

2.3. PRETRIAL CONFERENCE – FAILURE TO APPEAR. -- (A) In the event that a party, after proper notice, fails to appear at the pretrial conference, the judge before whom the matter is being heard may, in her/his discretion, enter a pretrial order granting, denying, or dismissing the petition. Dismissals may be with or without prejudice. Any pretrial order so entered shall contain a finding that the absent party, with due notice, failed to appear.

(B) Relief from Pretrial Order. -- After a pretrial order has been entered by the judge following a party's failure to appear, the judge may, on motion and upon such terms as are just, relieve a party from any order which has been entered pursuant to G.L. 1956 § 28-35-20 for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) fraud, misrepresentation, or other misconduct of an adverse party; (3) the pretrial order is void; (4) the orders have been previously satisfied, released, or discharged; or (5) any other reason justifying relief from operation of the pretrial order. The motion shall be filed within a reasonable time and not more than six (6) months after the date on which the pretrial order was entered. A motion under this rule does not affect the finality of the pretrial order or suspend its operation.

Reporter's Notes. This rule varies substantially from the practice in other courts and acknowledges the requirements imposed by G.L. 1956 § 28-35-20 on the court with reference to the pretrial conference. It also recognizes that in proceedings before the Workers' Compensation Court, service of process on the respondent is effectuated by the moving party. (See G.L. 1956 §§ 28-35-14, 28-35-15, and 28-35-17.) In those cases where a party fails to appear, the court may, in its discretion, allow the appearing party to proceed and may thereafter enter an order adverse to the absent party.

W.C.C. - R.P. 2.3(B) is modeled after Rule 60(b) of the Superior Court Rules of Civil Procedure, but limits the time within which to file a motion seeking relief from a pretrial order to a period not to exceed six (6) months from the date the pretrial order was entered. Since an unappealed pretrial order ripens into a decree under the provisions of G.L. 1956 § 28-35-20, review of such a decree alleging fraud is governed by G.L. 1956 § 28-35-61, which requires that any petition alleging that a decree has been procured by fraud must be filed within six (6) months of the date such decree was entered. This rule is therefore modified to reflect that statutory time constraint.