, has a reputation for impeccable honesty and ethics in the workers' compensation community and has absolutely no reason to negligently, inadvertently or intentionally interfere with Employee's workers' compensation case, as Employee alleges (experience, judgment, observations, and inferences drawn from all the above).

50) On several occasions during the July 2010 hearing, and on July 15, 2010, Employee implied then Acting Division Director Monagle had a personal vendetta against her, and may have been responsible for, or otherwise directed, culling, adding, removing, altering or otherwise changing documents in Employee's agency file (Employee).

51) Director Monagle did not remove, insert, cull, alter, modify or otherwise change any documents in Employee's agency record, and did not direct any Division employees to do so (Monagle).

52) Director Monagle is highly respected at the division, has a reputation for impeccable honesty and ethics in the workers' compensation community and has absolutely no reason to negligently, inadvertently or intentionally interfere with Employee's workers' compensation case, as Employee alleges (experience, judgment, observations, and inferences drawn from all the above).

53) Director Monagle placed reasonable restrictions on Employee because she occasionally would demand "two to three hours" at a time with Juneau Division staff, mislabeled documents she was filing, which caused confusion, and Juneau Division employees could not plan their work day

when Employee would appear at random times and demand hours of attention. Director Monagle had no "personal feelings" toward Employee (Monagle).

54) At hearing on July 15, 2010, Employee testified she believed, based upon hearsay statements attributed to an un-named Division employee, private attorneys including defense lawyers could take her agency file outside the building and copy it at will (Employee).

55) No credible evidence supports Employee's belief private attorneys including defense lawyers could take her agency file outside the building and copy it at will (experience, judgment).

56) Employee wants "two minutes" for each medical record to discuss each record with the SIME physicians (Employee).

57) Allowing Employee two minutes per medical record with each SIME physician would require over 80 hours just for reviewing the medical records with the SIME physicians, not including any evaluation, history, examinations or report writing (experience, judgment, observations, and inferences drawn from all the above).

58) Employee testified she attempted to file an appeal notice from the Alaska Workers' Compensation Appeals Commission with Juneau Division staff, who refused to accept it, she stated, because "they were not sure it was completed properly," which Employee perceived as "further evidence of interference" by Juneau Division staff with her workers' compensation claim (Employee).

59) At hearing, the designated chair explained to Employee how to file and serve her document with the appeals commission (record).

60) On numerous occasions during the July 2010 hearing, Employee testified and argued Juneau Division staff intentionally scanned pictures and certain documents in her agency file on "low resolution" so they would be illegible to Division staff in Anchorage who would look at the records electronically (Employee).

61) At hearing on or about July 15, 2010, the three-member panel hearing Employee's claim discovered Employee was secretly recording conversations occurring in the hearing room when the parties were not present, with a digital recorder at least during lunch hours if not more frequently. This observation is different from the panel's additional, earlier observation Employee was recording the hearing when the case was "on the record" and her recorder was in plain view. At one point, either Employee or "James Jones," the individual assisting her at hearing, covered the digital recorder with a piece of paper in an effort to hide it from view. On

another occasion, either Employee or Jones covered the digital recorder with a napkin, with the same intent (observations and inferences drawn from the above).

62) At hearing on July 16, 2010, Employee read her June 4, 2010 affidavit into the record. Among other things, Employee alleged she was "intentionally poisoned" with uranium and like toxins, alleged a "toxic assault" and said her son had similar poison in his system (Employee).

63) Employee testified former hearing officer Briggs intentionally manipulated evidence in her case, including but not limited to not accurately reflecting what happened at prehearing conferences in his prehearing conference summaries, intentionally changed prehearing conferences to earlier dates without notifying her so she could not appear and protect her interests, inappropriately sequestered her agency file in his office, deliberately delayed indexing her file to prevent her from reviewing it, and "stalled" her case hoping she would miss a statute of limitations against an EME physicians all because Briggs was "insurance friendly" and was known to have an ulterior motive to "protect insurance companies" in workers' compensation claims (*id*.).

64) Briggs was not known in the workers' compensation community as "insurance friendly" (experience, judgment, observations, and inferences drawn from all the above).

65) Briggs left state employment prior to the July 2010 hearing (observations).

66) Employee testified Briggs and Director Monagle had an "obvious bias" against her, "worked behind the scenes" to thwart her case, and were somehow involved when two binders of information from Employee's agency record allegedly "went missing," and were among the people with access to her file when documents were allegedly removed (Employee).

67) There is no credible evidence the two referenced "white binders" were ever filed with or disappeared from Employee's agency file, or that Briggs or Director Monagle had anything to do with any allegedly missing white binders (experience, judgment).

68) Notwithstanding her testimony and argument Briggs failed to accurately record what happened at prehearing conferences in his prehearing conference summaries, Employee testified and argued Briggs' December 2, 2009 summary was "too wordy and too lengthy" (Employee).

69) Employee objected to former workers' compensation officer Gillespie working with her file, and alleged Gillespie imposed unfair rules upon her, treated her unfairly compared to other claimants and assisted Briggs in making it difficult to prosecute her claim (*id*.).

70) Gillespie left state employment in September 2011 (observations).

71) Employee testified she has cognitive problems "every day" (Employee).

72) Employee testified her luggage was stolen from Alaska Airlines, documents were removed, and then ultimately mailed back to her in an envelope without any return address, postage or postmark, which she referred to as "mystery mail" (*id.*).

73) Employee was suspicious why Employer's counsel did not always check the same boxes on each record release, why Employer only requested specific but not all records and why Employer did not file certain documents Employee thought were helpful to her claim (*id.*).

74) Employee testified and argued a "joint plaintiff" in a lawsuit against Exxon was found dead in his hotel room of "natural causes" at age 28 before he could give his deposition. Employee disputed the cause of death and testified this individual was intentionally "injected with something" and did not commit suicide as some people surmised, but was "murdered" (*id.*).

75) Employee testified about attempts on her life including being chased by another car at over 90 mph, and being shot at twice (*id.*).

76) As further evidence of a concerted effort against her, Employee testified and argued that during her EME trip, Employer intentionally put her in a hotel room with a broken window latch, on the ground floor, outside of which were stacked rolls of carpet to enable an intruder to enter her room and do her harm (*id.*).

77) Employee further testified Juneau Department of Labor personnel deliberately made a bad photocopy of her original photograph showing this, to obliterate the evidence showing her hotel room had no window latch, unlike the adjacent room (*id.*).

78) Employee testified and argued her workers' compensation case was intentionally thwarted by Division employees. She said she suffered intentional interference from Juneau Division staff, and Director Monagle who had been in charge of self-insured employers was biased and working against her because Exxon was a self-insured employer. Employee testified there was a concerted effort by Director Monagle, the Juneau Department of Labor, and Employer's counsel to "extinguish her case," through a "litany of abuses," including "attorney misconduct," numerous "lost documents," and "changed appointments," all of which in Employee's view deserves an "investigation" against Director Monagle and Briggs by an impartial investigator, not affiliated with the Alaska Department of Labor or perhaps even with the State of Alaska (*id.*).

79) Employee said this was a "very serious matter," and she does not want "to die," but wants to recover from her work-related illness and obtain all benefits to which she is entitled (*id.*).

80) In her view, Employee has done "all she was asked to do" in respect to her claim, and objects to "special rules," which are restrictive and designed "only for her" (*id.*).

81) Employee has not done all she was asked. For example, Employee has never supplemented or returned the SIME binders with her affidavit of completeness, has not provided all requested discovery and has never returned specific releases to Employer's counsel, as was agreed at the July 2010 hearing (experience, judgment observations and inferences drawn from all the above).

82) Employee testified and argued she is "impaired," but is "not stupid" (Employee).

83) Between July 16, 2010, the last day of the four-day July hearing, and September 7, 2010, when the record closed, Employee filed numerous, additional documents (record).

84) On August 16, 2010, Employee sent an e-mail referencing the SIME binders, which concluded the binders had been culled of documents favorable to her position and contained altered documents (Employee's email: "198933971; OBJECTIONS; Appeal; SIME files alterations; no foundation; dates of IMEs don't reconcile w releases," August 16, 2010).

85) On August 17, 2010, Employee sent the following e-mail, cited in part:

> Dear DOL Workers' Compensation Division:
>
> In this email, below, I am sending you copies of two letters which demonstrate inconsistency and shenanigans on the part of opposing counsel. This is but one example of how records can be 'retroactively' added to the file. . . .
>
> This present day discrepancy is one of many examples of my files being altered, and it is impossible for me to constantly oversee the file and know what all has been added or culled or manipulated and contents changed within records that have been out of my control and in the control of Defense attorneys and agenda-driven office staff. . . .
> . . .
>
> Please read the following two letters which will clarify the point about files and records being altered, sometimes retroactively.
>
> (Employee's e-mail: "example of inconsistency of file and/or alteration by additional copies slipped into file," August 17, 2010).

86) On August 19, 2010, Employee sent the following e-mail, cited in part:

> Dear Ms. Gillespie:
> . . .

(5) There is no way of viewing the thousands of pages which would be necessary to review in order to ascertain whether or not these documents have been altered. As I stated in my email dated August 16, 2010, and as I have REPEATEDLY stated: I cannot authenticate documents which have been out of my control and do not display proper Foundation; I need to know where those documents come from and who produced the documents to Ms. Mitchell before I can authenticate them, **AND EVEN IF I AM ABLE TO ACQUIRE THIS LONG SOUGHT INFORMATION, THERE ARE THOUSANDS OF PAGES OF RECORDS AND I NEED ASSISTANCE TO LOOK THROUGH EACH AND EVERY PAGE.**

(6) I have Petitioned and stated time and time again that I NEED ASSISTANCE in setting forth this case, including assistance to help me scrutinize and organize the thousands of pages of documents which Ms. Mitchell has produced to the W.C. file.

(7) I no longer trust anybody at the Juneau office of Workers' Compensation, save for a couple of people, and even those couple of people whom I do trust are 'under instruction' of those whom I do not trust. If you recall, Ms. Gillespie, I petitioned long ago for you and Mr. Briggs to be removed from my case. I am still concerned that the eleven hundred pages of my documents within the two large white binders were not filed and 'lost' at Juneau DOL and when I asked if anybody would even look for them I was told 'No' by Mr. Monagle. **Back then I filed everything with Jay Childers and he passed it on to you for logging in. In addition to the two large binders, approximately 1,000 pages were sent by you to 'Fairbanks' rather than Anchorage for my hearing of June 11, 2010; these documents, even though I filed them in Juneau, never bore a Juneau stamp, but rather a Fairbanks and then Anchorage stamp. . . . I just want to let the Board know that I do not trust that DOL has kept the integrity of the file.**

(8) **It is clear to me that DOL, particularly, Juneau DOL works for the insurance companies, and big employers such as Exxon and Veco KNOW that they can simply turn worker over to DOL and wear out litigants, that is, if their illnesses don't wear them out first.**
. . .

(14) Now you tell me that I must go and see yet another person within the Juneau DOL building; but this person would have no way of seeing me or retroactively assessing me from back in 2006 and prior when I signed my Petitions. My illness waxes and wanes and I am not stepping into any more agenda-driven traps so that the enemy can produced a canned report. I have doctors' reports that confirm disability and I certainly believe I am disabled, and it is my understanding that the American Disabilities Act is applicable in my situation. I can't even imaging (sic) what the person who you, Ms. Gillespie, instruct me to see regarding the American Disabilities Act would write in order to cause me to lose my case. . . .

> . . .
>
> (Employee's e-mail: "Confirming OBJECTIONS," August 24, 2010, emphasis in original).

87) As of *Carey VIII*'s issuance, Employee's agency file contained approximately 12,717 pages, and the SIME has not even been completed yet (record; observations).

88) A typical SIME includes a physician spending an hour or two reviewing a claimant's medical records, and an hour or two interviewing and examining the claimant and writing a report (experience, judgment, observations).

89) The medical record's size in large measure determines how long the physician spends reviewing the records (*id.*).

90) Employee's medical file is large (*id.*).

91) SIME physicians typically charge from $300-$800 per hour for their time, depending upon their specialty (*id.*).

92) Medical providers frequently make dictation errors and hand-write changes on records when they notice a mistake (*id.*).

93) Medical providers also frequently record incorrect information (*id.*).

94) After the July 2010 hearing concluded, and the parties filed post-hearing material, *Carey VII* on its own motion re-visited Employer's September 23, 2009 petition for appointment of a guardian or other representative for Employee, and the July 13, 2010 oral order denying that petition. *Carey VII* decided to review the guardianship matter because, after four days of observing Employee's participation at hearing after the oral order was made, which included Employee's repeated emphasis on her alleged mental health and cognitive issues, it appeared Employee's behavior was paranoid. Among other things, Employee contended certain staff members at "Juneau Department of Labor" intentionally tried to make her appear "dangerous or incompetent," while a litany of other persons or entities also conspired against her (Employee; experience, judgment, observations and inferences drawn from all the above).

95) Thus, instead of ruling on all issues heard in July 2010, *Carey VII* reviewed the issue: Should it "ask the division director to require, through the superior court, the appointment of a guardian or other representative for Employee solely for purposes of Employee's workers' compensation claims?" (*Carey VII* at 49). In short, *Carey VII* found Employee needs someone to exercise the

powers granted to her and perform the duties required of her under the Act, to move her case forward to a hearing on its merits (*id.*).

96) On November 16, 2010, *Carey v. VECO, Inc.*, AWCB Decision No. 10-0186 (November 16, 2010) (*Carey VIII*) denied Employee's October 21, 2010 petition for reconsideration of *Carey VII* (*Carey VIII* at 28).

97) On December 7, 2010, *Carey v. VECO, Inc.*, AWCB Decision No. 10-0196 (December 7, 2010) (*Carey IX*) denied Employee's November 12, 2010 petition to reconsider or modify *Carey I* and *Carey VII* (*Carey IX* at 18).

98) On April 15, 2013, the superior court issued an order appointing OPA as Employee's conservator for this case (Order, April 15, 2013).

PRINCIPLES OF LAW

> **AS 23.30.001. Intent of the legislature and construction of chapter**. It is the intent of the legislature that
>
> 1) this chapter be interpreted . . . to ensure . . . quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to the employers. . . .
>
> 2) workers' compensation cases shall be decided on their merits except where otherwise provided by statute. . . .

The board may base its decision not only on direct testimony, medical findings, and other tangible evidence, but also on the board's "experience, judgment, observations, unique or peculiar facts of the case, and inferences drawn from all of the above." *Fairbanks North Star Borough v. Rogers & Babler*, 747 P.2d 528, 533-34 (Alaska 1987).

In *Richard v. Fireman's Fund*, 384 P.2d 445, 449 (Alaska 1963) the Alaska Supreme Court stated the board has a duty to act promptly in an advisory, instructive role:

> We hold to the view that a workmen's compensation board or commission owes to every applicant for compensation that duty of fully advising him as to all the real facts which bear upon his condition and his right to compensation, so far as it may know them, and of instructing him on how to pursue that right under the law.

The Alaska Supreme Court in *Dwight v. Humana Hospital Alaska*, 876 P.2d 1114 (Alaska 1994) stated the board has the duty to inform injured workers of their legal rights, such as the right to request an SIME. In *Bohlmann v. Alaska Construction & Engineering*, 205 P.2d 316 (Alaska 2009) the Alaska Supreme Court reiterated the board's duty to self-represented claimants:

> A central issue inherent to Bohlmann's appeal is the extent to which the board must inform a *pro se* claimant of the steps he must follow to preserve his claim. . . . In *Richard v. Fireman's Fund Insurance Co*. we held that the board must assist claimants by advising them of the important facts of their case and instructing them how to pursue their right to compensation [footnote omitted]. We have not considered the extent of the board's duty to advise claimants. . . . . But we do not need to consider the full extent of the duty here. . . . This requirement is similar to our holdings about the duty a court owes to a *pro se* litigant [footnote omitted]. . . . [The information given] must inform him of deficiencies in his . . . paperwork. In evaluating the accuracy of notice of procedural rights by an opposing party, we have noted that pro se litigants are not always able to distinguish between 'what is indeed correct and what is merely wishful advocacy dressed in robes of certitude' [footnote omitted]. The board, as an adjudicative body with a duty to assist claimants, has a duty similar to that of courts to assist unrepresented litigants (*id*. at 319-20).

The appeals commission gives non-attorney claimants leeway in their filings and holds them to a less demanding standard than attorneys. *Khan v. Adams & Associates*, AWCAC Decision No. 057 (September 27, 2007). The board generally accords self-represented litigants leeway in all regards. *Mow v. Peter Pan Seafoods, Inc.*, AWCB Decision No. 11-0051 (April 22, 2011).

> **AS 23.30.005. Alaska Workers' Compensation Board**. . . .
> . . .
>
> (h) . . . Process and procedure under this chapter shall be as summary and simple as possible. . . .

> **AS 23.30.095. Medical treatments, services, and examination**s. . . .
> . . .
>
> (h) Upon the filing with the division by a party in interest of a claim or other pleading, all parties to the proceeding must immediately, or in any event within five days after service of the pleading, send to the division the original signed reports of all physicians relating to the proceedings that they may have in their possession or under their control, and copies of the reports shall be served by the party immediately on any adverse party. There is a continuing duty on all parties to file and serve all the reports during the pendency of the proceeding. . . .

AS 23.30.107. Release of information. (a) Upon written request, an employee shall provide written authority to the employer, carrier, rehabilitation specialist, or reemployment benefits administrator to obtain medical and rehabilitation information relative to the employee's injury. . . .

(b) Medical or rehabilitation records, and the employee's name, address, social security number, electronic mail address, and telephone number contained on any record, in an employee's file maintained by the division or held by the board or the commission are not public records subject to public inspection and copying under AS 40.25. This subsection does not prohibit

(1) the reemployment benefits administrator, the division, the board, the commission, or the department from releasing medical or rehabilitation records in an employee's file, without the employee's consent, to a physician providing medical services under AS 23.30.095(k) or 23.30.110(g), a party to a claim filed by the employee, or a governmental agency; or

(2) the quoting or discussing of medical or rehabilitation records contained in an employee's file during a hearing on a claim for compensation or in a decision or order of the board or commission.

(c) The division may not assemble, or provide information respecting, individual records for commercial purposes that are outside the scope of this chapter. . . .

AS 23.30.108. Prehearings on discovery matters; objections to requests for release of information; sanctions for noncompliance. (a) If an employee objects to a request for written authority under AS 23.30.107, the employee must file a petition with the board seeking a protective order within 14 days after service of the request. If the employee fails to file a petition and fails to deliver the written authority as required by AS 23.30.107 within 14 days after service of the request, the employee's rights to benefits under this chapter are suspended until the written authority is delivered.

(b) If a petition seeking a protective order is filed, the board shall set a prehearing within 21 days after the filing date of the petition. At a prehearing conducted by the board's designee, the board's designee has the authority to resolve disputes concerning the written authority. If the board or the board's designee orders delivery of the written authority and if the employee refuses to deliver it within 10 days after being ordered to do so, the employee's rights to benefits under this chapter are suspended until the written authority is delivered. During any period of suspension under this subsection, the employee's benefits under this chapter are forfeited unless the board, or the court determining an action brought for the recovery of damages under this chapter, determines that good cause existed for the refusal to provide the written authority.

> (c) At a prehearing on discovery matters conducted by the board's designee, the board's designee shall direct parties to sign releases or produce documents, or both, if the parties present releases or documents that are likely to lead to admissible evidence relative to an employee's injury. If a party refuses to comply with an order by the board's designee or the board concerning discovery matters, the board may impose appropriate sanctions in addition to any forfeiture of benefits, including dismissing the party's claim, petition, or defense. If a discovery dispute comes before the board for review of a determination by the board's designee, the board may not consider any evidence or argument that was not presented to the board's designee, but shall determine the issue solely on the basis of the written record. The decision by the board on a discovery dispute shall be made within 30 days. The board shall uphold the designee's decision except when the board's designee's determination is an abuse of discretion.
>
> (d) If the employee files a petition seeking a protective order to recover medical and rehabilitation information that has been provided but is not related to the employee's injury, and the board or the board's designee grants the protective order, the board or the board's designee granting the protective order shall direct the division, the board, the commission, and the parties to return to the employee, as soon as practicable following the issuance of the protective order, all medical and rehabilitation information, including copies, in their possession that is unrelated to the employee's injury under the protective order.
>
> (e) If the board or the board's designee limits the medical or rehabilitation information that may be used by the parties to a claim, either by an order on the record or by issuing a written order, the division, the board, the commission, and a party to the claim may request and an employee shall provide or authorize the production of medical or rehabilitation information only to the extent of the limitations of the order. If information has been produced that is outside of the limits designated in the order, the board or the board's designee shall direct the party in possession of the information to return the information to the employee as soon as practicable following the issuance of the order.

The Alaska Supreme Court encourages "liberal and wide-ranging discovery under the Rules of Civil Procedure." *Schwab v. Hooper Electric*, AWCB Decision No. 87-0322 at 4, n. 2 (December 11, 1987). *Granus v. Fell*, AWCB Decision No. 99-0016 (January 20, 1999) defined the term "relevant" in AS 23.30.107(a) as follows:

> We frequently look to the Alaska Rules of Civil Procedure for guidance in interpreting our procedural statutes and regulations. Civil Rule 26(b)(1) governs the general scope of discovery in civil actions and provides in pertinent part, '[p]arties may obtain discovery regarding any matter, not privileged which is relevant to the subject matter involved in the pending action. . . . The information

> sought need not be admissible at trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.'
>
> We find the definition of 'relevant' for discovery purposes in Civil Rule 26(b)(1) is persuasive as to the meaning and legislative intent of the phrases 'relative to employee's injury' and 'that relate to questions in dispute' used in AS 23.30.107(a) and AS 23.30.005(h), respectively. The Civil Rules favor liberal and wide-ranging discovery. . . . However, the scope of evidence we may admit and consider in deciding those narrow issues is broader. Information which would be inadmissible at trial, may nonetheless be discoverable if it is reasonably calculated to lead to admissible evidence. . . .
>
> To be admissible at hearing, evidence must be 'relevant.' However, we find a party seeking to discover information need only show the information appears reasonably calculated to lead to the discovery of evidence admissible at hearing.

> **AS 23.30.110. Procedure on claims.** (a) Subject to the provisions of AS 23.30.105, a claim for compensation may be filed with the board in accordance with its regulations at any time after the first seven days of disability . . . and the board may hear and determine all questions in respect to the claim. . . .

The language "all questions" is limited to questions raised by the parties or by the agency upon notice duly given to the parties. *Simon v. Alaska Wood Products*, 633 P.2d 252, 256 (Alaska 1981).

> **AS 23.30.135. Procedure before the board.** (a) In making an investigation or inquiry or conducting a hearing the board is not bound by common law or statutory rules of evidence or by technical or formal rules of procedure, except as provided in this chapter. The board may make its investigation or inquiry or conduct its hearing in the manner by which it may best ascertain the rights of the parties. . . .

> **AS 23.30.250. Penalties for fraudulent or misleading acts; damages in civil actions**. (a) A person who (1) knowingly makes a false or misleading statement, representation, or submission related to a benefit under this chapter; (2) knowingly assists, abets, solicits, or conspires in making a false or misleading submission affecting the payment, coverage, or other benefit under this chapter; (3) knowingly misclassifies employees or engages in deceptive leasing practices for the purpose of evading full payment of workers' compensation insurance premiums; or (4) employs or contracts with a person or firm to coerce or encourage an individual to file a fraudulent compensation claim is civilly liable to a person adversely affected by the conduct, is guilty of theft by deception as defined in AS 11.46.180, and may be punished as provided by AS 11.46.120 - 11.46.150.

> (b) If the board, after a hearing, finds that a person has obtained compensation, medical treatment, or another benefit provided under this chapter, or that a provider has received a payment, by knowingly making a false or misleading statement or representation for the purpose of obtaining that benefit, the board shall order that person to make full reimbursement of the cost of all benefits obtained. Upon entry of an order authorized under this subsection, the board shall also order that person to pay all reasonable costs and attorney fees incurred by the employer and the employer's carrier in obtaining an order under this section and in defending any claim made for benefits under this chapter. If a person fails to comply with an order of the board requiring reimbursement of compensation and payment of costs and attorney fees, the employer may declare the person in default and proceed to collect any sum due as provided under AS 23.30.170(b) and (c).
>
> (c) To the extent allowed by law, in a civil action under (a) of this section, an award of damages by a court or jury may include compensatory damages and an award of three times the amount of damages sustained by the person, subject to AS 09.17. Attorney fees may be awarded to a prevailing party as allowed by law.

The Alaska Supreme Court has addressed this section on two occasions, but neither decision to date has clarified if, how or to what extent §250(a) applies to any and all persons participating in a workers' compensation claim as a party, witness, representative, or agent. *DeNuptis v. Unocal Corp*., 63 P.3d 272 (Alaska 2003); *ARCTEC Services v. Cummings*, 295 P.3d 916 (Alaska 2013). However, the Alaska Workers' Compensation Appeals Commission in *Walters v. Crazy Horse, Inc*., AWCAC Decision No. 06-031 (October 22, 2007), stated:

> The commission questions the board's comment on evidence of the motives and knowledge of the employee under AS 23.30.250(a) (footnote omitted). The determination of all questions, including motive and knowledge, under AS 23.30.250(a) are reserved to the court system. It is not appropriate for the board . . . to comment on the court's prospective finding of guilt or innocence of a person if proceedings were to be brought under AS 23.30.250(a). The board's comment suggests the board has jurisdiction to decide whether Walters had a criminal motive and is inappropriate (*id*. at 8).

> **AS 23.30.280. Investigation of fraud; staffing**. (a) The director shall establish a section within the division for the investigation of fraudulent or misleading acts under AS 23.30.250 and other fraudulent acts relating to workers' compensation.
>
> (b) The director may investigate facts reported under this section and may refer facts indicating a possible violation of law to the appropriate prosecutor or agency. If the director determines that there is credible evidence that a person obtained a payment, compensation, medical treatment, or other benefit provided

under this chapter by a fraudulent act or false or misleading statement or representation as provided in AS 23.30.250(a), the director shall notify the affected employer, insurer, and adjuster upon conclusion of the investigation. If the fraudulent act or false or misleading statement or representation was perpetrated against the division, the director may file a petition as provided in AS 23.30.110 for an order of forfeiture against the person, precluding, in whole or in part, the person from future payment, compensation, medical treatment, or other benefit provided under this chapter.

(c) The director shall establish a toll-free fraud hotline to receive calls relating to fraudulent or misleading acts under this chapter. The director shall publicize the availability of the toll-free fraud hotline and encourage the public to provide information to the division relating to fraudulent or misleading acts relating to workers' compensation.\

(d) The section established by the director under (a) of this section shall include not less than two full-time investigators with the primary responsibility of investigating fraudulent or misleading acts relating to workers' compensation. The director shall also ensure that there are sufficient personnel to staff the toll-free fraud hotline established under (c) of this section.

(e) Except as provided in (f) of this section, a person is not liable for civil damages for filing a report concerning a suspected, anticipated, or completed fraudulent act or a false or misleading statement or representation with, or for furnishing other information, whether written or oral, concerning a suspected, anticipated, or completed fraudulent act or false or misleading statements or representation to

(1) law enforcement officials or their agents and employees;
(2) the division of workers' compensation, the division of insurance in the Department of Commerce, Community, and Economic Development, or an agency in another state that regulates insurance or workers' compensation;
(3) an insurer or adjuster or its agents, employees, or designees, or the risk manager of a self-insured employer under this chapter.

(f) The provisions of (e) of this section do not preclude liability for civil damages as described in (e) of this section if the liability arose as a result of gross negligence or reckless or intentional misconduct.

(g) The papers, reports, documents, and evidence received under this section or in an investigation arising from information received under this section are not subject to public inspection for so long as the director considers confidentiality to be in the public interest or reasonably necessary to complete an investigation or protect the person investigated from unwarranted injury. Papers, reports, documents, and other evidence related to an investigation under this section are confidential. . . .

There is no Alaska Supreme Court case addressing AS 23.30.280. However, in *Municipality of Anchorage v. Syren*, AWCAC Decision No. 007 (March 7, 2006), at 2, n. 6, the commission implied a party could come under its ambit and stated:

> 8 AAC 45.052(a) requires that the parties disclose every medical report 'which is or may be relevant to the claim' (emphasis added). AS 23.30.095(h) imposes the duty to file on records in the party's control, but 8 AAC 45.052 is limited to documents in the party's possession. . . . The knowing withholding of a document relative to the claim from the submission of documents required under AS 23.30.095(h) may open Syren, and anyone who assists him in concealing a document, to investigation under AS 23.30.280. . . .

There is no precedential decision addressing AS 23.30.280 to date, which decided if, how or to what extent §280 applies to every person participating in a workers' compensation claim as a party, witness, representative, or agent.

In *Shug v. Moore*, 233 P.3d 1114, 1116 (Alaska 2010), Shug alleged Moore committed fraud, deception, bribery, and conspiracy before and during a personal injury trial. The trial court granted summary judgment on this issue against Shug. The Alaska Supreme Court held his unsupported allegations of wrongdoing did not rise to the level of disputed issues of material fact unless "the record . . . contain[s] at least some objective evidence establishing facts capable of supporting an inference" of wrongdoing. *See Prentzel v. Dep't of Pub. Safety*, 169 P.3d 573, 585 (Alaska 2007). "[C]onclusory statements describing [a party's] subjective impressions do not raise disputed questions of material fact" (*id*.).

In *Walstad v. State*, 818 P.2d 695 (Alaska App. 1991), the Alaska Court of Appeals addressed the "fruit of the poisonous tree" doctrine. This doctrine has been applied in some criminal cases to exclude at trial unlawfully obtained confessions, or evidence gained through an illegal search or seizure. *Walstad* noted:

> In support of his claim that this evidence should be suppressed, Walstad invokes the fruits of the poisonous tree doctrine. That doctrine, however, presupposes a poisonous tree; to prevail, Walstad must, at a minimum (footnote omitted), establish some impropriety in Webb's report to the authorities (*id*. at 699).

In *State v. Sears*, 553 P.2d 907 (Alaska 1976) the Alaska Supreme Court held the evidence exclusionary rule did not apply to non-criminal cases.

> **AS 39.52.010. Declaration of policy**. (a) It is declared that
>
> (1) high moral and ethical standards among public officers in the executive branch are essential to assure the trust, respect, and confidence of the people of this state;
>
> (2) a code of ethics for the guidance of public officers will
>
> (A) discourage those officers from acting upon personal or financial interests in the performance of their public responsibilities;
> (B) improve standards of public service; and
> (C) promote and strengthen the faith and confidence of the people of this state in their public officers;
>
> (3) holding public office or employment is a public trust and that as one safeguard of that trust, the people require public officers to adhere to a code of ethics;
>
> (4) a fair and open government requires that executive branch public officers conduct the public's business in a manner that preserves the integrity of the governmental process and avoids conflicts of interest;
>
> (5) in order for the rules governing conduct to be respected both during and after leaving public service, the code of ethics must be administered fairly without bias or favoritism;
>
> (6) no code of conduct, however comprehensive, can anticipate all situations in which violations may occur nor can it prescribe behaviors that are appropriate to every situation; in addition, laws and regulations regarding ethical responsibilities cannot legislate morality, eradicate corruption, or eliminate bad judgment; and
>
> (7) compliance with a code of ethics is an individual responsibility; thus all who serve the state have a solemn responsibility to avoid improper conduct and prevent improper behavior by colleagues and subordinates. . . .

> **AS 44.64.050. Hearing officer conduct**. . . .
>
> (b) The chief administrative law judge shall, subject to AS 39.52.920 and by regulation, adopt a code of hearing officer conduct. The code shall apply . . . hearing officers of each other agency. The following fundamental canons of

> conduct shall be included in the code: in carrying out official duties, [a] . . . hearing officer shall
>
> (1) uphold the integrity and independence of the office;
> (2) avoid impropriety and the appearance of impropriety;
> (3) perform the duties of the office impartially and diligently. . . .
>
> (c) Except as provided in (e) of this section, the chief administrative law judge shall receive and consider all complaints against . . . hearing officers employed or retained by the office or another agency alleging violations of (a) of this section or of the code of hearing officer conduct. The chief administrative law judge shall deliver the complaint to the attorney general when the chief administrative law judge determines that the conduct alleged, if true, would constitute a violation of
>
> (1) subsection (a) of this section; or
> (2) the code and would warrant disciplinary action under the regulations adopted under (b) of this section.
>
> (d) If the attorney general determines that a violation has occurred, the attorney general shall submit written findings to the agency that employed or retained the . . . hearing officer who is the subject of the complaint together with recommendations for corrective or disciplinary action. . . .

In *Rosales v. Icicle Seafoods, Inc*., 316 P.3d 580 (Alaska 2013), an injured worker claimed a hearing officer was biased against him. The Alaska Supreme Court stated AS 44.64.050 governs hearing officer conduct. Rosales argued the hearing officer should have recused herself because she represented the workers' compensation insurance company involved in his case, in a separate matter, within the previous two years while she was an attorney in private practice before she became a hearing officer. *Rosales* concluded:

> A hearing officer is generally not disqualified simply because he or she has previously represented one of the parties on an unrelated matter. . . . We conclude that the chairperson did not have a disqualifying conflict of interest (*id*. at 8).
>
> **2 AAC 64.030. Canons of conduct**. (a) The canons of conduct in AS 44.64.050(b) are part of the code of hearing officer conduct. A hearing officer . . . shall comply with the canons and requirements of 2 AAC 64.010 - 2 AAC 64.090. Noncompliance may be grounds for corrective or disciplinary action under AS 44.64.050(d) and 2 AAC 64.060.
>
> (b) To comply with the requirement

(1) to uphold the integrity and independence of the office and of the hearing function, a hearing officer . . . shall establish and personally observe high standards of conduct, and avoid improper ex parte communications with private and agency parties about the subject of a hearing request, so that the integrity and independence of the office and the hearing function will be preserved;

(2) to avoid impropriety and the appearance of impropriety, a hearing officer or administrative law judge shall

(A) respect and follow the law;
(B) act in a manner that promotes public confidence in the hearing function; and
(C) refrain from allowing familial, social, political or other relationships to influence the conduct of the hearing;

(3) to perform the duties of the office or of the hearing function impartially and diligently, a hearing officer or administrative law judge

(A) shall faithfully follow the law;
(B) shall maintain professional competence in the law;
(C) may not be swayed by partisan interests or fear of criticism;
(D) shall maintain order and decorum in hearings and related proceedings;
(E) shall show patience, dignity, and courtesy to all parties, their representatives, witnesses, and others with whom the hearing officer . . . deals in an official capacity, and shall require similar behavior from parties and their representatives;
(F) shall refrain from initiating, permitting, or considering improper ex parte communications;
(G) shall dispose of all hearing-related matters promptly, officially, and fairly;
(H) shall require participants in proceedings to refrain from manifesting personal bias or prejudice against parties, witnesses, their representatives, or others;
(I) shall refrain from making public comment outside of the proceedings on a case before the hearing officer . . . while the case is pending; and
(J) shall refrain from disclosing or using, for any purpose unrelated to official duties, information acquired in an official capacity that by law is not available to the general public;

(4) to conduct unofficial activities in ways that minimize the risk of conflict with the obligations of the office or the hearing function, a hearing officer . . . shall

(A) seek reassignment of a case in which the hearing officer . . . has a conflict of interest under 2 AAC 64.040; and

> (B) conduct unofficial activities so that they do not cast reasonable doubt on the hearing officer's . . . adjudicatory capacity or impartiality, demean the office or the hearing function, or interfere with the proper performance of the hearing officer's . . . official duties; activities that could interfere with a hearing officer's . . . official duties include
>
> > (i) advocating a position before an executive branch agency on a subject related to decisions that may be heard by the hearing officer. . . .
> > (ii) representing a person in litigation with, or relating to a decision of, a state agency; and
> > (iii) advising a person about the person's rights and responsibilities regarding legal issues that have or might come before the hearing officer . . . for a ruling;
>
> (5) to refrain from inappropriate activity in seeking employment with another agency or employer or in seeking reappointment, a hearing officer . . . may not discuss the matters that are before the hearing officer . . . with a prospective employer or take or promise any action that could be understood reasonably as using the hearing officer's . . . official position to benefit the prospective employer, other than the benefits resulting from employing a person with the skills and experience of a hearing officer. . . .

(c) Commentary on and decisions applying the Alaska Code of Judicial Conduct may be used as guidance in interpreting and applying 2 AAC 64.010 - 2 AAC 64.050.

2 AAC 64.040. Conflicts. (a) A hearing officer . . . shall refrain from hearing or otherwise deciding a case presenting a conflict of interest. A conflict of interest may arise from a financial or other personal interest of the hearing officer . . . or of an immediate family member. A conflict of interest exists if

> (1) the financial or other personal interest reasonably could be perceived to influence the official action of the hearing officer. . . . or
> (2) a hearing officer . . . previously represented or provided legal advice to a party on a specific subject before the hearing officer. . . .

(b) For purposes of this section, to determine whether membership in an organization whose interests may be affected by a decision in a case before a hearing officer or administrative law judge is a conflict of interest, the hearing officer or administrative law judge shall consider

> (1) the impact of the decision on the organization's interests;
> (2) the beneficial or harmful effect on a financial or other personal interest described in (a) of this section; and

(3) whether the hearing officer's or administrative law judge's official position requires membership in the organization.

(c) As soon as a hearing officer . . . discovers a conflict of interest, the hearing officer . . . shall disclose the conflict to the parties and, unless the parties waive the conflict on the record orally or in writing, shall notify the . . . state official who assigned the case of the need for reassignment. Noncompliance with the requirements of this subsection may be grounds for corrective or disciplinary action under AS 44.64.050(d) and 2 AAC 64.060.

(d) Nothing in this section prohibits a hearing officer . . . from performing, as part of the hearing officer's . . . employment, general legal work such as drafting, reviewing or proposing legislation or regulations, conducting training or continuing education courses, drafting or negotiating contracts, or supervising employees, even if the work is related to a subject that may come before the hearing officer . . . acting as an adjudicator.

2 AAC 64.050. Executive Branch Ethics Act violation. Violation of a provision of AS 39.52 (Executive Branch Ethics Act) by a hearing officer . . . is grounds for corrective or disciplinary action under AS 44.64.050(d) and 2 AAC 64.060.

8 AAC 45.105. Code of Conduct. . . .
. . .

(d) The recusal of a board panel member to avoid impropriety or the appearance of impropriety under the procedures set out in 8 AAC 45.106 may occur only if the recusal is based on clear and convincing evidence that the board panel member

(1) has a personal or financial interest that is substantial and material; or
(2) shows actual bias or prejudgment. . . .

8 AAC 45.106. Procedures for board panel members to avoid conflict of interest, impropriety, and appearance of impropriety. (a) Before conducting a hearing on a case, each board panel member shall be given the names of the parties involved in the hearing and any other appropriate information necessary for the board panel member to determine if the individual member, or another member, has a conflict of interest as described in 8 AAC 45.105.

(b) If a board panel member determines that the member has a potential conflict of interest, the potential conflict of interest must be disclosed to the board panel chair before the hearing.

> (c) Upon notification by a board panel member of potential conflict of interest under (b) of this section, the board panel chair shall request that the board panel member recuse oneself or refer the matter to the remainder of the board panel to determine if recusal is appropriate.
>
> (d) If before a scheduled hearing begins, a party has knowledge . . . that a board panel member's circumstances may present a potential impropriety or appearance of impropriety, the party may file a petition with the commissioner, or the commissioner's designated hearing officer under AS 23.30.005(b), objecting to the board panel member and briefly outline the reasons. If a petition is filed under this subsection, the commissioner, or the commissioner's designated hearing officer, shall forward the objection to the board panel member who is the subject of the petition for the member's review. If the board panel member does not recuse oneself from the proceeding, the remaining board panel members shall determine whether the board panel member who is the subject of the petition may hear the case.

In *DeNardo v. Maassen*, 200 P.3d 305 (Alaska 2009), DeNardo moved for recusal and argued the superior court judge on his case should recuse himself because DeNardo had sued the judge in another case. DeNardo argued the judge's participation under these circumstances evidenced "impropriety and the appearance of impropriety" and destroyed public confidence "in the integrity and impartiality of the judiciary" (*id*. at 310). The judge denied the motion and said: "This court does not feel as though it must recuse itself merely because it is being sued in another case by Mr. DeNardo." The judge dismissed DeNardo's case before him on summary judgment. Another judge reviewed the trial judge's decision to not recuse himself and concluded the trial judge had properly denied the recusal motion. The Alaska Supreme Court affirmed, noting the record did not contain, nor did DeNardo point to, any specific evidence of actual bias or an appearance of bias by the judge. *DeNardo* held the fact a party was suing a judge in another matter does not require the judge's disqualification, so long as the judge "believes he or she can be fair and impartial" (*id*. at 311).

> **8 AAC 45.050. Pleadings.** (a) A person may start a proceeding before the board by filing a written claim or petition.
>
> (b) **Claims and petitions.**
> . . .
>
> (2) A request for action by the board other than by a claim must be by a petition that meets the requirements of (8) of this subsection. The board has a form that may be used to file a petition. . . .

8 AAC 45.052. Medical summary. (a) A medical summary on form 07-6103, listing each medical report in the claimant's or petitioner's possession which is or may be relevant to the claim or petition, must be filed with a claim or petition. The claimant or petitioner shall serve a copy of the summary form, along with copies of the medical reports, upon all parties to the case and shall file the original summary form with the board.

(b) The party receiving a medical summary and claim or petition shall file with the board an amended summary on form 07-6103 within the time allowed under AS 23.30.095(h), listing all reports in the party's possession which are or may be relevant to the claim and which are not listed on the claimant's or petitioner's medical summary form. In addition, the party shall serve the amended medical summary form, together with copies of the reports, upon all parties.
. . .

(d) After a claim or petition is filed, all parties must file with the board an updated medical summary form within five days after getting an additional medical report. A copy of the medical summary form, together with copies of the medical reports listed on the form, must be served upon all parties at the time the medical summary is filed with the board. . . .

8 AAC 45.054. Discovery. (a) The testimony of a material witness, including a party, may be taken by written or oral deposition in accordance with the Alaska Rules of Civil Procedure. . . .
. . .

(d) A party who refuses to release information after having been properly served with a request for discovery may not introduce at a hearing the evidence which is the subject of the discovery request.

8 AAC 45.065. Prehearings. (a) After a claim or petition has been filed, a party may file a written request for a prehearing, and the board or designee will schedule a prehearing. . . . At the prehearing, the board or designee will exercise discretion in making determinations on

(1) identifying and simplifying the issues. . . .
. . .

(c) After a prehearing the board or designee will issue a summary of the actions taken at the prehearing, the amendments to the pleadings, and the agreements made by the parties or their representatives. The summary will limit the issues for hearing to those that are in dispute at the end of the prehearing. Unless modified, the summary governs the issues and the course of the hearing.

(d) Within 10 days after service of a prehearing summary issued under (c) of this section, a party may ask in writing that a prehearing summary be modified or amended by the designee to correct a misstatement of fact or to change a prehearing determination. The party making a request to modify or amend a prehearing summary shall serve all parties with a copy of the written request. If a party's request to modify or amend is not timely filed or lacks proof of service upon all parties, the designee may not act upon the request. . . .

8 AAC 45.070. Hearings. . . .

> (D) On a venue dispute, a party must file a petition asking the board to determine the venue and an affidavit of readiness for hearing on the written record. In accordance with 8 AAC 45.072, the board will consider the parties' written arguments and evidence in the case file, and an in-person hearing will not be held. . . .

. . .

(g) Except when the board or its designee determines that unusual and extenuating circumstances exist, the prehearing summary, if a prehearing was conducted and if applicable, governs the issues and the course of the hearing.

8 AAC 45.072. Venue. A hearing will be held only in a city in which a division office is located. Except as provided in this section, a hearing will be held in the city nearest the place where the injury occurred and in which a division office is located. The hearing location may be changed to a different city in which a division office is located if

> (1) the parties stipulate to the change;
> (2) after receiving a party's request in accordance with 8 AAC 45.070(b)(1)(D) and based on the documents filed with the board and the parties' written arguments, the board orders the hearing location changed for the convenience of the parties and the witnesses; the board's panel in the city nearest the place where the injury occurred will decide the request filed under 8 AAC 45.070(b)(1)(D) to change the hearing's location; or
> (3) the board or designee, in its discretion and without a party's request, changes the hearing's location for the board's convenience or to assure a speedy remedy.

8 AAC 45.092. Selection of an independent medical examiner. (a) The board will maintain a list of physicians' names for second independent medical evaluations. . . .

. . .

(e) . . . The board or its designee will consider these factors in the following order in selecting the physician:

(1) the nature and extent of the employee's injuries;
(2) the physician's specialty and qualifications;
(3) whether the physician or an associate has previously examined or treated the employee;
(4) the physician's experience in treating injured workers in this state or another state;
(5) the physician's impartiality; and
(6) the proximity of the physician to the employee's geographic location.

8 AAC 45.105. Code of conduct. . . .
. . .

(c) The recusal of a board panel member for a conflict of interest under the procedures set out in 8 AAC 45.106 may occur only if the recusal is based on clear and convincing evidence that the board panel member

(1) has a conflict of interest that is substantial and material; or
(2) shows actual bias or prejudgment.

(d) The recusal of a board panel member to avoid impropriety or the appearance of impropriety under the procedures set out in 8 AAC 45.106 may occur only if the recusal is based on clear and convincing evidence that the board panel member

(1) has a personal or financial interest that is substantial and material; or
(2) shows actual bias or prejudgment.

(e) Unethical conduct is prohibited, but there is no substantial impropriety or substantial appearance of impropriety if, as to a specific matter, the standards of AS 39.52.110(b) would permit participation.

8 AAC 45.106. Procedures for board panel members to avoid conflict of interest, impropriety, and appearance of impropriety. (a) Before conducting a hearing on a case, each board panel member shall be given the names of the parties involved in the hearing and any other appropriate information necessary for the board panel member to determine if the individual member, or another member, has a conflict of interest as described in 8 AAC 45.105.

(b) If a board panel member determines that the member has a potential conflict of interest, the potential conflict of interest must be disclosed to the board panel chair before the hearing.

(c) Upon notification by a board panel member of potential conflict of interest under (b) of this section, the board panel chair shall request that the board panel

member recuse oneself or refer the matter to the remainder of the board panel to determine if recusal is appropriate.

(d) If before a scheduled hearing begins, a party has knowledge of a potential conflict of interest or knowledge that a board panel member's circumstances may present a potential impropriety or appearance of impropriety, the party may file a petition with the commissioner, or the commissioner's designated hearing officer under AS 23.30.005(b), objecting to the board panel member and briefly outline the reasons. If a petition is filed under this subsection, the commissioner, or the commissioner's designated hearing officer, shall forward the objection to the board panel member who is the subject of the petition for the member's review. If the board panel member does not recuse oneself from the proceeding, the remaining board panel members shall determine whether the board panel member who is the subject of the petition may hear the case.

8 AAC 45.110. Record of proceedings. (a) . . . A person may see or get a copy of the written record in accordance with this subsection and after completing and giving the division a written request, providing identification, and paying the fee, if required under 8 AAC 45.030. Under this section,

(1) a party to a claim or a petition or a party's representative who has filed an entry of appearance in a case may see or get a copy of the written record, including medical and rehabilitation reports, for all of the employee's case files; for purposes of this paragraph, 'a party to a claim or a petition' is the employee, the employer, the insurer, a person sought to be joined or consolidated to a claim or petition, or the rehabilitation specialist appointed or selected in accordance with AS 23.30.041;

(2) a government agency or a physician providing services under AS 23.30.095(k) or 23.30.110(g) may see or get a copy of the written record, including medical and rehabilitation reports; or

(3) a person other than a person described in (1) or (2) of this subsection may see or get a copy of the written record, excluding the medical or rehabilitation reports; the person may see or get a copy of the written record, including medical and rehabilitation reports, upon submitting a

(A) written release signed by the employee giving consent for the person to see or get a copy of the medical and rehabilitation reports; or
(B) court order or a subpoena from a court or government agency.

8 AAC 45.120. Evidence. . a) Witnesses at a hearing shall testify under oath or affirmation. The board will, in its discretion, examine witnesses and will allow all parties present an opportunity to do so. Except as provided in this subsection and 8 AAC 45.112, a party who wants to present a witness's testimony by deposition

must file a transcript of the deposition with the board at least two working days before the hearing. If the board determines that a party is extremely indigent and cannot afford to pay the transcription fee, the board will rely upon the audio or visual recording of the deposition without a transcript. If a party fails to file a transcript of a witness's deposition at least two days before the hearing and if the board or its designee determines that neither unusual and extenuating circumstances exists nor is the party extremely indigent, the witness's deposition testimony will be excluded from the hearing, except for impeachment purposes, and will not be relied upon by the board in reaching its decision. . . .

(b) The order in which evidence and argument is presented at the hearing will be in the discretion of the board, unless otherwise expressly provided by law. All proceedings must afford every party a reasonable opportunity for a fair hearing. . . .
. . .

(e) Technical rules relating to evidence and witnesses do not apply in board proceedings, except as provided in this chapter. Any relevant evidence is admissible if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. . . . The rules of privilege apply to the same extent as in civil actions. . . .

(f) Any document, including a compensation report, controversion notice, claim, application for adjustment of claim, request for a conference, affidavit of readiness for hearing, petition, answer, or a prehearing summary, that is served upon the parties, accompanied by proof of service, and that is in the board's possession 20 or more days before hearing, will, in the board's discretion, be relied upon by the board in reaching a decision unless a written request for an opportunity to cross-examine the document's author is filed with the board and served upon all parties at least 10 days before the hearing. . . .
. . .
(*l*) Unless a genuine question is raised as to the authenticity of the original or, in the circumstances, it would be unfair to admit the duplicate in place of the original, a duplicate is admissible in accordance with this section to the same extent as an original.

(1) For purposes of this subsection, a duplicate is a counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, or by mechanical or electronic recording, or by chemical reproduction, or by other equivalent techniques that accurately reproduce the original.

(2) The following duplicates are admissible to the same extent as an original:

> (A) duplicates of medical reports or records of any governmental agency;
> (B) a duplicate of the contents of a writing, recording, or photograph is admissible if
>
> > (i) all originals are lost or have been destroyed, unless the party in bad faith lost or destroyed them;
> > (ii) an original cannot be obtained by any available judicial or administrative process or procedure;
> > (iii) at a time when an original was under the control of the party against whom offered, that party was put on notice, by the pleadings or otherwise, that the contents would be a subject of proof at the hearing, and that party does not produce the original at hearing; or
> > (iv) the writing, recording, or photograph is not closely related to a controlling issue.

Benston v. Marsh Creek, LLC, AWCB Decision No. 07-0116 (May 8, 2007) held the reference to "transcript" in 8 AAC 45.120(a) meant "a certified transcript" (*id*. at 11).

> **8 AAC 45.195. Waiver of procedures**. A procedural requirement in this chapter may be waived or modified by order of the board if manifest injustice to a party would result from a strict application of the regulation. . . .

> **Civil Rule 11. Signing of Pleadings, Motions, and Other Papers. (a) Signature.** Every pleading, written motion, and other paper must be signed by at least one attorney of record in the attorney's name -- or by a party personally if the party is unrepresented. The paper must state the signer's address, e-mail address, and telephone number. Unless a rule or statute specifically states otherwise, a pleading need not be verified or accompanied by an affidavit. The court must strike an unsigned paper unless the omission is promptly corrected after being called to the attorney's or party's attention. . . .

> **Civil Rule 30. Depositions Upon Oral Examination.** (a) **When Depositions May Be Taken; When Leave is Required.**
> . . .
>
> (b) **Notice of Examination: General Requirements; Method of Recording; Production of Documents and Things; Deposition of Organization; Deposition by Telephone.**
> . . .
>
> (c) **Examination and Cross-Examination; Record of Examination; Oath; Objections.** Examination and cross-examination of witnesses may proceed as permitted at the trial under provisions of the Rules of Evidence. . . . The testimony shall be taken stenographically or recorded by audio or audiovisual

> means. A party may arrange at the party's own expense to have any portion of the record typewritten. . . .
> . . .
>
> (e) **Review by Witness; Changes; Signing.** If requested by the deponent or a party before completion of the deposition, the deponent shall have 30 days in which to review the transcript or recording after being notified by the officer that the transcript or recording is available. . . . The officer shall indicate in the certificate prescribed by subparagraph (f)(1) whether any review was requested and, if so, shall append any changes made by the deponent during the period allowed.
>
> (f) **Certification and Filing by Officer; Exhibits; Copies; Notice of Filing.**
>
> > (1) The officer shall certify that the witness was duly sworn by the officer and that the deposition is a true record of the testimony given by the witness. This certificate shall be in writing and accompany the record of the deposition. . . . [A]nd shall promptly send it to the attorney who arranged for the transcript or recording. . . .
>
> **Administrative Rule 36. Transcripts -- Fees -- Preparation.** (a) The administrative director shall prescribe standards and procedures for the preparation of transcripts for appeal or other official purposes. All transcripts filed with the Alaska Court System shall be prepared according to these standards and procedures. Each transcript prepared under this rule must be certified and shall be certified only by the person who prepared it.
>
> (b) When a transcript is to be prepared by a person other than a court employee, the court shall provide that person with a copy of the electronic recording of the proceedings to be transcribed, a copy of the log notes, and other information necessary for preparation of the transcript. No fee shall be collected by the court from the transcriber or the appellant for providing this material.
>
> (c) A person other than a court employee who prepares a transcript shall be solely responsible under this rule for collection of the transcript fees.

ANALYSIS

1) Was the implicit order denying Employee's request to hear the issues in filing order correct?

Employee wanted her requests heard and decided in the order in which she filed them. The fact they were not resulted in an implicit order denying her request. The order in which evidence and argument are presented at hearing is solely in the panel's discretion. 8 AAC 45.120(b). The issues

were heard in a logical order to make the hearing process as summary and simple as possible. AS 23.30.005(h). As Employer sought to have a guardian or other representative appointed to assist Employee in her workers' compensation claim, it made sense to hear this issue first. Had the panel initially agreed with Employer's contentions, the July 2010 hearing would have been continued to allow the director to ask the superior court to appoint a guardian or other representative before the hearing proceeded. AS 23.30.110(a); AS 23.30.135; *Simon*.

Once the guardianship issue was initially resolved, the next issue to decide was Employee's request to change venue back to Anchorage from Juneau. 8 AAC 45.072. Had Employee's venue change request been granted, the July 2010 hearing would have been continued so the case could be transferred to Anchorage for further action. AS 23.30.135.

Because former workers' compensation officer Linda Gillespie was leaving for vacation the following day, it made sense to have the SIME issue heard third. Gillespie would not have been available to provide her testimony concerning the SIME on a day other than July 13, 2010. AS 23.30.135. Thereafter, the remaining issues were heard in roughly the order they were listed on Colberg's controlling prehearing conference summary. 8 AAC 45.120(b). Employee presented no persuasive evidence or argument why the remaining issues should have been heard in any different order. *Rogers & Babler*.

While Employee was disappointed with the order in which the issues were addressed, her arguments supporting her request were vague and secretive at best. Other than her brief explanation how deciding one issue in her favor might moot other issues, Employee never really explained why it was so important for her issues to be heard in the order in which she filed them, or what difference it made to her case presentation. If by "in the order in which [she] filed them" Employee meant her requests should have been heard shortly after they were filed, in order, by July 2010, her request was not possible as too much time had passed and too many filings had accumulated. Had Employee filed clearly identifiable petitions, her requests would have been addressed more promptly and in order. Employee did not demonstrate she was prejudiced in any way by the order in which the issues were addressed in July 2010. The issue presentation order was intended to insure a quick, efficient hearing process at a reasonable cost to Employer. AS 23.30.001(1). Issue

hearing order was also designed to best ascertain the parties' rights. AS 23.30.135. Because Employee could not persuasively articulate a reason supporting her request to have the issues heard in the order in which she filed them, and because the order in which they were heard was logical under the circumstances, the implicit order denying her request was correct. *Rogers & Babler*.

2) Was the oral order denying Employee's request to change venue from Juneau back to Anchorage correct?

In 2009, Employee successfully requested a venue change from Anchorage to Juneau for her convenience. 8 AAC 45.072; *Carey I*. The law requires venue change requests be heard on the written record. 8 AAC 45.070(a)(1)(D). Nevertheless, Employee was given an opportunity at hearing to argue facts and law supporting her request for a venue change back to Anchorage. AS 23.30.135. Employee would "reconsider" her request if what she viewed as Juneau shenanigans would stop. Employee alleges a wide-spread conspiracy against her, which includes Department of Labor staff in Juneau. Employee failed to prove a conspiracy, much less one involving Division staff. AS 23.30.122. Nevertheless, Employee's main points supporting her venue change request were allegations against former hearing officer Briggs and former workers' compensation officer Gillespie. The division no longer employs either Briggs or Gillespie. Therefore, to the extent Employee's venue change request is based upon objections to these individuals, her objections are moot. Employee did not otherwise convincingly demonstrate how any other unproven allegations would be remedied or otherwise affected by a venue change back to Anchorage. Her "conclusory statements" describing Employee's "subjective impressions" are inadequate to raise a factual dispute. *Shug*; AS 23.30.122.

Employer suggested it would "absolutely" stipulate to change venue back to Anchorage if it would result in speedier case resolution. Since 2009, nothing has changed to suggest an Anchorage venue would be advantageous to either party. The parties have not stipulated to another change. 8 AAC 45.072(1). Neither party presented evidence suggesting a venue change back to Anchorage would be more convenient to parties or witnesses. Employee lives near Juneau, her physicians are either in the Juneau area or outside Alaska, and Employer's attorney lives in Washington. Therefore, neither party has presented adequate evidence justifying a venue change back to Anchorage and the oral order denying Employee's request was correct. 8 AAC 45.072.

3) Should *Carey I*'s choice of Dr. Ling for the SIME panel be modified?

Carey I ordered an SIME with two physicians and selected Dr. Ling to be on the panel. Employer objected contending Dr. Ling has a conflict of interest because he and Employee's physician, Dr. Dahlgren, both work at UCLA. Employer contends it is not enough for Dr. Ling to simply state he can be fair and impartial given his alleged association with Dr. Dahlgren. However, Gillespie contacted Dr. Ling who asserted he does not know Dr. Dahlgren. *Carey I* already determined Dr. Ling is an ideal physician to participate in Employee's SIME. When the designee begins making arrangements for Employee's SIME, she will ask Dr. Ling if he still qualifies as an appropriate SIME selection in this case. 8 AAC 45.092(e)(1-6). If Dr. Ling's status has changed, his assignment to this SIME panel will be revisited. Until such time as Dr. Ling no longer qualifies, Employer has not demonstrated Dr. Ling cannot be a fair and impartial examiner.

Given *Carey I*'s SIME findings and order, there is no factual or legal basis for Employee to nominate her hand-picked physician to perform the SIME. Therefore, *Carey I*'s order selecting Dr. Ling as an SIME physician will not be changed.

4) Should the designee's April 29, 2010 discovery order be affirmed?

The law provides for liberal discovery. *Schwab*. At the April 29, 2010 prehearing conference, former hearing officer Colberg recorded the parties' positions related to discovery matters. Colberg stated the law and analyzed the matters at issue in detail and reviewed whether the information sought was reasonably calculated to lead to probative evidence. Colberg made several discovery rulings. AS 23.30.108(b-c). Employee subsequently filed a document treated as an "appeal" from the April 29, 2010 prehearing conference summary's discovery order. AS 23.30.108(c).

A) Medical Releases:

Colberg ordered Employee to sign medical record and other releases. AS 23.30.108(b). She objected concluding her former attorney and Employer's lawyer "colluded" with each other. She provided no evidence to support her conclusion. *Shug*.

Nevertheless, at hearing Employee agreed to sign releases so long as they provided that she concurrently receives copies of all medical records provided. Employer had no objection to this

process so long as Employee remains responsible to pay for any additional copying charges. However, Employee also objected to "blanket" releases listing more than one medical provider category and more than one named medical provider. In short, Employee wants Employer to provide one release with one provider's name for each potential source from which it seeks discovery, and pay for any additional copies sent to her. Employee's request lacks merit for two reasons: First, no statute or regulation requires either practice. Second, both requirements run contrary to the legislative intent set forth in AS 23.30.001(1). They are not quick, efficient or a reasonable cost to Employer. Her requested relief does not make for a summary and simple process or procedure. AS 23.30.005(h).

Furthermore, Employer has a duty to file and serve all medical records it receives relevant to Employee's claim within five days after receiving them. AS 23.30.095(h). Therefore, Employer will not be required to submit individual releases to Employee listing only one provider or provider category. It will not be required to pay for extra copies. If Employee wants duplicate medical records from medical providers, she must pay associated copying charges. If Employee prevails at a merit hearing, she can recover any money she expends obtaining duplicate medical records as litigation "costs."

B) Interrogatories regarding recorded events:

Colberg ordered Employee to answer interrogatories identifying any tape recordings, diaries, journals or other records Employee created related to any claim or defense in her case. AS 23.30.108(b). Employee objected because she alleges "fraud." She does not want to identify people she recorded because she fears she will not be able to use the recordings later for impeachment. Employee further objects to listing documents she may have created because if she leaves one out, Employer will say she withheld it intentionally. Colberg's order was correct. The law favors liberal discovery. *Granus*. If Employee created documents recording events or recorded witnesses related to a claim or defense, the information is likely relevant, otherwise there would have been no reason for Employee to create them in the first place. Witness recordings may be probative on material facts or credibility. At this point, Employee has only been ordered to identify the materials. If Employee created recordings, diaries, journals or other records she must identify these and claim any applicable privilege. If Employee recorded conversations between her and her

former attorney, she must also list these recordings identifying them as protected by the attorney-client privilege. However, the privilege is Employee's to waive, and she may choose later to waive the privilege by disclosing the recordings. Her list will give Employer an opportunity to determine whether or not it believes Employee should produce these recordings or documents. But Employee may not hide the recordings between her and her lawyer from Employer under a privilege and then choose to rely on them herself at hearing. 8 AAC 45.054(d). She must file and serve any and all recordings or documents upon which she intends to rely at least 20 calendar days before a hearing, or the material may not considered at hearing. 8 AAC 45.120(f).

There is no statute or regulation applicable to a workers' compensation claim stating a party can withhold previously requested discovery until such time as the party gets the opportunity to use the requested material at a hearing or a deposition to impeach a party or witness. Therefore, Colberg did not abuse his discretion as these documents may lead to discovery of evidence admissible at hearing. AS 23.30.108(c); *Granus.*

Colberg also issued a protective order stating Employee did not currently need to produce copies of any recordings, diaries, journals or other records identified in her answers, above. AS 23.30.108(b). Surprisingly, Employee objected to this order as well fearing it might limit her ability to subsequently file documents upon which she wanted to rely at hearing. Again, Colberg's order was correct. Employee need not produce any recordings, diaries, journals or other records unless and until Employer reviews her list and seeks production. At that time, Employee can timely produce copies or file a petition for a protective order and raise an objection citing an applicable privilege. AS 23.30.108(a).

C) Social Security releases:

Colberg ordered Employee to sign Social Security releases so Employer could obtain earnings information from applicable dates prior to her injury with Employer and from her injury date to the present. AS 23.30.108(b). Pre-injury earning records are relevant because they demonstrate Employee's earning capacity, which is relevant to setting a compensation rate and in determining Employee's future losses since she claims lifetime disability. Earnings from her injury date forward are relevant to discover whether or not Employee has, as she claims, been disabled ever since her

work injury with Employer. They are also relevant in the event Employee prevails on her claim's merits, and is awarded disability benefits. Employer might be entitled to a Social Security offset from those benefits. Colberg's order requiring Employee to sign these releases was correct. *Granus.* At hearing, Employee agreed to sign and return them provided Employer gave her new copies.

D) Interrogatories regarding income:

Colberg ordered Employee to answer interrogatories identifying all income received since her work injury to the present, and its source including the name, date and location of poker tournaments in which she played. AS 23.30.108(b). As Employee claims disability since her 1989 work injury with Employer, the source and amount of all earnings she received from the injury date to the present is relevant as it may demonstrate Employee was not disabled. Colberg also issued a protective order stating Employee was not required to identify by date, location and name all non-tournament poker games she played in or addresses, telephone numbers, e-mail addresses and "poker names" for each participant in games in which she played, or the name of every city and state Employee visited since her work injury and the date. AS 23.30.108(b-c). Employer did not demonstrate how this information could lead to evidence admissible at hearing. Therefore, Colberg's order was correct. *Granus.*

E) Requests for production:

Colberg ordered Employee to produce documents supporting the income she identified in the previous interrogatory. AS 23.30.108(b). However, Colberg issued a protective order stating Employee did not have to produce documents for poker tournaments in which she played, or poker games which were not part of a tournament. AS 23.30.108(b-c). Colberg's order was consistent with his previous order requiring Employee to answer interrogatories and with his decision to issue a protective order in some instances. Evidence demonstrating Employee's earned income since her 1989 injury with Employer may lead to further discovery including job applications with these employers and may lead to discovering evidence admissible at hearing on Employee's claims for disability benefits. *Granus.* Therefore, Colberg did not abuse its discretion and his discovery orders are supported by substantial evidence given Employee's claims and Employer's defenses. AS 23.30.108(c); *Granus*.

5) Should Employee be compelled to comply with the designee's April 29, 2010 discovery order?

Contrary to her assertions, Employee does not have a good track record complying with discovery requests or orders. She objected to Colberg's April 29, 2010 discovery orders. Employer subsequently petitioned to compel Employee's responses. As discussed above, Colberg orders were supported by substantial evidence and were not an abuse of discretion. At hearing, in many instances Employee still objected to Colberg's order and refused to comply. It is unlikely she will comply without further order. Further orders bring the specter of possible sanctions for non-compliance. Therefore, Employer's petition to compel Employee's compliance with Colberg's April 29, 2010 discovery order will be granted. Employee will be ordered to comply with all discovery orders entered on April 29, 2010, including those with which she stated she would voluntarily comply. As the parties are in settlement negotiations and are awaiting the court to approve a tentative agreement, this decision will give Employee 60 days in which to comply. If the parties successfully resolve Employee's claim through settlement, this order will become moot. If, however, the parties do not resolve the case, and Employee does not comply with this order, Employer can petition for further relief up to and including claim dismissal for failure to comply with discovery. AS 23.30.108.

6) Should Employer be compelled to state from where it obtained Employee's medical records?

Employee contends Employer is part of a larger conspiracy against her. She wants an order directing Employer to disclose from where it obtained her medical records so she can use these findings against Employer in this and in other proceedings. Employee seeks ammunition to impeach. But this decision has no authority to impose criminal sanctions against Employer, its representatives or agents for any wrongdoing. *Walters.* Therefore, even assuming for argument's sake Employee's allegations against Employer have merit, where Employer obtained her medical records is not relevant to any issue in Employee's workers' compensation case. Employee has not successfully demonstrated how the answer to this question will make any fact relevant to her claim for benefits under the Act any more or less likely. Though this information could arguably be relevant in some other forum where Employee seeks criminal or other sanctions against Employer, it is not relevant here. Employee has not demonstrated that knowing from where Employer

obtained her records is reasonably calculated to lead to any admissible evidence at hearing on her claim's merits. *Granus*. Employee has not cited any statute, regulation, or decisional law stating the "fruit of the poisonous tree" doctrine, on which she relies, applies in workers' compensation cases. *Walstad*. It does not apply in non-criminal cases. *Sears*.

It is undisputed Employer has the right to discover relevant medical evidence. AS 23.30.107. It is undisputed Employee signed medical and other releases and gave them to Employer. Employer may have simply used the releases Employee provided to obtain the records. Employee suspects Employer may be using records in this case obtained by its attorney in unrelated litigation defended by the same law firm. Or, she questions whether Employer is in collusion with non-parties or Employee's former lawyer. Assuming for argument's sake these allegations are true, Employee has not successfully demonstrated why Employer's purported ability to obtain records from other sources violates the Act, a regulation or any workers' compensation decisional law. Employer has a right to relevant medical records. If, as Employee concludes, Employer or its agents obtained her medical records by, for example, breaking and entering, fraud, or theft, workers' compensation law provides no remedy to exclude these records.

Two Act statutes address fraud or misleading acts: AS 23.30.250 and AS 23.30.280. No Alaska Supreme Court decision addressing §250 explains if or how this section applies to a party, witness, representative or agent other than the injured worker, an employer misclassifying its employees or possibly a medical provider. *Cummings*; *DeNuptis*. The commission has stated it is "inappropriate" for this decision to suggest it has jurisdiction to decide if a party "had a criminal motive." *Walters*. She can pursue any such allegations with the appropriate criminal or civil authorities. Similarly, no Alaska Supreme Court opinion addresses AS 23.30.280. However, the commission's *dicta* suggest an injured worker who knowingly withholds medical documents relative to a claim may be subject to "investigation under AS 23.30.280." *Syren*. AS 23.30.280 on its face appears to apply only to fraud committed by injured workers. AS 23.30.280(b). Even assuming it applies to Employee's conclusory allegations, §280 requires a complaint to the division and action by the director. Employee is free to pursue any remedy available under §280.

This decision should not be read to condone illegal actions by any party to obtain evidence. But Employee has not successfully demonstrated any wrongdoing on Employer's or its agents' part. AS 23.30122. She simply makes unsupported allegations. *Shug*. First, there has to be a "poisonous tree" and then there has to be a remedy. *Walstad*. Employee failed on both elements. Even had she successfully proven some records were obtained illegally, or simply mischievously, Employee has failed to state a legal basis for her requested relief from this forum.

Furthermore, if Employee can demonstrate her file contains records "not related to the employee's injury," she may petition for a protective order directing Employer and its agents to return the unrelated records to her "as soon as practicable." AS 23.30.108(d). For these reasons, Employer will not be ordered to divulge from where it obtained Employee's medical records.

7) Should Employer be compelled to correlate Employee's medical records with a particular medical release used to obtain the records?

Again, Employee desires to impeach Employer and its witnesses or agents and to use this decision in criminal or civil proceedings. She failed to cite any controlling statute, regulation or decisional law supporting her request that Employer correlate her medical records with a particular medical release it used to obtain those records. As stated above, information correlation is not relevant to any procedural issues for which this decision can offer a remedy and is not likely to lead to admissible evidence probative on any merit issue. *Granus*. Therefore, Employer will not be compelled to correlate Employee's medical records with a medical release it used to obtain them.

8) Is Employee entitled to a copy of the claim adjusting file?

An adjuster's claim file will frequently have information relevant to a party's claim or information which may lead to admissible evidence at hearing. Ordering an adjuster to provide a redacted claim file is common. *Granus*. Employee has already received an unredacted and redacted file including documents through a certain date. She now requests a complete, unredacted copy of the adjuster's file. Adjuster's files also frequently contain attorney-client privileged information and may contain references to attorney work product. Neither of these is typically discoverable in a workers' compensation case and Employer will not be required to produce privileged information. Therefore, Employee is not entitled to an unredacted copy and the fact she previously received a

partial unredacted copy is immaterial. Employer is maintaining its attorney-client and work product doctrine privileges on the adjuster's file prepared after Employee received part of the adjuster's file, which was unredacted.

However, as litigation is ongoing Employee is entitled to a redacted copy of the adjuster's file beginning from the first date after the previously produced file was last provided. Employee is not entitled to another unredacted copy of what she already obtained so she can compare this copy with what she got previously. In other words, Employer does not have to re-produce a copy of the same material it already provided, redacted or not. Employer will, however, be ordered to provide an up-dated, redacted adjuster's file copy in conformance with this decision. Employer will also be directed to prepare a privilege log if it redacts any material in the adjuster's file. *Granus.*

9) Should Employee's credit union and other financial records be relied upon?

Employee implies Employer or its agents obtained the name of her credit union and other banking facilities through theft. She has no evidence to support this allegation. *Shug*; AS 23.30.122. Employee does not suggest the information is inadmissible because it is irrelevant. Rather, she contends the information should not be considered in her case because she thinks Employer obtained it illegally. She again raises the "fruit of the poisonous tree" argument. *Walstad*; *Sears*. Employee contends she has been and is disabled from her work injury. Employer has the right to discover if she has received income, and from what sources, to defend against her claim for disability benefits. *Granus.* Employee is required to sign releases for Employer to obtain this information, which could be relevant to its defenses. AS 23.30.107. If Employer asked, Employee would also be required to divulge her financial institutions' names and addresses so Employer would know to which financial institutions it should send its releases. Therefore, as Employee has not proven Employer or its agents obtained her financial institution information illegally, and has cited no statute, regulation or decisional law applying the "fruit of the poisonous tree" doctrine to this administrative hearing, her credit union and other financial records may be relied upon in this case to the extent they are relevant to any issue or defense.

10) Should the Bardana, Wicher and Burton EME reports and depositions be stricken from the record or otherwise not relied upon?

Employee vehemently disagrees with the EME opinions. She has a right to disagree with them. Employee concludes these reports resulted from fraud, deceit, and manipulation and exclude needed references to deliberately withheld medical records. *Shug*. Her requested remedy is an order striking the EME reports and any related EME depositions and an order stating they will not be relied upon in this case. The law does not specifically provide authority for this decision to "strike" any records from Employee's agency file though it does allow her to petition to recover medical or rehabilitation records "not related" to Employee's injury. AS 23.30.108(d-e).

However, Employee does not allege the Bardana, Wicher and Burton EME reports and any related depositions are not "related" to her work injury. Rather, she objects to the manner in which she concludes they were created. *Shug*. Employee's objections go to the reports' and depositions' "weight," not to their admissibility. Employee is free to testify and argue at a merits hearing why these EME reports and depositions, or any hearing testimony from these witnesses, should be given little weight or not relied upon at all. Employee's request for these reports, depositions and testimony to be stricken or disallowed will be denied.

11) Does this decision have jurisdiction to impose criminal sanctions on Dr. Bardana or Dr. Burton?

Among other things, Employee contends one or more EME physician intentionally poisoned her during an examination. She contends this should subject these doctors to criminal prosecution. Presumably, Employee also contends the above-mentioned fraud allegations would also subject these physicians to prosecution. Mere conclusory allegations are insufficient to support a finding. *Shug*. The appeals commission stated hearing panels lack authority and should not make factual findings concerning alleged crimes. *Walters*. Neither the commission nor the Alaska Supreme Court has clarified whether or not, how, or to what extent AS 23.30.250 or AS 23.30.280 may apply to an EME physician. *Cummings*; *DeNuptis*. On their face, and in context, neither statute readily applies to Employee's allegations. Employee has not identified any "benefit" under the Act either Dr. Bardana or Dr. Burton obtained through their alleged behavior. Furthermore, Employee has not cited any statute, regulation or decisional law suggesting this decision has jurisdiction to impose any

criminal sanctions on these physicians. Accordingly, the panel does not have jurisdiction to make criminal findings or impose criminal sanctions on anyone and Employee's request will be denied.

12) Should uncertified audio recording transcripts be relied upon?

Employee has filed and served uncertified, transcribed excerpts from audio recordings. Employer objects to these as they are subject to error or intentional manipulation. The Act and regulations do not expressly address this issue. Parties may take depositions "in accordance with the Alaska Rules of Civil Procedure." 8 AAC 45.054(a). Those rules require certified transcripts. Civil Rule 30(f); Administrative Rule 36; *Benston.* But Employee's submissions are not "deposition" testimony. They are purportedly conversations between Employee and EME physicians. "Technical rules" relating to evidence and witnesses do not apply in these proceedings unless provided for in regulations. Any relevant evidence is admissible if it is the sort of evidence on which "responsible persons are accustomed to rely in the conduct of serious affairs." 8 AAC 45.120(e). It is doubtful Employee would agree to the panel relying upon uncertified transcripts prepared by Employer. Most people in "conduct of serious affairs," including quasi-judicial hearings, would probably prefer to have a certified transcript from a recording. A professional, certified transcript minimizes human error as well as intentional misrepresentations or omissions. Therefore, Employer's contentions have merit. On the other hand, transcripts can be expensive.

Fortunately, Employee is not left without a legal remedy. As to deposition transcripts, if a party is "extremely indigent and cannot afford to pay the transcription fee," the party may use an audio or visual recording at hearing without a transcript. 8 AAC 45.120(a). This regulation is limited to "deposition" transcripts. But, since the Act and regulations are otherwise silent regarding transcripts for other recordings, this decision will modify 8 AAC 45.120(a), apply it to non-deposition transcripts, and allow Employee to demonstrate "extreme indigence." 8 AAC 45.050(b)(2). If successful, Employee may file, serve and rely upon the recordings at hearing and play recorded excerpts if the recordings are otherwise admissible. 8 AAC 45.120(f); 8 AAC 45.195.

13) How should Employee's non-medical evidence be filed, and for what purpose may it be used?

Employee has filed non-medical evidence on medical summaries. For example, Employee has included photographs with her medical records. She has also filed documents through e-mail and e-mail attachments. Employer objects to these filings as not in compliance with the Act and the regulations and seeks an order directing Employee to use proper processes.

Self-represented litigants and non-attorney parties are typically given leeway in filing evidence. *Khan*; *Mow*. However, Employee has repeatedly been advised how to properly file and serve non-medical documents and continues to struggle with this concept. *Richard*; *Bohlmann.* The division's website at http://www.labor.state.ak.us/wc/pdf_list.htm contains a list of workers' compensation forms. Among these is a "Notice of Intent to Rely," form 07-6114. These forms are also available at any division office. They may be photocopied and used as often as necessary. The Notice of Intent to Rely form includes the words: "COMES NOW Employee and provides notice pursuant to 8 AAC 45.120(f) I intend to rely, and reserve the right to rely, on the following document(s) at hearing in the above-captioned case." There are numerous lines Employee can use to list the attached documents upon which she intends to rely at hearing. The form includes a convenient service certificate Employee can use to demonstrate she properly served the notice and all attachments on Employer. Using this form, Employee can properly file and serve non-medical evidence. Furthermore, using this form will unequivocally notify division staff and Employer's representatives that Employee is filing and serving evidence upon which she intends to rely. Employee will be directed to use the notice of intent to rely form, or her home-made equivalent when filing all non-medical evidence from this point forward.

A party has to file documents either "personally or by mail," and no other filing form is acceptable. 8 AAC 45.060(b). The Alaska legislature passed a statute recently concerning electronic filing and perhaps the department commissioner may issue an order allowing electronic document filing, including using facsimile and e-mail. However, unless and until that occurs, Employee will be required to file her evidence either in person or by mail.

14) Does this decision have jurisdiction to order an independent investigation into alleged activities at the Juneau Department of Labor in respect to Employee's agency file.

Employee has concluded certain past and current Division employees are part of a larger conspiracy against her to defeat her claim against Employer. She requests an order requiring an "independent" investigation into her allegations. Her primary focus includes her conclusions someone inserted, removed, modified, altered, manufactured and otherwise affected her medical records to her detriment; Briggs intentionally caused her to miss a statute of limitations against an EME physician; Chief Wright shuffled her hearing exhibits to confuse Employee and make it difficult for her to present evidence; the division intentionally misdirected her file; Division staff treats her differently than other patrons and unfairly; Division staff is rude to her; and Director Monagle has a conflict of interest and sabotages Employee's agency record.

At hearing, the panel investigated Employee's allegations and found them wanting. AS 23.30.122. Gillespie did not dislike Employee. Ryals Bates-stamped material placed in Employee's agency file, including a 1500+ page document stack and never saw anyone remove documents. Ryals did not add or remove any pages, alter any pages, or alter any numbering on the pages. Ryals conceded not everyone needs an appointment to come to the division's Juneau office, but Employee does because she is repeatedly "out of line." Ryals noticed Employee's 1500+ page filing was "missing" a few pages, or at least pages were not sequentially numbered. He reported this to Gillespie and Chief Wright; Chief Wright told him to Bates-stamp it as it came in since Employee may have had reasons to leave certain pages out. AS 23.30.122.

Chief Wright said Employee's file integrity was "at the forefront" of the division's concerns. She explained no one at the division would have any reason to remove documents from Employee's filings. Chief Wright investigated the "two very large binders" Employee claimed she had filed but "went missing" by personally looking for them. The two notebooks could not be located and it could not be determined if they had ever been filed. Chief Wright photocopied Employee's papers during the hearing as requested, made the exact number of copies Employee requested, and did not rearrange them. Employee's file was the only claimant's file Bates-stamped at the entire Division, short of cases being preparing for appeal. Chief Wright explained Employee's file was Bates-stamped to address Employee's "huge concern" about her file's integrity. AS 23.30.122.

Director Monagle explained he did not affect Employee's file, direct anyone else to or observe anyone else disturbing her file. He established an office visit policy for Employee because she was a frequent visitor sometimes tying up office staff for hours, unlike other patrons who at times may have been difficult but not as frequently. AS 23.30.122.

The panel called these witnesses on its own motion to "investigate" Employee's allegations. AS 23.30.135. The overwhelming evidence demonstrated her allegations were completely unfounded and conclusory. *Shug*. Employee has not shown the division conspired with Employer or anyone else to defeat her claim, or otherwise sabotaged her file. The only evidence Employee offers to support her allegations are the allegations themselves. AS 23.30.122.

Furthermore, Employee cites no statute, regulation or case authority stating this decision can order an "independent" investigation into Employee's perceptions and allegations against the division. Though undoubtedly some state or federal agency has jurisdiction to investigate Employee's complaints against the division, this decision does not have such authority. Therefore, Employee's request for an order for an independent investigation will be denied.

15) Is Employee entitled to a list of persons having access to her agency file?

Continuing with her conspiratorial theme, Employee contends someone within the division accessed her file and changed, deleted, added, or otherwise manipulated her records to confuse her case, lay a false foundation to explain what she predicts will be her suspicious death and ultimately defeat her claims. She demands a list of persons having access to her agency file. Director Monagle and other witnesses at the July 2010 hearing provided names of many such persons, and in fact, Employee questioned several people having access to her file. AS 23.30.135. As a practical matter, it would be difficult at best to provide a complete list. Arguably, custodians as well as contractors working on the building from time to time could have "access" to Employee's agency file because they had access to the building for cleaning or maintenance. But the biggest difficulty with Employee's request is that it is based solely on her conclusory allegations. *Shug*. She has not credibly demonstrated anyone has done anything untoward to her agency file. AS 23.30.122. Therefore, Employee's request for a list of persons having access to her agency file will be denied.

16) Should Employee be allowed to spend at least two minutes discussing each medical record with each physician during her SIME?

Because Employee has concluded certain records in her agency file are either not hers, or if they are hers, have been altered, she insists upon spending at least two minutes discussing each medical record with each physician during her SIME. Employee contends through this process she can discern if the records are accurate and inform the SIME physicians if they are not. The typical SIME includes a physician spending an hour or two reviewing the claimant's medical records, and an hour or two interviewing and examining the patient and writing a report. The medical record file size in large measure determines how long the physician spends reviewing the records. Employee's medical file is large and, were her request granted, it would take each SIME physician over 40 hours just to review the medical records with Employee. SIME physicians typically charge from $300-$800 per hour for their time, depending upon their specialty. Employee's request would result in an astronomical bill for Employee's SIME. This would not be a "reasonable cost" to Employer. AS 23.30.001(1).

Furthermore, as already discussed, Employee has no convincing evidence any of her medical records have been altered, modified, or otherwise changed by anyone other than their' authors. *Shug*; AS 23.30.122. Unless a "genuine issue" is raised concerning an original document's authenticity, photocopies are appropriate. 8 AAC 45.120(*l*). Employee has not raised a genuine issue. Medical providers frequently make dictation errors and hand-write changes on records when they notice a mistake. Providers also frequently record incorrect information. Thus, such findings in Employee's records are not unusual and do not indicate collusion or conspiracy. The issue is easily addressed. Employee has had years to read and review her SIME records and she will have weeks to review them again should she desire to ferret out any alleged errors. If Employee, for example, insists she never smoked tobacco in her life, she may so state to the SIME physicians, notwithstanding what one or more medical records may say. As a longer term solution, if Employee doubts any record's authenticity, she can obtain a "correct" copy from the provider and file and serve it in accordance with the Act and regulations, and the SIME records may be supplemented. If the records are no longer available, Employee can simply give an accurate and correct history to the examiners. Therefore, Employee's request will be denied.

17) Has the Workers' Compensation Division properly assisted Employee?

Employee contends the division has not properly assisted her as a self-represented litigant. *Carey IV* denied her request for interim attorney's fees and costs from Employer. To the extent she revisits this "assistance" issue, it is already decided and resolved, pending Employee's possible appeal from a final decision yet to come on her case's merits. To the extent Employee contends she has not otherwise been given adequate assistance, the Alaska Supreme Court has weighed in on the division's general duty to assist unrepresented claimants. *Richard* states the division owes Employee a duty to fully advise her as to "all the real facts which bear upon" her condition and her right to compensation, "so far as it may know them," and to instruct her "how to pursue that right under the law." *Bohlmann* states Employee must be given the same assistance the trial court gives a civil case litigant. This includes advising her correct documents to file, what relief is available, how to request it, and advising her how to cure paperwork deficiencies. The court has not yet considered the "full extent" of the duty owed.

Carey I and *Carey II* both provided Employee with legal principles pertinent to obtaining an SIME and a continuance. Carey *III* and subsequent decisions invoked *Richard* and *Bohlmann* and gave Employee specific advice and direction how to perfect her issues for hearing when she attended the April 29, 2010 prehearing conference. It further advised her to file shorter, more precise relief requests and to not re-request relief already sought. *Carey IV* educated Employee about the difference between claims and petitions and advised her there is no "motion practice" under the Act or regulations. It also clarified Employee's misplaced reliance upon the Americans with Disabilities Act (ADA). *Carey V* advised how Employee could perfect a proper petition for reconsideration or modification. *Carey VI* informed Employee her failure or refusal to file clearly identified "petitions" confused division staff and probably delayed her claim's adjudication. It also advised Employee she must file medical evidence to support her allegations and statutory or case law to support her legal arguments. *Carey VI* also told Employee to consult with the division's ADA coordinator if she needed physical accommodations from the division.

At hearing in July 2010, the designated chair spent considerable time explaining the law and hearing processes to Employee. *Carey VIII* again advised Employee how petitions for reconsideration or modification work procedurally and the purposes for each. It informed her "objections, overviews

and responses" to decisions and orders were unnecessary and not legally adequate or functional to obtain appellate review. It also advised Employee how to seek appellate review of a decision and order from the appeals commission or the Alaska Supreme Court. *Carey VIII* informed and instructed Employee how decisions and orders become public records and how she does not have a right to revise or edit them prior to publication. It explained why prior decisions recommended she have a guardian or other representative for her claim and elucidated how she was not prejudiced when *Carey II* continued the April 6, 2010 hearing at her request.

Carey IX counselled Employee about how to timely file reconsideration petitions or seek appellate review. It again informed her that her "objections, overviews and responses" to decisions and orders were unnecessary and not legally adequate or functional. It again advised Employee how to seek appellate review of a decision and order. *Carey IX* again advised Employee to file clearly marked petitions when necessary, which plainly delineated relief requests to insure Division staff understood what she wanted.

The prior nine decisions and orders in this case all repeatedly and consistently cited applicable statues, regulations and case law necessary for Employee to seek relief and obtain due process. Furthermore, prehearing conference summaries abridged lengthy discussions workers' compensation officers and hearing officers had with Employee trying to assist her as she worked her way through the adjudications process. Chief Wright met and corresponded with Employee when possible and Juneau division staff also advised her. Employee is just not satisfied with the advice and assistance she received.

Employee has not convincingly articulated an area in which the division has failed to properly assist her. AS 23.30.122. Employee continues to contend Employer should be required to pay for an attorney and paralegals to assist her. As *Carey IV* held, there is no legal support for this request.

A corollary to this issue is Employee's conclusion the division actively conspired against her. As discussed above, her allegations division staff colluded with Employer or others to conspire against her are without merit. *Shug*; AS 23.30.122. Therefore, the evidence shows the division has met its duty to advise and inform Employee under *Richard* and *Bohlmann.*

18) Should Employer be ordered to copy EME records onto colored paper?

Employee is concerned SIME doctors or this panel may not notice EME reports as such and may give them too much attention or weight. She bases this on her previous contention these physicians were biased, did not consider all her records, considered altered records, tried to poison her and had an agenda contrary to her best interests. She seeks an order requiring Employer to copy all EME reports onto colored paper so they stand out. Employee cites no authority for this request. Employee assumes SIME physicians and this panel cannot readily identify EME reports. She is mistaken. Each EME is clearly identified as such and their format makes them distinctive when compared to attending physicians' reports. Readers will have no difficulty recognizing EME reports. Employee's request also subjects Employer to an unreasonable cost. AS 23.30.001(1). Employee's request will be denied.

19) Should Employer be ordered to copy, re-file and re-serve two white binders, which Employee claims she filed and which she claims subsequently "went missing" from her agency file?

Employee contends she filed and served two white binders containing evidence. She further contends these are missing from her agency file and she seeks an order requiring Employer to replace them by copying its service copy of the binders and re-filing these documents. First, Employee has not proven she filed these binders. *Shug*; AS 23.30.122. Chief Wright looked for the binders, could not find them and could not determine if Employee had ever actually filed them. Chief Wright is credible. AS 23.30.122. Second, Employee cites no authority requiring Employer to replace these binders, even assuming Employee filed them and they were misplaced or even stolen as Employee concludes. Parties typically retain an exact copy of any documents filed in a case. If Employee retained a duplicate, she is free to file and serve another copy. 8 AAC 45.120(f). If Employee failed to retain a copy, she is advised to keep an exact reproduction of all documents she files and serves in the future. *Richard*; *Bohlmann*. Third, Employee's request also subjects Employer to an unreasonable cost. AS 23.30.001(1). Because she has not shown she filed the two white binders and as there is no authority to order Employer to replace them in any event, Employee's request will be denied.

20) Should summary judgment in Employee's favor be ordered against Employer under Civil Rule 11, or under any other legal authority?

Employee's contention in this regard was vague. She contends under the circumstances, given the division's alleged collusion with Employer and Employer's efforts to defeat her claim, she is entitled to "sanctions." She contends "summary judgment" is an appropriate sanction under Civil Rule 11 or under some similar rubric. Employee has not shown the division has colluded or conspired with anyone to harm her case. AS 23.30.122. Furthermore, this is an adversarial system and Employer has the right to vigorously defend itself. Lastly, workers' compensation cases are to be decided on their merits unless otherwise provided by statute. AS 23.30.001(2). In some cases, claims are dismissed for failure to meet filing requirements. But there is no workers' compensation statute or regulation providing for summary judgment or the equivalent for a claimant. Civil Rule 11 upon which Employee relies, addresses a party's failure to sign pleadings in civil court and provides for certain sanctions. Civil Rule 11 is not applicable here. Employee's request for summary judgment will be denied.

21) Should Employee's file be "sealed," or an order issued limiting Employer's ability to disseminate Employee's records?

Employee is concerned Employer may use her allegedly altered medical records or other documents in other venues where she may have sued or may yet sue Employer and its agents or others, thus tainting those cases with "false" information. She wants her agency file "sealed" to prevent this. Again, Employee fails to cite legal authority for this request. Employer correctly notes the law already prevents people from seeing Employee's agency file without a release signed by her. AS 23.30.107(b). As Employee has filed a claim, the law allows the panel to disseminate relevant information in its decisions and orders. AS 23.30.107(b)(2). If Employee believes there is medical information in her agency file "not related" to her claim, she may file a petition to recover these records from the agency file, the commission and from Employer. AS 23.30.108(d-e). However, this decision has no authority over what Employer may do with Employee's confidential medical records. If she can prove Employer has violated a statute by inappropriately disseminating her medical records, she can pursue whatever remedies may exist under state or federal law. As for her agency file, her request it be "sealed," and her request for an order directing Employer to not share her medical records will be denied for lack of jurisdiction.

22) Should former hearing officer Briggs or former workers' compensation officer Gillespie have been disqualified from working on Employee's case?

Employee contends former Division employees Briggs and Gillespie conspired against her and deliberately interfered with her claim. Briggs had already left state employment by July 2010, and Employee questioned Gillespie at the July 2010 hearing. Gillespie has since also left state employment. As both are now gone from the division, they can have no effect on her case and Employee's worries as to the future are moot. However, Employee contends both Briggs and Gillespie should have been disqualified while still Division employees and the time both spent on her case prejudiced her permanently.

Gillespie was a workers' compensation officer. Employee cited no statute or regulation stating a party has the right to request a workers' compensation officer's disqualification. Employee implied Gillespie was rude and disliked her. She implied Gillespie also mishandled her file. Otherwise, Employee was vague in her complaints about Gillespie's service or its alleged effect on her agency file. Gillespie credibly said she did not dislike Employee. AS 23.30.122. Employee has not shown Gillespie did anything untoward to her or affected her agency file or her case in any way. *Shug*. She demonstrated no grounds for Gillespie to have been "disqualified" even were there a statute or regulation providing for workers' compensation officer disqualification. Therefore, Employee has not revealed any factual or legal basis for Gillespie to have been disqualified from handling her agency file or working on her case.

Briggs was a hearing officer. Hearing officer conduct is governed by the Executive Branch Ethics Act. AS 39.52.010. Hearing officers are also subject to AS 44.64.050 and associated regulations including 2 AAC 64.030-050, and by implication 8 AAC 45.105-106, as they are panel "members." *Rosales*. The Executive Branch Ethics Act requires high moral and ethical standards among public officers, including hearing officers. The legislative goal is to enhance public trust in fair and open government. AS 39.52.010. Alaska's chief administrative law judge has implemented a hearing officer conduct code. AS 44.64.050(b). This code provides for a complaint and investigatory process. The chief administrative law judge receives and considers all complaints against hearing officers, and if the chief judge determines the conduct alleged, if true, would constitute a violation and warrant disciplinary action the case is referred to the Alaska attorney general's office for further

investigation and action. AS 44.64.050(c). If the attorney general determines the hearing officer has committed a violation, the attorney general submits written findings to the hearing officer's agency along with recommendations for corrective or disciplinary action if appropriate. AS 44.64.050(d); 2 AAC 64.050.

The administrative regulations reiterate the statutes' expressed purposes and goals, and further require hearing officers to avoid *ex parte* communications, impropriety and the appearance of impropriety. The hearing officer Canons of Conduct includes 10 specific things hearing officers must or must not do to perform their duties impartially and diligently. 2 AAC 64.030(b). Noncompliance with these canons may be grounds for corrective or disciplinary action. 2 AAC 64.030(a). Regulations also enumerate ways for hearing officers to avoid conflicts of interest, primarily dealing with financial stakes or personal interest in a case's outcome. 2 AAC 64.040. Lastly, as panel members, hearing officers could be disqualified to avoid impropriety or the appearance of impropriety. This requires a substantial and material personal or financial interest in a case, or actual bias or prejudice. 8 AAC 45.105(d)(1-2). Panel members review case captions before hearings to determine if they have a potential or real conflict of interest. 8 AAC 45.106. Nevertheless, a judicial officer should not disqualify himself or herself simply because a party claims actual bias or an appearance of bias, without specific evidence of either. *DeNardo*. If the fact-finder believes he or she can be fair and impartial, disqualification is not required. In other words, recusal or disqualification is largely a subjective test. *Id.*

Employee draws many negative conclusions from Briggs's alleged behavior. All of them from Employee's perspective point to Briggs intentionally interfering with her case. For example, Employee contends Briggs sequestered her agency file in his office for four months claiming to be organizing or "logging" the documents. Employee claims Briggs delayed this process so she would miss a statute of limitations in a lawsuit against an EME physician. The problem with Employee's contentions is that they are all simply conclusory. *Shug*. She has no specific evidence to support them. For example, Employee offered no evidence showing Briggs lacked high moral and ethical standards. She had no evidence he had a personal or financial interest in her case affecting his public responsibilities. AS 39.52.010(a)(1-3); 2 AAC 64.040. If Employee lacked confidence in Briggs' ability, impartiality, or fairness, it was based only upon Employee's paranoid

misperceptions. Employee failed to demonstrate Briggs violated the Canons of Conduct for hearing officers. 2 AAC 45.64.030.

Similarly, Employee did not demonstrate Briggs failed to show integrity and independence. She did not show impropriety or the appearance of impropriety or that Briggs did not perform his duties diligently. *Rosales*. Her main complaints against Briggs were that he adversely affected her file by removing documents, or directing others such as Gillespie do so, and that he sequestered the file from her so she missed a statute of limitations in another matter. She has absolutely no evidence to support her allegation that Briggs intentionally manipulated her file to Employee's disadvantage. *Shug*; AS 23.30.122. Employee implies four months was too long for Briggs to complete his file organizing duties. But Employee's file is huge. As Briggs could not reasonably be expected to dedicate his entire daily schedule to chronologically organizing Employee's file, it is not surprising if it took him four months to do so.

Employee's primary contention is the division failed to protect her file's integrity. Briggs' effort to organize and paginate Employee's agency file was an effort to assuage her concerns. Further, Employee did not explain how her alleged inability to access her file while it was in Briggs' office prevented her from filing a lawsuit against an EME physician. Employee's contention she did not have any access to her agency file for four months is not credible given the division's policy allowing Employee to see her file by appointment. AS 23.30.122.

Lastly, Briggs was never on a "panel" hearing Employee's case. Therefore, regulations specifically addressing hearing officer conduct in hearing "panels" are not applicable. 8 AAC 45.105-106. Given the law and Employee's conclusory, unsupported allegations, there was no legal or factual basis to disqualify either Briggs or Gillespie from their participation in Employee's case.

23) Should benefits be awarded, sanctions imposed, or an independent investigation ordered to address Employee's concerns about former hearing officer Briggs or former workers' compensation officer Gillespie?

Employee again seeks summary judgment awarding her benefits for what she perceives to be agency interference with her case. As discussed above, the Act, regulations and decisional law contain no provision for a summary benefit award to an injured worker. Cases are to be decided on

their merits. AS 23.30.001(1). Likewise, the law does not provide authority for this decision to impose a sanction on Briggs or Gillespie for any alleged wrongdoing. As discussed above, Employee failed completely to demonstrate wrongdoing by either. *Shug*; AS 23.30.122.

But Employee also wants an "independent investigation" to address her concerns against Briggs and Gillespie. As for Gillespie, this decision has no authority to order such an investigation. As to Briggs, the state's chief administrative law judge receives and reviews complaints against hearing officers. AS 44.64.050(a). If Employee wishes to file a complaint against Briggs with the chief administrative law judge, she is free to do so, and the process set forth in statutes and regulations will be followed. Since Briggs has not been employed by the State of Alaska as a hearing officer for over four years, it is unclear what "corrective or disciplinary action" could be taken, assuming Employee can make her case in the first instance. For the reasons set forth above, this decision will not award benefits, impose sanctions, or order an independent investigation into Employee's allegations against Briggs or Gillespie.

24) Does Employee have a remedy in respect to her objection to the December 2, 2009 prehearing conference summary?

Employee did not have a specific objection to anything in the December 2, 2009 prehearing conference summary. Her only objection was to the fact Briggs chaired the prehearing conference giving rise to the summary. Employee had previously requested Briggs' disqualification and objected to his continued participation in her case. Employee's secondary objection was to the prehearing conference summary's 27 page length and "wordiness." As discussed above, Employee failed to demonstrate Briggs did anything wrong in respect to her case. Furthermore, as the designated chair explained to Employee at hearing, issues raised and clarified in subsequent prehearing conferences control the issues for hearing. AS 23.30.110(a); *Simon*; *Richard*; *Bohlmann.*

Since Briggs is no longer employed as a hearing officer, he will not be involved in any future prehearing conferences in this case. Therefore, Employee is free to re-state, clarify, or amend her pleadings as provided by law at subsequent prehearing conferences before her claim is heard on its merits. She is reminded to timely file an objection to any future prehearing conference summaries with which she disagrees and seek amendment or modification within 10 days if she wants to

correct a factual misstatement or prehearing determination. 8 AAC 45.065(d); *Richard*; *Bohlmann.* If a request to modify or amend a prehearing conference summary is not timely filed or lacks proof of service upon all parties, the prehearing conference designee may not act upon her request. *Id.* If the prehearing conference designee does not act upon her request, Employee may seek another prehearing conference prior to any hearing to obtain a ruling on her request under 8 AAC 45.065(d).

CONCLUSIONS OF LAW

1) The implicit order denying Employee's request to hear the issues in filing order was correct.

2) The oral order denying Employee's request to change venue from Juneau back to Anchorage was correct.

3) *Carey I*'s choice of Dr. Ling for the SIME panel will not be modified.

4) The designee's April 29, 2010 discovery order will be affirmed.

5) Employee will be compelled to comply with the designee's April 29, 2010 discovery order.

6) Employer will not be compelled to state from where it obtained Employee's medical records.

7) Employer will not be compelled to correlate Employee's medical records with a particular medical release used to obtain the records.

8) Employee is entitled to a copy of the claims adjusting file.

9) Employee's credit union and other financial records may be relied upon.

10) The Bardana, Wicher and Burton EME reports and depositions will not be stricken from the record and may otherwise be relied upon.

11) This decision does not have jurisdiction to impose criminal sanctions on Dr. Bardana or Dr. Burton.

12) Uncertified audio recording transcripts will not be relied upon.

13) Employee's non-medical evidence must be filed in accordance with the law, and may be used for any allowable purpose.

14) This decision does not have jurisdiction to order an independent investigation into alleged activities by Employer, its counsel or by staff at the Juneau Department of Labor in respect to Employee's agency file.

15) Employee is not entitled to a list of persons having access to her agency file.

16) Employee will not be allowed to spend at least two minutes discussing each medical record with each physician during her SIME.

17) The Workers' Compensation Division has properly assisted Employee.

18) Employer will not be ordered to copy EME records onto colored paper.

19) Employer will not be ordered to copy, re-file and re-serve two white binders, which Employee claims she filed and which she claims subsequently "went missing" from her agency file.

20) Summary judgment in Employee's favor will not be ordered against Employer under Civil Rule 11, or under any other legal authority.

21) Employee's file will not be "sealed," and no order will be issued limiting Employer's ability to disseminate Employee's records.

22) Former hearing officer Briggs and former workers' compensation officer Gillespie should not have been disqualified from working on Employee's case.

23) Benefits will not be awarded, nor sanctions imposed, nor an independent investigation ordered to address Employee's concerns about former hearing officer Briggs or former workers' compensation officer Gillespie.

24) Employee has a remedy in respect to her objection to the December 2, 2009 prehearing conference summary.

ORDER

1) Employee's request to hear the issues in filing order was correctly denied.

2) The oral order denying Employee's venue change request was correct.

3) Employer's request to change *Carey I*'s choice of Dr. Ling for the SIME panel and Employee's suggested replacement are denied.

4) The designee's April 29, 2010 discovery order is affirmed.

5) Employee is ordered to comply with the designee's April 29, 2010 discovery order.

6) Employee has 60 days within which to comply, to give parties time to finalize their pending settlement.

7) Employee's request for Employer to state from where it obtained Employee's medical records is denied.

8) Employee's request that Employer be compelled to correlate Employee's medical records with a particular medical release used to obtain the records is denied.

9) Employer is ordered to provide Employee with a redacted claim adjusting file beginning from the day after the last date already provided.

10) Employer is ordered to identify redacted portions with an appropriate privilege.

11) Employer has 60 days within which to comply, to give parties time to finalize their pending settlement.

12) Employee's request for an order stating Employee's credit union and other financial records may not be relied upon is denied

13) Employee's request for an order striking Drs. Bardana, Wicher and Burton's EME reports and depositions is denied.

14) Employee's request for an order imposing criminal sanctions against Dr. Bardana or Dr. Burton is denied.

15) Employee's request for an order allowing uncertified audio recording transcripts as evidence is denied.

16) Employee is ordered henceforth to file and serve non-medical evidence in accordance with the law.

17) Employee's request for an order causing an independent investigation into alleged activities by Employer, its counsel or by staff at the Juneau Department of Labor in respect to Employee's agency file is denied.

18) Employee's request for a list of persons having access to her agency file is denied.

19) Employee's request for an order allowing her to spend at least two minutes discussing each medical record with each physician during her SIME is denied.

20) Employee's request for a finding the Workers' Compensation Division has not properly assisted her is denied.

21) Employee's request for an order requiring Employer to copy EME records onto colored paper is denied.

22) Employee's request for an order requiring Employer to copy, re-file and re-serve two white binders, which Employee claims she filed and which she claims subsequently "went missing" from her agency file is denied.

23) Employee's request for summary judgment in Employee's favor under Civil Rule 11, or under any other legal authority is denied.

24) Employee's request for an order "sealing," her agency file and an order limiting Employer's ability to disseminate Employee's records is denied.

25) Employee's request for a finding former hearing officer Briggs and former workers' compensation officer Gillespie should have been disqualified from working on Employee's case is denied.

26) Employee's request for an order awarding benefits or imposing sanctions, and requiring an independent investigation to address Employee's concerns about former hearing officer Briggs or former workers' compensation officer Gillespie is denied.

27) Employee's objection to the December 2, 2009 prehearing conference summary is overruled.

Dated in Juneau, Alaska, on July 29, 2014.

ALASKA WORKERS' COMPENSATION BOARD

_____
William Soule, Designated Chair

_____
Patricia Vollendorf, Member

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Robert C. Weel, Member

RECONSIDERATION

A party may ask the board to reconsider this decision by filing a petition for reconsideration under AS 44.62.540 and in accordance with 8 AAC 45.050. The petition requesting reconsideration must be filed with the board within 15 days after delivery or mailing of this decision.

MODIFICATION

Within one year after the rejection of a claim, or within one year after the last payment of benefits under AS 23.30.180, 23.30.185, 23.30.190, 23.30.200, or 23.30.215, a party may ask the board to modify this decision under AS 23.30.130 by filing a petition in accordance with 8 AAC 45.150 and 8 AAC 45.050.

PETITION FOR REVIEW

A party may seek review of an interlocutory or other non-final Board decision and order by filing a petition for review with the Alaska Workers' Compensation Appeals Commission. Unless a petition for reconsideration of a board decision or order is timely filed with the board under AS 44.62.540, a petition for review must be filed with the commission within 15 days after service of the board's decision and order. If a petition for reconsideration is timely filed with the board, a petition for review must be filed within 15 days after the board serves the reconsideration decision, or within 15 days from date the petition for reconsideration is considered denied absent board action, whichever is earlier.

CERTIFICATION

I hereby certify the foregoing is a full, true and correct copy of the Interlocutory Decision and Order in the matter of BETTY G. CAREY Employee / claimant v. VECO, INC., Employer, ALASKA INSURANCE GUARANTY ASSOCIATION, and NORTHERN ADJUSTERS, INC., insurer / defendants; Case No. 198933971; dated, filed and served in the office of the Alaska Workers' Compensation Board in Juneau, Alaska, on July 29, 2014.

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Sue Reishus-O'Brien, Workers' Compensation Officer