

JUDGE NAME: David A. Cicola

DISTRICT: Western

ASSIGNED OFFICE: Johnstown

Assistant's Name: Jane McCarty

Assistant's email: jamccarty@pa.gov

Assistant's Commonwealth Direct Dial Phone Number: (814) 626-7022

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 listing will usually be a full hearing on the merits. It will be an on-record pretrial conference if the schedule does not permit a full hearing. The default for hearings will be virtual. Counsel should check the hearing notice to determine whether the event will be virtual or in-person. Counsel should also verify that their clients and witnesses know whether to report in-person or participate virtually.
 - a. List any documents required at the first event:** All documents that a witness will reference during their testimony must be served on opposing counsel and all unrepresented parties in compliance with Rule 131.61. They must also be uploaded to WCAIS at least three business days prior to the hearing.
 - b. Should documents be uploaded as Exhibits or Letters to the Judge?** Exhibits.
- 2. Describe the format of your hearings (e.g., serial, one day – one trial).**

Most disputes are heard in a serial format. Generally, I take the claimant's testimony at the first hearing and the employer's testimony at the second. If time permits, I will also hear claimant's rebuttal testimony at the second hearing. Usually there will be a final hearing to take any additional claimant testimony (if needed), rule on exhibits, and set dates for closing the evidentiary record and filing of briefs. I will schedule additional hearings, if necessary, based on a WCAIS Request stating the reason for the hearing, a projection of the time needed and the names of any proposed witnesses.
- 3. Are you willing to change the hearing format upon request?** Yes, if there is good cause to do so.
- 4. What factors will you consider in deciding whether to conduct a hearing in-person?** Factors include but are not limited to: Whether any party has made a WCAIS Request for an in-person hearing and the reason(s) given in support of the Request; whether any party objects to the Request and the reason(s) for the objection; technological barriers to virtual video participation; a need for sign or language interpretation that would be impractical by video; disfigurement claims in which photos or video do not allow a sufficient description; the ability or inability of a participant to travel to the hearing location; the need for witnesses to review exhibits during testimony; and public or individual health considerations.
- 5. What factors will you consider in deciding whether to conduct a virtual hearing by audio only or by audio with video?** Virtual hearings will be scheduled with video unless there is a compelling reason not to use it. Counsel must bring the reason to my attention at least five business days before the hearing.

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

Our office will verify that that WCOA sent notice of the petition assignment and hearing to the correct address, and that the Postal Service has not returned the notice(s). If the party is represented, I will try to reach counsel during the hearing to determine why they did not appear. If we cannot contact counsel, I will write a letter to counsel affording them thirty days to advise if they intend to pursue or defend the petition. If the party is unrepresented, we will send a notice to the party explaining the proceedings and providing lawyer referral information. Then we will either schedule another hearing or issue an order, depending on the party's response (or lack of response) to the notice. If a moving party does not reply, I will dismiss the petition, usually without prejudice. If a responding party does not reply, I will circulate a decision based on the evidence then of record.

7. Do you have special procedures for psychological injury cases? No. But the parties are free to recommend case-specific procedures as needed.

SUPERSEDEAS PROCEDURES

1. What are your procedures for supersedeas hearings?

- a. Will testimony be heard?** The claimant should testify at the supersedeas hearing if possible. If this is not possible, counsel may upload a claimant's affidavit prior to the ruling.
- b. Is additional time generally granted to obtain medical evidence?** Yes. If counsel requests additional time, I will allow it if the extension is reasonable and opposing counsel does not make a persuasive objection.
- c. Under what circumstances will you reconsider a supersedeas order?** If there is a change in circumstances after the initial ruling, e.g., there is new evidence or claimant's medical condition or work status change. The procedure is governed by Rules 131.41.
- d. Do you generally use written orders for denials?** Yes, when the claimant is receiving indemnity benefits. As I lack authority to grant supersedeas on medical benefits, I note a deemed denial on the record in medical-only disputes.
- e. What is required for employee's counsel to obtain interim fee approval?** A signed fee agreement must be uploaded prior to the supersedeas ruling.
- f. Describe any other procedures for supersedeas hearings:** Counsel must upload all available supersedeas exhibits at least three business days before hearing. Supersedeas exhibits need not be uploaded as such to WCAIS. They may be uploaded as any other exhibit, and I will consider them only for supersedeas purposes. They will be admitted in the case in chief if the party later provides an appropriate foundation, e.g., a medical or vocational report will be admitted when counsel uploads the expert's deposition testimony.
- g. Describe procedures for special supersedeas hearings, if different:** Special supersedeas hearings are scheduled per Sections 413(a.1) of the Act and Rule 131.49. I apply the statutory standard to the rulings.

WITNESSES/EXHIBITS

- 1. What are your rules regarding taking testimony?** Except for pre-trial hearings, Claimant is expected to testify at the first hearing. For subsequent hearings, counsel must provide in advance of the hearing the name(s) of their witness(es) and the time needed for their testimony. I allow time at a final hearing for supplemental testimony from Claimant if needed.

2. **Do you require testimony at a virtual hearing, an in-person hearing, or by deposition?** I prefer lay testimony to be presented at a hearing, either in-person or by video. Expert testimony should be taken by deposition, but counsel may submit a WCAIS Request to present it at a hearing.
3. **Under what circumstances will you change your requirements for presentation of testimony?** These requirements may be changed on a party's WCAIS Request, or my own motion based on cause shown.
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?** Since Claimant's testimony is generally expected at the first hearing, we allow sufficient time for it when scheduling when possible. I will usually provide counsel at a hearing with a deadline to advise whether they will be presenting lay testimony at a future hearing. Prior to the deadline, counsel must provide the names of the proposed witness(es) and the expected time needed for their testimony. This enables us to schedule sufficient time for the testimony.
5. **What is your procedure regarding the order of expert medical testimony when cross petitions are filed?**
The party filing the first petition would normally take its medical testimony first. The order of proof can vary if good cause exists.
6. **Do the parties need to upload the Bureau and WCOA documents as exhibits, or will you admit them electronically as Judge exhibits?** I will upload these records as Judges' Exhibits.
7. **Do you require counsel to upload exhibits to WCAIS before or after the hearing? If before, how far in advance of the hearing must they be uploaded?** Counsel should upload exhibits at least three business days before a hearing. Each exhibit should be numbered sequentially and clearly labeled (e.g., "Dr. X's January 10, 2022 report"). Physical exhibits such as DVDs should be mailed to my attention at the Johnstown WCOA Office and not to WCOA Headquarters or the Petitions Unit.
8. **When will you rule on objections to exhibits?** I usually rule at the final hearing, as events during the litigation (e.g., deposition testimony or a change in the duration of alleged disability) may affect the ruling. But I will rule sooner if counsel request.
9. **What is your procedure for handling discovery disputes?** We will schedule an on-record conference call for counsel to present argument and obtain a ruling.
10. **What is the last day to file written preservations of deposition objections?** They may be filed with the final briefs. Counsel should request rulings sooner if necessary to formulate their trial or briefing strategies.

COMPROMISE & RELEASES (C&Rs)

1. **Describe your procedures regarding the review of C&R Agreements:**
 - 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?** Amendment of pending petitions is appropriate. A separate petition is necessary when the parties request a post-C&R decision on the only petition pending at the time of settlement.
 - b. **Are parties required to provide a draft of the C&R Agreement before the hearing? No. If yes, how far in advance of the hearing do you need to receive it?** N/A.

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

A hearing will be scheduled only after the **final, fully executed** C&R Agreement (together with the Fee Agreement any other document to be attached to the C&R) is uploaded. Exhibits other than those attached to the C&R must be uploaded at least three business days before the hearing. **The hearing may be postponed if the parties submit an updated C&R Agreement after the hearing is scheduled or the other exhibits are not uploaded at least three business days before the hearing.**

Should child support documents be uploaded as a separate exhibit? Yes, always.

Should Social Security numbers and other confidential information be redacted from the C&R Agreement and Act 109 documents? Yes, as to the Compromise and Release Agreement and all attachments to it.

Act 109 documents should never be uploaded as an attachment to the C&R Agreement. They must be unredacted to allow verification of Act 109 compliance.

Child Support Orders and Domestic Relations records must be redacted to delete the custodial party's name, docket numbers and the names and dates of birth of minors.

- d. **Will you sign bench orders?** No.

- e. **Describe any other procedures you have for C&R Agreements:** Counsel should ensure that the claimant has a complete set of exhibits in front of them at the time they testify.

STIPULATIONS RESOLVING DISPUTES

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

Stipulations must comply with Rule 131.91 of the Special Rules.

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

3. **Should child support documents be uploaded as a separate exhibit?** An unredacted version of the Act 109 documents **must** be uploaded as an exhibit separate from the stipulation.

4. **What other exhibits should be uploaded (i.e., medical bills, etc.)?** Any document referenced in the stipulation should be uploaded as an exhibit.

5. **Should other exhibits uploaded as be part of the stipulation or as separate exhibits?** Other exhibits should not be attached to the stipulation unless absolutely necessary.

6. **When should Social Security numbers and other confidential information be redacted from the stipulation and Act 109 documents?** The stipulation and attached documents should **never** contain Social Security numbers or other personal identifying information. These must be redacted to remove such information.

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 customarily schedule a final hearing to occur after the time for mediation and expert testimony has expired.

2. **What are the time requirements for final submissions and what procedures are taken when time requirements are not met?** I set record closure and briefing schedules via Interlocutory Order or on the record at the final hearing. Typically, the evidentiary record will close in WCAIS thirty to forty-five days after the final hearing or the circulation date of the Interlocutory Order. Each party's brief is generally due thirty to forty-five days from the date of the record closure date. I will provide for a longer lead time for these occurrences if justified (e.g., if there is extensive testimony at the final hearing). The dispute will go into Waiting for Decision status on the first business day following the due date for briefs. **No reminder correspondence will be sent.**
3. **Describe any preferences regarding the format and content of final submissions:** Counsel should submit letter briefs containing a concise summary of the key testimony and evidence. Where the issue is credibility, the brief must provide reasons why each witness should or should not be found credible. Where the issue is legal, counsel must include argument and citations to authority where appropriate.

MANDATORY MEDIATIONS

1. **List the offices where you conduct mandatory mediations:** Brookville and Johnstown.
2. **What factors will you consider in deciding whether to conduct a mandatory mediation virtually or in-person?** Factors include but are not limited to: Whether any party has made a WCAIS Request for an in-person mediation and the reason(s) given in support of the Request; whether any party objects to the Request and the reason(s) for the objection; technological barriers to virtual video participation; a need for sign or language interpretation that would be impractical by video; disfigurement claims in which photos or video do not allow a sufficient description; the ability or inability of a participant to travel to the mediation location; and public or individual health considerations. Note: By default, mediations will be scheduled as virtual events.
3. **What factors will you consider in deciding whether to conduct a virtual mandatory mediation by audio only or by audio with video?** Mediations will be scheduled with video unless there is a compelling reason not to use it.
4. **Are you willing to allow counsel or a party to participate virtually in an in-person mandatory mediation? If so, under what circumstances?** Only in case of emergency.
5. **Do you require a Mediation Statement?** Yes. If yes: [See attached.](#)
 - a. **What information do you require in that Statement?**
[See attached.](#)
 - b. **What documents, if any, must accompany the Statement?**
[See attached.](#)
 - c. **How far in advance of the mediation must the parties submit the Statement and accompanying documents?** At least three business days before the mediation.
6. **If there is a request to postpone a mandatory mediation, will it be rescheduled? If so, how long until it is rescheduled?** It will generally be rescheduled to occur within forty-five to sixty days. Postponement Requests will be directed to the assigned WCJ.

7. **Are you willing to conduct more than one mandatory mediation session per Dispute?** If warranted, yes.
8. **What is the latest day before the mediation that cancellation or postponement, absent an emergency, can be requested?** At least three business days.
9. **What else should the parties know or do before the mediation?** The parties should exchange proposals in advance of the mediation. The Mediation Statements should contain detailed, candid assessments of each parties' position. They should identify specific, objective barriers to agreement. Please avoid descriptions such as, "The other party is being unreasonable."

VOLUNTARY MEDIATIONS

1. **Do you conduct Voluntary Mediations?** Yes.
2. **How should the parties request a Voluntary Mediation?** Make a WCAIS Request reflecting the positions of all parties.
3. **List the locations where you conduct in-person voluntary mediations:** Brookville, Johnstown.
4. **Will you conduct virtual voluntary mediations? If yes, for which WCOA Districts will you conduct them?**

Yes, on disputes arising from any location within the Commonwealth.
5. **Do you mediate Disputes assigned to you for hearing and decision?** No.
6. **Do you mediate Disputes in which one or both parties are unrepresented? If yes, describe any special procedures you have for such cases:** No.
7. **What factors will you consider in deciding whether to conduct a voluntary mediation virtually or in-person?**
Factors include but are not limited to: Whether any party has made a WCAIS Request for an in-person mediation and the reason(s) given in support of the Request; whether any party objects to the Request and the reason(s) for the objection; technological barriers to virtual video participation; a need for sign or language interpretation that would be impractical by video; disfigurement claims in which photos or video do not allow a sufficient description; the ability or inability of a participant to travel to the mediation location; and public or individual health considerations.
Note: By default, mediations will be scheduled as virtual events.
8. **What factors will you consider in deciding whether to conduct a virtual voluntary mediation by audio only or by audio with video?** Mediations will be scheduled with video unless there is a compelling reason not to use it.
9. **Are you willing to allow counsel or a party to participate virtually in an in-person voluntary mediation? If so, under what circumstances?** Only in case of emergency.

10. Do you require a Mediation Statement? Yes. If yes: [See attached.](#)

a. What information do you require in that Statement?

[See attached.](#)

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

[See attached.](#)

c. How far in advance of the mediation must the parties submit the Statement and accompanying documents? At least three business days before the mediation.

11. After you approve a Voluntary Mediation Request, how long until it is scheduled? Generally, forty-five to sixty days.

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

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? Assigned Judge.

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

10. What else should the parties know or do before the mediation? The parties should exchange proposals in advance of the mediation. The Mediation Statements should contain detailed, candid assessments of each parties' position. They should identify specific, objective barriers to agreement. Please avoid descriptions such as, "The other party is being unreasonable."

REQUESTS/MISCELLANEOUS

1. How far in advance do you require Requests for continuances, changes in hearing times, and extensions to be uploaded into WCAIS? Event postponement requests should be made within the time prescribed by the Special Rules. Requests for extension or otherwise to amend a scheduling order should be made at least three business days prior to the deadline established by the order. Counsel are expected to use the WCAIS Request feature for these purposes. Any Request must reference the position of all opposing counsel and unrepresented parties. Requests indicating that their positions are "Unknown" are likely to be denied except in emergency situations.

2. Under what circumstances do you conduct off the record conference calls? We will schedule a conference call when necessary to resolve a disagreement between counsel, make a ruling that counsel need before the next hearing or final decision, or adjust a scheduling order. We will also schedule a conference call in follow-up to a mediation or to discuss a WCAIS Request that cannot be addressed with the information provided in the Request.

3. Under what conditions/circumstances do you accept e-mails from parties? Emails should be directed to my assistant at the address in the header to this document. All emails must reflect service on all counsel of record and unrepresented parties. No confidential information may be included in any email.

4. **Do you adhere strictly to the duration listed for a Hearing or Mediation?** I may be willing to go a little over time at a hearing, but only if we would not inconvenience other litigants or judges by falling behind schedule. I am willing to conduct multiple mediations simultaneously, so long as I can do so effectively.
5. **What is the best way to contact you in an emergency situation?** Email or call my assistant at the address or phone number in the Header to this Questionnaire. All emails must reflect service on all counsel of record and unrepresented parties. No confidential information may be included in any email.
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 will postpone events or allow virtual participation in an in-person event if there is a weather or other emergency. Counsel should make an appropriate WCAIS Request based on weather forecasts available on the business day immediately before the event date. **No participants should put themselves at risk by traveling in bad weather.**

Counsel should check WCAIS Alerts daily for news regarding event postponements and office closings.