

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?

The first event is often a hearing with testimony, usually of the Claimant. Currently, first hearings may be live/in person events, or by Teams, depending on circumstances and the requests of the parties. I may schedule in person hearings where testimony is expected, such as first hearings on Claim Petitions, and Petitions to Terminate, Reinstate, Modify, or Suspend. If a matter is not live, I MUCH prefer video testimony to phone testimony. PARTICIPATION BY PHONE SHOULD BE AVOIDED. If a matter with testimony is set for a virtual hearing, a party may request an in person hearing at least 10 days in advance of the scheduled virtual hearing date. Doing so ensures the best opportunity for an earlier live date. I expect Claimant's counsel to ensure Claimant can use video, or that Claimant will be in counsel's office for video testimony. Generally, events will be video even if no testimony is to be taken. If an event is in person, ALL parties and witnesses must be present. Live hearings may also be requested where no event is scheduled, but such requests should be submitted approximately 30 days in advance of any proposed live event hearing date. In the event of a live hearing, it will be generally held in the WCOA office closest to Claimant. Due to scheduling issues, live days will be scheduled only occasionally, as needed. I expect the moving party, whether it is the Claimant or Defendant, to gather and exchange all available exhibits in advance of the hearing and to be ready to discuss its prima facie case. As per the rules, the moving party is expected to provide the opposing party with all documents at or before the time of the first hearing.

2. List any documents required at the first event:

- a. I do not demand first hearing filings, but they are acceptable and can be helpful. The moving party should submit the relevant Bureau documents. As noted above, I do expect evidence to be gathered and exchanged at or before the first hearing, not just a fee agreement or Bureau document.
- b. **Should documents be uploaded as Exhibits or Letters to the Judge?**
Exhibits.

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

I employ a modified serial hearing format. I expect no more than 3-4 hearings. The first hearing is generally one with testimony where possible, or if my schedule does not allow time for testimony, it is a pre-trial, followed by a hearing for testimony after the first hearing. Any subsequent hearings will include additional lay testimony if needed and any other interim matters. The final hearing occurs about six to eight months after the first hearing and consists of any remaining lay testimony. All depositions should be completed by and submitted at the final hearing. I will do additional hearings only if the case is complicated, or the lay testimony is very lengthy, or if for good cause the parties request additional hearings after the final hearing.

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

Yes, but lengthy delays are highly irregular and unfair to the parties, so adherence to timelines will be expected.

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

Issues of public safety, party safety and the nature of the matter will all be considered.

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

Events will be video unless testimony is to be taken. I MUCH prefer in person if there is testimony, but I will not automatically schedule for in person. I need a request. If by TEAMS, Claimant's counsel must ensure Claimant is able to use video, and Claimant is properly dressed. I DEMAND PROPER FORMAL BUSINESS ATTIRE FOR COUNSEL DURING VIDEO EVENTS, MEANING SUIT AND TIE FOR MEN, AND A BUSINESS SUIT OR OTHER FORMAL ATTIRE FOR WOMEN. Dress as if going to a court in person.

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

I try to call or email during the scheduled event if a party has not appeared. I ask counsel to contact Claimant when Claimant is the missing party. Thereafter a letter is sent by me to the missing party regarding the absence. I warn that a matter may be decided without their participation, or if it is their petition that it may be dismissed if they fail to attend again.

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

No. If a party requests special procedures, I will consider the request.

SUPERSEDEAS PROCEDURES

1. What are your procedures for supersedeas hearings?

a. Will testimony be heard?

Yes. Unless a matter is scheduled for 10 minutes, I take testimony as time allows. The parties will be given additional time for submission of affidavits and/or other relevant evidence if necessary.

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

Yes. I will allow up to 14 days routinely and will consider longer if circumstances warrant and the parties agree.

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

I will consider a motion or request for reconsideration if additional evidence has been obtained, or if circumstances merit reconsideration. Repeated requests for reconsideration are not welcomed

d. Do you generally use written orders for denials?

Yes. I try to issue denials in written form as a matter of course.

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

Counsel must have uploaded/offered a valid fee agreement

f. Describe any other procedures for supersedeas hearings:

N/A

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

N/A

WITNESSES/EXHIBITS

1. What are your rules regarding taking testimony?

Testimony is limited to the time allotted during hearings. Witnesses, and counsel, are expected to dress respectfully and to have reasonably good hygiene. I EXPECT PROPER ATTIRE EVEN ON VIDEO. I DEMAND PROPER FORMAL BUSINESS ATTIRE, SUCH AS SUIT AND TIE FOR MEN, AND A BUSINESS SUIT OR OTHER FORMAL ATTIRE FOR WOMEN, FOR COUNSEL DURING VIDEO EVENTS. Improper attire is disrespectful and may lead to delay or continuance. A suit and tie or semi-formal dress/pant suit is not required for non-attorneys. Testimony is expected to be conducted with dignity and respect for all parties. Interpreters must be requested in accordance with WCOA guidelines.

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

I prefer at a hearing. Subsequent testimony and less contentious testimony may be by deposition.

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

If a party is local, significant effort should be made to have the witness testify in person if circumstances allow live hearings. I often permit employer/adjuster testimony by deposition or phone, if the issue is minor and not involving direct rebuttal to key aspects of claimant's testimony. I am willing to accommodate claimants as well in certain instances.

4. If counsel wishes to present the testimony of a witness (either virtually or in-person), do you require prior notice? yes If yes, how much notice do you require? If a party has witnesses, I should be notified, as should opposing parties, before the next hearing is scheduled so there is ample time for testimony. Generally, this means I should be notified at the prior hearing, and in any circumstance at least 30 days in advance of the next hearing as a rule of thumb to guarantee available time. I do grant exceptions when deemed appropriate.

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

Generally, the party filing the first petition goes first, but there are exceptions depending on the type of petitions involved.

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

The parties upload them as exhibits, particularly since I travel to locations with weak internet service. I will do so when appropriate. Deposition transcripts should be uploaded as a deposition transcript, not exhibit.

7. Do you require counsel to upload exhibits to WCAIS before or after the hearing? I prefer before, but the parties are permitted to upload after. I also prefer the parties upload the day before so opposing counsel can review the exhibit. For Compromise and Release cases, I want the exhibits uploaded 48 hours in advance. If before, how far in advance of the hearing must they be uploaded? See above.

8. When will you rule on objections to exhibits?

I generally rule on the spot, but in certain situations a deferred ruling is appropriate and performed.

9. What is your procedure for handling discovery disputes?

I am prone to use conference calls, and I will also consider position letters, if necessary, on disputes. I will attend depositions if necessary.

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

The parties should follow the Special Rules. I prefer they be uploaded as an exhibit. However, they can be submitted AS CORRESPONDENCE separate from, but at the time of, briefs.

COMPROMISE & RELEASES (C&Rs)

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

I review all C&Rs before the hearing, and I expect them to first be in final draft form and submitted as correspondence to me in WCAIS 48 hours prior to the hearing. I expect a signed version to be uploaded BEFORE the hearing. I reserve the right as Judge to decide if I want the matter to handled live. DO NOT ATTACH ANYTHING TO THE C&R, other than a fee agreement and any CMMS APPROVED MSA. All waivers, resignations, Act 109, and similar exhibits must be uploaded as separate exhibits.

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?

I permit and prefer Amendments

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?

I want to see the proposed/draft Agreement uploaded with a letter 48 hours in advance so I can review the terms and language.

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

See above

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

YES. Always, unless there is a support order to be dealt with.

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

Redacted from the final version

f. Will you sign bench orders?

They have limited legal value, and I prefer to not do so, but I will in certain circumstances.

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

STIPULATIONS RESOLVING DISPUTES

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

I will have the parties upload it as an exhibit which I will mark as a joint exhibit. I will adopt a stipulation provided it is in proper format in accordance with the Special Rules of Administrative Practice and Procedure, (as modified in December of 2014) and it addresses the facts and issues. I expect all stipulations to clearly state the relief to be granted, and to address the result intended for each pending petition. The Claimant will need to have consented to any stipulation, and documentation of same will be needed.

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

Separate

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

Separate

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

Any evidence the parties deem relevant to the issues addressed, including possibly medical bills, bills of costs, co-pay records, etc.

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

Separate

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

The parties should redact the SS number from all exhibits before uploading them.

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?

I will permit closure via WCAIS, so long as all exhibits have been previously discussed and addressed at a prior hearing. Costs should be submitted as an exhibit in the record PRIOR TO the briefing deadline.

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

I generally give the parties a written briefing order or letter, ideally shortly after the final hearing, or after all depositions and exhibits are submitted by mail/electronically if permitted by me to close in that manner. If

objections are not preserved on time, they are deemed waived. Once the briefing deadlines pass, I will place the matter in line for decision.

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

I prefer Proposed Findings with page references to relevant testimony. I prefer mimicry of my format, but in the end, the format and content are left to the parties to determine. The Proposed Findings should be neutral in content until one reaches the resolution of evidence and credibility determinations. I fully expect all argument and advocacy to be done in a brief or position letter and NOT in any Proposed Findings. I do not require that the parties submit any other post-trial submissions

MANDATORY MEDIATIONS

1. List the offices where you conduct mandatory mediations:

I currently mediate in New Castle, Pittsburgh, Butler, with an in person option, and elsewhere depending on need. With the advent of video and Teams usage, I am willing to add cases from anywhere in Pennsylvania.

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

See above, same as for hearings. I have no issues with doing in person mediations. A request for in person mediation should be submitted at the time mediation is requested.

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

Same as with hearings

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

All parties must be present in person, or all parties must be virtual/phone participants. A mix is not permitted.

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

a. What information do you require in that Statement?

I need the AWW/TTD rate, nature of injury claimed and/or accepted, the issues in litigation, status of litigation, strengths and weaknesses of the evidence/positions held by the parties, and the status of offers and demands. I DO NOT want an advocacy letter. The statement should be fairly neutral.

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

Whatever the parties deem appropriate

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

Preferably 48 hours in advance

6. If there is a request to postpone a mandatory mediation, will it be rescheduled? Possibly, if circumstances justify same. If so, how long until it is rescheduled? Generally, a mediation will be rescheduled promptly if there is justification for a new date. It will usually take place in 30-45 days.

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

Yes, if circumstances warrant.

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

Absent an emergency I should be given 2 business days' notice of any request. I fully expect AT LEAST a modicum of authority. "No authority" is not a well-regarded excuse by any judge.

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

I expect the parties to evaluate a claim in good faith and have authority in all cases. I also expect the adjuster or other person in charge to be at the ready if not present. THIS IS A MUST.

VOLUNTARY MEDIATIONS

1. Do you conduct Voluntary Mediations?

Yes, many.

2. How should the parties request a Voluntary Mediation?

A WCAIS request must be made unless the parties have the litigating Judge schedule it.

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

Same as above locations, and statewide virtually. I also do group mediations for firms or carriers.

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

I have no limit when it comes to virtual mediation locations. I'm happy to help anywhere necessary.

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

Yes. I will ONLY mediate my own cases in rare circumstances, and if the parties stipulate in writing or on the record whether the matter is to be reassigned if mediation fails. My preference is reassignment, unless what remains is a minor issue.

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

I make the party aware of the right to counsel and the implications of not having one. I give the party the choice on whether to go forward.

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

Same as stated above for mandatory and hearings.

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

Same as stated above for mandatory and hearings

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

All parties must be present in person, or all parties must be virtual/phone participants. A mix is not permitted

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

a. What information do you require in that Statement?

Same as above

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

Same as above

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

Same as above

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

Usually within 30-45 days

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

Yes, when it makes sense

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?

Mediating Judge

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

See above

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

I expect the parties to evaluate a claim in good faith and have authority in all cases. I also expect the adjuster or other person in charge to be at the ready if not present. THIS IS A MUST.

REQUESTS/MISCELLANEOUS

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

Such requests must be through WCAIS and should be made 48 HOURS in advance of the event or deadline. If a matter with testimony is set for a virtual hearing, a party may an in person hearing instead at least 10 days in advance of the scheduled virtual hearing date. Live hearings may also be requested where no event is scheduled, but such requests should be submitted approximately 30 days in advance of any proposed live event hearing date. Mediations will generally be continued as necessary. A request for live mediation should be made at time of scheduling. For the first hearing, I will generally cancel the hearing if the canceling party verifies it is consented to by the opposing party. I will reschedule it as soon as possible and will not grant continuances thereafter except in reasonable and explained circumstances. I may in the interim request the submission of the pre-trial documents and any supersedeas documents by mail within a short time frame. If it is the type of petition that can be handled in only one hearing, such as a Utilization Review, Physical Examination/Expert Interview, etc., I will generally grant one continuance per side and relist the petition. I generally do not grant continuances of final hearings unless the circumstances involve death or hospitalization of a party, or counsel is undeniably otherwise occupied and has no other counsel available to attend the hearing. I will change the time of a hearing if the parties agree and there is an opening in the schedule. I generally do not grant extensions of time on the briefing schedule, but such requests are considered.

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

I am open to a conference call for most conceivable matters. I find them to be quite useful.

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

Use WCAIS correspondence or requests instead. A party may also contact my assigned secretary. I do not want emails unless I sent one first.

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

I run a tight schedule. I will possibly briefly (under 15 minutes) go over the scheduled allotment of time if necessary, on hearing days. I am more flexible on mediations.

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

Contact my assistant. If this fails to generate a quick enough response, and it is urgent, email me at jefrussell@pa.gov.

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.)?

I generally follow the policy of the office to which I am travelling. For locations where events are not held in a WCOA office, I will follow their policies. All closure and delay information will be available on the WCAIS dashboard. Also, I am much more concerned with the safety of a party than I am in keeping a day's schedule, so I am willing to give due consideration to any legitimate request to delay or cancel an event due to snow or other emergency.