

Michigan Office of Administrative Hearings and Rules

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**AGENCY REPORT TO THE
JOINT COMMITTEE ON ADMINISTRATIVE RULES (JCAR)**

1. Agency Information

Agency name:

Labor and Economic Opportunity

Division/Bureau/Office:

Workers' Compensation Agency

Name of person completing this form:

Dave Campbell

Phone number of person completing this form:

517-284-8891

E-mail of person completing this form:

campbelld5@michigan.gov

Name of Department Regulatory Affairs Officer reviewing this form:

Thomas Shaver

2. Rule Set Information

MOAHR assigned rule set number:

2019-130 LE

Title of proposed rule set:

Workers' Compensation Board of Magistrates General Rules

3. Purpose for the proposed rules and background:

The rules apply to the practice and procedures before the workers' disability compensation board of magistrates under the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941. This RFR specifically references Part 13 (R 792.11301 – R 792.11313) of the Michigan Administrative Hearing System, Administrative Hearing Rules, currently located within Licensing and Regulatory Affairs - Michigan Office Of Administrative Hearings and Rules. As a result of Executive Order 2019-13, Part 13 will be rescinded by MOAHR, and promulgated by LEO, Workers' Disability Compensation Agency. Some of the specific rules in Part 13 will be updated to reflect changes in process and procedure including simplification of pre-trial hearing process and case scheduling; rules to facilitate expansion in the use of electronic conferencing for case resolution, settlement approval and adjudication.

4. Summary of proposed rules:

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The Workers' Disability Compensation Board of Magistrates rules apply to practice and procedures before the board.

The Request for Rules specifically references Part 13 (R 792.11301 – R 792.11313) of the Michigan Administrative Hearing System, Administrative Hearing Rules, currently located within Licensing and Regulatory Affairs - Michigan Office Of Administrative Hearings and Rules. As a result of Executive Order 2019-13, Part 13 will be rescinded by MOAHR, and promulgated by LEO, Workers' Disability Compensation Agency. Some of the specific rules in Part 13 will be updated to reflect changes in process and procedure.

5. List names of newspapers in which the notice of public hearing was published and publication dates:

Ann Arbor News Daily Edition June 13, 2021
Detroit Legal News June 17, 2021
The Mining Journal June 18, 2021

6. Date of publication of rules and notice of public hearing in Michigan Register:

7/1/2021

7. Date, time, and location of public hearing:

7/7/2021 12:05 PM at Room L-150, Cadillac Place Bldg. , 3026 W Grand Blvd, Detroit, MI

8. Provide the link the agency used to post the regulatory impact statement and cost-benefit analysis on its website:

<https://ARS.apps.lara.state.mi.us/Transaction/RFRTransaction?TransactionID=116>

9. List of the name and title of agency representative(s) attending public hearing:

Jack Nolish, WDCA Director
Deb Outwater, WDCA Executive Secretary
David Campbell, WDCA Agency Division Director
Kris Kloc, WDCA Medical Claims Analyst

10. Persons submitting comments of support:

Jayson Chizick for Worker's Compensation Section of the Michigan State Bar Association.

Michigan Self-Insurers Ass'n and Michigan Ass'n for Justice Ad Hoc Stakeholder Advisory Group.

Don Hannon, Associate Member Michigan Self-Insurer's Association
Dawn Droblich, Executive Secretary, Michigan Self-Insurers' Association
Richard Warsh, Past President, Michigan Association for Justice
Robert MacDonald, Past President, Michigan Association for Justice

Alicia W. Birach: Foster, Swift, Collins & Smith.

Dyke VanKoevering: General Counsel, Insurance Alliance of Michigan.

11. Persons submitting comments of opposition:

No comments of opposition

12. Identify any changes made to the proposed rules based on comments received during the public comment period:

	Name & Organization	Comments made at public hearing	Written Comments	Agency Rationale for change	Rule number & citation changed
1	Dawn Droblich, Michigan Self-Insurers' Association		Rule 9(4) needs two technical fixes related to the duties to respond to subpoenas. As drafted, only a "party" needs to respond to a subpoena, when clearly that was not intended.	Clarified who responds to a subpoena and what must be provided.	§418.89(4) Rule 9(4)
2	Dawn Droblich, Michigan Self-Insurers' Association		Discovery Rule 11(1)(a) and (b) and Rule 17(2) (b), as employers and carriers are required to produce copies of medical reports prepared by defense medical examiners and all treating medical records must be exchanged, it only seems fair that injured workers and their attorneys be required to produce copies of reports prepared by medical examiners retained by an employee.	Clarification of wording to facilitate exchange of medical reports in cases.	§418.91(1)(a) Rule 11(1)(a) & (b)
3	Dawn		The proposed	Clarification of	§418.91(1)(d)

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<p>Drobnich, Michigan Self- Insurers' Association</p>	<p>changes R18.91 (1)(d)(ii) to require a vocational report to include "a job description outlining the functional requirements of the job that are available" and the proposed change to R418.91(1)(d)(iii) that would require defendants to produce "any other pertinent information reasonably necessary to apply for the employment." We think Defendants should be producing the information that can be obtained from prospective employers so that employees have a meaningful opportunity to understand the job requirements, and a meaningful way to apply for the jobs. The recommended changes to the rule should suffice---The proposed rule 418.91(1)(d)(ii), includes a requirement that</p>	<p>wording to make sure appropriate information about job requirements is provided.</p>	<p>(ii)& (iii) Rule 11(1)(d) (ii,iii)</p>
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			a vocational consultant report include a job description outlining “all of” the functional requirements of the job. With respect to proposed rule 418.91(1)(d)(iii), the current wording is overly broad.		
4	Dawn Droblich, Michigan Self-Insurers’ Association		The rule requires a party, upon request, to produce various records but the general terms in the proposed rules refer to just employer and personnel records, while the list that follows in the rule includes non-privileged claims records.	Wording change to clarify which records must be provided to the employee.	§418.91(f) Rule 11(1)(f),

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5	Dawn Droblich, Michigan Self-Insurers' Association		We believe doctorate level psychologists ought be included in the definition of physician for purposes of conducting defense examinations in mental disability cases. We also recommend replacing the word 'limit' with 'determine' in describing a magistrate's power to determine how a defense medical examination is conducted.	Added description of qualifications for a psychologist to be included in the list of available specialists for employee evaluation. Clarification of who may accompany employee during evaluation.	§418.91(1)(g) Rule11(1)(g)
6	Dawn Droblich, Michigan Self-Insurers' Association		A comma in the noticed rules is missing from the proposed and noticed rules, which with the missing comma, would require an attorney to secure permission of a magistrate and show good cause in order to be allowed to represent his or her client at a Stokes interview.	Corrected punctuation error.	§418.91(1)(h) Rule 11(1)(h)

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7	Dawn Droblich, Michigan Self-Insurers' Association		Our recommended changes make it clearer that material protected by attorney-client privilege need not be exchanged or disclosed at the joint final pretrial, but may be offered into evidence thereafter. Our recommended revisions reinforce the intent that any joint final pretrial order should not act as a straight jacket or trap for the unwary, and that the parties should have the ability to address new issues or offer newly obtained or discovered evidence either not anticipated in the pretrial order, or for strategical trial or appellate reasons not raised until after proofs are completed, or the Magistrate's Order/Opinion has been written.	Clarification of process for exchange of evidence prior to trial; admissibility of later acquired evidence; admissibility of evidence initially classified as privileged; admissibility of undisclosed rebuttal evidence.	§418.93 Rule 13

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8	Dawn Droblich, Michigan Self-Insurers' Association		It is not clear that parties can offer additional evidence beyond that listed on a joint final pretrial statement or order, as some evidence may be privileged, not yet obtained or newly discovered, or strategically are not offered until appropriate during trial.	Clarification of admissibility of evidence not available at the time of the joint pre-trial conference order.	§418.94(6) Rule 14(6)
9	Dawn Droblich, Michigan Self-Insurers' Association		Discovery Rule 11(1)(a) and (b) and Rule 17(2)(b), as employers and carriers are required to produce copies of medical reports prepared by defense medical examiners and all treating medical records must be exchanged, it only seems fair that injured workers and their attorneys be required to produce copies of reports prepared by medical examiners retained by an employee.	Language changed to provide of admission medical reports by both parties.	§418.97(2)(b) Rule 17(2)(b)

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10	Jayson Chizick, Michigan State Bar Association.	Commenting in support of the proposed rule set.		Noted support of rule set.	2019-130-LE
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13.Date report completed:

8/17/2021