

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.

Table of Contents

- A. [First Event/First Hearing](#)
- B. [Witnesses/Exhibits](#)
- C. [C&Rs/Stipulations](#)
- D. [Close of Record/Briefs](#)
- E. [Mandatory Mediations](#)
- F. [Voluntary Mediations](#)
- G. [Requests/Miscellaneous](#)

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?

Hearing. Both sides present documentary evidence and, if time allows, witness testimony.

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:

First Hearing Statements are permitted but not required. Admissability of uploaded exhibits will be determined at the time of the hearing.

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

Exhibits **Documents**

Further explanation:

First Hearing Statements are not considered evidence and should be uploaded as a document.

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

Before After

Further explanation:

Exhibits that the party wants included as part of the evidentiary record should be uploaded upon receipt.

3. What are your procedures for supersedeas hearings?

a. Will testimony be heard? Yes No

Further explanation:

Counsel should be prepped to offer testimony from the Claimant. Time will be allotted for that purpose.

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

Further explanation:

Additional time is permitted with the consent of the opposing party.

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

Supersedeas may be reconsidered at a subsequent hearing or upon written request.

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

Further explanation:

A written Supersedeas Order will be issued following the initial hearing.

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

Submit an executed fee agreement as required by the Act and WCJ Rules.

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

Further explanation:

Procedures are in accordance with the Act and WCJ Rules.

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

Further explanation:

Procedure does not differ.

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.

Hearing format is determined by the nature of the Petition. In most instances serial hearings are conducted.

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

Further explanation:

Participation by telephone is permitted with consent of opposing counsel. A request in advance of the hearing is recommended.

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

Party will be provided with an opportunity to explain their absence.

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

Further explanation:

Parties should advise in advance of the first hearing if "special procedures" are warranted.

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:

Advance notice is preferred. Counsel should also consult with opposing counsel in advance and note time allotted for scheduled hearing. Hearings can be specially set for the taking of lay or expert witness testimony.

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?

Not preferred, but for good cause. Testimony of expert medical witnesses should be taken by deposition.

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

No depositions required until all sides have notice of what is at issue. Party with the burden of proof will be required to proceed first.

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:

Exhibits should be uploaded as soon as possible before the scheduled hearing. Parties should upload Bureau documents that have not been filed with the Bureau.

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

Further explanation:

Only Compromise and Release Agreements and Act 109 Affidavits should be produced in hard copy and not uploaded.

14. When will you rule on objections to exhibits?

At the time the objection is preserved. It is recommended that objections be preserved within 30 days of when the applicable exhibit is offered.

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

Telephone conferences can be used to resolve discovery disputes. Judge's attendance at a deposition will be entertained upon request of a party or at the Judge's discretion.

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

With proposed findings of fact but dispositive objections should be raised as soon as possible.

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:

A separate petition is required where the parties seek a decision on the merits of a pending petition.

- 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:

Draft copy is not required but preferred two days before the scheduled hearing. This aids in the preparation for the hearing and the issuance of a Decision.

- 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:

The executed C&R Agreement will be marked as a Joint Exhibit and uploaded by the Judge following the hearing.

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

Further explanation:

The Act 109 and Lien Search documents will be uploaded as a separate exhibit for the Claimant by the Judge following the hearing.

- 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.

Fee agreement is required. Costs, court orders, CMS documents and any additional documents will be included upon agreement of the parties.

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

The Judge will redact confidential information following the hearing.

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

Further explanation:

The parties will be advised at the conclusion of the hearing if the Claimant has demonstrated the required level of understanding for approval of the C&R.

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

Further explanation:

If employee is resigning from employment as an essential part of the compromise settlement of the workers' compensation claim, that fact must be placed on the record. An agreement that resolves "any and all injuries" will be permitted but with a caveat regarding its enforceability. All documents should be executed/witnessed before entering the hearing room.

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?

Stipulations should comply with the WCJ Rules which includes a requirement that Stipulations be signed by the claimant as well as counsel.

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

Further explanation:

Fee should also be described in the Stipulation.

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

Further explanation:

See Explanation 17d.)

- 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.

The Stipulation will be circulated as part of the Decision. Exhibits will not be circulated and should be uploaded separately even if referenced in the Stipulation.

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

WCJ will redact confidential information from any Stipulation and Act 109 document.

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

Further explanation:

Parties should be specific in describing what issues/petitions are being resolved by the Stipulation.

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:

Any subsequent electronic submissions should be determined at the final hearing so that there is no dispute regarding admissibility.

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?

Proposed Findings are due 45 days from the close of the record. Allotted time may be reduced or increased with consent of the opposing party.

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

Proposed Findings unless otherwise directed.

Mandatory Mediations

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

Brookville and 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:

An agreement is not required.

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:

Attendance by phone is permitted but not encouraged.

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

If so:

a. What information do you require in that Statement?

A brief position statement with a demand/offer is suggested. Format of the statement is not critical. The statement, however, should include the following: employee's date of birth; date of injury; nature of accepted injury; AWW and weekly benefit rate; liens; outstanding medical expenses; support issues; and whether a resignation will be required. Party should also list any impediments to settlement. While a Statement is not required, the preparation and submission of a Statement improves the likelihood of a successful mediation.

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

Any record not already marked as an exhibit that a party believes is important. This would include medical reports and applicable Bureau documents.

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

Two days.

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

Mandatory Mediations are generally scheduled when requested at the time of hearing. Voluntary Mediations can be scheduled in a time frame requested by the parties.

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

Further explanation:

If it appears that additional time is needed, another session will be scheduled.

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?

Adjudicating 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?

24 hours must be provided.

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

Yes No

Further explanation:

Parties should discuss the process with their clients and exchange at least one settlement demand and offer before the scheduled mediation.

Voluntary Mediations:

30. Do you conduct Voluntary Mediations? Yes No

Further explanation:

Voluntary mediations will be scheduled upon receipt of a request submitted via WCAIS.

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

Brookville and Pittsburgh.

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

Yes No

Further explanation:

With agreement of the parties and where the Claimant's credibility is not an issue.

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:

Same procedures as in Mandatory Mediation.

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:

An agreement is not required.

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:

Same as in Mandatory Mediation procedure. Participation by telephone is not encouraged.

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

Further explanation:

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If so:

a. What information do you require in that Statement?

Same procedure as for Mandatory Mediations.

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

Any reports or records that the party believes is significant.

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

Two days.

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

Voluntary Mediations can be scheduled at the convenience of the parties by contacting my Brookville office.

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

Further explanation:

Additional sessions will be scheduled as needed.

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?

Mediating Judge when it is a Voluntary Mediation.

- 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?

24 hours.

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

Yes No

Further explanation:

Preparation and exchange of a settlement offer and demand in advance improves the likelihood of success.

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?

24 hours with consent of opposing party.

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

Further explanation:

If there will be no witness testimony, a conference call is preferred to save time and resources.

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

Yes No

Further explanation:

Encourage the most efficient means of communication between all parties.

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:

Duration of hearing or mediation will be adjusted based on circumstances presented at the time. Parties must respect the impact of exceeding scheduled time on others.

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

E-mail: jmctiernan@pa.gov or phoning my office @ 814-849-5382.

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

Consistent with posted WCOA policy. Pittsburgh WCOA schedule is governed by the Pittsburgh Public School schedule. Brookville WCOA schedule is on a case-by-case basis.