

WORKERS' COMPENSATION COURT RULES AS LAST AMENDED EFFECTIVE 2/7/08

RULE 1. ADMINISTRATOR

The Administrator shall perform such duties and responsibilities as authorized by law, and as the judges of the Court may prescribe.

RULE 2. RULES OF THE COURT

Any matter of practice or procedure not specifically dealt with either by the Workers' Compensation Act or by these rules will be guided by practice or procedure followed in the district courts of this state.

RULE 3. FORMS UNDER OLD RULES

A. Forms or other documents which were in conformity or compliance with Court rules when filed shall be given full effect in accordance with the Court procedure in force at the time of their filing.

B. All forms and other documents shall be submitted to the Workers' Compensation Court on letter size, 8 ½" x 11", paper.

RULE 4. DOCUMENTS AND ORDERS - SIGNATURES

A. Any document, correspondence or order submitted to the Court, Court Administrator or to any trial judge thereof, shall be typed or printed legibly and shall bear the typed or printed name and the signature of the person who prepared the document or correspondence; the firm name if applicable; the complete address, including the zip code; the telephone number, including the area code; and the assigned file number, if any. If the document or correspondence has been prepared by an attorney, the attorney's Oklahoma Bar Association number shall also be listed.

B. The signature of an attorney or party constitutes the following:

1. a certification that the form, motion or other paper has been read;
2. that to the best of the attorney's or party's knowledge, information and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law; and
3. that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

C. Any document or correspondence submitted to the Court shall include a certificate of mailing to all parties.

RULE 5. DATE OF FILING - STAMPING - TIME COMPUTATION

All forms filed with the Court shall be file-stamped by the Clerk on the date of receipt. Time limits prescribed by law or these rules shall be computed from the date of filing as reflected by the date of the file stamp on the document. When the period of time prescribed or allowed is less than eleven (11) days, intermediate legal holidays and any other day when the office of the court clerk does not remain open for public business until the regularly scheduled closing time, shall be excluded from the computation.

RULE 6. CORRESPONDENCE WITH THE COURT; PROHIBITED COMMUNICATIONS WITH THE COURT AND COURT APPOINTED PROFESSIONALS

A. All required filings pertaining to any case shall be sent to the Workers' Compensation Court Administrator, 1915 North Stiles Avenue, Oklahoma City, Oklahoma 73105. After the case has been assigned, correspondence may be addressed to the assigned trial judge. All correspondence related to a settlement conference shall be addressed to the assigned settlement conference judge.

B. Parties, attorneys, mediators, case managers, vocational rehabilitation evaluators and medical providers shall have no ex parte communications with the assigned trial judge regarding the merits of a specific matter pending before the assigned judge of the Workers' Compensation Court.

C. 1. Direct or indirect ex parte communications with court appointed professionals regarding specific cases or claimants are prohibited except as provided in this subsection.

2. The term "court appointed professionals" shall include independent medical examiners, vocational rehabilitation counselors, case managers, psychologists and others who have been appointed by the Court to provide services or treatment to the claimant. This term also includes the office staff of the professional and any physician to whom the claimant is subsequently referred for treatment or evaluation. This term is deemed to include any physician who accepts a referral of the claimant from a court appointed professional. The term excludes a Form A physician selected pursuant to 85 O.S., Section 14(G).

3. Permitted communications are the following:

- a. Joint letter of the parties requesting information or opinions from the court appointed professional after approval by the assigned judge.
- b. Communication with the staff of a physician or psychologist to schedule or verify an appointment, or to authorize diagnostic testing, treatment or surgery.
- c. Communications with a court appointed case manager concerning light duty issues consistent with the physician's restrictions.
- d. Any communication between the claimant and the court appointed professional necessary to complete the claimant's treatment, testing or evaluation.

e. Communication between court appointed professionals.

4. Failure to comply with this subsection shall, in the discretion of the assigned judge, result in imposition of costs, citation for contempt of court, or sanctions against the offending party.

5. This subsection applies to the attorneys, agents, and employees of the parties and anyone acting in their behalf.

6. Instances of prohibited communications with a court appointed professional shall be communicated by the court appointed professional to the assigned judge and all counsel, in writing.

RULE 7. APPEARANCE OF PARTIES

A. A party in any proceeding before this Court, including agreed settlements, may appear pro se, by an attorney licensed to practice law in Oklahoma, by an out-of-state attorney admitted to practice before the Court pursuant to rules of the Oklahoma Bar Association, or by a licensed legal intern; provided, a claimant in a Form 1X proceeding may appear only pro se. Provided further, corporate entities, limited liability companies, insurance companies and own risk employers may appear only by an attorney. If the judge is on the bench, no persons except licensed attorneys, pro se litigants, and legal interns knowledgeable of the case may present documents to the judge for signature.

B. Attorneys who will appear before the Court on behalf of a party shall notify the Court of their appearance by filing an entry of appearance. An entry of appearance on behalf of the respondent shall be filed no later than ten (10) days after the respondent's receipt of a file-stamped copy of a Form 3, 3A, 3B, 3E or 3F. The entry of appearance for the respondent shall contain language stating whether the employer is an active member of a certified workplace medical plan in which the claimant is potentially enrolled.

C. The attorney of record for the claimant in a case shall be the attorney signing the first Form 3, 3A, 3B, 3E or 3F filed in the case. Any other attorney who files an entry of appearance on behalf of any party in the case or who is identified as a substitute attorney pursuant to a notice of substitution of attorney shall also be considered an attorney of record. The Court shall send notices to all attorneys of record until a substitution of attorney has been filed or an Application for Leave to Withdraw as Attorney has been filed and granted by the Court pursuant to Rule 51(B). Various attorneys may appear before the Court in a matter, but notice shall be sent only to those attorneys who are an "attorney of record" as defined in this subsection.

RULE 8. FORMS - PREPARATION AND ADOPTION - USE

The Court shall prepare and adopt such forms for use in matters before the Court as it may deem necessary or advisable. Whenever Court forms are prescribed and are applicable, they shall be used. Printed copies of all forms may be procured in reasonable quantities upon request to the Clerk of the Court, or may be downloaded from the Court's web site at www.owcc.state.ok.us.

The following forms have been adopted by the Court:

- Form 1A: Notice and Instructions to Employers and Employees.
- Form 1B: Employer's Application for Permission to Carry Its Own Risk Without Insurance.
- Form 1X: Compromise Settlement.
- Form 2: Employer's First Notice of Injury.
- Form 3: Employee's First Notice of Accidental Injury and Claim for Compensation.
- Form 3A: Claimant's First Notice of Death and Claim for Compensation.
- Form 3B: Employee's First Notice of Occupational Disease and Claim for Compensation.
- Form 3E: Employee's Claim for Benefits for Combined Disabilities Against the Last Employer.
- Form 3F: Employee's Claim for Benefits from the Multiple Injury Trust Fund.
- Form 4: Treating Physician's Report and Notice of Treatment.
- Form 4A: Treating Physician's Progress Report.
- Form 5: Physician's Report on Release and Restrictions.
- Form 7: Designation of a Service Agent.
- Form 9: Motion to Set for Trial.
- Form 10: Answer and Pretrial Stipulation Offered by Respondent.
- Form 10A: Respondent's Response to Claimant's Form A Application for Change of Physician
- Form 10M: Response to Request for Payment of Charges for Health or Rehabilitation Services.
- Form 13: Request for Prehearing Conference.
- Form 14: Agreement between Employer and Employee as to Fact with Relation to an Injury and Payment of Compensation. (For injuries occurring before July 1, 2005.)
- Form 17: Disclosure Statement.
- Form 18: Request for Administrative Review of Medical Charges.

- Form 19: Part I. Request for Payment of Charges for Health or Rehabilitation Services.
Part II. Notice of Appeal of Administrative Order.
- Form 20: Proof of Loss in Death Claim.
- Form 26: Memorandum of Agreement as to Fact with Relation to an Injury and Payment of Disability Compensation. (For injuries occurring after June 30, 2005.)
- Form 93: Application and Order For Leave to Withdraw as Attorney of Record.
- Form 99: Pauper's Affidavit.
- Form 100: Application and Order for Dismissal.
- Form 463: Application for Physicians Seeking Appointment as an Independent Medical Examiner.
- Form 626: Application for Medical Case Manager.
- Form 862: Application for Vocational Rehabilitation Evaluator.
- Form A: Claimant's Application for Change of Physician and Request for Hearing.
Appointment of Independent Physician or Rehabilitation Evaluator.
Joint Petition.

RULE 9. NOTICE OF INJURY

An employee or former employee shall give oral or written notice to the employer or former employer pursuant to 85 O.S., Sections 24.2 and 43.¹

RULE 10. COMMENCEMENT OF CLAIM AND DESIGNATION OF A SERVICE AGENT

A. A claim for compensation under the Workers' Compensation Act shall be commenced by filing, in triplicate, an executed notice form that includes the employer's Federal Employer Identification Number. The following forms shall be used, as appropriate:

1 a. In all cases filed prior to November 1, 1986, 85 O.S., Section 24 remains unrepealed.
b. In all cases filed on or after November 1, 1986, 85 O.S., Section 24.2 shall be effective.
c. In all cases filed on or after September 1, 1993, an employee shall give notice to the employer within 180 days of the employee's separation from employment, or the cumulative trauma or occupational disease is presumed not compensable as provided in 85 O.S., Section 24.2(A).
d. In cases filed on or after November 1, 1997, a rebuttable presumption is created against compensability, if an employee fails to give notice to the employer within 30 days of the date of injury or medical treatment, or in cases of cumulative trauma or occupational disease, within 90 days of the employee's separation from employment. [85 O.S., Section 24.2(A)]

1. Form 3 for accidental injury benefits;
2. Form 3A for death benefits; and
3. Form 3B for occupational disease benefits.

B. A proceeding under Court Rule 50, to address payment of disputed health service expenses (physician's fees, hospital costs, etc.) shall be commenced by filing a Form 18 or Form 19. A proceeding under Court Rule 50 to address disputed vocational rehabilitation expenses or medical case management expenses shall be commenced by filing a Form 19. A Form 9 shall be filed to request a hearing on a Form 19 dispute.

C. When the claimant files a claim for compensation (Form 3, Form 3A or Form 3B), the Court shall mail a file-stamped copy of the claim form bearing the assigned file number to a single service agent of the self-insured employer, group self-insurance association, insurance carrier or CompSource Oklahoma which shall be designated on a Form 7 and filed with the Court. The Court shall send all notices and correspondence to the service agent, until an entry of appearance is filed pursuant to Rule 7. If no service agent is designated on a Form 7, notices and correspondence shall be sent to:

1. the signatory on the self-insurance application, if the insurer is a self-insured employer;
2. the Administrator of the group self-insurance association, if the insurer is a group self-insurance association;
3. the person designated to receive notice of service of process for an insurer as provided in 36 O.S., Section 621, if the insurer is a foreign or alien insurance carrier;
4. the President and Chief Executive Officer of CompSource Oklahoma, if the insurer is CompSource Oklahoma; or
5. the service agent on file with the Secretary of State, if the insurer is a domestic insurance carrier.

D. If the employer is uninsured or the Court cannot determine insurance coverage, notices and correspondence shall be sent by certified mail to the employer's last known address until such time as an attorney enters an appearance on behalf of such an employer.

RULE 11. CLAIMS AGAINST MULTIPLE INJURY TRUST FUND

A. A claim against the Multiple Injury Trust Fund shall be commenced by filing an executed Form 3F. The Form 3F shall list each of the claimant's prior adjudicated claims, the date of each injury, the Court file number and the percentage of disability awarded for each injury. If the claimant claims a pre-existing obvious and apparent disability, the disability shall be fully described

on the Form 3F, but no percentage of impairment need be included. A Form 9 shall be filed to request a hearing. Upon filing the Form 9, the claimant or the claimant's attorney shall mail a copy thereof to the Multiple Injury Trust Fund.

B. At the time of filing the Form 3F, the claimant or the claimant's attorney shall certify that a true and correct copy thereof has been mailed to the Multiple Injury Trust Fund.

C. The notation on the Form 3 or Form 3B that the claimant is a previously impaired person shall not be deemed to commence a claim against the Multiple Injury Trust Fund. The Form 3F must be filed in the claim in which benefits are sought and shall use that same Court file number.

D. All requests by the Multiple Injury Trust Fund for the appointment of an independent medical examiner shall be governed by 85 O.S., Section 17 and these rules.

RULE 12. CLAIMS AGAINST LAST EMPLOYER FOR COMBINED DISABILITIES

A. A claim against the last employer for combined disabilities shall be commenced by filing an executed Form 3E. The Form 3E shall list each of the claimant's prior adjudicated claims, the date of each injury, the Court file number and the percentage of disability awarded for each injury. If the claimant claims a pre-existing obvious and apparent disability, the disability shall be fully described on the Form 3E, but no percentage of impairment need be included. A Form 9 shall be filed to request a hearing.

B. At the time of filing the Form 3E, the claimant or the claimant's attorney shall certify that a true and correct copy thereof has been mailed to the last employer or its attorney.

C. The notation on the Form 3 or Form 3B that the claimant is a previously impaired person shall not be deemed to commence a claim against the last employer for combined disabilities. The Form 3E must be filed in the claim in which benefits are sought and shall use that same Court file number.

D. All requests for the appointment of an independent medical examiner shall be governed by 85 O.S., Section 17 and these rules.

RULE 13. DEATH CLAIMS AND REVIVOR ACTIONS

A. Death claims must be filed by the personal representative of the deceased employee's estate if probate proceedings have begun. If no probate proceeding has been brought, a death claim may be filed by the surviving spouse, or where there is no such spouse, then by the next of kin of the deceased employee. If the latter is incompetent or a minor, the guardian of such person shall be the proper party-claimant.

B. All persons who have or may assert a claim for death benefits shall be named in the claim and their addresses and relationship to the deceased shall be given.

C. If there are any heirs at law or beneficiaries named in the claim whose current whereabouts are not known, notice to such persons shall be obtained by publication in the county in which the decedent last resided, and the county of the last known address of any such heir or beneficiary. Publication shall be for one time per week for three successive weeks.

D. Revivor actions shall be conducted in accordance with 12 O.S., Section 2025(A)(1).

RULE 14. COMMENCEMENT OF TEMPORARY COMPENSATION AND MEDICAL TREATMENT

A. Upon the receipt of notice that an employee has been injured, the employer has an obligation under the Workers' Compensation Act to provide that employee with reasonable and necessary medical treatment, and to commence temporary compensation in the event that the employee is disabled and unable to return to work for more than three (3) calendar days. It is not necessary for there to be any order of this Court directing the employer to provide these benefits. After notice of an injury, an insured employer may, at its own option, commence payment of temporary total disability to the claimant, for a period not to exceed four (4) weeks and may seek reimbursement as set forth in 85 O.S., Section 24.3. Advance payments of temporary total disability benefits made under 85 O.S., Section 24.3 or voluntary provision of medical treatment shall not constitute admission by the employer or the insurer as to liability, compensation rate or any other material fact.

B. Once a Form 3 or 3B has been filed, temporary compensation shall be provided to the employee as specified in 85 O.S., Section 24.2, unless the employer has timely denied the claim by filing a Form 10 which specifically notes the denial of the employee's claim for temporary compensation. A Form 9 may be filed by the employee not less than ten (10) days after the employee has filed a Form 3 or Form 3B.

C. Disputes involving multiple insurers or multiple employers regarding liability for temporary disability benefits and/or immediate medical care and the continuing health care expenses of an employee shall be set for prehearing conference before the assigned judge. The judge may direct one carrier or employer to pay for such temporary disability benefits and/or medical care, subject to reimbursement as provided in 85 O.S., Section 203.

RULE 15. TERMINATION OF TEMPORARY COMPENSATION

A. Temporary compensation may be terminated if the worker has no claim for compensation (Form 3 or Form 3B) on file with the Court. If there is a Form 3 or Form 3B on file, the employer may terminate temporary compensation without a Court order only if one of the following events occur:

1. The claimant returns to full-time employment;
2. The claimant fails to:

- a. object to the termination of temporary disability benefits as provided in 85 O.S., Section 14(A)(2), within fifteen (15) days after receipt, by the claimant's attorney of record or by the claimant if unrepresented, of written notice of the termination from the employer; or
- b. object to the termination of temporary total disability benefits as provided in 85 O.S., Section 17(D)(10), within twenty (20) days after receipt, by the claimant's attorney of record or by the claimant if unrepresented, of written notice of the termination from the employer;

3. The claimant is determined by a Court-appointed independent medical examiner to be capable of returning to work and the claimant elects not to do so; provided, the Court-appointed independent medical examiner must provide a copy of the Form 5 Release to the assigned judge and all parties, when the examiner determines the claimant is capable of returning to work. Temporary total disability benefits shall cease when the claimant has reached maximum medical improvement on all body parts in dispute, is released from active medical care and can return to full or permanently restricted full duty, as indicated by the Court-appointed independent medical examiner on the Form 5 Release;

4. The claimant files a permanent disability rating report or a Form 9 requesting a hearing on permanent disability;

5. The parties voluntarily agree in writing to terminate temporary compensation;

6. The claimant dies; or

7. Any other event that causes temporary total disability benefits to be lawfully terminated under 85 O.S., Section 22 without Court order.

B. In all other instances, including the receipt of a Form 5 Release for modified light duty work from a Court-appointed independent medical examiner, temporary compensation may be terminated only by Court order. A respondent may request a hearing on the termination of temporary total disability benefits by filing a Form 13 with the Court and concurrently mailing a copy thereof to the opposing parties. The Form 13 mailed to the opposing parties shall include a copy of all evidentiary exhibits relied upon by the respondent in support of terminating temporary compensation.

C. If a respondent is found to have improperly terminated temporary compensation, the Court shall order the compensation reinstated retroactive to the date of termination and assess a fifteen percent (15%) penalty against the respondent on all unpaid benefits as of the date of the trial. The Court also may require the respondent to file a new Form 13 and show full compliance with this rule before a trial on the respondent's request to terminate temporary compensation will be conducted.

D. If the claimant objects to the termination of temporary total disability benefits, the claimant may request an expedited hearing on the issue of reinstatement of temporary total disability benefits as provided in 85 O.S., Section 17(D)(7).

RULE 16. DENIAL OF CLAIMS - DEFENSES

A. The respondent or its insurance carrier may deny liability of any claim, including a claim for payment of health care services or rehabilitation expenses, or a claim for combined disabilities, by timely filing a Form 10 or Form 10M under Rule 19 or Rule 50, as appropriate.

B. 1. A general denial or failure to timely file a Form 10 or Form 10M shall be taken as admitting all allegations in the claim form except jurisdictional issues; and

a. the extent, if any, of the claimant's disability, for a Form 3 or Form 3B claim; or

b. the amount due, if any, for a death claim.

2. Unless excused by the Court for good cause shown, denials and affirmative defenses shall be asserted on the Form 10 or Form 10M or shall be waived. No reply to the Form 10 or Form 10M is required.

RULE 17. SCHEDULING CONFLICTS INVOLVING MATTERS SET BEFORE THIS COURT

Any attorney with a scheduling conflict shall provide three (3) days' notice in writing to opposing counsel and all assigned judges along with a proposed resolution of the conflict. The judges affected may confer and require the parties to appear earlier than scheduled, or strike and reschedule any affected hearing, all as justice may require. Scheduling conflicts between this court and other courts is governed by the Guidelines for Resolving Scheduling Conflicts adopted by the Oklahoma Supreme Court at 1998 OK 117.

RULE 18. (Intentionally left blank.)

RULE 19. MOTIONS TO SET AND PRETRIAL STIPULATIONS

A. Any party may request a trial on any issue by filing a Form 9. When a Form 9 is filed on the issues of permanent partial disability or permanent total disability, the claimant shall deliver a verified or declared medical report to the opposing attorney(s). The name of the physician and the date of the report shall be noted on the Form 9. No Form 9 may be filed less than ten (10) days from the date the claimant has filed a Form 3, 3A or 3B with the Court. No Form 9 may be filed to request a trial on a Form 3E claim against the employer for combined disabilities until the claimant's claim for compensation for the last compensable injury against the employer has been adjudicated or otherwise resolved.

B. Except for objections to termination of temporary compensation made pursuant to 85 O.S., Sections 14(A)(2), 17(D)(7), 17(D)(10) and 22(3)(d), which shall be set by the Court on the assigned trial judge's prehearing conference docket, all cases involving a request for temporary compensation or medical treatment shall be set by the Court on a temporary issue scheduling docket prior to the case being docketed for trial, unless otherwise directed by the assigned trial judge. At the time of the temporary issue scheduling docket, all parties, to the best of their ability, shall advise the Court and all parties of the number of witnesses expected to be called at the time of trial.

C. The procedure to request a trial for the termination of temporary compensation is governed by Rule 15.

D. In all cases, the respondent shall file a Form 10 or Form 10M no later than thirty (30) days after the filing of the Form 9. The Form 10 or Form 10M may be amended at any time, not later than twenty (20) days prior to the date of trial.

E. No later than twenty (20) days prior to the date of trial, all parties shall exchange medical reports, all documentary evidence, exhibits and a complete list of witnesses with all opposing parties.

F. Both the Form 9, and the Form 10 or Form 10M, shall list the names of all witnesses, including any expert witnesses, which the party intends to call at the time of trial. Any witness not listed shall not be allowed to testify. Failure to comply with this rule shall result in the exclusion of the evidence, if submitted, at the trial.

G. The provisions of this rule may be excused by the Court for good cause shown.

RULE 20. MEDICAL EVIDENCE

A. Expert medical testimony may be offered by:

1. A verified or declared written medical report signed by the physician;
2. Deposition; or
3. Oral examination in open Court.

B. The Workers' Compensation Court, recognizing that it is costly and time-consuming to have physicians appear at trial to testify, encourages the production of medical evidence by verified or declared written medical reports. The Court encourages but does not require the report to include the following information, as applicable:

1. A complete history of the claimant, including all previous relevant or contributory injuries with a detailed description of the present injury.
2. The complaints of the claimant.

3. The physician's findings on examination, including a description of the examination and any diagnostic tests and x-rays.

4. The date and cause of the alleged injury and whether, in the physician's opinion, it is job-related.

5. The period during which the claimant was temporarily and totally disabled and, if such temporary total disability has ended, the date on which it ended. If temporary total disability continues at the time of the report, the physician should so state.

6. A finding which apportions the percentage of claimant's pre-existing permanent partial disability, if any.

7. Whether the claimant is capable of returning to light duty or full duty work, and what physical restrictions, if any, should be imposed on the claimant, either temporarily or permanently.

8. Whether the claimant has reached maximum medical improvement.

9. Whether the claimant is able to return to the claimant's former employment or is a candidate for vocational rehabilitation.

10. Whether the claimant is in need of continuing medical care, and if so, the type of continuing medical care needed.

11. The existence or extent of any permanent impairment.

12. An apportionment of injury causation.

13. Any other detailed factors upon which the physician's evaluation of permanent impairment is based.

C. Medical opinions concerning the existence or extent of permanent impairment must be supported by objective medical evidence of permanent anatomical abnormality, and, in appropriate cases, may include medical evidence that the ability of the employee to earn wages at the same level as before the injury has been permanently impaired. Medical opinions supporting employment as the major cause of occupational disease or age-related deterioration or degeneration, must be supported by objective medical evidence. "Objective medical evidence" includes medical testimony that rests on reliable scientific, technical or specialized knowledge, and assists the Court to understand the evidence or to determine a fact in issue.

D. The medical report must be verified or contain a written declaration, made under the penalty of perjury, that the report is true. The following form of declaration is suggested: "I declare under penalty of perjury that I have examined this report and all statements contained herein, and to the best of my knowledge and belief, they are true, correct and complete."

E. A claim for compensation for permanent disability must be supported by competent medical testimony which shall be supported by objective medical evidence and which shall include an evaluation by the treating physician or an independent medical examiner, as prescribed in 85 O.S., Section 17 and these rules, stating an opinion of the claimant's percentage of permanent impairment and whether or not the impairment is job-related and caused by the accidental injury or occupational disease. The treating physician's evaluation, if any, shall be issued within fourteen (14) calendar days of the treating physician's release of the injured worker from active medical treatment and shall be sent by the treating physician to the parties within seven (7) calendar days of issuance. Unless the treating physician's evaluation is sent to the parties as required by this rule, there shall be deemed to be no treating physician evaluation.

F. 1. Upon receipt of the treating physician's or independent medical examiner's medical report, the party-recipient may object to the report on any of the following grounds by giving written notice to all parties and to the Court within ten (10) days or such objections shall be deemed waived:

- a. object to the hearsay nature of the report and request cross-examination of the physician by deposition; or
- b. object to the treating physician's medical report by filing a Form 13 requesting the appointment of an independent medical examiner pursuant to 85 O.S., Section 17(A)(2) and Section 17(D)(3).

2. All other objections to the medical report shall be raised at the time of trial or shall be waived.

G. Within ten (10) days after a hearsay objection and request for cross-examination, arrangements for the taking of the physician's deposition shall be made by the offering party; provided, however, if the objection is to an independent medical examiner's report, arrangements for the deposition shall be made as provided in Rule 28(D). The party requesting the deposition testimony of any such physician, shall be responsible for the reasonable charges of the physician for such testimony, preparation time, and the expense of the deposition.

RULE 21. AMA GUIDES

A. Except as provided in Rules 22 and 23, a physician's evaluation of the extent of permanent impairment shall be prepared in compliance with the appropriate edition of the AMA Guides to the Evaluation of Permanent Impairment, including approved deviations and exceptions to the Guides in effect on the date of injury, as set forth in this rule.

B. The Third Edition of the AMA Guides shall be used to rate permanent impairment as a result of injuries occurring on or after January 1, 1989.

C. The Third Edition Revised of the AMA Guides shall be used to rate permanent impairment as a result of injuries occurring on or after May 1, 1991.

D. The Fourth Edition of the AMA Guides shall be used to rate permanent impairment as a result of injuries occurring on or after November 1, 1993. When applicable, the 4th Edition of the Guides shall apply to examinations conducted through June 19, 1994.

E. The 4th Edition of the Guides with the following deviation shall apply to all examinations conducted on or after June 20, 1994: When determining spinal impairment, a physician shall not utilize the Injury or Diagnosis Related Estimates (DRE) models, including the DRE Tables, as set forth in Chapter Three, "The Musculoskeletal System."

F. The 5th Edition of the Guides, except for the Diagnosis-Related Estimates (DRE) Method and the DRE tables set forth in Chapter 15, "The Spine," shall be used to rate permanent impairment as a result of injuries occurring on or after June 28, 2001.

G. The examining physician shall not follow the guides based on race or ethnic origin.

H. The provisions of subsections A, B, C, D, E, F and G of this rule shall not apply to scheduled members enumerated in 85 O.S., Section 22.

I. Injuries occurring prior to January 1, 1989 are to be evaluated by the following editions of the Guides:

Injuries occurring prior to July 1, 1978 are to be evaluated based upon the claimant's ability to perform "ordinary manual labor."

Injuries occurring on or after July 1, 1978 through October 31, 1984 - First Edition.

Injuries occurring on or after November 1, 1984 through December 31, 1988 - Second Edition.

J. Evaluations of permanent impairment which are prepared in support of a Motion for Change of Condition shall be performed in compliance with the edition of the AMA Guides, including approved deviations and exceptions thereto, in effect on the date of injury.

RULE 22. HEARING IMPAIRMENT

A. The "Guides to the Evaluation of Permanent Impairment" of the American Medical Association shall be used to evaluate permanent impairment caused by hearing loss where the last exposure occurred on or after June 1, 1987. Prior to that date, former "Rule 37", as set out in Appendix "A" to the Court Rules shall be used to evaluate hearing loss.

B. Hearing loss in only one ear shall be rated under the AMA Guides as a monaural hearing loss. Hearing loss in both ears shall be rated under the AMA Guides as a binaural hearing loss and shall not be converted to a whole person rating.

RULE 23. EYE IMPAIRMENT

The State Industrial Court previously published the Snellen Chart as the criteria for measuring and calculating the percentage of eye impairment in a single eye. This method of rating eye injuries has been accepted and approved by the Ophthalmological Section of the American Medical Association. Physicians may continue to use these criteria in the future. The Workers' Compensation Act provides, in 85 O.S., Section 22(3), that eye impairment is a scheduled member loss. That section states that loss of an eye shall be compensated by the payment of a specified number of weeks of permanent partial disability benefits. However, industrial blindness, in both eyes, according to 85 O.S., Section 3(20), means the claimant is permanently and totally disabled by statutory definition regardless of claimant's capacity to earn any wages in any occupation. Therefore, any computation or conversion of any loss of vision in one eye into the whole man (as done by the American Medical Association's "Guides to the Evaluation of Permanent Impairment") is clearly incorrect according to Oklahoma law. However, partial loss of vision in both eyes may be combined into the whole man provided that the physician states the evaluation of the loss of each eye separately and then evaluates the combination.

The physician should consult with the "Guides" regarding the equipment necessary to test the function of eyes and for the methods of evaluation. The following Snellen Chart may then be used for computing the percentage of visual efficiency. It should be noted that all measurements shall be based upon uncorrected vision.

The Court recognizes that visual acuity for distance and near is only one of the functions of the eye. Therefore, the physician may wish to consider the visual fields and ocular motility with absence of diplopia. Evaluation of visual impairment may be based upon all three of these functions. Although they are not equally important, vision is imperfect without the coordinated function of all three.

A physician may deviate from this method of evaluation or may use some other recognized method of evaluation PROVIDED the deviation or the method of evaluation is fully explained.

Oklahoma case law has defined industrial blindness as being 20/200. Therefore, the Court has modified the Snellen Chart to show 100 percent loss to an eye at 20/200 even though the Chart would normally show such loss to be 80 percent. Likewise, it is not necessary to show the percentage loss of vision above 20/200 since there can be no loss greater than 100 percent.

SNELLEN CHART

Snellen Notation for distance	Snellen Notation for near	Percentage of Visual Efficiency	Percentage Loss of Vision (Okla.)	Comp. Rate in Weeks (Okla.) For injuries occurring from 11-1-97 to 12-31-01, inclusive	Comp. Rate in Weeks (Okla.) For injuries occurring in calendar year 2002	Comp. Rate in Weeks (Okla.) For injuries occurring on and after 1-1-03
20/20	14/14	100.0	0.0	0.0	0.0	0.0
20/25	14/17.5	95.7	4.3	8.26	11.31	11.83
20/30	14/21	91.7	8.5	16.32	22.36	23.38
20/35	14/24.5	87.5	12.5	25.68	32.88	34.38
20/40	14/28	83.6	16.4	35.04	43.13	45.10
20/45	14/31.5	80.0	20.0	43.68	52.60	55.0
20/50	14/35	76.5	23.5	53.52	61.81	64.63
20/60	14/42	69.9	30.0	72.48	78.90	82.50
20/70	14/49	64.0	36.0	89.76	94.68	99.0
20/80	14/56	58.5	41.5	105.36	109.15	114.13
20/90	14/63	53.4	46.6	120.0	122.56	128.15
20/100	14/70	48.9	51.1	132.72	134.39	140.53
20/120	14/84	40.9	59.1	151.92	155.43	162.53
20/140	14/98	34.2	65.8	168.0	173.05	180.95
20/160	14/112	28.6	71.4	181.44	187.78	196.35
20/180	14/126	23.9	76.1	192.72	200.14	209.28
20/200	14/140	20.0	100.0 (Industrial Blindness)	250.0 ¹	263.0 ²	275.0 ³

¹ Per the 250 week maximum established in 85 O.S. Supp. 1997, Section 22.

² Per the 263 week maximum established in 85 O.S. Supp. 2001, Section 22 for injuries occurring in calendar year 2002.

³ Per the 275 week maximum established in 85 O.S. Supp. 2001, Section 22 for injuries occurring on and after January 1, 2003.

RULE 24. MEDICAL AND HOSPITAL RECORDS

Copies of all relevant medical and hospital records to be introduced at trial shall be provided to opposing parties in a timely manner as required by Rule 19.

The Court recognizes that such records are widely accepted as exceptions to the hearsay rule and will entertain only the objection that such records are not properly identified. A party wishing to object to such records as not properly identified shall notify the offering party and the Court, in writing, of the objection within ten (10) days of the receipt of such records. The offering party shall promptly arrange the deposition of the custodian of such records. The inquiry at deposition shall be limited to the identification of the offered records. If the offered records are ultimately admitted in

evidence, the cost of such deposition shall be assessed against the objecting party. If the offered records are ultimately excluded from evidence, the costs of such deposition shall be assessed against the offering party.

For purposes of this Rule, the term “medical or hospital records” shall be defined as the regularly kept records of any hospital, clinic, emergency room or other treatment facility and the office records or notes, including summaries, of any “physician” as defined by 85 O.S., Section 14. The term “medical and hospital records” does not include any statement, letter, memorandum or report prepared by a physician specifically for use at trial.

Medical and hospital records offered in evidence in accordance with this Rule are to be received in evidence for historical purposes only.

RULE 25. VOCATIONAL REHABILITATION AND CASE MANAGEMENT EVIDENCE

A. Testimony of a vocational rehabilitation expert or medical case manager shall be presented by:

1. A written verified or declared [as defined in Rule 20(D)] report signed by the vocational rehabilitation expert or medical case manager, as appropriate;
2. Deposition; or
3. Oral examination in open Court.

B. Upon receipt of an adverse party’s vocational rehabilitation evaluator’s report or medical case manager’s report, a court-appointed vocational rehabilitation evaluator’s report, or a court-appointed medical case manager’s report, the party-recipient may object to the hearsay nature of the report and request cross-examination of the evaluator or case manager by deposition. The objection to the evaluator’s or case manager’s report must be made within ten (10) days after receipt of the report by giving written notice to all parties and attorneys of record in the case. Unless the objection and request for cross-examination is timely made as set out in this rule, the party-recipient shall be deemed to have waived any hearsay objection to the evaluator’s or case manager’s report. Within ten (10) days after the objection and request for cross-examination, arrangements for the taking of the evaluator’s or case manager’s deposition shall be made by the offering party; provided, however, if the objection were to a court-appointed vocational rehabilitation evaluator’s report or to a court-appointed medical case manager’s report, arrangements for the deposition and payment of such evaluator’s or case manager’s costs shall be made as provided in Rule 28(D). Except in the case of court-appointed vocational rehabilitation evaluators and court-appointed medical case managers, the party requesting the deposition testimony of any such evaluator or case manager shall be responsible for the reasonable charges of the evaluator or case manager for such testimony, preparation time, and the expense of the deposition. All other objections to the competency, relevancy and probative value of the evaluator’s or case manager’s report shall be raised at the time of trial or shall be waived.

RULE 26. PHOTOGRAPHS, AUDIO TAPES, VIDEOTAPES, AND OTHER ELECTRONIC OR DIGITAL MEDIA EXHIBITS

A. Videotapes, audio tapes, photographs, and other electronic or digital media products offered at trial are “exhibits” and must be endorsed on pleadings and exchanged with all other parties as specified in Rule 19(E)(F). The exhibits are to be exchanged among the parties and not filed with the Court prior to the trial date.

B. The party sponsoring or offering the exhibit shall prepare and provide copies for all opposing parties at its expense.

C. An opposing party who receives the exhibit shall be deemed to waive any objection as to identification or authentication of such evidence, unless, within ten (10) days of receipt thereof, said party objects in writing to the sponsoring party.

D. A party may present the exhibit to the Court appointed independent medical examiner or Court appointed vocational evaluator for review only if approved by order of the Court, prior to its submission to the independent medical examiner or vocational evaluator. If presentation of such evidence to the independent medical examiner or Court appointed vocational evaluator is not by agreement of all parties, the party wishing to present same shall request a Prehearing Conference.

E. The charges of the independent medical examiner for reviewing the exhibits for preparation of reports or at a deposition or for review in preparation for a deposition are subject to and controlled by Rule 44.

F. A party who obtains a Court order to present the exhibits to the independent medical examiner must provide copies of said evidence to all parties for their review at least three (3) calendar days before presentation to the independent medical examiner.

G. If a party is found to have willfully violated the provisions of this rule, the Court may exclude the party’s exhibits, the independent medical examiner’s report and/or deposition, and may impose other appropriate penalties or sanctions requested by opposing parties.

RULE 27. OBJECTIONS TO EVIDENCE

A. All challenges to the legal sufficiency of the opposing party's evidence shall be made by specific objection at the time of trial.

B. An objection to testimony offered by oral examination in open Court shall be made at the time the testimony is sought to be elicited.

C. Except as otherwise provided in Rule 20, an objection to medical testimony offered by a signed, written, verified or declared medical report, if on the grounds that it: (1) is based on inaccurate or incomplete history or is otherwise without probative value, or (2) does not properly

evaluate claimant's impairment or disability, as the case may be, in accordance with the Workers' Compensation Act, shall be interposed at the same time it is offered into evidence.

D. Unless an objection is timely made, it shall be waived. Any legally inadmissible evidence that stands admitted without objection shall be regarded as admitted as part of the proof in the case.

E. When a timely made objection to offered evidence is sustained, the offering party shall be given the opportunity to elect whether to stand on the evidence offered or be given a chance to cure the defect, unless the Court finds the defect resulted from bad faith or for the purpose of delay.

RULE 28. COSTS

A. The cost of taking a deposition shall be borne by the deposing party. A party desiring to have deposition or other taxable costs taxed to the opposing party in the case must file a motion to tax costs.

B. The fee of Seventy-five Dollars (\$75.00) assessed by the Court Administrator pursuant to 85 O.S., Section 93 shall be made payable to the order of the Clerk of the Workers' Compensation Court.

C. A fee of Seventy-five Dollars (\$75.00) per action to reopen any case shall be collected by the Court Administrator, pursuant to 85 O.S., Section 93, from the party filing a Form 9 seeking to reopen.

D. When a hearsay objection and request for cross-examination is timely filed to the medical report of a court-appointed independent medical examiner, a court-appointed vocational rehabilitation evaluation report, or to a report of a court-appointed medical case manager, the claimant is responsible for scheduling the deposition regardless of which party objects. The respondent shall choose the court reporter. All costs associated with a deposition of a court-appointed vocational rehabilitation evaluator or court-appointed medical case manager shall be borne by the respondent regardless of which party asserts a hearsay objection. Responsibility for costs associated with the deposition of a court-appointed independent medical examiner is governed by Rule 20(G).

E. The Court may impose up to the total cost of the proceedings, including attorney fees, against a party who is determined to have unreasonably sought or denied benefits, including medical benefits.

RULE 29. PAUPER'S AFFIDAVIT

A. Any party making application to proceed *in forma pauperis* shall file a Form 99 with the Court and provide a copy thereof to all other parties in the proceeding. The Form 99 shall state

the applicant's status and inability to pay fees and costs required under the Workers' Compensation Act.

B. The Court shall set the party's Form 99 for prehearing conference before the assigned trial judge prior to any hearing on merits, giving notice to all other parties in the proceeding. Any party may file a Form 99 with an appeal to the Court En Banc, as provided under 85 O.S., Section 3.6. The Form 99 shall be set for prehearing conference before the assigned trial judge before the appeal is docketed for oral argument.

C. An appeal to the Court en banc of a trial judge's denial of pauper status shall be set before the Court en banc on a priority basis with payment of the cost of the appeal (including transcription and filing fee) being deferred pending resolution of the pauper status appeal. If denial of the pauper status is affirmed by the Court en banc, within twenty (20) days, the party either must seek appellate review of the denial before the Supreme Court or pay the filing fee for the appeal and the transcription costs of the same prior to the original, underlying appeal being set for hearing before the Court en banc. Failure to do either shall result in dismissal of the underlying appeal to the Court sitting en banc upon motion of the opposing party. Only one appeal fee is due because the pauper status appeal is part of the original, underlying appeal. If pauper status is found by the Court en banc, the deferred costs and fees shall be borne by the Workers' Compensation Court.

RULE 30. DISCOVERY AND ATTENDANCE

A. The Court's process shall be available to aid any party in pursuit of discovery and to compel attendance of witnesses. Subpoenas for the production of documentary evidence shall be obtained in accordance with Title 12 of the Oklahoma Statutes. A copy of any subpoena that commands production of documents and things or inspection of premises before trial shall be served on each party as provided in 12 O.S., Section 2004.1(B).

B. No depositions, interrogatories, interrogatory answers, requests for production of documents and things, requests for admissions, or responses thereto, shall be filed with the Court, except as ordered by the assigned judge. Discovery disputes may be resolved by filing a Form 13 requesting a prehearing conference.

C. The parties shall advise opposing parties of the desire to take depositions of all persons, excluding physicians, within twenty (20) days after a Form 9 or Form 10 has been timely filed. Parties who fail to complete depositions in a timely manner will be deemed to have waived their right to take a deposition, unless such failure is excused by the Court for good cause shown.

D. The Court may exclude the oral testimony or the verified or declared report of any physician whose report has been withheld from a party who has made timely written demand therefor.

RULE 31. ACCESS TO COURT RECORDS INDEXED BY SOCIAL SECURITY NUMBER

In accordance with 74 O.S., Section 3113, the Court will not furnish information indexed by social security number unless specifically authorized to do so by the holder of the social security number.

RULE 32. JURISDICTIONAL ISSUES

Any party may raise a jurisdictional issue and request a trial thereon in advance of a trial on the merits, subject to the discretion of the Court. A finding by the Workers' Compensation Court that it has jurisdiction does not finally determine the rights of the parties, and is not an appealable order. Hermetics Switch, Inc. v. Sales, 1982 OK 12, 640 P.2d 963. A finding by the Workers' Compensation Court that denies jurisdiction is an appealable order, subject to de novo review by the Supreme Court. Garrison v. Bechtel Corporation, 1995 OK 2, 889 P.2d 273.

RULE 33. PRIOR PRESENTATION TO JUDGE

When a question of law, fact or procedure has been presented to a judge, the same question shall not thereafter knowingly be presented to another judge without apprising the subsequent judge of the former judge's ruling or, if no ruling has been made, that such question has already been presented in the same case to the former judge. The provisions of this rule do not apply to questions of law, fact or procedure presented to a settlement judge.

RULE 34. JOINDER OF ADDITIONAL PARTIES

A. A claimant who desires to add additional respondent(s), shall promptly amend the Form 3, and mail a copy to all parties, including the additional respondent(s) and insurance carrier(s) named. Mailing shall constitute service upon the additional parties.

B. A respondent who desires to add additional respondent(s) shall file a Form 13 requesting a prehearing conference on the issue, and mail a copy of the Form 13 to all parties, including the additional respondent(s) and insurance carrier(s) named. The Court shall notify all parties of the date of the prehearing conference. At the prehearing conference, the Court shall hear argument, and based upon its discretion, enter its order granting or denying the request.

C. The additional respondent(s) and insurance carrier(s) shall comply with Rule 16.

D. The Court, in its discretion, may tax costs against any party who joins an additional party without reasonable grounds.

RULE 35. CHANGE OF CONDITION

Any party to the claim may move to set the cause for trial on a change of condition by filing a Form 9 as provided in Rule 19. The physician's medical report or testimony at the subsequent trial must show that said physician was either the attending, treating or examining physician at the time

of the previous award or that the physician has personal knowledge of claimant's condition at that time, or it must show that the physician has examined reports, x-rays and any other medical data referring to claimant's condition at the time of the previous award. A fee of Seventy-five Dollars (\$75.00) per action to reopen any case shall be collected by the Court Administrator, pursuant to 85 O.S., Section 93, from the party filing a Form 9 seeking to reopen.

RULE 36. VENUE AND CASE CONSOLIDATION

A. Cases will be heard by a trial judge of the Workers' Compensation Court in either Oklahoma City or Tulsa, and as otherwise provided by law. If venue is agreed upon between the parties, the Court shall be so notified by such a statement on the Form A, 9, or 13. If no agreement is reached, the Court will set the case to be heard at the most convenient location. Objections to venue shall be filed and submitted to the assigned trial judge within ten (10) days of receipt of the Notice of Trial.

B. Consolidation of cases involving the same claimant may be made for hearing purposes only at the discretion of the trial judge assigned to the lowest case number, upon request of either party. Cases consolidated for purposes of hearing only shall maintain individual case numbers and shall remain subject to a separate filing fee and costs, as set out in 85 O.S., Section 93 and Rule 28. Cases involving the same claim shall be consolidated to the lowest case number. All motions and requests to consolidate shall be set for prehearing conference prior to the entry of a Court order sustaining or overruling the motion for case consolidation.

RULE 37. CONTINUANCES

A request for a continuance will not be granted as a matter of course. Any motion for a continuance may be granted only by the assigned judge for good cause shown. All motions for continuance shall be signed by the party on whose behalf the motion is made, or contain a certificate of the movant's attorney, that the attorney's client has knowledge of and has approved the continuance.

No continuance of an appeal scheduled for review by the three-judge panel is permitted prior to the date of oral argument without approval of the Presiding Judge, or in the absence of the Presiding Judge, the duty judge. Continuances on the day of oral argument will be granted by a majority vote of the three-judge panel.

RULE 38. DISQUALIFICATION OF TRIAL JUDGE OR TRANSFER OF CLAIM TO PRESIDING JUDGE - REVIEW

Any party who feels that a fair and impartial trial or other hearing cannot be received from the trial judge to whom the matter is assigned, shall make written motion requesting such judge to withdraw from the case. That application need not set forth specific reasons. The trial judge may withdraw without further proceeding and immediately refer the matter to the presiding judge for reassignment.

Any party aggrieved by an order of a trial judge who refused to grant a written request to disqualify, or transfer a claim to the presiding Judge for reassignment, may seek corrective relief by invoking the appellate jurisdiction of the three-judge review panel in the manner and within the time provided by 85 O.S., Section 3.6(A).

The Supreme Court will not entertain an original proceeding to disqualify a trial judge of the Workers' Compensation Court or direct such judge to transfer a claim to the presiding judge of that court for reassignment unless it is shown that the relief sought by the petitioner was previously denied by the three-judge review panel. An order of the assigned trial judge or the three-judge review panel which is favorable to the moving party may not be reviewed in any tribunal either by appeal or in any other procedural framework.

RULE 39. TRAVEL EXPENSES - MEDICAL AND VOCATIONAL REHABILITATION

A. Upon reasonable advance notice from the respondent and receipt of statutory travel expenses, the claimant must submit to a medical examination by a physician selected by the respondent. If the claimant refuses to submit to the examination, the respondent may file a Form 13 requesting the claimant's compensation and right to prosecute any proceeding under the Workers' Compensation Act be suspended during the period of refusal as provided in 85 O.S., Section 25. The claimant must show cause at the hearing why the respondent's request should not be granted. The Court, in its discretion, may assess the cost of the examination against the claimant.

B. Travel expenses related to a claimant's submission to a medical examination or incurred in obtaining reasonable and necessary medical treatment, vocational evaluations, and vocational retraining shall be paid to the claimant as provided in this rule. Mileage and necessary lodging expenses are limited to the provisions of the State Travel Reimbursement Act, 74 O.S., Section 500.1 et. seq. Meals will be reimbursed at the rate of Eight Dollars (\$8.00) per meal per four hours of travel status, not to exceed three meals per day. Travel expenses paid to the claimant shall include only expenses for travel from the residence of the claimant at the time of the examination, treatment, evaluation or retraining, as applicable, not to exceed 600 miles round trip. The employer shall not be liable for travel which is wholly within the limits of the city or town of the claimant's residence. Exceptions to this rule shall be at the discretion of the Court.

RULE 40. APPLICATION FOR CHANGE OF PHYSICIAN

A. A claimant seeking a change of physician pursuant to 85 O.S., Section 14(G) shall file an application with the Court setting out the claimant's current treating physician, the body part for which a change of physician is sought, and a list of three physicians qualified to treat the body part named. The Court shall set the application for hearing on the Court's next available temporary issue docket, unless otherwise directed by the assigned trial judge.

B. The respondent shall choose one of the three physicians listed by the claimant or shall file a Form 10A no later than ten (10) days after the application is filed. The Form 10A may be amended at any time not later than the hearing on the application. A reply to the Form 10A is not required. If the parties are unable to agree upon a physician from among the physicians named by

the parties, or if the respondent fails to timely file a Form 10A, the Court shall appoint a physician from the Court's list of independent medical examiners to treat the claimant's injured body part for which the change of physician is sought.

C. The Court, in its discretion, and in the interest of justice, may continue the selection hearing upon such terms as may be appropriate.

RULE 41. INDEPENDENT MEDICAL EXAMINERS - APPOINTMENTS

A. Qualifications. To be eligible for appointment by the Court to the list of qualified independent medical examiners and for retention on the list, the physician must:

1. be a licensed physician in good standing in Oklahoma or the state in which the physician practices as provided in 85 O.S., Sections 14(E) and 17(A)(1);
2. be highly experienced and competent in the physician's specific field of expertise and in the treatment of work-related injuries;
3. be knowledgeable of workers' compensation principles and the workers' compensation system in Oklahoma, as demonstrated by prior experience and/or education;
4. have in force and effect health care provider professional liability insurance from a domestic, foreign or alien insurer authorized to transact insurance in Oklahoma or in the state where the physician practices, if different from Oklahoma. The per claim and aggregate limits of the insurance must be at least One Million Dollars (\$1,000,000.00). This insurance requirement shall not apply to physicians requesting their services under the independent medical examiner system to be restricted to providing opinions regarding the nature and extent of permanent impairment, if any, and/or opinions in claims against the last employer for combined disabilities or against the Multiple Injury Trust Fund;
5. have no felony conviction under federal or state law within seven (7) years before the date of the physician's application to serve as a qualified independent medical examiner;
6. have a valid Oklahoma State Bureau of Narcotics and Dangerous Drugs Control (BNDD) registration (or comparable registration from the state where the physician is licensed and practices if other than Oklahoma) and federal Drug Enforcement Agency (DEA) registration, as authorized by law for the physician's professional license; and
7. have a valid, unrestricted professional license as a physician which is not probationary.

B. Appointment. Appointment of physicians to the list of qualified independent medical examiners, and maintenance and periodic validation of such list shall be by a majority vote of the judges of the Court. Physician appointments shall be for a two-year period.

C. Application for Appointment. To request appointment to the list of qualified independent medical examiners, a physician shall:

1. Submit a signed and completed application Form 463 and a signed and completed physician disclosure Form 17 to the following address: Oklahoma Workers' Compensation Court, Medical Services Division, 1915 N. Stiles Avenue, Oklahoma City, Oklahoma 73105-4918. Illegible, incomplete or unsigned applications and disclosures will not be considered by the Division and shall be returned. A copy of the application Form 463 and physician disclosure Form 17 may be obtained from the Division at the address set forth in this paragraph;

2. Submit a current curriculum vitae, together with the application Form 463 and physician disclosure Form 17, to the Division; and

3. Verify that the physician, if appointed, will:

- a. provide independent, impartial and objective medical findings in all cases that come before the physician;
- b. decline a request to serve as an independent medical examiner only for good cause shown;
- c. conduct an examination, if necessary, within thirty (30) calendar days from the date of the order appointing the examiner, unless otherwise approved by the Court, when necessary to render findings on the questions and issues submitted;
- d. prepare a written report in accordance with Rule 20 which addresses the issues set out in the order of appointment;
- e. submit the report to the parties and the Court within fourteen (14) calendar days of a required examination of the claimant and/or completion of necessary tests, or within fourteen (14) calendar days after receipt of necessary records and information if no examination and/or tests are required;
- f. accept as payment in full for services rendered as an independent medical examiner the fees established pursuant to Rule 44;
- g. submit to a review pursuant to Rule 42 and 85 O.S., Section 17(D)(9);
- h. submit annually to the Workers' Compensation Court written verification of valid health care provider professional liability insurance as and if required in subsection A of this rule;

- i. notify the Workers' Compensation Court in writing upon any change affecting the physician's qualifications as provided in subsection A of this rule; and
- j. comply with all applicable statutes and Court Rules.

D. Disclosure. As part of the application, the physician shall identify, on the physician disclosure Form 17, any employer, insurer, employee group, certified workplace medical plan, or representatives of any of the above with whom the physician is under contract or serves as a company doctor, or who regularly uses the services of the physician.

RULE 42. INDEPENDENT MEDICAL EXAMINERS - REVOCATION OF APPOINTMENT

A. Removal of a physician from the list of qualified independent medical examiners shall be by request of the independent medical examiner or by a majority vote of the judges of the Court.

B. The Court may remove a physician from the list of qualified independent medical examiners for cause, including, but not limited to the following grounds:

1. a material misrepresentation on the Form 463 application for appointment to the list of qualified independent medical examiners or on the physician disclosure Form 17;

2. refusal or substantial failure to notify the Court of any change affecting the physician's qualifications as provided in Court Rule 41(A); or

3. refusal or substantial failure to comply with the provisions of Rules 41 through 45, 85 O.S., Section 17, or other applicable Court rules and statutes.

C. In arriving at a determination regarding whether to remove a physician from the list, the Court may consider the character of the alleged violation and all of the attendant circumstances, and may confer with the Physician Advisory Committee (85 O.S., Section 201.1), other public or private medical consultants, or refer such review to the Administrator in accordance with 85 O.S., Section 201.

D. A physician whose qualification to serve as independent medical examiner has been revoked by the Court is not eligible to be selected as an independent medical examiner during the period of revocation.

RULE 43. INDEPENDENT MEDICAL EXAMINERS - REQUESTS FOR ASSIGNMENT

A. Appointment of an independent medical examiner from the Court's list of independent medical examiners is governed by this rule. Appointments shall take into account the specialty, availability and location of the examiner.

- B. In order to be eligible for appointment, a qualified independent medical examiner:
1. shall not have a financial interest in the claimant's award; and
 2. in a case involving permanent disability, shall not be a treating physician of the injured employee or have treated the injured employee with respect to the injury for which the claim is being made or the benefits are being paid.

C. Requests for the appointment of an independent medical examiner may be set for a prehearing conference, at the discretion of the Court.

D. The parties shall send prior Court orders involving the employee, any medical reports submitted by the parties, and other pertinent information to the independent medical examiner by regular mail within seven (7) calendar days of receipt of the Court order assigning the examiner. A copy of any medical report submitted by a party to the independent medical examiner shall be sent simultaneously to all opposing parties. The treating physician shall send the employee's medical records to the independent medical examiner within seven (7) calendar days of receipt of notice from the respondent of the appointment of the independent medical examiner. The expense of the treating physician's copy or copies is governed by 76 O.S., Section 19 and shall be borne by the employer. If necessary, the independent medical examiner may contact persons in whose possession the records or information is located solely for the purpose of obtaining such records or information. Nothing in this rule shall preclude the treating physician's medical records from being sent to the independent medical examiner by the parties.

E. An independent medical examiner may decline to accept the Court's appointment only for good cause shown.

F. Disputes relating to treatment provided or to be provided through a certified workplace medical plan, including requests for change of physician within the plan, shall be timely processed as provided by 85 O.S. Section 14.3(E), through the internal dispute resolution procedures of the certified workplace medical plan prior to pursuing remedies in the Workers' Compensation Court.

RULE 44. INDEPENDENT MEDICAL EXAMINERS - FEES AND COSTS

A. Fees for services performed by a Court appointed independent medical examiner shall be paid according to the following schedule:

1. Diagnostic tests relevant to the questions or issues in dispute shall be paid by the respondent in accordance with the Court's Schedule of Medical and Hospital Fees; provided, diagnostic tests repeated sooner than six (6) months from the date of the test are not authorized for payment unless agreed to by the parties or ordered by the Court.

2. The review of records and information, including any treating physician evaluation and/or medical reports submitted by the parties, the performance of any necessary examinations, and

the preparation of the verified or declared written report pursuant to Rule 20, shall be billed at the physician's usual and customary rate, not to exceed Three Hundred Dollars (\$300.00) per hour or any portion thereof, not to exceed a maximum reimbursement of One Thousand Six Hundred Dollars (\$1,600.00) per case. The Court may permit exception to this provision, for good cause shown. Subject to reimbursement if appropriate, these costs shall be billed to, and initially paid by, the respondent.

3. Reimbursement for medical testimony given in person or by deposition shall be paid by the requesting party in accordance with the independent medical examiner's usual and customary charges, not to exceed Four Hundred Dollars (\$400.00) per hour or any portion thereof, plus an allowance of Seventy-five Dollars (\$75.00) for 15 minute increments thereafter. Preparation time shall be reimbursed at the examiner's usual and customary charge, not to exceed One Hundred Dollars (\$100.00). A physician may receive not more than Two Hundred Dollars (\$200.00) in advance in order to schedule a deposition. The advance payment shall be applied against amounts owed for testimony fees. A Four Hundred Dollar (\$400.00) charge is allowable whenever a deposition or scheduled testimony is canceled by any party within three working days prior to the scheduled start of the deposition or scheduled testimony. The party canceling the deposition or scheduled testimony is responsible for the incurred cost.

4. Amounts owed to the independent medical examiner for services are payable upon submission of the examiner's verified or declared written report.

5. The independent medical examiner may charge and receive up to Three Hundred Dollars (\$300.00), to be paid initially by the respondent in the event the employee fails to appear for any scheduled examination, or if the examination is canceled by the employee or the respondent within forty-eight (48) hours of the scheduled time. The respondent shall be reimbursed by the employee if the failure to appear or the cancellation by the employee was without good cause. The independent medical examiner may not assess a cancellation charge for appointments canceled by the examiner.

B. Failure to timely pay a Court appointed independent medical examiner for services rendered pursuant to Court order may result in the imposition of assessments or sanctions by the Court. Disputes regarding payment for services rendered by a Court appointed independent medical examiner that cannot be resolved by the examiner and the parties themselves, may be addressed by filing a Form 13 or Form 19, or by mediation, as appropriate.

RULE 45. INDEPENDENT MEDICAL EXAMINERS - APPLICATION RENEWAL PROCESS

A. The Medical Services Division of the Court shall notify the independent medical examiner of the end of the examiner's two-year qualification period at least sixty (60) calendar days before the expiration of that period and shall provide the examiner with an application Form 463 and physician disclosure Form 17 for reapplication as an independent medical examiner.

B. Criteria for reapplication shall be governed by Rule 41. If a curriculum vitae (CV) has been previously submitted to the Division with a request for independent medical examiner status, the physician does not have to resubmit the physician's CV.

RULE 46. MEDICAL CASE MANAGERS - APPOINTMENTS

A. Qualifications. To be eligible for appointment by the Court to the list of qualified independent medical case managers and for retention on the list, the applicant must:

1. be a registered nurse with a current, active unencumbered license from the Oklahoma Board of Nursing, or possess one or more of the following certifications:

- a. Certified Disability Management Specialist (CDMS);
- b. Certified Case Manager (CCM);
- c. Certified Rehabilitation Registered Nurse (CRRN);
- d. Case Manager - Certified (CMC);
- e. Certified Occupational Health Nurse (COHN); or
- f. Certified Occupational Health Nurse Specialist (COHN-S);

2. be highly experienced and competent in the field of medical case management as it relates to the care and treatment of work related injuries;

3. be knowledgeable of workers' compensation principles and the workers' compensation system in Oklahoma as demonstrated by prior experience and/or education;

4. have no felony conviction under federal or state law within seven (7) years before the date of the applicant's application to serve as a qualified independent medical case manager; and

5. have a valid professional license as a nurse or case manager certification as provided in paragraph 1 of this subsection, which is not probationary or restricted.

B. Appointment. Appointment of applicants to the list of qualified independent medical case managers, and maintenance and periodic validation of such list shall be by a majority vote of the judges of the Court. Medical case manager appointments to the list shall be for a two year period.

C. Application for Appointment. To request appointment to the list of qualified medical case managers, an applicant shall:

1. Submit a signed and completed application Form 626 to the following address: Oklahoma Workers' Compensation Court, Medical Services Division, 1915 N. Stiles Avenue, Oklahoma City, Oklahoma, 73105-4918. Illegible and incomplete or unsigned applications will not be considered by the Division for submission to the judges, and shall be returned. A copy of the application Form 626 may be obtained from the Division at the address set forth in this paragraph;

2. Submit a current resume, together with the application Form 626 to the Division; and
3. Verify that the applicant, if appointed, will:
 - a. provide independent, impartial and objective medical case management services in all cases assigned to the case manager;
 - b. decline a request to serve as a medical case manager only for good cause shown;
 - c. meet with the claimant and appear at any appointments with treating physicians, as directed by the Court, and when necessary to report findings or respond to questions and issues submitted by the Court;
 - d. submit an initial written report to the parties and Court within twenty (20) calendar days from the date of the order appointing the case manager, or sooner as the particular circumstances of the medical care or treatment or inquiries from the Court may necessitate. Progress reports shall be submitted as the particular circumstances of each case warrant, or as directed by the Court;
 - e. notify the Workers' Compensation Court in writing upon any change affecting the medical case manager's qualifications as provided by statute or this rule; and
 - f. comply with all applicable statutes, Court rules, and orders in the case assigned.

D. Disclosure. As part of the application, the case manager shall identify, on the application form, any employer, insurer, employee group, certified workplace medical plan, or representatives of the above with whom the case manager is under contract, or who regularly uses the services of the case manager.

RULE 47. MEDICAL CASE MANAGERS - REVOCATION OF APPOINTMENT

- A. Removal of a case manager from the list of qualified independent medical case managers shall be at the request of the case manager, or by a majority vote of the judges of the Court.
- B. Grounds for removal include, but are not limited to:
 1. a material misrepresentation on the Form 626 application for appointment to the list of qualified independent medical case managers;
 2. refusal or substantial failure to notify the Court of any change affecting the case manager's qualifications as provided by statute or this rule; or

3. refusal or substantial failure to comply with the provisions of Rules 46 through 49, or other applicable Court rules, statutes or orders in the specific case assigned.

C. In arriving at a determination regarding whether to remove a case manager from the list, the Court may consider the character of the alleged violation and all of the attendant circumstances, and may confer with the Physician Advisory Committee (85 O.S., Section 201.1), other public or private medical or case management consultants, or refer such review to the Administrator in accordance with 85 O.S., Section 201.

D. A case manager whose qualification to serve as an independent medical case manager has been revoked by the Court is not eligible to be selected as an independent medical case manager during the period of revocation.

RULE 48. MEDICAL CASE MANAGERS - REQUESTS FOR ASSIGNMENT

A. For cases not covered by a certified workplace medical plan, and where the insurance company, if any, does not provide case management, the Court may grant case management on the request of any party or when the Court, on its own motion, determines that case management is appropriate. Nothing in this rule shall limit the Court's ability to appoint a case manager by agreement of the parties, or as otherwise allowed by law.

B. If the parties to a dispute cannot agree on an independent medical case manager of their own choosing, the Court may appoint one from the list of qualified independent medical case managers maintained by the Court.

C. In order to be eligible for appointment in any given case, a qualified medical case manager:

1. shall not have a financial interest in the claimant's award; and
2. shall not have any financial interest in the employer's or insurer's business, nor regularly contract with or serve as a case manager for the employer, insurer, or employer's own risk group, or a certified workplace medical plan with which the employer or employer's own risk group contracts.

D. The parties are encouraged to request the appointment of an independent medical case manager at a prehearing conference in accordance with Rule 54.

E. Requests for the appointment of an independent medical case manager may be set for a prehearing conference, at the discretion of the Court.

F. Upon appointment, the parties shall send information and all medical records to the independent medical case manager, by regular mail, within seven (7) calendar days of receipt of the Court order assigning the case manager.

G. If a party makes a good faith effort to get medical records (including diagnostic films) and the records are unobtainable, then a letter to this effect shall be sent to the case manager with copies to all other parties and the Court, together with information as to the known location of any such records or information not in either the attorney's or client's possession. If necessary, the case manager may contact persons in whose possession the records or information is located solely for the purpose of obtaining such records or information.

H. The respondent shall pay all reasonable and customary charges of a medical case manager appointed by the Court. Failure to timely pay a Court appointed independent medical case manager for services rendered pursuant to Court order may result in the imposition of assessments and sanctions by the Court.

RULE 49. MEDICAL CASE MANAGERS - APPLICATION RENEWAL PROCESS

A. The Medical Services Division of the Court shall notify the independent medical case manager of the end of the case manager's two-year qualification period at least sixty (60) calendar days before the expiration of that period and shall provide the examiner with an application Form 626, for reapplication as an independent medical case manager.

B. Criteria for reapplication shall be governed by Rule 46. If a resume has been previously submitted to the Division with a request for independent medical case manager status, the case manager does not have to resubmit the case manager's resume, unless there have been material changes that would have bearing upon the applicant's qualifications.

RULE 50. DISPUTES REGARDING PAYMENT FOR HEALTH OR REHABILITATION SERVICES

A. General: Disputes regarding payment for health or rehabilitation services rendered pursuant to the Workers' Compensation Act may be addressed as set out in this rule. A Form 18 proceeding is an administrative review of disputed medical charges. A Form 19 proceeding may involve judicial resolution of disputed charges for health services. Mediation refers to a process of resolving disputes with the assistance of a mediator outside of a formal court proceeding.

B. Jurisdictional requirement: No Form 18 or Form 19 will be processed by the Workers' Compensation Court unless a Form 2, 3, 3A or 3B is filed with the Court; provided, a Form 18 may be processed if the payor's legal representative executes and provides the Court with a submission to limited jurisdiction. The Court has no jurisdiction to hear and resolve disputes where a written contract exists between the employer or insurance carrier and any medical provider, pursuant to 85 O.S., Section 14(F).

C. Payment of Charges: All charges which comply with the Schedule of Medical and Hospital Fees should be paid by the uninsured or own risk employer or insurance carrier within thirty (30) days of the employer's or carrier's receipt of the bills from the provider. Failure to offer payment of charges within sixty (60) days of receipt of the bills may limit the applicability of the Schedule of Medical and Hospital Fees.

D. Form 18 Proceedings:

1. Disputes arising after a medical charge has been paid, involving conflicting interpretations of the Schedule of Medical and Hospital Fees may be addressed by filing a Form 18 as provided in Court Administrator Rule 1.

2. Either party aggrieved by the Administrator's order directing or denying the payment of medical charges may appeal such order to a judge of the Workers' Compensation Court by filing a Form 19 and a Form 9 within ten (10) days after the Administrator's order is entered. The Form 19 must be appropriately marked to indicate that it is being used to appeal the Administrator's order. The following shall be attached to the Form 9 when filed:

- a. A copy of the administrative order appealed from;
- b. Copies of all materials submitted to the Administrator in the administrative review proceedings;
- c. A statement identifying each portion of the Administrator's order claimed to be in error; and
- d. An explanation of how each portion of the Administrator's order urged in error conflicts with the Schedule of Medical and Hospital Fees.

The appealing party must mail a copy of all materials which are filed in the appeal to each opposing party. No response to the appeal of the Administrator's order is required.

E. Form 19 Proceedings:

1. A rehabilitation provider, case manager or a medical provider may institute proceedings to recover charges rendered for rehabilitation or health services, medicines or supplies which have been provided to a claimant, by the filing of a Form 19, Part I, if the provider has not received payment within sixty (60) days from the date the charges were submitted to the uninsured or own risk employer or insurance carrier. A Form 19 may also be filed if the uninsured or own risk employer or insurance carrier has refused liability for the payment of the charges on one or more of the following grounds:

- a. Length of treatment;
- b. Necessity of treatment;
- c. Unauthorized physician;
- d. Denial of compensability of the claimant's accidental injury or occupational disease; or

e. Any other objection requiring a judicial determination for resolution.

2. A provider may request a trial for a determination of the issues raised on the Form 19 by filing a Form 9. The provider shall mail a copy of the Form 9, together with a copy of the Form 19 and itemized bill(s), to the uninsured or own risk employer or insurance carrier in the case. The uninsured or own risk employer or insurance carrier shall file a Form 10M no later than thirty (30) days after the Form 9 is filed.

3. A medical report signed by a physician shall be offered by both parties in any claim made for the payment or non-payment of medical services when the dispute involves the necessity of the medical services, including claims for treatment rendered in excess of the length of treatment authorized by the Schedule of Medical and Hospital Fees provided for in 85 O.S., Section 14. Medical reports shall be offered by both parties in any claim made for complex treatment rendered beyond the limitation provided in the Schedule of Medical and Hospital Fees.

4. Audits of medical bills to determine the amount allowable under the appropriate Schedule of Medical and Hospital Fees may be offered by either party. Audits prepared by billing review services, medical bill audit services or in-house auditors may be submitted as evidence reflecting the methodology of the application of the Schedule of Medical and Hospital Fees. The Schedule of Medical and Hospital Fees sets maximum amounts allowable but does not prohibit a party from asserting a lesser amount should be paid.

5. Form 19 hearings may be scheduled periodically for the Administrator's docket to determine the status of the payment of disputed rehabilitation, case management and medical charges. If the rehabilitation, case management or medical charges are not paid before the hearing or the parties are unable to resolve the dispute at the hearing, the dispute shall be assigned to a judge of the Workers' Compensation Court for hearing on the same date. All parties involved in a Form 19 hearing shall be prepared for trial on such disputed charges.

F. Appearances: Appearances are governed by Rule 7.

G. Mediation: Mediation is governed by Court Rule 52 and Court Administrator Rule 4.

RULE 51. DISPUTED ATTORNEY FEES - WITHDRAWAL OF ATTORNEY - CHANGE OF ADDRESS

A. When a dispute arises among several attorneys as to the identity of claimant's attorney of record, or when several successive attorneys lay claim to a fee in the same case, the trial judge shall decide the issues raised and allocate the fee allowed in proportion to the services rendered.

B. 1. Before any attorney may withdraw as an attorney from a Workers' Compensation Court case, the attorney shall obtain leave of Court to withdraw, for good cause shown.

2. The attorney filing the Application for Leave to Withdraw as Attorney of Record shall send a copy of the application to the attorney's client and to all attorneys of record. All applications shall be signed by the party on whose behalf the attorney has previously appeared or contain a certificate of the movant attorney that:

- a. the client has knowledge of and has approved or refused to approve the withdrawal; or
- b. the attorney has made a good faith effort to notify the client and the client cannot be located.

3. In all cases, the moving attorney shall certify whether or not:

- a. the case is set for trial, settlement conference or mediation;
- b. the case is pending for an order;
- c. the case is pending on appeal;
- d. a permanent total disability order has been entered; or
- e. a death claim order has been entered.

4. All applications to withdraw shall include an order for the Court.

5. A Form 93 has been adopted by the Court that may be used for this purpose.

6. The filing of an Application and Order For Leave to Withdraw on a Form 93 provided for this purpose, does not perfect an attorney lien.

C. Except when an attorney's representation has been terminated at the client's initiative, no attorney shall be allowed to withdraw as an attorney for a party when that attorney has signed the pleadings necessary to perfect an appeal to the Court En Banc. This prohibition shall apply until the appeal has been fully submitted to the Court En Banc for consideration. This prohibition shall not apply if another attorney has entered an appearance for the appealing party prior to the filing of the application to withdraw.

D. Any attorney of record shall give notice of a change of address by mailing to the docket office, a copy of the letterhead containing the new address and a list containing the Oklahoma Bar Association number of each attorney member of the firm who regularly appears in Court. A party acting pro se shall mail notice of the change of address to the docket office. Attorneys of record who change firms shall notify the Court of the status of the representation of their clients, and shall immediately withdraw, when appropriate.

RULE 52. MEDIATION

A. It is the policy of the Workers' Compensation Court to encourage the use of alternative dispute resolution procedures for the early disposition of pending litigation. Such informal procedures can achieve the just, efficient, and economical resolution of controversies while preserving the right to a full trial on demand.

B. 1. The Court, on its own motion, upon request of any party or by agreement of the parties, may refer any case, or portion thereof, for mediation, except for disputes related to medical care under a certified workplace medical plan or claims against the Multiple Injury Trust Fund. A referral may be made at any time. More than one referral may be made in any case.

2. The order of referral to mediation shall be entered by the Court, and provided to the parties.

C. A list of mediators is available from the Court Administrator's office. To be eligible for appointment by the Court to the list of certified workers' compensation mediators, the individual must meet the following minimum requirements:

1. be an active or senior member in good standing of the Oklahoma Bar Association for not less than three (3) years immediately preceding the application for appointment as a mediator;

2. be knowledgeable of workers' compensation principles and the workers' compensation system in Oklahoma, as demonstrated by prior experience and/or education; and

3. within twelve months immediately preceding the application for appointment to the Court's list of certified workers' compensation mediators:

a. complete a minimum of six (6) hours of mediation training, which training is Court sponsored or has been approved by the Mandatory Continuing Legal Education Commission of the Oklahoma Bar Association, and

b. observe or have mediated a minimum of two (2) workers' compensation mediation proceedings.

D. 1. Appointment of individuals to the list of certified workers' compensation mediators, and maintenance and periodic validation of such list, shall be by a majority vote of the judges of the Court. Individual appointments shall be for a five-year period. Review of requests for appointment or reappointment to the list of qualified mediators shall be conducted every six months beginning January 1, 2007.

2. Certified mediators must complete at least six (6) hours of continuing education per two-year period in the areas of mediation and workers' compensation, which education is Court sponsored or has been approved by the Mandatory Continuing Legal Education Commission of the Oklahoma Bar Association. Proof of compliance with this requirement shall be submitted to the

Court Administrator. This continuing education requirement is in addition to any other general requirement which may be required by the Oklahoma Bar Association.

3. The Court shall notify a certified mediator of the end of the mediator's five-year qualification period at least sixty (60) calendar days before the expiration of that period. Criteria for reappointment is the same criteria as for initial appointment in effect at the time of reappointment.

E. To request appointment to the list of certified workers' compensation mediators, an individual shall:

1. Provide the following information to the Court's Counselor Department, 1915 N. Stiles Avenue, Oklahoma City, Oklahoma 73105-4918:

- a. name;
 - b. address;
 - c. telephone number;
 - d. profession or occupation (e.g. attorney, retired judge);
 - e. training and/or experience as a mediator;
 - f. training and/or experience evidencing knowledge of workers' compensation principles and the Oklahoma workers' compensation system; and
 - g. a statement certifying that the individual meets the minimum requirements set forth in this rule; and
2. Verify that the individual, if appointed, will:
- a. complete mediation within thirty (30) days of the mediator being contacted by the parties to make appropriate arrangements for the mediation proceedings;
 - b. if requested by the Court, conduct not to exceed two pro bono mediations annually;
 - c. submit biennially to the Court Administrator written verification of compliance with the continuing education requirements of this rule;
 - d. accept as payment in full for services rendered as a certified workers' compensation mediator compensation not exceeding such rate or fee as determined by the Court Administrator in Court Administrator Rule 4; and

- e. comply with all applicable statutes and Court rules, including rules of the Court Administrator and all applicable standards of confidentiality and impartiality.

F. Removal of an individual from the list of certified workers' compensation mediators shall be by request of the mediator or by a majority vote of the judges of the Court. The Court may remove an individual from the list of certified workers' compensation mediators for cause, including, but not limited to the following grounds:

- 1. a material misrepresentation in information submitted to apply for appointment to the Court's list of certified workers' compensation mediators; or
- 2. refusal or substantial failure to comply with the provisions of this rule or other applicable Court rules, including rules of the Court Administrator, and statutes.

G. Nothing in this rule shall preclude the parties from agreeing to voluntarily participate in mediation by a mediator of their choice, independent of an order of this Court.

H. Final disposition of a case resolved by mediation shall be completed upon the filing of a Court approved Joint Petition or Form 14 that includes the consent to mediation form or court order of referral to mediation, as applicable, and mediation agreement. Final disposition of a case resolved by mediation may not be completed by the filing of a Form 1X or Form 26.

RULE 53. JUDICIAL SETTLEMENT CONFERENCE

A. A trial judge assigned to a case, on his or her own motion or at the request of any of the parties upon the filing of a Form 13, may refer the case, or any portion thereof, to a judicial settlement conference. The settlement conference shall be conducted by any Workers' Compensation Court Judge or an Active Retired Judge sitting by special designation for that purpose, other than the trial judge assigned to the case. The settlement judge may participate in the case in future settlement conferences, if any, and otherwise shall be disqualified from conducting or participating in any hearings, trials or three-judge panel appeals concerning the case. The setting of a settlement conference by the Court, or a request for a settlement conference by any party, shall not preclude any party from filing a Form 9.

B. The settlement judge, all counsel and parties, and any other persons attending the settlement conference shall treat as confidential all written and oral communications made in connection with or during any settlement conference. Neither the settlement conference statements nor communications during the conference with the settlement judge may be used by any party in the trial of the case. The settlement judge shall not have any communications regarding the case or the settlement conference with the assigned trial judge other than to advise the trial judge that a settlement was or was not reached.

C. At the conclusion of the settlement conference or any continuation thereof, the settlement judge shall advise the Court Administrator whether or not the case settled. If the parties

reach a settlement agreement, the settlement judge may approve a Joint Petition, Form 14 Order, or Order of Dismissal, or enter such further order within the Court's jurisdiction as may be necessary to effectuate the agreement of the parties.

RULE 54. PREHEARING, PRETRIAL AND SETTLEMENT CONFERENCES

A. The assigned trial judge shall set the Prehearing Conference no later than forty-five (45) days after the filing of the Form 13.

B. Nothing in this rule shall limit a party's right to request a Pretrial Conference with the trial judge at the time of trial.

C. The Court, in its discretion, may order the appearance of any party or attorney at any Prehearing, Pretrial, or Judicial Settlement Conference before a settlement conference judge pursuant to Rule 53. Nothing in this rule shall limit the authority of a judge of the Workers' Compensation Court to order a Prehearing, Pretrial or Settlement Conference.

D. The Court, in its discretion, in order to assist in the efficient management of the dockets, may establish additional Pretrial dockets. Except for judicial settlement conferences, all Pretrial dockets shall be governed by the rules pertaining to a Prehearing Conference.

E. Failure to appear at a conference, appearance at a conference substantially unprepared or failure to participate in good faith may result in any of the following sanctions:

1. the striking of the hearing;
2. holding the proceeding in abeyance;
3. an order entered by default;
4. assessment of expenses and fees (either against a party or the attorney individually);

or

5. such other order as the Court may deem just and appropriate.

F. If during the Prehearing Conference, the trial judge finds the party seeking the Prehearing Conference has done so in an effort to delay, harass or increase costs, the judge shall assess all costs and attorney fees for such conference against the party requesting the conference.

G. All regularly scheduled conferences with the Court shall be governed by the Prehearing Conference rules of procedure as set out herein.

H. If any party requests a prehearing conference, that party must certify, on the request for prehearing conference, that the parties have conferred or attempted to confer in good faith, but sincere efforts to resolve the issue have been unavailing.

RULE 55. JOINT PETITION SETTLEMENTS

A. 1. A record of the terms and conditions of an approved Joint Petition settlement and the claimant's understanding concerning the effect of the settlement must be made and transcribed at the respondent's expense.

2. In no instance shall the total attorney's fee amount exceed the maximum attorney's fee allowable by law.

3. A file-stamped copy of an approved Joint Petition settlement shall be mailed by the Court to all unrepresented parties and attorneys of record.

B. No settlement of a claim on Joint Petition shall be made upon written interrogatory or deposition except in cases where the claimant is currently engaged in the military service of the United States, is outside of the state, is a nonresident of Oklahoma, or in cases of extreme circumstances.

C. No Joint Petition settlement may be presented until competent medical evidence is ready for admission.

D. The transcript of the Joint Petition settlement shall be prepared and provided to the parties within ninety (90) days. If any respondent or insurance carrier prefers to be billed immediately for the transcript, it may request the court reporter to determine the charge at the time the record is made. The court reporter may then contract for services rendered and submit a statement in conformity with the agreement.

E. Medical reports and other exhibits submitted in support of a Joint Petition settlement will not be transcribed unless the parties request otherwise. When said reports or exhibits are not transcribed, the original exhibits or duplicate copies thereof shall be affixed to the original transcript and placed in the Court file.

F. Joint Petition settlements between the claimant and the respondent shall not be deemed an adjudication of the rights between the medical provider and the employer as to charges incurred by the medical provider prior to the date of the Joint Petition settlement.

G. Within seven (7) days of the date a medical provider provides initial treatment for a work-related accident, the medical provider shall provide notice in writing to the Workers' Compensation Court (but only if a Form 3, 3A or 3B has been filed with the Court) and in all cases shall provide notice in writing to the patient's employer, and if known, the employer's insurance carrier. If the medical provider fails to provide the required notification, the medical provider forfeits any rights to future notification, including those circumstances where a case is joint petitioned, unless said medical provider is actually known to the respondent or is listed by the claimant.

H. At the time of the joint petition, the claimant shall provide to the respondent a list of all medical providers of which the claimant is aware. Within ten (10) days from the date the joint petition is file-stamped by the Court, the respondent shall send notice of the joint petition to all medical providers listed by the claimant, to all medical providers providing written notice to the employer and, if known, the employer's insurance carrier, and to any other medical providers known to the respondent.

I. Once a joint petition is filed, the claimant is responsible for payment of any future medical benefits, and informing any future medical providers that the case has been joint petitioned, and that the respondent shall not be responsible for payment of said medical bills.

RULE 56. COMPROMISE SETTLEMENTS

A. The parties to a claim, by agreement, may make full and final disposition of all issues regarding a claim under the Workers' Compensation Act, as the parties consider reasonable, subject to approval by a Workers' Compensation Court judge or the Court Administrator. The agreement shall be set forth in a Form 1X compromise settlement as authorized in 85 O.S., Section 26 and this rule or in a Joint Petition settlement under 85 O.S., Section 84 and Rule 55. The Form 1X must be supported by competent medical evidence.

B. As used in this rule, "parties" means the respondent (employer or its insurer), and a claimant who is not, nor was previously, represented by an attorney in the claim. The employer must have filed a Form 2 regarding the injury or occupational illness which is the subject of the Form 1X. There is no requirement for the claimant to have filed a claim for compensation (Form 3, Form 3A, Form 3B, or Form 3E) with the Court before effecting a Form 1X compromise settlement.

C. Form 1X compromise settlements shall not be used to address payment of medical services rendered before the date of the Form 1X agreement, or combined disabilities claims against the Multiple Injury Trust Fund. Nothing in this rule shall preclude the Multiple Injury Trust Fund from compromising a claim as authorized by 85 O.S., Section 172(G).

D. No Form 1X shall be made upon written interrogatory or deposition except in cases where the claimant is currently engaged in the military service of the United States, is outside of the state, is a nonresident of Oklahoma, or in cases of extreme circumstances.

E. A record of the terms and conditions of an approved Form 1X and the claimant's understanding concerning the effect of the settlement must be made and transcribed at the expense of the respondent. The transcript of the Form 1X shall be prepared and provided to the parties within ninety (90) days. If any respondent prefers to be billed immediately for the transcript, it may request the court reporter to determine the charge at the time the record is made. The court reporter may then contract for services rendered and submit a statement to the respondent in conformity with the agreement. Medical reports and other exhibits submitted in support of a Form 1X shall not be transcribed unless the parties request otherwise. If the reports or exhibits are not transcribed, the original exhibits or duplicate copies thereof shall be affixed to the original transcript and placed in the Court file.

F. A file-stamped copy of an approved Form 1X shall be mailed by the Court to all unrepresented parties and attorneys of record.

G. At the time of the Form 1X, the claimant shall provide to the respondent a list of all medical providers known to the claimant. Within ten (10) days from the file-stamped date of the Form 1X, the respondent shall send notice of the Form 1X to all medical providers listed by the claimant and to all medical providers known to the respondent.

H. The claimant is liable for payment of any medical services rendered after a Form 1X is filed. The claimant is responsible for informing any future medical providers that the case was disposed of by a Form 1X and that the claimant, rather than the respondent, is the party financially responsible for such services.

I. The amount of a Form 1X compromise settlement shall not be considered an award of permanent partial disability. However, the settlement amount is subject to such assessments and taxes as may be provided by law.

RULE 57. NUNC PRO TUNC ORDERS

A. Within twenty (20) days of the date a final order was sent to the parties the Workers' Compensation Court's power to correct it nunc pro tunc is coextensive with that of the district court. After the lapse of twenty (20) days that power is limited only to correcting facially apparent clerical errors or omissions, mathematical miscalculations, and other facially apparent mistakes in recording judicial acts.

B. No nunc pro tunc change may be made in any order without a written application therefor, followed by an adversary hearing set upon notice to the opposite parties or a written consent by those parties. A nunc pro tunc correction order made within twenty (20) days of a final order's entry must be entered and sent to the parties within those twenty (20) days. See Ferguson v. Ferguson Motor Co., 1988 OK 137, 766 P.2d 335.

RULE 58. CERTIFICATION OF AWARDS

An application for an order directing certification to district court of any workers' compensation award may be heard after notice to the respondent and insurance carrier has been given at least ten (10) days before the scheduled trial thereon. At such trial the respondent and insurance carrier shall be afforded an opportunity to show good cause why the application should not be granted.

RULE 59. PROOF OF PRIOR ADJUDICATION

A. If, in the course of a litigated proceeding, a party desires to establish the fact of a prior adjudication either by the State Industrial Court, the Workmen's Compensation Court or by the Workers' Compensation Court, the proof thereof shall be made by offering a certified copy of the judgment roll, rather than by offering the Court's case file. For purposes of this rule, the judgment

roll shall consist of: (1) the notice of claim form (Form 3, 3A, 3B, 3E or 3F) and (2) the orders and awards made in the case.

B. Any other part of the case file in a previously adjudicated claim shall be offered in a similar manner.

RULE 60. APPEALS

A. Appeals to the three-judge panel may be taken by filing an original and two (2) copies of a Request for Review within ten (10) days from the date the order appealed from was filed with the Court as reflected by the date of the file stamp thereon. No party may file a Motion For New Trial, a Motion For Reconsideration or a Petition for Rehearing before the assigned trial judge. The Request for Review shall include:

1. The name of the trial judge from whose decision the appeal is taken;
2. A copy of the order appealed;
3. A specific statement of each conclusion of law and finding of fact urged as error. General allegations will not be accepted. General allegations of error include statements that the decision of the trial judge is “against the clear weight of the evidence or contrary to law.” The party or parties appealing to the three-judge panel will be bound by the allegations of error contained in the Request for Review and will be deemed to have waived all others; and
4. A brief statement of the relief sought.

B. No response to a Request for Review is necessary. A motion to Dismiss an Appeal for lack of jurisdiction based upon the time lines of the appeal, may be filed by the non-appealing party. Appeals to the three-judge panel shall be strictly on the record made before the trial court. No new evidence shall be allowed. Said Request for Review shall be accompanied by a non-refundable filing fee in the sum of One Hundred Twenty Five Dollars (\$125.00).

C. A designation of record shall be filed by the appealing party and a copy submitted to the court reporter and all other parties in the case concurrently with or prior to filing a Request for Review in all actions which are appealed to the three-judge panel. The cost of preparing the transcript shall be advanced forthwith by the designating party. The transcript shall be prepared and sent to all parties to the appeal within forty-five (45) days from the date the designation of record is filed.

D. 1. Where a party believes that a memoranda brief would aid the three-judge panel in its determination, the party may submit the brief and two copies thereof to the three-judge panel on the date of oral argument. The party shall provide all opposing parties with a copy of the memoranda brief not later than three (3) days prior to oral argument.

2. Memoranda brief shall not exceed five pages in length. The brief shall be submitted on 8 ½" x 11", paper with one inch margins and shall be double-spaced and prepared in no less than ten point type. No appendix or other documents shall be attached to the brief.

E. The Presiding Judge, or in the absence of the Presiding Judge, the judge who is the most senior in terms of service or designee, shall preside at oral argument.

F. Oral argument shall be limited to ten (10) minutes to each side unless the time is enlarged by leave of the Court. Any party failing to appear when the appeal is called for oral argument shall be deemed as having waived the right to argue the case and the appeal shall be considered as being submitted on the record. If a basis of the appeal involves medical evidence, other disputed questions of fact, or if there is controlling or significant appellate authority, three copies of the relevant document(s), relevant portions of the trial transcript, deposition testimony, or decisions shall be presented to the three-judge panel at the time of oral argument and shall be exchanged with opposing parties prior to oral argument.

G. Any party to the appeal may request a record of the oral argument proceedings. The party demanding the record shall advise the duty reporter assigned to the three-judge panel. Any party requesting that a transcript be prepared, shall bear the costs associated with the preparation. Any designation of the record for the three-judge panel shall be governed by the applicable Rules of Appellate Procedure in civil cases as adopted by the Oklahoma Supreme Court. During the pendency of an appeal to the three-judge panel, the trial court shall retain jurisdiction over any issue not affected by the eventual ruling of the appellate body. See, Waddle v. State Industrial Court, 1964 OK 169, 394 P.2d 511.

RULE 61. CONTEMPT

A. Direct Contempt:

1. Power of the Court. The court has the power to punish any contempt in order to protect the rights of the parties and the interests of the public by assuring that the administration of justice shall not be thwarted. The trial judge has the power to cite and if necessary punish anyone who, in the judge's presence in open court, willfully obstructs the court or judicial proceedings after an opportunity to be heard has been afforded.

2. Admonition and Warning. Censure should not be imposed by the trial judge unless:

- a. it is clear from the identity of the offender and the character of his or her acts that disruptive conduct was willfully contemptuous; or
- b. the conduct warranting the sanction was preceded by a clear warning that the conduct is impermissible and that specified sanctions may be imposed for its repetition.

3. Notice of Intent to Use Contempt Power. Postponement of Adjudication:

- a. The trial judge, as soon as practicable after he or she is satisfied that courtroom misconduct requires contempt proceedings, should inform the alleged offender of the judge's intention to institute such proceedings.
- b. The trial judge should consider the advisability of deferring adjudication of contempt for courtroom misconduct of a party, an attorney or a witness until after the trial, and should defer such a proceeding unless prompt punishment is imperative.

4. Notice of Charges and Opportunity to be Heard. Before imposing any punishment for contempt, the judge should give the offender notice of the charges and at least a summary opportunity to adduce evidence or argument relevant to guilty or punishment.

5. Referral to Another Judge. The judge before whom courtroom misconduct occurs may impose appropriate sanctions, including punishment for contempt, but should refer the matter to the Court Administrator for assignment to another judge, if his or her conduct was so integrated with the contempt that the judge contributed to it or was otherwise involved, or his or her objectivity can reasonably be questioned.

B. Indirect Contempt for Refusal to Comply With Subpoena.

1. Power of the Court. The court has the power to punish a witness for willful disobedience of, or willful resistance to, a subpoena lawfully issued or made by the court.

2. Attachment of a Witness for Nonattendance. When a witness fails to attend in obedience to a subpoena, except in case of a demand and failure to pay witness fees as provided in 85 O.S., Section 81, the trial judge before whom attendance by the witness is required may issue an attachment to the sheriff of the county where the witness resides, or where the witness may be at the time, commanding the sheriff to arrest and bring the person named in the subpoena before the trial judge at a time and place to be fixed in the attachment, to give testimony and answer for the contempt. If the attachment does not require the witness to be immediately brought before the trial judge, a sum may be fixed in which the witness may give an undertaking, with surety, for his or her appearance. Such sum shall be endorsed on the back of the attachment. If no sum for the undertaking is fixed and endorsed on the attachment, it shall be One Hundred Dollars (\$100.00). If the witness is not personally served with the attachment, the court may order the witness to show cause why an attachment should not issue against him or her. Charges for service of the attachment shall be paid by the party moving the Court for an order of contempt against the witness for refusal to comply with the subpoena.

3. Punishment for Contempt. The punishment for failure of a witness to attend in obedience to a subpoena lawfully issued by the Workers' Compensation Court shall be limited to a fine not exceeding One Thousand Dollars (\$1,000.00), payable by the witness to the Workers'

Compensation Court for credit to the Administrator of Workers' Compensation Revolving Fund created pursuant to 85 O.S., Section 95.

C. Indirect Contempt for Disobedience To Court Order. Obedience of any person to an order of the Workers' Compensation Court, other than a subpoena to testify as a witness, may be compelled by attachment proceedings through the district court upon application of the Workers' Compensation Court judge pursuant to 85 O.S., Section 80.

RULE 62. ACTIVE RETIRED JUDGES

Active retired judges assigned to the Workers' Compensation Court by the Chief Justice of the Oklahoma Supreme Court shall perform such duties and responsibilities as authorized by law, and as a majority of the judges of the Workers' Compensation Court may prescribe.

RULE 63. CERTIFICATE OF COVERAGE FOR INSURANCE

A. When an insurer issues a policy to provide workers' compensation benefits pursuant to the Workers' Compensation Act, the insurer immediately shall file, or cause to be filed, with the Court Administrator, a certificate of coverage. The certificate shall be in print format as follows, or may be submitted electronically to the Court in such form and manner as may be prescribed by the Court Administrator.

FRONT OF CARD

NAME OF INSURED EMPLOYER _____

ADDRESS OF INSURED EMPLOYER'S PRINCIPAL PLACE OF BUSINESS _____

PRINCIPAL OCCUPATION OF THE INSURED EMPLOYER BY NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM CODE – "NAICS CODE" _____

CARRIER _____

POLICY NO. _____

ADDRESS OF ISSUING OFFICE _____

POLICY EFFECTIVE DATE _____

POLICY EXPIRATION DATE _____

FEDERAL EMPLOYER IDENTIFICATION NO. OF INSURED EMPLOYER _____

NAME OF CERTIFIED WORKPLACE MEDICAL PLAN (CWMP), IF ANY _____

BACK OF CARD

I hereby certify that I have on this day delivered to the employer named on this card a workers' compensation certificate which covers all obligations of the insured under the Workers' Compensation Act of Oklahoma, wherever located, during the period shown on this card.

DATE _____
SIGNED BY _____
TITLE _____
TELEPHONE NO. _____

A certificate submitted in print format shall be on a 3" x 5" card of card stock, in 10 point type and signed by the issuing entity.

B. Any expense incurred by the Court or any party resulting from continuances necessitated by the failure of the respondent or its insurer to comply with this rule, may be assessed by the Court against the party responsible.

C. Each certified workplace medical plan shall file, and maintain, with the Court Administrator a current list of its network providers and dispute resolution form, for public disclosure. This filing requirement may be complied with by submission of the required information in writing, or electronically if approved in advance by the Court Administrator. Alternatively, the plan may notify the Administrator in writing of the appropriate InterNet web site address through which the required information may be accessed by the public electronically.

RULE 64. MOTION TO REVOKE INSURANCE LICENSE

Motions to revoke or suspend the insurance license of any carrier, pursuant to 85 O.S., Section 42(B), shall first be presented to the Court Administrator for disposition. The Administrator may refer the matter to a regularly assigned judge of the Court for fact finding and determination. Appeals from the decision of the trial judge, or the Administrator shall conform to Rule 60. If it is determined that an insurer's license should be suspended or revoked, a recommendation shall be made to the Insurance Commissioner.

RULE 65. ORDERS SUPPLEMENTING RULES

When authorized by a majority of the judges of the Workers' Compensation Court, the Presiding Judge may enter orders consistent with these rules for the general conduct of business.

RULE 66. EFFECTIVE DATE

These rules, as amended, shall become effective on February 7, 2008.