

April 2010  
WC volume 2 number 1



## The Continuance and Docketing Processes: Changes for the Better?

by Mark A. Shaw and Garrett M. Cravener

The word “Kaizen” is Japanese for “change for the better.” The Kaizen philosophy is designed to improve standardized processes and eliminate waste. Kaizen was implemented by many Japanese firms after World War II, and now has been adopted by businesses and entities across the world, including the Ohio Bureau of Workers’ Compensation (BWC) and Industrial Commission of Ohio.

The Industrial Commission held a Kaizen event from January 25-29, in response to a recurring theme of concerns and complaints about continuance and docketing processes at the Industrial Commission. The Industrial Commission organized the event to accommodate the concerns and complaints of all interested parties. Members of the Industrial Commission Kaizen event included individuals from the BWC, Industrial Commission and outside third parties, which included employer representatives, injured worker representatives and third party administrators. To address these concerns and complaints, the Kaizen event was specifically designed to meet three goals:

1. Reduce or eliminate docketing challenges;
2. Develop a consistent statewide continuance evaluation process; and
3. Reduce unnecessary continuances.

### Offices

#### **Toledo Office:**

One Seagate, 24th Floor  
P.O. Box 10032  
Toledo, Ohio 43699-0032  
Telephone: 419-241-6000  
Fax: 419-247-1777

#### **Columbus Office:**

100 E. Broad Street, Suite 600  
Columbus, Ohio 43215  
Telephone: 614-280-1770  
Fax: 614-280-1777


#### **Findlay Office:**

725 S. Main Street  
Findlay, Ohio 45840  
Telephone: 419-424-5847  
Fax: 419-424-9860

#### **Novi Office:**

28175 Haggerty Road  
Novi, Michigan 48377  
Telephone: 248-994-7757  
Fax: 248-994-7758

[www.eastmansmith.com](http://www.eastmansmith.com)



To reduce docketing challenges and the need for continuances, changes have been proposed for the Automated Docketing System (ADS). As currently configured, the ADS has a one-day pool for determining how hearings are scheduled. For instance, because of the one-day pool, the ADS cannot tell that a representative is scheduled for an out-of-town hearing in Lima on two separate days of the same week, even though the representative has the capacity to handle both hearings on the same day. In an attempt to reduce these kinds of inefficiencies, the ADS pool will now be expanded to three days.

The ADS also will adopt concurrent values to help reduce the need for a continuance. A concurrent value shows a representative's capacity to cover a hearing. For example, by entering a concurrent value of "three," the ADS system will know that the representative has the capacity to cover three cities, or three hearings in different rooms, at the same time. Therefore, where the concurrent value is three, the ADS will not schedule hearings for this representative that are in four different cities on the same day. The concurrent value system is scheduled to be implemented May 2010.

Another significant change to the docketing process will be revisions to the hearing block policy. The number of hearing blocks will be increased by two days, for a total of 22 full day blocks, to allow representatives more time to attend continuing education events. Also, the partial-day block will be revived, where one full day block can be split up into two half-day partial blocks. Furthermore, a new partial city block will be permitted where a representative can block certain cities without using a full day block. Hearing block management will be done via a calendar on the Industrial Commission Online Network (ICON). However, to be effective, a hearing block will be required to be set at least 20 days prior to the hearing. The calendar is scheduled to be implemented May 2010.

The Kaizen event also led to the development of methods which are designed to reduce the significant number of continuances that are being granted. In 2009, approximately 170,000 hearings were conducted by the Industrial Commission. Out of these, approximately 40,000, or 24%, were continued. One large law firm in Northeast Ohio even was mentioned at the Kaizen event for having 40% of its hearings continued. The top five reasons in 2009 for the need of a continuance were the following:

1. The representative had a documented court or Industrial Commission conflict;
2. Due diligence was demonstrated in scheduling an independent medical examination;
3. A party recently has obtained counsel;
4. Scheduling conflict on the date of hearing; and
5. Demonstrated due diligence in obtaining medical documentation in preparation for the hearing.

The Industrial Commission has a lofty goal to reduce the number of overall continuances by 50%.

Currently, there is no uniform standard to determine whether a party requesting a continuance has met his or her "due diligence" requirement when attempting to schedule an independent medical examination or obtain other medical documentation. Consequently, there is a variation in granted continuances from region to region, with the most recent data showing a 12% variation. A proposal was made to define due diligence in order to create uniformity, and although no definition was created at the Kaizen event, the members agreed that the Industrial Commission will develop a non-exhaustive list of factors that will be considered when determining whether due diligence has been met.

According to Ohio Revised Code 4123.511, a district hearing must be held within 45 days from referral of the claim by the BWC to the Industrial Commission. Members of the Kaizen event realized that the 45 day requirement was too rigid to accommodate all circumstances. Therefore, a proposal was made to permit the parties to waive the 45 day requirement by mutual consent. The Industrial Commission intends to implement a mechanism on ICON by November 2010, that allows the parties to submit the waiver online.

Application of the proposed changes raises some concerns, and tweaks of these proposals are likely inevitable. For instance, permitting a waiver of the 45 day statutory hearing requirement by mutual consent may require a legislative amendment before it may be considered legally effective. Furthermore, requiring 20 days advance notice to set a hearing block may be impractical for representatives that have non-workers' compensation conflicts which arise within 20 days. Other practical considerations concern the implementation of the new hearing block policy. Which block takes precedent when opposing representatives have conflicting blocks? Also, should it be permissible for a representative to implement his or her blocking rights in such a manner that dictates when the opposing representative's hearings will be scheduled? None of these concerns were specifically addressed at the Kaizen event. However, the Industrial Commission was clear to point out that the greater discretion afforded by the proposed changes may be retracted if they are not applied in a responsible manner. Despite these concerns, the Kaizen event illustrates the good faith efforts made by the Industrial Commission to improve the continuance and docketing processes, and hopefully, the proposed changes will be a step in the right direction. Time will tell.



---

*Mr. Shaw is a member of the Firm who represents employers in workers' compensation, litigation and employment matters.*



*Mr. Cravener is an associate in the Labor & Employment Practice Group. He is a recent graduate of The Ohio State University law school.*

*Mr. Shaw or Mr. Cravener can be reached at our Columbus office (614-280-1770).*

#### **Disclaimer**

The articles in this newsletter have been prepared by Eastman & Smith Ltd. for informational purposes only and should not be considered legal advice. This information is not intended to create, and receipt of it does not constitute, an attorney/client relationship.