

## CHAPTER 235

### RULES OF THE DIVISION OF WORKERS' COMPENSATION

Authority: N.J.S.A. 34:1-20, 34:1A-3(e), 34:1A-12(b), (c) and 34:15-64.

Department of Labor and Workforce Development  
Division of Workers' Compensation

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**SUBCHAPTER 1. GENERAL PROVISIONS**

**12:235-1.1 Purpose and scope**

- (a) The purpose of this chapter is to establish rules to carry out the responsibilities of the Division of Workers' Compensation under the Act.
- (b) This chapter shall apply to all persons subject to the Workers' Compensation Law, N.J.S.A. 34:15-7 et seq.

**12:235-1.2 Construction**

The rules contained in this chapter shall be construed to secure a just determination, simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay. Unless otherwise stated, any rule may be relaxed or dispensed with if strict adherence would cause an injustice.

**12:235-1.3 Certification in lieu of oath**

- (a) Claim petitions shall be notarized and filed under oath as set forth in N.J.S.A. 34:15-51 and 34:15-52 and in accordance with N.J.A.C. 12-235-3.1.
- (b) Certifications in lieu of oath as provided in the New Jersey Rules of Court may be used for motions and any other documents filed with the Court.

**12:235-1.4 Still and television camera and audio coverage of proceedings**

- (a) All requests for still and television camera and audio coverage of proceedings shall be forwarded to the Chief Judge.
- (b) Such requests shall be considered in accordance with Department procedures and the “New Jersey Supreme Court Guidelines For Still And Television Camera And Audio Coverage of Proceedings In The Courts Of New Jersey”, which are incorporated herein by reference and contained in Vicinage Operations Directive #10-03 issues by Richard J. Williams, Administrative Director, on October 8, 2003.

**12:235-1.5 (Reserved)**

**12:235-1.6 Maximum workers' compensation benefit rates**

- (a) In accordance with the provisions of N.J.S.A. 34:15-12(a), the maximum workers' compensation benefit rate for temporary disability, permanent total disability, permanent partial disability, and dependency is hereby promulgated as being \$871.00 per week.
- (b) The maximum compensation shall be effective as to injuries occurring in the calendar year 2016.

**12:235-1.7 (Reserved)**

**12:235-1.8 (Reserved)**

## **SUBCHAPTER 2. DEFINITIONS**

### **12:235-2.1 Definitions**

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

“Act” means Workers' Compensation Law, N.J.S.A. 34:15-7 et seq.

“Division” means the Division of Workers' Compensation, PO 381, Trenton, New Jersey 08625-0381.

“Chief Judge” means the Director/Chief Judge of the Division.

“Commissioner” means the Commissioner of Labor and Workforce Development or his or her designee.

“Department” means the New Jersey Department of Labor and Workforce Development.

“Director” means Director/Chief Judge of the Division.

“Judge” means Judge of Compensation.

“N.J.A.C.” means New Jersey Administrative Code.

“N.J.S.A.” means New Jersey Statutes Annotated.

“Respondent,” “employer” or “insurance carrier” are used interchangeably.

## **SUBCHAPTER 3. FORMAL CLAIMS**

## 12:235-3.1 Initial Pleadings

- (a) Claim petitions shall be subject to the following:
1. The claim petition may be filed electronically or on paper.
  2. Claim petitions filed on paper shall be verified by the claimant and include the date of the signature and verification. The formal hearing process shall be initiated by the filing of a verified claim petition in duplicate with the central office of the Division within the time prescribed by law on a form prescribed by the Division. Claim petitions filed electronically shall follow the procedures in (c) below. If an attorney for the petitioner knowingly files an incomplete or inaccurate petition any fee that may be awarded may be reduced by 15 percent or \$200.00, whichever is greater.
  3. Except as provided in subsection (a)2 above, all paper pleadings, motions and briefs shall be signed by the attorney of record, or the attorney's associate or by the party if pro se. Signatures of a firm may be typed, followed by the signature of an attorney of the firm. Signatures on any duplicate original or carbon copy required to be filed may be typed. Every paper to be filed shall bear the date on which it was signed.
  4. The signature of an attorney or party pro se constitutes a certification that the signatory has read the pleading or motion; that to the best of the signatory's knowledge, information and belief there is good ground to support it.
  5. Material allegations, if known, shall be stated. Material allegations include a description of the accident or occupational exposure, the nature of the injury, the date and place of the occurrence, the wage, compensation benefits provided to date, a description of all other claims made for this injury and all other information requested on the prescribed form.
  6. Claim petitions by or on behalf of a worker seeking compensation for injury caused by an accident shall describe the date, place and description of the accident, the injury, the name and address of the employer, the name and address of the treating provider, the name of the compensation insurer and all other pertinent information required by the Act and these rules.
  7. Claim petitions filed by dependents for benefits provided by N.J.S.A. 34:15-13 shall set forth the identity, address, relationship and date of birth of all dependents, the social security number of the decedent, the date and cause of death, whether compensation

benefits were paid or claimed during the deceased's lifetime, and the type and amount of benefits claimed. To the extent applicable, the petitioner shall comply with the information required for accidental injury claims or occupational disease claims. Multiple claims arising from one decedent shall be consolidated for disposition.

8. All known multiple occupational claims by a worker or dependent against the same respondent employer shall be joined in one petition. Claim petitions for occupational disease as defined by N.J.S.A. 34:15-31 which are filed on behalf of a worker shall describe the dates, place and description of the exposure and the injury or illness claimed to have occurred as a result of the exposure. The occupational disease petition shall include the name and address of the employer(s) and the identity of its compensation insurer for the pertinent period of time as well as all other information required in filing a claim petition required by this section. The Division shall notify all parties of disposition.
  9. Vague or evasive pleadings may be stricken or a claim petition dismissed without prejudice on motion brought by a party or the Judge of Compensation on notice. Claim petitions which merely describe the injury or illness by generic definition, such as orthopedic, internal, neuropsychiatric or similar terms without description of the particular injury shall be considered vague or evasive.
- (b) Answers to a claim petition may be filed electronically or on paper subject to the following:
1. The answer of the respondent to a claim petition shall be on a form prescribed by the Division and shall, if known, contain the following:
    - i. The name and address of the respondent's attorney;
    - ii. The name and address of the carrier;
    - iii. The carrier's claim number;
    - iv. The employer's State registration number;
    - v. An admission or denial of employment;
    - vi. An admission or denial if accident or illness arose out of and in the course of employment;
    - vii. Gross weekly wage;
    - viii. Benefit rates;
    - ix. Medical providers;
    - x. Temporary disability paid, if any; and
    - xi. An admission or denial of jurisdiction.



2. The answer shall be filed with the office to which the claim is assigned within 30 days of the date of service of the petition except for good cause shown. The answer may be prepared by the attorney for the respondent based upon knowledge, information or belief and shall be regarded as his or her certification of its contents without the necessity of an affidavit.
    - i. If the answer is filed on paper, it shall be filed with the office to which the claim is assigned. A copy of the answer shall be forwarded to the petitioner's attorney by first class mail, or its equivalent.
    - ii. If an answer is filed electronically with the Division and the petitioner's attorney is a duly authorized electronic filer with the Division, the Division shall cause the answer to be forwarded to the petitioner's attorney in electronic format which will constitute service under the rules.
    - iii. If an answer is filed electronically with the Division and the petitioner's attorney is not a duly authorized electronic filer with the Division, the respondent's attorney shall serve a copy of the answer on paper with the petitioner's attorney by first class mail, or its equivalent.
  3. If the answer is not filed as specified in (b)1 and 2 above, the Judge of Compensation to whom the case is assigned may, on motion, either suppress the defenses and permit the petitioner to prove his or her case, or permit the filing of the answer on such terms as may be fixed in the discretion of the Judge of Compensation.
  4. If the respondent knowingly files an incomplete or inaccurate answer or unnecessarily delays filing an answer, such circumstances shall be considered in the apportionment of any counsel fee awarded.
  5. Answers which put petitioner to proofs without conforming with (b)(1) and (2) above may be stricken and subject to the penalties pursuant to Section 12:235-3.14 of these Rules.
- (c) Petitions and answers filed electronically shall be accepted by the Division in lieu of paper pleadings provided:
1. The filer is an attorney licensed in the State of New Jersey and duly authorized by the Division to file pleadings electronically.

2. The filer submits the pleading in the format approved by the Division.
  3. The filer makes an identical paper copy of the electronically submitted pleading and obtains thereon a verification by oath, affirmation or certification of the petitioner or respondent, as applicable, as to the accuracy of the information set forth therein.
  4. The filer shall retain, as an officer of the court, the duly verified pleading and shall make same available to the Division and/or his/her adversary upon request.
  5. Failure to maintain the paper copy of said pleadings and make it available within a reasonable time upon proper request shall constitute grounds for the revocation of the privilege of electronic filing in addition to whatever other sanction may be deemed appropriate under the law.
- (d) Upon receipt of an electronically filed pleading the Division shall send an electronic copy of same to the insurance carrier, third party administrator or designated legal representative of the respondent provided that the insurance carrier, third party administrator or designated legal representative has requested to be and has been approved by the Division to receive such pleadings. Notification of the electronic pleading to the electronic address of the approved recipient shall constitute valid service of process.
- (e) Claim petitions filed electronically where the insurance carrier, third party administrator or designated legal representative is not approved to receive service of an electronic pleading shall be sent by the Division to the addressee specified in the claim petition, by regular mail together with a request for Acknowledgment of Service in accordance with N.J.S.A. 34:15-51 and N.J.S.A. 34:15-52. Answers shall likewise be submitted by regular mail in accordance with (b)2i.
- (f) Claim petitions will be assigned in the following priority order: the vicinage for the county where the petitioner resides, the vicinage for the county where the respondent is situated, or the vicinage for the county where the accident or exposure occurred.
- (g) A copy of the claim petition shall be forwarded by the Division to the respondent either electronically for electronic filers, by regular mail, or by registered mail return receipt requested if served pursuant to N.J.S.A. 34:15-55.1. Where a motion for default has been filed, the petitioner must provide proof that the claim petition and motion for default have also been

served personally on the respondent, its agents, and/or corporate officers as applicable, pursuant to R. 4:4-4 of the New Jersey Rules of Court.

**12:235-3.2 General Motions for temporary disability and/or medical benefits**

- (a) In all motions by the petitioner for temporary disability or medical benefits, the original notice of motion shall be filed with the district office to which the case is assigned and a copy of the notice of motion and claim petition served by certified mail or personal service on the attorneys of record. If the attorney of record is unknown, then service shall be made by certified mail on the respondent(s) and its carrier(s). If it is a new claim petition and it is a claim petition filed on paper, then the notice of motion shall also be filed with the central office. Motions for temporary disability and/or medical benefits must evidence that petitioner is currently temporarily totally disabled and/or in need of current medical treatment. Where only past periods of temporary total disability and/or medical expenses are claimed by petitioner, such issues should be presented at pretrial for resolution or trial and not by motion under this section.
- (b) The notice of motion for temporary disability or medical benefits shall be on a form prescribed by the Division and shall contain:
  - 1. A detailed account of compensable lost time claimed by the petitioner, indicating any period paid by the respondent;
  - 2. Affidavits or certifications made in personal knowledge by the petitioner or the petitioner's attorney, as well as the report(s) of a physician(s) stating the medical diagnosis and the specific type of diagnostic study, referral to specialist, or treatment being sought, and, if available, an itemized bill and report of the treating physicians or institutions or both for which services past, present and future, petitioner is seeking payment and such other evidence as shall relate to the petitioner's claim for temporary disability and/or medical treatment; and
  - 3. If the petitioner, having received treatment, cannot secure a report of the medical provider authorized by the respondent, it shall be set forth in the affidavit in lieu of the physician's report.
- (c) If an attorney for the petitioner knowingly files an incomplete, inaccurate or misleading notice of motion for temporary disability and/or medical benefits, or an attorney for the respondent files an untimely, incomplete, inaccurate or misleading answer, the attorney may be assessed a penalty in accordance with 12:235-3.14.

- (d) Except for good cause shown, respondent(s) shall file an answer within 21 days of service of the motion or within 30 days after service of the claim petition whichever is later.
- (e) When the Division has received a notice of motion for temporary disability and/or medical benefits filed in accordance with (a), (b) and (c) above, it shall list the motion for a hearing before a Judge of Compensation peremptorily within 30 days of the filing of the motion. Motions for medical and/or temporary benefits shall commence and continue in a timely manner subject to the scheduling constraints of the Division. Said scheduling may be accelerated as ordered by the Director, the Supervising Judge of the vicinage, or the Judge of Compensation to whom the case is assigned.
- (f) Affidavits, certifications and medical reports submitted in accordance with (b) above in support of the motion may constitute a prima facie case and may be sufficient basis for the issuance of an order compelling the respondent to provide the relief sought unless respondent files supporting affidavits or certifications to oppose said motion on a legal or factual basis, or files medical reports if there is a medical basis to oppose said motion. No order shall be issued until 30 days after service of the claim petition.
- (g) Examination, if required by respondent, shall be completed within 30 days of receipt of the motion and the report issued in not more than 35 days from receipt of the motion and shall not delay the start of the hearing of the motion except for good cause shown.
- (h) For motions where it appears the only issue involved is which carrier or employer is liable to petitioner for the benefits sought, a judge of compensation may order one carrier or employer to pay benefits without prejudice and subject to an order of reimbursement if another party is later held liable for such benefits.
- (i) On conclusion of the hearing on the motion for temporary and/or medical benefits, the Judge of Compensation shall, within 15 days, render a final decision on the motion and notify the respective counsel of the decision. In computing the 15 days' time, the 15 days shall be from the last day of hearing or from the date of filing of briefs as ordered by the Judge, whichever is later. Under no circumstances shall briefs be filed later than 15 days after the hearing.
- (j) Every carrier and self-insured employer shall designate a contact person who is responsible for responding to issues concerning medical and temporary disability benefits where no claim petition has been filed or where a claim petition has not been answered. The full name, telephone

number, address, e-mail address, and fax number of the contact person shall be submitted to the Division. Whenever any of this information about the contact person needs to be updated, such updated information shall be submitted to the Division. After an answer is filed with the division, the attorney of record for the respondent shall act as the contact person in the case.

**12:235-3.3 Motions for emergent medical care pursuant to N.J.S.A. 34:15-15.3**

- (a) With or after the filing of a claim petition, a petitioner may file a motion for emergent medical care directly with the district office to which the petition is or will be assigned (See N.J.A.C. 12:235-3.1 for claim petition filing and assignment).
- (b) The notice of motion for emergent medical care shall be on a form prescribed by the Division and shall contain or be accompanied by the following:
  - 1. A statement by the petitioner or the petitioner's attorney of the specific request(s) for medical treatment made by the petitioner or the petitioner's attorney to the employer and/or the employer's insurance carrier, including the name of the person(s) to whom the request(s) was/were made;
  - 2. Medical documentation, including a statement by a physician indicating that the petitioner is in need of emergent medical care, that the delay in treatment will result in irreparable harm or damage to the petitioner and the specific nature of the irreparable harm or damage;
  - 3. All medical records relating to the requested medical care, which are in the possession of the petitioner or the petitioner's attorney;
  - 4. Copies of the claim petition and answer.
    - i. If no answer to the claim petition has been filed, the notice of motion shall include the following information if known by the petitioner: the telephone number and the fax number of the employer, the name of the employer's workers' compensation insurance carrier and the insurance carrier or self-insured employer contact person's telephone number and fax number, as required to be maintained under N.J.A.C. 12:235-3.4; and
  - 5. Proof of service under (c), (d) and (e) below.

- (c) Where an answer to the claim petition has been filed by the respondent, the notice of motion and supporting papers shall be served on respondent's attorney by fax and by a one-day delivery service.
- (d) Where no answer to the claim petition has been filed by the respondent, the notice of motion and supporting papers shall be served on the employer and, if known by the petitioner, upon the employer's insurance carrier.
  - 1. Service on the employer under this subsection shall be either by personal service or by fax and a one-day delivery service.
  - 2. Service on the insurance carrier under this subsection shall be by fax and a one-day delivery service to the contact person listed pursuant to N.J.A.C. 12:235-3.4.
- (e) Where the employer is uninsured or where the employer's insurer is not known by the petitioner, the notice of motion and supporting papers shall, in addition to the requirements under (c) or (d) above, be served on the Uninsured Employer's Fund by fax and by a one-day delivery service.
- (f) The date of the personal service, the date of the fax service or the date of receipt of the one-day delivery service, whichever is latest, shall be considered the date of service under (c), (d) and (e) above.
- (g) No later than five calendar days after receiving service of the petitioner's notice of motion for emergent medical care, the respondent shall file with the district office an answer to the motion.
- (h) Within 15 calendar days after the petitioner has served the notice of motion for emergent medical care upon the appropriate party or parties under (c), (d) and (e) above, the employer or the employer's insurance carrier may have a medical examination of petitioner conducted.
- (i) The petitioner is required to attend and cooperate with the medical examination process under (h) above.
- (j) Motions for emergent medical care shall take precedence over all other court listings.
- (k) The judge should use telephone conferences and afternoon hearings, as appropriate, to expedite the disposition of motions for emergent medical care and to avoid as much as possible the disruption of other court proceedings.

- (l) Within five calendar days of the filing of an answer by respondent or, if no answer has been filed, within five calendar days from the date an answer should have been filed, an initial conference on the motion for emergent medical care shall take place
- (m) The district office shall provide notice of the initial conference to the following parties under the following circumstances:
  - 1. Where an answer to the notice of motion for emergent medical care has been filed, the district office shall provide notice of the initial conference by telephone and fax to the petitioner's attorney or petitioner pro se and to the answering party using the telephone numbers and fax numbers indicated in the notice of motion for emergent medical care and the answer, respectively;
  - 2. Where an answer to the notice of motion for emergent medical care has not been filed and where the employer is insured, the district office shall provide notice of the initial conference by telephone and fax to the employer and to the insurance carrier contact person listed in the notice of motion for emergent medical care; or
  - 3. Where an answer to the notice of motion for emergent medical care has not been filed and where the employer is not insured or the insurer is not known, the district office shall provide notice of the initial conference by telephone and fax to the employer and to the Uninsured Employer's Fund.
- (n) If the motion for emergent medical care has not been resolved at the initial conference and the employer or the employer's insurance carrier has not requested a medical examination of the petitioner under (h) above, the judge shall hold a hearing on the merits of the motion for emergent medical care as soon as is practicable, but no later than five calendar days from the date of the initial conference.
- (o) If the motion for emergent medical care has not been resolved at the initial conference and the employer or employer's insurance carrier has requested a medical examination of the petitioner under (h) above, the judge shall hold a hearing on the merits of the motion for emergent medical care as soon as is practicable after the medical examination of the petitioner, but no later than five calendar days from the date of the medical examination of the petitioner.
- (p) With regard to the hearing on the merits of the motion for emergent medical care, the judge may require a continuous trial or may use other procedures to ensure that the motion is expeditiously heard.

- (q) The judge hearing the motion for emergent medical care shall render a decision and issue an order on the motion within one business day of the conclusion of the trial testimony.
- (r) The judge may supplement the decision and order rendered under (q) above at a later date.
- (s) If a motion for emergent medical care does not meet the requirements under this section, but does meet the requirements for a general motion for temporary and/or medical benefits under N.J.A.C. 12:235-3.3, the motion shall be listed and proceed as a general motion for temporary and/or medical benefits.

**12:235-3.4 Insurance carrier or self-insured employer contact person procedures pursuant to N.J.S.A. 34:15-15.4**

- (a) Every insurance carrier providing workers' compensation insurance and every workers' compensation self-insured employer shall designate a contact person who is responsible for responding to issues concerning medical and temporary disability benefits where no claim petition has been filed or where a claim petition has not been answered.
- (b) The contact person referred to in (a) above shall also receive notice of motions for emergent medical care under N.J.A.C. 12:235-3.3.
- (c) The full name, telephone number, mailing address, e-mail address and fax number of the contact person referred to in (a) above shall be submitted to the Division utilizing the Division's contact person form in the manner instructed on the form.
- (d) The Division's contact person form shall be made available on the Division's website and at the Division's district offices.
- (e) Any changes of contact person or in information about the contact person shall be immediately submitted to the Division using the Division's contact person form.
- (f) After an answer to a claim petition has been filed, the attorney of record for the respondent shall be the point of contact for issues concerning temporary disability and/or medical benefits.
- (g) A contact person roster using the information provided under (c) above will be available on the Division's website.



- (h) Failure to comply with the requirements of N.J.S.A. 34:15-15.4 or this section shall result in a fine of \$ 2,500 for each day of noncompliance, which fine shall be payable to the Second Injury Fund.
  - 1. The Division shall send notice of noncompliance and of the fine amount by certified mail, return receipt requested, to the business address of the insurance carrier or self-insured employer.
  - 2. The insurance carrier or self-insured employer shall have 30 calendar days to pay the fine or to contest the fine.
  - 3. Where the insurance carrier or self-insured employer contests the fine, the Division shall hold a conference in an attempt to resolve the dispute.

**12:235-3.5 Other motions**

- (a) All other motions shall be in the form of a notice of motion, the original of which shall be filed with the district office to which the case is assigned with copies served on petitioner(s), respondent(s), carrier(s), or attorney(s). Every notice of motion shall include the factual and legal basis for the relief requested and a proposed form of order in triplicate.
- (b) If the notice of motion or responsive pleading relies on facts not of record, it shall be supported by affidavit made on personal knowledge setting forth facts which are admissible in evidence to which the affiant is competent to testify. The notice of motion shall be considered uncontested unless responsive papers are filed and served within 14 days of the service of the notice of motion.
- (c) Motions to dismiss for lack of prosecution pursuant to N.J.S.A. 34:15-54 and motions to suppress defenses shall be listed for hearing. All other motions shall be disposed of on the papers, unless a Judge of Compensation directs oral argument or further proceedings, in which event a hearing shall be scheduled within 30 days from the filing of the last papers contemplated by this section. At the conclusion of any such hearing the Judge of Compensation shall render a decision and enter an appropriate order within 30 days.

**12:235-3.6 Third party joinder by respondent**

- (a) A respondent who alleges that another employer or insurance carrier may be liable for all or part of the benefits claimed by the petitioner may move to join such employer or insurance carrier as a responding party to the original claim petition by notice of motion which shall be supported by a

definitive statement setting forth the factual and legal basis for the relief sought.

- (b) A copy of the motion and supporting statement with a copy of the original claim petition shall be served upon the party sought to be joined and all other parties.
- (c) It shall be the responsibility of the moving party to give notice of any hearing of the motion to the party sought to be impleaded.
- (d) Such motion shall be granted only where the moving party has satisfied the Judge of Compensation that there exists a substantial likelihood that the party to be joined is or may be liable for compensation benefits to the petitioner.
- (e) If the order sought is granted, the order shall be served upon the party joined forthwith who shall file an answer within 30 days of the date of service of the order.
- (f) In cases where it appears that the only issue involved is which carrier or employer is liable to the petitioner for the benefits sought, the Judge of Compensation may order the moving party to pay the benefits in whole or in part as a condition of joinder subject to an order for reimbursement, if another party is held to be liable for such benefits.
- (g) If a respondent knowingly files an incomplete, inaccurate or frivolous motion for third party joinder, such circumstances may be considered in the apportionment of any counsel fee awarded, in addition to a counsel fee not to exceed \$ 200.00 to each opposing counsel of each party sought to be joined.

**12:235-3.7 Conditions allowable for discovery**

- (a) Discovery, except a deposition for preservation of testimony, may be allowed in those contested cases where there are issues in dispute in addition to the nature and extent of petitioner's temporary or permanent disability.
- (b) All discovery shall be concluded within 180 days from the filing of respondent's answer or from petitioner's last authorized medical treatment, whichever date is later. A Judge of Compensation may extend or reopen discovery on his or her own motion or on application of a party for good cause appearing.

**12:235-3.8 Discovery**

- (a) Interrogatories shall be allowed without motion in dependency cases.
- (b) Interrogatories shall be allowed without motion where the injured worker is treated by the employer's physician and where medical information is not available to the worker.
- (c) The employer shall be required to furnish or make available for inspection and copying all records of medical treatment, examinations and diagnostic studies authorized by the respondent. The respondent shall have the same right when the worker is treated by his or her own physician. If either party fails to furnish said information within 30 days of receipt of demand of records, it may be responsible to reimburse its adversary for the cost of procuring the same.
- (d) Interrogatories shall be allowed without motion in cases of review or modification of a prior award on the grounds of increase or decrease of disability. The party seeking such review or modification shall furnish the adversary party with a chronology of the pertinent events from the date of the last award or judgment to the filing of the petition for the increase or decrease of disability indicating the essential facts upon which the petition is grounded.
- (e) Interrogatories in those cases allowed without motion shall be served by the petitioner not later than 30 days after service of the answer to the petition and by the respondent not later than 15 days after the service of its answer. Answers to the interrogatories shall be served within 45 days after service of the interrogatories. A Judge of Compensation upon motion for good cause may enlarge the time provided for service of answers. Supplemental interrogatories may be allowed on motion for good cause shown.
- (f) In occupational disease cases, a party may propound interrogatories only by demanding in the initial pleading that the opposing party answer the standard form interrogatories as listed in N.J.A.C. 12:235-14.1. The demand shall be stated in the claim petition by the petitioner and in the answer by the respondent immediately following signature. Interrogatory answers shall be served by all parties within 90 days from the filing of respondent's answer to the claim petition. A Judge of Compensation upon motion for good cause may extend the time provided for service of answers. Supplemental interrogatories may be allowed on motion for good cause shown.
- (g) Interrogatories may be allowed in other cases, upon motion, for good cause shown.

- (h) Depositions of witnesses may be allowed, upon motion, for good cause shown.
- (i) If timely response to a discovery demand has not been provided under this rule and no motion for an extension has been made, the party entitled to the discovery may move, on notice, for an order dismissing the claim petition for lack of prosecution or suppressing the defenses of the delinquent party which are pertinent to the unanswered interrogatories. See N.J.A.C. 12:235-3.3. Such noncompliance may also be the subject of an enforcement action under N.J.A.C.12:235-3.14. Failure to move to dismiss the claim petition or suppress defenses, as appropriate, prior to the first trial date shall be deemed a waiver of a discovery demand.

**12:235-3.9 Testimony of injured or ill petitioner by depositions**

- (a) A petitioner seeking compensation who is in such a physical condition that it is imperative that his or her testimony be taken by deposition, in order to preserve the person's rights or those of his or her estate or dependents, may give a deposition.
- (b) The deposition may be ordered by a Judge of Compensation upon notice to the adverse party and taken before a certified shorthand reporter.
- (c) The appearance by an attorney for the respondent shall not constitute a waiver of any of the rights of the respondent or its insurance carrier.
- (d) A report from a physician shall be attached to the application to take depositions stating the medical basis upon which the deposition is sought.
- (e) A deposition for this purpose may also be taken by consent of all parties, provided there is a report from a physician stating the medical basis upon which the deposition is sought.

**12:235-3.10 Certification of pre-existing conditions**

- (a) In all cases in which the petitioner claims total and permanent disability, the petitioner or petitioner's attorney shall, prior to the first hearing date, furnish to all other parties a written certification as to the existence of any condition pre-existing the last claimed compensable episode.
- (b) The certification shall include the names and addresses of physicians and institutions furnishing treatment or examinations for any such pre-existing conditions.

- (c) The petitioner may in lieu of furnishing actual records or reports, furnish executed authorizations for the records and reports of each such physician and institution.
- (d) Copies of all records and reports so obtained by the respondent shall be furnished to the petitioner or petitioner's attorney within 10 days of receipt.

**12:235-3.11 Pre-trial conference**

- (a) In any formal proceeding, the Division shall schedule a pre-trial conference where the following shall be accomplished:
  - 1. All medical reports shall be exchanged;
  - 2. The Judge and the attorneys shall agree upon the type of examination(s) required by each party;
  - 3. The Judge and the attorneys shall make a sincere effort to limit issues; and
  - 4. A pre-trial memorandum on a form prescribed by the Division shall be executed.
    - (i) Any party that intends to utilize videos or other electronic media, including surveillance tapes, must indicate that such media will be utilized at trial and identify the witness who will authenticate and testify concerning the materials to be presented in the "Other Witness" section of the pre-trial memorandum or as an addendum to the pre-trial memorandum. A party is not required to provide or exhibit electronic information, including surveillance tapes, to another party prior to the other party's testimony under oath.
    - (ii) A party may move to amend the pre-trial memorandum to include any necessary changes including the introduction of electronic materials obtained subsequent to the pre-trial.
  - 5. There shall be an adjournment upon good cause shown.
- (b) Incomplete medical examinations by either party shall be considered good cause for the adjournment of a pre-trial conference; provided, however, that no such adjournment shall be granted unless each party requesting the

adjournment shall supply to the Judge the name(s) of the examining physician(s) and the date(s) of the examination(s).

- (c) Any case set down for pre-trial on more than one occasion, if not ready because of failure of respondent to comply with this section, shall be placed on the trial list, and in the event an award is made, such failure shall be considered in the apportionment of the counsel fee. This provision shall not apply in any case in which the failure to have medical examinations is due to petitioner's neglect or refusal to appear for the examinations, in which event the case shall be marked, "not moved."
- (d) Any case listed, in which no appearance is made on behalf of the petitioner and which is not adjourned for good cause, shall be marked "not moved" and may be administratively discontinued. A matter that has been administratively discontinued may be the subject of a motion to dismiss for lack of prosecution or any other appropriate basis. The case shall not be restored to the calendar except on notice of motion, provided however, the Judge of Compensation may for good cause and on the Judge's own motion restore a case marked "not moved" to the trial or pre-trial calendar. The counsel fee normally allowed shall be reduced within the discretion of the Judge of Compensation for each time a case has been marked "not moved" when the attorney for the petitioner is responsible for such marking. When a case has been marked "not moved" because of the petitioner's failure without good cause to submit to a physical examination at the request of the respondent, the petitioner may be penalized in the apportionment of fees or reimbursement of respondent's cost for a missed appointment at the discretion of the Judge of Compensation.

### **12:235-3.12 Conduct of formal hearings**

- (a) The following concern appearances:
  - 1. Only an attorney at law licensed to practice in the State of New Jersey shall act as attorney of record.
    - (i) A substitution of attorney is permitted by filing a Substitution of Attorney (WC-10) form anytime up to the commencement of a trial when another attorney is being substituted to represent a party. At or after the commencement of a trial, a substitution of attorney must be approved by a Judge of Compensation.
    - (ii) An attorney who has entered an appearance for a party must file a motion to be relieved as counsel when another attorney is not being substituted. Notice of such motion,

including the date of the hearing, shall be given to the client to afford an opportunity to be heard on the motion.

2. Unless otherwise required by law to be represented by counsel and subject to 1.ii. above when an attorney has entered an appearance, a party may appear pro se.
  3. A medical provider or carrier, who claims to have performed services or made payment for a work related condition or disability, may intervene by motion in a pending case, to seek payment or assert a lien. Such motion shall be supported by an affidavit or certification and shall include a copy of the bills for which payment is being sought.
- (b) Attorneys representing both petitioners and respondents shall provide sufficient personnel to handle all lists expeditiously.
  - (c) Hearings shall be scheduled by the Director or a designated representative of the Director.
  - (d) The Judge of Compensation shall, at the commencement of the day, call the list of cases in open court. No adjournment shall be granted unless there is found to be good cause. No adjournment shall be granted for medical examination unless the name of the examining physician and date of examination are supplied.
  - (e) Trials shall commence and continue in a timely manner subject to scheduling constraints of the Division. Said scheduling may be accelerated as ordered by the Director, the Supervising Judge of the vicinage or the Judge of Compensation to whom the case has been assigned. A Judge shall issue a preemptory trial scheduling order for all cases that have been listed as a partial trial for six months.
    1. Except in situations where there is no material dispute of fact, issues shall not be decided until all sides have had the opportunity to provide full proofs based upon, but not limited to, oral testimony, affidavits and other proofs as stipulated by the parties or required by the judge.
    2. Except where the judge for good cause directs otherwise, the order of proofs at trial shall be:
      - i. Appearances;
      - ii. Stipulated facts;

- iii. Rulings on motions including motions to modify order of proofs;
  - iv. Opening Statements;
  - v. Testimony of petitioner;
  - vi. Testimony of petitioner's lay witnesses;
  - vii. Testimony of respondent's lay witnesses;
  - viii. Testimony of petitioner's non-medical expert witnesses;
  - ix. Testimony of respondent's non-medical expert witnesses;
  - x. Testimony of treating medical experts;
  - xi. Testimony of petitioner's medical experts unless testimony waived and reports submitted into evidence;
  - xii. Testimony of respondent's medical experts unless testimony waived and reports submitted into evidence;
  - xiii. Ruling on motions at the conclusion of testimony including motions to call additional witnesses upon a showing of good cause;
  - xiv. Closing statements;
  - xv. Post trial briefs.
3. Bifurcation of any trial may be permitted by the Judge to whom the case is assigned. The order of proof shall be determined by the Judge of Compensation.
- (f) All formal hearings or applications shall be conducted in open court, except:
- 1. The Judge of Compensation to whom the case is assigned may deem the matter so delicate that the hearing of a party or witness in camera is warranted. When this occurs, a stenographic record shall be made.
  - 2. The telephonic testimony of a witness may be permitted for good cause by the Judge of Compensation to whom the case is assigned



and with the consent of the parties. When this occurs, a stenographic record shall be made.

3. Deposition testimony of a witness in lieu of an appearance other than that provided under N.J.A.C. 12:235-3.7 may be permitted by the Judge of Compensation to whom the case is assigned and with the consent of the parties.
  4. Testimony of witnesses by video teleconferencing procedures may be permitted for good cause by the Judge of Compensation to whom the case is assigned. When this occurs, a stenographic record shall be made and all costs associated with the use of video teleconferencing shall be borne by the requesting party.
- (g) All formal hearings including motions where a record is required shall be recorded stenographically by a certified shorthand reporter subject to such limitation as may be provided by statute.
1. Upon a determination reached at the conclusion of all hearings, including motions, the cost for the attendance of the certified shorthand reporter shall be assessed by the Judge of Compensation. Transcripts of the testimony may be obtained from the certified shorthand reporter at the official scheduled rates.
- (h) When there are pending in the Division two or more formal proceedings involving a common question of law or fact arising out of employment by the same employer or different employers, or out of the same accident or series of accidents, or out of the same exposure or series of exposures, to causes of occupational disease, the Judge of Compensation or the Director may, on motion, or on the Judge's own initiative, order a joint hearing of any or all matters in issue. The Director or the Judge of Compensation may order all such proceedings consolidated, and have such orders concerning proceedings designed to avoid unnecessary costs or delay. The order shall state the county in which the consolidated proceedings are to be heard.
- (i) Upon the commencement of a formal hearing, counsel may make opening statements on behalf of their respective clients. All matters agreed upon shall be stipulated upon the record. However, this shall not bar the parties from making further stipulations as the trial proceeds, until the close of the formal hearing.
- (j) Counsel may make closing statements or file post-trial briefs. Post-trial briefs, if ordered or volunteered, shall be submitted within 15 days after the conclusion of the hearing. Each party thereafter may have seven days to file a reply brief, if so desired or ordered.

- (k) Prior to the testimony of an expert witness, the producing party shall provide the Judge of Compensation and opposing counsel with a written curriculum vitae of the witness.
- (l) Questions calling for the opinion of an expert witness need not be hypothetical in form, unless the Judge of Compensation in the Judge's discretion so requires. If the hypothetical question is submitted in written form, counsel shall provide sufficient copies for the Judge of Compensation, opposing counsel, the witness and the stenographer, and the hypothetical question may be marked as an exhibit in the proceedings in lieu of reading it to the witness.
- (m) All medical experts for both parties who regularly examine petitioners to determine the nature and extent of their disability shall adhere to the vacation schedules established annually by the Director. If such medical expert is not available to testify because of an unexcused absence at any other time, the Judge of Compensation may require the party for whom such medical witness is to appear, to arrange for an examination and appearance at trial by another medical expert.
  - 1. A medical expert who regularly examines petitioners means a medical expert who performs a minimum of 25 workers' compensation examinations per year.
- (n) All exhibits shall be marked with an identifying number, the date of submission and initials of the court reporter or the Judge.
  - 1. An exhibit list shall be prepared by the Judge to be retained in the file and forwarded to the Division for microfilming and storage.
  - 2. At the conclusion of the hearing, the Judge shall determine which exhibits are to be retained in the file and forwarded to the Division for microfilming and storage.
  - 3. All other exhibits shall be returned to respective counsel for retention until the expiration of time for appeal or 20 years as determined by the Judge.
- (o) When a deposition has been taken to preserve the testimony of an injured or ill petitioner the introduction into evidence of such deposition shall be limited to those cases where the deponent cannot appear because of medical inability to appear or death or where all parties consent to the introduction of the deposition into evidence.

- (p) Judges of Compensation may refer the petitioner to the Division of Vocational Rehabilitation when warranted.
- (q) Prior to testifying, a witness shall be administered an oath by the Judge of Compensation or by a certified shorthand reporter qualified to administer oaths. Because of religious beliefs, a witness may affirm in place of an oath.
- (r) Forms of subpoena, bearing the seal of the Department, shall be made available at all district offices. A party may prepare a subpoena and authorize its service, in accordance with the New Jersey Rules of Court, in the name of the Judge of Compensation assigned to the case, to compel the attendance of witnesses and the production of books and papers and such other items as shall be subject to production. However, the return date of such subpoena will be the date of the workers' compensation proceeding instead of the date of deposition referred to by the New Jersey Rules of Court. A copy of the subpoena shall also be provided to the Judge of Compensation whose name appears on the subpoena.
- (s) When a party has unreasonably failed to present its case in a timely fashion, the Judge of Compensation may, upon 21 days notice, close the proofs as to that party.
- (t) All reserved decisions shall be rendered by the Judge of Compensation within 30 days from completion of the last day of hearing, or within 30 days from the date of filing of briefs. Additional time to render a reserved decision may be allowed only on approval of a written application to the Director.
- (u) The Judge of Compensation shall notify all parties by letter of the decision, detailing its terms and the name of: the reporter and the certified shorthand reporting firm to which it has been dictated; centralized word processing center; or other method by which the opinion is produced.
- (v) A judgment or an order shall be deemed entered as of the date the judgment or order is signed by the Judge.
- (w) (Reserved)
- (x) A party proposing the form of judgment or order may forward the original thereof to the Judge who heard the matter and shall serve a copy thereof on every other party together with a notice advising said party that unless they notify the Judge and the proponent of the judgment or order in writing of their specific objection thereto within 10 days after such service, the judgment or order may be signed in the Judge's discretion. If no such objection is timely made, the Judge may forthwith sign the

judgment or order. If objection is made, the matter may be listed for hearing in the discretion of the Court.

**12:235-3.13 Orders Approving Settlement reached pursuant to N.J.S.A. 34:15-20**

- (a) A settlement agreement reached pursuant to N.J.S.A. 34:15-20 ("Section 20 settlement") may be approved by a judge of compensation when:
  - 1. The petitioner is represented by counsel;
  - 2. The case involves contested issues of jurisdiction, liability, causal relationship and/or dependency; and
  - 3. The settlement is determined to be fair and just under the circumstances.
- (b) A Section 20 settlement shall have the force and effect of a dismissal of the petitioner's claim and a complete surrender by the petitioner of any future right to compensation or benefits arising out of the injuries, conditions or exposures encompassed in the claim petition.
- (c) A Section 20 settlement shall not be a waiver of future dependency claims in the event that the petitioner's death occurs as a result of the injuries, conditions or exposures encompassed by petitioner's claim petition unless:
  - 1. The petitioner's dependents (as defined in N.J.S.A. 34:15-13) join in a waiver of future dependency benefits.
    - i. A parent, other than the petitioner, shall ordinarily represent the interests of petitioner's dependent minor children residing in that parent's household. The judge of compensation shall determine whether circumstances dictate that a representative other than a parent is necessary for any dependents for the purposes of a Section 20 proceeding.
- (d) A petitioner's acceptance of a Section 20 settlement and a dependent's waiver of dependency benefits shall be given knowingly, intelligently and voluntarily. The judge of compensation shall explain on the record the preclusive effect the Section 20 settlement shall have on the petitioner's claim and on any future dependency claims, except as provided in (e) below.
- (e) A petitioner's acceptance of a Section 20 settlement and any waiver of future dependency claims shall occur on the record of the Section 20 settlement proceeding unless the judge of compensation determines that

sufficient circumstances preclude the appearance of the petitioner, a dependent and/or representative. In such case, an affidavit executed by such petitioner, dependent and/or representative shall be submitted. The affidavit must contain all of the facts to which the petitioner, dependent and/or representative would be required to testify if present in court.

- (f) A Section 20 settlement shall encompass all injuries, conditions or exposures set forth in the petitioner's claim petition unless the parties amend the claim petition at the Section 20 settlement proceeding and specifically set forth any amendments to the claim petition on the settlement form. Where intended, the parties shall specifically set forth that the claim petition and settlement includes latent or unknown consequences of the alleged injuries, conditions or exposures.

#### **12:235-3.14 Notice of appeal**

Copies of a notice of appeal of any order or judgment shall be provided to the Division and the judge who decided the matter. See New Jersey Court Rule 2:5-1.

#### **12:235-3.15 Interpreters**

In any proceeding for which the services of an interpreter are required, a professional interpreter shall be utilized unless the Judge of Compensation, with the consent of the parties, determines otherwise. An interpreter shall be sworn or make affirmation or declaration to interpret accurately.

#### **12:235-3.16 Enforcement**

- (a) A party may, by written motion pursuant to N.J.A.C. 12:235-3.5(a) and (b), move against an employer, insurance carrier, petitioner, case attorney or any other party to a claim petition for enforcement of any court order or for the enforcement of the requirements of the workers' compensation statute or rules.
- (b) The motion under (a) above shall identify the order, statute or regulation sought to be enforced.
- (c) The party against whom the motion has been brought shall file a written response to the motion within 14 calendar days of the notice of motion.
- (d) The response under (c) above shall include the reasons for any noncompliance and the manner and time period to ensure compliance.

- (e) Any time after the 14-day period to respond under (c) above has elapsed and on notice to the parties, the judge shall hold a hearing on the motion.
- (f) A judge on his or her own motion may at any time, upon notice to the affected parties, move to enforce a court order or to enforce the requirements of the workers' compensation statute or rules.
- (g) Prior to ruling on a motion under (f) above, the judge shall provide the parties an opportunity to respond to the motion and to be heard on the record.
- (h) Upon a finding by a judge of noncompliance with a court order or the workers' compensation statute or rules, the judge, in addition to any other remedy provided by law, may take any or all of the following actions:
  - 1. Impose costs and simple interest on any monies due.
    - i. The judge may impose an additional assessment not to exceed 25 percent on any moneys due if the judge finds the payment delay to be unreasonable;
  - 2. Levy fines or other penalties on parties or case attorneys in an amount not to exceed \$ 5,000 for unreasonable delay or continued noncompliance.
    - i. A fine shall be imposed by the judge as a form of pecuniary punishment.
    - ii. A penalty shall be imposed by the judge to reimburse the Division's administrative costs.
    - iii. The proceeds under this paragraph shall be paid into the Second Injury Fund;
  - 3. Close proofs, dismiss a claim or suppress a defense as to any party;
  - 4. Exclude evidence or witnesses;
  - 5. Take other appropriate case-related action to ensure compliance; and/or
  - 6. Allow a reasonable counsel fee to a prevailing party, where supported by an affidavit of services.
- (i) Upon a finding by a judge of noncompliance by a party with a court order or the workers' compensation law or rules, the judge, in addition to any

other remedy provided by law, may hold a separate hearing on the issue of contempt.

- (j) Following a hearing under (i) above and upon a finding by the judge of contempt, the successful party in the contempt hearing or the judge may file a motion with the Superior Court for contempt action.
- (k) Any fine, penalty, assessment or cost imposed by a judge under this section shall be paid by the entity or party found to be in noncompliance and shall not be included in the expense base of an insurance carrier for the purpose of determining rates or as a reimbursement or case expense.

**12:235-3.17 Hearing to request a stay of the order or judgment**

A request for a stay of an order or judgment shall be heard on the record when a party requests a hearing on the stay.

**12:235-3.18 Non-duplication of benefits under the Temporary Disability Benefits Law, N.J.S.A. 43:21-25 et seq. and the Workers' Compensation Act, N.J.S.A. 34:15-1 et seq.; temporary disability benefit liens in workers' compensation cases**

- (a) Administrative procedures for avoiding duplication of benefits in cases where claimants have pursued temporary disability benefits under both the Temporary Disability Benefits Law, N.J.S.A. 43:21-25 et seq. (hereinafter referred to in this section as the "TDBL") and the Workers' Compensation Act, N.J.S.A. 34:15-1 et seq. (hereinafter referred to in this section as the "WCA") are as follows:
  - 1. Where a claimant has filed a claim petition under the WCA and where his or her claim is disputed or contested by the employer or its workers' compensation carrier in regard to whether temporary disability benefits are due to the claimant in workers' compensation, then such claimant may apply for temporary disability benefits under the TDBL and, if eligible, may receive temporary disability benefits as allowable by law during the pendency of the workers' compensation claim.
  - 2. Where a claimant has not filed a workers' compensation claim and seeks benefits through the TDBL due to an alleged work-related condition, the Division of Temporary Disability Insurance or private plan disability carrier shall deny said benefits and inform the claimant that should he or she file a workers' compensation

claim, benefits may be payable pursuant to the TDBL under (a)1 above.

3. As a condition to receiving temporary disability benefits under (a)1 above, a claimant shall be required to sign a written subrogation agreement which documents that the claimant will prosecute the workers' compensation claim and reimburse the Division of Temporary Disability Insurance or private plan disability carrier, as applicable, from the proceeds of any workers' compensation benefits the claimant subsequently receives based upon the same injury or illness as that for which the temporary disability benefits were obtained under the TDBL.
4. As a result of the subrogation agreement under (a)3 above, the Division of Temporary Disability Insurance or private plan disability carrier shall have the right to file a notice of lien with the Division of Workers' Compensation that shall apply against any workers' compensation award the claimant subsequently receives that is based upon the same injury or illness as that for which the temporary disability benefits were obtained under the TDBL.
5. Where the Division of Temporary Disability Insurance or private plan disability carrier has paid benefits to a claimant under the TDBL and later has reason to believe that the injury or illness upon which the TDBL benefits were based may also be compensable under the WCA, the Division of Temporary Disability Insurance or private plan disability carrier may file a lien against any workers' compensation claim.
6. Where a lien has been filed pursuant to (a)4 or 5 above, or where the parties and/or the Judge of Compensation become aware during workers' compensation proceedings that benefits had been paid under the TDBL, the Division of Temporary Disability Insurance or private plan disability carrier shall be reimbursed the amount of temporary disability benefits paid pursuant to the TDBL from any workers' compensation award, order, or settlement including lump sum or permanent disability benefits the claimant receives.
7. Where a claimant's workers' compensation award, order, or settlement after deductions for allowances totals less than the amount of the benefits paid under the TDBL, then the net amount due to the petitioner shall be reimbursed to the Division of Temporary Disability Insurance or private plan disability carrier in full satisfaction of the petitioner's obligation resulting from the written subrogation agreement.



8. While a judge of compensation would determine any contested issue with respect to temporary disability benefits payable by the respondent under the WCA, should a claimant wish to contest the amount of the lien or reimbursement required under (a)6 above or other issues related to the lien or reimbursement, including disabilities covered by the lien or reimbursement, the claimant shall either:
  - i. Reimburse the amount of the temporary disability insurance lien as part of the workers' compensation award, order or settlement and then appeal, pursuant to (a)9 and 10 below, such amount or other issues related to the lien within 24 days from the date of the workers' compensation award, order or settlement; or
  - ii. File an appeal, pursuant to (a)9 and 10 below, of the reimbursement amount or other issues related to the lien, which shall stay the workers' compensation proceedings until the reimbursement issue is determined.
9. The Division of Temporary Disability Insurance shall forward appeals under this section in accordance with N.J.A.C. 12:20 (for liens arising from State plan and disability during unemployment benefits) or N.J.A.C. 1:12A (for liens arising from private plan benefits).
10. Appeals filed under (a)9 above shall be directed by appellants to the following addresses, as appropriate:
  - i. For appeals arising from State plan temporary disability benefits:  
Division of Temporary Disability Insurance  
Attention: Appeal Unit  
PO Box 387  
Trenton, New Jersey 08625-0387
  - ii. For appeals arising from State disability during unemployment (4F) benefits:  
Division of Temporary Disability Insurance  
Attention: Disability During Unemployment Section  
PO Box 956  
Trenton, New Jersey 08625-0956
  - iii. For appeals arising from private plan temporary disability benefits:  
Division of Temporary Disability Insurance

Attention: Private Plan Claims Review Unit  
PO Box 957  
Trenton, New Jersey 08625-0957

#### **SUBCHAPTER 4. INFORMAL HEARINGS**

##### **12:235-4.1 Purpose of informal hearings**

- (a) The informal hearing process is a service provided by the Division to effectuate the amicable adjustment of controversies between injured workers and their employers involving their respective rights under the Act.
- (b) The informal hearing procedure is not expressly contained within the provisions of the Act.
- (c) The filing of an application for an informal hearing will not toll the time limitation periods for the filing of a formal claim petition or a dependency claim petition as provided by the Act.

##### **12:234-4.2 Filing of an application for an informal hearing**

- (a) The informal process is initiated by the filing of an application in duplicate with the Division.
- (b) The filing for informal hearing may be made by any party of interest including the injured worker, petitioner's attorney, the employer, the employer's representative or insurance carrier, or the Division.
- (c) The application shall be filed within the time periods prescribed for the filing of a formal claim petition.

##### **12:235-4.3 Contents of the application**

- (a) The application for an informal hearing shall contain:
  - 1. The worker's name, address, age, and social security number;
  - 2. The employer's name and address;
  - 3. The name of the employer's insurance carrier, if any;
  - 4. The date of the accident;

5. A brief description of how the accident occurred;
6. A brief description of the injury.

**12:235-4.4 Scheduling of informal hearings**

- (a) Upon receipt of the completed application the Division shall schedule the matter as soon as practicable.
- (b) The Division shall give written notice of the time, place and name of the assigned Judge of Compensation to all parties involved in the controversy. In addition the Division shall include, with the notice to the worker that is the subject of the proceeding, an informational brochure explaining the nature of the proceedings and the rights of the parties involved. The form brochure shall be as set forth in N.J.A.C. 12:235-14.1.

**12:235-4.5 Attendance at hearings**

The worker's attorney, employer, insurance carrier, or self-insured shall provide sufficient personnel to insure prompt attendance at the scheduled time and place of the hearing to expeditiously handle all listed cases.

**12:235-4.6 Representative of employer or carrier**

An employer or carrier shall be represented by an individual expressly empowered with authority to act on its behalf to agree or disagree with the recommendations made by the Judge of Compensation at the time of the hearing.

**12:235-4.7 Registration of representatives for employers or carriers**

- (a) Each employer, carrier, or self-insured shall submit to the Director for distribution to all Judges of Compensation a list of each individual who will represent them at informal hearings.
- (b) Each employer, carrier, or self-insured shall indicate that such individuals shall have the authority to represent and agree to settle on behalf of the respondent at informal proceedings.

**12:235-4.8 Representation of claimant**

Only an attorney at law licensed to practice in the State of New Jersey shall act as attorney for a worker in any informal hearing.

#### **12:235-4.9 Procedure where employer has no insurance**

Where it is brought to the attention of the Judge of Compensation that the employer has failed to comply with N.J.S.A. 34:15-71, written notice of such violation shall be given to the Director for appropriate action.

#### **12:235-4.10 Allowance of attorney fees**

- (a) A Judge of Compensation conducting informal hearings may allow counsel a fee, where warranted, for services rendered on behalf of the worker, in an amount not to exceed 10 percent of the worker's award.
- (b) The fee in (a) above shall be payable by the worker.

#### **12:235-4.11 Commencement of informal hearings**

- (a) Hearings shall be conducted by a Judge of Compensation designated by the Director.
- (b) Hearings shall commence promptly at the time and place designated in the notice of informal hearing by a call of the daily court to ascertain the presence of all parties to the controversy and to identify those cases ready for disposition.
- (c) Upon completion of the daily call, the Judge of Compensation shall inform all parties present of the order for hearing the ready cases and commence hearings, excusing those persons whose presence will not be required and granting those adjournments the Judge feels are warranted.

#### **12:235-4.12 Determination of issues**

- (a) Upon a review of the application for the informal hearing and any supporting documents, the Judge of Compensation shall ascertain the areas of dispute and make recommendations to the parties to resolve any controversy as to unpaid temporary disability benefits and/or medical expenses.
- (b) After a review of medical records or evaluation reports or both submitted by the parties and having personally inquired of the worker as to all present complaints, the Judge of Compensation shall make recommendations regarding permanent disability.
- (c) In cases where there is insufficient factual or medical information upon which a recommendation can be made, the Judge of Compensation shall

require either party to provide such information and shall adjourn the hearing until such time as the information is available.

**12:235-4.13 Acceptance of settlement recommendations and entry of informal award**

- (a) When agreement has been reached by all parties and approved by the Judge of Compensation, the terms of such settlement shall be entered in the "Statement of Award," on a form prescribed by the Division.
- (b) The claimant shall be fully advised of all rights under the Act and as more particularly described in the brochure as prescribed at N.J.A.C. 12:235-14.1.
- (c) The "Statement of Award" shall be signed by the claimant, the employer or the employer's representative, and by the Judge of Compensation.

**12:235-4.14 Fee for service of physician**

A Judge of Compensation conducting an informal hearing may allow a fee to a physician for medical services rendered to a claimant for the term of a compensable injury, unless such treatment was not ordered or authorized by the employer or carrier.

**12:235-4.15 Denial of compensability or refusal to accept findings of informal hearings**

In cases where the employer or the representative denies compensability under the Act or where either party refuses to accept the recommendations made by the Judge of Compensation, the claimant shall be made aware of all statutory rights, including the right to obtain counsel, to file a formal claim petition, and the applicable time period within which a claim petition must be filed.

**12:235-4.16 Failure of employer or carrier to appear**

- (a) If a worker is present and the employer or its carrier fails to appear, the Judge of Compensation shall inform the worker of:
  - 1. The procedure and time limit relating to rescheduling for rehearing;
  - 2. The approximate date of rescheduling; and
  - 3. The worker's statutory rights as stated at N.J.A.C. 12:235-4:15.

**12:235-4.17 Adjournment**

When it appears that certain cases cannot be resolved at the first hearing, due to lack of notice or knowledge of any injury, incomplete reports, or for any good cause, the Judge of Compensation shall be promptly informed so that the Judge may have an opportunity to notify the parties and arrange for rescheduling.

**12:235-4.18 (Reserved)**

**SUBCHAPTER 5. SECOND INJURY FUND CASES**

**12:235-5.1 General procedure**

- (a) Upon the filing of a verified petition for Second Injury Fund (Fund) benefits a settlement conference shall be scheduled before a Judge of Compensation where representatives of the employee, employer(s) and the Fund are noticed to attend
  - 1. The settlement conference may be adjourned by a Judge of Compensation for good cause.
  - 2. If a settlement cannot be effectuated at the settlement conference, the matter may be bifurcated and listed for trial on a day when the probable responsible respondent is regularly scheduled to appear.
- (b) If the Judge of Compensation finds that the petitioner is not totally and permanently disabled, the Fund petition shall be dismissed.
- (c) If the Judge of Compensation finds that the petitioner is totally and permanently disabled and the total and permanent disability is the result of the last compensable accident, the Fund application shall be dismissed.
- (d) If the Judge of Compensation finds that the petitioner is totally and permanently disabled and the total and permanent disability is the result of the effects of the last compensable accident and subsequent conditions, the Fund application shall be dismissed.
- (e) If the Judge of Compensation finds that the petitioner is totally and permanently disabled and the total and permanent disability may be the result of the last compensable accident together with pre-existing conditions, the Judge of Compensation shall schedule a hearing upon the application for Fund benefits on a day when the Deputy Attorney General representing the Fund regularly appears.
  - 1. The hearing to determine whether the petitioner is entitled to Fund benefits shall be upon the transcript of the hearing for benefits previously heard, supplemented by oral and documentary evidence

as may be required in the discretion of the Judge of Compensation for a full and true disclosure of the facts as to Fund responsibility and where applicable, as to an apportionment of the responsibility of the Fund.

2. Pending determination of the application for Fund benefits, the employer previously found liable shall commence payments at the applicable rate for permanent total disability.

### **12:235-5.2 Payment of benefits**

- (a) Upon approval of an application for benefits from the Fund, the Judge of Compensation shall enter an order requiring payment from the Fund from the date when the final payment of compensation by the employer is or was payable for the last compensable injury following which the employee became totally and permanently disabled. No payment from the Fund shall be made for any period prior to the date of filing the verified petition for Fund benefits.
  1. If the employer has paid in excess of the amount for which it is responsible, the employer shall be reimbursed by the Fund.
- (b) The payment from the Fund may be made to the employer as reimbursement for a period where the payments have been made by the employer to the employee beyond the time period for which the employer is determined to be liable.
- (c) Such payments shall be made from the Fund directly to the employee for such periods to which the employee may be entitled in accordance with the provisions of N.J.S.A. 34:15-95 and subject to N.J.A.C. 12:235-5.1(e)(2).

### **12:235-5.3 Filing**

- (a) The verified petition for benefits shall be filed in accordance with N.J.S.A. 34:15-95.1 and shall include a succinct and accurate description of all medical, legal and factual basis upon which the petitioner alleges eligibility for Fund benefits pursuant to N.J.S.A. 34:15-95. The verified petition shall be under oath or affirmation and be accompanied by all physician's reports in possession of the applicant or the applicant's attorney.
- (b) The verified petition shall also include the following:
  1. Name and address of petitioner;

2. Social security number of petitioner;
  3. Age and date of birth of petitioner;
  4. Marital status and educational background of petitioner;
  5. A summary of petitioner's employment history;
  6. A description of disabilities which existed prior to the date of the last compensable injury, and the date of onset of each;
  7. The last compensable injury, indicating the date and a description of the occurrence; a description of the injury; brief description of the medical treatment for the injury; a description of permanent injury; name and address of employer and its insurance carrier; petitioner's wages and compensation rate; and a listing of all compensation paid to date for this injury;
  8. An indication as to whether a third party tort claim has been made as to the last compensable injury, stating the name and address of the third party and the status of the claim;
  9. A copy of all reports which are in the possession or control of the party filing the applications from all proposed expert witnesses and all treating physicians;
  10. A description of all wage replacements presently being received by the petitioner;
  11. References to all prior allowances and awards in workers' compensation matters concerning the petitioner, including the date of the accident and the extent of the allowance or award.
- (c) Respondent shall provide all evaluative reports to the Second Injury Fund at the first motion hearing.

## **SUBCHAPTER 6. COMMUTATION OF AWARD**

### **12:235-6.1 Application for commutation**

- (a) All applications for commutation of compensation payments pursuant to N.J.S.A. 34:15-25 shall be filed with the Director.
- (b) Applications for commutation of compensation shall be made only after the entry of an award.



**12:235-6.2 Application form for commutation**

- (a) The application for commutation shall be made on a form prescribed by the Division which shall include:
  - 1. The applicant's name, address, and social security number;
  - 2. The name and address of the employer;
  - 3. The name, address, and file number of the employer's insurance carrier;
  - 4. The date of award;
  - 5. The Judge of Compensation and the place wherein the award was rendered;
  - 6. The amount of the award;
  - 7. The amount of balance due on the award;
  - 8. The amount requested for commutation; applicant's marital, employment, and economic status;
  - 9. Purpose(s) for which commutation is being requested; and
  - 10. Such other information as prescribed by the Director.
- (b) The application for commutation shall be under oath or affirmation of the applicant.
- (c) The application for commutation shall include, or have attached thereto, all documents upon which the applicant is relying in the application.

**12:235-6.3 Approval or disapproval of application for commutation**

- (a) Upon receipt of the application for commutation, the matter shall be forwarded for hearing to the Judge of Compensation who entered the award which is sought to be commuted.
  - 1. If that Judge is not available, then any Judge in the vicinage may hear the application.

- (b) After hearing the application, the Judge of Compensation shall enter an order either granting or denying the application and shall state the reasons therefor, pursuant to N.J.S.A. 34:15-25.
- (c) The disbursement of all funds commuted shall be under the supervision of the Director.
- (d) No award for total disability or dependency benefits shall be commuted.

## **SUBCHAPTER 7. UNINSURED EMPLOYER'S FUND**

### **12:235-7.1 Purpose; scope**

- (a) The Uninsured Employer's Fund (UEF) has been established pursuant to N.J.S.A. 34:15-120.1 to provide for the payment of certain awards of medical and temporary benefits entered against uninsured defaulting employers. This subchapter sets forth the procedures by which the UEF will be operated.
- (b) Benefits for temporary disability and medical costs shall be provided in accordance with N.J.S.A. 34:15-120.1 et seq.
- (c) The UEF shall be a party to proceedings under this subchapter. However, no judgment or order for the payment of benefits shall be entered against the UEF.
- (d) The UEF may relax or dispense with requirements under the subchapter where appropriate and with the consent of the judge hearing the case.
- (e) A petitioner may move to relax or dispense with requirements under this subchapter.
  - 1. After a hearing on the motion to relax or dispense with requirements under this subchapter, the judge may grant the motion upon a finding that the subject requirements under the particular facts of the case are unduly burdensome and that grant of the motion would not adversely affect the UEF.
- (f) Where petitioner seeks current medical treatment and/or temporary disability benefits and the only issue is the cancellation or non-renewal of an insurance policy, the judge may order the insurance carrier to provide treatment and/or benefits without prejudice and subject to reimbursement by the employer or, if not paid by the employer, by the UEF, if it is subsequently determined that the policy was not in effect.

- (g) The UEF shall be provided a copy of a notice of appeal of any order or judgment in which the UEF is a party.

**12:235-7.2 Filing notice of an uninsured claim; personal service; subpoena duces tecum; third party joinder;**

- (a) Petitioner or petitioner's attorney shall contact the Compensation Rating and Inspection Bureau for coverage information in writing within 30 days after the petitioner or the petitioner's attorney knew or should have known that the employer was uninsured or has received confirmation that the employer was uninsured on the date of the accident or occupational exposure alleged in the claim petition. A copy of the Rating Bureau's response shall be included in the motion to join the UEF.
- (b) If benefits may be sought from the UEF, the petitioner or petitioner's attorney shall notify the UEF in writing within 30 days after the petitioner or petitioner's attorney knew or should have known that the employer was uninsured on the date of the accident or occupational exposure or has received information from the Compensation Rating and Inspection Bureau showing that the employer was uninsured on the date alleged.
- (c) In order to secure reimbursement of a petitioner's temporary disability benefits from the Uninsured Employers Fund, the petitioner shall file a motion to join the UEF in an action brought by or against the uninsured employer.
  1. When filing a motion to join the UEF, the petitioner's attorney or petitioner shall attach a copy of the inquiry and response of the Compensation Rating and Inspection Bureau.
  2. The motion to join the UEF shall be filed in the vicinage in which the case is assigned.
  3. A copy of the motion to join the UEF shall be served upon the Fund in the Office of Special Compensation Funds, P.O. Box 399, Trenton, New Jersey 08625-0399.
- (d) Petitioner's attorney may make personal service of the claim petition and the motion to join the UEF on respondent.
  1. Proof of service shall be filed with the Division and with the attorney representing the UEF.
  2. If respondent is unable to be served, petitioner's attorney shall make a motion with the Judge of Compensation for substituted

service pursuant to Rules of Civil Practice. The motion shall be supported by convincing evidence that the petitioner has made all reasonable attempts to serve respondent.

- (e) The UEF shall have the authority to join a third-party and the third-party's insurance carrier when it appears that such party is or may be liable for the benefits sought.
- (f) In reviewing claims submitted to the Uninsured Employer's Fund for payment pursuant to N.J.S.A. 34:15-120.4, the Commissioner may consider the extent of delay in notification to the Uninsured Employer's Fund by the petitioner and/or his/her attorney from the time they knew or reasonably should have known the respondent employer was uninsured.

**12:235-7.3 Certification**

- (a). Petitioner shall submit a certification when filing a motion for an uninsured claim. The certification shall be specific, and shall contain the following information if known or available to the petitioner and should be supplemented as such information becomes known or available to the petitioner:
  - 1. The date of hire immediately preceding the date of the accident, injury or occupational exposure;
  - 2. The length of employment: If not continuous, list all dates of employment;
  - 3. Copies of petitioner's W-2 forms for all dates of employment during the year in which the accident occurred;
  - 4. Pay stubs for or other documentation in support of all wages received from respondent for the six months immediately preceding the date of the accident or occupational exposure;
  - 5. The total wages received from respondent for 12 months immediately preceding the accident which includes salary, gratuities, services in lieu of wages, meals or lodging;
  - 6. The name, address (business and personal) and phone number of the respondent and any corporate officer or manager of the company;
  - 7. Any documents relating to the employer/employee relationship or lack thereof;

8. A statement of facts which establish the employer-employee relationship;
9. The name, address and phone number of all persons with knowledge of the existence of an employer/employee relationship between petitioner and respondent;
10. The address and/or other identifying information about where the injury occurred, including the name of the owner of the property and the reason why the employee was at the location where the injury occurred;
11. The name, address and phone number of all witnesses to the accident, and whereabouts of respondent when the accident occurred;
12. The name, address and phone number of all persons with any knowledge of the accident;
13. The date on which a medical provider was first contacted concerning injuries sustained in the accident or occupational condition;
14. The name and address of all treating physicians and the name and address of any hospital, laboratory or other facility where treatment was received;
15. Copies of all medical reports from the hospitals and treating physicians;
16. Medical insurance coverage for employee and/or spouse, and if available, the name and address of the company and the policy number;
17. A detailed listing of medical expenses which have been paid, the dates the medical services were provided, the names of individuals and entities providing such services, and the sources and amounts of such payments; and
18. Whether or not the petitioner is receiving or has applied for Social Security, unemployment compensation, temporary disability insurance, disability insurance, pensions or any other wage-related benefits.

**12:235-7.4 Medical bills; physician's examination**

- (a) Any medical bills or charges for which petitioner seeks payment from the UEF must be timely submitted by the petitioner to the UEF and be supported by the following:
  - 1. Related treating records, itemized bills and a physician's report, which reflects that the bills and charges were reasonable, necessary and causally related to the work accident or occupational exposure alleged in the claim petition; and
  - 2. Other necessary medical documentation or information required by the UEF.
- (b) Any dispute under this section concerning the treating records, bills, physician's report or UEF request for other medical documentation or information shall be determined by the judge after a hearing upon oral or written motion by the UEF or another party.
- (c) The UEF may order an independent medical examination of a petitioner by a physician at any time when the UEF is involved or when it appears the UEF may become involved in a case. The examining physician may be asked to offer an opinion on:
  - 1. The causal relationship between the alleged accident or occupational exposure and the petitioner's current medical condition;
  - 2. The necessity of petitioner's previous and current medical treatment and the reasonableness of charges for such treatment for the alleged accident or occupational exposure;
  - 3. The prognosis for the petitioner;
  - 4. Whether the petitioner is able to return to work;
  - 5. Whether or not petitioner required further treatment to reach maximum medical improvement; and
  - 6. Any other pertinent issues or information.
- (d) Fees for the independent medical evaluation ordered by the UEF shall be paid by the UEF.
- (e) If it appears that the petitioner may be entitled to benefits from the UEF, then the UEF may direct the petitioner to the appropriate authorized treating physician for treatment.

1. Treatment obtained by petitioner from any physician other than the one authorized by the UEF shall be deemed to be unauthorized treatment, and costs for such treatment shall not be payable by the UEF.
- (f) The UEF may provide for medical care to assist the petitioner until he or she has reached maximum medical improvement.

**12:235-7.5 Assignment of cases; schedules**

- (a) The Director shall assign the UEF cases for hearing.
- (b) The Director shall establish the vicinages in which the cases shall be heard.
- (c) The Director shall establish the hearing dates and schedules for all uninsured employer cases.

**12:235-7.6 Payments from the UEF**

Payments from the UEF shall be made only in accordance with N.J.S.A. 34:15-120.4.

- (a) The UEF shall not reimburse governmental agencies for benefits paid to or on behalf of the petitioner except for benefits or expenses conditionally paid under the New Jersey Temporary Disability Benefits Law (N.J.S.A. 43:21-25 et seq.), New Jersey Medicaid reimbursement statute (N.J.S.A. 30:4D-7.1), and the federal Medicare Secondary Provider Statute (42 U.S.C. 1395y). Such reimbursements for medical expenses are subject to the limitation set forth in N.J.A.C. 12.235-7.4 (e).
- (b) Payments under (a) above can be made only after a Judge of Compensation has ordered the uninsured employer to reimburse the agency or agencies making the conditional payments and the uninsured employer has defaulted on making such reimbursements within the time period set forth by N.J.S.A. 34:15-120.3 and N.J.S.A. 34:15-120.4

**12:235-7.7 Attorney fees**

- (a) An attorney fee may be payable from the UEF to the petitioner's attorney when the petitioner is found eligible for UEF benefits by the Commissioner and shall exclude any fees awarded in association with permanent disability benefits.

- (b) An attorney shall make an application to the Commissioner for payment of the attorney fee awarded by the Judge of Compensation for obtaining the medical and/or temporary benefits assessed against the respondent.

**12:235-7.8 Asbestos exposure claims under N.J.S.A. 34:15-33.3**

- (a) After due diligence, as defined in (b) below, an application may be filed with the UEF for compensation for asbestosis or asbestos-induced cancer, including mesothelioma, resulting in injury or death from exposure to asbestos where:
  1. The workers' compensation insurance carrier of the employer, the employer, or the principals of the employer where the employee was last exposed cannot be located or the employee worked for more than one employer during the time the exposure to asbestos may reasonably be deemed to have taken place but the employer or employers where the employee was last exposed cannot reasonably be identified;
  2. The claim petition was pending on or filed after January 14, 2004 and had not been concluded or dismissed prior to that date; and
  3. Compensation is based on the last date of exposure if known, or if such date cannot be known, on an appropriate date established by the judge of workers' compensation, pursuant to N.J.S.A. 34:15-33.3 (d).
- (b) "Due diligence" shall be defined as a reasonable effort on the part of the petitioner or the petitioner's attorney, given the particular facts and circumstances of the case, to determine the identities of the carrier of the employer, the employer, and/or the principals of the employer where the employee was last exposed to asbestos, as well as the identities of any other carriers, employers, and/or principals of other employers that may be liable for benefits. Such efforts shall be listed in the certification required under N.J.A.C. 12:235-7.9 and shall include, unless explained under N.J.A.C. 12:235-7.9(b), the following:
  1. Inquiries made to the Compensation Rating and Inspection Bureau to ascertain the workers' compensation insurance coverage of such employers;
  2. Acquisition and review of the employee's Social Security earnings history for the period or periods during which the employee was exposed to asbestos;
  3. Review of the employee's Federal and state income tax returns for the period or periods during which the employee was exposed to asbestos;
  4. Acquisition and review of labor union records and/or pension plan records maintained for the employee for the period or periods during which the employee was exposed to asbestos;



5. Review of the employee's medical records during and subsequent to the period during which the employee was exposed to asbestos;
  6. Review of any personal records maintained by the employee with respect to employment for the period or periods during which the employee was exposed to asbestos; and
  7. Any other efforts by the petitioner or the petitioner's attorney to establish due diligence.
- (c) The UEF may without motion take the deposition of a petitioner and/or other individuals that may have information relevant to the application.
- (d) In (a) above, the UEF shall have subrogation and lien rights including those provided by N.J.S.A. 34:15-33.3 (b) and (c).

**12:235-7.9 Certification to the UEF, medical information in asbestos exposure cases**

- (a) In addition to the items specified at N.J.A.C. 12:235-7.3 for certification to the UEF, the petitioner shall, in asbestos exposure claims under N.J.A.C. 12:235-7.8, provide the following as part of such certification:
1. Identification of all third-party actions or latent disease claims filed by or on behalf of the employee based upon exposure(s) to asbestos, including the names of the defendants and the courts in which such actions are pending or were concluded;
  2. Date of manifestation of the employee's asbestosis or asbestos-induced cancer;
  3. Date of discovery, disclosure or diagnosis of the employee's asbestosis or asbestos-induced cancer and its relation to the ability of the employee to work;
  4. Rate of progression of the employee's asbestosis or asbestos-induced cancer;
  5. Date(s) the employee was impaired or unable to work as a result of the asbestosis or asbestos-induced cancer;
  6. Date(s) of any lost time for medical treatments related to asbestosis or asbestos-induced cancer;
  7. Nature of pre-existing pulmonary conditions, cancer-related conditions, exposure to any other chemicals, and/or smoking history;
  8. Medical basis for concluding that there is a causal relationship between the employee's work and the employee's asbestosis or asbestos-induced cancer;
  9. Medical conditions pre-existing the alleged exposure(s) to asbestos, including the nature of the pre-existing condition(s), the date(s) and type(s) or medical treatment received, and the names and addresses of

all medical practitioners and providers involved in the diagnosis and treatment of such condition(s);

10. Details of efforts made under the provisions of N.J.A.C. 12:235-7.8 (b);
  11. Dates and nature of employment during which the employee was exposed to asbestos or during which the employee was exposed to conditions which aggravated or contributed to the asbestosis or asbestos-induced cancer. Such information should include, but not be limited to, any environmental information and data giving evidence of the level of exposure to asbestos and how such levels exceeded those encountered in the general environment; and
  12. Nature and extent of any future treatment for the employee's asbestosis or asbestos-induced cancer.
- (b) If any of these items of information are not provided to the UEF, the petitioner or the petitioner's attorney shall indicate that a request or search has established that such item or information is not available. The UEF may require such additional information and searches that are necessary and reasonable for review of the application.
- (c) In addition to the information required under the provisions of this rule in (a) above and under N.J.A.C. 12:235-7.3, the petitioner shall provide the UEF with all medical records and information related to the asbestos exposure claim.

## **SUBCHAPTER 8. DISCRIMINATION COMPLAINTS**

### **12:235-8.1 Filing discrimination complaints**

All complaints alleging discrimination pursuant to N.J.S.A. 34:15-39.1 shall be filed with the Director.

### **12:235-8.2 Contents of discrimination complaints**

- (a) The complaint alleging discrimination shall be under the oath or affirmation of the complainant, and shall be on a form prescribed by the Division.
- (b) The complaint alleging discrimination shall include the following:
  1. Complainant's name, address, social security number, and claim petition number, if a claim for formal hearing has been filed;
  2. The name and address of the insurance carrier for the employer;

3. The date of complainant's accident;
4. Complainant's occupation and wages;
5. Complainant's current employment and wages;
6. Complainant's occupational duties and indication as to whether he or she is able to perform those duties;
7. The date and reason for complainant's termination of employment;
8. The factual and legal reasons for alleging discrimination;
9. Such other information as requested by the Director.

**12:235-8.3 Attachments to discrimination complaints**

The complaint for discrimination shall include, or have attached thereto, all documents upon which the complainant is relying on in the application.

**12:235-8.4 Investigation of discrimination complaints; appeal procedures**

- (a) Subject to the discretion of the Commissioner of Labor, the Director/Chief Judge shall supervise the investigation and review of discrimination complaints filed under N.J.S.A. 34:15-39.1.
- (b) No discrimination complaint shall be accepted by the Division of Workers' Compensation unless filed with the Director/Chief Judge within 180 days of the date of the last act of alleged discrimination.
- (c) Upon receipt of a sworn complaint alleging a violation of N.J.S.A. 34:15-39.1 the Division of Workers' Compensation shall transmit a copy of the complaint to the named employer within fourteen days thereafter.
- (d) The named employer shall file an answer to the complaint, under oath, with the Division of Workers' Compensation within 14 days of the employer's receipt of the complaint.
- (e) The named employer, for good cause, may request from the Division of Workers' Compensation an additional period of not more than thirty days to file an answer to the discrimination charge.
- (f) Upon receipt of the employer's answer, the Division will transmit a copy of the answer to the complainant. The complainant will be allowed fourteen days to respond to the answer in writing. At the end of the fourteen day period the record will be closed unless the Division requests

additional submissions from the parties or allows additional time, for good cause shown, for the parties to respond.

- (g) The Director/Chief Judge shall review the submission of the parties and determine if the complaint should be affirmed, dismissed or determined to be a contested case and forwarded to the Office of Administrative Law for hearing. The Director/Chief Judge shall render his/her decision within 90 days after the filing of a discrimination complaint or 30 days of the last evidentiary submission from the parties, whichever is later. If the complaint is affirmed, the decision will be transmitted to the Commissioner of Labor for imposition of penalties and such other relief authorized pursuant to N.J.S.A. 34:15-39.1 and N.J.S.A. 34:15-39.2.
- (h) Any individual who disagrees with the decision of the Director may submit to the Division a written request for a formal hearing to be held in accordance with the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., N.J.S.A. 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1 within 20 days from the date of the receipt of the Director's decision, by the party seeking the appeal.

## **SUBCHAPTER 9. ASSIGNMENT AND SUPERVISION OF JUDGES**

### **12:235-9.1 Assignment of Judges**

It shall be within the sole discretion of the Director to assign judges throughout the State as he/she shall deem appropriate for the effective administration of the Division.

### **12:235-9.2 Assignment to supervisory positions**

- (a) It shall be within the power of the Director to ascertain the need to assign Judges to supervisory positions and exercise the administrative duties as set forth in this chapter for the districts the Director may designate.
- (b) The Director may at his or her discretion:
  1. Determine the number of Judges needed to provide the necessary supervision; and
  2. Appoint Judges of Compensation to supervisory positions in which the Judges shall serve at the pleasure of the Director.

### **12:235-9.3 Personnel functions**

- (a) The Supervising Judge of a particular district shall be directly responsible for the general conduct and performance of each Judge of Compensation

in that district. The Supervising Judge shall be prepared to give a periodic performance evaluation of each Judge at the request of the Director.

- (b) The Supervising Judge of a particular district shall be responsible for the orderly and prompt flow of work in that district.
- (c) Subject to the approval of the Director, the Supervising Judge shall determine the composition of the daily calendar and shall designate the Judge of Compensation to be responsible for each calendar list. The Supervising Judge shall be responsible for all daily changes of scheduling for all hearing personnel within each district and be available to discuss particular scheduling problems with attorneys.
- (d) **Each Supervising Judge shall furnish statistical reports as required by the Director.**

## **SUBCHAPTER 10. CONDUCT OF JUDGES**

### **12:235-10.1 Causes for discipline or removal**

- (a) A judge may be disciplined for:
  - 1. Violation of the Code of Conduct for Judges of Compensation;
  - 2. Willful misconduct including misconduct which, although not directly pertaining to judicial duties, brings the office into disrepute or is prejudicial to the administration of justice;
  - 3. Failure, neglect, or inability to perform judicial duties; or
  - 4. Failure to notify the Director when the judge has reason to believe that a medical report, medical bill for services, or medical finding has been altered, falsified, or withheld by a licensed physician, dentist, chiropractor, osteopath, optometrist, physical therapist, medical technician, attorney, or a representative of an insurance carrier or self-insured.

### **12:235-10.2 Forms of discipline**

- (a) Disciplinary sanctions shall include, but not be limited to:
  - 1. An oral or written private reprimand;
  - 2. An oral or written public reprimand;

3. A suspension; and
  4. Removal.
- (b) A judge may be suspended by the Commissioner with or without pay pending the outcome of the disciplinary process in accordance with Department procedures.
- (c) A judge may be represented by counsel in any step of the disciplinary

### **12:235-10.3 Minor discipline**

Oral or written private reprimands shall constitute minor discipline. A judge shall receive formal notification of the charges and the facts upon which the charges are based. The judge shall be afforded an opportunity to respond either in writing or orally to the Director or Supervisory Judge presenting the charges. No formal hearing will be held and the decision of the Director or Supervisory Judge shall be final. A judge may request of the Director that records of minor discipline and all related documents be expunged after one year provided no subsequent reprimands have been issued.

### **12:235-10.4 Major discipline**

Oral or written public reprimands, suspensions, and removal shall constitute major disciplinary actions. A judge is entitled to notice of major disciplinary charges and an opportunity to be heard pursuant to N.J.A.C. 12:235-10.9.

### **12:235-10.5 Establishment of Commission on Judicial Performance**

- (a) There is established a Commission on Judicial Performance to investigate complaints or reports referred by the Director concerning judicial conduct and to give advisory opinions, recommendations, and reports to the Director. The Division will provide necessary staff or other resources for the Commission. The Commission shall consist of nine members. The Director shall designate one member to serve as Chairperson and another member to serve as Vice Chairperson. At least two members shall be retired Judges of Compensation, not less than three members shall be members of the Bar, and not less than one, but no more than four members shall be laypersons who do not hold public office of any nature. The members shall be appointed by the Director for terms of two years and may be reappointed for such additional term or terms as the Director shall determine. Membership

on the Commission shall terminate if a member is appointed or elected to public office or to any position considered by the Director to be incompatible with such service.

- (b) A quorum shall consist of five members of the Commission. No action of the Commission shall be valid unless concurred in by a majority of its membership. However, if the Commission finds cause and recommends to the Director the institution of formal proceedings which may lead to reprimand, suspension, or removal of the Judge, such recommendation shall be made only on the affirmative vote of five members of the Commission who have considered the record and at least three of whom were present at all proceedings at which evidence was produced. If not present at all proceedings, other voting members must have listened to the tape recordings or read transcripts of any missed proceedings.

#### **12:235-10.6 Initial review by the Commission**

- (a) The Commission shall conduct an initial review upon receipt of a written complaint or report, which is not obviously unfounded or frivolous, or related solely to the subject of an appeal and which, if true, would constitute a violation of this subchapter.
- (b) Prior to any meeting to decide the merits of the complaint or report, the Commission shall send a copy of the complaint or report to the judge who is the subject of the review

#### **12:235-10.7 Evidentiary review by the Commission**

- (a) When the Commission conducts an evidentiary review, the Commission shall:
  1. Require the filing of a verified complaint or report;
  2. Notify the judge of the nature of the complaint or report and the name of the person making the complaint or report, provide a copy of the complaint or report, and notify the judge that he or she has the opportunity to present, within such reasonable time as the Commission shall fix, such matters as the judge may choose to place on the record. The notice to the judge shall specify in ordinary and in concise language the complaint or report against the judge and the alleged facts upon which the complaint or report is based. A presentation by the judge includes the right to appear before the Commission, with or without counsel, to confront and cross-examine witnesses and present evidence on his or her behalf and to make a statement under oath as the judge deems appropriate. The Commission may request that the complainant

make a supplemental statement under oath. Any statements, if oral, shall be taken stenographically or by sound recording; and

3. Review and determine requests for discovery.

#### **12:235-10.8 Recommendations of the Commission**

(a) Upon completion of the initial review, the Commission may take any of the following actions which may be accepted, rejected, or modified by the Director:

1. The Commission may recommend that the Director dismiss the charges and notify the parties of the action taken. If the matter has been made public, the Director shall, at the request of the judge involved, issue a short statement of clarification and correction of any dismissed complaint or report.
2. If the initial review reveals a departure by the judge from common standards of judicial propriety, such as discourtesy, rudeness, disparagement of witnesses or attorneys, and the like, or other conduct or demeanor which would reflect unfavorably upon the administration of justice if persisted in or were to become habitual or more substantial in character, the Commission may request the judge to appear at a time and place designated for an informal discussion of the matter. After making the judge aware of the objectionable conduct, and becoming satisfied that it was temporary in nature and not likely to become habitual, the Commission may recommend to the Director that the complaint or report be dismissed and the parties advised of the action taken, and the reasons therefore. Any such conference shall be recorded stenographically or by sound recording and a transcribed record filed with the papers in the proceeding.
3. If the Commission believes that the judge may be suffering from a mental or physical disability which is disabling the judge and may continue to disable the judge indefinitely or permanently from the performance of his or her duties, it may recommend to the Director an appropriate response that balances any medical need of the judge and protects the public interest.
4. Whenever the Commission concludes that the circumstances merit minor discipline, the Commission shall promptly file a copy of the recommendation, and the record of the Commission certified as such by its Chairperson, with the Director. If the Director agrees with the recommendation, the Director shall proceed in accordance with N.J.A.C. 12:235-10.3. If the Director disagrees with the



recommendation, the Director may dismiss or refer the matter for major disciplinary charges in accordance with N.J.A.C. 12:235-10.4.

5. Whenever the Commission concludes, and only after an evidentiary review under N.J.A.C. 12:235-10.7, that the basis of the complaint or report merits disciplinary action greater than minor discipline and that formal charges should be instituted, the Commission shall promptly file a copy of the recommendation and the record of the Commission certified as such by its Chairperson with the Director. The Commission shall issue also without delay and serve upon the judge a notice advising him or her that it has filed such a recommendation with the Director.

#### **12:235-10.9 Final hearing**

When requested by the judge, a final hearing in major discipline shall be conducted by an independent hearing officer under procedures set by the hearing officer. The hearing officer will make a recommendation to the Commissioner. As feasible and as permitted by law, the hearing officer shall be a retired judge of the Superior Court. At the hearing, the Department may be represented by the Attorney General or a designated representative. After recommendation of the hearing officer or on the record if no hearing had been requested, the Commissioner shall make the final decision in all cases other than removal. The Governor, pursuant to Art. V, Sec. IV, Par. 5 of the New Jersey Constitution and upon recommendation of the Commissioner, may remove a judge from office.

#### **12:235-10.10 Confidentiality**

The record before the Commission on Judicial Performance shall be confidential and shall not be available to any person except in the proper discharge of official duties, unless the judge requests that the charge, proceedings, or action shall be made public. If a public reprimand is imposed by the Director, the written reprimand shall be made public. Upon the issuance of a complaint or disciplinary charges, the complaint and/or charges shall be made public. The entire record shall, unless the Director otherwise orders, be made public upon the entry of a final decision imposing a public reprimand, suspension, or removal.

#### **12:235-10.11 Judicial independence and discipline process**

The methods used by the judge, but not the result arrived at by the judge in any case, may be the cause for discipline of the judge. In order to

foster and encourage judicial independence, claims of error shall be left to appellate review and not be subject to discipline.

**12:235-10.12 (Reserved)**

**12:235-10.13 (Reserved)**

**12:235-10.14 (Reserved)**

**12:235-10.15 (Reserved)**

**12:235-10.16 (Reserved)**

**12:235-10.18 (Reserved)**

**12: 235-10.19 (Reserved)**

**12:235-10.20 (Reserved)**

**12:235-10.21 (Reserved)**

## **APPENDIX**

- **CODE OF CONDUCT FOR  
JUDGES OF COMPENSATION**

### **PREAMBLE**

The Code of Conduct for Judges of Compensation is intended to establish basic ethical conduct standards for judges of compensation. The Code is intended to govern the conduct of these judges of compensation and to provide guidance to assist judges in establishing and maintaining high standards of judicial and personal conduct. This Code is based upon the revised New Jersey Code of Judicial Conduct, adopted by the New Jersey Supreme Court to be effective September 1, 2016.

The text of the Canons is authoritative. The Commentary, by explanation and example, provides guidance with respect to the purpose and meaning of the Canons. The Commentary is not intended as a statement of additional rules. When

the text uses "shall" or "shall not," it is intended to impose binding obligations the violation of which can result in disciplinary action. When "should" or "should not" is used, the text is a statement of what is or is not appropriate conduct, but not as a binding rule under which a judge may be disciplined. When "may" is used, it denotes permissible discretion or, depending on the context, it refers to action that is not covered by specific proscriptions.

The Canons are rules of reason. They should be applied consistent with constitutional requirements, statutes, administrative rules, and decisional law and in the context of all relevant circumstances. The Code is to be construed so as not to impinge on the essential independence of judges in making judicial decisions. The Code is designed to provide guidance to judges of compensation and to provide a structure for regulating conduct.

- CANON 1 AN INDEPENDENT AND IMPARTIAL JUDICIARY IS INDISPENSABLE TO JUSTICE. A JUDGE THEREFORE SHALL UPHOLD AND SHOULD PROMOTE THE INDEPENDENCE, INTEGRITY AND IMPARTIALITY OF THE JUDICIARY

- RULE 1.1 Independence, Integrity and Impartiality of the Judiciary

A judge shall participate in establishing, maintaining and enforcing, and shall personally observe, high standards of conduct so that the integrity, impartiality and independence of the judiciary is preserved. This Code shall be construed and applied to further these objectives.

- RULE 1.2 Compliance with the Law

A judge shall respect and comply with the law.

COMMENT:

Violations of this Code, or violations of law or [N.J.A.C. 12:235](#) that reflect adversely on a judge's honesty, impartiality, temperament or fitness constitute a failure to respect and comply with the law.

- CANON 2 A JUDGE SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY

- RULE 2.1 Promoting Confidence in the Judiciary

A judge shall act at all times in a manner that promotes public confidence in the independence, integrity and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

COMMENT:

- [1] Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety and must expect to be the subject of constant public scrutiny. This principle applies to both the professional and personal conduct of a judge. A judge must therefore accept restrictions on personal conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

- [2] Actual impropriety is conduct that reflects adversely on the honesty, impartiality, temperament or fitness to serve as a judge.
- [3] With regard to the judicial conduct of a judge, an appearance of impropriety is created when a reasonable, fully informed person observing the judge's conduct would have doubts about the judge's impartiality.

With regard to the personal conduct of a judge, an appearance of impropriety is created when an individual who observes the judge's personal conduct has a reasonable basis to doubt the judge's integrity and impartiality.

- **RULE 2.2 External Influences on Judicial Conduct**

Judges shall decide cases according to the law and facts. Judges shall not permit family, social, political, financial or other relationships or interests to influence their judicial conduct or judgment.

- **RULE 2.3 Avoiding Abuse of the Prestige of Judicial Office**

- (A) A judge shall not lend the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so.
- (B) A judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge.

**COMMENT:**

- [1] It is improper for judges to use or attempt to use their position to gain personal advantage or deferential treatment of any kind. For example, it would be improper for a judge to allude to his or her judicial status to gain favorable treatment in encounters with others, such as persons in official positions and members of the public.
- [2] The New Jersey Supreme Court has determined that in certain limited situations a judge may write a letter of recommendation for a current or former law clerk or intern on judicial letterhead; in all other situations, if a letter of recommendation is appropriate, it should be on the judge's personal stationery.

The situations in which the judge may use judicial letterhead for letters of recommendation for law clerks or interns are as follows: (a) when the letter is addressed to another state or federal government official (this would include letters regarding subsequent additional clerkships or internships); (b) when the letter is addressed to a law school, university, or college in connection with a possible teaching position for the law clerk or intern; and (c) when a potential employer requests a recommendation.

- [3] Judges may participate in the process of judicial selection or judicial reappointment by cooperating with appointing authorities and screening committees, and by responding to inquiries from such entities concerning the professional qualifications of a person being considered for judicial office.

- **RULE 2.4 Testifying as a Character Witness**

A judge shall not testify as a character witness in a judicial, administrative, or other adjudicatory proceeding, or otherwise vouch for the character of a person in a legal proceeding.

COMMENT:

The testimony of a judge as a character witness injects the prestige of the office into the proceeding in which the judge testifies and may be misunderstood to be an official testimonial. This rule, however, does not afford a judge a privilege against testifying as a witness as to evidentiary facts of which the judge has personal knowledge.

- CANON 3 A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY AND DILIGENTLY
- RULE 3.1 Precedence of Judicial Office

The judicial duties of a judge shall take precedence over all other activities. Judicial duties include the duties of the office prescribed by law, this Code, [N.J.A.C. 12:235](#), and administrative directive.

- RULE 3.2 Competence

A judge shall maintain professional competence.

COMMENT:

Competence in the performance of judicial duties requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary to perform judges' responsibilities of judicial office.

- RULE 3.3 Judicial Independence

A judge shall be unswayed by partisan interest, public clamor or fear of criticism.

COMMENT:

A judge shall decide cases without regard to whether particular laws or litigants are popular or unpopular with the public, the media, government officials, or the judge's friends or family. Confidence in the workers' compensation judiciary is eroded if judicial decision-making is perceived to be subject to outside influences.

- RULE 3.4 Decorum

A judge shall maintain order and decorum in judicial proceedings.

- RULE 3.5 Demeanor

A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity, and shall not permit lawyers, court officials, and others subject to the judge's direction and

control to display impatience or discourtesy or to detract from the dignity of the court.

- RULE 3.6 Bias and Prejudice
  - (A) A judge shall be impartial and shall not discriminate because of race, creed, color, sex, gender identity or expression, religion/religious practices or observances, national origin/nationality, ancestry, language, ethnicity, disability or perceived disability, atypical hereditary cellular or blood trait, genetic information, status as a veteran or disabled veteran of, or liability for service in, the Armed Forces of the United States, age, affectional or sexual orientation, marital status, civil union status, domestic partnership status, socioeconomic status or political affiliation.
  - (B) A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice on the bases specified in Rule 3.6(A), against parties, witnesses, counsel or others. This section does not preclude legitimate advocacy when the listed bases are issues in or relevant to the proceeding.
  - (C) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice or harassment on the bases specified in Rule 3.6(A), and shall not permit court staff, court officials or others subject to the judge's direction and control to do so. This section does not preclude reference to the listed bases when they are issues in or relevant to the proceeding.

COMMENT:

- [1] The prohibited bases in this rule are primarily drawn from the Law Against Discrimination, [N.J.S.A. 10:5-1](#), et seq.
  - [2] Examples of manifestations of bias or prejudice include but are not limited to epithets, slurs, demeaning nicknames, negative stereotyping, attempted humor based on stereotypes, threatening, intimidating, or hostile acts, suggestions of connections between race, ethnicity, or nationality and crime and irrelevant references to personal characteristics. Even facial expressions and body language can convey to parties and lawyers in the proceeding, jurors, the media and others an appearance of bias or prejudice. A judge must avoid conduct that may reasonably be perceived as prejudiced or biased.
  - [3] Harassment is verbal or physical conduct that denigrates or shows hostility or aversion toward a person on prohibited bases listed in Rule 3.6(A).
  - [4] Sexual harassment includes but is not limited to sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature that is unwelcome.
- RULE 3.7 Ensuring the Right to Be Heard

A judge shall accord to every person who is legally interested in a proceeding, or to that person's lawyer, the right to be heard according to law or court rule.

COMMENT:

A judge may make reasonable accommodations to ensure pro se litigants the opportunity to have their matters fairly heard.

- RULE 3.8 Ex Parte Communications

Except as authorized by law or [N.J.A.C. 12:235](#), a judge shall not initiate or consider ex parte or other communications concerning a pending or impending proceeding.

COMMENT:

- [1] This rule does not prohibit a judge from appointing an independent expert in accordance with the rules of court.
- [2] The proscription against communications concerning a proceeding generally includes communications with or from lawyers and other persons who are participants in the proceeding. It does not preclude a judge from consulting with other judges on pending matters, provided that the judge avoids ex parte discussions of a case with judges who have previously been disqualified from hearing the matter and with judges who have appellate jurisdiction over the matter, or from consulting with court personnel whose function is to aid the judge in carrying out adjudicative responsibilities.
- [3] In general, settlement discussions, discussions regarding scheduling and a judge's handling of emergent issues are not considered to constitute ex parte communications in violation of this rule.

- RULE 3.9 Diligence

A judge shall dispose promptly of the business of the court.

COMMENT:

Prompt disposition of the court's business requires judges to devote adequate time to their duties, to be punctual in attending court and expeditious in determining matters before the court, and to insist that court officials, litigants and lawyers cooperate to that end. In disposing of matters promptly, a judge must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay.

- RULE 3.10 Judicial Statements on Pending and Impending Cases

A judge shall not publicly COMMENT about a pending or impending proceeding in any court and shall not permit court personnel subject to the judge's direction and control to do so. This rule does not prohibit judges from making public statements in the course of their official duties or from explaining to the public the procedures of the court.

COMMENT:

- [1] "Court personnel" does not include the lawyers in a proceeding before a judge. The conduct of lawyers is governed by RPC 3.6 of the Rules of Professional Conduct.
- [2] This rule is not intended to prohibit a judge from discussing the facts and holdings, subject to the guidelines of the Advisory Committee on Extrajudicial Activities, in a matter that has been concluded.

- Rule 3.11 Broadcasting

A judge should permit broadcasting, televising, recording and the taking of photographs in the courtroom and areas immediately adjacent thereto during sessions of court and during recesses between sessions only in accordance with the guidelines promulgated by the Supreme Court and subject to the restrictions contained therein; except that where there is a conflict between the guidelines promulgated by the Supreme Court and the provisions of [N.J.A.C. 12:235](#), the provisions of [N.J.A.C. 12:235](#) shall govern.

- RULE 3.12 Judicial Administration

A judge shall diligently discharge the administrative responsibilities of the office without bias or prejudice, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials.

- RULE 3.13 Supervisory Duties

A judge shall require staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

- RULE 3.14 Responding to Judicial and Lawyer Misconduct

A judge has the following disciplinary responsibilities:

- (A) A judge who receives reliable information indicating a substantial likelihood that another judge has committed a violation of this Code should take appropriate action. A judge having knowledge that another judge has committed a violation of this Code that raises a substantial question as to the other judge's fitness for office shall inform the appropriate authority.
- (B) A judge who receives reliable information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct should take appropriate action. A judge having knowledge that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the appropriate authority.
- (C) Acts of a judge in the discharge of disciplinary responsibilities under this rule shall be absolutely privileged.

**COMMENT:**

Appropriate action includes notification to the Supervising Judge, Administrative Supervisory Judge, or Director/Chief Judge of Compensation.

- RULE 3.15 Administrative Appointments

- (A) A judge shall not make unnecessary appointments and shall exercise the power of appointment only on the basis of merit, avoiding nepotism and favoritism.



- (B) A judge shall not approve compensation of appointees beyond the fair value of services rendered.

COMMENT:

Appointees of the judge include officials such as commissioners, receivers, guardians and personnel such as clerks and secretaries. Consent by the parties to an appointment or to the fixing of compensation does not relieve the judge of the obligation prescribed by this rule.

- RULE 3.16 Disqualification

- (A) Judges shall hear and decide all assigned matters unless disqualification is required by this rule or other law.
- (B) Judges shall disqualify themselves in proceedings in which their impartiality or the appearance of their impartiality might reasonably be questioned, including but not limited to the following:
  - (1) Personal bias, prejudice or knowledge. Judges shall disqualify themselves if they have a personal bias or prejudice toward a party or a party's lawyer or have personal knowledge of disputed evidentiary facts involved in the proceeding.
  - (2) Financial interest. Judges shall disqualify themselves if they individually or as a fiduciary have a financial interest in an enterprise related to the litigation. Subject to subparagraphs (i), (ii), (iii), and (iv) hereof, a financial interest means ownership of a legal or equitable interest, however small, or a relationship as director or advisor or other participation in the affairs of a party.
    - (a) Financial interest does not include:
      - (i) Ownership of an interest in securities held by a mutual fund or common investment fund, or ownership of securities held in managed funds, provided, in respect of managed funds, that no investment discretion has been retained by the judge or the judge's spouse, civil union partner, or domestic partner.
      - (ii) Ownership in securities held by an educational, religious, charitable, fraternal or civic organization in which the judge holds an office;
      - (iii) The proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest unless there is a reasonable possibility that the value of the interest will be affected by the judge's decision;
      - (iv) Ownership of an interest in government securities unless there is a reasonable possibility that the value of the interest will be affected by the judge's decision.
  - (3) Personal Relationships. Judges shall disqualify themselves if:
    - (a) The judge or the judge's spouse, civil union partner, or domestic partner, or a first cousin or more closely related relative to either of them, or the spouse, civil union partner, or domestic partner of such relative, or to the judge's knowledge, a second cousin or related relative

to either of them, as defined below, or the spouse, civil union partner, or domestic partner of such relative is a party to the proceeding or is likely to be called as a witness in the proceeding.

- (b) The judge or the judge's spouse, civil union partner, or domestic partner, or a first cousin or more closely related relative to either of them, or the spouse, civil union partner, or domestic partner of such relative is a lawyer for a party.
  - (c) The judge or the judge's spouse, civil union partner, or domestic partner, or any member of the judge's family residing in the judge's household has an interest in the litigation, including among other things, a financial interest, as defined by Rule 3.15(B)(2), in an enterprise related to the litigation.
  - (d) The judge has a social relationship with a party or a lawyer for a party of a nature that would give rise to partiality or the appearance of partiality.
- (4) Prior Professional Relationships. Judges shall disqualify themselves based on their prior professional relationships as follows:
- (a) In proceedings in which the judge served as a lawyer in the matter in controversy or in which the judge has been a witness or may be called as a witness;
  - (b) In proceedings in which a party was a former private client for whose matter the judge had primary responsibility, disqualification is necessary for a period of seven years following the conclusion of that representation. However, disqualification for a period of time in excess of seven years from the conclusion of the representation may be required in certain circumstances. In making that determination, a judge should consider, among other relevant factors: 1) the scope of the representation, including but not limited to the cumulative number of matters handled by the judge, whether a continuous fiduciary relationship existed with the client over an extended period of time, and the length of time that has elapsed since the conclusion of that representation; 2) the duration of the representation; 3) the nature of the representation, including but not limited to the acrimonious nature of the underlying litigation and any information acquired about the client as a consequence of that representation that could cast doubt on the judge's impartiality; and-4) in respect of a corporate client, whether the principals of the entity are the same as existed during the representation.

For purposes of this rule, an insurance company that retained the judge to defend its insureds in tort actions shall not be considered a former client of the judge.

- (c) In proceedings in which a party is a governmental entity that previously employed the judge:
  - (i) for a period of two years following judicial appointment if the judge was employed as a state government attorney, county prosecutor or assistant county prosecutor, provided, however, that prior employment as a state government

attorney with broad supervisory authority shall not disqualify judges who had no actual involvement in the matter while in government service;

- (ii) for a period of five years following judicial appointment if the judge represented a local government entity.
- (d) In proceedings in which the judge's former law firm is involved, for a period of at least seven years following termination of the relationship or until all financial obligations of the law firm to the judge are satisfied, whichever is longer;
- (e) In proceedings in which the judge's former law clerk is appearing or has signed papers, for a period of six months following termination of the clerkship.
- (5) Post-Retirement Employment. Judges shall disqualify themselves if the judge has initiated contact about or discussed or negotiated his or her post-retirement employment with any party, attorney or law firm involved in any matter pending before the judge in which the judge is participating personally and substantially, regardless of whether or not the discussions or negotiations lead to employment of the judge by the party, attorney or law firm;
- (6) Irrespective of the time periods specified in this rule, judges shall disqualify themselves whenever the nature of the relationship to a party or a lawyer, because of a continuing social relationship or otherwise, would give rise to partiality or the appearance of partiality.
- (C) A disqualification required by this rule is not subject to the parties' waiver. The judge shall, however, disclose to the parties any circumstance not deemed by the judge to require disqualification but which might be regarded by the parties as affecting the judge's impartiality.
- (D) A judge shall address disqualification or issues of recusal and disqualification promptly upon recognition of grounds which would give rise to partiality or the appearance of partiality.
- (E) A judge shall not be automatically disqualified upon learning that a complaint has been filed against the judge with the Director/Chief Judge of Compensation, litigation naming the judge as a party, or any other complaint about the judge by a party. If, however, the judge concludes that there is a reasonable basis to question the court's impartiality, the judge may recuse himself or herself. A judge shall promptly disclose to the parties to the pending litigation that a complaint has been filed or made.

#### COMMENT:

- [1] Judges must be available to decide the matters that come before the court. Although there are times when disqualification is necessary to protect the rights of litigants and preserve public confidence in the independence, integrity and impartiality of the judiciary, unwarranted disqualification may bring public disfavor to the court and to the judge personally. The dignity of the court, the judge's respect for fulfillment of judicial duties, and a proper concern for the burdens that may be imposed upon the judge's colleagues require that a judge not use disqualification to avoid cases that present difficult, controversial or unpopular issues.

- [2] In determining whether disqualification is necessary, the applicable standard is as follows: Would a reasonable, fully informed person have doubts about the judge's impartiality. [DeNike v. Cupo, 196 N.J. 502.](#)
- [3] For purposes of this rule, as with New Jersey Court Rule 1:12-1, a "first cousin or more closely related relative" includes first cousin, aunt or uncle, niece or nephew, grandparent, grandchild, child, parent, or sibling.

A "second cousin or related relative" includes a second cousin, great aunt or uncle, first cousin once removed (e.g., a first cousin's child or a great aunt or uncle's child), great grandparent, or grandniece or grandnephew, or great grandchild.

Judges shall keep informed about their personal and fiduciary interests and make reasonable efforts to keep informed about the personal financial interests of their spouse, civil union partner, or domestic partner, and family members residing in the judge's household.

"Knowledge" means actual knowledge of the fact in question. However, knowledge may be inferred from the circumstances.

- [4] The fact that a lawyer in a proceeding is affiliated with a law firm with which a lawyer-relative of the judge is affiliated does not itself disqualify the judge. If, however, the judge's impartiality might reasonably be questioned under paragraph (B), or the lawyer-relative is known by the judge to have an interest in the law firm that could be substantially affected by the proceeding under paragraph (B)(3)(c), the judge's disqualification is required.

In making such a determination, a judge should consider, among other relevant factors: (1) the degree of relationship between the judge and the relative affiliated with the firm (e.g., sister, nephew, nephew's spouse); (2) the closeness of the relationship between the judge and the relative; (3) whether the relative's affiliation with the firm was known to the judge without counsel making the court aware of such affiliation; (4) the size of the law firm the relative is affiliated with; (5) the relative's role in the law firm (e.g., owner or equity interest holder, associate, intern); (6) the relative's relationship, if any, to the lawyer in the proceeding; (7) whether the law firm represents a named party to the action as opposed to an entity proceeding (or seeking to proceed) as *amicus curiae*; (8) the timing of the law firm's commencement of participation in the proceeding; (9) whether the law firm is providing its services *pro bono*, if such an arrangement is known by the judge; and (10) the nature of the proceedings.

Note that this COMMENT addresses only whether a lawyer-relative renders the judge disqualified from hearing all matters involving the law firm with which the relative is affiliated. Nothing in this COMMENT should be read to permit a judge to hear

proceedings in which a lawyer in the case is related (as first cousin or closer) to the judge or the judge's spouse, civil union partner or domestic partner.

- [5] In evaluating whether a judge should be disqualified from proceedings in which a party was a former private client of the judge for a period of time in excess of seven years from the conclusion of the representation, judges should be guided by [DeNike v. Cupo, 196 N.J. 502](#).
- [6] A lawyer in a governmental agency does not necessarily have an association with other lawyers employed by that agency within the meaning of this rule; judges formerly employed by governmental agencies, however, should disqualify themselves in a proceeding if their impartiality might reasonably be questioned because of the association.
- [7] A judge may not initiate contact about or discuss or negotiate his or her post-retirement employment with any party, attorney or law firm involved in any matter pending before the judge in which the judge is participating personally and substantially. A matter pending before the judge includes any matter or aspect of a matter which has not been completed, even if only the performance of a ministerial act remains outstanding, such as signing a consent order or a similar order. If the subject is raised in any fashion, the judge must put a halt to the discussion or negotiation at once, rebuff any offer, and disclose what occurred on the record in the presence of all parties and counsel. The judge, all parties and attorneys on the record should then evaluate objectively whether any further relief is needed.

A judge who engages in post-retirement employment negotiations or discussions while still on the bench with any party, attorney or law firm that does not have a matter pending before the judge, must do so in a way that minimizes the need for disqualification, does not interfere with the proper performance of the judge's judicial duties, and upholds the integrity of the courts. A judge should delay starting any such negotiations or discussions until shortly before his or her planned retirement, and should discuss post-retirement employment opportunities with the fewest possible number of prospective employers. A judge should also inform the Director/Chief Judge of Compensation about the post-retirement employment negotiations or discussions to the extent that such negotiations or discussions will interfere with the judge's regular assignments.

A judge should not initiate contact about or discuss or negotiate his or her post-retirement employment with a party, attorney or law firm that has in the past appeared before the judge until the passage of a reasonable interval of time, so that the judge's impartiality in the handling of the case cannot reasonably be questioned. What is reasonable depends on the circumstances. For instance, it may be that an uncontested matter resolved swiftly by entry of a default judgment; such a circumstance may not call for the passage of a lengthy intervening period of time. Prolonged or particularly

acrimonious litigation may caution in favor of a longer delay. Actions likely to result in continuing post-judgment matters would also warrant a lengthier intervening period of time.

- [8] The rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute, or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. In matters that require immediate action, the judge must disclose on the record the basis for possible disqualification and make reasonable efforts to transfer the matter to another judge as soon as practicable.
  - [9] The provision in Rule 3.16(C) is designed to avoid the possibility that a party or lawyer will feel coerced into consent.
- CANON 4 A JUDGE MAY ENGAGE IN ACTIVITIES TO IMPROVE THE LAW, THE LEGAL SYSTEM AND THE ADMINISTRATION OF JUSTICE
  - RULE 4 Activities Related to the Judicial Function

A judge, subject to the proper performance of judicial duties, may engage in the following related activities if in doing so the judge does not cast doubt on the judge's capacity to decide impartially any issue that may come before the court and provided the judge is not compensated therefor:

- (A) A judge may speak, write, lecture and participate in other activities concerning the law, the legal system and the administration of justice.
- (B) A judge may teach concerning the law, the legal system and the administration of justice.
- (C) A judge may serve as a member, officer or director of a nongovernmental organization devoted to the improvement of the law, the legal system, or the administration of justice, but may not assist the organization in raising funds or participate in their management and investment. A full-time judge may participate as a member of a local or state bar association, but may not serve as an officer or trustee, and may only serve on committees of the association subject to such conditions as determined by the Supreme Court.
- (D) A judge may encourage lawyers to provide pro bono legal services.

#### COMMENT:

A judge is in a unique position to contribute to the improvement of the law, the legal system and the administration of justice, including revision of substantive and procedural law and improvement of the justice system. To the extent that time permits, a judge is encouraged to do so through a bar association, judicial conference, other organization dedicated to the improvement of the law or through an appropriate judicial official charged with administrative responsibility under [N.J.A.C. 12:235](#)

Nothing herein shall preclude a judge from serving as an officer of the Inns of Court.

- CANON 5 A JUDGE SHALL SO CONDUCT THE JUDGE'S EXTRAJUDICIAL ACTIVITIES AS TO MINIMIZE THE RISK OF CONFLICT WITH JUDICIAL OBLIGATIONS
- RULE 5.1 Extrajudicial Activities in General
  - (A) Judges shall conduct their extrajudicial activities in a manner that would not cast reasonable doubt on the judge's capacity to act impartially as a judge, demean the judicial office, or interfere with the proper performance of judicial duties.
  - (B) A judge shall not:
    - (1) participate in activities that can be reasonably anticipated to lead to frequent disqualification;
    - (2) participate in activities that would appear to reasonable, fully informed persons to undermine the judge's independence, integrity or impartiality;
    - (3) make use of court premises, staff, stationery, equipment or other resources for extrajudicial activities, except for incidental use involving activities that concern the law, the legal system or the administration of justice, or unless such additional use is permitted by law, administrative directive or Division of Workers' Compensation policy. De minimis or other incidental personal use of judiciary equipment or facilities, such as telephones, computers, scanners, fax machines, and copiers, do not violate this rule.
  - (C) Upon notice to and approval by the Commissioner of the Department of Labor and Workforce Development, a judge may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system or the administration of justice.
  - (D) A judge may communicate with government officials on matters concerning the administration of justice within the judge's official responsibility.
  - (E) A judge may act pro se in a matter involving the judge's legal or economic interests, or when the judge is acting in a fiduciary capacity as permitted in Rule 5.8.

- RULE 5.2 Avocational Activities

A judge may write, lecture, teach and speak on non-legal subjects, and engage in the arts, sports and other social and recreational activities provided these activities do not detract from the dignity of the judicial office or interfere with the performance of judicial duties.

- RULE 5.3 Affiliation with Discriminatory Organizations

- (A) A judge shall not hold membership in any organization that practices invidious discrimination on any of the bases prohibited by Rule 3.6(A)
- (B) A judge shall not accept benefits from or use the facilities of an organization if the judge knows or should know that the organization practices invidious discrimination on any of the bases prohibited by Rule 3.6(A), or as otherwise proscribed by law.

COMMENT:

- [1] A judge's membership in an organization that practices invidious discrimination creates the perception that the judge's impartiality is impaired.

- [2] An organization is generally said to discriminate invidiously if it arbitrarily excludes from membership, on the bases prohibited by Rule 3.6(A), persons who would otherwise be eligible for admission. Whether an organization practices invidious discrimination cannot be determined from an examination of an organization's current membership rolls, but rather depends on how the organization selects members, as well as other relevant factors, including but not limited to whether the organization is dedicated to religious, ethnic or cultural values of legitimate common interest to its members. Organizations dedicated to the preservation of religious, spiritual, charitable, civic or cultural values that do not stigmatize any excluded persons are not considered to discriminate invidiously.
    - [3] When a judge learns that an organization to which the judge belongs engages in invidious discrimination, the judge must resign immediately from the organization.
- RULE 5.4 Participation in Educational, Religious, Charitable, Fraternal or Civic Organizations and Activities

A judge may participate in civic and charitable activities that do not reflect adversely on the judge's impartiality or interfere with the performance of judicial duties. A judge may serve as an officer, director, trustee or non-legal advisor of an educational, religious, charitable, fraternal or civic organization whose purpose is not to advance the economic or political advantage of its members, subject to the following limitations:

- (A) A judge shall not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly engaged in adversarial proceedings in any court.
- (B) A judge shall not solicit funds for any educational, religious, charitable, fraternal or civic organization, or use or permit the use of the prestige of the judicial office for that purpose. A judge shall not be listed as an officer, director or trustee of such an organization in any letters or other documents used in such solicitations. A judge shall not be a speaker or the guest of honor at an organization's fundraising events, but may attend such events and contribute to such organizations.
- (C) A judge shall not give investment advice to such an organization, nor may a judge serve on its board of directors or trustees if the board has the responsibility for approving investment decisions.
- (D) A judge's name, but not a judge's position and title, may appear on the organization's letterhead and in literature regarding that organization.

**COMMENT:**

- [1] The changing nature of some organizations and their relationship to the law makes it necessary for judges to reexamine regularly the activities of each organization with which they are affiliated to determine whether the relationship should be continued.
- [2] Judges shall inform organizations of the limitations associated with their participation in educational, religious, charitable, fraternal or civic organizations and activities. Specific prohibitions include identification of a judge's position and title on the letterhead of an organization, regardless of the intended use of



that letterhead, and any involvement of a judge in the solicitation of funds for the organization.

- [3] A judge's participation in an organization devoted to law-related activities is governed by Canon 4.
- RULE 5.5 Financial, Business, or Remunerative Activities
  - (A) Judges shall refrain from financial and business dealings that tend to reflect adversely on their impartiality, interfere with the proper performance of judicial duties, exploit the judicial position, or involve the judge in transactions with lawyers or persons likely to come before the court on which the judge serves.
  - (B) Judges may hold investments, including real estate, but shall not serve as an officer, director, manager, advisor or employee of any business, except upon notice to and approval by the Director/Chief Judge of Compensation.
  - (C) Judges should manage their investments and other financial interests to minimize the number of cases in which they are disqualified.
- RULE 5.6 Acceptance of Gifts, Loans, Bequests, Benefits, or Other Things of Value

Neither a judge nor a member of the judge's family residing in the same household should accept a gift, bequest, favor or loan from anyone except as follows:

- (A) A judge may accept a gift of nominal value incident to a public testimonial; books supplied by publishers on a complimentary basis for official use; or an invitation to the judge to attend a bar-related function or activity devoted to the improvement of the law, the legal system or the administration of justice, except as limited by Canon 6, Rule 6;
  - (B) A judge may accept gifts, loans, bequests, benefits or other things of value from persons whose appearance or interest in a proceeding pending or impending before the judge would in any event require disqualification of the judge under Rule 3.16, including Rule 3.16(B)(6), which requires disqualification of a judge when the nature of the judge's relationship to a party or an attorney would give rise to partiality or the appearance of partiality;
  - (C) A judge or a member of the judge's family residing in the same household may accept ordinary social hospitality; gifts, favors or commercial loans made in the regular course of business on the same terms available to the general public; or a scholarship or fellowship awarded on the same terms applied to other applicants;
  - (D) A judge or a member of the judge's family residing in the same household may accept any other gift, bequest, favor or loan only if the donor is not a party or other person whose interests have come or are likely to come before the judge.
  - (E) For the purposes of this rule, "member of the judge's family residing in the same household" means any relative of a judge by blood or marriage, civil union partner, domestic partner or a person treated by a judge as a member of the family, who resides in the same household as the judge.
- RULE 5.7 Disclosure of Information

Information acquired by a judge in a judicial capacity shall not be used or disclosed by the judge in financial dealings or for any purpose not related to judicial duties.

COMMENT:

- [1] In the course of performing judicial duties, a judge may acquire information of commercial or other value that is unavailable to the public. Judges shall not reveal or use such information for personal gain or for any purpose unrelated to their judicial duties.
- [2] This rule is not intended to affect a judge's ability to act on information as necessary to protect the health or safety of the judge or a member of a judge's family, court personnel or other judicial officers when consistent with other provisions of this Code.

- RULE 5.8 Fiduciary Activities

A judge shall not serve as an executor, administrator, trustee, guardian or other fiduciary, except for the estate, trust or person of a member of the judge's family, and then only when such service will not interfere with the proper performance of judicial duties. "Member of the judge's family" includes a spouse, civil union partner, domestic partner, child, grandchild, parent, grandparent or other relative or person with whom the judge maintains or maintained a familial relationship. As a family fiduciary a judge is subject to the following restrictions:

- (A) The judge shall not serve as a fiduciary if that service is likely to result in litigation that would ordinarily come before the judge, or if the estate, trust or ward becomes involved in adversary proceedings in the court on which the judge serves or under its appellate jurisdiction.
- (B) While acting as a fiduciary for a member of the judge's family, a judge is subject to the same restrictions on financial activities that apply to the judge in a personal capacity.
- (C) On becoming a judge, persons serving as fiduciaries shall comply with this rule as soon as reasonably practicable, upon notice to and approval by the Director/Chief Judge of Compensation.

COMMENT:

When a judge who is a beneficiary of an estate serves as an executor or administrator as permitted by this rule and receives a fee solely for the purpose of reducing the tax liability of the estate, receipt of that fee does not constitute "compensation" under Canon 6.

- RULE 5.9 Serving as Arbitrator or Mediator

A judge shall not act as an arbitrator or mediator or perform other judicial functions apart from the judge's official duties unless expressly authorized by law.

COMMENT:

This Rule does not prohibit a judge from participating in arbitration, mediation, or settlement conferences performed as part of assigned judicial duties. Rendering

dispute resolution services apart from those duties is prohibited unless it is expressly authorized by law.

- RULE 5.10 Practice of Law

A judge shall not practice law, with or without compensation.

- RULE 5.11 Appointments to Governmental Positions

A judge shall not accept appointment to a governmental committee, commission or other position except with prior approval of the Commissioner of the Department of Labor and Workforce Development.

- CANON 6 A JUDGE SHALL NOT RECEIVE COMPENSATION FOR QUASI-JUDICIAL AND EXTRAJUDICIAL ACTIVITIES

- RULE 6 Compensation for Quasi-Judicial and Extrajudicial Activities

- (A) Except as otherwise provided in (B) below, a judge shall not receive compensation for quasi-judicial and extrajudicial activities permitted by this Code, but may receive reimbursement of actual expenses that the judge reasonably incurred for travel, food and lodging, provided that the source or amount of such reimbursement, or the location of the activity, does not give the appearance of influencing the judge in the exercise of judicial duties or otherwise create an appearance of impropriety.
- (B) Upon notice to an approval by the Director, a judge may receive compensation for teaching at law schools or colleges, provided that the source of the payment does not give the appearance of impropriety.

- CANON 7 A JUDGE SHALL REFRAIN FROM POLITICAL ACTIVITY

- RULE 7 Political Activity

- (A) A judge shall not engage in any political activity, including but not limited to:
  - (1) holding membership or office in a political organization;
  - (2) making speeches for a political organization or candidate, or publicly endorsing a candidate for public office;
  - (3) attending political functions that are likely to be considered as political in nature;
  - (4) soliciting funds, paying an assessment, or making a contribution to a political organization or candidate, or purchasing tickets for political party dinners or other functions;
- (B) A judge shall resign from office when the judge becomes a candidate for an elective public office or is nominated thereto.

- COMMENT:

The proscription against membership in a political organization does not prohibit a judge from registering with a political party to vote.

Applicability

Compliance with the Code of Conduct for Judges of Compensation

All judges, including recalled judges, shall comply with this Code.

## **SUBCHAPTER 11. ACCIDENT REPORTS**

### **12:235-11.1 Employer's First notice of accidental injury or occupational disease**

- (a) Every employer subject to N.J.S.A. 34:15-96 shall file a first notice of accidental injury or occupational disease under the procedures set forth in (b) below when:
  - 1. The injury causes a loss of time from regular duties beyond the working day or shift on which the accident occurred; or
  - 2. Medical treatment beyond ordinary first aid is required; or
  - 3. Occupational disease exists whether or not time is lost.
- (b) Upon the happening of an accident or the occurrence of any occupational disease, an employer who has insurance coverage or utilizes a third party administrator shall promptly furnish the insurance carrier or the third party administrator with accident or occupational disease information.
- (c) Within three weeks after an accident or upon knowledge of the occurrence of an occupational disease, every insurance carrier, third party administrator, statutory non-insured employer, including the State, counties, municipalities and school districts, and duly authorized self-insured employer not utilizing a third party administrator shall file a report designated as "first notice of accident" in electronic data interchange media with the Division of Workers' Compensation through the Compensation and Rating and Inspection Bureau in a format prescribed by the Compensation and Rating and Inspection Bureau. When filed by an insurance carrier or third party administrator, the report shall also be sent to the employer. If the employer disagrees with the report, the employer may prepare and sign an amended report and file the amended report with the insurance carrier or third party administrator. The amended report must then be filed electronically with the Division through the Compensation Rating and Inspection Bureau.
- (d) The Compensation Rating and Inspection Bureau shall insure the information received pursuant to this subchapter is readily available to the Division or any person authorized by the Commissioner of Labor pursuant to N.J.S.A. 34:15-99.

### **12:235-11.2 Employer's final report of accidental injury or occupational disease**

- (a) Not more than 26 weeks after the insurance carrier, third party administrator, self-insured employer or statutory non-insured employer learns that an employee has recovered so as to resume work or has reached maximum medical improvement prior to resumption of work, the insurance carrier, third party administrator, self-insured employer or statutory non-insured employer shall prepare a final report in electronic data interchange media with the Division through the Compensation Rating and Inspection Bureau in a format prescribed by the Compensation Rating and Inspection Bureau. A benefits status letter will be sent to the employee by the insurance carrier, third party administrator, self-insured employer or statutory non-insured employer which shall contain the information filed with Division and Compensation Rating and Inspection Bureau.
- (b) If the employee disagrees with the benefits status letter, the employee may contact the insurance carrier, third party administrator, self-insured employer or statutory non-insured employer directly or write to the Division pursuant to instructions on the New Jersey Benefit Status Letter. Any changes to the report shall be filed by the insurance carrier, third party administrator, self-insured employer or statutory non-insured employer in the same manner as the original report under (a) above.

### **12:235-11.3 Penalty for noncompliance**

- (a) Every employer, insurer, third party administrator or other person who fails to comply with the terms of this subchapter shall be liable for a penalty of \$10.00 for the first offense, \$25.00 for the second offense and \$50.00 for the third and subsequent offenses. Violations under this section include, but are not limited to, a failure to file a required report, a failure to file a report electronically, a failure to supply information to another party and a failure to file a complete and accurate report.
- (b) A person or entity who receives notice of a penalty assessment may request in writing a review of the penalty assessment within 20 days of the notice of penalty assessment. Such request must include the reasons and basis for a dismissal or waiver of the penalty.

## **SUBCHAPTER 12. SURCHARGE COLLECTION PROCEDURES**

### **12:235-12.1 Purpose and scope**

- (a) The purpose of this subchapter is to establish surcharge collection procedures to fund the Uninsured Employers Fund and the Second Injury Fund.
- (b) The surcharges shall be levied against all workers' compensation and employers' liability insurance policyholders and self-insured employers.

## **12:235-12.2 Definitions**

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise:

"Department" means the New Jersey Department of Labor.

"Director" means the Director/Chief Judge of the Division of Workers' Compensation.

"Earned premium" means the portion of the standard premium that was earned on a pro-rata basis of the policy term.

As of January 1, 1999, the earned premium shall be defined as the portion of modified premium that was earned on a pro-rata basis of the policy term.

"Insurer" means a domestic, foreign, or alien mutual association or stock company writing workers' compensation or employer's liability insurance on risks located in this State who is subject to premium taxes pursuant to N.J.S.A. 54:18A-1 et seq.

"Modified premium" means the earned premium after application of any experience modification and prior to the application of an approved managed care premium reduction, a premium reduction in consideration of the New Jersey Construction Classification Premium Adjustment Program, the expense constant, surcharges, premium discount, retrospective rating plans, or premium reductions for deductible coverages.

"Policyholder" means a holder of a policy of workers' compensation and employer's liability insurance issued by an insurer, exclusive of any workers' compensation endorsement requirement pursuant to N.J.S.A. 17:36-5.29.

"Report of compensation paid" is a report of the total amount of workers' compensation paid pursuant to N.J.S.A. 34:15-1 et seq., adjusted for the amounts paid for funeral expenses and for the compromise of disputed claims pursuant to N.J.S.A. 34:15-20.

"Second Injury Fund" means a fund established pursuant to N.J.S.A. 34:15-94 which is designed to provide funds for workers who have experienced two disability injuries.

"Self-insured employer" means an employer which is authorized to self-insure for workers' compensation or employer's liability pursuant to N.J.S.A. 34:15-77.

"Standard premium" means the premium earned after application of any experience modification and prior to the application of the expense constant, premium discounts, retrospective rating plans or premium reductions for deductible coverages.

"Uninsured Employer's Fund" means a fund to provide for the payment of awards against uninsured defaulting employers pursuant to N.J.S.A. 34:15-120.1 et seq.

### **12:235-12.3 Reporting compensation paid**

- (a) Report forms for the reporting of compensation paid shall be mailed by the Department to the respective insurers or self-insured employers by June 15 of each calendar year.
- (b) Insurers and self-insured employers shall file the report of compensation paid for the calendar period July 1 to June 30 with the Department by July 31 following the end of the report year to be filed.

### **12:235-12.4 Calculation and notification of surcharge**

- (a) Insurers shall include the surcharge percentages as provided by the Department of Insurance, for both the Second Injury Fund and the Uninsured Employer's Fund, respectively, on each policyholder's premium notice.
- (b) The surcharge amounts shall be calculated by multiplying the surcharge rate by the standard premium. For quarters after December 31, 1998, the surcharge amounts shall be calculated by multiplying the surcharge by the modified premium.
- (c) The resulting surcharge amounts shall be stated by the insurer separately on the premium notice.
- (d) The surcharge shall be remitted to the insurer in accordance with the payment schedule established by the insurer for the policyholder, for the annual policy term.

- (e) Self-insured employers shall be notified of their share of the surcharge by September 15 of the calendar year that precedes the year for which the surcharge applies.

**12:235-12.5 Surcharge collection procedure**

- (a) The Department shall provide each insurer and self-insured employer with the appropriate form for calculating the surcharge remittance. The form shall contain express instructions for the completion of the items pertaining to the calculation of the surcharge remittance.

- 1. For insurers, the following apply:

- i. The amount of the remittance shall be proportionate to the earned premium at the end of the calendar quarter of remittance, less any supplemental benefits and special adjustments that have been paid;
- ii. The quarterly calculation of the surcharge amount due shall be adjusted for changes in prior quarter earned premiums, if any. For example, in 1989, the maximum number of prior quarters that may need earned premium adjustment will be three. In 1993, the maximum number of prior quarters that may need earned premium adjustment will be 19. In 1994, and thereafter, the maximum number of quarters that may need earned premium adjustment will vary from 16 to 19; and
- iii. Surcharges collected shall be remitted within 30 days following the end of each calendar quarter ending March 31, June 30, September 30, and December 31.

- 2. For self-insured employers, the following apply:

- i. The amount of the remittance shall be equal to one-quarter of the annual surcharge, adjusted for supplemental benefits and special adjustments paid during the calendar quarter of remittance; and
- ii. One-quarter of the annual surcharge shall be remitted within 30 days of the end of each calendar quarter ending March 31, June 30, September 30, and December 31.

- (b) The surcharge remittance form shall be returned with the surcharge remitted to the Department.

**12:235-12.6 Verification and audit procedures**



- (a) Insurers and self-insured employers shall submit a quarterly detailed report that supports the amount of credits, supplemental benefits and special adjustment payments claimed on the quarterly remittance.
  - 1. The form and manner of completion shall be as directed by the Director.
- (b) Claims for credits for supplemental benefits and special adjustment payments made pursuant to N.J.S.A. 34:15-94 are subject to review and approval by the Director.
  - 1. Any credits claimed that are not approved by the Director shall result in the insurer or self-insured employer being liable for the surcharge in the amount of the disallowed claim for credit.
- (c) Insurers and self-insured employers that fail to submit the support of the credits claimed on their quarterly remittance shall be liable for the total amount of the quarterly surcharge due without credit for the amount of supplemental benefits and special adjustment payments.
- (d) Earned premiums and reports of compensation paid are subject to audit and verification by the Department.
  - 1. Adjustments resulting from incorrectly reported earned premiums or reports of compensation paid shall result in a recalculation of the surcharge due from the insurer or self-insured employer who filed the incorrect information.
- (e) Any amounts of surcharges due as the result of disallowed claims for credit or incorrect reports of earned premiums or reports of compensation paid shall be subject to interest on the portion of the surcharge that is due as the result of the disallowance or adjustment made by the Department.

### **12:235-12.7 Earned premium notification**

Insurers are required to notify the Department of Insurance of the amount of standard earned premiums for the period January 1 to December 31 of each calendar year by August 31 of the immediately following year. Such premiums shall be used in the determination of the annual policyholder surcharge rate applicable during the next policy year.

### **12:235-12.8 Forms**

Forms referred to in this subchapter are available from the Department, and may be requested in writing from:

**Office of the Controller  
New Jersey Department of Labor  
CN 078  
Trenton, New Jersey 08625-0078**

**12:235-12.9 Penalties**

- (a) Any insurer or self-insured employer who fails to submit a completed report of compensation paid by July 31 of any calendar year shall be subject to a penalty of \$100.00 for each 30 day period that the report is delinquent, up to a maximum of \$500.00.
- (b) Any insurer or self-insured employer who fails to remit a quarterly surcharge by the due date shall be subject to a penalty of one-half of one percent (0.5%) of the surcharge remittance amount for each 30 day period, or portion thereof, that the remittance is delinquent, up to a maximum of five percent.
- (c) Surcharges and penalties which are delinquent are subject to collection proceedings pursuant to the Penalty Enforcement Law, N.J.S.A. 2A:58-1.

**SUBCHAPTER 13. ENFORCEMENT AND COLLECTION OF NON-INSURANCE PENALTIES**

**12:235-13.1 General**

- (a) The Director/Chief Judge or his or her designee may, upon finding that an employer has failed for a period of not less than ten (10) consecutive days to make provision for payment of compensation as required by N.J.S.A. 34:15-71 and N.J.S.A. 34:15-72 and subsequent to notice and demand for proof of such provision pursuant to N.J.A.C. 12:235-13.2, impose upon that employer, in addition to all other penalties, fines or assessments provided for in the New Jersey Workers' Compensation Law (N.J.S.A. 34:15-7 et seq.) an assessment up to an amount of \$1,000.00 and when the period exceeds twenty (20) days, an additional assessment of up to \$1,000.00 for each period of 10 days thereafter. All such assessments shall be collectible in a court of competent jurisdiction in a summary civil proceeding and shall be paid into the "Uninsured Employers Fund."

**12:235-3.2 General motions for temporary disability and/or medical benefits**

- (a) In all motions by the petitioner for temporary disability or medical benefits, the original notice of motion shall be filed with the district office to which the case is assigned and a copy of the notice of motion and claim petition served by certified mail or personal service on the attorneys of

record. If the attorney of record is unknown, then service shall be made by certified mail on the respondent(s) and its carrier(s). If it is a new claim petition and it is a claim petition filed on paper, then the notice of motion shall also be filed with the central office. Motions for temporary disability and/or medical benefits shall evidence that petitioner is currently temporarily totally disabled and/or in need of current medical treatment. Where only past periods of temporary total disability and/or medical expenses are claimed by petitioner, such issues should be presented at pretrial for resolution or trial and not by motion under this section.

- (b) The notice of motion for temporary disability or medical benefits shall be on a form prescribed by the Division and shall contain:
  - 1. A detailed account of compensable lost time claimed by the petitioner, indicating any period paid by the respondent;
  - 2. Affidavits or certifications made in personal knowledge by the petitioner or the petitioner's attorney, as well as the report(s) of a physician(s) stating the medical diagnosis and the specific type of diagnostic study, referral to specialist, or treatment being sought, and, if available, an itemized bill and report of the treating physicians or institutions or both for which services past, present and future, petitioner is seeking payment and such other evidence as shall relate to the petitioner's claim for temporary disability and/or medical treatment; and
  - 3. If the petitioner, having received treatment, cannot secure a report of the medical provider authorized by the respondent, it shall be set forth in the affidavit in lieu of the physician's report.
- (c) If an attorney for the petitioner knowingly files an incomplete, inaccurate or misleading notice of motion for temporary disability and/or medical benefits, or an attorney for the respondent files an untimely, incomplete, inaccurate or misleading answer, the attorney may be assessed a penalty in accordance with N.J.A.C. 12:235-3.14.
- (d) Except for good cause shown, respondent(s) shall file an answer within 21 days of service of the motion or within 30 days after service of claim petition whichever is later.
- (e) When the Division has received a notice of motion for temporary disability and/or medical benefits filed in accordance with (a), (b) and (c) above, it shall list the motion for a hearing before a Judge of Compensation peremptorily within 30 days of the filing of the motion. Motions for medical and/or temporary benefits shall commence and continue in a timely manner subject to the scheduling constraints of the Division. Said scheduling may be accelerated as ordered by the Director,

the Supervising Judge of the vicinage, or the Judge of Compensation to whom the case is assigned.

- (f) Affidavits, certifications and medical reports submitted in accordance with (b) above in support of the motion may constitute a prima facie case and may be sufficient basis for the issuance of an order compelling the respondent to provide the relief sought unless respondent files supporting affidavits or certifications to oppose said motion on a legal or factual basis, or files medical reports if there is a medical basis to oppose said motion. No order shall be issued until 30 days after service of the claim petition.
- (g) Examination, if required by respondent, shall be completed within 30 days of receipt of the motion and the report issued in not more than 35 days from receipt of the motion and shall not delay the start of the hearing of the motion except for good cause shown.
- (h) For motions where it appears the only issue involved is which carrier or employer is liable to petitioner for the benefits sought, a judge of compensation may order one carrier or employer to pay benefits without prejudice and subject to an order of reimbursement if another party is later held liable for such benefits.
- (i) On conclusion of the hearing on the motion for temporary and/or medical benefits, the Judge of Compensation shall, within 15 days, render a final decision on the motion and notify the respective counsel of the decision. In computing the 15 days' time, the 15 days shall be from the last day of hearing or from the date of filing of briefs as ordered by the Judge, whichever is later. Under no circumstances shall briefs be filed later than 15 days after the hearing.

### **12:235-13.2 Notice and Demand for Proof of Coverage**

- (a) In the event the Division determines that a business entity is or may be operating as an employer in the State of New Jersey without the required workers' compensation coverage, the Division shall issue a notice, by regular and certified mail, to the business entity. Notice shall include a statement of the allegation, penalties to be assessed for such failure, a demand for proof of required coverage to be submitted within twenty (20) calendar days and procedures for the business entity to request a hearing on the allegation.

### **12:235-13.3 Acceptable Proofs**

- (a) In response to a notice issued pursuant to N.J.A.C. 12:235-13.2, acceptable preliminary proof of the required workers' compensation insurance coverage shall include a copy of a current certificate of insurance issued by a mutual association or stock company authorized to write on such risks in the State of New Jersey, a sworn affidavit by the agent of such mutual association or stock company stating the policy number(s) and the effective date(s) of coverage, documentation evidencing application for required coverage through the Compensation Rating and Inspection Bureau (CRIB), or a copy of the certificate of approval issued by the Commissioner of Insurance for self-insurance privilege under N.J.S.A. 34:15-77. Where a CRIB application is provided as proof of coverage, the Division shall issue a preliminary acceptance notice to the business entity with a copy to CRIB, requiring submittal by the business entity of a certificate of insurance within sixty (60) calendar days from the date of the mailing of such notice.
- (b) All proofs of coverage submitted in the form of insurance certificate or agent affidavit are subject to verification by the Division with the named mutual association or stock company. Proofs of coverage submitted in the form of certificates of self-insurance shall likewise be subject to verification with the Department of Insurance.
- (c) Where proofs of coverage as submitted by the business entity are found to be invalid on their face or through the process of verification, a second notice shall be issued to the business entity stating such findings and the current amount of assessment to be imposed, and providing procedures for the business entity to request a hearing on the allegation within twenty (20) calendar days following the date of the second notice.
- (d) All notices prescribed hereunder shall be served by the Division by certified and regular mail and shall be deemed satisfactory if not returned as undeliverable.

#### **12:235-13.4 Failure to Respond**

- (a) Where the business entity fails to respond to either the initial or second notice and demand for proof of coverage within the period allowed, the amount of assessment stated in the last notice issued to the business entity shall become the final administrative order with respect to the imposition of such penalties.

#### **12:235-13.5 Hearings**

- (a) A hearing will be conducted by the Director/Chief Judge or designee if requested pursuant to N.J.A.C. 12:235-13.2.

- (b) The employer shall have the opportunity to present any and all relevant evidence but the Director/Chief Judge or designee conducting the hearing shall not be bound by the Rules of Evidence.
- (c) Penalties assessed against an employer will be dismissed upon a finding by a preponderance of the credible proof that the requirements of Article 5 and related sections of the Workers' Compensation Act were met as of the date of the issuance of the initial notice of violation.
- (d) If, upon finding that the employer was in violation of N.J.S.A. 34:15-7 et seq., a portion or all of the administrative penalty assessed in the initial notice of violation may be abated by the Director/Chief Judge or designee based on the following factors:
  - 1. Length of time the employer was without workers' compensation coverage;
  - 2. An occurrence of a compensable injury while the employer was uninsured;
  - 3. Past history of violations by the employer or an entity in which the violator was an owner, officer or principal shareholder;
  - 4. Good faith of the employer;
  - 5. Size of the employer's business; and
  - 6. Any other material factors which the Director/Chief Judge or designee deems appropriate.
- (e) If, as the result of a hearing, pursuant to this subchapter, an initial penalty amount is abated in part upon condition of timely payment, in whole or by installment, said employer shall make payment in strict accordance with the schedule of payments set forth by the Director/Chief Judge or designee. If the conditions of the penalty abatement order are not met, the abatement shall, upon further order of the Director/Chief Judge or designee, and without further hearing, be rescinded and the full amount of the initial assessment shall be due and owing.
- (f) The Director/Chief Judge or designee shall issue a final administrative order within a reasonable time following the conclusion of the hearing.

### **12:235-13.6 Payments**

- (a) All penalties shall be paid in compliance with the final administrative order. Failure to pay such penalties when due shall result in a judgment being obtained in a court of competent jurisdiction.
- (b) All sums shall be made payable to the "Uninsured Employers Fund" in the form of a certified check, money order or such other form authorized by the Director/Chief Judge or designee.

**12:235-13.7 Stop-work order**

- (a) Besides any other penalties, remedies or sanctions as provided by statute or regulation, an employer who knowingly fails to provide workers' compensation coverage, who knowingly misrepresents one or more employees as independent contractors or who knowingly provides false, incomplete or misleading information concerning the number of employees, shall be subject to a stop-work order by the Director of the Division of Workers' Compensation.
- (b) A violation under (a) above shall be considered to be "knowing" if the employer:
  - 1. Has previously obtained workers' compensation insurance and the insurance has been cancelled or the insurance has not been continued or renewed;
  - 2. Has been advised of the need for workers' compensation insurance by the Division of Workers' Compensation or any other agency of the New Jersey Department of Labor and Workforce Development; or
  - 3. Has had one or more previous violations of workers' compensation coverage requirements, including, but not limited to, failure to obtain workers' compensation insurance or to qualify as a self-insuring employer, misreporting or misrepresentation of the number of employees and/or misreporting or misrepresentation of employees as independent contractors.
- (c) A stop-work order against an employer shall apply against any successor firm, corporation or partnership of the employer in the same manner that it applies to the employer.
- (d) On finding a violation under (a) above after investigation, the Director shall issue, not later than 72 hours after making such determination, a stop-work order requiring the cessation of all business operations of the employer at every site at which the violation occurs.
  - 1. A stop-work order shall take effect when served upon the employer, or, for a particular employer worksite, when served at the worksite.

2. A stop-work order shall remain in effect until the Director issues an order releasing the stop-work order upon finding that the employer has come into compliance and has paid any penalty assessed.
- (e) An employer who is subject to a stop-work order shall have the right to apply to the Director, not more than 10 days after the order is issued, for a hearing to contest whether the employer committed the violation on which the order was based.
1. Application to the Director for a hearing by an employer who is subject to a stop-work order shall be in writing and hand delivered to the Director within the statutorily prescribed period at 1 John Fitch Plaza, Trenton, New Jersey, or submitted by certified mail, postmarked within the prescribed period, to the Director, Division of Workers' Compensation, P.O. Box 381, Trenton, New Jersey 08625-0381.
  2. The hearing shall be afforded and a decision rendered by the Director or the Director's designee in the Director's absence within 48 hours of the Director's receipt of the application.
- (f) Failure or refusal to comply with a stop-work order issued by the Director shall, in addition to any other penalties provided by law, result in the assessment of a penalty of not less than \$ 1,000 and not more than \$ 5,000 for each day the employer is found not to be in compliance.

## **SUBCHAPTER 14. STANDARD FORMS**

### **12:235-14.1 Listing of forms**

- (a) Listed below are the titles and numerical designations of the standard forms utilized for workers' compensation:
1. Employee Claim Petition, WC 365;
  2. Dependency Claim Petition, WC 366;
  3. Application for Review or Modification of Formal Award, WC 368;
  4. Notice of Motion for Temporary and/or Medical Benefits, WC 101;
  5. Respondent's Answer to Claim Petition, WC 367;
  6. Respondent's Answer to Dependency Claim Petition, WC 171;
  7. Answer to Application for Review or Modification of Formal Award, WC 369;
  8. Answering Statement to Motion for Temporary and Medical Benefits, WC 102;



9. Standard Respondent's Interrogatories: Occupational Diseases (WC-22);
10. Standard Petitioner's Interrogatories: Occupational Diseases (WC-23)
11. Pre-Trial Memorandum, WC(DO) 31;
12. Order Approving Settlement WC(DO) 370;
13. No Insurance Case, WC(DO)-339;
14. Bench Referral from Division of Workers' Compensation to New Jersey Division of Vocational Rehabilitation Services;
15. Application for Informal Hearing WC(CF) 66;
16. Central Office Record of Informal Proceedings, WC(CF) 11;
17. Second Injury Fund Application and Verified Petition;
18. Decision of Eligibility, WC 48;
19. Application for Commutation, WC(1) 60;
20. Decision of Dismissal, WC 47;
21. Discrimination Complaint, SCF 4;
22. Employer's First Report of Accidental Injury or Occupational Illness, L&I 1;
23. Employer's First Report to Division of Workers' Compensation of Accidental Injury or Occupational Disease, WC 1;
24. Insurer's Initial Notice of Accident and Insurer's and Self-Insurer's Statement of Wages and Agreement to Care for Case, WC 2;
25. Informational Brochure on Informal Proceedings;
26. Final Report of Accident, WC 3;
27. Final Report of Accident, WC 4;
28. Final Report of Accident, WC 5;
29. Final Report of Accident, WC 6;
30. Substitution of Attorney, WC 10.

## **12:235-14.2 Sample forms**

Samples of the standard forms listed in N.J.A.C. 12:235-14.1 follow:

OFFICE OF ADMINISTRATIVE LAW NOTE: The Division of Workers' Compensation submitted 30 sample forms. These forms are not reproduced herein but may be inspected at:

**Office of Administrative Law  
Building 9  
Quakerbridge Plaza, Quakerbridge Road  
PO Box 049  
Trenton, NJ 08625-0049  
and  
Department of Labor  
Division of Workers' Compensation  
Sixth Floor**

**John Fitch Plaza  
PO Box 399  
Trenton, NJ 087625**