



**DIVISION OF WORKERS' COMPENSATION
COURT OF WORKERS' COMPENSATION CLAIMS**

**PRACTICE AND PROCEDURES
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**DIVISION OF WORKERS' COMPENSATION
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IN RE: PRACTICE AND PROCEDURES

For the express purpose of establishing uniform practice and procedures before the Court of Workers' Compensation Claims, the Court hereby adopts the following set of practice and procedure guidelines.

Rule 1. Rules of Court and Conduct

1.01 Application

These local procedures shall become effective July 1, 2014. These procedures govern practice in the Tennessee Court of Workers' Compensation Claims and apply to all persons/entities who appear before the Court, regardless of capacity (i.e. attorneys, parties, witnesses, etc.). The *Tennessee Rules of Civil Procedure* and the *Mediation and Hearing Procedures*, 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 pro se 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. 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. Cell phones and other electronic devices shall be silenced while in the courtroom. The use of cell phones 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, court 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.

1.04 Contacting 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 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 Clerk's office or the Judge, as soon as practicable, if the case set for hearing is reasonably anticipated to require more than four (4) 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 can 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.

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 interpreters, approved by the Court. 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 translate 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 translate the response of the party and/or witness.

3.03 Audiovisual 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.

Rule 4. Motions

4.01 Hearings

A. Dispositive Motions. All motions potentially dispositive of any issue in a case shall be scheduled for hearing by the attorney filing the motion at the next motion day after filing, or as soon thereafter as is practicable, but no later than 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 the same.

B. Opposition to Motions. If a motion is opposed, a response to the motion must be filed. 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. Responses to motions, including any opposing affidavits, depositions, or briefs or any matter being presented in opposition to the motion, must be filed and furnished to opposing counsel at least five (5) business days in advance of the hearing, except for responses to requests for expedited hearing, which are governed by Rule 0800-02-21-.14(1)(b), and responses to motions for summary judgment, which are governed by T.R.Civ.P. 56.

4.02 Recusal of Judge

Motions for recusal of a Judge shall be made so as not to delay hearing.

4.03 Orders from Motion Hearings

The prevailing party or designated attorney shall prepare and submit an order reflecting the decision in every motion hearing.

4.04 Non-suit where Motion for Summary Judgment Pending

In cases where a motion for summary judgment is pending, notice of a request to take a voluntary non-suit must be served on opposing counsel at least five (5) business days prior to the proposed hearing date.

4.05 Motions to Alter or Amend an Order of a Judgment

In any motion to alter or amend an order or judgment, a notice of hearing date shall accompany the motion.

Rule 5. Affidavits

5.01 Submission of Affidavits

Pursuant to Rule 0800-02-21-.14(1)(a), all motions for expedited hearing must be accompanied by affidavits. Affidavits shall not be admissible at the Compensation Hearing.

5.02 Content

The affidavit shall contain a written sworn statement of fact voluntarily made by an affiant under an oath or affirmation administered by a person authorized to do so by law. The execution of the 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 shall not be introduced as evidence and will not be considered by the Judge.

5.03 Time

Pursuant to Rule 0800-02-21-.14(1), if the moving party intends to rely upon affidavits, the moving party must file the affidavits at the time the request for expedited hearing is filed with the clerk. Affidavits filed with the mediator prior to the request for expedited hearing do not need to be resubmitted. If the opposing party contests the request for expedited hearing, immediately upon receiving the request for expedited hearing, but no later than five (5) business days after the motion is filed with the clerk, the opposing party shall file a response to the request for expedited hearing, attaching affidavits or other evidence demonstrating that the moving party is not entitled to the benefits or relief sought. The moving party shall be entitled to file a reply to the opposing party's response, but such reply must be filed within three (3) business days after the opposing party's response is filed with the clerk, but no later than forty-eight (48) hours prior to the hearing.

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 serve the brief on opposing counsel and/or parties at least ten (10) business days prior to the scheduled hearing and shall file the original with the Clerk in the local office where the assigned Judge is located.

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 assigned Judge.

6.03 Requirements

Briefs should contain a recitation of the facts expected to be proven and a statement of the law (with appropriate citations) applicable to such facts. Any prehearing brief that makes reference to a transcript or deposition shall specify the relevant page(s) of the transcript or deposition and attach those pages. Any prehearing brief that cites a foreign case shall attach a copy of the case or the Court may disregard the authority.

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 set forth in 0800-02-21. Absent extraordinary circumstances and approval of the assigned 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 scheduled hearing shall be filed with the Division no later than ten (10) business days before the scheduled hearing date. All medical records, exceeding ten (10) 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 (10) pages total, 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 (10) business days before the date of a scheduled Compensation Hearing or as otherwise directed by the assigned Judge, each party shall file, either separately or jointly, a prehearing statement on a form provided by the Division.

7.02 Expedited Hearings

Pursuant to Rule 0800-02-21-.14, the Court will make rulings in all Expedited Hearings upon affidavits, depositions, and any other evidence timely filed with the Clerk unless a party requests and obtains permission of the Court for a telephonic or in-person evidentiary hearing. All requests for expedited hearing must be accompanied by affidavits at the time the request for expedited hearing is filed. If the opposing party contests the request for expedited hearing, no later than five (5) business days after the request is filed, the opposing party shall file a response, attaching affidavits or other evidence demonstrating that the requesting party is not entitled to the benefits or relief sought. Affidavits filed with the mediator do not need to be refiled. Affidavits filed after the five (5) day response time will NOT be accepted into evidence in the on the record, telephonic, or in-person evidentiary hearings. Affidavits filed within the appropriate time frames set forth above will be accepted as proof in Expedited Hearings whether conducted via on the record, telephonic or in-person. The Mediation and Hearing Procedures governing expedited hearings in the Court of Workers' Compensation Claims specifically provide that they may be introduced. *See* Tenn. Comp. R. & Regs. 0800-02-21-.14(1)(a). The weight to be given the affidavit will be determined by the judge. Affidavits will not be accepted as

evidence at a Compensation Hearing other than for impeachment purposes. If the Court conducts a telephonic or in-person evidentiary hearing, the Court will make rulings upon the live testimony and evidence introduced during the evidentiary hearing in addition to the affidavits, depositions, and any other evidence timely filed with the Clerk.

7.03 Compensation Hearings

Pursuant to Rule 0800-02-21-.18, 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 Rules and these Local Procedures. Affidavits will not be admissible at any Compensation Hearing. Opening Statements and Closing Arguments will be permitted upon approval of the assigned Judge.

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 (10) 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 T.R.Civ.P. 58 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 some 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 attorney drafting the order shall serve it upon opposing counsel for approval within five (5) business days of the Court's decision. Opposing counsel shall either (1) approve the order and submit it to the Judge for signature within five (5) business days of the receipt thereof, or (2) submit an alternate order and the original order to opposing counsel and the Judge within five (5) 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 is satisfied. The Judge may sign a submitted order or may draft the Court's own order. The Clerk shall forward a copy of the entered order to counsel or pro se parties if directed by the Court.

8.05 Parties' Signatures on Orders.

Counsel or pro se parties shall be required by the Court to secure the signatures of parties on orders before submitting them for approval.

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 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 T.C.A. § 50-6-240(e). 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, regardless of 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.

Rule 10. Court Records

10.01 Access to Court Records and Documents

No person except the Judge, 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 Clerk of the Court. If it is necessary for any person other than the foregoing to examine any record, the Clerk will obtain that record for such person.

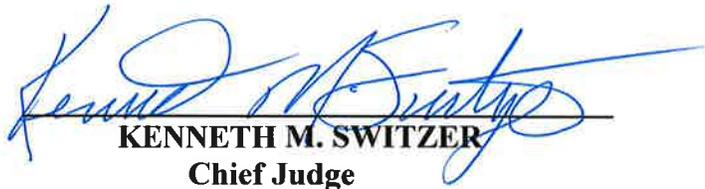
10.02 Disposition of Exhibits/Depositions

After final determination of any case, the parties shall have sixty (60) days after entry of the final judgment to withdraw exhibits and depositions if no appeal is filed. The Clerk may destroy or dispose of exhibits or depositions not so withdrawn.

IT IS SO ORDERED.

ENTERED this the 17th day of March, 2015.

BY:


KENNETH M. SWITZER
Chief Judge