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 Number: 08-19-18  
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# Notice of Rulemaking Hearing

*Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.*

<b>Agency/Board/Commission:</b>	Department of Labor and Workforce Development
<b>Division:</b>	Bureau of Workers' Compensation
<b>Contact Person:</b>	Troy Haley
<b>Address:</b>	220 French Landing Dr. 1-B, Nashville, TN 37243
<b>Phone:</b>	615-532-0179
<b>Email:</b>	troy.haley@tn.gov

*Any individuals with disabilities who wish to participate in these proceedings (to review these filings) and require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:*

<b>ADA Contact:</b>	Troy Haley
<b>Address:</b>	220 French Landing Dr. 1-B, Nashville, TN 37243
<b>Phone:</b>	615-532-0179
<b>Email:</b>	troy.haley@tn.gov

**Hearing Location(s)** (for additional locations, copy and paste table)

Address 1:	Tennessee Room		
Address 2:	220 French Landing Drive, 1-A, Nashville, TN 37243		
City:	Nashville, TN		
Zip:	37243		
Hearing Date :	10/30/18		
Hearing Time:	10:00 a.m.	<input checked="" type="checkbox"/> _X_ CST/CDT EST/EDT	

**Additional Hearing Information:**

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**Revision Type (check all that apply):**

- ☒ X Amendment  
☐ New  
☐ Repeal

**Rule(s)** (ALL chapters and rules contained in filing must be listed. If needed, copy and paste additional tables to accommodate more than one chapter. Please enter only **ONE** Rule Number/Rule Title per row.)

<b>Chapter Number</b>	<b>Chapter Title</b>
0800-02-21	Court of Workers' Compensation Claims and Alternative Dispute Resolution
<b>Rule Number</b>	<b>Rule Title</b>
0800-02-21-.01	Scope
0800-02-21-.02	Definitions
0800-02-21-.03	Computation of Time
0800-02-21-.04	Representation by Counsel
0800-02-21-.05	Foreign Attorneys
0800-02-21-.06	Fees
0800-02-21-.07	Forms
0800-02-21-.08	Service of Documents
0800-02-21-.09	Ombudsman Program
0800-02-21-.10	Alternative Dispute Resolution
0800-02-21-.11	Docketing of Cases, Setting Cases for Hearing, and Continuances
0800-02-21-.12	Courtroom Conduct
0800-02-21-.13	Court Reporters, Interpreters, and Audiovisual
0800-02-21-.14	Scheduling Hearing
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0800-02-21-.16	Medical Records
0800-02-21-.17	Discovery
0800-02-21-.18	Motions
0800-02-21-.19	Compliance with Orders
0800-02-21-.20	Briefs
0800-02-21-.21	Post-Discovery Alternative Dispute Resolution
0800-02-21-.22	Compensation Hearing
0800-02-21-.23	Settlement Approval
0800-02-21-.24	Voluntary Dismissal
0800-02-21-.25	Workers' Compensations Claims Against the State

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

#### Amended Rules

#### Chapter 0800-02-21 Court of Workers' Compensation Claims and Alternative Dispute Resolution

The present Rule 0800-02-21 Mediation and Hearing Procedures is being amended by deleting the prior rule and replacing it with the following:

#### 0800-02-21-.01 Scope

These rules govern the procedures for workers' compensation disputes before the court of workers' compensation claims and alternative dispute resolution. They are intended to provide an efficient, expedient, and fair resolution of workers' compensation disputes in accordance with the Workers' Compensation Law.

Authority: T.C.A. §§ 4-3-1409 and 50-6-101.

- (1) Appeals Judge. A judge of the workers' compensation appeals board.
- (2) Appeals Board. The workers' compensation appeals board.
- (3) Bureau. The Bureau of Workers' Compensation.
- (4) Catastrophic Injury. For the purposes of this chapter only, any of the following injuries is catastrophic:
  - (a) Spinal cord injury involving severe paralysis of an arm, leg, trunk, or any combination of these;
  - (b) Amputation of an arm, hand, foot, leg, or any combination of these involving the effective loss of use of that appendage;
  - (c) Severe brain or closed-head injury evidenced by:
    - (i) Severe sensory or motor disturbances;
    - (ii) Severe communication disturbances;
    - (iii) Severe complex integrated disturbances of cerebral function;
    - (iv) Severe disturbances of consciousness; or
    - (v) Severe episodic neurological disorders;
  - (d) Second- or third-degree burns to twenty-five percent (25%) or more of the whole person or third-degree burns to five percent (5%) or more of the face or hands;
  - (e) Total or industrial blindness; or
  - (f) Total loss of hearing.
- (5) Chief Judge. Supervises the judges and coordinates all activities in the court of workers' compensation claims.
- (6) Claim. An employee's request for benefits available under the Workers' Compensation Law.
- (7) Clerk. Unless otherwise provided, the clerk of the court of workers' compensation claims and any deputy clerk.
- (8) Compensation Hearing. A trial conducted to fully resolve all pending issues on the merits including but not limited to disability and/or medical benefits.
- (9) Compensation Order. An order by a judge that fully resolves all pending issues of the claim including but not limited to additional permanent disability benefits and/or additional medical

benefits. A judge may issue a compensation order based on a decision on the record.

- (10) Court. The court of workers' compensation claims.
- (11) Decision on the record. A decision by a judge based on a review of the written materials without an evidentiary hearing.
- (12) Dispute Certification Notice. The notice the mediator files with the clerk after alternative dispute resolution that identifies the issues for a judge's determination.
- (13) Electronic signature. A document submitted by electronic transmission signed or verified electronically in the manner approved by the bureau.
- (14) Expedited Hearing. A hearing conducted before a trial on the merits to determine temporary disability and/or medical benefits. A judge may issue an expedited hearing order based on a decision on the record.
- (15) Filed. For purposes of this chapter, a document is considered filed: (a) on the date and time received by the clerk if hand-delivered to any bureau office during normal business hours; (b) on the date posted to the clerk if sent by U.S. certified or registered mail, return receipt requested, or its equivalent; (c) on the date the document reaches the clerk if transmitted by first-class mail, facsimile, or by electronic transmission approved by the bureau; or (d) on the date and time filed in TNComp.
- (16) Interlocutory Order. Any order by a judge that does not dispose of the case in its entirety.
- (17) Judge or Workers' Compensation Judge. A judge of the court of workers' compensation claims.
- (18) Ombudsman. A bureau employee who assists any unrepresented party.
- (19) Ombudsman Attorney. A bureau attorney who provides limited legal advice to any unrepresented party.
- (20) Petition for Benefit Determination. A written request for the bureau to assist in resolution of disputed issues in a claim. Any party may file a petition for benefit determination on a form approved by the administrator at any time after a dispute arises in a claim.
- (21) Request for Expedited Hearing. A request filed with the clerk for a judge to issue an interlocutory order for temporary disability and/or medical benefits. Either party may file a request for expedited hearing after a dispute certification notice is filed.
- (22) Request for Scheduling Hearing. A request filed with the clerk for a judge to conduct a scheduling hearing and enter a scheduling order for efficient processing of the case. Either party may file a request for scheduling hearing after a dispute certification notice is filed.
- (23) Scheduling Hearing. A hearing where the judge considers efficient processing of the case and issues a scheduling order containing a discovery plan, including but not limited to dates for post-discovery alternative dispute resolution and the compensation hearing.

Authority: T.C.A. §§ 4-3-1409, 50-6-101, 50-6-233, and 50-6-239.

#### 0800-02-21-.03 Computation of Time

- (1) Unless otherwise noted, the time required for completing any actions in these rules is calculated as in Rule 6.01 of the Tennessee Rules of Civil Procedure.
- (2) Except for filing a petition for benefit determination under T.C.A. § 50-6-203 and a request for hearing under T.C.A. § 50-6-239(a), when an act is required to be done at or within a specified time, a judge may at any time:
  - (a) Extend the deadline if requested before expiration of the original deadline or before the deadline extended by a previous order; or
  - (b) Permit the act to be done late on motion made after the deadline has passed, if the failure to complete the act resulted from excusable neglect or good cause as determined by the judge.
- (3) Nothing in this section will be construed to allow any ex parte communication with a judge about any issue in the case that would be prohibited by T.C.A. § 4-5-304.

Authority: T.C.A. §§ 4-3-1409, 50-6-233, and 50-6-239.

#### 0800-02-21-.04 Representation by Counsel

- (1) At any hearing or alternative dispute resolution:
  - (a) Any party may be represented by a Tennessee-licensed attorney in good standing.
  - (b) Any party who is a natural person may represent himself or herself at any hearing or alternative dispute resolution.
  - (c) Any corporation or other artificial person may participate in alternative dispute resolution through a duly-authorized representative such as an officer, director or appropriate employee but must be represented by a licensed attorney in the court of workers' compensation claims and the workers' compensation appeals board.
- (2) Immediately after engaging in representation of a party, an attorney must file a notice of appearance. After a licensed attorney has appeared on behalf of a party, all documents will be served on the attorney. Instead of filing formal notice, an attorney's signing of any document filed with the clerk or the bureau will satisfy the notice of appearance requirement. Other attorneys from the same law firm may appear on behalf of the party without a notice of appearance.
- (3) Representation continues until the case concludes, including all appeals or until withdrawal from representation is approved by a judge. An attorney seeking to withdraw must file a motion with reasonable notice provided to the represented party. An affidavit from the attorney must accompany the motion and contain the client's last-known mailing address, email address, telephone number, and a declaration that the attorney notified the client of both the effects of the attorney's withdrawal from the case and of any deadlines and scheduled proceedings. The motion must be heard by convening a hearing, unless the judge determines that a hearing is unnecessary.
- (4) If a party is represented by an attorney, all documents filed with the bureau or clerk must be signed

by the attorney and include the attorney's mailing address, email address, and Tennessee board of professional responsibility number. If a party is unrepresented, the party must include his or her signature, mailing address, telephone number, and email address on the filing.

Authority: T.C.A. §§ 4-3-1409, 50-6-101, 50-6-233, and 50-6-239.

#### 0800-02-21-.05 Foreign Attorneys

The bureau may admit foreign attorneys to appear pro hac vice by application on a form approved by the administrator.

Authority: T.C.A. §§ 4-3-1409 and 50-6-101, 50-6-233.

#### 0800-02-21-.06 Fees

The employer must pay a filing fee of one hundred and fifty dollars (\$150) to the clerk at the time of a settlement approval or the conclusion of a case. A filing fee is assessed at all later settlement approvals or at the conclusion of every re-opening of the case. The filing fee will be submitted to the clerk before a settlement approval or within five (5) business days after the fee is assessed by a judge. Payment must be made in a form and manner approved by the administrator.

Authority: T.C.A. §§ 4-3-1409 and 50-6-101, 50-6-233.

#### 0800-02-21-.07 Forms

All documents filed with the bureau or clerk, including those filed electronically, must be the most recent version approved by the bureau, if a form or template is available.

Authority: T.C.A. §§ 4-3-1409, 50-6-101, 50-6-233, and 50-6-244.

#### 0800-02-21-.08 Service of Documents

Copies of all documents filed with the bureau or clerk must be served on all parties or their attorneys if represented. Service must occur either before filing with the bureau or clerk or within a reasonable time afterward. Service may be accomplished by hand delivery, mail or common carrier, facsimile, or electronic mail in PDF format (or other electronic means approved by the bureau). Unless otherwise required by the bureau, proof of service will be by certification of the sender on the document filed with the bureau. The certification must include the name of the person served, the date and manner of service, and the address where service occurred.

Authority: T.C.A. §§ 4-3-1409, 50-6-233, and 50-6-101.

#### 0800-02-21-.09 Ombudsman Program

- (1) The ombudsman program assists injured or disabled employees, persons claiming death benefits, employers, and other persons in protecting their rights, resolving disputes, and obtaining information. The ombudsman program is available only to those individuals or organizations who are not represented by legal counsel under T.C.A. § 50-6-216.

- (2) Any unrepresented person or organization seeking the services of an ombudsman must contact the bureau, and the bureau will assign an ombudsman if the person is qualified to receive services. The bureau retains sole authority to determine services the ombudsman will provide under T.C.A. § 50-6-216(a).
- (3) Any unrepresented party seeking the services of an ombudsman attorney must submit a request on a form approved by the administrator. The ombudsman attorney must provide services in compliance with T.C.A. § 50-6-216(e)(3) and Formal Ethics Opinion 2017-F-162.

Authority: T.C.A. §§ 4-3-1409, 50-6-101, 50-6-216, and 50-6-233

#### 0800-02-21-.10 Alternative Dispute Resolution

- (1) Resolution of a dispute for benefits begins by filing a petition for benefit determination with the bureau under T.C.A. § 50-6-203.
- (2) After a petition for benefit determination is filed, the parties must exchange any medical records they possess related to the claimed injury. Each party must continue to provide copies of any medical records received during the course of the claim within fourteen (14) days of receipt. The mediator or judge may refer any party that does not comply with this rule for the assessment of a civil penalty.
- (3) Within seven (7) business days after the request of the mediator or within fifteen (15) calendar days after a dispute certification notice is filed with the clerk, whichever is applicable, the employer must provide a wage statement on a form approved by the administrator detailing the employee's wages over the fifty-two (52) weeks before the injury. The form must be fully completed and signed by the employer or counsel. If the employee was employed for fewer than fifty-two (52) weeks, the employer must provide a wage statement detailing the employee's wages during the period of employment. If the mediator requests the wage statement, the employer must send the wage statement directly to the mediator. If the dispute certification notice is filed with the clerk, the employer must file the wage statement with the clerk. Under either circumstance, the employer must serve a copy of the wage statement on all parties. Any employer who does not file a wage statement within the timeframe in this paragraph may be assessed a civil penalty.
- (4) After a petition for benefit determination is filed, the case will be assigned to a mediator who will schedule alternative dispute resolution. The mediator may conduct alternative dispute resolution as is practical for the effective resolution of the issues, including by telephonic, electronic, or in-person interactions.
- (5) Alternative dispute resolution must be conducted in compliance with T.C.A. § 50-6-236.

Authority: T.C.A. §§ 4-3-1409, 50-6-101, 50-6-216, 50-6-233, and 50-6-236.

#### 0800-02-21-.11 Docketing of Cases, Setting Cases for Hearing, and Continuances

- (1) After a dispute certification notice is filed with the clerk, either party may file a request for expedited hearing or request for scheduling hearing with the clerk on a form approved by the administrator and serve a copy of the request on all parties or their counsel. If no request for hearing is filed within sixty (60) days after the dispute certification notice is filed, the clerk will set a show-cause hearing. The clerk will send notice of the hearing to the parties, indicating the docket number,

the date and time of the hearing, and the judge assigned to the case. The parties must appear to show cause why the case should not be dismissed.

- (2) Except in cases where an employee suffered a catastrophic injury or for similar reasons as determined by the bureau, all cases must be placed on the docket by the clerk in the order that the request for hearing is received. The clerk will assign a date for the hearing based on available dates provided by the parties whenever practicable.
- (3) The clerk will consolidate all requests for hearing related to a single dispute certification notice into a single setting on the docket. If two or more filings that should be consolidated are not, then the cases will be combined and assigned to the judge who received the assignment for the first request, unless otherwise directed by the chief judge. Consolidation may occur on the motion of a party or on a judge's own motion.
- (4) Special settings may be requested. Only a judge may grant a special setting.
- (5) Once a case is assigned to a judge, all matters dealing with that case must be brought before the assigned judge.
- (6) Trials and/or hearings may be held at locations other than the bureau office 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.
- (7) The parties or their attorneys must advise the judge's staff as soon as practicable if they anticipate a trial or hearing will last more than four (4) hours.
- (8) Expedited or compensation hearings may be continued only by an order from the judge. Absent good cause as determined by the judge, the date of the expedited hearing or compensation hearing will not be modified. Good cause does not include absence of witnesses unless subpoenaed in accordance with Rule 0800-02-21. In the event attorneys are notified of a hearing on a date when they have a conflict with another court's previous setting, the attorney must immediately notify the judge's staff and other parties to request a continuance.

Authority: T.C.A. §§ 4-3-1409 and 50-6-101, 50-6-233.

#### 0800-02-21-.12 Courtroom Conduct

- (1) The space between the bench and counsel table in the courtroom is reserved for parties, attorneys, and court officials. Spectators and witnesses must sit in the general seating area. The presence of infants and small children is discouraged.
- (2) During the hearing, attorneys and self-represented litigants may not exhibit familiarity with the witnesses, opposing counsel, court officials, or judge. The use of first names should be avoided.
- (3) Attorneys and self-represented litigants may not approach the bench or witnesses without the judge's approval.
- (4) Attorneys and self-represented litigants may not interrupt the judge or opposing counsel, except when necessary to protect a client's rights on the record. When an objection is made, the attorney



or self-represented litigant must state the legal ground for the objection. The parties must wait for the judge to rule on the objection before asking the witness any further questions.

- (5) Attorneys and self-represented litigants must stand while examining witnesses or addressing the judge. Exceptions are within the judge's discretion.
- (6) All attorneys, parties, witnesses, and spectators must wear appropriate clothing. Hats, shorts, low-cut or open shirts or blouses, bare feet, or other inappropriate attire are not permitted.
- (7) No food, beverage, tobacco product, or gum is allowed in the courtroom. Water is permitted at counsel table. Mobile phones and other electronic devices must be silenced while in the courtroom.
- (8) The possession of firearms, knives, or any other weapon or explosive device is prohibited in any facility where judicial proceedings are conducted. It is a Class E felony to carry a weapon into any building where a judicial proceeding is in progress under T.C.A. § 39-17-1306.
- (9) All parties, attorneys, and witnesses must ensure their prompt arrival for all hearings. In the event of an emergency, the parties or counsel must contact the judge's staff to report the anticipated tardiness. Repeated offenses may result in a referral for assessment of a civil penalty under T.C.A. § 50-6-118.
- (10) Neither counsel nor a party to a pending claim may contact the judge unless an emergency arises, except by letter or verbally with all counsel or parties present. A copy of all written communications must be sent to all counsel or parties and the clerk.

Authority: T.C.A. §§ 4-3-1409, 50-6-101, 50-6-216, 50-6-233, and 50-6-236.

#### 0800-02-21-.13 Court Reporters, Interpreters, and Audiovisual

- (1) All hearings are recorded for the judge's use. The parties may purchase an audio recording of the hearing from clerk for twenty-five dollars (\$25). The parties may have the audio recording transcribed by a certified court reporter at their own expense for an appeal.
- (2) The parties may hire a court reporter. The parties or their counsel are responsible to arrange for court reporters.
- (3) The employer or their counsel must arrange for court-approved interpreters at expedited or compensation hearings. The interpreters must be either (1) state-certified court interpreters or (2) state-registered court interpreters. In areas where state-certified or registered court interpreters are unavailable, the judge may waive this requirement. Interpreters must not be counsel or family members of either party.
- (4) The parties or their counsel are responsible for providing equipment necessary to operate any audiovisual used during the hearing. The parties or their attorneys must set up or install all equipment before the judge begins the hearing. All equipment takedown or dismantling must take place during recess or after court adjourns.

- (5) The parties or their counsel must provide any audio and video recordings intended to be introduced into evidence in the proper format. Permissible audio formats include ".wav" and ".mp3." Permissible video formats include ".wmv," ".wma," ".asf," and ".avi."

Authority: T.C.A. §§ 4-3-1409, 50-6-101, 50-6-216, 50-6-233, and 50-6-236.

#### 0800-02-21-.14 Scheduling Hearing

- (1) All parties or their counsel must participate in a scheduling hearing with a judge no more than sixty (60) days after a request for scheduling hearing is filed.
- (2) After the scheduling hearing is set, the clerk will send a docketing notice to all parties with the case number, time of the scheduling hearing, and judge assigned to the case. The clerk will also send information to the parties detailing the actions required to prepare for and participate in the hearing. Unless the judge determines that an in-person hearing is necessary, all scheduling hearings will be conducted telephonically or through other electronic means as determined by the judge.
- (3) At the scheduling hearing, the parties will develop a discovery plan and a scheduling order to ensure timely, efficient, and fair resolution of the case.
- (4) At the conclusion of the scheduling hearing, the judge may set a date for completion of post-discovery alternative dispute resolution and the compensation hearing.

Authority: T.C.A. §§ 4-3-1409, 50-6-101, 50-6-233, and 50-6-239.

#### 0800-02-21-.15 Expedited Hearing

- (1) When the parties dispute temporary disability and/or medical benefits, either party may file a request for expedited hearing. A request for expedited hearing must be accompanied by an affidavit or a T.R.C.P. Rule 72 declaration under penalty of perjury, which must contain a plain, concise statement of the facts and any other documents demonstrating the party is entitled to the requested relief. The party requesting an expedited hearing must list any witnesses it intends to call at the expedited hearing on the request for expedited hearing form. The affidavit or Rule 72 declaration requirement is not met by the filing of an affidavit or Rule 72 declaration from the party's attorney.
  - (a) The party opposing the request for expedited hearing must file documents, including any affidavits or T.R.C.P. Rule 72 declarations, demonstrating the moving party is not entitled to the requested relief no later than ten (10) business days before the date of the expedited hearing. The party opposing the request for expedited hearing must also provide a plain, concise statement detailing why the relief requested should not be granted and listing any witnesses it intends to call at the expedited hearing. The affidavit or Rule 72 declaration requirement is not met by the filing of an affidavit or Rule 72 declaration from the party's attorney.
  - (b) Evidence or witnesses not disclosed in accordance with this rule, except for witnesses or evidence intended for impeachment or rebuttal purposes, will not be considered unless good cause is shown for why the evidence/witness was not timely disclosed.
  - (c) The court will entertain requests for reasonable extensions of the deadlines in this rule. The

request should be made by motion and filed with the clerk before the expiration of the time the party seeks to extend. Any response in opposition to the motion for extension of time must be filed with the clerk and served on all parties or their counsel within five (5) business days after the filing of the motion. The response must be in writing and state with particularity the grounds for the opposition. The motion will be decided on the written materials unless the judge determines argument is needed.

- (d) Documents attached to the dispute certification notice and filed by the mediator with the clerk should not be refiled with the request for expedited hearing or the opposing party's response.
- (e) Any party may request that the judge issue a decision on the record instead of convening an evidentiary hearing. Any party opposing the request for a decision on the record has ten (10) business days from the date the request for expedited hearing is filed to file an objection with the clerk. The judge may either set an evidentiary hearing or enter a decision on the record. If the judge determines that issuing a decision on the record is appropriate, the clerk will send a docketing notice to all parties with the docket number and the assigned judge. The clerk will also send information to the parties detailing the actions required to present the case for a decision on the record.
- (2) Letters or written statements addressing medical causation signed by a physician are admissible at an expedited hearing and need not be in affidavit form. At a compensation hearing, these letters or statements, even if in affidavit form, may be excluded through valid objection under the Tennessee Rules of Evidence. This rule has no effect on the admissibility of a standard form medical report for industrial injuries (Form C-32) when properly presented at any hearing.
- (3) If the claim is denied after an expedited hearing because the employee is not likely to succeed at a hearing on the merits on the issue of compensability, the employer may file a motion for summary judgment under Rule 56 of the Tennessee Rules of Civil Procedure. The motion must also comply with Rule 0800-02-21-.18.
- (4) During an expedited hearing, a judge may take testimony in any manner that is practical for the fair, effective resolution of the request for temporary disability and/or medical benefits, including testimony by telephone or videoconferencing. Any party seeking permission to attend a hearing by telephone or present witness testimony by telephone or videoconferencing must file a motion no later than ten (10) business days before the hearing.

Authority: T.C.A. §§ 4-3-1409, 50-6-101, 50-6-233, 50-6-233, 50-6-239, and 50-6-239.

#### 0800-02-21-.16 Medical Records

- (1) If requested, a medical provider treating an injured employee must furnish copies of records at a cost allowed by T.C.A. § 50-6-204 for paper records and Rule 0800-02-17-.24 for non-paper records. The medical provider must forward the records within ten (10) business days of receipt of a written request.
  - (a) For the purposes of paragraphs (1) and (2) of this rule, "medical provider" includes the authorized treating physician, a hospital, and any other entity or person who provides medical care to the injured employee for the claimed work-related injury under the employer's obligation under T.C.A. § 50-6-204. A "medical provider" does not include any physician, hospital, or other person or entity that treated the worker for injuries or conditions that were not provided under the employer's obligation in T.C.A. § 50-6-204 for treatment of the claimed work-related injury.

- (b) A medical provider is entitled to a reasonable fee not to exceed the maximum charge provided by Rule 0800-02-17-.15(4) for preparation of a written report in response to a request from a party.
  - (c) Records from a medical provider as defined in paragraph (c) of this rule may be provided with the appropriate HIPAA-compliant, written authorization of the employee, which the employee must provide if ordered to do so by the judge.
- (2) Medical records must be exchanged among the parties as in Rule 0800-02-21-.10(2).
- (a) Medical records to be presented as evidence at a hearing must be filed with the clerk no later than ten (10) business days before the hearing. Absent good cause as determined by the judge, failure to comply may result in the exclusion of any medical record that is not timely filed or the assessment of costs or sanctions against the party or the party's attorney. Absent good cause as determined by a judge, no other medical records may be filed with the clerk.
  - (b) Medical records are self-authenticating and admissible when signed by a physician or accompanied by a form signed by a medical provider or records custodian certifying that the records are true and accurate. The judge may exclude medical records in response to a proper objection other than to authenticity under the Tennessee Rules of Evidence or other applicable law. The bureau must provide a certification form for the parties' use. An electronic signature suffices if the judge finds the electronic signature demonstrates that the provider approved the contents of the medical record.
  - (c) Medical records to be presented as evidence at a hearing that exceed ten (10) pages must include a chronological table of contents. The medical records must be filed with the clerk, and each of the records must be identified by author and date and numbered as in the table of contents. The parties, not the medical providers, must prepare the chronological table of contents required by part (c) of paragraph (2). A self-represented party may, but is not required to, provide the chronological table of contents.

Authority: T.C.A. §§ 4-3-1409, 50-6-204, 50-6-233.

#### 0800-02-21-.17 Discovery

- (1) Parties are encouraged to obtain any necessary discovery informally to avoid undue expense and delay. When these attempts fail or the complexity of the case makes informal discovery impracticable, discovery must be sought in accordance with the Tennessee Rules of Civil Procedure unless these rules provide an alternative procedure.
- (2) A party may serve written discovery requests on any other party at any time after a petition for benefit determination is filed.
  - (a) All written discovery requests must be answered under oath and in accordance with the Tennessee Rules of Civil Procedure. The responding party must supplement its answers in a timely manner whenever additional information becomes available or the responses provided in a previous response change.
  - (b) No party may serve more than twenty (20) interrogatories, including subparts, on any other party without approval of the judge.

- (c) The judge may increase or decrease the time allowed for answering written discovery requests.
  - (d) Except as required when filing a discovery-related motion, no written discovery requests or answers may be filed with the clerk.
- (3) All depositions must be taken within the timeframe in the scheduling order, or if no scheduling order exists within the time allowed by the Tennessee Rules of Civil Procedure.
- (a) The deposition must be taken as provided by the Tennessee Rules of Civil Procedure.
  - (b) Written notice must be provided in accordance with the Tennessee Rules of Civil Procedure.
  - (c) No oral deposition may continue for more than four (4) hours, excluding breaks.
- (4) Licensed physicians may charge their usual, customary fee for providing testimony by deposition provided that the fee does not exceed seven hundred fifty dollars (\$750) for the first hour.
- (a) Depositions longer than one (1) hour will be pro-rated at the licensed physician's usual, customary fee as above, not to exceed four hundred fifty dollars (\$450) per hour for deposition time in excess of one (1) hour. Physicians may not charge for the first fifteen (15) minutes of preparation time. In instances requiring over fifteen (15) minutes of preparation time, a physician's preparation time in excess of fifteen (15) minutes may be added to and included in the deposition time and billed at the same rate as for the deposition.
  - (b) Physicians may require pre-payment of seven hundred fifty dollars (\$750) maximum for a deposition or in-person appearance. Following the deposition, the physician may bill for any additional amount due. The payer may recover any amount overpaid.
  - (c) An additional fee of up to two hundred fifty dollars (\$250) may be charged for a video deposition.
  - (d) Physicians who are late for a deposition may only be reimbursed for the time in attendance and not from the time of the scheduled deposition.
  - (e) Instead of a physician's deposition, a party may file a standard form medical report for industrial injuries (Form C-32) with the clerk. The physician may charge a fee of up to one hundred fifty dollars (\$150) for completion and certification of the form.
- (5) In the event of a discovery dispute, either party may file a motion at any time after a petition for benefit determination is filed. All discovery-related motions will be decided on the written materials unless the judge determines that argument is needed. Affidavits may be provided in support of any motion or response; live testimony is prohibited. Any motion to compel discovery, motion to quash, motion for protective order, or other discovery-related motion must:
- (a) Quote verbatim the interrogatory, request, question, or subpoena at issue or be accompanied by a copy of the interrogatory, request, subpoena, or excerpt of a deposition that shows the question and objection or response if applicable. If the entire set of discovery requests were unanswered, the moving party need not file the entire set with its motion;
  - (b) State the reason or reasons supporting the motion; and

- (c) Include a statement certifying that the moving party or his or her counsel made a good-faith effort to resolve by agreement the issues in the motion and an agreement was not achieved. The statement must detail the efforts to resolve the dispute.
- (6) If requested, the clerk will issue signed subpoenas in blank in accordance with the Tennessee Rules of Civil Procedure.
  - (a) Parties must complete and serve their own subpoenas.
  - (b) Service of subpoenas for records may be by certified, return-receipt mail in addition to means of service provided by the Tennessee Rules of Civil Procedure.
  - (c) Service of subpoenas compelling witnesses' appearance at a hearing must be made in the manner provided by the Tennessee Rules of Civil Procedure, and a signed copy of the original must be filed with the clerk.
  - (d) All subpoenas compelling witnesses' appearance at a hearing must be served no later than five (5) business days before the hearing unless the judge extends this period.
  - (e) Anyone who fails to timely respond to a subpoena for documents or testimony or who fails to appear at a hearing under a properly-served subpoena may be assessed a civil penalty.

Authority: T.C.A. §§ 4-3-1409, 50-6-101, 50-6-233, and 50-6-239.

#### 0800-02-21-.18 Motions

- (1) Any party may file a dispositive motion in accordance with the Tennessee Rules of Civil Procedure.
  - (a) The moving party must provide any non-moving, self-represented party with a copy of the rule or statute on which the dispositive motion is based and must state any deadline and/or requirement to respond.
  - (b) The moving party or their attorney must contact the judge's staff to obtain a hearing date more than thirty (30) days from the filing date of the dispositive motion but no later than as stated in the scheduling order. The moving party must write the date on the motion in bold print as follows: **THIS MOTION WILL BE HEARD ON \_\_\_\_, 20\_\_, AT \_\_A.M./P.M.** Failure to obtain a hearing in a timely manner may be construed as an abandonment of the motion.
  - (c) If a dispositive motion is opposed, a written 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 (30) days after the filing of the dispositive motion. The response must state with particularity the grounds for opposition. If no opposition is filed, the dispositive motion will be considered unopposed. The judge may grant additional, reasonable time for the non-moving party to respond, obtain affidavits, engage in discovery, or take depositions.
- (2) Any party may file a non-dispositive motion in accordance with the Tennessee Rules of Civil Procedure.
  - (a) All non-dispositive motions will be decided on the written materials unless the judge determines a hearing is appropriate.

- (b) If a non-dispositive motion is opposed, a written response to the non-dispositive motion must be filed and served on all parties or their counsel on or before five (5) business days after the filing of the non-dispositive motion. The response must state with particularity the grounds for the opposition. If no opposition is filed, the motion will be considered unopposed.
- (3) Any party seeking disqualification or recusal of a judge must do so by timely filing a written motion. The motion must be supported by an affidavit under oath or a T.R.C.P. Rule 72 declaration on personal knowledge and by other appropriate materials. The motion must state with specificity all factual and legal grounds supporting disqualification of the judge and must affirmatively state that it is not being presented for improper purpose, such as to harass or to cause unnecessary delay or increase in the cost of litigation. The motions must be timely filed so as not to delay an expedited hearing and/or compensation hearing. While the motion is pending, the judge will make no further orders and take no further action on the case, except for good cause stated in the order in which the action is taken.
- (4) The judge will prepare and issue an order reflecting the decision unless otherwise ordered. All parties or their counsel must sign an agreed order before submitting the order to the judge for approval. An attorney must not sign a self-represented litigant's name "by permission."

Authority: T.C.A. §§ 4-3-1409, 50-6-101, 50-6-233, and 50-6-239.

#### 0800-02-21-.19 Compliance with Orders

- (1) Whenever a judge issues an interlocutory or compensation order and a party fails to comply with that order, the party seeking enforcement of the order may file a motion to compel. Before filing the motion, the moving party must contact the opposing party to inform the party that a motion to enforce the order will be filed.
- (2) Before filing the motion, the moving party must contact the judge's staff to obtain a hearing date and write the date in the motion in bold print as follows: **THIS MOTION WILL BE HEARD ON \_\_\_\_\_, 20\_\_\_\_, AT \_\_\_\_A.M./P.M.**
- (3) All responses must be filed and served no later than five (5) business days before the hearing.
- (4) If the judge determines that a party failed to comply with the order, the judge may order compliance and refer the noncompliant party for assessment of a civil penalty.

Authority: T.C.A. §§ 4-3-1409, 50-6-101, 50-6-233, and 50-6-239.

#### 0800-02-21-.20. Briefs

- (1) Prehearing briefs for expedited and compensation hearings are encouraged. Unless the scheduling order provides otherwise, prehearing briefs must be filed at least ten (10) business days before the hearing.
- (2) Post-hearing briefs for expedited and compensation hearings are permitted only with the judge's advance approval.
- (3) Briefs should contain the facts and law with appropriate citations. Any brief that refers to a transcript or deposition must specify the relevant page(s) of the transcript or deposition. Any brief that cites an unpublished or foreign case must attach a copy of the case, or the judge may disregard the case. Briefs must not exceed ten (10) pages exclusive of attachments unless permission is granted by the judge.

Authority: T.C.A. §§ 4-3-1409, 50-6-101, 50-6-233, and 50-6-239.

0800-02-21-21 Post-Discovery Alternative Dispute Resolution

- (1) All parties must participate in alternative dispute resolution after discovery is completed unless the judge determines it unnecessary.
- (2) Alternative dispute resolution under this section must be conducted as provided by Rule 0800-02-21-.10.
- (3) If the parties do not reach a full settlement, the mediator will file a new dispute certification notice identifying the remaining issues and defenses. If any party disagrees with the dispute certification notice, the party may file an objection under T.C.A. § 50-6-236. Afterward the parties must appear before the judge for a compensation hearing.

Authority: T.C.A. §§ 4-3-1409, 50-6-233, and 50-6-239.

0800-02-21-22 Compensation Hearing

- (1) The compensation hearing will be conducted at the time and place specified in the scheduling order. Absent good cause, no motion for a continuance will be considered at the compensation hearing.
- (2) Ten (10) business days before the date of a compensation hearing or as otherwise directed by the judge, each party must file a prehearing statement either jointly or individually.
- (3) Concurrent with the submission of the prehearing statement, each party must file the following:
  - (a) A copy of each proposed exhibit not previously filed, except for those intended for impeachment or rebuttal purposes; and
  - (b) A copy of any expert's deposition transcript not previously filed that the party intends to introduce at the hearing.
- (4) With the exception of witness testimony and exhibits intended for impeachment or rebuttal purposes, no witness whose name and address was not included in the prehearing statement may testify at the hearing, and no exhibit excluded from the list of proposed exhibits in the prehearing statement may be presented at the hearing, unless permission to present the testimony or exhibit is granted by the judge. Permission may be granted only on finding that:
  - (a) The party seeking to present the witness or exhibit did not have knowledge of the witness or exhibit before submitting the prehearing statement and could not have discovered the witness or exhibit despite reasonable investigation; and
  - (b) Prohibiting the presentation of the witness or exhibit would result in prejudice.
- (5) Absent good cause, a party failing to provide a prehearing statement as required by these rules may be sanctioned by the judge, including prohibiting the party from introducing evidence or exhibits or calling witnesses, except for impeachment or rebuttal purposes.
- (6) Any party may request that the judge issue a decision on the record instead of convening an



evidentiary hearing. Any party opposing the request for a decision on the record has ten (10) business days from the date the request is filed to file an objection with the clerk. If the judge determines a decision on the record is appropriate, the clerk will send a docketing notice to all parties detailing the actions required to prepare the case for a decision on the record.

Authority: T.C.A. §§ 4-3-1409, 50-6-233, and 50-6-239.

0800-02-21-23 Settlement Approval

- (1) In any case where the parties reach a full settlement, the settlement will not become effective until it has been signed by all parties and approved by a judge.
- (2) Unless the settlement is of a disputed claim as provided by T.C.A. § 50-6-240(e), the settlement agreement must contain language stating that the employee is receiving substantially the benefits provided by the Workers' Compensation Law.
- (3) If the settlement is of a disputed claim under T.C.A. § 50-6-240(e), the settlement agreement must contain language stating that the settlement is in the best interest of the employee.
- (4) If the parties agree to close future medicals, the settlement must contain a statement advising the employee of the consequences of the settlement, if any, with respect to Medicare and TennCare benefits and liabilities.
- (5) When the parties reach an agreement, they must file a petition for benefit determination for settlement approval. Before the settlement approval, they must prepare and sign a settlement agreement, statistical data form, explanation of benefits, and an order approving workers' compensation settlement agreement. The required documents must be prepared using the most recent templates on the court's webpage.
- (6) In addition to the required forms, the parties must attach a copy of the impairment rating as an exhibit to the settlement agreement, except in disputed claims settled under T.C.A. § 50-6-240(e). The parties must attach any other documents requested by the local bureau office or judge. In cases where the parties agree to close future medical benefits, the parties may attach a written statement from the treating physician stating that no further medical treatment is anticipated, documentation of the anticipated cost of future medical treatment, and/or medical documentation supporting the requested closure of future medical benefits.
- (7) Settlements by affidavit are permitted for good cause as determined by the judge.
  - (a) Good cause may include but is not limited to distance from the judge's office or adverse health of the parties or their counsel. Settlement approvals by affidavit in cases involving closure of future medical benefits are unlikely to be granted absent proof of exceptional circumstances.
  - (b) Requests for approvals by affidavit must be made in writing to the local bureau office two (2) business days in advance of the requested approval hearing and must include a copy of the proposed settlement documents. The assigned judge may require appearance of the party or counsel by telephone.
- (8) Any settlement that is denied by a judge may not be presented for approval before another judge.
- (9) Absent good cause as determined by the judge, settlements must be presented in the bureau office closest to the employee's residence.
- (10) If the parties reach a settlement before a scheduled hearing, the parties must immediately notify

the judge's staff and schedule a settlement approval.

Authority: T.C.A. §§ 4-3-1409, 50-6-233, 50-6-239, and 50-6-240.

0800-02-21-.24 Voluntary Dismissal

- (1) A party may move to voluntarily dismiss a petition for benefit determination no more than once after it is filed unless the employee was awarded temporary benefits through an interlocutory order or a motion for summary judgment is pending. If a party moves for voluntary dismissal and the order is entered, either party may file a new claim within ninety (90) days.
- (2) A voluntary dismissal is effective as of the date the order of dismissal is issued by the clerk.
- (3) If a claim is voluntarily dismissed, the party that sought the dismissal must pay a filing fee of one hundred fifty dollars (\$150). The fee is due and payable on the date the order of voluntary dismissal is entered.

Authority: T.C.A. §§ 4-3-1409, 50-6-233, and 50-6-239.

0800-02-21-.25 Workers' Compensation Claims Against the State

The court of workers' compensation claims has no jurisdiction over a claim for benefits filed against the state by a state employee.

Authority: T.C.A. §§ 4-3-1409, 9-8-307, and 9-8-402.

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: August 21, 2018

Signature: Abbie Hudgens

Name of Officer: Abbie Hudgens

Title of Officer: Administrator



Subscribed and sworn to before me on: August 21, 2018

Notary Public Signature: Shara Hamlett

My commission expires on: 2/19/20

**Department of State Use Only**

Filed with the Department of State on: \_\_\_\_\_

8/21/18

Tre Hargett

Tre Hargett  
Secretary of State

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