

# **Basic Crafts Alternative Dispute Resolution Rules of Practice and Procedure**

## **Table of Contents**

Article 1: General

Article 2: Powers, Duties and Responsibilities

Article 3: Parties and Joinder

Article 4: Filing of Documents

Article 5: Pleadings

Article 6: Service

Article 7: Subpoenas

Article 8: Hearings

Article 9: Evidence and Reports

Article 10: Medical Examiners

Article 11: Record of Proceedings

Article 12: Liens

Article 13: Attorneys and Representatives

Article 14: Findings, Awards and Orders

Article 15: Reconsideration

Article 16: Settlements

## **Article 1: General**

### ***Rule 101: Authority for Rules of Practice and Procedure.***

The authority for the promulgation of these Rules of Practice and Procedure is found in Article VII. A. 7. of the Workers' Compensation Addendum to the relevant collective bargaining agreement.

### ***Rule 102: Jurisdiction.***

Jurisdiction of the Basic Crafts ADR shall be established in a given case where the injured employee is covered by a collective bargaining agreement with a Workers' Compensation Addendum, and the employer is signatory to that agreement. Where this is the case, it is the intent of the Basic Crafts ADR that disputes regarding the entitlement to compensation under Division 4 of the California Labor Code for work-related injuries or illnesses, or claimed work-related injuries or illnesses, shall be resolved pursuant to the terms of the relevant Workers' Compensation Addendum, and the Rules set forth herein.

### ***Rule 103: Intent of the Workers' Compensation Addendum.***

Under the authority provided by Article VII. of the Workers' Compensation Addendum to the current collective bargaining agreement between the signatory employer associations and the construction unions, it is the intent of this Addendum to replace all sections of the California Labor Code and the California Code of Regulations that provide for dispute resolution processes and procedures in workers' compensation cases, except for those Labor Code sections referred to in Article VII of the Addendum and those set forth in Appendix 1 of the Addendum, and replace them with the processes and procedures contained within said Addendum, as more precisely defined in these Rules, to the fullest extent allowed by law. To the extent that a section of the California Labor Code or California Code of Regulations does not address dispute resolution, it is the intent of the Addendum that those sections remain operative as to claims falling within the jurisdiction of said Addendum, unless otherwise expressly excluded.

### ***Rule 104: Application of the Basic Crafts ADR Rules of Practice and Procedure.***

It is the intent of the Basic Crafts Workers' Compensation Benefits Trust Fund that the Basic Crafts ADR Rules of Practice and Procedure be applied within the reasonable discretion of the arbitrator so as to accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character.

### ***Rule 105: Definitions.***

As used in these Rules:

- (a) "Basic Crafts ADR" means the Alternative Dispute Resolution system of the Basic Crafts Workers' Compensation Benefits Trust Fund,
- (b) "ADR Director" means the Director of the Alternative Dispute Resolution system of the Basic Crafts Workers' Compensation Benefits Trust Fund.

- (c) “Basic Crafts Program” or “Basic Crafts Trust Fund” or “the Trust” means the Basic Crafts Workers’ Compensation Benefits Trust Fund.

***Rule 106: Obligation to Expedite Resolution.***

It is the obligation of each employee and employer falling within the jurisdiction of the relevant Workers’ Compensation Addendum, and these Rules, to make all good faith efforts to expedite resolution of all matters, including scheduling and direction of their employees and agents.

***Rule 107: ADR Process - Generally.***

- (a) When an employee within the jurisdiction of the Basic Crafts ADR is injured on the job, or believes that he or she has sustained a compensable injury, the employee must notify the employer immediately after the occurrence of the injury.
- (b) When informed of an injury claim, the employer is obligated, within 1 working day, to provide the employee giving notice of an injury, with:
- a. a claim form,
  - b. a notice of potential eligibility for workers’ compensation benefits form, and
  - c. any other documents required by the Basic Crafts Trust Fund.
- (c) The employee must file the Claim Form with the employer.
- (d) The employer must send a copy of the Claim Form and the Employer’s Report of Occupational Injury or Illness to the carrier, with copies to the Ombudsman.
- (e) The carrier will investigate and make a timely decision as to whether to accept liability, and in the meantime it will pay for any required medical care pending a decision, up to a maximum of \$10,000.00.
- (f) The carrier will timely advise the employee of its decision as to whether or not to accept liability.
- (g) Where the employee is dissatisfied with the carrier’s decision on this issue or any further decision to deny, reduce or terminate benefits, the employee shall notify the Ombudsman and the Ombudsman shall try to resolve the dispute. The employee is obligated to provide the Ombudsman with copies of any notices or other documents relevant to the disputed issues. If the employee is represented by counsel, the employee or the attorney shall notify the employer’s insurance company and attempt to resolve the dispute.
- (h) Where the employee is not represented by counsel, and the Ombudsman cannot resolve the dispute, a final response will be provided to the employee, and the employee will have the right to file a Workers’ Compensation Grievance within 30 days of the final response and seek an Informal Conciliation before a mediator. This time limit may be extended by the ADR Director upon a showing of good cause. Where the employee is represented by counsel and cannot resolve the dispute voluntarily, the employee will have the right to file a Workers’ Compensation Grievance within 30 days of the final response and seek an Informal Conciliation before a mediator. This time limit may be extended by the ADR Director upon a showing of good cause. Where such a request is filed, the ADR Director shall schedule an Informal Conciliation between the employee and the employer. A mediator will be selected pursuant to Rule 203 herein. If the employee so requests, the Ombudsman shall attend the Informal Conciliation.

- (i) Where the Informal Conciliation does not result in an agreement satisfactory to the employee, the employee may file a Request to Arbitrate within 30 days of the Informal Conciliation. When prepared to go forward, a Declaration of Readiness to Arbitrate shall be filed with the Basic Crafts ADR Director, and the ADR Director shall schedule the Arbitration proceeding as soon as possible, while allowing the parties time to prepare. Once the employee has filed a Request to Arbitrate, the Ombudsman shall provide no further assistance to the employee.
- (j) An arbitrator will be selected pursuant to Rule 203 herein.
- (k) The arbitrator must issue a decision within 30 days of the submission of the case for decision.
- (l) Subsequent to the issuance of the arbitrator's decision, a party may file a Petition for Reconsideration with the Workers' Compensation Appeals Board, within the time limits provided by the Labor Code.
- (m) The employer/carrier may also initiate proceedings and request an Informal Conciliation where a the injured employee has been notified of the Ombudsman's final response, or of the carrier's final response where the employee is represented by counsel, if after 30 calendar days the injured employee has neither accepted the Ombudsman's final response or the carrier's final response, nor filed a Workers' Compensation Grievance. The employer/carrier shall initiate proceedings under these circumstances by filing a Workers' Compensation Grievance on its own behalf. Similarly, the employer may also request arbitration by filing a Request to Arbitrate within 30 days of the Informal Conciliation.

### ***Rule 108: Continuing Jurisdiction.***

As does the appeals board under Labor Code section 5803, the Basic Crafts ADR has continuing jurisdiction over all its orders, decisions, and awards made and entered under the provisions of Division 4 of the California Labor Code. At any time, upon notice and after an opportunity to be heard is given to the parties in interest, the ADR Director of the Basic Crafts ADR, or a mediator or arbitrator assigned by the Basic Crafts ADR, may rescind, alter, or amend any order, decision, or award, good cause appearing therefore.

This power includes the right to review, grant or regrant, diminish, increase, or terminate, within the limits prescribed by Division 4 of the California Labor Code, any compensation awarded, upon the grounds, that the disability of the person in whose favor the award was made has either recurred, increased, diminished, or terminated.

Further, as under section 5410 of the California Labor Code, nothing in these rules shall bar the right of any injured worker to institute proceedings for the collection of compensation within five years after the date of the injury upon the ground that the original injury has caused new and further disability. The jurisdiction of the Basic Crafts ADR in these cases shall be a continuing jurisdiction within this period.

This rule shall not be construed as extending any period of limitation expressly provided within the California Labor Code.

**Rule 109: Case Names.**

Each case shall be filed in the database of the Basic Crafts ADR under the name of the person claimed to have been injured. Reference to the case shall be by the name of the injured person and the Basic Crafts ADR case number.

**Rule 110: Official Address Record.**

The Basic Crafts ADR shall maintain in each case file an official address record, which shall contain the names and addresses of all parties and lien claimants, and their attorneys or agents of record.

**Rule 111: Ex Parte Communications.**

No document, including letters or other writings, shall be filed by a party or lien claimant with the Basic Crafts ADR unless service of a copy thereof is made on all parties together with the filing of proof of service. No party or lien claimant shall discuss with a Mediator or Arbitrator employed or retained by the Basic Crafts ADR without the presence of all necessary parties to the proceeding, except as otherwise provided by these rules or as agreed during an Informal Conciliation hearing.

**Article 2: Powers, Duties and Responsibilities**

**Rule 201: The Ombudsman**

- (a) The Ombudsman's purpose is to prevent or limit disputes at the earliest possible time by aiding and counseling employees regarding claims, complaints and inquiries, including explaining to employees when necessary the effect of the facts and law, which may at appropriate times include an element of mediation. The Ombudsman's duties include being available to respond to employees before and after any formal action is taken by either the employee or employer and acting as a liaison between the employee and the employer's insurance carrier. The Ombudsman shall be competent in relevant legal and medical matters of Workers' Compensation Law, along with having reasonable knowledge about the crafts in which employees work. The Ombudsman shall act on behalf of the injured employee in protecting the employee's best interest and shall work to expedite the employee's case to a satisfactory conclusion. However, the Ombudsman shall not be the attorney, lawyer or legal representative of any employee.
- (b) The Ombudsman's services are provided at no cost to employees.
- (c) All statements by the employee to the Ombudsman are confidential.
- (d) The Trust shall retain and compensate the Ombudsman, or more than one if it determines that is necessary, and determine the requisite qualifications, purposes, duties and powers.
- (e) Where an employee receives notice of denial of, reduction in or termination of benefits by the carrier herein, the carrier is required to provide the employee with written notice as to the reason for the action, in terms that are readily understandable by the employee. The employee shall provide the Ombudsman with a copy of the notice, along with any and all other documentation relevant to the action in question.

- (f) The employee, employer and carrier are obligated to provide the Ombudsman with copies of all termination notices and any documentation and information relevant thereto.
- (g) The Ombudsman is not responsible for timely completing or filing ADR forms or other documents for the employee, as it is the employee's responsibility. The Ombudsman may assist the employee in completing forms if requested.
- (h) When an employee receives notice of a denial, reduction or termination of compensation, or where the employee believes that he or she is not receiving the compensation to which he or she is entitled, the employee shall notify the Ombudsman within thirty (30) days, and provide the Ombudsman with a copy of any written notice, and/or attached documentation. Upon request, the employer and carrier shall provide the Ombudsman with copies of any documents arguably relevant to the dispute in question. Upon receiving such notice, the Ombudsman shall attempt to resolve the matter. The Ombudsman shall provide the employee with a final response as soon as reasonably possible under the relevant circumstances.
- (i) Where the employee is not satisfied with the Ombudsman's final response the employee may proceed to Informal Conciliation by filing a Workers' Compensation Grievance with the ADR Director within thirty (30) days of the issuance of receiving the Ombudsman's final response.
- (j) Once the employee has filed a Request to Arbitrate, the Ombudsman shall not aid or counsel the employee regarding the issues covered in that Request. It becomes that employee's duty at such time to retain any desired legal representation.

***Rule 202: Assignment or Transfer of Cases.***

The ADR Director has full responsibility for the assignment of cases to mediators and arbitrators. The ADR Director shall transfer to another mediator or arbitrator the proceedings on any case in the event of the death, extended absence, unavailability, or disqualification of the mediator or arbitrator.

***Rule 203: Assignment of Mediators and Arbitrators.***

Different persons shall be assigned to conduct the informal conciliation and the arbitration. The ADR Director holds the authority to assign both mediators and arbitrators.

The ADR Director may assign himself or herself as the mediator, unless the ADR Director has acted as the ombudsman in the case previously. If the ADR Director chooses, or is required, to assign an outside mediator, the ADR Director or Ombudsman shall select the mediator from the list of mediators approved by the Trust.

The ADR Director may assign himself or herself as the arbitrator, unless the ADR Director has acted as the ombudsman or mediator in the case previously. If the ADR Director chooses, or is required, to assign an outside arbitrator, the ADR Director will issue a panel consisting of an odd number of arbitrators, from which the parties will be ordered to select an agreed upon arbitrator. If the parties cannot agree, the parties will

alternate rejecting arbitrators from the list with the injured worker striking the first arbitrator. The final remaining arbitrator will be assigned as the arbitrator.

***Rule 204: Authority of ADR Director, Mediators and Arbitrators.***

- (a) The ADR Director shall be available to the parties to distribute exclusive lists of medical providers, exclusive lists of medical evaluators, ADR forms, these Rules of Practice and Procedure, or any portion of the Workers' Compensation Addendum.
- (b) In any case, other than one in which he or she has acted as the ombudsman, the ADR Director, or any arbitrator that has been regularly assigned to a case, shall have full power, jurisdiction and authority to hear and determine all issues of fact and law presented and to issue any interim, interlocutory and final orders, findings, decisions and awards as may be necessary to the full adjudication of the case.
- (c) In any case, other than one in which he or she has acted as the ombudsman, the ADR Director or any mediator or arbitrator shall have the authority to inquire into the adequacy and completeness, including provision for lien claims, of compromise and release agreements or stipulations with request for award or orders, and to issue orders approving compromise and release agreements or awards or orders based upon approved stipulations.
- (d) In any case, other than one in which he or she has acted as the ombudsman, the ADR Director or arbitrator may make orders and rulings regarding admission of evidence and discovery matters, including admission of offers of proof and stipulations of testimony where appropriate and necessary for resolution of the dispute(s) by the ADR Director or arbitrator, and may submit and decide the dispute(s) on the record pursuant to the agreement of the parties. Sworn testimony shall not be heard at any informal conciliation.
- (e) The ADR Director, in any case in which he or she has not acted as the ombudsman, mediator or arbitrator may temporarily adjourn or postpone an informal conciliation or arbitration to a later date in order to facilitate a specific resolution of the dispute(s) in question. In such a case, the mediator or arbitrator shall note the reasons for the continuance or postponement in the minutes. The minutes shall be served on all parties and lien claimants, and their representatives.
- (f) Absent resolution of the dispute(s) at the informal conciliation, the parties shall file at a time agreed to between the parties, or determined by the mediator, a joint pre-trial statement setting forth the stipulations and issues to be arbitrated, as well as all exhibits to be introduced at the arbitration and witnesses to be called to testify. A summary of informal conciliation proceedings including, if available, the joint pre-arbitration statement and the disposition shall be filed by the mediator in the record of the proceedings, and shall be served on the parties.
- (g) The arbitration will be conducted pursuant to the rules herein. No written or oral demand or offer of resolution, or statement made in that context, may constitute admissible evidence. No settlement demand or offer, or statement made to the Ombudsman may be offered into evidence in the arbitration
- (h) The arbitrator shall issue a findings of fact, award, order and/or decision within thirty (30) days of the submission of the case for decision. Said time limit may be waived by the parties, but only upon a clear showing of good cause. Said findings of fact,

award, order and/or decision is final and may be challenged by a Petition for Reconsideration before the Workers' Compensation Appeals Board.

***Rule 205: Reconsideration of Arbitrator's Orders, Decisions or Awards.***

Any final order, decision or award filed by an arbitrator shall be subject to the reconsideration process as set forth in Labor Code Sections 5900 through 5911.

**Article 3: Parties and Joinder**

***Rule 301: Parties Applicant.***

Where the jurisdiction of the Basic Crafts ADR has been established as to the employer and the employee, pursuant to Rule 102:

- (a) Any person in whom any right to relief is alleged to exist may appear, or be joined, as an applicant in any such case or controversy before the Basic Crafts ADR. A lien claimant may become a party where the applicant's case has been settled or adjudicated, or where the applicant chooses not to proceed with his or her case.
- (b) Any person against whom any right to relief is alleged to exist may be joined as a defendant.
- (c) In death cases, all persons who may be dependents shall either join or be joined as applicants so that the entire liability of the employer or the insurer may be determined in one proceeding.

***Rule 302: Joinder of Parties.***

After the filing of a claim form, the ADR Director or a mediator or an arbitrator may order the joinder of additional parties necessary for the full adjudication of the case, if the Basic Crafts ADR Program is capable of exercising jurisdiction over the party or parties to be joined. A party not present or represented at the time of joinder shall be served with copies of the order of joinder, the claim form, minutes of hearing and summary of evidence, medical reports and other documents, as directed in the order of joinder. The ADR Director, mediator or arbitrator may designate the party or parties who are to make service.

**Article 4: Filing of Documents**

***Rule: 401: Place and Time of Filing of Documents.***

After the filing and processing of the claim form, all papers and documents required to be filed by these Rules of Practice and Procedure of the Basic Crafts ADR or which request action by the Basic Crafts ADR shall be filed with the office of the Basic Crafts ADR at 265 Hegenberger Road, Suite 240, Oakland, CA 94621.

After a petition for reconsideration or petition for removal has been properly filed with the Appeals Board, and until the Appeals Board issues its decision on a petition for reconsideration or removal, all requests for action relating to the reconsideration process,



requests for withdrawal of the petitions for reconsideration or petitions to remove or notifications of change of address from the parties or lien claimants shall be filed with the Appeals Board in San Francisco. All other mail unnecessary to the reconsideration or removal process shall be filed with the Basic Crafts ADR.

Documents received in the office of the Appeals Board in San Francisco, except as provided in this rule, will not be accepted for filing or deemed filed and the parties will not receive an acknowledgment of receipt and the documents will likely be discarded. Such document, however, may be returned where the filing party includes a self addressed envelope with sufficient return postage. The Workers' Compensation Appeals Board, in any proceeding, may excuse a failure to comply with this rule resulting from mistake inadvertence, surprise, or excusable neglect.

***Rule 402: Filing of Copies of Documents.***

The Basic Crafts ADR will accept for filing a fax, fax copy, photocopy, or other reproduction of a properly executed Basic Crafts ADR Form, Compromise and Release, or Stipulations with Request for Award.

Any reproduction of a document filed under this section is presumed to be an accurate representation of the original document. If a party alleges that a reproduction filed under this section is inaccurate or unreliable, the party filing the reproduction has the burden of proving by a preponderance of the evidence, that the reproduction is an accurate representation of the original document.

***Rule 403: Form and Size of Requirements for Filed Documents.***

All pleadings, letters, petitions, briefs and notices filed with the Basic Crafts ADR by any party or lien claimant shall be on 8 ½ x 11 inch paper with two holes punched at the top and centered to fit the Basic Crafts ADR file. All documents shall include in the heading the name of the injured employee and the Basic Crafts ADR case number. All pleadings, petitions and briefs shall be double spaced, except that quotations may be single spaced.

Where, on the same day, a party files two or more medical reports in the same case, the party shall attach them to a transmittal letter that shall list each report by name of physician and date of report. The transmittal letter shall include the name of the injured employee and the Basic Crafts ADR case number.

***Rule 404: Duty to Furnish Correct Address.***

- (a) Every party and lien claimant having an interest in an active case pending before the Basic Crafts ADR shall advise the Basic Crafts ADR and all other known interested parties of any change of address by promptly furnishing the correct and current mailing address.
- (b) Every lien claimant having an interest in an active case pending before the Basic Crafts ADR shall advise all known interested parties of any change in the identity or telephone number of the person with authority to resolve the lien by promptly furnishing the correct name and daytime telephone number of that person to the interested parties, and shall advise the Basic Crafts ADR of any such change after a Workers' Compensation Grievance is filed.

- (c) Every party and lien claimant having an interest in an inactive case shall advise all other known interested parties and known interested lien claimants of any change of address by promptly furnishing the correct and current mailing address.

## **Article 5: Pleadings**

### ***Rule 501: Claim Form.***

Recognition of the filing of a claim form by an employee against an employer within the jurisdiction of the Basic Crafts ADR shall be made by the assignment of a Basic Crafts ADR claim number.

### ***Rule 502: Initiating Adjudication of Dispute or Approval of Settlement.***

Proceedings for adjudication of rights and liabilities before the Basic Crafts ADR shall be initiated by the filing of a Workers' Compensation Grievance. If the claim is settled and approval of a Compromise and Release Agreement or Stipulations with Request for Award is sought, it should be filed with the Basic Crafts ADR, or an appointment with the Basic Crafts ADR Director for review and approval, if appropriate, may be scheduled with under Rules 508 and 1604 . These documents shall be filed with the Basic Crafts ADR at 265 Hegenberger Road, Suite 240, Oakland, CA 94621. Upon filing one of these documents the Basic Crafts ADR shall assign a Basic Crafts case number and place the document in the case file. The person filing such a document shall be notified that it has been filed and shall be given a case number that he or she shall serve on all other parties and lien claimants.

### ***Rule 503: Minors, Incompetents as Applicants.***

If the Applicant is a minor or incompetent, the Application for Adjudication shall be accompanied by a Petition for Appointment of a Guardian ad Litem and Trustee. In those instances where the minor has the right of nomination, the nomination shall be included in the petition.

### ***Rule 504: Workers' Compensation Grievance.***

If an unrepresented employee is not satisfied with the Ombudsman's final response, or a represented employee is not satisfied with the carrier's final response, the employee may proceed to Informal Conciliation by filing a Workers' Compensation Grievance, within thirty (30) days of receipt of the final response. No matter shall be scheduled for an Informal Conciliation unless a party has filed with the Basic Crafts Workers' Compensation Program, and served a copy on the opposing party and counsel, a Workers' Compensation Grievance in the form prescribed by the Basic Crafts Workers' Compensation Program. Workers' Compensation Grievances shall be reviewed by the ADR Director who shall, absent a substantial reason to attempt dispute resolution through the involvement of the ombudsman, or otherwise, schedule an Informal Conciliation at the earliest reasonable date, giving due consideration to both the urgency of the issues in dispute and the convenience of the parties.

***Rule 505: Request to Arbitrate.***

Where either party is unsatisfied with the results of an Informal Conciliation, the party may proceed to arbitration by filing a Request to Arbitrate with the ADR Director within thirty (30) days of the Informal Conciliation.

***Rule 506: Declaration of Readiness to Arbitrate.***

No matter shall be scheduled for arbitration unless a party has filed with the Basic Crafts Workers' Compensation Program, and served a copy on the opposing party and counsel, a Request to Arbitrate and a Declaration of Readiness to Arbitrate in the form prescribed by the Basic Crafts Workers' Compensation Program. Declarations of Readiness shall be reviewed by the ADR Director who shall, absent a substantial reason to the contrary, schedule an arbitration at the earliest reasonable date, giving due consideration to the urgency of the issues in dispute, the convenience of the parties, and the necessity of any further discovery reasonably required by the parties prior to the arbitration proceeding.

***Rule 507: Objections to Declaration of Readiness to Arbitrate.***

Any objection to a Declaration of Readiness to Arbitrate shall be filed with the Basic Crafts Workers' Compensation Program, and served on the opposing party, and counsel, within ten (10) days after service of the Declaration. The objection shall set forth the specific reason(s) why the matter should not be set or why the requested proceedings are inappropriate.

If a party has received a copy of the Declaration of Readiness to Arbitrate and has not filed an objection under this section, that party shall be deemed to have waived any and all objections to proceeding on the issues specified in the declaration, absent extraordinary circumstances.

***Rule 508: Settlement Approval.***

Any and all settlements of a claim filed under the jurisdiction of the Basic Crafts Workers' Compensation Program, shall be approved for adequacy either by the ADR Director, a mediator or an arbitrator. Settlement approvals may be requested by mail, or when time is of the essence, by an expedited walk-through before the ADR Director by calling the Basic Crafts Workers' Compensation Program and scheduling an appointment. (See Rule 1604).

***Rule 509: Letters of Appointment for Medical Examination.***

After the filing of a claim form under the jurisdiction of the Basic Crafts Workers' Compensation Program, each party will notify all other parties, and their attorneys or representatives, of any medical appointment scheduled for the purposes of medical-legal

evaluation. That notice shall be given at the same time the injured worker is advised of the appointment.

***Rule 510: Serious and Willful Misconduct – Pleadings and Allegations.***

(a) All allegations that an injury was caused by either the serious and willful misconduct of the employee or of the employer must be separately pleaded and must set out in sufficient detail the specific basis upon which the charge is founded so that the adverse parties and the Basic Crafts Workers’ Compensation Program may be fully advised.

(b) All allegations that an injury was caused by serious and willful misconduct shall:

(1) When the charge of serious and willful misconduct is based on more than one theory, set forth each theory separately.

(2) Whenever the charge of serious and willful misconduct is predicated upon the violation of a particular safety order set forth the correct citation or reference and all of the particulars required by Labor Code Section 4553.

***Rule 511: Pleadings – Discrimination.***

Any person seeking to initiate proceedings under Labor Code Section 132a other than prosecution for misdemeanor must file a petition setting forth specifically and in detail the nature of each violation alleged and facts relied on to show each violation and the relief sought. Each alleged violation must be separately pleaded so that the adverse party or parties and the Basic Crafts Workers’ Compensation Program may be fully advised of the specific basis upon which the charge is founded.

The Basic Crafts Workers’ Compensation Program may refer, or any worker may complain of, suspected violations of the criminal misdemeanor provisions of Labor Code Section 132a to the Division of Labor Standards Enforcement or directly to the Office of the Public Prosecutor.

As Labor Code section 132a is not contained within Division 4 of the California Labor Code, in order to resolve any dispute involving section 132a within the Basic Crafts ADR, the parties will be required to stipulate to arbitrate the issue pursuant to Labor Code section 5270 et seq. Without said stipulation any such issues will be required to be litigated within the State workers’ compensation system.

***Rule 512: Petitions.***

A request for action by the Basic Crafts Workers’ Compensation Program, other than a Workers’ Compensation Grievance or a Declaration of Readiness to Arbitrate, shall be made by petition filed with the Basic Crafts Workers’ Compensation Program. The caption of each petition shall contain the title and number of the case and shall indicate the type of relief sought.

***Rule 513: Petition to Reopen.***

Petitions to invoke the continuing jurisdiction of the Basic Crafts Workers' Compensation Program under Rule 108 shall set forth specifically and in detail the facts relied upon to establish good cause for reopening.

***Rule 514: Petition for New and Further Disability.***

The jurisdiction of the Basic Crafts Workers' Compensation Program under Rule 108 shall be invoked by a petition setting forth specifically and in detail the facts relied upon to establish new and further disability.

***Rule 515: Petition to Terminate Liability; Filing.***

A petition to terminate liability for continuing temporary disability indemnity under a findings and award, decision or order of an arbitrator or the Appeals Board shall be filed with the Basic Crafts Workers' Compensation Program within 10 days of the termination of the payments or other compensation. Failure to file such a petition within 10 days may affect the right to credit for an overpayment of temporary disability indemnity.

***Rule 516: Contents of Petition to Terminate Liability.***

A petition to terminate liability for temporary total disability indemnity shall include:

- (a) the correct title and date of filing of the prior order or decision establishing liability that the petitioner seeks to terminate;
- (b) the date upon which it is claimed that liability terminated;
- (c) the grounds upon which it is claimed liability should be terminated;
- (d) whether permanent disability is being advanced and, if so, the approximate date to which such indemnity will be paid;
- (e) whether the employee is presently working, according to information available to the petitioner;
- (f) a computer printout showing the dates and the amounts of disability indemnity that have been paid, and the periods covered shall be attached; and
- (g) proof of service upon the opposing parties.

All medical reports in the possession of the petitioner that have not previously been served and filed shall accompany the petition. The petition also shall contain a statement, in underlined capital letters, that an order terminating liability for temporary total disability indemnity may issue unless objection thereto is made on behalf of the employee within 14 days after service of the petition.

***Rule 517: Objections to Petition, Hearing, Interim Order.***

If written objection to the petition to terminate is not received within fourteen (14) days of its proper filing with the Basic Crafts Workers' Compensation Program and service on the opposing party and counsel, the Basic Crafts Workers' Compensation Program may order temporary disability compensation terminated, in accordance with the facts as stated in the petition or in such other manner as may appear appropriate on the record. If

the petition to terminate is not properly completed or executed in accordance with Rule 515 or 516, the Basic Crafts Workers' Compensation Program may summarily deny or dismiss the petition.

Objection to the petition by the employee shall be filed in writing with the Basic Crafts Workers' Compensation Program within fourteen (14) days of service of the petition, and shall state the facts in support of the employee's contention that the petition should be denied, and shall be accompanied by a Workers' Compensation Grievance. All supporting medical reports shall be attached to the objection. The objection shall also show that service of the objection and the reports attached thereto has been made upon petitioner or counsel.

***Rule 518: Demurrer, Judgment on the Pleadings, and Summary Judgment Not Permitted; Unintelligible Pleadings.***

Demurrers, petitions for judgment on the pleadings, and petitions for summary judgment are not permitted.

***Rule 519: When Pleadings Deemed Amended.***

The pleadings shall be deemed amended to conform to the stipulations and statement of issues agreed to by the parties on the record. Pleadings may be amended by the ADR Director of the Basic Crafts Workers' Compensation Program, or a mediator or arbitrator assigned by the Program, to conform to proof.

***Rule 520: Award and Orders without Hearing.***

Awards and orders may be based upon stipulations of parties, upon written stipulation signed by the parties, or on the record during the course of an arbitration proceeding.

***Rule 521: Rejection of Stipulations.***

No finding shall be made contrary to a stipulation of the parties on an issue without giving the parties notice and an opportunity to present evidence thereon.

## **Article 6: Service**

***Rule 601: Service.***

The ADR Director or a mediator or arbitrator, may, in his or her discretion, designate a party or lien claimant, or their representative, to make service of notices of the time and place of hearing, orders approving compromise and release, awards based upon stipulations with request for award and any interim or procedural orders. The party, lien claimant, or representative designated to make service shall retain the proof of service and shall not file with the Basic Crafts Program unless ordered to do so by the ADR Director, mediator or arbitrator.

***Rule 602: Service by the Parties.***

Service of any document may be made by mail or personal service. Service of any document may be made by facsimile transmission by agreement of the parties or lien claimants, or where authorized or requested by the receiving party or lien claimant.

***Rule 603: Mail and Fax Service.***

The time requirements of Code of Civil Procedure Section 1013(a) shall govern all service by mail and fax.

***Rule 604: Service on Attorney or Agent.***

Service shall be made on all attorneys or agents of record unless the party or lien claimant is unrepresented, in which event service shall be made on the party or lien claimant.

***Rule 605: Proof of Service by Parties and Lien Claimants.***

Proof of service by parties or lien claimants may be made by:

- (a) affidavit or declaration of service;
- (b) written statement endorsed upon the document served and signed by the party making the statement;
- (c) letter of transmittal.

The proof of service shall set forth the names and addresses of persons served, whether service was made personally or by mail, the date of service, the place of personal service or the address to which mailing was made.

The proof of service shall be filed with the documents to which the proof of service pertains.

***Rule 606: Proof of Service by the Basic Crafts ADR.***

Proof of service by the Basic Crafts ADR may be made by endorsement on the document served, setting forth the fact of service on the persons listed on the official address record on the date of service. The endorsement shall state whether service was made personally or by mail, the date of service and the signature of the person making the service.

## **Article 7: Subpoenas**

***Rule 701: Subpoenas and Notices to Appear and Produce.***

The ADR Director shall issue Subpoenas and/or Subpoenas Duces Tecum upon request in accordance with the provisions of Code of Civil Procedure sections 1985 and 1987.5

and Government Code section 68097.1. Subpoenas and Subpoenas Duces Tecum shall be on forms prescribed and approved by the ADR Director.

***Rule 702: Microfilm.***

Where records or other documentary evidence have been recorded or reproduced using the methods described in Section 1551 of the Evidence Code and the original records destroyed, the film, legible print thereof or electronic recording shall be produced in response to a subpoena duces tecum or notice to produce. A party offering a film or electronic recording in evidence may be required to provide legible prints thereof or reproductions from the electronic recording.

The expense of:

- (a) inspecting reproductions shall be paid by the party making the inspection; and
- (b) obtaining microfilm prints shall be borne by the party requiring the same.

***Rule 703: Witness Fees and Subpoenas.***

Medical examiners appointed by the ADR Director or agreed to by the parties when subpoenaed for cross-examination at a Basic Crafts Arbitration or deposition shall be paid by the party requiring the attendance of the witness.

Failure to serve the subpoena and tender the fee in advance based on the estimated time of the trial or deposition may be treated by the ADR Director and/or the Arbitrator as a waiver of the right to examine the witness. Service and payment of the fee may be made by mail if the witness so agrees.

***Rule 704: Subpoena for Medical Witness.***

A subpoena requiring the appearance of a medical witness before a Basic Crafts Arbitration must be served not less than ten (10) days before the time the witness is required to appear and testify.

## **Article 8: Hearings**

***Rule 801: Notice of Hearing.***

The ADR Director shall serve or cause to be served notice of the time and place of hearings (i.e. informal conciliations and arbitrations) on all parties and lien claimants, and their attorneys or other agents of record.

Notice of hearing shall be given at least ten (10) days before the date of hearing, except where:

- (a) notice is waived; or
- (b) a different time is expressly agreed to by all parties and concurred in by the ADR Director.



### ***Rule 802: Submission at Single Arbitration.***

The parties are expected to submit for decision all matters properly in issue at a single arbitration hearing and to produce at the arbitration hearing all necessary evidence, including witnesses, documents, medical reports, payroll statements and all other matters considered essential in the proof of a party's claim or defense. However, an arbitrator may order that the issues in a case be bifurcated and tried separately upon a showing of good cause.

### ***Rule 803: Sanctions.***

On its own motion or upon the filing of a petition, the ADR Director or arbitrator may order payment of reasonable expenses, including attorney's fees and costs and, in addition, sanctions as provided in Labor Code section 5813. Before issuing such an order, the alleged offending party or attorney must be given notice and an opportunity to be heard. In no event shall the ADR Director or arbitrator impose a monetary sanction pursuant to Labor Code section 5813 where the one subject to the sanction acted with reasonable justification or other circumstances make imposition of the sanction unjust.

A bad faith action or tactic is one that results from a willful failure to comply with a statutory or contractual obligation or from a willful intent to disrupt or delay the proceedings of the Basic Crafts ADR.

A frivolous bad faith action or tactic is one that is done for an improper motive or is indisputably without merit.

Violations subject to the provisions of Labor Code Section 5813 shall include but are not limited to the following:

- (a) Failure to appear or appearing late at an informal conciliation or arbitration hearing shall be deemed a bad faith action or tactic solely intended to cause unnecessary delay where a reasonable excuse is not offered or the offending party has demonstrated a pattern of such conduct.
- (b) Filing a pleading, petition or legal document shall be deemed a bad faith action or tactic that is frivolous or solely intended to cause unnecessary delay unless there is some reasonable justification for filing the document.
- (c) Failure to timely serve evidentiary documents, including but not limited to medical reports, shall be deemed a bad faith action or tactic that is frivolous or solely intended to cause unnecessary delay unless that failure resulted from mistake, inadvertence, or excusable neglect.
- (d) Failing to comply with the Basic Crafts ADR Program's Rules of Practice and Procedure or an order of the ADR Director or an ADR arbitrator, including an order of discovery, shall be deemed a bad faith action or tactic that is frivolous or solely intended to cause unnecessary delay unless that failure results from mistake, inadvertence, surprise, or excusable neglect.

### ***Rule 804: Failure to Appear.***

- (a) Where a party served with notice of arbitration fails to appear either in person or by attorney or representative, the ADR Director or arbitrator may:

- (1) dismiss the claim form after issuing a ten (10) day notice of intention to dismiss, or
- (2) hear the evidence and, after service of the minutes of hearing and summary of evidence that shall include a ten (10) day notice of intention to submit, make such decision as is just and proper.
- (b) Where a party served with notice of an informal conciliation fails to appear at the informal conciliation, the mediator may
  - (1) dismiss the claim form after issuing a ten (10) day notice of intention to dismiss, or
  - (2) close discovery and forward the case to the ADR Director to set the matter for arbitration.
- (c) Where a party, after notice, fails to appear at either an arbitration proceeding or an informal conciliation and good cause is shown for failure to appear, the ADR Director, arbitrator or mediator may take the case off calendar or may continue the case to a date certain.
- (d) Where a lien claimant served with notice of an informal conciliation fails to appear at the informal conciliation either in person or by attorney or representative, and fails to have a person with settlement authority available by telephone, the ADR Director, mediator or arbitrator may:
  - (1) dismiss the lien claim after issuing a ten (10) day notice of intention to dismiss with or without prejudice, or
  - (2) close discovery and forward the case to the ADR Director to set the matter for arbitration.
- (e) Where a lien claimant served with notice of an arbitration proceeding fails to appear, the ADR Director or arbitrator may:
  - (1) dismiss the lien claim after issuing a ten (10) day notice of intention to dismiss with or without prejudice, or
  - (2) hear the evidence and, after service of the minutes of hearing and summary of evidence that shall include a ten (10) day notice of intention to submit, make such decision as is just and proper, or
  - (3) defer the issue of the lien and submit the case on the remaining issues.

***Rule 805: Appearances Required.***

Unless the notice otherwise provides, the employee shall be present at an informal conciliation and the defendant and lien claimants whose liens have not been resolved or withdrawn shall have a person available with settlement authority. The person designated by the defendant to be available with settlement authority need not be present if an attorney or representative who is present can obtain immediate authority by telephone. The representative of the lien claimant with settlement authority must be present or available by telephone.

At the time of arbitration, all parties shall be present and the defendants shall have a person available with settlement authority in the same manner as set forth above. If a lien claimant whose lien has not been resolved or withdrawn is not present at the time of

arbitration, the lien claimant shall have a person available with settlement authority in the same manner as set forth above.

***Rule 806: Interpreters.***

The ADR Director or Arbitrator may in any case appoint an interpreter and fix the interpreter's compensation. It shall be the responsibility of any party producing a witness requiring an interpreter to arrange for the presence of a qualified interpreter.

The interpreter's fees that are reasonably, actually and necessarily incurred shall be allowed in the amount charged by the interpreter unless:

- (1) proof of unreasonableness is entered by the party contesting the reasonableness of the charge, or
- (2) the charge is manifestly unreasonable.

***Rule 807: Minutes of Hearing and Transcript.***

A transcript shall be prepared subsequent to the conclusion of arbitration and filed in the record of proceedings. It shall include:

- (a) The names of the arbitrator, the court reporter, the parties present, attorneys or other agents appearing therefore and witnesses sworn;
- (b) The place and date of said hearing;
- (c) All interlocutory orders, admissions and stipulations, the issues and matters in controversy, a descriptive listing of all exhibits received for identification or in evidence (with the identity of the party offering the same) and the disposition, which shall include the time and action, if any, required for submission;
- (d) If motion pictures are shown, a brief summary of their contents;
- (e) A fair statement of any offers of proof.
- (f) If the disposition is an order canceling the arbitration or a continuance, the reason therefore shall be given.

Minutes of informal conciliation shall be prepared at the conclusion of an informal conciliation and filed in the record of proceedings. They shall include:

- (a) The names of the mediator, the parties present, and attorneys or other agents appearing therefore;
- (b) The place and date of said mediation;
- (c) All interlocutory orders, admissions and stipulations, the issues and matters in controversy, and the disposition;
- (d) If the disposition is an order canceling the arbitration or a continuance, the reason therefore shall be given.

***Rule 808: Minute Orders.***

Interlocutory or interim orders, including dismissal of improper or unnecessary parties, may be entered upon the minutes of informal conciliation and will become the order of the ADR Director upon the filing thereof.

***Rule 809: Evidence Taken Without Notice.***

Transcripts of testimony taken without notice and copies of all reports and other matters added to the record, otherwise than during the course of an open hearing, shall be served upon the parties to the proceeding. Unless it is otherwise expressly provided, the parties shall be allowed 10 days after service of the testimony and reports within which to produce evidence in explanation or rebuttal or to request further proceedings before the case shall be deemed submitted for decision.

***Rule 810: Inactive Cases, Procedure, Subsequent Action.***

A claim form filed with the Basic Crafts ADR will be placed in the active claim files under the custody of the Basic Crafts' ombudsman staff.

Cases set for mediation or arbitration may be removed from the active calendar by an order canceling proceedings.

Cases in inactive status may be activated upon the filing and serving of a properly executed Workers' Compensation Grievance.

Unless a case is activated for hearing within one year after the filing of the claim form or the entry of an order canceling proceedings, the case may be dismissed after notice and opportunity to be heard. Such dismissals may be entered at the request of an interested party or upon the ADR Director's own motion for lack of prosecution. A case may be dismissed after issuance of a ten (10) day notice of intention to dismiss and an opportunity to be heard, but not by an order with a clause rendering the order null and void if an objection showing good cause is filed.

A petition by a defendant to dismiss the case must be accompanied by a copy of a letter mailed to the employee and, if represented, to the employee's attorney or representative, more than thirty (30) days before the filing of the petition to dismiss. This letter must state that it is the intention of the persons signing the letter to file a petition for dismissal thirty (30) days after the date of that letter unless the employee or his attorney or representative shows in writing some good reason for not dismissing the case. A copy of the reply, if any, must be attached to the petition to dismiss. A copy of the petition must be served on all parties and all lien claimants.

***Rule 811: Consolidated Cases.***

Consolidation of two or more related cases may be ordered for the purpose of receiving evidence. Whether consolidation is ordered or a master file is designated to accommodate exhibits rests in the sound discretion of the ADR Director or the arbitrator. In exercising that discretion, the ADR Director and arbitrator shall take into consideration the complexity of the issues involved and the potential prejudice of any party. Under consolidation, all documentary evidence previously received in an individual case shall be reintroduced in the consolidated proceedings under a master file, if so designated.

When so adduced, the evidence shall be deemed part of the record of each of the several consolidated cases. Evidence received subsequent to the order of consolidation shall be similarly received with like force and effect.

Any request or petition to consolidate cases shall be filed with the ADR Director.

***Rule 812: Pleadings in Consolidated Cases.***

Where cases are consolidated, joint minutes of hearing, transcripts and opinions may be used.

**Article 9: Evidence and Reports**

***Rule 901: Evidence and Reports.***

The filing of a document does not signify its receipt in evidence. Only those documents that have been expressly received in evidence by an arbitrator shall be included in the record of proceedings on the case.

***Rule 902: Copies of Reports and Records.***

Where documents, including videotapes, are to be offered into evidence at an arbitration proceeding, copies shall be served on all adverse parties no later than the informal conciliation, should the informal conciliation not result in resolution, unless a satisfactory showing is made that the documents were not available for service at that time.

***Rule 903: Formal Permanent Disability Ratings.***

Where extent of permanent disability is in issue, the parties shall produce evidence in the form of permanent disability ratings as to each parties contention as to the extent of permanent disability. Multiple ratings may be introduced by each party in the alternative.

The ADR Director or the arbitrator may conclude that the evidence produced regarding the appropriate rating of permanent disability is inadequate. If such a conclusion is reached, the ADR Director or the arbitrator may request that a permanent disability evaluator prepare a formal rating determination on a form prescribed for that purpose by the ADR Director. The request may refer to an accompanying medical report or chart for the sole purpose of describing measurable physical elements of the condition that are clearly and exactly identifiable. In every instance the request shall describe the factors of disability in full.

The report of the permanent disability evaluator in response to the request shall constitute evidence only as to the percentage of the permanent disability based on the factors described, and the report shall not constitute evidence as to the existence of the permanent disability described.

The report of the permanent disability evaluator shall be filed with the ADR Director and served on the parties and shall include or be accompanied by a notice that the case shall

be submitted for decision seven (7) days after service unless written objection is made within that time.

***Rule 904: Certified Copies.***

Certified copies of the reports or records of any governmental agency, division or bureau shall be admissible in evidence in lieu of the original reports or records.

***Rule 905: Reproduction of Documents.***

A nonerasable optical image reproduction provided that additions, deletions, or changes to the original document are not permitted by the technology, a photostatic, microfilm, microcard, miniature photographic, or other photographic copy or reproduction, or an enlargement thereof, of a writing is admissible as the writing itself if the copy or reproduction was made and preserved as a part of the records of a business (as defined by Evidence Code Section 1270) in the regular course of that business. The introduction of the copy, reproduction, or enlargement does not preclude admission of the original writing if it is still in existence. The ADR Director or the arbitrator may require the introduction of a hard copy printout of the document.

A printed representation of images stored on a video or digital medium is presumed to be an accurate representation of the images it purports to represent. This presumption is a presumption affecting the burden of producing evidence. If a party to an action introduces evidence that a printed representation of images stored on a video or digital medium is inaccurate or unreliable, the party introducing the printed representation into evidence has the burden of proving by a preponderance of the evidence, that the printed representation is an accurate representation of the existence and content of the images that it purports to represent.

***Rule 906: Physicians' Reports as Evidence.***

The Basic Crafts ADR Program favors the production of medical evidence in the form of written reports. Direct examination of a medical witness will not be received at a trial except upon a showing of good cause. A continuance may be granted for rebuttal testimony.

These reports should include where applicable:

- (a) the date of the examination;
- (b) the history of the injury;
- (c) the patient's complaints;
- (d) a listing of all information received from the parties reviewed in preparation of the report or relied upon for the formulation of the physician's opinion;
- (e) the patient's medical history, including injuries and conditions, and residuals thereof, if any;
- (f) findings on examination;
- (g) a diagnosis;
- (h) opinion as to the nature, extent, and duration of disability and work limitations, if any;
- (i) cause of the disability;
- (j) treatment indicated;

- (k) opinion as to whether or not permanent disability has resulted from the injury and whether or not it is stationary. If stationary, a description of the disability with a complete evaluation;
- (l) apportionment of disability, if any;
- (m) a determination of the percent of the total causation resulting from actual events of employment, if the injury is alleged to be a psychiatric injury;
- (n) the reasons for the opinion; and,
- (o) the signature of the physician.

Failure to comply with (a) through (o) will be considered in weighing the evidence.

In death cases, the reports of non-examining physicians may be admitted into evidence in lieu of oral testimony.

All medical-legal reports shall comply with the provisions of Labor Code section 4628. Except as otherwise provided by the Labor Code, including Labor Code sections 4628 and 5703, and the Basic Crafts ADR Rules of Practice and Procedure, failure to comply with the requirements of this section will not make the report inadmissible but will be considered in weighing the evidence.

Medical reports procured pursuant to the utilization review procedure set forth in Labor Code section 4610 are admissible, provided that all time limits set forth in section 4610 are met.

### ***Rule 907: Computer Printouts of Benefits Paid.***

If a party requests that a defendant provide a computer printout of benefits paid, within twenty (20) days the defendant shall provide the requesting party with a current computer printout of benefits paid. The printout shall include the date and amount of each payment of temporary disability indemnity, permanent disability indemnity, and the period covered by each payment, and the date, payee, and amount of each payment for medical treatment. This request may not be made more frequently than once in a one-hundred-twenty (120) day period unless there is a change in indemnity payments.

A defendant that has paid benefits shall have a current computer printout of benefits paid available for inspection at every informal conciliation.

### ***Rule 908: Filing and Service of Physicians' Reports.***

- (a) After the filing of a claim form, if a party is requested by another party or lien claimant to serve copies of physicians' reports relating to the claim, the party receiving the request shall serve copies of the reports on the requesting party or lien claimant within six (6) days of the request; the party receiving the request shall serve a copy of any subsequently-received physician's report within six (6) days of receipt of the report.
- (b) A Workers' Compensation Grievance, Declaration of Readiness to Arbitrate, or an objection to either shall be accompanied by the physicians' reports that are in the possession or under control of the grievant/declarant. At the time of filing, it shall be the duty of the grievant/declarant to serve copies of physicians' reports that have not

- been previously served and that are in the possession or under the control of the grievant/declarant on all other parties and all lien claimants requesting service.
- (c) Within six (6) days after service of the Workers' Compensation Grievance or Declaration of Readiness to Arbitrate, all other parties and lien claimants shall serve upon the opposing parties copies of all reports of physicians that are in their possession or under their control, and that have not been previously served. All reports that have not been previously filed, and whose filing is not required by subsection (b), shall be filed with the ADR Director.
  - (d) All physicians' reports that have not been previously filed shall be filed with the ADR Director upon the filing of a compromise and release or stipulations with request for award.
  - (e) X-rays shall not be transmitted to the ADR Basic Crafts Program, except under a specific order directing their production.

***Rule 909: Continuing Duty to Serve.***

During the continuing jurisdiction of the Basic Crafts ADR, the parties have a continuing duty to serve on each other, and any lien claimant requesting service, any physicians' reports received.

***Rule 910: Employer-Maintained Records.***

A written communication from a physician containing any information listed in Rule 906 that is contained in any record maintained by the employer in the employer's capacity as employer will be deemed to be a physician's report and shall be filed and served as required in Rules 911 and 912. Records from an employee assistance program are not required to be filed or served unless ordered by the ADR director or the arbitrator.

***Rule 911: X-Rays.***

On order of the ADR Director or the arbitrator, a party shall forthwith transmit all X-rays to the person designated in the order.

X-rays shall be subpoenaed only when they are relevant to pending issues and there is a present and bona fide intent to offer them in evidence. X-rays produced in violation of this rule will be ordered returned to their original custodian at the expense of the party causing them to be produced.

Upon reasonable request of a party, X-rays in the possession of, or subject to the control of, an adverse party or lien claimant shall be made available for examination by the requesting party or persons designated by that party at a time or place convenient to the persons to make the examination.

***Rule 912: Failure to Comply.***

Disclosure, service and filing of all medical reports in the possession and control of every party to a proceeding, except as otherwise expressly provided, are essential to and required in the expeditious determination of controversies.

The ADR Director or arbitrator may decline to receive in evidence, either at or subsequent to arbitration, any medical report offered by a party who has failed to comply with the provisions of Rules 911, 912, 913 or 914. A medical report shall not be refused



admission into evidence at arbitration, solely upon the ground of a late filing, where examination was diligently sought and said report came into possession or control of the party offering it within the preceding seven (7) days.

Where a willful suppression of a medical report is shown to exist in violation of these rules, it shall be presumed that the findings, conclusions and opinions therein contained would be adverse, if produced.

The remedies in this section are cumulative to all others authorized by law.

***Rule 913: Hospital and Physicians' Records.***

Subject to Labor Code section 3762, all parties, their attorneys, agents and physicians shall be entitled to examine and make copies of all or any part of physician, hospital, or dispensary records that are relevant to the claims made and the issues pending in a proceeding before the Basic Crafts ADR.

A party offering such records shall designate the particular portion or portions thereof believed to be relevant, specifically stating where in the records it may be found. The Basic Crafts ADR prefers that the designation be in writing and before the arbitration.

***Rule 914: Return of Exhibits.***

No exhibits filed or received in evidence will be released into the custody of a party, his attorney or other agent, except upon stipulation of the parties or by order of the ADR Director or the assigned arbitrator.

Sixty (60) days after decision is final in any proceeding, or after a case has been ordered off calendar, the ADR Director may, on its own motion, with or without notice, return:

- (a) to the owners or persons producing the same, all exhibits of a physical, mechanical or demonstrative evidentiary character, unless some other disposition is expressly provided for; and
- (b) to the respective owners or custodians, all permanent office records, X-rays, laboratory, clinical and hospital records and charts.

After a reasonable period of time following the conclusion of proceedings, the ADR Director may, with or without notice, make such order disposing of exhibits

**Article 10: Medical Examiners**

***Rule 1001: Medical Examination Directed by ADR Director or Arbitrator.***

The ADR Director or arbitrator may from time to time direct any employee claiming compensation to be examined by a regular physician, if the medical evidence available does not create an adequate medical record upon which to decide the issues in dispute. The reports generated from such an examination shall be submitted to the ADR Director or arbitrator for his or her consideration.

**Rule 1002: Prohibited Communication.**

All correspondence concerning the examination and reports of a physician appointed pursuant to Rule 1001 shall be made through the ADR Director or arbitrator, and no party, attorney or representative shall communicate with that physician with respect to the merits of the case unless ordered to do so, or permitted to do so, by the ADR Director or the arbitrator.

**Rule1003: Cross-Examination by Deposition.**

The Basic Crafts ADR Program favors cross-examination of medical witnesses by way of deposition. Reasonable costs in connection with such deposition shall be allowed.

**Rule1004: Choosing a Medical Evaluator.**

- (a) All qualified medical evaluators ("QME") shall be selected, by the party using the evaluator, from the Exclusive List of Medical Evaluators which consists of the Official Qualified Medical Evaluators List promulgated by the Department of Industrial Relations (DIR), as that list may be amended from time to time by the DIR, and with the limitation that only QME's in the following counties can be chosen: Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Kings, Lake, Lassen, Madera, Marin, Mariposa, Mendocino, Merced, Modoc, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Sonoma, Solano, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, Yolo, and Yuba.
- (b) Each party may select one QME from the Exclusive List of Medical Evaluators to conduct a comprehensive medical evaluation which must address all medical issues in dispute.
- (c) No party may obtain more than one evaluation, except that where an additional evaluation is reasonably necessary to address a specialty, the party needing the additional QME shall select it from the Exclusive List and that QME is limited to addressing only that specialty.
- (d) The parties may agree to an Agreed Medical Evaluator ("AME") regarding any issues in dispute, with the exception that an employee unrepresented by counsel shall not be allowed to agree to use an Agreed Medical Examiner, and any such agreement shall not be recognized as binding by the ADR Director, a mediator or an arbitrator.
- (e) The evaluation and opinion of the authorized medical provider, or providers if there is more than one, is admissible evidence at arbitration at the request of any party, regardless of whether the requesting party also seeks admission of evidence from a QME or AME.
- (f) The employer is not liable for the cost of medical evaluations furnished by anyone not authorized by the relevant Workers' Compensation Addendum and/or these Rules of Practice and Procedure.

## **Article 11: Record of Proceedings**

### ***Rule 1101: Record of Proceedings.***

The Record of Proceedings consists of: the pleadings, workers' compensation grievances, declarations of readiness to arbitrate, minutes of hearing and transcripts of testimony, proofs of service, evidence received in the course of a proceeding, exhibits marked but not received in evidence, notices, petitions, briefs, findings, orders, decisions and awards.

### ***Rule 1102: Confidentiality of Basic Crafts ADR Files.***

The contents of all Basic Crafts ADR files is confidential, and only parties to a given claim may have access to it, absent authorization of the trustees of the Basic Crafts Workers' Compensation Benefits Trust Fund, or a delegate thereof.

## **Article 12: Liens**

### ***Rule 1201: Lien Procedure.***

- a) Any lien claimant under Labor Code sections 4903 or 4903.1 shall file its lien in writing with the ADR Director, on a form prepared by the ADR Director. Lien claims filed in writing shall be accompanied by a full statement or itemized voucher supporting the lien and justifying the right to reimbursement and proof of service. All liens, along with a full statement or itemized voucher supporting the lien, shall be served upon the injured employee (or, if deceased, upon worker's dependents), the employer, the insurance carrier and the respective attorneys or other representatives of record. Service of a lien on a party shall constitute notice to it of the existence of the lien.
- (b) The lien claimant shall provide the name, mailing address, and daytime telephone number of a person who will be available at the time of all conferences and trials, and will have authority to resolve the lien on behalf of the lien claimant.
- (c) After a lien has been filed, the lien claimant shall continue to file and serve amendments to the lien on the parties.
- (d) The lien claimant shall be notified by the ADR Director when a hearing is scheduled.

### ***Rule 1202: Unemployment Compensation Disability Liens.***

When an unemployment compensation disability lien is filed by the Employment Development Department, there shall be a rebuttable presumption that the amounts stated therein have been paid to the injured worker by the Employment Development Department.

In any case involving a lien claim for unemployment compensation disability benefits or unemployment compensation benefits and extended duration benefits where it appears that further benefits may have been paid subsequent to the filing of the claim of lien, the ADR Director or arbitrator shall notify the lien claimant when the case is ready for

decision or confirm that any lien claimant was served with a copy of any settlement document filed with a request for approval. The lien claimant shall have five (5) days thereafter in which to file and serve an amended lien reflecting all payments made to and including the date of filing of the amended lien.

In cases where a compromise and release is filed and continuing unemployment compensation disability benefits or unemployment compensation benefits and extended duration benefits are being paid, the ADR Director or arbitrator will ascertain the full amount of the lien claim as of the time of the approval of the compromise and release so that the agreement reflects the actual unemployment compensation disability or unemployment compensation and extended duration payments made to the date of decision.

## **Article 13: Attorneys and Representatives**

### ***Rule 1301: Legal Representation***

Either party to a case before the Basic Crafts Workers' Compensation Program may be represented by an attorney at any point in the life of the claim. Upon agreeing to represent a party to a claim within the jurisdiction of the Basic Crafts Workers' Compensation ADR, a Notice of Representation shall be filed with the Basic Crafts Program forthwith. Said attorney may be fully involved in the proceedings without restriction, with the caveat that once an injured employee retains counsel, he or she will no longer be entitled to the aid and counsel of the ombudsman.

### ***Rule 1302: Law Firm Employees.***

- (a) Law firm employees not holding current active membership in the State Bar may appear on behalf of the law firm if:
  - (1) the client has been fully informed of the involvement of the law firm employee and that the person is not a current active member of the State Bar of California;
  - (2) in all proceedings where the law firm employee appears and in all documents the person has prepared, the person appearing or preparing the documents is identified and it is fully disclosed that the person is not licensed to practice law in the State of California; and
  - (3) the attorney directly responsible for supervising the law firm employee appearing in any proceedings is identified.
- (b) The ADR Director or the arbitrator shall not approve any compromise and release agreement or stipulations with request for award signed by a law firm employee who is not currently an active member of the State Bar of California without the specific written authorization of the attorney directly responsible for supervising the law firm employee.

### ***Rule 1303: Substitution or Dismissal of Attorneys.***

Substitution or dismissal of attorneys must be made in the manner provided by Code of Civil Procedure Sections 284, 285 and 286. Dismissal of agents may be made by serving and filing a statement of dismissal.

***Rule 1304: Reasonable Attorney's Fee.***

In establishing a reasonable attorney's fee, the ADR Director, mediator or arbitrator shall consider the following:

- (a) the responsibility assumed by the attorney,
- (b) the care exercised in representing the applicant,
- (c) the time involved, and
- (d) the results obtained.

***Rule 1305: Approval of Attorney's Fee.***

- (a) No request for payment or demand for payment of a fee shall be made by any attorney for, or agent of, a worker or dependent of a worker until the fee has been approved or set by the ADR Director, mediator or arbitrator.
- (b) No attorney or agent shall accept any money from a worker or dependent of a worker for the purpose of representing the worker or dependent of a worker before the Basic Crafts ADR, until the fee has been approved or set by the ADR Director, mediator or arbitrator.
- (c) Any agreement between any attorney or agent and a worker or dependent of a worker for payment of a fee shall be submitted to the ADR Director, mediator or arbitrator for approval within ten (10) days after the agreement is made.

***Rule 1306: Request for Increase of Attorney's Fee.***

All requests for an increase in attorney's fee shall be accompanied by proof of service on the applicant of written notice of the attorney's adverse interest and of the applicant's right to seek independent counsel. Failure to so notify the applicant may constitute grounds for dismissal of the request for increase in fee.

***Rule 1307: Disbarred and Suspended Attorneys.***

An attorney who has been disbarred or suspended by the Supreme Court for reasons other than nonpayment of State Bar fees, or who has been placed on involuntary inactive enrollment status by the State Bar, or who has resigned while disciplinary action is pending shall be deemed unfit to appear as a representative of any party before the Basic Crafts ADR during the time that the attorney is precluded from practicing law in this state. Any attorney claiming to be qualified to appear as a representative before the Basic Crafts ADR despite disbarment, suspension or resignation may file with the ADR Director a petition for permission to appear. The petition shall set forth in detail:

- (1) the facts leading to the disbarment, suspension or resignation; and
- (2) the facts and circumstances alleged by the attorney to establish competency, qualification and moral character to appear as a representative before the Basic Crafts ADR. The petition shall be verified and a copy thereof served on the State Bar of California.

## **Article 14: Findings, Awards and Orders**

### ***Rule 1401: Dismissal Orders.***

Except as provided in Rules 804 and 810 and unless good cause to the contrary appears, orders of dismissal of claim forms shall issue forthwith when requested by the employee. All other orders of dismissal of claim shall issue only after service of a notice of intention allowing at least fifteen (15) days for the adverse parties to show good cause to the contrary, and not by an order with a clause rendering the order null and void if an objection showing good cause is filed.

## **Article 15: Reconsideration**

### ***Rule 1501: Filing Petitions for Reconsideration and Answers.***

A petition for reconsideration from a final order, decision, or award made and filed by the ADR Director or an arbitrator shall be filed within twenty (20) days of the service of the final order, decision, or award (see Labor Code section 5900 et seq. and Title 8, California Code of Regulations section 10865) directly with the office of the Workers' Compensation Appeals Board in San Francisco (P. O. Box 429459, San Francisco, CA 94142-9459). A copy of the petition for reconsideration shall be served on the ADR Director at the Basic Crafts ADR Program, 265 Hegenberger Road, Suite 240, Oakland, CA 94621.

The petition for reconsideration shall be captioned so as to identify it as a Petition for Reconsideration from Arbitrator's Decision Under Labor Code section 3201.5 or 3201.7, and shall set forth the injured worker's name, date of birth, social security number, and the date on which the ADR Director or the arbitrator served the arbitration decision. Proof of service of the arbitration decision on the parties shall be either by a verified statement of the arbitrator indicating the date of service and listing the names and addresses of the persons served or by written acknowledgment of receipt by the parties at the time of the arbitration proceedings. In addition, a copy of that portion of the collective bargaining agreement relating to the arbitration and reconsideration processes shall be submitted by the petitioner.

Upon receiving the petition for reconsideration, the ADR Director or the arbitrator shall forward to the Appeals Board in San Francisco the record of proceedings, including the transcript of proceedings, if any, a summary of testimony if the proceedings were not transcribed, the documentary evidence submitted by each of the parties, and an opinion that sets forth the rationale for the decision as to each contention raised by the petition.

After the ADR Director's decision or the arbitration decision has been made, the ADR Director or arbitrator shall maintain possession of the record of proceedings until the time for filing a petition for reconsideration has passed. Thereafter one of the parties may be designated custodian of the arbitration record as provided for in the collective bargaining agreement.

***Rule 1502: Contents of Petition for Reconsideration and Answer.***

All petitions for reconsideration shall be filed on 8 ½ x 11 inch paper with two holes punched at the top and centered to fit the Workers' Compensation Appeals Board file, and shall include in the heading the name of the injured employee and the Basic Craft ADR case number. Petitions for reconsideration shall be double spaced, except that quotations may be single spaced.

Every petition for reconsideration shall fairly state all the material evidence relative to the point or points at issue. Each contention contained in a petition for reconsideration shall be separately stated and clearly set forth.

Copies of documents that have already been received in evidence or that have already been made part of the legal file shall not be attached as exhibits to petitions for reconsideration or answers to petitions for reconsideration. Documents attached in violation of this rule may be detached from the petition for reconsideration or answer and discarded.

***Rule 1503: Petitions to Remove.***

(a) Petitions to remove and responses or answers thereto shall be filed directly with the office of the Appeals Board in San Francisco within twenty (20) days of the service of the final order, decision, or award made and filed by the ADR Director or the arbitrator. A copy of the petition for reconsideration shall be served on the ADR Director at the Basic Crafts ADR Program, 265 Hegenberger Road, Suite 240, Oakland, CA 94621.

(b) At any time within twenty (20) days after the service of the order or decision, or of the occurrence of the action in issue, any party may petition for removal based upon one or more of the following grounds:

(1) The order, decision or action will result in significant prejudice.

(2) The order, decision or action will result in irreparable harm.

The petitioner must also demonstrate that reconsideration will not be an adequate remedy after the issuance of a final order, decision or award. Failure to file the petition to remove timely shall constitute valid ground for dismissing the petition to remove.

(c) A copy of the petition to remove shall be served forthwith upon all parties by the petitioner. Any adverse party may file an answer within ten (10) days after service. No supplemental petitions, pleadings or responses shall be considered unless requested or approved by the Appeals Board.

(d) The ADR Director or the arbitrator may, within fifteen (15) days of the filing of the petition to remove, rescind the order or decision in issue, or take action to resolve the issue raised in the petition to remove. If the ADR Director or the arbitrator so acts, or if the petitioner withdraws the petition at any time, the petition to remove will be deemed automatically dismissed, requiring no further action by the Appeals Board. The issuance of a new order or decision, or the occurrence of a new action, will recommence the time period for filing a petition to remove as described above.

- (e) The filing of a petition to remove does not terminate the ADR Director's or the arbitrator's authority to proceed in a case or require the ADR Director or the arbitrator to continue or cancel a previously scheduled hearing absent direction from the Appeals Board. After a petition to remove has been filed, the arbitrator shall consult with the ADR Director prior to proceeding in the case or continuing or canceling a scheduled hearing.

***Rule 1504: Skeletal Petitions.***

A petition for reconsideration may be denied if it contains no more than allegations of the statutory grounds for reconsideration unsupported by specific references to the record and principles of law involved.

***Rule 1505: Supplemental Petitions.***

When a petition for reconsideration has been timely filed, supplemental petitions or pleadings or responses other than the answer shall be considered only when specifically requested or approved by the Appeals Board. Supplemental petitions or pleadings or responses other than the answer, except as provided by this rule, shall neither be accepted nor deemed filed for any purpose and shall not be acknowledged or returned to the filing party.

***Rule 1506: Proof of Service.***

Service of copies of a petition for reconsideration, removal, or disqualification shall be made on all parties to the case and on any lien claimant, the validity of whose lien is specifically questioned by the petition, and to any party whose case has been consolidated therewith pursuant to Section 10590. Failure to file proof of service shall constitute valid ground for dismissing the petition.

***Rule 1507: Insufficiency of Evidence.***

Where reconsideration is sought on the ground that findings are not justified by the evidence, the petition shall set out specifically and in detail how the evidence fails to justify the findings.

***Rule 1508: Allegations of Newly Discovered Evidence and Fraud.***

Where reconsideration is sought on the ground of newly discovered evidence that could not with reasonable diligence have been produced before submission of the case or on the ground that the decision had been procured by fraud, the petition must contain an offer of proof, specific and detailed, providing:

- (a) the names of witnesses to be produced;
- (b) a summary of the testimony to be elicited from the witnesses;



- (c) a description of any documentary evidence to be offered;
- (d) the effect that the evidence will have on the record and on the prior decision; and
- (e) as to newly discovered evidence, a full and accurate statement of the reasons why the testimony or exhibits could not reasonably have been discovered or produced before submission of the case.

A petition for reconsideration sought upon these grounds may be denied if it fails to meet the requirements of this rule, or if it is based upon cumulative evidence.

***Rule 1509: Correction of Errors.***

Before a petition for reconsideration is filed, the ADR Director or the arbitrator may correct the decision for clerical, mathematical or procedural error or amend the decision for good cause under the authority and subject to the limitations set out in Sections 5803 and 5804 of the Labor Code.

***Rule 1510: Orders After Filing of Petition for Reconsideration.***

After a petition for reconsideration has been timely filed, the ADR Director or the arbitrator may, within the period of fifteen (15) days following the date of filing of that petition for reconsideration, amend or modify the order, decision or award or rescind the order, decision or award and conduct further proceedings. Further proceedings shall be initiated within thirty (30) days from the order of recession. The time for filing a petition for reconsideration pursuant to Labor Code section 5903 will run from the filing date of the new, amended or modified decision. After this period of fifteen (15) days has elapsed, the ADR Director or the arbitrator shall not make any order in the case nor correct any error until the Appeals Board has denied or dismissed the petition for reconsideration or issued a decision after reconsideration.

***Rule 1511: Report of ADR Director or Arbitrator.***

Petitions for reconsideration, petitions for removal and petitions for disqualification shall be referred to the ADR Director or arbitrator from whose decisions or actions relief is sought. The ADR Director or arbitrator shall prepare a report that shall contain:

- (a) a statement of the contentions raised by the petition;
- (b) a discussion of the support in the record for the findings of fact and the conclusions of law that serve as a basis for the decision or order as to each contention raised by the petition, and
- (c) the action recommended on the petition.

The ADR Director or arbitrator shall send the report and the Basic Crafts ADR file to the Appeals Board within fifteen (15) days after the petition is filed unless the Appeals Board grants an extension of time. The ADR Director or arbitrator shall serve a copy of the report on the parties and any lien claimant, the validity of whose lien is specifically questioned by the petition, at the time it is sent to the Appeals Board.

***Rule 1512: Hearing After Reconsideration Granted.***

Where reconsideration has been granted and the case referred to the ADR Director or arbitrator for proceedings on reconsideration, the ADR Director or arbitrator shall, upon the conclusion thereof, prepare and serve upon the parties a summary of evidence received in the proceedings after reconsideration is granted.

Unless otherwise instructed by the panel before which a case is pending, the ADR Director or arbitrator to whom the case has been assigned for further proceedings may rule on requests for postponement, continuance of further hearing, join additional parties, dismiss unnecessary parties where such dismissal is not opposed by any other party to the case, make all interlocutory or procedural orders that are agreed to by all parties, issue subpoenas, rule on motions for discovery, rule on all evidentiary motions and objections, and make all other rulings necessary to expedite and facilitate the trial and disposition of the case. The ADR Director or arbitrator shall not order a medical examination, obtain a recommended disability evaluation, make an order taking the case off calendar, nor make an order approving or disapproving compromise and release.

***Rule 1513: Authority of ADR Director or Arbitrator After Decision After Reconsideration.***

After a decision after reconsideration has become final, subsequent orders and decisions in a case may be made by the ADR Director or an arbitrator to whom the case is assigned pursuant to Rule 203, including orders approving or disapproving compromise and release, orders allowing or disallowing liens, orders for enforcement of the decision of the Appeals Board, orders granting or denying petitions to reopen, orders rescinding, altering or amending the decision of the Appeals Board for good cause under Labor Code Section 5803, orders for increased compensation under Labor Code Section 5814, orders terminating liability, orders for commutation and orders resolving issues that the Board in its decision has left for determination by the ADR Director or an arbitrator.

The ADR Director or the arbitrator may not make an order correcting a decision after reconsideration for clerical, mathematical, or procedural error. Requests for such correction shall be acted on by the panel that made the decision or if the composition of the Board has changed, by the successor panel.

**Article 16: Settlements.**

***Rule 1601: Approval of Compromise and Release.***

Agreements that provide for the payment of less than the full amount of compensation due or to become due and undertake to release the employer from all future liability will be approved only where it appears that a reasonable doubt exists as to the rights of the parties or that approval is in the best interest of the parties.

***Rule 1602: Action on Settlement Agreement.***

The ADR Director, mediator or arbitrator shall inquire into the adequacy of all compromise and release agreements and stipulations with request for award. The ADR Director may set the matter for hearing to take evidence when necessary to determine whether the agreement should be approved or disapproved, or issue findings and awards.

***Rule 1603: Service on Lien Claimants.***

Where a lien claim is on file with the Basic Crafts ADR Program or where a party has been served with a lien, and a compromise and release agreement or stipulations with request for award or order is filed, a copy of the compromise and release agreement or stipulations shall be served on the lien claimant.

No lien claim shall be disallowed or reduced unless the lien claimant has been given notice and an opportunity to be heard.

***Rule 1604: Walk-Through Documents.***

Any party to a case filed with the Basic Crafts ADR Program may schedule an expedited meeting with the ADR Director, a mediator or an arbitrator to obtain review and, if appropriate, approval of any settlement document. A party wishing to schedule such a meeting should contact the ADR Director to schedule such a meeting. (See Rule 508).