

**IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA**

**WCC No.**

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**Petitioner**

**vs.**

**Respondent/Insurer.**

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**SCHEDULING ORDER**

You are hereby given notice that a Petition for Hearing has been filed in the Workers' Compensation Court.

**THE PARTIES SHALL ADHERE TO THE FOLLOWING DEADLINES.**

1) **RESPONSE:** Respondent shall serve the Court and the Petitioner with a **Response to the Petition on or before \_\_\_\_\_, 2014.** ARM 24.5.302.

2) **WRITTEN DISCOVERY:** All written discovery must be served on or before **April 25, 2014.** A notice of serving discovery or discovery responses shall be filed with the Court.

3) **FURTHER IDENTIFICATION OF WITNESSES AND EXHIBITS AND PARTICULARIZATION FOR ATTORNEY FEES OR PENALTY:** On or before **May 2, 2014,** the parties shall exchange and file with the Court:

a) a list of the names of all witnesses not already identified in the Petition for Hearing or Response to Petition for Hearing, along with a summary of the general subject matter of their testimony;

b) a list of the names of all expert witnesses, along with a summary of the subject matter on which the expert is expected to testify, and the nature of the facts and opinions to which the expert is expected to testify;

c) a list of all proposed exhibits, identifying the exhibit by date, author and number of pages. Generic identification, such as "all vocational records" **is insufficient**; and

d) a particularization of the grounds or basis for any penalty or attorney fees sought by the claimant.

Inadequate witness summaries: Summaries of the expected testimony of witnesses, including expert witnesses, may incorporate by reference depositions, report, or records of the witness. If a party considers an opposing party's summary inadequate to permit preparation for trial or evaluation of the case, the party shall contact the opposing party no later than **May 9, 2014**, to request additional information. If the party remains unsatisfied with the information provided, the dissatisfied party may file a motion to compel further disclosure and shall promptly arrange a conference call with the Court to resolve the motion. Unless otherwise permitted by the Court, a motion to compel further disclosure shall be filed no later than **May 16, 2014**. Any motion to limit witness testimony based on inadequate disclosure will be considered by the Court **only** if these procedures have been followed.

Inadequate penalty particularization: If the insurer believes the particularization regarding attorney fees and penalty are inadequate, it shall adhere to the same procedures and deadlines as provided for inadequate witness summaries.

Supplementation: A party may supplement its exchange if the supplementation is in response to the opposing party's late identification. Otherwise, a party may supplement its witness lists, witness summaries, exhibit lists, and penalty particularizations only: if the supplementation could not have been identified earlier through reasonable diligence; by leave of court; or in response to the opposing party's request. The parties shall exchange any supplementation no later than the deadline for the parties' conference.

4) **PROPOSED EXHIBITS**: On or before **May 12, 2014**, the parties shall exchange all proposed exhibits, including medical records, which have not been previously provided to the opposing party or which are not known to be already in the opposing party's possession. **Do not mail the exhibits to the Court.**

5) **MEDICAL RECORDS**: As set forth in ARM 24.5.317, written objections to medical records must be served identifying the medical record and basis of objection on or before **May 12, 2014**.

6) **PRETRIAL MOTIONS**: The Court must **RECEIVE** all motions to dismiss, to amend pleadings, and for summary ruling, with supporting briefs, on or before **May 2, 2014**. Unless otherwise provided by the rules of the Court, the Court must **RECEIVE** all other pretrial motions, including motions in limine, with briefs, on or before **May 12, 2014**.

**UNTIMELY MOTIONS WILL NOT BE CONSIDERED UNLESS THE MOVING PARTY HAS FIRST OBTAINED LEAVE OF COURT TO FILE AN UNTIMELY MOTION.**

7) **SETTLEMENT CONFERENCE:** The Court encourages the parties to engage in settlement discussions. If any party believes that settlement negotiations would be facilitated by a settlement conference as provided in ARM 24.5.334, that party may move the Court to order a settlement conference.

8) **PARTIES' CONFERENCE:** At least one week prior to the pretrial conference the parties shall confer and determine the contents of the pretrial order.

9) **PRETRIAL CONFERENCE:** Pursuant to prior Order of the Court, a Hearing Examiner shall conduct the pretrial conference and issue orders concerning pretrial discovery, scheduling, procedural, and similar matters and disputes. The pretrial conference is scheduled for the week of **June 2, 2014**. Unless otherwise requested, the Hearing Examiner will conduct the pretrial conference by telephone.

10) **PROPOSED PRETRIAL ORDER and EXHIBIT LIST: By 5:00 p.m., on the Thursday preceding the pretrial conference the parties must:**

a) Present the **Proposed Pretrial Order** in the form set forth in ARM 24.5.318(5). The parties must present any disputes as to the content of the Proposed Pretrial Order at the pretrial conference for resolution. The Proposed Pretrial Order shall state whether any party intends to file proposed findings of fact and conclusions of law, a trial memorandum or brief, or any other written argument relating to trial. If the Pretrial Order does not disclose such intention, the Court will not accept any such written argument absent agreement of all parties.

b) Attach to the Proposed Pretrial Order an exhibit list which delineates all proposed exhibits. The list shall clearly set forth which party is offering each exhibit and all objections a party has to any proposed exhibit. The parties shall number each exhibit and all pages within each exhibit. For instructions regarding preparing a trial exhibit list and notebook, refer to the Court's website (<http://www.wcc.dli.mt.gov/forms/exhibit-instructions.pdf>).

c) Irrespective of whether an exhibit may be in evidence via a deposition exhibit that has been admitted, if a deposition exhibit is to be referred to at trial, the exhibit shall be included in the trial exhibit book and listed on the exhibit sheet.

d) **Petitioner shall prepare the Proposed and Final Pretrial Orders and Exhibit Notebook except in cases involving a pro sé Petitioner.** In that event, opposing counsel shall prepare the Proposed and Final Pretrial Orders and the Exhibit Notebook. Prior to the pretrial conference, Respondent must provide Petitioner with sufficient copies for all parties of every exhibit Respondent intends to offer for admission. Respondent must separate these exhibits and must number the pages within each exhibit. Petitioner will then identify the exhibit by number when preparing the list of exhibits. In cases involving a pro sé Petitioner, prior to the pretrial conference, Petitioner shall provide Respondent with sufficient copies for all parties of every exhibit Petitioner intends to offer for admission, with each exhibit separated and numbered accordingly.

e) The Court considers electronic copies compliant with the filing deadline for the Proposed Pretrial Order and exhibit list. Any electronic filing with the Court must be served electronically on the opposing party.

11) **LENGTH OF TRIAL:** At the time of the pretrial conference, the parties shall agree to the length of time required for trial and shall provide the Hearing Examiner with the names of each witness and the length of time of each witness' testimony. The Court will require the parties to adhere to this schedule.

12) **TRIAL DATE:** The trial of this matter shall be set during the **week of June 16, 2014**, in Helena, Montana.

**NOTICE:** The public facilities the Court uses for trials comply with the provisions of the Americans with Disabilities Act. Persons with disabilities requiring special accommodations should contact the Court one week prior to the pretrial hearing.

13) **FINAL PRETRIAL ORDER AND EXHIBIT NOTEBOOK:** The Court must receive the final, signed Pretrial Order and exhibit notebook from Petitioner no later than the **Wednesday preceding the trial week** for trials estimated to last one day or less. For trials expected to exceed one day in length, the Court must receive the final, signed Pretrial Order and exhibit notebook no later than the **Monday preceding the trial week**. At the time Petitioner submits the exhibit notebook to the Court, Petitioner must provide conformed copies of the exhibit notebook to all parties. Petitioner must prepare and bring to trial a conformed exhibit notebook which shall be available for any witness testifying either live or via videoconference about the exhibits. In cases involving a pro sé Petitioner, Respondent shall submit the final, signed Pretrial Order and exhibit notebook to the Court in compliance with the deadlines set forth above, as well as bring to trial a conformed exhibit book to be available for any witnesses testifying.

14) DEPOSITIONS: The Court must receive all depositions no later than the **Wednesday preceding the trial week** for trials estimated to last one day or less. For trials expected to exceed one day in length, the Court must receive all depositions no later than the **Monday preceding the trial week**. If exhibits are attached to the deposition, the pages of each deposition exhibit must be numbered sequentially. The Court will accept electronic copies of depositions transcripts if the original transcript is not available for filing by the deadline. However, the electronic version must include any exhibits. **In addition, an electronic version of any deposition must also be received at the Court by the deadline for filing the deposition transcript. The electronic version shall be sent to the Court's filing address at dliwccfilings@mt.gov. See exhibit section above referencing deposition exhibits referred to at trial.**

15) PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW OR TRIAL BRIEF: If the parties intend to submit proposed findings of fact and conclusions of law or a trial brief, they must do so by the deadline for filing the Final Pretrial Order, Exhibit Book, and depositions. Electronic submission is acceptable. Submission of proposed findings is not mandatory. However, failure to submit pretrial proposed findings will not be cause for the Court to defer a bench ruling or to delay submission of the case for decision. The Court will not routinely allow post-trial proposed findings or trial briefs.

16) The Court will accept trial briefs, proposed findings, the pretrial order, and deposition transcripts, including any deposition exhibits, electronically in Adobe .pdf, Microsoft Word, or e-trans formats. The Court will consider electronic submissions compliant with the deadlines set forth herein. The parties must file the originals at the time of trial.

This schedule may be modified upon approval of the Court and written confirmation by a party. **Failure to comply with the deadlines set forth in this Scheduling Order without prior leave of Court will result in the case being reset to the next trial docket.** The Court may impose sanctions on any party who fails to cooperate with the terms of this Scheduling Order.

DATED in Helena, Montana, this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

(SEAL)

JACKIE POOLE  
Clerk of Court

By: \_\_\_\_\_  
Deputy Clerk of Court

REMEMBER TO DO A CLERK'S CERTIFICATE ON NEXT PAGE

