

This is an amendment to 11.4.4 NMAC, Sections 13, 16, and 18, effective 1/1/2025.

**11.4.4.13 ADJUDICATION PROCESS:**

**A. Assignment of judge:**

(1) Upon receipt of a timely rejection of a recommended resolution, an application to judge or petition for lump sum payment, the clerk shall assign a judge to the case and shall serve notice on all parties. Pro se parties shall be served by certified mail unless registered with the WCA electronic filing system. This notice shall be considered the initial notice of judge assignment.

(2) Each party shall have the right to disqualify a judge by filing a notice of disqualification of judge no later than 10 days from the date of filing of the notice of assignment of judge. The clerk shall assign a new judge to the case and notify all registered parties. A party who has not exercised the right of disqualification may do so no later than 10 days from the filing of the notice of reassignment of judge.

(3) No action may be taken by any judge on a case until the expiration of the time for all parties to exercise the peremptory right to disqualify a judge. To expedite the adjudication process, the parties may file a joint waiver of the right to disqualify a judge. Such waiver shall forever bar the parties' right to disqualify a judge in that case.

(4) Disputes related to the assignment, re-assignment, or disqualification of a judge shall be raised by written application to the director, which shall be filed with the clerk.

(5) The director may designate an on-call judge for the limited purpose of reviewing and approving lump sum payment petitions on a voluntary walk-in basis. The director shall provide notice to the public about the schedule for any on-call judge availability. Such designation shall not be considered a judge assignment or reassignment under this section if further adjudication action is needed.

**B. Application to judge:**

(1) Unless otherwise provided, all claims under the act shall be initiated by filing a complaint form, and the clerk shall schedule the claim for mediation. A party may file an application to judge, and the clerk shall assign the case to a judge to adjudicate the following limited forms of relief only:

- (a) physical examination pursuant to Section 52-1-51 NMSA 1978;
- (b) independent medical examination pursuant to Section 52-1-51 NMSA 1978;
- (c) determination of bad faith, unfair claims processing, fraud or retaliation;
- (d) supplemental compensation order;
- (e) award of attorney fees;
- (f) stipulated reimbursement agreement pursuant to Section 52-5-17 NMSA 1978;
- (g) consolidation of payments into quarterly payments (not a lump sum under

Section 52-5-12 NMSA 1978);

(h) approval of limited discovery where no complaint is pending before the agency, including but not limited to approval of a communication to a treating health care provider when the parties cannot otherwise agree on the form or content; or

- (i) request for release of medical records.

(2) If any claim not enumerated above is raised on an application to judge, the application shall be deemed a complaint and the clerk shall refer it for mediation.

(3) For an application seeking relief under subparagraphs (a) (b) (c) (d) (h) or (i) of Paragraph 1 of Subsection A of 11.4.4.13 NMAC above, an application to judge may not be filed if a complaint has been filed in the same case and the time period for acceptance or rejection of the recommended resolution has not yet expired. Any other claim for relief arising during that time period shall be raised in the mediation process.

(4) Following the rejection of a recommended resolution and during the pendency of a complaint, those claims for forms of relief set forth above shall be sought through motion rather than an application.

(5) Responses to an application to a judge, if any, shall be filed within 15 days of service. A response to application to judge may not raise new claims or issues.

(6) All applications to a judge shall be accompanied by a summons, if one has not previously been issued in the case, and a request for setting. Hearings as necessary may be scheduled by the assigned judge.

**C. Petition for lump sum payment:**

(1) Parties may request approval of a lump sum payment by filing the WCA mandatory petition form, which shall be signed and verified by the worker or the worker's dependents.

(2) Petitions under Subsection D of Section 52-5-12 NMSA 1978 shall also be signed by the employer or its representative or, where applicable, the UEF.

(3) Parties to lump sum payment petitions filed pursuant to Subsection D of Section 52-5-12 NMSA 1978 shall attend a lump sum payment approval hearing for a determination that the agreement is voluntary, that the worker understands the terms, conditions and consequences of the settlement agreement or any release, and that the settlement is fair, equitable and provides substantial justice to the parties. For all other joint lump sum payment petitions, a hearing may be held at the discretion of a judge pursuant to Sections 52-5-12 and 52-5-13 NMSA 1978.

(4) Any lump sum payment petition filed pursuant to this rule shall comply with Section 52-1-54 NMSA 1978 and counsel for the parties may concurrently seek approval or award of attorney fees, if appropriate, to be heard in the context of the lump sum payment hearing.

(5) Written responses to the petition, if any, shall be filed within 10 days of service of a petition.

(6) All petitions shall be accompanied by a request for setting, and a summons, if one has not previously been issued in the case. Such hearings will be promptly scheduled by the assigned judge.

**D.** The adjudication process for complaints shall commence upon the clerk's receipt of a timely rejection of a recommended resolution. An answer to complaint shall be filed within 20 days of the filing of the initial notice of assignment of judge unless already filed in lieu of the informal response. The answer shall admit or deny each claim asserted in the complaint. Any affirmative defenses to the complaint shall be stated in the answer.

**E.** Amended complaints may be filed during the adjudication process only by leave of the assigned judge or by written consent of the adverse party. Leave shall be freely given when justice so requires. Amended complaints filed during the adjudication process shall not be referred back to the mediation process nor shall a new recommended resolution be issued.

**F.** The judge may hold pre-trial conferences as necessary, establish appropriate deadlines, mandate evidentiary disclosures between the parties, approve formal discovery, and otherwise control all other aspects of the adjudication process in order to enable the prompt adjudication of the case.

**G.** Discovery: Authorized interrogatories, requests for production or inspection, requests for admissions, depositions, and subpoenas shall be governed by the rules of civil procedure of the district courts of New Mexico.

**H.** Depositions: Upon the filing of a complaint and by written stipulation of the parties, good cause is presumed and depositions may be taken of the worker, employer representative, authorized HCP, and any provider of an independent medical examination.

(1) Reasonable notice shall be deemed to be not less than five days prior to the date set for the deposition.

(2) The original deposition transcript shall be kept by the party who noticed the deposition.

(3) The parties shall make a good faith effort to obtain a completed and signed form letter to HCP prior to setting the deposition of the HCP.

(4) Deposition testimony of authorized HCPs shall be admissible in lieu of live testimony.

(5) Depositions of other witnesses identified by the parties may be admissible, if noticed for use at trial, provided that nothing prohibits either party from issuing a subpoena to order the deposed witness to testify at trial.

(6) A party intending to use a deposition shall notify the other party of the intended use at least 10 days prior to trial. Any objection to the use of the deposition shall be determined at the adjudication hearing.

(7) The party that notices a deposition may request the return of the original transcript after final disposition of the case. The clerk may return a transcript or any exhibits tendered to the submitting party or its attorney. If no request for the deposition or exhibits is received, the deposition or exhibits will be destroyed. Notice of intent to destroy exhibits is published in the New Mexico bar bulletin.

**I.** Subpoenas: The clerk may issue a subpoena, signed but otherwise blank, to a party requesting it, who shall complete it before service. An attorney authorized to practice law in New Mexico who represents a party before the WCA may also issue and sign a subpoena as an officer of the court on behalf of the WCA. Subpoenas are not considered discovery and do not require good cause or approval from a judge.

**J.** Appointment of interpreter:

(1) It is the responsibility of the parties to determine if interpretive services are necessary.

(2) An interpreter may be appointed by the judge, director, or mediator. The interpreter shall be court-certified, except that a non-certified interpreter may serve at mediation conferences.

(3) The employer shall be responsible for the cost and arrangement of a qualified interpreter for the hearing or mediation conference. This responsibility may fall to the uninsured employers' fund when named as a party.

(4) The judge shall have discretion to require written discovery translated into the language of the responding party to ensure fairness and substantial justice.

**K.** Motions: All motions, except those made in open court, shall be written and comply with the New Mexico district court rules of civil procedure.

**L.** Settlement/pre-trial conferences: The judge shall have discretion to schedule settlement conferences. A settlement conference facilitated by the assigned judge shall require the consent of all parties either on the record or in writing.

**M.** Orders: Proposed orders or other documents requiring a judge's signature shall not be filed with the clerk but shall be submitted directly to the judge.

**N.** Admissibility of evidence:

(1) Live medical testimony shall not be permitted, except by an order of the judge.

(2) A judge may admit evidence, including hearsay evidence, provided that the evidence is relevant, has sufficient indicia of reliability and authenticity, and will assist the judge in determining a fact or issue in dispute, including, but not limited to:

(a) personnel records, payroll records, or other employment files for worker;

(b) pre-injury medical records of treatment received for a period of 10 years prior to the date of injury through the time of hearing on the merits;

(c) form letters approved by the WCA;

(d) records of authorized health care providers and their referrals, including functional capacity evaluations;

(e) reports of independent medical examinations ("IMEs") performed pursuant to the act or as otherwise agreed by the parties;

(f) toxicology or drug and alcohol test reports;

(g) records of the office of medical examiner, including autopsy and toxicology reports; or

(h) records of the New Mexico board of pharmacy prescription monitoring program.

(3) On motion of a party, or by stipulation of the parties, a judge may treat admitted medical records and reports of authorized health care providers and independent medical examination as testimony for any relevant purpose other than to establish causation connection pursuant to Section 52-1-28 NMSA 1978.

**O.** Continuance of hearing: A judge may continue an adjudication hearing for good cause shown. All discovery, disclosure, and exchange deadlines shall be extended by a continuance unless otherwise ordered.

**P.** Trials and other hearings:

(1) Parties shall appear personally at the adjudication hearing, without the necessity of a subpoena. Parties shall appear personally or through their legal representatives at all other hearings properly noticed, unless excused by a judge.

(2) Failure to appear at a hearing after proper notice and without good cause may result in the imposition of sanctions.

(3) The employer shall make all necessary arrangements and pay all costs incurred for telephonic conference calls. The director or judge may appear telephonically for the conference call.

(4) All hearings shall be recorded by audio tape recording or by any other method approved by the director.

(5) Prior to commencement of the adjudication hearing, the parties shall confer with the court monitor to ensure that all exhibits are properly marked. Any exhibit to be jointly tendered shall be marked and offered as a joint exhibit. All other exhibits shall be marked by party and exhibit number or letter. Depositions shall be marked as exhibits.

(6) Under exceptional circumstances and in the interest of justice, a judge has discretion to direct or allow supplementation of evidence within 10 days of the close of the adjudication hearing.

**Q.** Consolidated cases:

(1) A judge may order the consolidation of cases when the issues or facts in dispute in the cases are common or when consolidation will expedite resolution of the issues or facts in dispute.

(2) A party may request an order for consolidation of cases by filing a motion requesting consolidation in each case sought to be consolidated and serving each party and their counsel, if any, for each case sought to be consolidated.

(3) Motions to consolidate cases will be adjudicated by the final judge assigned to the case with the lowest case number.

(4) A judge's order of consolidation shall be filed in each consolidated case.

(5) After consolidation, all pleadings shall only be filed in the case with the lowest case number and the case number of each consolidated case shall appear in the caption of all pleadings. The caption of the lowest case number shall appear on all pleadings.

(6) All parties of record and their counsel shall have access to view the filed pleadings for each case.

(7) In the event of an appeal, the notice of appeal shall include the case number for each consolidated case and shall be filed in the case with the lowest case number. The record proper on appeal shall include all pleadings in each of the consolidated cases.

**R. Release of medical records:**

(1) A judge shall decide medical record disputes. If no judge has been assigned, the clerk shall appoint a judge upon a party filing an application to judge for release of medical records.

(2) An application to judge for the release of medical records shall be allowed notwithstanding the provisions of any other rule, and shall be disposed of separate and apart from all rule provisions and procedures pertaining to resolution of other disputes arising from a claim for benefits.

(3) The judge will determine whether the protected health information in controversy is material to the resolution of any matter presently at issue or likely to be at issue in the administration of the claim and shall order the release of protected health information upon agreement of the parties or a finding of materiality by a preponderance of evidence.

(4) A bench order or formal order of release of medical records shall have the force of law with respect to the parties and to the HCP or medical facility.

(5) If an HCP or medical facility fails to provide records after a judge has ordered the release of records pursuant to this rule, then the party to receive the records may notify the HCP or medical facility through My E-File of the obligation to produce the records and an endorsed copy of the order. If the records are not produced within five days of service of the notice, the payer's obligation to timely pay shall be tolled until the actual production of the records.

(6) If any judge involved in the adjudication of the case finds that the withholding of records of health information after an order to produce has obstructed the efficient administration or adjudication of a case, then the judge may schedule a hearing to determine if the withholding of records was unreasonable. If the judge finds after notice and an opportunity to be heard that the withholding of records by the HCP or medical facility is unreasonable, the director may find the HCP or medical facility in violation of this rule and assess a penalty pursuant to Section 52-1-61 NMSA 1978 (1990).

[11.4.4.13 NMAC - Rp, 11.4.4.13 NMAC, 1/1/2023; A, 1/1/2025]

**11.4.4.16 SANCTIONS:**

**A.** The judge may sanction any party, attorney, or personal representative for conduct that interferes with the orderly administration of the court or a hearing, including, but not limited to:

(1) rejecting a recommended resolution without reasonable basis, or without reasonable expectation of doing better at formal hearing;

(2) failing to obey a lawful order of the court;

(3) failing to appear for a hearing or deposition; [☒]

(4) advancing a meritless position in order to harass or vex the opposing party; or

(5) unreasonable conduct during a deposition.

**B.** The judge will conduct a separate hearing on the imposition of sanctions according to the procedures in this part.

**C.** As a sanction, the judge may do any or all of the following:

(1) assess reasonable attorney's fees against a party pursuant to Section 52-1-54 NMSA 1978;

(2) reduce the fees of an attorney for a party;

(3) assess prejudgment interest from the date of the recommended resolution in the claim;

(4) strike a claim or defense;

(5) limit the evidence which may be introduced;

(6) dismiss an action;

(7) order the suspension or forfeiture of compensation benefits;

- (8) assess expenses and costs against a party; or
- (9) impose a civil penalty pursuant to Sections 52-1-28.1, 52-1-28.2, 52-3-45.1 or 52-3-45.2

NMSA 1978.

**D.** For patterns of misconduct beyond a single case, the judge may refer the matter to the WCA enforcement bureau for further investigation, administrative prosecution and imposition of penalties.  
[11.4.4.16 NMAC - Rp, 11.4.4.16 NMAC, 1/1/2023; A, 1/1/2025]

**11.4.4.18 COURT SECURITY:**

**A.** In any case where a party believes that a potentially violent or dangerous situation might arise during a court hearing or appearance, that party, through counsel or pro se, should notify the assigned judge or clerk of the court sufficiently in advance so that appropriate security measures can be taken by the assigned judge or director in their discretion.

**B.** All persons entering with packages, briefcases, purses, bags and containers brought into any offices of the workers' compensation administration may be subject to search by security personnel.

**C.** As all workers' compensation administration buildings include courtrooms, in order to preserve and promote order during hearings, no deadly weapons of any type will be allowed. A "deadly weapon" includes any deadly weapon as defined by Section 30-1-12 NMSA 1978. Any person found entering a workers' compensation administration building with a deadly weapon may be turned away until they have secured the weapon off premises. The foregoing shall not apply to law enforcement officers and authorized security personnel.  
[11.4.4.18 NMAC – N, 1/1/2025]