

DEPARTMENT OF ENERGY, LABOR, AND ECONOMIC GROWTH

WORKERS' COMPENSATION BOARD OF MAGISTRATES

GENERAL RULES

(By authority conferred on the director of the department of energy, labor, and economic growth by section 213 of 1969 PA 317, and Executive Reorganization Orders No.1996-2, 2002-1, and 2003-1, MCL 418.213, MCL 445.2001, MCL 445.2004, MCL 445.2011 of the Michigan Compiled Laws)

R 418.51 Applicability.

Rule 1. These rules apply to practice and procedures before the worker's compensation board of magistrates.

History: 1996 AACS.

R 418.52 Hearing district explained.

Rule 2. A hearing district is an area of the state served by 1 or more magistrates as designated by the chairperson of the board of magistrates.

History: 1996 AACS.

R 418.53 Appearances.

Rule 3. Unless otherwise indicated by the magistrate, the parties or their attorneys shall personally appear at all pretrial or hearings as may be scheduled. The parties and their attorneys shall appear at a hearing date as may be scheduled and shall be ready to proceed as directed by the magistrate. Failure of the petitioner or the petitioner's attorney to appear in a timely manner and participate in a pretrial or hearing may Subject the application for hearing to dismissal. If the respondent or the Respondent's attorney fails to appear in a timely manner for a pretrial or Hearing, then the magistrate may proceed in the absence of the respondent or The respondent's attorney.

History: 1996 AACS.

R 418.54 Case resolution by order and opinion; attorney briefs; correction of mistakes in order or opinion.

Rule 4. (1) A case that is assigned to a magistrate shall be resolved by an order and, when applicable, an opinion. A magistrate may direct the attorneys to furnish briefs. The order and, when applicable, the opinion shall be written within 42 days of the closing of the record, except under extenuating circumstances as determined by the chairperson.

(2) Within the appeal period provided, a magistrate may correct a mistake in the order or opinion. Parties may stipulate to the corrections pursuant to section 851 of Act No. 317 of the Public Acts of 1969, as amended, being S418.851 of the Michigan Compiled Laws. Any corrections shall require a corrected order or opinion, or both, and shall specify the correction made.

History: 1996 AACS.

R 418.55 Admission of records, reports, memorandum, and data compilation.

Rule 5. (1) Not less than 42 days before a hearing, the party intending to introduce a record, memorandum, report, or data compilation shall furnish copies and a notice of intent to all parties, for which a proof of service shall be completed and retained by the noticing party.

(2) Any party objecting to an exhibit under this rule shall provide written objection to all parties not less than 21 days before the hearing, for which a proof of service shall be completed and retained by the objecting party. An objecting party may schedule cross-examination in response to the record, memorandum, report, or data compilation sought to be admitted under this rule.

- (3) This rule shall not affect the magistrate's discretion to rule on newly discovered evidence.
- (4) The notice of intent, objection, and proof of service shall not be sent to the agency. Only those records admitted into evidence by a magistrate shall be placed in the agency file or maintained by the agency.

History: 1996 AACCS; 2010 AACCS.

R 418.56 Subpoena; provision to opposing party; submittal of subpoenaed records; disputes.

Rule 6. (1) A subpoena shall be on an agency approved form and include all of the following:

- (a) The party requesting a subpoena shall certify that the matter about which the subpoena is requested is pending before the agency.
- (b) A subpoena shall be fully completed before submission to a magistrate for signing.
- (c) The return date indicated on the subpoena shall provide a reasonable time for compliance.
- (d) Magistrates may sign a subpoena for a case that is assigned to another magistrate.
- (2) A copy of a subpoena issued by a magistrate in accordance with MCL 418.853 shall be provided to all parties, or their legal counsel, at the time of issuance.
- (3) The party for whom a subpoena is issued shall immediately do 1 of the following:
 - (a) Provide a complete copy of the records to all parties when received.
 - (b) Make the records reasonably available for copying when received.
- (4) All subpoenaed records shall be returned directly to the party requesting the records.
- (5) Only those records admitted into evidence by a magistrate at a hearing shall be placed in the agency file or maintained by the agency.
- (6) Any dispute arising under this rule shall be brought by motion before the assigned magistrate and shall have a copy of the subpoena attached. A copy of the motion and the subpoena shall be served on all parties, or their counsel, and proof of service filed with the agency.

History: 1996 AACCS; 2007 MR 4, Eff. Feb. 21, 2007.

R 418.57 Disqualification of magistrate.

Rule 7. (1) A party may raise the issue of a magistrate's disqualification by motion or a magistrate may raise the issue.

(2) A magistrate is disqualified when the magistrate cannot impartially hear a case, including a proceeding in which the magistrate is involved in any of the following ways, or for any other reason is disqualified by law:

- (a) Is interested as a party.
- (b) Is personally biased or prejudiced for or against a party or attorney.
- (c) Has been consulted or employed as counsel.
- (d) Was a partner of a party, attorney for a party, or a member of a law firm representing a party within the preceding 2 years.
- (e) Is within the third degree (civil law) of consanguinity or affinity to a person acting as an attorney or within the sixth degree (civil law) to a party.
- (f) Owns, or his or her spouse or minor child owns, a stock, bond, security, or other legal or equitable interest of a corporation that is a party. This subdivision does not apply to any of the following:
 - (i) Investments in securities traded on a securities exchange registered as a national securities exchange under the securities exchange act of 1934, 15 U.S.C. S78 et seq.
 - (ii) Shares in an investment company registered under the investment company act of 1940, 15 U.S.C. S80a-1 et seq.
 - (iii) Securities of a public utility holding company registered under the public utility holding company act of 1934, 15 U.S.C. S79 et seq.

(3) A motion to disqualify shall be filed within 30 days after the case has been assigned to a magistrate or within 10 days after the party discovers, or with reasonable diligence could have discovered, the information that is the basis of the motion, whichever is later.

(4) The motion of disqualification shall be stated positively and shall set forth with particularity the factors that would be admissible as evidence to establish the grounds stated in the motion. An affidavit shall accompany a motion.

(5) The challenged magistrate shall decide the motion. If the challenged magistrate denies the motion, then the challenging party may ask that the motion be referred for decision to another magistrate assigned by the chairperson, except as stated in subrule (6) of this rule.

(6) If the motion is made after the trial has commenced, then the challenged magistrate shall rule upon the motion. If the motion is denied, then the trial shall be continued by the trial magistrate.

(7) When a magistrate is disqualified, the chairperson shall assign another magistrate to hear the case.

History: 1996 AACS.

R 418.58 Extensions of time.

Rule 8. The magistrate may grant extensions of time to a party to comply with any of these rules for good cause shown.

History: 1996 AACS.