

# THE COURT OF WORKERS’ COMPENSATION CLAIMS AND COVID-19: A MEASURED RESPONSE

16 Mar 2020

By Chief Judge Kenneth M. Switzer, Nashville

*“No man is an island entire of itself; every man is a piece of the continent.”*

*--John Donne, Devotions Upon Emergent Occasions, 1624*

Indeed, this past week we have become aware of just how right John Donne was in 1624. From travel, to schools and universities, to the NBA, NCAA, MLB, NHL, NASCAR, and MLS, decisions have been made to cancel events.

On Friday the Tennessee Supreme Court issued an ORDER SUSPENDING IN-PERSON COURT PROCEEDINGS. The Court made certain exceptions to its order, mainly pointing out the necessary nature of some proceedings despite the risk of COVID-19. Although the Supreme Court Order, by its own terms, does not directly apply to the Court of Workers’ Compensation Claims, we find it very instructive. Upon issuance of that order, our phones began to ring with inquiries about our future schedules. Fortunately, we are prepared to address the present circumstance.

The Court, as part of the Bureau of Workers’ Compensation, delivers a service to injured workers and employers in approving settlements and conducting hearing and trials. These are matters of urgency in most cases, much like the exceptions listed in the Supreme Court’s order. Settlements are especially important. Some of the injured workers need the settlement money simply to survive. We do not want to slow down this process or stand in the way of approving settlements altogether. Unfortunately, in-person settlement approvals bring many people to the Bureau’s offices, who could expose Bureau and Court personnel and members of the public not necessarily associated with the Court to the virus.

To minimize that risk, we have developed a plan of action for settlements, expedited and compensation hearings, mediations, and Workers’ Compensation Appeals Board oral arguments.

## **Settlements**

We realize that many in-person settlements are already scheduled for the week of March 16. Since coordination of settlements is not easy, we will not disturb those plans. Please come as planned, exercising as much common sense for cleanliness as the Center for Disease Control has suggested. The Court is taking steps to clean common surfaces regularly. So, for this upcoming week, in-person settlement approvals will happen as usual.

Beginning the week of March 23, each office will perform settlement approvals by phone only. Protocol for doing these approvals is detailed for each office at the Court blog ([wccourt.com](http://wccourt.com)).

Generally the plan requires electronically sending in the approval documents well before the settlement date. The plans also provide for paying the filing fee.

Notably, **ALL** settlements will be scheduled to be approved by phone. Let me say that again: **ALL** settlements will be scheduled to be approved by phone. During this temporary procedure, notarized affidavits from the employee will be waived. Since many of you have statewide practices, we urge you to read carefully each location's process about to whom to e-mail the documents, how to schedule, and how to pay the filing fee.

We ask for your patience. I am sure you will have many questions. Please direct those to the office where you propose to have a settlement approved. We will work diligently to make this run smoothly and effectively.

As many of you know we have several remote locations for approvals – Hamblen County, Montgomery County, Maury County and Weakley County. For now the Supreme Court's order effectively eliminates those locations for in-person approvals. If you already have one scheduled, contact the Court office that scheduled the approval for instructions.

How long will this last, you ask? We don't really know at this point. This is a fluid situation. Watch this blog for updates and changes. However, when business returns to normal, in-person settlements will resume.

### **Expedited and Compensation Hearings**

Since our expedited and compensation hearings generally involve a limited number of people, we believe that it is acceptable to maintain the present trial schedule and conduct all hearings presently set. Of course, the court has the discretion in consultation with the parties to continue cases, should a circumstance require. If a party or attorney has health concerns about proceeding, please file an appropriate motion.

### **Mediations**

Mediations will continue as scheduled at the mediator's discretion in consultation with the parties as to whether mediation will be conducted in person or by phone. If you have one scheduled in the next month, contact your mediator directly to discuss options.

### **Appeals Board**

The Appeals Board had previously set an oral argument docket for March 24 in Knoxville. The Board issued an Oral Argument Cancellation on March 13 setting aside the in-person aspect of those appeals.

**HOWEVER**, they **DID NOT CANCEL** the oral arguments. The cases designated for hearing will be heard telephonically. The clerk of the Appeals Board will contact the attorneys scheduled to participate in oral arguments to arrange their appearance.

### **A Final Word**

These temporary changes to our process will only work if we all work together. Indeed, no man is an island. As a friend has noted, "a communal lens must continue to be brought to bear upon

our decision making. It is an irony then: to practice social distancing, to withdraw from all sorts of events may be the most communal loving thing we can do at the moment. To do otherwise, all things being equal, is to further exacerbate the possibilities of leaving more of our elders and more of our at risk friends to be left excluded from care upon which their very lives may depend.”

Lee Camp