

JUDGE'S PROCEDURAL RULES AND POLICIES

Workers' Compensation Automation and Integration System (WCAIS) is the official repository for all documents related to a Dispute (matter pending) before a Workers' Compensation Judge. All documents, including evidence and briefs, that would have been submitted to a Workers' Compensation Judge by mail or in person prior to WCAIS should now be uploaded into WCAIS. If Social Security numbers appear on any such document, they should be completely redacted before the document is uploaded, unless otherwise specified below. All communications with the Judge, including but not limited to requests, should be submitted through WCAIS unless otherwise specified by the Judge.

HEARING PROCEDURES

1. What is the first event and what will occur?

Other than a C&R approval hearing, at which testimony will be completed virtually, in the absence of request from counsel to reschedule as In -Person, every first hearing is conducted as a virtual or telephonic Pre-trial. At such time counsel should be prepared to identify the issues in dispute, potential witnesses, medical and/or lay, and estimated amount of time required for the next hearing. Scheduling orders will then be issued for the completion of any requisite IMEs, the relisting for a subsequent testamentary hearing, mandatory mediation, subsequent medical depositions, and anticipated close of the record. For a typical Pre-trial hearing, provided both sides are represented by counsel, it is not required for the Claimant or an employer representative to participate. At the Pre-trial it shall be determined whether any subsequent hearing for testimony will be conducted In-Person or virtually.

a. List any documents required at the first event:

While not required, counsel are at leave, and it is preferred, for at least the moving party to upload any exhibits supporting the existing petitions.

b. Should documents be uploaded as Exhibits or Letters to the Judge?

Any documents intended to be relied upon by either party should be uploaded as exhibits. Letters to the Judge are not considered evidentiary in nature, and should be limited to procedural aspects of the dispute.

2. Describe the format of your hearings (e.g., serial, one day – one trial).

I traditionally conducted a modified one day/one trial format, where all lay witness testimony was completed at the first hearing following the Pre-trial, with mediation and medical depositions to follow. When employer lay witness testimony is required prior to Claimant's testimony, such format can still be utilized. However, my format has been modified to some extent. Presently, typically, the first testamentary hearing following the Pre-trial is utilized for the Claimant's testimony. Following mediation, if no resolution and employer witness testimony is necessary, a subsequent hearing will be scheduled. Procedural and status virtual conference hearings are frequently used to address any procedural issues and confirm counsels' compliance with scheduling orders.

3. Are you willing to change the hearing format upon request?

Based upon the nature of disputes at issue, and preferably in conjunction with the consent of both counsel, the hearing format can be adjusted to best serve the due process of all parties.

4. What factors will you consider in deciding whether to conduct a hearing in-person?

Opportunities for in person hearings are readily available. Whether an-in person event best suits the interests of the parties will be addressed at the initial Pre-trial. Considerations may include, but not limited, to the video capabilities

of witnesses for credibility purposes or disfigurement claims, as well as travel/scheduling considerations for all parties. However, if either party has a preference for an In-Person hearing, such shall be granted in the absence of some particularly compelling basis.

5. What factors will you consider in deciding whether to conduct a virtual hearing by audio only or by audio with video?

Video virtual hearings are available, and preferred to telephone participation, and such information to participate in the same, is provided to counsel. Counsel should, as far as possible in advance, share such info with clients and/or any witnesses for hearings. However, if any interested party is not capable of participating via video, or particularly if the hearing is simply a status/procedural hearing, audio participation is acceptable, in the absence of objection of counsel.

6. What procedure do you follow if a party fails to appear at a hearing?

An Interlocutory Order is issued to the non-participating party advising as to the hearing, the non-participation in the same, and potential consequences without further Notice or hearing, if communication as to good cause for failure to participate, or intention to defend is not provided, within a set period of time, typically 20-30 days, dependent upon the nature of petition.

7. Do you have special procedures for psychological injury cases?

Such is determined on a case by case basis, dependent upon representation of counsel, and the potential need of appointment of a trustee.

SUPERSEDEAS PROCEDURES

1. What are your procedures for supersedeas hearings?

Supersedeas is addressed at the initial Pre-trial hearing. Consistent with The Judges' Rules of Practice, time is allocated for the parties to submit Exhibits, in support or opposition to the request. An Interlocutory Order is then issued addressing the same.

a. Will testimony be heard?

Affidavits, written statements, job offers, and medical reports are used to address supersedeas in lieu of testimony.

b. Is additional time generally granted to obtain medical evidence?

Counsel should be prepared, as early as possible, to upload documentation in support, or opposition to supersedeas so that consistency with the Judges' Rules of Practice may be maintained. However, upon request and preferably with advance consent of opposing counsel, with good cause shown, extensions for submission of exhibits addressing supersedeas can be granted.

c. Under what circumstances will you reconsider a supersedeas order?

Consistent with the Judges' Rules of Practice, following an additional hearing, and upon consideration of additional probative evidence, reconsideration of a prior supersedeas order may be requested by either party.

d. Do you generally use written orders for denials?

Written Interlocutory Orders are consistency utilized for decisions on supersedeas.

e. What is required for employee's counsel to obtain interim fee approval?

Provided that an executed fee agreement is submitted, and a denial of supersedeas results in a continuance of a Claimant's indemnity benefits, an attorney fee is typically approved as part of the supersedeas order.

f. Describe any other procedures for supersedeas hearings:

N/A

g. Describe procedures for special supersedeas hearings, if different:

Special supersedeas hearings are scheduled in an expedited manner consistent with the Workers' Compensation Act, as Amended.

WITNESSES/EXHIBITS

1. What are your rules regarding taking testimony?

Consistent with "Hearing Instructions" above, at the Pre-trial time is allocated for direct and cross examination of at subsequent hearing(s) of the Claimant and any identified witnesses.

2. Do you require testimony at a virtual hearing, an in-person hearing, or by deposition?

Testimony may be conducted virtually, preferably via video or In-Person. Upon request and in conjunction with discussions with counsel, in-person hearings are readily available, and dependent upon the nature of the Petition(s) at times preferred. Upon consent of both counsel, testimony via deposition is permissible.

3. Under what circumstances will you change your requirements for presentation of testimony?

Consistent with #2, I try to accommodate the best interests of the parties while maintaining due process and compliance with scheduling orders and the expeditious completion of the evidentiary record.

4. If counsel wishes to present the testimony of a witness (either virtually or in-person), do you require prior notice?

If a witness not previously identified, is intended to be presented, counsel should provide advance notice, as far as possible as to the identity of the witness, expedited amount of time required, and a brief offer of proof, as to the nature of the testimony. If a hearing is already scheduled, if possible additional time may be allocated. If additional time is not available, or no hearing then presently scheduled, counsel may simply submit a "Request for hearing" through WCAIS, providing the above info and a hearing or follow up hearing to the one scheduled, will be scheduled accordingly. **If yes, how much notice do you require?** See above.

5. What is your procedure regarding the order of expert medical testimony when cross petitions are filed?

Typically, the initial moving party's medical deposition will be completed first. However, dependent upon the nature of the petitions, and in conjunction with discussions with counsel, alternative scheduling orders may be considered.

6. Do the parties need to upload the Bureau and WCOA documents as exhibits or will you admit them electronically as Judge exhibits?

While counsel are at leave to upload documents that they believe are probative to the issues at hand, as part of my hearing preparation, I typically upload the primary controlling Bureau or WCOA Documents as Judge's Exhibits.

7. **Do you require counsel to upload exhibits to WCAIS before or after the hearing?** Preferably before, if they are to be discussed or addressed at hearing **If before, how far in advance of the hearing must they be uploaded?**

I have no specific constraints about the timing of uploading of exhibits other than C&R documentation.

8. **When will you rule on objections to exhibits?**

I try to be very specific, on the record during the course of every Pre-trial, that counsel are not only at leave, but it is preferable for counsel to upload exhibits into WCAIS as opposed to having to submit them in conjunction with a hearing. When counsel submit exhibits into the evidentiary record, I automatically receive notice as to the same. I then go ahead and mark them into the evidentiary record as “admitted.” However, hearsay or other relevant objections are deemed preserved, without other need to preserve objections, for the case in chief, pending completion of the evidentiary record. Then prior to the close of the evidentiary record, when I send out the final scheduling order for proposed findings, I advise counsel to review the evidentiary record, and that they may preserve objections at that time, if they feel objections have not been properly remedied. If a dispute exists as to the same, a status hearing can be scheduled to address the same, and rulings/and/or extensions to the close of the record made accordingly.

9. **What is your procedure for handling discovery disputes?**

Dependent upon the nature of the dispute, such will be addressed by either correspondence, Interlocutory Order, or virtual status hearing.

10. **What is the last day to file written preservations of deposition objections?**

Such may be preserved, prior to submission of Findings, by separate Exhibit.

COMPROMISE & RELEASES (C&Rs)

1. **Describe your procedures regarding the review of C&R Agreements:**

Counsel should submit, as early as possible, but at least 3-5 days in advance, the C&R documentation

- a. **Are you willing to allow amendments of existing petitions or do you require the filing of a separate Petition Seeking Approval of a C&R Agreement?**

Amending existing petitions is acceptable, and preferred unless the C&R does not conclude existing petitions, at which time a separate C&R Petition may be required.

- b. **Are parties required to provide a draft of the C&R Agreement before the hearing? If yes, how far in advance of the hearing do you need to receive it?**

Yes. Preferably executed, as early as possible. If counsel upload the C&R documents three days or more in advance of hearing, my staff will have a draft of the order approving prepared, and it will be more likely that we can approve Orders granting C&Rs the day of the hearing, allowing for it to be in mail the next mailing date.

- c. **Should the parties upload the signed C&R Agreement, including the fee agreement and any other attachments, before or after the hearing?**

All supportive documentation shall be uploaded at the earliest opportunity prior to the hearing. Preferably three days in advance.

d. Should child support documents be uploaded as a separate exhibit?

Yes.

e. Should Social Security numbers and other confidential information be redacted from the C&R Agreement and Act 109 documents?

Yes

f. Will you sign bench orders?

Being that C&R hearings can be conducted virtually, provided that counsel have timely uploaded the C&R documents, a signed Bench Order will likely not be received by counsel prior to the WCAIS approval of the C&R. However, I do sign Bench Orders.

g. Describe any other procedures you have for C&R Agreements:

N/A

STIPULATIONS RESOLVING DISPUTES

1. What are your usual procedures regarding the submission, review, and adoption of stipulations?

Counsel shall upload the Stipulation as an Exhibit into WCAIS with a separate WCAIS request for an Order approving the same, confirming if such approves all or portion of any exiting dispute, including indications as to approval of attorney fees or costs or other matters to be included in Order.

2. Should the fee agreement be part of the stipulation or separate exhibit?

The fee agreement should be referenced in the Stipulation, but then uploaded as a Claimant Exhibit.

3. Should child support documents be uploaded as a separate exhibit?

Yes

4. What other exhibits should be uploaded (i.e. medical bills, etc.)?

If there are specific medical bills etc. addressed in the Stipulation, it may avoid future disputes by uploading or attaching them to the Stipulation. But otherwise, not required.

5. Should other exhibits uploaded as be part of the stipulation or as separate exhibits?

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See #4

6. When should Social Security numbers and other confidential information be redacted from the stipulation and Act 109 documents?

Yes

7. Describe any other procedures you have for stipulations:

N/A

BRIEFS AND PROPOSED FINDINGS

1. Will you close a case via WCAIS submission or is a final hearing required?

Cases will typically be closed via WCAIS without Final Hearing, unless requested by counsel.

2. What are the time requirements for final submissions and what procedures are taken when time requirements are not met?

I set Dispute Alerts for the completion of medical depositions following mediation, if no resolution. Following the same I send out via Judge Communication, a Final Scheduling Order for the close of the evidentiary record, to close upon the uploading of “Briefs”, with a specific date assigned for the same. In the absence of Notice received as to good cause for holding the evidentiary record open, if both counsel have not submitted Findings, by the assigned date, I send correspondence to counsel that the evidentiary record has been closed, the matter moved to “Waiting for Decision”, and that Proposed Findings may be considered if received prior to the issuance of decision.

3. Describe any preferences regarding the format and content of final submissions:

Proposed Findings of Fact and Conclusions of Law should contain a short recitation, paragraphs format, of the procedural history and petitions pending, followed by a very succinct objective summary of the evidentiary record. The summary of the evidentiary record should not be argumentative in nature. Following counsel’s objective summary of the evidentiary record, counsel should then present an indication, and this is where the argumentative aspect is acceptable, as to “based upon the foregoing” this is how the Judge should rule, addressing all of the issues, and explaining why, particularly presenting indications as why the Judge should make credibility determinations as to each witness. The Conclusions of Law portion may then address if there are any legal issues in question requiring case precedent. A proposed Order should then follow addressing all issues.

MANDATORY MEDIATIONS

1. List the offices where you conduct mandatory mediations:

Virtual, as well as In-Person, if essential, with advance scheduling are held at the Clearfield, & Altoona, and remote hearing locations, when available in Lewistown and State College.

2. What factors will you consider in deciding whether to conduct a mandatory mediation virtually or in-person?

If both counsel are in strong agreement that an in-person mediation is essential, as the Claimant would not be effectively capable of participating via audio or video, in-person mediations can be available, However, based upon present experience virtual mediations can be just as effective as in person

3. What factors will you consider in deciding whether to conduct a virtual mandatory mediation by audio only or by audio with video?

I allow counsel to determine whether they believe mediation will be most effective with their client(s) participating via audio/video, or available to them by phone. I do believe mediation can be more effective in most instances if the Claimant is at least participating via call in or video.

4. Are you willing to allow counsel or a party to participate virtually in an in-person mandatory mediation? If so, under what circumstances?

No. In the rare occasion that an in-person mediation is deemed essential, then both counsel and at least the Claimant must be present, with an authorized decision maker on behalf of the employer being available, consistent with the Workers' Compensation Act Mandatory Mediation Amendments to the Act.

5. Do you require a Mediation Statement? Yes If yes:

a. What information do you require in that Statement?

A summary of the issues in dispute; medical positions of both side; statement of wages, if not already an exhibit; and then a brief discussion as to any prior discussions/demands/offers, and prospective impressions as to either sides strengths/weaknesses, and thoughts on where counsel believe the matter could resolve. Any submissions are maintained as strictly confidential.

b. What documents, if any, must accompany the Statement?

A statement of wages, but only if not already of record. I do not need, and do not want to receive extensive medical records.

c. How far in advance of the mediation must the parties submit the Statement and accompanying documents? Or two

Preferably a week in advance, as often that is when I do my preparation. But the day or two before is better than not at all.

6. If there is a request to postpone a mandatory mediation, will it be rescheduled? That is dependent on the presiding Judge's determination, and the reason for postponement, and whether it can be rescheduled at a more appropriate time with a different Judge. If counsel request we will reschedule. If so, how long until it is rescheduled? Next reasonably available open date that works for both counsel and their clients.

7. Are you willing to conduct more than one mandatory mediation session per Dispute?

I frequently will agree to do follow up mediations at counsels' request.

8. What is the latest day before the mediation that cancellation or postponement, absent an emergency, can be requested?

This is determined on a case by case basis dependent upon the basis of the request.

9. What else should the parties know or do before the mediation?

Counsel should fully prepare their respective clients as to the reality of potential best and worst case scenarios of the outcome of litigation, if the case does not resolve. If either side enters into a mediation with unrealistic expectations as to the potential outcome of the mediation, which counsel has not previously at least alluded to, mediation will likely be of limited value.

VOLUNTARY MEDIATIONS

1. Do you conduct Voluntary Mediations?

Yes

2. How should the parties request a Voluntary Mediation?

Via WCAIS and contacting trebar@pa.gov or Tara phone# as listed above to obtain available dates times, or if in litigation, any presiding Judge can often locate available times I have listed in Clearfield, State College, Altoona, or Lewistown Sharepoint for virtual mediations.

3. List the locations where you conduct in-person voluntary mediations:

Subject to availability see #2

4. Will you conduct virtual voluntary mediations? If yes, for which WCOA Districts will you conduct them?

Yes. Subject to availability, and continuing approval, I have been conducting Voluntary Mediations upon request for any Districts/Offices/Judges.

5. Do you mediate Disputes assigned to you for hearing and decision?

Only upon specific request of both counsel, consistent with the Judges Rules of Practice.

6. Do you mediate Disputes in which one or both parties are unrepresented? If yes, describe any special procedures you have for such cases:

Yes. Not in a case assigned to me.

7. What factors will you consider in deciding whether to conduct a voluntary mediation virtually or in-person?

Voluntary mediations are conducted virtually, unless counsel have good cause for them to be conducted in-person..

8. What factors will you consider in deciding whether to conduct a virtual voluntary mediation by audio only or by audio with video?

I do not vary in my format/procedures between Mandatory and Voluntary .

9. Are you willing to allow counsel or a party to participate virtually in an in-person voluntary mediation? If so, under what circumstances?

Same as #8

10. Do you require a Mediation Statement? See #8 If yes:

a. What information do you require in that Statement?

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b. What documents, if any, must accompany the Statement?

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c. How far in advance of the mediation must the parties submit the Statement and accompanying documents?

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11. After you approve a Voluntary Mediation Request, how long until it is scheduled?

As scheduling and availability permits

12. Are you willing to conduct more than one voluntary mediation session per Dispute?

Same as Mandatory

13. If the party wants to request cancellation or postponement of a voluntary mediation on a Dispute assigned to you, should they contact you or the mediating Judge?

If a Voluntary they should contact mediating Judge

14. What is the latest day before the mediation that cancellation or postponement, absent an emergency, can be requested?

Same as Mandatory

15. What else should the parties know or do before the mediation?

Same as Mandatory

REQUESTS/MISCELLANEOUS

1. How far in advance do you require Requests for continuances, changes in hearing times, and extensions to be uploaded into WCAIS?

Our practices are consistent with the Rules of Practice before Workers Compensations Judges. Otherwise such requests are ruled upon based upon good cause shown.

2. Under what circumstances do you conduct off the record conference calls?

Upon the request and consent of counsel.

3. Under what conditions/circumstances do you accept e-mails from parties?

Preferably, submissions should be through WCAIS. Any e-mail must include a copy to opposing counsel.

4. Do you adhere strictly to the duration listed for a Hearing or Mediation?

If time permits, no.

5. What is the best way to contact you in an emergency situation?

mikoll@pa.gov or cell 814-880-7952

6. What is your snow/emergency cancellation policy regarding in-person and virtual events (i.e., do you follow a specific school district closing schedule, etc.)?

With Virtual hearings/events there should be no need for cancellations. Clearfield in-person we follow the Penn State Dubois Closure policies. State College & Lewistown Events-Penn State Main Campus. Altoona- Penn State Altoona Campus.