

Pro Sé Brochure

A guide to representing
yourself before the

Workers' Compensation Court



Montana Department of
LABOR & INDUSTRY

Representing Yourself

If you choose to represent yourself before the Workers' Compensation Court, there are a number of things you need to know.

Initially, you may hear the term *pro sé*. That term, taken from Latin, means that you are representing yourself. You, as the person starting the lawsuit, are called the petitioner and the insurance company who represents your employer is called the respondent. Your employer need only be named in the caption if you are seeking direct relief against it.

Important things to remember are:

- First, even though you are not an attorney, you must comply with the Rules of the Workers' Compensation Court, except as to technical matters such as the requirement that documents filed with the Court must be typed. Legible handwritten documents will be accepted if you do not have access to a typewriter, word processor, or computer.
- Second, unless your injury or occupational disease occurred prior to July 1, 1987, or is within some other limited exceptions, you must mediate your dispute before petitioning the Court. If you have questions regarding mediation, call (406) 444-6534. Additional information can also be found here: erd.dli.mt.gov/work-comp-claims/mediation.
- Third, you must send the attorney who represents the insurer or other party involved in your dispute a copy of every document you send to (file with) the court.
- Fourth, you cannot talk to the Judge about your case unless the attorney for the other party is personally present or on the telephone. The attorney for the other party also may not talk to the Judge unless you are personally present or on the telephone. The exception to this rule is that either party may contact the Court Clerks to discuss procedural questions.
- Fifth, Workers' Compensation Court trials are "bench trials," that is, trials held before a Judge without a jury.



The following are more details about what will happen in your case and what you are required to do as your case progresses.

The Rules of the Court are very specific regarding pleadings, motions, and other formal filings. Important rules are:

- All documents must be typewritten or legibly printed on 8.5 x 11-inch unnumbered, unlined paper.
- Your name, mailing address, telephone number, fax number, and e-mail address must appear in the upper left-hand corner of the first page of the document.
- You must sign any document you file with the Court.
- Except for the **Petition for Hearing**, every document you file with the Court must indicate you have sent a copy to the insurer and/or other parties in the case. If the opposing party has an attorney, the document only needs to be sent to the attorney.

Please read the Court's rules for other filing requirements.

Filing a petition

If you are seeking benefits from an insurer, you must file a Petition for Hearing with the Court. The Petition must include all of the following information:

- The date of your accident at work, or the date you became aware of your occupational disease.
- A description of the accident, or a description of the condition and its occupational origin.
- The place (city or county) where the accident occurred, or occupational disease arose.
- A short, plain statement of your contentions.
- A statement confirming that you have attempted to resolve your dispute (for injuries occurring before July 1, 1987).
- A statement confirming that the mediation procedure has been complied with (for injuries occurring on or after July 1, 1987, and for occupational disease claims).
- A statement confirming that you have provided the insurer with all medical records regarding your claim and will continue to do so in the future.
- A list of your witnesses including their names and what you expect they will say when testifying.
- A list of all documents (exhibits) you want the Court to consider.
- What benefits, or other relief, you want the Court to order, including costs and/or a penalty against the insurer.
- You must provide the Court with both an original and two copies of your petition. You must also provide the names and addresses of the insurer and other parties involved in your case.

Trial Location

Unless another trial location is requested, a trial will be scheduled in the county where the accident occurred or occupational disease arose. Trials are scheduled four times a year in Billings, Great Falls, Kalispell, Missoula, and Helena. If adequate reasons are given, the Court will set an “emergency trial” (scheduled in less than 75 days after the Petition is filed). Trials can be “specially set” at any time by agreement of the parties.

After a Petition is filed

Scheduling Order: Upon the filing of your petition, the Court will issue a Scheduling Order. That order will set a date and place for the trial. It will also set deadlines for all pretrial matters.

The Scheduling Order is VERY IMPORTANT AND YOU MUST READ AND FOLLOW IT.

- You must comply with the deadlines in the Scheduling Order. Failure to do so may result in postponement of your case or imposition of other penalties and sanctions, up to and including dismissal of your case for your failure to comply with deadlines.
- If you cannot comply with a deadline, you may request an **extension of time**. Contact the Court Clerks to find out how to request an extension.

Discovery: Between the time the petition is filed and the trial, every party in the case will be able to conduct *discovery*. **Discovery** is a legal term which refers to various ways you, and the other parties, can find out about the evidence which might be presented at trial.

The basic ways are:

- **Interrogatories:** These are written questions sent by one party to another party which must be answered in writing, under oath, that is, signed before a notary public.
- **Requests for Production:** These are written requests made by one party asking another party to provide copies of documents relating to the case.
- **Depositions:** Being deposed is similar to testifying in Court, without the Judge. Any party may request a deposition of the other party or of any person who has information about the case. The deposition is typically held in an attorney's office or at the offices of a court reporter. The parties and/or their attorneys ask questions of the witness (*who is called a deponent*), and a court reporter records the answers. The deposition transcripts are usually filed with the Court for it to consider in making its final decision. The party requesting the deposition is responsible for the cost.

Pretrial Conference

Generally, two weeks prior to trial, a court Pretrial Hearing Examiner will conduct a pretrial conference via telephone. Following the deadline set forth in the Scheduling Order, the parties must work together to prepare a proposed Pretrial Order and provide it to the Court. The proposed Pretrial Order must set out all the following information:

- A statement of jurisdiction.
- A list of all pending motions (pending motions are motions this Court has not ruled on at the time of drafting the proposed Pretrial Order).
- Any uncontested facts.
- Any stipulations between the parties.
- A joint statement of the issues.
- Each parties' contentions, including contentions that the petitioner/claimant argues provide a basis for a claim of unreasonableness on the part of the insurer.
- A list of all exhibits to be offered by each party and any objections to their admission.
- A list of all witnesses who may be called, including their names, addresses, occupations, and the subject matter of their testimony.
- Any unusual issues.
- The estimated length of trial.
- A statement as to whether or not the parties will be filing trial briefs (document which sets forth facts, evidence, and arguments citing legal authority) and/or proposed findings of fact and conclusions of law (document which proposes facts the Judge should find as true, and legal conclusions the Judge should make about those facts).
- All depositions that have been or will be taken.
- Trial date (to be inserted in the final Pretrial Order).

Following the pretrial conference, a court Pretrial Hearing Examiner will advise the parties when the final Pretrial Order must be filed with the Court. It will be due during the week preceding the trial. As you are representing yourself (pro sé), the insurer shall prepare the proposed and final Pretrial Orders.

Exhibits

You must provide the insurer and other parties with copies of all documents you wish to use at trial by a deadline set out in the Scheduling Order. If you fail to provide documents by the deadline, you may not be able to introduce the documents at trial. By the week preceding the trial, you and the insurer (or other parties) must also provide the Court with an exhibit notebook containing the exhibits you wish the Court to consider. A court Pretrial Hearing Examiner will advise the parties when this must be provided. The exhibits must be accompanied by a written list of all exhibits and a list of any objections any party may have to the exhibits.

As you are representing yourself (pro sé), the insurer shall prepare the exhibit list and exhibit notebook.

Other Helpful Information

A copy of the Court rules and sample documents may be obtained by contacting the Court or from the Court's website at wcc.dli.mt.gov.



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