

2.24. REPORTS OF COURTPPOINTED IMPARTIAL MEDICAL EXAMINERS. -- The report of the findings of a court appointed impartial medical examiner and/or a comprehensive independent health care review team shall be admissible as an exhibit of the court. The court shall provide copies of the report to the parties or their attorneys upon receipt. If a party elects to contest the findings of the report, notice of contest must be filed with the court within ten (10) days of receipt of the report. A notice of deposition to depose the impartial medical examiner, a subpoena issued to the examiner to appear in court at the next scheduled hearing, or a notice of objection signed by the contesting party and filed with the court, shall constitute a notice of contest as required by G.L. 1956 § 28-33-35 if filed with the court within ten (10) days of receipt of the report. The contesting party shall pay the cost of the deposition of the examiner, including any reasonable fee to the examiner, or the cost of the appearance of the examiner to testify before the court. If after hearing, the employee has successfully prosecuted her/his petition or has successfully defended, in whole or in part, any employer's petition, the employer shall reimburse the employee for the entire cost of the deposition or testimony of the author of the report, including any expert witness fee.

Reporter's Notes. This rule reconciles several different statutory provisions regarding the appointment and use of the impartial medical examiner. The appointment of an impartial medical examiner to examine an employee and to provide advice on the employee's medical status can occur at several points in a workers' compensation case. The court is authorized to order an impartial medical examination pursuant to G.L. 1956 §§ 28-34-5, 28-35-22, and 28-35-24. While most of these provisions are silent regarding the procedure to be followed to preserve a party's right of cross-examination of the author of the report, G.L. 1956 § 28-33-35 imposes a duty on any party contesting the report of the impartial examiner to file a "Notice of Contest" within ten (10) days of the receipt of the report.

The rule promulgated by the court recognizes the value of adopting a uniform procedure to ensure a party's right of cross-examination and applies the rule to all situations where an impartial examination is held. The rule also liberally interprets the term "Notice of Contest" to include any document or pleading designed to apprise a party and the court that the objecting party intends to preserve the right to cross-examine the author of the report.

The rule has been amended to delete reference to the procedure set forth in W.C.C. - R.P. 2.13(B)(3) regarding shifting the costs of deposing expert witnesses in order to be consistent with the language of G.L. 1956 § 28-33-35 which states that the party contesting the findings of the impartial medical examiner shall pay the cost of the appearance of the examiner.