

**Performance Update and Further
Inquiry Report**

**WORKERS' COMPENSATION
Office of Judges**

**The Office of Judges Was Found To Be In
Compliance With All Three Recommendations**



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John Sylvia
Director

November 19, 2002

The Honorable Edwin J. Bowman
State Senate
129 West Circle Drive
Weirton, West Virginia 26062

The Honorable Vicki V. Douglas
House of Delegates
Building 1, Room E-213
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0470

Dear Chairs:

Pursuant to the West Virginia Sunset Law, we are transmitting a *Performance Update and Further Inquiry Report of the Workers' Compensation - Office of Judges*, which will be presented to the Joint Committee on Government Operations on Tuesday, November 19, 2002. The issue covered herein is "The Office of Judges Was Found To Be In Compliance With All Three Recommendations."

We transmitted a draft copy of the report to the Office of Judges on October 25, 2002. The Office of Judges opted not to have an Exit Conference. We received the agency response on November 1, 2002.

Let me know if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "John Sylvia".

John Sylvia

JS/wsc

Joint Committee on Government and Finance

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Executive Summary

The Office of Judges (OOJ) was created in 1990 to hear protests on Workers' Compensation claims. This report is the fourth compliance monitoring and further inquiry update of the performance evaluation conducted in 1997 as required by WVC B4-10-4a. The last update was presented in November 2000. Three recommendations from the November 2000 report required action by the agency. They are:

1. *The Office of Judges should complete all pre-June 1, 1995 protests through its appeals process in accordance with time standards as established in its regulations.*
2. *The Legislative Auditor recommends that the Office of Judges should continue in its efforts to eliminate the use of contract attorneys and appear before the Joint Committee on Government Operations during the 2001 Interim Session to give an oral presentation and provide a written status report on this issue.*
3. *The Workers' Compensation Office of Judges should make every attempt to compile the information and submit a report to the Joint Committee on Government and Finance, as required, before the 2001 Regular Legislative Session.*

The OOJ was found to be in compliance with all three recommendations. This Compliance Monitoring of the Preliminary Performance Review uses the following designations of levels of compliance:

Levels of Compliance

<u>In Compliance</u> - The agency has corrected the problems identified in the previous audit report.
<u>Partial Compliance</u> - The agency has partially corrected the problems identified in the November 2000 audit report.
<u>Planned Compliance</u> - The agency has not corrected the problem but has provided sufficient documentary evidence to find that it will do so in the future.
<u>In Dispute</u> - The agency does not agree with either the problem identified or the proposed solution.
<u>Non-Compliance</u> - The agency has not corrected the problem identified in the previous audit report.
<u>Requires Legislative Action</u> - The recommendation was intended to call to the attention of the Legislature to one or more statutory issues.

Review Objective, Scope and Methodology

This Performance Update and Further Inquiry Report of the Workers' Compensation Office of Judges is required and authorized by the West Virginia Sunset Law B4-10-4a of the West Virginia *Code*, as amended. The Workers' Compensation Office of Judges is responsible for hearing protests of Workers' Compensation award decisions.

Objective

The objective of the report is to monitor the Office of Judges' progress on recommendations made in the November 2000 Performance Update and Further Inquiry Report.

Scope

The scope of this evaluation covers the period from October 2000 to October 2002.

Methodology

The methodology for this report included reviewing relevant statutes with the West Virginia *Code*, as amended, relevant rules within the Code of State Rules, various reports produced by the agency's database as well as interviews and correspondence with the Workers' Compensation Office of Judges. Every aspect of this review complied with Generally Accepted Auditing Standards (GAGAS).

The Office of Judges Has Virtually Eliminated All of the Pre-June 1995 Protests in Its Caseload.

Recommendation 1

The Office of Judges should complete all pre-June 1, 1995 protests through its appeals process in accordance with time standards as established in its regulations.

Level of Compliance: In Compliance

The original performance evaluation conducted by the Legislative Auditor on the Office of Judges (OOJ) uncovered an estimated 6,000 to 8,000 protests that were in its backlog prior to June 1, 1995. The significance of the June 1, 1995 date is that it is the date that the OOJ's new computer system went online. At that time the computer system did not have a programmed report that identified active cases filed prior to June 1, 1995. Since then, the OOJ completed a project that accurately identified the number of pre-June 1, 1995 protests backlogged in its inventory. Since 1998, the number of pre-June 1995 protests has dropped significantly from 3,595 to 58. Table 1 provides a full breakdown of the type and number of protests. The OOJ is currently working on the remaining 58 cases and plans to complete them. However, it should be noted that 51 of these cases are Occupational Pneumoconiosis cases, which historically have been the most difficult type to control the length of litigation and is often times out of the OOJ's control. Therefore, such cases may take some time to complete.

Since 1998, the number of pre-June 1995 protests has dropped significantly from 3,595 to 58.

Table 1
Pre-June 1, 1995 Protests, 1998 - 2002*

PROTEST TYPE	NUMBER OF PROTESTS 1998	NUMBER OF PROTESTS 1999	NUMBER OF PROTESTS 2000	NUMBER OF PROTESTS 2002*
Compensability	53	5	2	0
Rehabilitation	1	1	0	0
Medical Treatment/Equipment	75	20	3	0
Temporary Total Disability	23	5	1	0
Dependent Benefits 104	161	21	21	2
Dependent Benefits Fatal	60	121	38	1
Permanent Partial Disability	2,852	56	15	1
Occupational Pneumoconiosis (non-Medical)	123	349	50	8
Occupational Pneumoconiosis (PPD)	NA	977	448	43
Permanent Total Disability Threshold	2	0	0	0
Permanent Total Disability Entitlement	127	55	32	3
Permanent Total Disability Onset Date	5	3	3	0
Permanent Total Disability 2 nd Injury	20	3	2	0
Reopening	55	18	4	0
System Resolution Only	NA	117	0	0
Miscellaneous	38	0	0	0
TOTAL	3,595	1,751	619	58

*Totals as of 10/9/02.

Issue 2

The Office of Judges Has Ceased the Use of Contract Attorneys and Now Drafts All Decisions In-House.

Recommendation 2

The Legislative Auditor recommends that the Office of Judges should continue in its efforts to eliminate the use of contract attorneys and appear before the Joint Committee on Government Operations during the 2001 Interim Session to give an oral presentation and provide a written status report on this issue.

Level of Compliance: In Compliance

In the past, the OOJ used contract attorneys to write decisions for some of its protests. The goal of the OOJ has been to reduce and eliminate the need for contract attorneys and complete all decision writing in-house. Since this issue has been looked at by the Legislative Auditor, the amount spent on contract attorneys has decreased, with the exception of 2001 (see Table 2). The OOJ ceased using contract attorneys after March 2002 and now drafts all of its decisions in-house.

The OOJ ceased using contract attorneys after March 2002 and now drafts all of its decisions in-house.

Table 2
Expenditures For Contract Attorneys, 1995-2002*

CALENDAR YEAR	TOTAL EXPENDITURE	MONTHLY AVERAGE
1995	\$1,862,807	\$155,234
1996	1,453,800	121,150
1997	1,627,600	135,633
1998	1,058,924	88,244
1999	470,262	39,189
2000	416,400	34,700
2001	719,700	59,975
2002*	198,100	16,508
TOTAL	\$7,807,593	\$54,219

*Includes 1/02 - 3/02. The OOJ ceased using contract attorneys after March, 2002.

The Chief Administrative Law Judge Is in Compliance with Reporting Requirements.

Recommendation 3

The Workers' Compensation Office of Judges should make every attempt to compile the information and submit a report to the Joint Committee on Government and Finance, as required, before the 2001 Regular Legislative Session.

Level of Compliance: In Compliance

The November 2000 report identified that the Chief Administrative Law Judge (Chief ALJ) was not in compliance with reporting requirements as required by §93-2-3 of the Code of State Rules. This rule requires the Chief ALJ to file a report indicating the degree of compliance with time standards. The section states:

On December 31, 1995 and on September 1, of each year thereafter, the Chief Administrative Law Judge shall file a report with the Governor, the Joint Legislative Committee on Government and Finance or such other committee as shall be designated by the President of the Senate and the Speaker of the House, and with the Compensation Programs Performance Council indicating the degree of compliance with these rules. Such report shall include, with respect to any area of non-compliance with these rules, the reason for non-compliance together with a plan to secure compliance with these rules.

The 2001 report was filed late on February 7, 2002; however, the 2002 report was filed in a more timely manner on September 11, 2002. Even though the OAJ was more timely in filing its 2002 report, it should still strive to meet the filing date of September 1.

Appendix A: Transmittal Letter to Agency

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John Sylvia
Director

October 25, 2002

Timothy G. Leach, Chief Administrative Law Judge
Workers' Compensation Office of Judges
P.O. Box 2233
One Players Club Drive
Charleston, WV 25311-1638

Dear Judge Leach:

This is to transmit a draft copy of the Performance Update and Further Inquiry Report of the Office of Judges. This report is scheduled to be presented Sunday, November 17, 2002 at the interim meeting of the Joint Committee on Government Operations. It is expected that a representative from your agency be present at the meeting to orally respond to the report and answer any questions the committee may have. If you would like to schedule an exit conference to discuss any concerns you may have with the report please notify us. We need your written response by noon on November 6, 2002 in order for it to be included in the final report.

We request that your personnel treat the draft report as confidential and request that it not be disclosed to anyone not affiliated with your agency. Thank you for your cooperation.

Sincerely,

Handwritten signature of John Sylvia in cursive script.
John Sylvia

Joint Committee on Government and Finance

Appendix B: Agency Response

Bob Wise
Governor

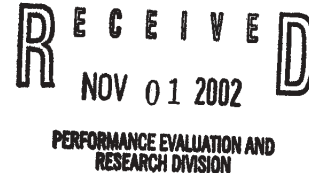
Timothy G. Leach
Chief Administrative
Law Judge



West Virginia
Workers' Compensation Office of Judges
an equal opportunity/affirmative action employer

November 1, 2002

Mr. John Sylvia, Director
Performance Evaluation and Research Division
West Virginia Legislature
Building 1, Room W-314
1900 Kanawha Boulevard, East
Charleston, WV 25305-0610



Re: Performance Update and Further Inquiry Report of the Office of Judges

Dear Mr. Sylvia:

Thank you for providing the Office of Judges with a draft copy of the above referenced report. Inasmuch as the Office of Judges has been found to be in compliance with all of the recommendations of your office, we have no comment regarding these matters.

I want to assure you and the members of the Joint Committee on Government Operations that it is my intent to continue to improve the efficiency, accuracy and timeliness of the matters before the Office of Judges. It is my goal to reduce the time needed to litigate these issues while continuing to produce a quality written decision.

Thank you for the opportunity to comment on this report. If you need any additional information, please contact me at your convenience.

Sincerely,

Timothy G. Leach
Chief Administrative Law Judge

TGL/ddm

cc: Robert J. Smith, Commissioner
Bureau of Employment Programs

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