CHAPTER 235

RULES OF THE DIVISION OF WORKERS' COMPENSATION

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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 $650.00 per week.

(b) The maximum compensation shall be effective as to injuries occurring in the calendar year 2004.

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 or 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 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 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.

12:235-3.4 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.

12:235-3.5 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.

12:235-3.6 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.

12:235-3.7 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.

12:235-3.8 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.

12:235-3.9 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.

12:235-3.10 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.

12:235-3.11 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.

12:235-3.12 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.

12:235-3.13 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.

12:235-3.14 Enforcement

(a) For unreasonable failure to comply with any written order of a Judge of Compensation or with any requirement of statute or regulation, a Judge of Compensation may:

1. Dismiss or grant the motion or application for enforcement of order;

2. Close proofs, dismiss a claim or suppress a defense;

3. Exclude evidence;

4. Order costs or reasonable expenses, including interest or monies due and/or attorney's fees, to be paid to the Second Injury Fund of the State of New Jersey or an aggrieved party, attorney, or other representative of a party;

5. Refer matters for other administrative, civil or criminal proceedings; or

6. Take other appropriate case-related action.

(b) A party or the court on its own motion may move for enforcement of an order. After receiving notice of an application for enforcement, a party shall file a written response to the application within 10 days of such notice. The response shall include the reasons for any noncompliance and manner and time periods to ensure compliance with the order at issue. Before taking any action under N.J.A.C. 12:235-3.14(a) above, the Judge of Compensation shall hold a hearing on the appropriateness of the action and the reasonableness of any compensatory levy or sanction.

(c) Unless a stay is obtained from the appropriate appellate court or the Judge of Compensation, the failure to obey an order of the Judge of Compensation shall constitute grounds for compensatory sanctions against the attorney, the parties, or both. Filing of an appeal does not constitute an automatic stay of the judgment or order being appealed.

(d) For purposes of this section, “compensatory levy and sanction” shall mean an amount awarded to compensate for actual losses, including, but not limited to, interest on monies due a party as well as attorney’s fees and administrative costs to the Division.

12:235-3.15 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.

12:235-3.16 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.l 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) 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) The UEF shall have the opportunity to review all medical bills and charges to determine if the costs incurred were reasonable and necessary.

(b) 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 petitioner is able to return to work;

5. Whether or not petitioner requires further treatment to reach maximum medical improvement; and

6. Any other pertinent issues or information.

(c) Fees for the independent medical evaluation ordered by the UEF shall be paid by the UEF.

(d) 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.

(e) 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 NJ.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 A judge should perform the duties of judicial office impartially and diligently

(a) A judge shall be prompt in the performance of all duties, including, but not limited to:

1. Convening court proceedings at the time and in the manner established by the Director;

2. Completing final disposition of cases; and

3. Completing and forwarding to the Director at regular intervals performance records and other data relating to judicial performance in a manner established by the Director.

(b) The adjudicative responsibilities of a judge are as follows:

1. A judge should maintain professional competence and be faithful to and comply with the law, regulations and Division procedures. A judge should not be influenced by partisan interest, public opinion, or fear of criticism.

2. A judge should maintain order and decorum in judicial proceedings.

3. A judge should be patient, dignified, and courteous to litigants, witnesses, lawyers, and others with whom the judge deals in an official capacity, and should 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.

4. A judge should be impartial and should not discriminate because of race, color, religion, age, sex, sexual orientation, national origin, language, marital status, socioeconomic status, or disability.

5. A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, color, religion, age, sex, sexual orientation, national origin, language, marital status, socioeconomic status or disability against parties, witnesses, counsel, or others. This section does not preclude legitimate advocacy when race, color, religion, age, sex, sexual orientation, national origin, language, marital status, socioeconomic status or disability, or other similar factors are issues in the proceeding.

6. A judge should accord to every person who is legally interested in a proceeding, or that person's lawyer, full right to be heard according to law, and, except as authorized by law, neither initiate

nor consider substantive ex parte communications concerning a pending or impending proceeding. The proscription against communications concerning a proceeding includes communications from lawyers, law teachers, and other persons who are participants in the proceeding, except to the limited extent permitted. This does not preclude a judge from consulting with other judges, or with court personnel whose function is to aid the judge in carrying out adjudicative responsibilities.

7. A judge should abstain from public comment about a pending or impending proceeding in any court and should require similar abstention on the part of court personnel subject to the judge's direction and control.

8. A judge should permit broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto during sessions of court or recesses between sessions only in accordance with the guidelines promulgated by the Supreme Court as modified by these rules of the Division of Workers' Compensation and subject to the restrictions contained therein. See *Supreme Court Guidelines For Still and Television Camera and Audio Proceedings in the Courts of New Jersey. New Jersey Court Rules 1999.*

(c) The administrative responsibilities of a judge are as follows:

1. A judge should 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.

2. A judge should 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.

3. A judge has the following disciplinary responsibilities:

i. A judge who receives information indicating a substantial likelihood that another judge has committed a violation of these Rules should take appropriate action. A judge having knowledge that another judge has committed a violation of these Rules that raises a substantial question as to the other

judge's fitness for office shall inform the appropriate authority;

ii. A judge who receives 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; and

iii. Acts of a judge in the discharge of disciplinary responsibilities required or permitted are part of a judge's judicial duties.

12:235-10.2 Courtesy and civility

(a) A judge shall be impartial and courteous to parties, counsel, and all others appearing or concerned with the administration of justice in the court.

(b) A judge shall require, so far as their power extends, that those individuals assisting the judge in the administration of the function of the court extend the same civility and courtesy to counsel and all others having business in the court.

(c) The conduct of a judge shall be free from impropriety and the appearance of impropriety. A judge's personal demeanor, not only on the bench and in the performance of a judge's judicial duties, but also in their everyday life, shall be beyond reproach. A judge shall be temperate, attentive, patient, and impartial.

12:235-10.3 Conduct of attorneys

(a) Attorneys shall conduct themselves in a professional manner at all times, as defined by the Rules of Professional Conduct.

(b) A judge shall report to the Supervising Judge and Director all instances of attorney conduct which violates the Rules of Professional Conduct.

12:235-10.4 Conduct of witnesses and others having business before the court

(a) Witnesses and others having business before the court shall conduct themselves in a proper manner.

(b) A judge shall report to the Supervising Judge and Director all instances of improper, unethical or illegal practices by any expert witness, interpreter, court reporter, or party before the judge.

12:235-10.5 A judge should uphold the integrity and independence of the judiciary

An independent and honorable judiciary is indispensable to justice in society. A judge should participate in establishing, maintaining, and enforcing, and should personally observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this subchapter should be construed and applied to further that objective.

12:235-10.6 A judge should avoid impropriety and the appearance of impropriety in all activities

(a) A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

(b) A judge should not allow family, social, political, or other relationships to influence judicial conduct or judgment. A judge should not lend the prestige of office to advance the private interests of others; nor should a judge convey or permit others to convey the impression that they are in a special position of influence. A judge shall not testify as a character witness.

(c) A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion, or national origin.

12:235-10.7 Disqualification of a judge

(a) A judge should disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including, but not limited to, instances where:

1. The judge has a personal bias or prejudice concerning a party or a party's lawyer or has personal knowledge of disputed evidentiary facts concerning the proceeding;

2. The judge served as lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a witness concerning it;

3. The judge knows that he or she, individually or as a fiduciary, or the judge's spouse, parent or child or any other member of the judge's family residing in the judge's household, has a financial interest in the subject matter in controversy or in a party to the proceeding or any other interest that could be affected by the outcome of the proceeding; or

4. The judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

   i. Is a party to the proceeding, or an officer, director, or trustee of a party;

   ii. Is acting as, or is in the employ of or associated in the practice of law with, a lawyer in the proceeding;

   iii. Is known by the judge to have an interest that could be affected by the outcome of the proceeding; or

   iv. Is to the judge's knowledge likely to be a witness in the proceeding.

(b) A judge should keep informed about his or her personal and fiduciary financial interests and make a reasonable effort to keep informed about the personal financial interests of his or her spouse and dependent children.

(c) For the purposes of this section:

1. The degree of relationship is calculated according to the common law;

2. “Fiduciary” includes such relationships as executor, administrator, trustee, and guardian;

3. “Financial interest” means ownership of a legal or equitable interest, however small, or a relationship as director, advisor, or other participant in the affairs of a party, except that:

   i. Ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities;

   ii. An office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;

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, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest; and

iv. Ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

12:235-10.8 A judge may engage in activities to improve the law, the legal system, and the administration of justice

(a) A judge, subject to the proper performance of judicial duties, may engage in the following 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:

1. A judge may speak, write, lecture, and participate in other activities concerning the law, the legal system, and the administration of justice upon notice to and approval by the Director and Chief Judge.

2. A judge may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice upon notice to and approval by the Director and Chief Judge, and may otherwise consult with an executive or legislative body or official on matters concerning the administration of justice with which the judge is charged with responsibility by the Rules and statutes pertaining to workers' compensation. This section shall not preclude a judge from appearing at a public hearing or consulting with an executive or legislative body or official on pension, salary or any issue which has a direct impact on the judge.

3. A judge may serve as a member, officer or director of a non-governmental organization devoted to the improvement of the law, the legal system, or the administration of justice. A judge may not, however, assist such an organization in raising funds nor may a judge participate in their management and investment. A judge may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, legal system, and the administration of justice.

12:235-10.9 A judge shall so conduct the judge's personal activities as to minimize the risk of conflict with judicial obligations

(a) A judge shall conduct all of the judge's personal activities so that they do not:

1. Cast reasonable doubt on the judge's capacity to act impartially as a judge;

2. Demean the judicial office; or

3. Interfere with the proper performance of judicial duties.

(b) The following concern avocational activities:

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

2. A judge may teach on non-legal subjects provided the judge is not compensated therefor subject to notice to and approval by the Director and Chief Judge.

(c) A judge may participate in civic and charitable activities that do not reflect adversely upon 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 not conducted for the economic or political advantage of its members, subject to the following limitations:

1. A judge should 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 adversary proceedings in any court.

2. 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, nor may a judge 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.

3. A judge shall not give investment advice to such an organization, nor may a judge serve on its board of directors or trustees if it has the responsibility for approving investment decisions.

(d) The following concern financial activities:

1. A judge should refrain from financial and business dealings that tend to reflect adversely on the judge's 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.

2. A judge may hold investments, including real estate, but shall not serve as an officer, director, manager, advisor, or employee of any business.

3. A judge should manage his or her investments and other financial interests to minimize the number of cases in which the judge is disqualified. As soon as a judge can do so without serious financial detriment, the judge should divest himself or herself of investments and other financial interests that the judge could reasonably anticipate might require frequent disqualification.

4. 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:

i. 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 and the judge's spouse to attend a bar-related function or activity devoted to the improvement of the law, the legal system, or the administration of justice;

ii. A judge or a member of the judge's family residing in the same household may accept ordinary social hospitality; a gift, bequest, favor, or loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges; or a scholarship or fellowship awarded on the same terms applied to other applicants; and

iii. 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.

5. For the purposes of this section, "member of the judge's family residing in the same household" means any relative of a judge by blood or marriage, or a person treated by a judge as a member of the family, who resides in the same household as the judge.

6. A judge is not required to disclose income, debts, or investment, except as provided in this subsection and subsection 12:235-10.7.

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

(e) A judge shall not serve as the 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 if such service will not interfere with the proper performance of judicial duties. "Member of the judge's family" includes only a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. 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.

(f) A judge shall not act as an arbitrator or mediator.

(g) A judge shall be prohibited from the practice of law, which shall include, but not be limited to, the acceptance of compensation, pecuniary or otherwise, in exchange for referring matters to other attorneys except in situations where the judge prior to his/her appointment made written arrangements for the distribution of fees on cases already in existence.

(h) A judge shall not accept appointment to a governmental committee, commission, or other position except with prior approval of the Director and Chief Judge as well as the Executive Commission on Ethical Standards.

12:235-10.10 Other compensation

(a) Except as otherwise provided by (b) below, a judge may not receive compensation for activities permitted by this subchapter but may receive reimbursement of actual expenses that the judge reasonably incurred for travel, food, and lodging, provided that the source of such payments does not give the appearance of influencing the judge in the exercise of judicial duties or otherwise give the appearance of impropriety.

(b) A judge may receive compensation for teaching at law schools and/or colleges provided that the source of such payments does not give the appearance of impropriety, upon notice to and approval by the Director.

12:235-10.11 A judge shall refrain from political activity

(a) A judge shall not:

1. Act as a leader or hold any office in a political organization;

2. Make speeches for a political organization or candidate or publicly endorse a candidate for public office;

3. Attend political functions that are likely to be considered as being political in nature; or

4. Solicit funds or pay an assessment or make a contribution to a political organization or candidate, or purchase 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.

(c) A judge shall not otherwise engage in any political activity.

12:235-10.12 Medical reports

Any judge who 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 shall notify the Director.

12:235-10.13 Causes for discipline or removal

(a) A Judge may be disciplined for:

1. Violation of the code of judicial conduct as set forth in N.J.A.C. 12:235-10.1 through N.J.A.C. 12:235-10.12;

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; and/or

3. Failure, neglect or inability to perform judicial duties.

12:235-10.14 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 proceeding.

12:235-10.15 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.

12:235-10.16 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. 12:235-10.21.

12:235-10.17 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.

12:235-10.18 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: 235-10.19 Evidentiary Review By the Commission

(a) When the Commission conducts an evidentiary review , the Commission shall:

1. Shall 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.

3. Review and determine requests for discovery.

12:235-10.20 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. 12:235-10.15. 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. 12:235-10.16.

5. Whenever the Commission concludes, and only after an evidentiary review under N.J.A.C. 12:235-10.19, 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.

12:235-10.21 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.

12:235-10.22 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.

12:235-10.23 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.

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-l 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."

12:235-13.2 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.

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