

IN THE SUPREME COURT OF FLORIDA

**IN RE: AMENDMENTS TO THE
FLORIDA RULES OF WORKERS'
COMPENSATION PROCEDURE**

CASE NO: SC04-110

Comment of the Workers' Compensation Section of The Florida Bar in Support of Amendments to the Florida Rules of Workers' Compensation Procedure.

The executive branch in the person of DOAH has objected to the Supreme Court's jurisdiction to amend the Florida Rules of Workers' Compensation Procedure by claiming that DOAH has exclusive jurisdiction to adopt rules of practice and procedure for litigants in workers' compensation cases. The Workers' Compensation Section of The Florida Bar recommends a middle ground for historical, legal and practical reasons. The power to adopt rules of practice and procedure for litigants in workers' compensation cases should be shared by the judicial branch and the executive branch, whereby the rules of procedure are adopted by this Court as they have been for more than 30 years, and DOAH, pursuant to the APA, adopts rules of judicial administration, which are supplementary and complementary, but not in conflict with the rules adopted by this court or with the statute.

Legal Reasons

Prior to 2001, the Office of the Judges of Compensation Claims was located within the Department of Labor and Employment Security and headed by a chief judge. Section 440.45(1), Fla. Stat. (2000). Having abolished the Department of Labor and Employment Security, in 2001, the Legislature transferred the Office of the Judges of Compensation Claims to the Department of Management Services, Division of Administrative Hearings (DOAH). Ch. 2001-91, §26, Laws of Fla. The preamble to Ch. 2001-91, Laws of Fla., specifically describes this as a

"transfer". Ch. 2001-91, Laws of Fla. p. 761. The word "transfer" has legal meaning in connection with the Government Reorganization Act of 1969. Section 20.06, Fla. Stat., provides that when a transfer takes place, the rules which are in effect immediately before the transfer remain in effect until specifically changed in the manner provided by law. The 2001 transfer legislation did not provide for DOAH to change the existing rules in regard to practice and procedure before the Judges of Compensation Claims, nor has there been any such legislation since. The transfer legislation did not specifically authorize DOAH to replace the Florida Rules of Workers' Compensation Procedure adopted by the Supreme Court of Florida with rules of procedure adopted by DOAH. On February 23, 2003, DOAH adopted rules of practice and procedure for the litigants before the Judge of Compensation Claims which are entitled: "Rules of Procedure for Workers' Compensation Adjudications". These rules are contained in Chapter 60Q-6 of the Florida Administrative Code.

Fla. R. Admin. 60Q-6.01 is entitled "Scope". It provides:

These rules of procedure apply in all workers' compensation proceedings before the judges of compensation claims and replace workers' compensation rules of procedure 4.010 through 4.900 and all forms referenced therein.

DOAH gave as its specific authority for this rule: §440.45(1)a, (4), Fla. Stat., and further stated that the law implemented was §440.45(1)a, (4), Fla. Stat.

The 4.010 through 4.900 rules, which the February 23, 2003, DOAH rules replace, are the Florida Rules of Workers' Compensation Procedure adopted by the Supreme Court of Florida

Ch. 2001-91, §26, Laws of Fla. amended §440.45(4), Fla. Stat., by amending existing law in three ways: it renumbered subsection 5 to subsection 4; it changed the word "promulgate" to

the word "adopt"¹ and it added the words "and other data necessary for the judicial nominating commission to review the performance of judges as required in paragraph (2)(c).

This statute dates to 8 years earlier when the legislature adopted Ch. 93-415, §40, Laws of Fla., creating §440.45(5), Fla. Stat., which provided:

The Office of the Judges of Compensation Claims shall promulgate rules to effect the purposes of this section. Such rules shall include procedural rules applicable to workers' compensation claim resolution and uniform criteria for measuring the performance of the office, including but not limited to the number of cases assigned and disposed, the age of pending and disposed cases, timeliness of decision making, extraordinary fee awards and other performance indicators. The Workers' Compensation Rules of Procedure approved by the Supreme Court shall apply until the rules promulgated by the Office of the Judges of Compensation Claims pursuant to this section become effective.

The preamble, which the constitution requires the legislature to write to describe the purpose of the legislation, does not describe this statute as making any change in the rules of procedure for litigants. It describes this change: "amending s. 440.45, F.S., providing a code of judicial conduct for judges of compensation claims". Ch. 93-415, Laws of Fla., p. 64.

The legislature enacted §440.45(4), Fla. Stat., providing that the Office of the Judge of Compensation Claims shall adopt rules to effect the

¹ Same meaning; "adopt" is used in the APA. §120.54, Fla. Stat.

purposes of this **section**. (Emphasis added.) Such rules shall include procedural rules applicable to workers' compensation claim resolution and uniform criteria for measuring the performance of the office, including but not limited to the number of cases assigned and disposed, the age of pending and disposed cases, timeliness of decision making, extraordinary fee awards and other performance indicators.

At the exact same time, §440.29, Fla. Stat., was entitled "Procedure before the Judge of Compensation Claims". Subsection 440.29(3), Fla. Stat., provided:

The practice and procedure before the judges of compensation claims shall be governed by rules adopted by the Supreme Court, except to the extent that such rules conflict with the provisions of this chapter.

Section 440.29(3), Fla. Stat., was not changed by the 2001 Act. Section 440.29(3), Fla. Stat. still reads the same.

The 1993 Act amended §440.25(4)(g), Fla. Stat., to provide:

Judges of compensation claims shall adopt and enforce uniform local rules for workers' compensation.

Ch. 93-415, §30, Laws of Fla.

Under authority of this statute, the office of judge of compensation claims adopted the Workers' Compensation Uniform Practices and Procedures (UPP's). These were the rules in force at the time of the transfer, which under §20.06, Fla. Stat., remain in force until otherwise provided by law. There has been no otherwise provided by law. However, this statute was repealed at the time of the 2001 transfer.

In summary, the 1993 Act had three references to rules. One of which was old and two of which were new. The old one was §440.29, Fla. Stat., entitled: "Procedure before the Judge of Compensation Claims" and it provided, as it had for some time, that the practice and procedure before the Judge of Compensation Claims shall be governed by rules adopted by the Supreme Court, except that such rules conflict with the provisions of this chapter. To this was added a new provision in §440.25, Fla. Stat., entitled "Procedure for Mediation and Hearings" by which the Judges of Compensation Claims shall adopt and enforce uniform local rules for workers' compensation. Ch. 93-415, §30, Laws of Fla., creating §440.25(4)(g), Fla. Stat. The third new rules provision in the 1993 Act was made in connection with the amendment to §440.442, Fla. Stat., by Ch. 93-415, §39, Laws of Fla., which should be read in pari materia with the next section, §40, amending §440.45, Fla. Stat. Section 39 of the 1993 Act struck the provision that the chief judge and the judges of compensation claims were to abide by the Code of Judicial Conduct adopted by the Supreme Court of Florida in 1978, and substituted for it the specific language of a code of judicial conduct which, in fact, had great similarity to the code already adopted by the Supreme Court.

The 1993 Act contains substantial re-wording of §440.45, Fla. Stat., relating to the office of the judge of compensation claims and the chief judge and the manner of the judges' appointment, their re-appointment and their duties. It is in this section in which the words were created:

The Office of the Judges of Compensation Claims shall promulgate rules to effect the purposes of this **section**. Such rules shall include procedural rules applicable to workers' compensation claim resolution and uniform criteria for measuring the performance of the office,

including but not limited to the number of cases assigned and disposed, the age of pending and disposed cases, timeliness of decision making, extraordinary fee awards and other performance indicators. The Workers' Compensation Rules of Procedure approved by the Supreme Court shall apply until the rules promulgated by the Office of Judges of Compensation Claims pursuant to this **section** become effective. (Emphasis added.)

It is important to note that the 1993 Act used the word "section" and not the word "chapter".

The 2001 Act did not change those words. It still limits the power of the office of the judge of compensation claims under §440.45(4), Fla. Stat., to adopt rules to effect the purposes of this **SECTION**, and the rules of procedure approved by the Supreme Court apply until the rules adopted pursuant to this **SECTION** become effective. At the time of the transfer to DOAH, in rewriting §440.45, Fla. Stat., the legislature did not change the word "section" to the word "chapter". It still reads "section". Furthermore, 2001 Act repealed the specific code of judicial conduct contained in the former act and re-referenced the Code of Judicial Conduct as adopted by the Florida Supreme Court, by amending §440.442, Fla. Stat., to read essentially the way it read prior to the 1993 amendment.

It is significant that the Legislature amended §440.442, Fla. Stat., at the time of the transfer to DOAH in 2001 to provide that the Judges of Compensation Claims would be subject to the Code of Judicial Conduct adopted by the Supreme Court.

Clearly, this was a recognition by the Legislature that the judge of compensation claims performed the function of a judicial officer. Indeed, his only function is to conduct a due process hearing and enter a final order by which he orders one party to pay money to the other party or

not to do so. This is the purest of judicial functions. Both the result (his order) and the process for producing the order (the pre-hearing and hearing procedure) are totally subject to supervision by the judicial branch of the government (the First District Court of Appeal).

By having made the Code of Judicial Conduct, adopted by the Supreme Court, applicable to the judges of compensation claims at the time of the transfer to DOAH in 2001, such enactment indicates the intent of the legislature that the judge of compensation claims, although located within the executive branch, should, in the performance of his duties, operate with the independence of a judicial officer.

1. Fla. Code Jud. Conduct, Canon 1, provides:

An independent and honorary judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

Fla. Code Jud. Conduct, Canon 2B, provides:

A judge shall not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment.

Fla. Code Jud. Conduct, Canon 3B(2), provides:

A judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.

Fla. Code Jud. Conduct, Canon 5C(1), provides:

A judge shall not appear at a public hearing before, or otherwise consult with, an executive or legislative body or official except on matters

concerning the law, the legal system or the administration of justice or except when acting pro se in a matter involving the judge or the judge's interest.

Since the 2001 Act directs the judge in §440.442, Fla. Stat., to act with the independence of a judicial officer this should be read in pari materia with the section that follows, §440.45, Fla. Stat., regarding the appointment of, and the retention in office of, the judges of compensation claims.

DOAH relies upon this section, §440.45, Fla. Stat., for its claim to the exclusive power to adopt rules of practice and procedure for the litigants.

DOAH invoked the Administrative Procedure Act in adopting its 60Q rules in 2001 to replace the rules of practice and procedure for litigants in workers' compensation cases adopted by the Supreme Court of Florida.

The Administrative Procedure Act provides in §120.536(1):

A grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required. An agency may adopt only rules that implement or interpret the specific powers and duties granted by the enabling statute. No agency shall have authority to adopt a rule only because it is reasonably related to the purpose of the enabling legislation and is not arbitrary and capricious or is within the agency's class of powers and duties, nor shall an agency have the authority to implement statutory provisions setting forth general legislative intent or policy. Statutory language granting rulemaking authority or generally describing the powers and

functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the same statute.

Turning to §440.45(4), Fla. Stat., we see that, first of all, the statute is limited to the purposes of the **section**. That is, it deals with the performance of the judge of compensation claims toward the litigants, not the practice and procedure of the litigants themselves. Under §120.536, Fla. Stat., as well as general principals of separation of powers, the legislature cannot simply delegate to DOAH the power to adopt rules of practice and procedure for that would be an unconstitutional delegation of legislative authority and a violation of the APA. That would be like the legislature saying to DOAH, just go and do a good job. However, §440.45(4), Fla. Stat., does contain legislative directives of what the rules may implement:

...uniform criteria for measuring the performance of the office, including but not limited to the number of cases assigned and disposed, the age of pending and disposed cases, timeliness of decisionmaking, extraordinary fee awards and other data necessary for the judicial nominating commission to review the performance of judges as required by paragraph 2(c).

With the reference to procedural rules applicable to workers' compensation claim resolution being confined to just this section, and being confined to the enumerated purposes for which rulemaking was delegated, i.e., the performance of the judge, it is clear that this statutory authority for rulemaking is limited to judicial administration. For example, Rule 4.155 of the Florida Workers' Compensation Rules adopted by the Supreme Court of Florida deals with the disqualification or recusal of judges. Fla. R. Work. Comp. P. 4.155(a) provides:

Any motion for disqualification of a judge shall be made and determined pursuant to Fla. R. Jud. Admin. 2.160.

A number of the 4.0 rules adopted by this Court deal with judicial administration that DOAH has APA rulemaking authority to share. E.g., Fla. R. Work. Comp. P. 4.020; 4.027; and 4.150.

The situation can be compared to the Rules of Civil Procedure adopted by the Supreme Court, which govern the conduct of the litigants in court and the Rules of Judicial Administration adopted by the Supreme Court for the action of the judge with respect to the litigants. In the field of workers' compensation, §440.29(3), Fla. Stat., requests the court to adopt rules of practice and procedure for the litigants and §440.45(4), Fla. Stat., requests DOAH

to adopt rules of judicial administration for the judges. There is no conflict between §440.29(3), Fla. Stat., and §440.45(4), Fla. Stat.

They deal with different things. That is not to say that DOAH could not otherwise adopt rules under the APA to implement provisions of the workers' compensation law so long as those rules supplemented or complemented the rules of procedure adopted by the Supreme Court of Florida and, of course, did not conflict with the statute. In other words, the power to adopt rules of practice and procedure is one which is shared by the judicial branch and the executive branch, according to the legislative directives.

Article V, §2(a), Fla. Const., provides:

The supreme court shall adopt rules for the practice and procedure in
all courts...

The people of Florida in adopting that constitutional provision could have written it:

The supreme court shall adopt rules for the practice and procedure in
all courts provided for in this article

The constitution is not written in that limited way. The people could have achieved a limited application of Article V, §2(a), if the word "courts" had been capitalized, that is written with a capital letter c: "Courts". That would mean that the word "Courts" would be a title and, therefore, would refer to the courts titled within the article. However, the people in their constitution used the word courts with a small letter c, which is a generic term, modified by the word "all".

In 1974, the legislature approved of the court adopting rules of practice and procedure before the commission and the judges of industrial claims by enacting §440.29(3), Fla. Stat., to provide:

The practice and procedure before the Commission and the Judges of Industrial Claims shall be governed by rules adopted by the Supreme Court.

Ch. 74-197, §16, Laws of Fla.

In adopting the Florida Workers' Compensation Rules of Procedure in 1973, this Court decided:

A judge of industrial claims is a quasi-judicial officer under the authority of Florida Statutes, Section 20.17(7), F.S.A., whose duties are devoted *exclusively* to the trial and disposition of workmen's compensation claims of industrial employees.

In workmen's compensation cases we, therefore, have a duplicitous situation where the litigation is quasi-judicial at one level and judicial when it reaches this Court. Because the total authority in workmen's compensation cases involves the review on appeal of the Judges of Industrial Claims and the Industrial Relations Commission, we deem such litigation to be more *judicial* than *quasi-judicial*.

In re Workmen's Compensation Rules of Procedure, 285 So. 2d 601 (Fla. 1973).

(Supreme Court's original emphasis.)

The 1973 rules were adopted by this court unanimously.

When the rules were amended in 1977, six of the seven justices approved of the rules with Arthur England dissenting on jurisdictional grounds. *In re Workmen's Compensation Rules of Procedure*, 343 So. 2d 1273 (Fla. 1977).

In 1979, the rules were again amended. These rules were approved by the court, 4 to 1, again with Arthur England dissenting on the same jurisdictional grounds. These were the first rules proposed by the Florida Bar Rules Committee. *In re Workers' Compensation Rules of Procedure*, 374 So. 2d 981 (Fla. 1979).

In 1980, the rules were again amended, having been proposed by the Florida Bar Rules Committee. At this point, Arthur England gave up his dissent and joined in the decision, which was unanimous. *In re Workers' Compensation Rules of Procedure*, 390 So. 2d 698 (Fla. 1980).

Thereafter, the rules were amended on several occasions in unanimous decisions by the court, the rules having been submitted by the Florida Bar. To suggest at this point that the court should say that it does not have jurisdiction to adopt rules of practice and procedure for workers' compensation would require an extreme degree of judicial activism, to undo the process of adopting rules that has been in place for over three decades. When this court said of workers' compensation: "...we deem such litigation to be more judicial than quasi-judicial..." *In re Workmen's Compensation Rules of Procedure*, 285 So. 2d 601, at 601 (Fla. 1973), the court was in keeping with a view of separation of powers expressed by the Supreme Court of the United States in the famous case of *Humphrey's Executor v. The United States*, 295 U.S. 602 79 Ld. 1611, 55 Sct. 869 (1935).² Humphrey was a member of the Federal Trade Commission appointed by President Hoover in his last days in office. When Franklin D. Roosevelt became president, he removed him from his office because his policies were not in keeping with FDR's, although Congress had given Humphrey tenure so that he could only be removed for cause. Humphrey claimed he could not be removed. The president claimed that the

² This case and *Schechter Poultry* decided the same day, caused FDR to campaign to "pack the court".

legislation was unconstitutional. The Supreme Court of the United States disagreed with FDR. The court held that it is the function and character of the office, not the location, which determines whether a particular official is subject to the executive. The court pointed out that although Humphrey held a position which was located within the executive branch of the government, his only functions were quasi-legislative or quasi-judicial and therefore, in order to maintain separation of powers, he could not be subject to the executive.

We think it plain under the Constitution that illimitable power of removal is not possessed by the President in respect of officers of the character of those just named. The authority of Congress, in creating quasi-legislative or quasi-judicial agencies, to require them to act in discharge of their duties independently of executive control, cannot well be doubted and that authority includes, as an appropriate incident, power to fix the period during which they shall continue, and to forbid their removal except for cause in the meantime. For it is quite evident that one who holds his office only during the pleasure of another cannot be depended upon to maintain an attitude of independence against the latter's will.

The fundamental necessity of maintaining each of the three general departments of government entirely free from the control or coercive influence, direct or indirect, of either of the others, has often been stressed and is hardly open to serious question. So much is implied in the very fact of the separation of the powers of these departments by the Constitution, and in the rule which recognizes their

essential co-equality. The sound application of a principle that makes one master in his own house precludes him from imposing his control in the house of another who is master there....

The function of the judge of compensation claims is purely judicial. He conducts due process hearings and decides whether to order one person to pay money to another person or not to do so. His decision is reviewed by the First District Court of Appeal. That is to say, it is subject to supervision by the judicial branch of the government. §440.25, Fla. Stat., and §440.271, Fla. Stat. His decisions also are enforceable by the judicial branch of the government in the circuit court by rule nisi. §440.24, Fla. Stat.

Historical Reasons

The Judge of Compensation Claims is the lineal descendant of the judge and jury prior to 1911. People see that 1935 date in connection with the enactment of the Workers' Compensation Law in Florida and mistakenly associate it with New Deal legislation establishing a mere statutory entitlement. That is not the case.

At common law, the employer had the duty to provide a safe place to work to his employees. For the breach of that duty, the employee could sue for common law damages and have a jury trial. However, to foster the industrial revolution, the courts created what were called the common law defenses. Contributory negligence applied to all negligence cases, as did assumption of risk, but assumption of risk had particular applications to the employment relationship. If that were not enough, the fellow servant rule applied to the employment relationship only. The first inroads were the Jones Act for seamen and employers' liability acts, like F.E.L.A., for railroad workers, which eliminated assumption of risk and fellow servant rule as defenses and established comparative negligence, which is now used for all negligence cases. Florida has had an employers' liability act of very limited application since 1913, called the

Hazardous Occupations Act. Ch. 769, Fla. Stat. It has been superseded by the Florida Workers' Compensation Law.

As employers' liability acts were of limited applicability, the first workers' compensation law was enacted in New York state in 1910. However, the New York Court of Appeals (the highest appellate court in that state) held that the law was unconstitutional in *Ives v. South Buffalo Ry. Co.*, 94 N.E. 431; 201 N.Y. 271 (1911). The court held that the statute violated due process provisions of the state and federal constitutions for the state to impose liability without fault upon employers for the payment of benefits to their employees. Thus, the states could not have workers' compensation laws.³

The next year, 1911, an historical event took place which changed everything: the Triangle Shirtwaist Company fire in which many women were killed at work. The nation went into shock. It was the 9-11 of disaster of the day. The women in the needle trades refused to work and brought the American clothing industry to a halt. Seeing that the women would not work any longer, without some protection, the New York Assembly met and re-passed the workers' compensation law pursuant to constitutional amendment. Thereafter, the New York Court of Appeals changed its decision and held that workers' compensation laws were constitutional. *Jensen v. Southern Pac. Co.*, 109 N.E. 600; 215 N.Y. 514 (1915). In 1917, the Supreme Court of the United States approved of workers' compensation laws as well in *New York Central R. R. Co. v. White*, 243 U. S. 188, 37 S. Ct. 247, 61 L. Ed. 667 (1917). By 1920, virtually all of the states had workers' compensation laws, except Florida and Mississippi. Florida's was enacted in 1935, by copying the New York act and Mississippi in 1948.

³ *The federal government had enacted the Longshoremen's and Harbor Workers' Compensation Act in 1906 for a federal jurisdiction.*

An employee's entitlement to workers' compensation is a vested property right.
Florida Forest and Park Service v. Strickland, 18 So. 2d 251 (Fla. 1944).

This constitutional compromise that was made before World War I traded the employees' right to full damages based on the fault of his employer who had numerous defenses, and the right to trial by jury, for a no-fault system by which the employer provided medical care and limited indemnity payments on a pay as you go basis. When there were disputes, these would be tried before an administrative official exercising quasi-judicial powers. He would have to do what a jury does not have to do, by

making findings of fact to explain why he had decided the case the way he did. It was this constitutional compromise which made workers' compensation laws possible.

The position of the Judge of Compensation Claims is quite unique. His jurisdiction has been carved out of the circuit court. However, because of the access to courts provision in the Florida Constitution, as well as general principles of due process of law, his decision and the procedure and process by which that decision was arrived at, are entirely within the supervision of the judicial branch of the government. It is the judicial branch of the government that is ultimately responsible for the correctness of the decisions of the Judge of Compensation Claims. Therefore, the judicial branch of the government must have some say in regard to the process and procedure by which the litigants proceed before the judge.

A Practical Consideration

In *Steele v. A.D.H. Building Contractors, Inc.*, 174 So. 2d 16 (Fla. 1965), the Supreme Court of Florida decided long ago that orders of the Judge of Compensation Claims approving of joint stipulations are to be encouraged and had the same force and effect as orders of adjudication in contested cases.

Stipulations have long been approved and encouraged as means of expediting the resolution of controversies. *Duncombe v. Smith*, 139 Fla. 497, 190 So. 796. And there is as much reason to utilize them in cases arising under Workmen's Compensation Law as in other disputes, if not more, inasmuch as they affect directly the wages of the working man and delay consequently deprives him and his family immediately of the meat and bread to sustain them.

Steele v. A.D.H. Building Contractors, Inc., supra, at 19.

In the Florida Rules of Workers' Compensation Procedure adopted by this court, we find Fla. R. Work. Comp. P. 4.142, entitled "Agreements or Stipulations". It provides:

(a) Scope. Agreements or stipulations not involving settlements under section 440.20(11), Florida statutes, shall comply with this rule.

(b) Generally. No agreement or stipulation shall be enforceable unless it is:

(1) in writing and signed by the parties or their attorney; or

(2) dictated on the record; or

(3) in the case of a settlement agreement resulting from a conference under section 440.191(2)(c), Florida Statutes, approved in writing by a judge.

(c) Form. All agreements or stipulations submitted to a judge for approval and entry of an order shall include a detailed statement of the issues in dispute and how the issues were resolved, including a description of the benefits provided.

(d) Reliance. Any agreement or stipulation under this rule may be expressly relied on by the judge in any proceeding, unless a party seeks to be relieved of the agreement or stipulation for good cause shown.

(e) Abrogation. The judge may abrogate any stipulation that appears to be manifestly contrary to the evidence on due notice to the parties; however, the judge need not inquire beyond the stipulation or agreement.

When DOAH adopted its rules on February 23, 2003, stating that its rules replaced the Florida Rules of Workers' Compensation Procedure adopted by the Supreme Court of Florida, DOAH did not adopt a comparable or equivalent rule. This has resulted in there being a division of practice among the judges of compensation claims. There are those who still follow the Florida Rules of Workers' Compensation Procedure adopted by this Court and sign joint stipulations for the resolution of issues (called straight stips) and mediation agreements and the like, thereby making them enforceable orders subject to the 20% penalty for failure to pay under §440.20(7), Fla. Stat., and subject to rule nisi under §440.24, Fla. Stat. On the other hand, there are other judges of compensation claims who will not sign a straight stipulation or order the parties to comply with one. Nor will they approve of any mediation agreement or order the parties to comply with such agreement. Their view, which is that of DOAH, is that agreements to resolve controversies by stipulated statements of fact or agreements to do certain things or not to do certain things⁴ are simply contracts.

Under DOAH's view, if either party believes that the other party has not abided by a joint stipulation, the remedy is a suit for breach of contract in the circuit court if the amount in controversy is sufficient, or in the county court, if it is less. This is not an unintended consequence or an inadvertent blunder. It is, however, an imposition upon the resources of the judicial branch of the government by the executive branch of the government. It is a procedural "non-rule" that gets the workers' compensation case off the desk of the executive and off the budget of the executive and onto the desk of the circuit judge and onto the budget of the judicial branch.

The present proposed amendments to the Rules of Workers' Compensation Procedure and DOAH's objection to jurisdiction is not a theoretical exercise in separation of powers. As a

⁴ Other than complete settlement of the case.

practical consideration, the potential and the already existing real problem of the executive encroaching upon the judicial branch is quite real. The only way to avoid this potential conflict is for the judicial branch to continue to supervise the practice and procedure of the litigants before the Judge of Compensation Claims in furtherance of its review function and its enforcement function of

his decisions. At the same time, DOAH does have authority under the statute to adopt APA rules of judicial administration. Furthermore, the Workers' Compensation Uniform Practices and Procedures remain in force by operation of §20.06, Fla. Stat.

Respectfully submitted,

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Certificate of Service

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