TENNESSEE BUREAU OF WORKERS' COMPENSATION
IN THE COURT OF WORKERS' COMPENSATION CLAIMS

PRACTICES AND PROCEDURES
TABLE OF CONTENTS

Rule 1. Rules of Court and Conduct ***Page 4***

Section 1.01 Application 4

Section 1.02 Construction 4

Section 1.03 Conduct, Representation and Admission 4
Subsection A Space within the Bar 4
Subsection B Familiarity with Participants 4
Subsection C Approaching the Bench 4
Subsection D Objections 5
Subsection E Addressing Witnesses 5
Subsection F Notice of Appearance 5
Subsection G Attire 5
Subsection H Forbidden Items 5
Subsection I Courtroom Security 5
Subsection J Promptness for Court 6

Section 1.04 Contacting Judge 6

Rule 2. Setting Cases for Hearing and Continuances ***Page 6***

Section 2.01 Setting Cases 6
Subsection A Special Settings 6
Subsection B Appropriate Judge 6
Subsection C Length of Hearing 6
Subsection D Location of Hearings 6

Section 2.02 Continuances 6
Subsection A Court Order Required 6
Subsection B Good Cause Required 6
Subsection C Conflicts 7

Section 2.03 Settlements 7

Rule 3. Court Reporters, Interpreters, and Audiovisual Equipment *Page 6*

Section 3.01 Court Reporters 6

Section 3.02 Interpreters 7

Section 3.03 Audiovisual Equipment 7
Subsection A Equipment 7
Subsection B Audio and Video Formats 8

Rule 4. Motions *Page 8*

Section 4.01 Dispositive Motions 8
Subsection A Dispositive Motions 8
Subsection B Response to Dispositive Motions 8

Section 4.02 Non-dispositive Motions 8
Subsection A All Other Motions 8
Subsection B Response to Non-dispositive Motions 8

Section 4.03 Recusal of Judge 9
Subsection A Motion 9
Subsection B Time 9
Subsection C Appeal 9

Section 4.04 Orders from Motion Hearings 9

Section 4.05 Motions to Alter or Amend an Order of a Judgment 9

Rule 5. Affidavits *Page 9*

Section 5.01 Submission of Affidavits 9

Section 5.02 Content 10

Rule 6. Briefs *Page 10*

Section 6.01 Submission of Pre-hearing Briefs 10

Section 6.02 Submission of Post-hearing Briefs 10

Section 6.03 Requirements 10

Rule 7. Hearings *Page 10*

Section 7.01 Submission of Evidence 10
Subsection A Medical Records 11

Subsection B Table of Contents 11
Subsection C Pre-hearing Statements 11

Section 7.02 Expedited Hearings 11
Subsection A Evidence Considered 12
Subsection B Evidentiary Hearings 12

Section 7.03 Compensation Hearings 13
Subsection A Evidence Considered 13
Subsection B Evidentiary Hearings 13

Rule 8. Orders ***Page 13***

Section 8.01 Preparation and Submission 13

Section 8.02 Content 14

Section 8.03 Approval 14

Section 8.04 Entry 14

Section 8.05 Parties' Signatures on Orders 14

Rule 9. Settlement Approvals ***Page 14***

Section 9.01 Required Documents 14

Section 9.02 Required Supporting Documentation 15

Section 9.03 Approvals by Affidavit 15

Section 9.04 Settlement Orders 15

Section 9.05 Venue 15

Rule 10. Court Records ***Page 15***

Section 10.01 Access to Court Records and Documents 15

Section 10.02 Disposition of Exhibits/Depositions 16

TENNESSEE BUREAU OF WORKERS' COMPENSATION
IN THE COURT OF WORKERS' COMPENSATION CLAIMS

IN RE: PRACTICES AND PROCEDURES

For the express purpose of establishing uniform practices and procedures before the Court of Workers' Compensation Claims, the Court adopts the following set of practices and procedures:

Rule 1. Rules of Court and Conduct

1.01 Application

These local procedures became effective as of July 1, 2014, and as amended since that date. These procedures govern practice in the Court of Workers' Compensation Claims and apply to all persons/entities that appear before the Court, regardless of capacity (e.g. attorneys, parties, witnesses, etc.). The Tennessee Rules of Civil Procedure and the Tennessee Compilation Rules and Regulations, Chapter 0800-02-21 et seq., shall control in the event of any conflict between them and these procedures. Any reference to "Judge" shall include "Workers' Compensation Judge."

1.02 Construction

These procedures shall be construed to secure a just and speedy determination of all matters. A Judge may suspend any of these procedures whenever justice requires.

1.03 Conduct, Representation and Admission

A. Space within the Bar. The space between the bench and counsel table in the courtroom is reserved for parties, attorneys, and court officials. Spectators and prospective witnesses shall be seated in the general seating area. The presence of infants and small children in the courtroom is discouraged.

B. Familiarity with Participants. During the hearing, attorneys shall not exhibit familiarity with the witnesses, opposing counsel, court officials, or Judge. The use of first names shall be avoided.

C. Approaching the Bench. Attorneys shall not approach the bench without Court approval. Attorneys shall not lean on the bench nor appear to engage the Court in conversation in a confidential manner.

D. Objections. Attorneys shall not interrupt the Judge or opposing counsel until the statement being made is fully completed, except when absolutely necessary to protect a client's rights on the record, and should respectfully await the completion of the statement or opinion before pointing out objectionable matter. When objection is made to a question asked by an attorney, the attorney should refrain from asking the witness another question until the Judge has had an opportunity to rule upon the objection. The objecting attorney shall state the legal grounds without argument or discussion except by leave of Court.

E. Addressing Witnesses. Attorneys and self-represented parties shall stand while examining witnesses or otherwise addressing the Court. However, exception may be made in the Court's discretion. When attorneys are examining witnesses or addressing the Court, they shall not approach the witness without the Court's permission.

F. Notice of Appearance. Only an attorney who has entered an appearance in a case will be counsel of record.

G. Attire. All male attorneys are required to wear jackets and ties. Female attorneys are required to wear appropriate clothing during the presentation of a case. Witnesses and spectators must wear appropriate clothing. Hats, shorts, swimsuits, leotards, low-cut or open shirts or blouses, bare feet, or other inappropriate attire are not permitted in the courtroom.

H. Forbidden Items. There shall be no tobacco products in the courtroom or at the taking of a deposition. There shall be no food, beverage, or gum in the courtroom. However, water is permitted at counsel table. Cellphones and other electronic devices shall be silenced while in the courtroom. The use of cellphones is prohibited while in the courtroom.

I. Courtroom Security. In order to ensure and maintain proper security for the protection of government property and safety of the Judge, courtroom personnel, attorneys, and all persons in attendance, whether as a party, witness, or spectator, no person shall bring firearms, knives or any other weapon or explosive device into the facility in which judicial procedures are being conducted. Only authorized courtroom personnel shall wear/carry firearms in the courtroom while Court is in session.

J. Promptness for Court. In order to ensure the Judge's docket runs efficiently, the parties, their counsel, their representatives, and all other persons appearing before the Judge shall plan accordingly to ensure their prompt arrival for all scheduled hearings. If an emergency or extraordinary circumstance occurs, the parties, their counsel, their representatives, and all other persons shall contact the Judge's Assistant, Staff Attorney, or Court Clerk immediately to report the anticipated tardiness. Failure to appear or call at the designated time may result in a determination of the issues without a party's further participation. Repeated offenses may result in referral of the party or their counsel by the Judge to the Penalty Unit for investigation and possible assessment of penalties pursuant to Tennessee Code Annotated section 50-6-118.

1.04 Contacting the Judge

Neither counsel nor a party to a pending action shall contact the Judge before whom the matter is pending unless there is an emergency, except by letter or verbally with other counsel of record or party present. A copy of all such letters or communications shall be sent to all counsel of record or party and a copy sent to the Court Clerk.

Rule 2. Setting Cases for Hearing and Continuances

2.01 Setting Cases

A. Special Settings. Special settings may be requested of a Judge. However, only a Judge can grant a special setting.

B. Appropriate Judge. Once a case is assigned to the Judge, matters dealing with that case must be brought before that Judge.

C. Length of Hearing. The attorneys shall advise the Court Clerk, the Judge's Assistant, or the Judge, as soon as practicable, if the case set for hearing is reasonably anticipated to require more than four hours for the hearing.

D. Location of Hearings. Hearings may be held at locations other than where the Judge is assigned. However, only a Judge may grant approval to hold the hearing at a location other than where the Judge is assigned.

2.02 Continuances

A. Court Order Required. Cases set for Expedited or Compensation Hearing may be continued only by Court order.

B. Good Cause Required. Absent a showing of good cause as determined by the Judge, the date of the Expedited Hearing or Compensation Hearing shall not be modified. Good cause shall not include absence of witnesses unless subpoenaed in accordance with Rule 0800-02-021.

C. Conflicts. In the event attorneys are notified of a hearing setting on a date when they have a conflict caused by another Court's previous setting, such attorney shall immediately notify the Judge and other parties and prepare the order of continuance.

2.03 Settlements

If the parties reach a settlement of all issues prior to a scheduled hearing, the parties shall immediately give notice to the Court Clerk and the Judge's Assistant or Staff Attorney.

Rule 3. Court Reporters, Interpreters, and Audiovisual Equipment

3.01 Court Reporters

It is the responsibility of the parties or their counsel to arrange for court reporters. Proceedings shall not be postponed or delayed because of a court reporter's absence or tardiness.

3.02 Interpreters

It is the responsibility of the parties or their counsel to arrange for Court-approved interpreters. The interpreters shall be either a (1) state-certified court interpreter or (2) state-registered court interpreter. Interpreters shall not be counsel for either party or a family member of either party. Interpreters shall interpret only the question and/or statement tendered to the party and/or witness, without additional discussion or explanation offered by the interpreter personally. Interpreters shall interpret only one question and/or statement at a time and shall immediately interpret the response of the party and/or witness.

3.03 Audiovisual Equipment

A. Equipment. It is the responsibility of the parties or their counsel to provide for equipment necessary to operate any audiovisual to be used during the hearing. Hearings shall not be postponed or delayed because of a party's failure to provide equipment necessary for use at the hearing. All equipment should be wireless to avoid posing a trip hazard. All equipment requiring set-up or installation shall be set up or installed before the Court commences the proceeding. All equipment takedown or dismantling shall take place during recess or after the Court has adjourned.

B. Audio and Video Formats. It is the responsibility of the parties or their counsel to provide any audio and video recordings intended to be introduced into evidence in the proper format. Permissible audio formats include ".wav," and ".mp2." Permissible video formats include "wmv," ".asf," and ".avi." Hearings shall not be postponed or delayed because of a party's failure to provide the proper format for introduction of the audio and/or video recording at the hearing.

Rule 4. Motions

4.01 Dispositive Motions

A. Dispositive Motions. All motions potentially dispositive of any issue in a case shall be scheduled for hearing by the party or attorney filing the motion. The moving party shall provide any non-moving self-represented party with a copy of the rule or statute upon which the dispositive motion is based and shall further indicate any deadline and/or requirement to respond. Dispositive motions shall be set on the next motion day following the thirty-calendar-day deadline to respond, or as soon thereafter as is practicable, but no later than as set forth in the scheduling order absent Court order. Failure to obtain a hearing in a timely manner may be construed by the Court as an abandonment of the motion and the Court may refuse to consider it.

B. Response to Dispositive Motions. If a dispositive motion is opposed, a response to the motion must be filed and served on all parties or their counsel, in accordance with any applicable rule or statute, or, if no deadline is mandated by other rule or statute, then on or before thirty calendar days after the filing of the dispositive motion. The response shall be in writing and shall state with particularity the grounds for the opposition. If no opposition is filed, the dispositive motion will be considered unopposed.

4.02 Non-dispositive Motions

A. All Other Motions. All non-dispositive motions shall be decided on the written materials filed with the non-dispositive motion and/or response in opposition to the non-dispositive motion. The Judge shall have the discretion to set the non-dispositive motion for hearing if the Judge determines that argument is needed to resolve the dispute.

B. Response to Non-dispositive Motions. If a non-dispositive motion is opposed, a response to the non-dispositive motion must be filed and served on all parties or their counsel, in accordance with any applicable rule or statute, or, if no deadline is mandated by other rule or statute, then on or before five business days after the filing of the non-dispositive motion. The response shall be in writing and shall state with particularity the grounds for the opposition. If no opposition is filed, the motion will be considered unopposed.

4.03 Recusal of Judge

A. Motion. Any party seeking disqualification, recusal, or a determination of constitutional incompetence or statutory incompetence of a Judge shall do so by a timely-filed written motion. The motion shall be supported by an affidavit under oath or a declaration under penalty of perjury on personal knowledge and by other appropriate materials. The motion shall state, with specificity, all factual and legal grounds supporting disqualification of the Judge and shall affirmatively state that it is not being presented for improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

B. Time. Motions for recusal of a Judge shall be made so as not to delay the Expedited Hearing and/or Compensation Hearing. While the motion is pending, the Judge whose disqualification is sought shall make no further orders and take no further action on the case, except for good cause stated in the order in which such action is taken.

C. Appeal. If the Judge enters an order denying the motion for disqualification or recusal, the Court's ruling may be appealed in accordance with applicable law.

4.04 Orders from Motion Hearings

The Court will prepare and issue an order reflecting the decision of the Judge assigned to the case unless otherwise ordered.

4.05 Motions to Alter or Amend an Order or a Judgment

In any motion to alter or amend an order or judgment, a notice of hearing date shall accompany the motion. The hearing date will be provided by the Court Clerk, the Judge's Assistant or Staff Attorney upon request of the moving party.

Rule 5. Affidavits

5.01 Submission of Affidavits with Request for Expedited Hearing

Pursuant to Rule 0800-02-21-.14(1)(a), all motions concerning the provision of temporary disability or medical benefits on an expedited basis and requests for expedited hearing must be accompanied by affidavits and other evidence demonstrating that the moving party is entitled to the benefits or relief sought. Declarations made under penalty of perjury pursuant to Tennessee Rules of Civil Procedure Rule 72 are acceptable. Affidavits or declarations shall not be admissible at the Compensation Hearing.

5.02 Content

The affidavit or declaration shall set forth a written, sworn statement of facts demonstrating that the moving party is entitled to the benefits or relief sought. The affidavit or declaration shall be voluntarily made by an affiant, under an oath or affirmation administered by a person authorized to do so by law or in compliance with Rule 72 of the Tennessee Rules of Civil Procedure. The execution of an affidavit must be witnessed as to the authenticity of the affiant's signature by the taker of the oath, who must provide a written acknowledgment of the authenticity of the affiant's signature. Affidavits that do not meet the requirements of a sworn statement or declarations that do not meet the requirements of Rule 72 shall not be introduced as evidence and will not be considered by the Judge.

Rule 6. Briefs

6.01 Submission of Pre-hearing Briefs

The use of pre-hearing briefs for Expedited Hearings and Compensation Hearings is encouraged. Unless the Scheduling Order provides otherwise, any party who intends to submit a pre-hearing brief shall file and serve the brief on opposing counsel and/or parties at least ten business days prior to the scheduled hearing.

6.02 Submission of Post-hearing Briefs

The use of post-hearing briefs for Expedited Hearings and Compensation Hearings is permitted only in extraordinary circumstances and with approval of the Judge.

6.03 Requirements

Pre-hearing briefs should contain a recitation of the facts expected to be proven and a statement of the law (with appropriate citations) applicable to the facts. Any pre-hearing brief that refers to a transcript or deposition shall specify the relevant page(s) of the transcript or deposition and attach those pages. Any pre-hearing brief that cites an unpublished or foreign case shall attach a copy of the case or the Court may disregard the case. A represented party shall provide a self-represented party with a copy of any case or statute cited in its brief.

Rule 7. Hearings

7.01 Submission of Evidence

All evidence to be considered by the Court during the Expedited Hearing or Compensation Hearing shall be submitted in accordance with the applicable Rules and Regulations in 0800-02-21. Absent extraordinary circumstances and approval of the Judge, evidence may not be considered if submitted after the expiration of the applicable rules and regulations.

A. Medical Records. Pursuant to Rule 0800-02-21-.16(6), all medical records designated by the parties to be presented as evidence at a hearing shall be filed with the Bureau no later than ten business days before the scheduled hearing date. All medical records exceeding ten pages must be accompanied by a chronological table of contents identifying the medical provider, date, and numbered as in the table of contents.

B. Table of Contents. All evidence submitted and exceeding ten pages must contain a table of contents identifying the document, date and each page numbered in sequential order.

C. Pre-hearing Statements. No later than ten business days before the date of a scheduled Compensation Hearing or as otherwise directed by the Judge, each party shall file, either separately or jointly, a pre-hearing statement on a form provided by the Bureau.

7.02 Expedited Hearings

Pursuant to Rule 0800-02-21-.14, the Court will conduct an Expedited Hearing regarding the provision of temporary disability and/or medical benefits based on the record upon request of the parties, or by convening an evidentiary hearing. The Judge shall have the discretion to enter a decision on the record upon determining that no additional information is needed to determine whether the Employee is likely to prevail at a hearing on the merits of the claim. The Court will make rulings in all Expedited Hearings upon witness testimony, affidavits, declarations, depositions, and any other evidence timely filed with the Court Clerk.

A. Evidence Considered. All motions concerning the provision of temporary disability or medical benefits on an expedited basis and requests for expedited hearing must be accompanied by affidavits or declarations and other evidence demonstrating that the moving party is entitled to the benefits or relief sought. The party requesting a hearing must list any witnesses it intends to call on the request for expedited hearing form. Affidavits and other evidence filed with the mediator prior to the request for expedited hearing do not need to be resubmitted. If the opposing party contests the motion for provision of temporary disability or medical benefits or the request for expedited hearing, immediately upon receiving the request for expedited hearing, but no later than ten business days before the scheduled hearing, the opposing party shall file a response and attach affidavits, declarations, or other evidence demonstrating that the moving party is not entitled to the benefits or relief sought and shall list any witnesses it intends to introduce at the expedited hearing. The moving party shall be entitled to file a reply to the opposing party's response, but such reply must be filed no later than five business days after the opposing party's response is filed with the Court Clerk.

B. Evidentiary Hearings. Evidentiary Hearings will convene in the courtroom at the local office of the assigned Judge. The Judge will not convene an evidentiary hearing by telephone or take telephonic testimony unless special circumstances make the personal appearance of a party or witness impossible or unduly burdensome. Any party seeking permission to attend a hearing by telephone or present witness testimony by telephone must file a motion requesting permission from the Judge no later than ten business days prior to the hearing date. The party bringing the motion must contact the Court Clerk, Judge's Assistant, or Staff Attorney and request a hearing date and the Judge's conference line information before filing the motion. The motion shall include a notice of hearing setting forth the date and time of the hearing and specifying the conference call-in number.

7.03 Compensation Hearings

Pursuant to Rule 0800-02-21-.18, the Court will conduct a Compensation Hearing based on a review of the file by convening an evidentiary hearing. Pursuant to Rule 0800-02-21-.14(2), the parties may request that the Judge issue a Compensation Hearing Order based on the Judge's review of the written materials and without the benefit of a hearing. The Judge will make a determination whether an on-the-record determination is appropriate under the circumstances and may decline to issue a decision on-the-record and order the parties to appear for an evidentiary hearing. The Court will make rulings in all Compensation Hearings upon witness testimony, expert depositions, and any other evidence timely filed and submitted in accordance with the *Tennessee Compilation Rules and Regulations* and these Practices and Procedures. Unless permitted by statute or other regulation, neither affidavits nor declarations will be admissible at any Compensation Hearing. Opening statements and closing arguments will be permitted upon approval of the Judge.

A. Evidence Considered. The parties, either jointly or separately, shall file a pre-hearing statement ten business days prior to the date of the Compensation Hearing. Concurrently with the submission of the pre-hearing statement, each party shall file a copy of each proposed exhibit, except for those intended for impeachment or rebuttal purposes, and a copy of the transcript of the deposition of any medical expert that the party intends to present at the hearing. Except for witness testimony and exhibits intended for impeachment or rebuttal purposes, no witness whose name and address was not included in the pre-hearing statement may testify at the hearing and no exhibit that was not included in the list of proposed exhibits in the pre-hearing statement may be presented at the hearing unless permission to present the testimony or exhibit is granted by the Judge.

B. Evidentiary Hearings. The Compensation Hearing shall be conducted at the time and place established in the Scheduling Order. Absent extraordinary circumstances, no motion for continuance shall be considered at the Compensation Hearing.

Rule 8. Orders

8.01 Preparation and Submission

The attorneys for the prevailing party shall prepare orders that reflect the Judge's rulings on any motion unless the Judge otherwise directs. All orders shall be submitted to the Judge for signature within ten business days of the Court's decision. Failure to comply with this provision may result in issuance of show-cause orders.

8.02 Content

All orders shall comply with Rule 58 of the Tennessee Rules of Civil Procedure and shall state in the first sentence the date of the Court's action. All orders shall state whether the case is set for hearing, and, if so, the date of the hearing and before whom set. All orders that reserve a matter for final disposition shall state with particularity what is being reserved. All orders of substitution of counsel shall not delay or prejudice the hearing of the case.

8.03 Approval

The party or attorney drafting the order shall serve it upon the opposing party or their counsel for approval within five business days of the Court's decision. The opposing party shall either (1) approve the order and submit it to the Judge for signature within five business days of its receipt or (2) submit an alternate order and the original order to opposing counsel and the Judge within five days of service of the original order, along with a separate document specifically stating the differences in the orders. Failure to submit an alternative order may result in the Judge signing the first order received.

8.04 Entry

An order is not "entered" until Rule 58 of the Tennessee Rules of Civil Procedure is satisfied. The Judge may sign a submitted order or may draft the Court's own order. The Court Clerk shall forward a copy of the entered order to counsel or self-represented parties if directed by the Court. If more than thirty calendar days have passed since the Judge took a motion or matter under advisement, or more than ten business days have passed since the parties submitted an order for the Judge's signature, the parties or their counsel shall call the Court Clerk, the Judge's Assistant or Staff Attorney to schedule a Status Conference with the Judge to address the issues resulting in delay of entry of the order.

8.05 Parties' Signatures on Orders

Counsel or self-represented parties shall secure the signatures of all parties or their counsel on orders before submitting them for approval. Any order submitted to the Judge involving a self-represented party must be signed by the self-represented party. An attorney may not sign a self-represented party's name "by permission."

Rule 9. Settlement Approvals

9.01 Required Documents

When the parties reach an agreement, the parties shall file a petition for benefit determination if the petition for benefit determination has not been filed as of the date of the settlement. Thereafter, and prior to the settlement approval hearing before the Court, the parties shall prepare and execute a settlement agreement, statistical data form, explanation of benefits, and order approving workers'

compensation settlement agreement. The required documents shall be prepared on a template approved by the Court.

9.02 Required Supporting Documentation

In addition to the required forms referenced in Procedure 9.01, the parties shall attach a copy of the impairment rating as an exhibit to the settlement agreement, except in doubtful and disputed cases settled according to Tennessee Code Annotated section 50-6-240(e). The parties shall further attach such other documents requested by the local Bureau office or assigned Judge. In cases where the Employee has agreed to close future medical benefits, the parties may attach a written statement from the treating physician stating that no further medical treatment is anticipated or documentation of the anticipated cost of future medical treatment.

9.03 Approvals by Affidavit

Absent extraordinary circumstances and good cause shown as determined by the Judge, settlement approvals by affidavit are prohibited. Good cause may include, but is not limited to, great distance from the Judge's office, such as for out-of-state parties, or significant adverse health of the parties or counsel for the parties. Settlement approvals by affidavit are expressly prohibited in all cases where future medical benefits will be closed, except in extraordinary circumstances or good cause shown.

9.04 Settlement Orders

Any proposed settlement order that has been denied by the Court shall not be presented for settlement before another Judge.

9.05 Venue

Absent special circumstances and good cause shown as determined by the Judge, settlements shall be presented to the Judge in the Bureau office closest to where the Employee resides.

Rule 10. Court Records

10.01 Access to Court Records and Documents

No person except the Judge, Court Clerk, or their agents shall be allowed access to the filing cabinets, vaults, electronic databases, or other repositories where Court records are kept. All papers, documents, and records pertaining to any and all court records shall at times be kept under strict control and custody of the Court Clerk. If it is necessary for any person other than the foregoing to examine any record, the Court Clerk will obtain that record for such person.

10.02 Disposition of Exhibits/Depositions

After final determination of any case, the parties shall have sixty days after entry of the final judgment to withdraw exhibits and depositions if no appeal is filed. The Court Clerk may destroy or dispose of exhibits or depositions not so withdrawn.

IT IS SO ORDERED.

ENTERED this the 13th day of March, 2017.

BY: _____
KENNETH M. SWITZER
Chief Judge