

## **Workers' Compensation Judges' Procedural Questionnaire**

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, the first five numbers should be redacted before the document is uploaded, unless otherwise specified below. Requests, such as Requests for Continuance and Subpoenas, should also be made through WCAIS.

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### **First Event/Hearings:**

1. What is the first Event (i.e., pretrial, hearing, conference call) and what will occur at the first Event with the judge? Usually there is a standard hearing with testimony by the claimant at the first hearing for usual petitions. However, fee review litigation for the first hearing is almost always by telephone conference call.
  
2. Are any first hearing filings or documents required at the first Event with the judge? If so, what are they? **Yes**  **No**

#### **Further explanation:**

The procedural rules allow first hearing filings to be done orally, on the record.

Exhibits should all be offered at the first hearing, assuming exhibits are available.

- a. Should first hearing filings or documents be uploaded as Exhibits or as Documents?

**Exhibits**  **Documents**

#### **Further explanation:**

If a written submission is not being marked as an exhibit, then logically it should not be marked as a "document"

b. Should first hearing filings be uploaded before or after the first hearing?

**Before**  **After**

**Further explanation:**

See above for answer to question # 2

3. What are your procedures for supersedeas hearings?

a. Will testimony be heard? **Yes**  **No**

**Further explanation:**

There is no need to mark separate "supersedeas hearings" exhibits. If the document is not admissible for the case in chief, it would be admitted anyway as an exhibit for supersedeas only.

b. Is additional time generally granted to obtain medical evidence? **Yes**  **No**

**Further explanation:**

If a claimant requests additional time, usually 2 to 3 weeks, and the opposing party generally does not object, the extension of time is routinely granted. If there is an objection to the amount of time a claimant wants for additional time, the requests are considered on a case by case basis.

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

If there is new evidence, such as a job offer, or inconsistent surveillance evidence, or the claimant undergoing surgery, or evidence of bad faith by employer in not honoring medical restrictions, those potentially could be a basis for supersedeas reconsideration.

d. Do you generally use written orders for denials? **Yes**  **No**

**Further explanation:**

I also usually give an explanation of the evidence currently, knowing it may change by the end of the case. However it gives an opportunity to discuss burdens of proof and issues in the case, as well as the general impression of the supersedeas evidence.

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

A denial in whole or part of the supersedeas request, and the submission of a fee agreement, and claimant's counsel's request on the record for fees.

- f. Do you have any other procedures for supersedeas hearings not described above? If so, what are they? **Yes**  **No**

**Further explanation:**

There are no "legal hoops", but the listing is not exhaustive and is based on a case by case basis.

- g. Do you have different procedures for special supersedeas hearings? If so, please describe them? **Yes**  **No**

**Further explanation:**

The big difference is the timing of the hearing. Otherwise, the burden of proof for a termination does not change.

If the question is directed towards Section 413 (c) and (d) supersedeas requests, applicable Supreme Court caselaw (Rumbaugh vs. USAirways) is applied

4. Do you use a one-day/one-hearing format or serial hearings? Please describe the structure of your hearings. Please indicate if you are willing to change your hearing format upon request of all parties.

Usually serial hearings. However, if the record closes after one hearing, I will not relist, but will simply decide the case. That occurs frequently in cases such as supersedeas fund reimbursement cases, or even fee review, or compel expert interview or compel physical exam petitions.

5. Are you willing to allow counsel to participate in hearings by telephone? **Yes**  **No**

**Further explanation:**

Yes, but based on reasons more substantial than inconvenience to counsel. Generally, it is awkward having hearings with one side present and the other side not present. Generally, the standard is allowing for good cause. However, that does not excuse both parties from having available the respective decision makers at mandatory mediation.

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

See answer to 5. It depends on the reason for a party not appearing. A good reason would allow rescheduling. Often the missing party participating by phone solves the problem.

Claimant's counsel entering an appearance and then sending the claimant to the hearing on his own is not an acceptable procedure.

7. Do you have any special procedures for psychological injury cases? **Yes**  **No**

**Further explanation:**

Sensitivity may be called for, but generally adaptation such as taking a break for the party to obtain water or tissue resolves the problem. Conditions such as agoraphobia present a larger problem and usually require hammering out a procedural compromise with both parties.

**Witnesses/Exhibits:**

8. What are your rules regarding the taking of testimony?

a. Do you prefer the testimony be taken at a hearing or by deposition?

**Hearing**  **Deposition**

b. If counsel wishes to bring a witness to a hearing, do you require prior notice? If so, how much notice do you require? **Yes**  **No**

**Further explanation:**

The advance notice usually is to the other party and failure to disclose a witness ahead of time may result in that witness not testifying at that hearing. My hearing time slots 90% of the time are 30 minutes. Therefore, if a party has an hour of testimony, I need to know that ahead of time. In most cases, witnesses can testify within 30 minute hearings. I will attend testimony of witnesses out of the hearing room.

9. Under what circumstances will you permit a party or witness (including an expert witness) to testify by deposition or by phone, rather than appear at the hearing?

It depends on what one means by an expert witness. I prefer vocational experts to testify live. If a medical expert testifies, there needs to be advance notice and scheduling sufficient time. It rarely occurs because it is so costly to produce expert medical witnesses at hearings. As far as by telephone, any objections are addressed and ruled upon on the hearing record.

10. What is your procedure regarding the order of testimony with respect to submission of medical evidence, particularly when cross petitions are filed?

A rule of reason. The parties usually negotiate it, and, if not, a record is made on the hearing record and a ruling made. Generally, also, the first petition chronologically is the first to present its expert.

11. Do the parties need to upload the Bureau documents as exhibits or will they automatically be made Judge Exhibits? **Parties Upload**  **Judge**

12. Do you require that counsel upload exhibits to WCAIS before or after the hearing? If before, what is the latest day before the hearing that they may be uploaded? **Before**  **After**

**Further explanation:**

Click here to enter text.

13. Do you require counsel to bring hard copies of the exhibits to the hearing? **Yes**  **No**

**Further explanation:**

It is more that I prefer that hard copies be brought. That is especially so when the parties do not know the order of submission of proposed exhibits in WCAIS. Also the records, such as 6 months of treatment records are massive and unwieldy and sometimes counsel does not know what documents are included in its proposed exhibits.

14. When will you rule on objections to exhibits?

When the exhibits are marked and offered into evidence.

15. What is your procedure for handling discovery disputes, e.g., do you employ telephone conferences, do you prefer to attend certain depositions, etc.?

Handling discovery is more an art than a science. Reasonable proposals will be entertained. In complicated discovery matters, usually they are kept on the hearing record to keep track of who said what,

16. What is the last day the parties may file written preservations of deposition objections?

It is a rule of reason and generally negotiated by the parties; generally, though, the deposition rulings should be received no later than the submission of the party's brief.

**C&Rs/Stipulations:**

17. Please describe your procedures regarding the review of Compromise and Release 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 Compromise and Release Agreement?

**Amendments**  **New Petition**

**Further explanation:**

The parties need to remember they need at least one petition from each dispute number if there are different numbers for multiple petitions. The parties should remember they at least need a reference in the c&r document to each injury date they wish to close out.

b. Do you require the parties to provide you with a draft of the Compromise and Release Agreement to review before the hearing? If so, how far in advance of the hearing do you need to receive it? **Yes**  **No**

**Further explanation:**

Having the c&r draft at LEAST 2 BUSINESS DAYS BEFORE THE HEARING is extremely helpful in eliminating problems and avoiding other problems.

- c. Should the parties upload the Compromise and Release Agreement, including the fee agreement and any other attachments, before or after the hearing?

**Before**  **After**

**Further explanation:**

[Click here to enter text.](#)

- d. Should the child support documents be uploaded as a separate exhibit? **Yes**  **No**

**Further explanation:**

[Click here to enter text.](#)

- e. What other exhibits should be uploaded as part of the Compromise and Release Agreement or as separate exhibits (i.e., waiver of appeal, medical bills, etc.). Please indicate whether they should be uploaded as part of the Compromise and Release Agreement or as separate exhibits.

I allow the parties to try their own cases, as far as what exhibits are needed. The caveat is if there are clearly excessive exhibits such as photocopies of all bills from the bill of costs, I would question the parties as to whether they need to offer all that documentation, especially when the total amount of payment is already in the c&r agreement.

As far preparing multiple compromise and release agreements for different injury dates, experience indicates that the use of multiple c&r's for different injury dates causes more confusion than simply utilizing one c&r agreement.

- f. When should the social security number and other confidential information be redacted from the C&R agreement and Act 109 documents?

The secretaries per Department policy are instructed to redact the SSA#

- g. Will you sign bench orders? **Yes**  **No**

**Further explanation:**

Bench orders are void based on case law

- h. Do you have any other procedures for Compromise and Release Agreements not described above? If so, what are they? **Yes**  **No**

**Further explanation:**

One cannot envision every single problem. Counsel should communicate (by WCAIS) if there is a concern

18. Please provide the following information regarding Stipulations resolving Disputes:

- a. What are your usual procedures regarding the submission, review, and adoption of such Stipulations?

See above

- b. Should the fee agreement be uploaded as part of the Stipulation or as a separate exhibit? **Part of Stipulation**  **Separate Exhibit**

**Further explanation:**

[Click here to enter text.](#)

- c. Should the child support documents be uploaded as a separate exhibit? **Yes**  **No**

**Further explanation:**

[Click here to enter text.](#)

- d. What other exhibits should be uploaded as part of the Stipulation or as separate exhibits (i.e., medical bills, etc.)? Please indicate whether they should be uploaded as part of the Stipulation or as separate exhibits.

Medical liens are useful; abolishment of nondisbursement orders are helpful; modified consent orders for child support are helpful; etc

- e. When should the social security number and other confidential information be redacted from the Stipulation and Act 109 documents?

They are redacted as the result of WCOA instructions to secretaries

- f. Do you have any other procedures for Stipulations not described above? If so, what are they? **Yes**  **No**

**Further explanation:**

There are numerous other matters that could be discussed, but time and space do not permit that

**Close of Record/Briefs:**

19. Are you willing to close a case by electronic submission via WCAIS or is a final hearing required? **Electronic Submission**  **Final Hearing**

**Further explanation:**

The survey requests an answer as yes or no. Actually depending on the case, the closing of the record and submission of briefs could be either by final hearing or by briefs. It is negotiable

- 20. What are the time requirements for the submission of briefs and other post-hearing submissions? Do you have any procedure if the briefs or post-hearing submissions are not received in a timely manner?

Generally the record is set on the hearing record to close 30 to 45 days after the last evidence. If it appears as an oversight that briefs were not submitted, both sides will be reminded of the deadline. Usually a letter states the case will be decided even if evidence is not in by a date certain.

- 21. Please describe your preferences for the format and content of briefs and post-hearing submissions.

Do briefs that actually address the evidence in the case and advocacy of the outcome. Do not regurgitate back everything in the record Most good briefs are less than 5 pages.

**Mandatory Mediations**

- 22. Please list the offices at which you conduct mandatory mediations.

Currently Washington and sometimes Pittsburgh

- 23. Do you require the parties to execute an agreement to mediate? If so, please describe the matters to be addressed by the agreement. **Yes**  **No**

**Further explanation:**

Mandatory mediation is required and does not require the consent of the parties.

- 24. Do you require all participants (claimant, adjustor/employer representative, counsel) to attend the mediation personally? Under what circumstances do you permit a participant to attend by telephone, if any? **Yes**  **No**

**Further explanation:**

Most claims representatives will not attend mediations live. They are not encouraged to attend, in my experience. Many claims representatives work out of their homes, and do not appear for that reason also, Many claimants live out of state, such as Florida, Minnesota, etc and there is agreement for them many times not to attend if their attorneys attend live.

- 25. Do you require a Mediation Statement? **Yes**  **No**

If so:

- a. What information do you require in that Statement?

It is satisfactory that counsel be prepared for the mediation. Most of the information that would be placed in a mediation statement can be readily retrieved from other documents.

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

See above

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

See above

26. Once you receive a mediation request, what is the usual amount of time that elapses until the mediation takes place?

It depends on the schedule of what the parties want. It could be several weeks or several months

27. Are you willing to conduct more than one session per Dispute? **Yes**  **No**

**Further explanation:**

[Click here to enter text.](#)

28. If a party wants to request cancellation or postponement of a mediation on a Dispute assigned to you:

- a. Should the party contact you or the mediating judge?

Usually it is better to contact the mediating judge

- b. If you are to be contacted, what is the latest day before the mediation that cancellation or postponement, absent an emergency situation, can be requested?

Rule of reason. It depends on the reason a continuance is requested

29. Is there anything else the parties should know or do in advance of the mediation?

**Yes**  **No**

**Further explanation:**

The parties would have adequate authority to discuss a settlement, and make clear what if anything other than a complete settlement is being sought.

**Voluntary Mediations:**

30. Do you conduct Voluntary Mediations? **Yes**  **No**

**Further explanation:**

[Click here to enter text.](#)

31. Please list the offices at which you will mediate a Dispute.

Usually Pittsburgh or Washington

32. Are you willing to mediate Disputes that are assigned to you for hearing and decision?

**Yes**  **No**

**Further explanation:**

[Click here to enter text.](#)

33. Are you willing to mediate Disputes in which one or both parties are not represented by counsel? If so, do you have any special procedures? **Yes**  **No**

**Further explanation:**

[Click here to enter text.](#)

34. Do you require the parties to execute an agreement to mediate? If so, please describe the matters addressed by the agreement. **Yes**  **No**

**Further explanation:**

[Click here to enter text.](#)

35. Do you require all participants (claimant, adjustor/employer representative, counsel) to attend the mediation personally? Under what circumstances do you permit a participant to attend by telephone, if any? **Yes**  **No**

**Further explanation:**

See above

36. Do you require a Mediation Statement? **Yes**  **No**

**Further explanation:**

[Click here to enter text.](#)

If so:

- a. What information do you require in that Statement?

[Click here to enter text.](#)

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

[Click here to enter text.](#)

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

[Click here to enter text.](#)

37. Once you receive a mediation request, what is the usual amount of time that elapses until the mediation takes place?

[Click here to enter text.](#)

38. Are you willing to conduct more than one session per Dispute? **Yes**  **No**

**Further explanation:**

[Click here to enter text.](#)

39. If a party wants to request cancellation or postponement of a mediation on a Dispute assigned to you:

- a. Should the party contact you or the mediating judge?

See above

- b. If you are to be contacted, what is the latest day before the mediation that cancellation or postponement, absent an emergency situation, can be requested?

See above

40. Is there anything else the parties should know or do in advance of the mediation?

**Yes**  **No**

**Further explanation:**

See above

**Requests/Miscellaneous:**

41. What is your procedure regarding continuances, changes in hearing times and extensions, i.e., how far in advance do you require the Request be uploaded into WCAIS?

Rule of reason and decided case by case

42. Do you conduct/permit conference call? If so, under what circumstances? **Yes**  **No**

**Further explanation:**

See above

43. Do you accept faxes and e-mails from the parties? If so, under what circumstances?

**Yes**  **No**

**Further explanation:**

[Click here to enter text.](#)

44. Do you adhere strictly to duration listed for a hearing or mediation or are you willing to go over the allotted time? **Yes**  **No**

**Further explanation:**

The question cannot be answered yes or no. I would prefer to remain on time, but if there is a compelling reason I will permit additional time.

45. What is the best way to contact you in an urgent/emergency situation?

Call 724-223-4595

46. What is your snow/emergency cancellation policy (i.e., do you follow a specific school district closing schedule, etc.)?

I follow Department of Labor and Industry procedures