

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?
A pretrial hearing will be conducted. A thorough review of the factual, legal, medical, and procedural issues involved in the case will be undertaken. Documents and information will be exchanged to facilitate the litigation. The claimant is expected to be present at the pretrial hearing unless there are good reasons for claimant's non-attendance.
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:

A First Hearing Filing and Stipulation of Undisputed Facts should be produced. Please use the attached forms (Insert links to Kenneth P. Walsh Form – MOVING PARTY FILING, Kenneth P Walsh Form – RESPONDING PARTY FILING, and Kenneth P. Walsh Form –STIPULATION OF UNDISPUTED FACTS here)

Hard copies of Notices of Temporary Compensation Payable, Notices of Workers' Compensation Denial, Notices of Compensation Payable, Statements of Wages, Notices Stopping Temporary Compensation, etc., prior workers' compensation judge (WCJ) decisions, compromise and release (C&R) decisions and stipulations, i.e., the documents necessary to establish the procedural history of the case, are to be produced at the pretrial hearing. Counsel should contact the bureau immediately upon filing the petition or receiving the file for litigation to obtain the documents.

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

Exhibits **Documents**

Further explanation:

A First Hearing Filing should be uploaded as a Document before the first hearing.

The Stipulation of Undisputed Facts will probably be completed at the hearing and my staff will upload this document.

My office will upload Bureau Documents, but counsel should bring hard copies of the Bureau documents to the hearing so they may be identified and discussed while all counsel and the WCJ are present.

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

Before **After**

Further explanation:

[Click here to enter text.](#)

3. What are your procedures for supersedeas hearings?

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

Further explanation:

Fee agreements should be submitted if interim fees are being sought. Generally, supersedeas evidence must be submitted by documents. Additional time will generally be granted to obtain additional medical or other evidence. Written orders will generally be issued. Motions to reconsider may be filed during the litigation to consider changes of circumstance. Testimony may be taken in special circumstances.

Special supersedeas hearings: Consistent with the Commonwealth Court's statement that "...we view with disfavor oral amendments in special supersedeas cases, and we encourage WCJ's to require written petitions to memorialize issues beyond those expressly excused from formal pleadings by statute." Hinkle v. WCAB (General Electric), 808 A.2d 1036, 1040 (Pa. Cmwlth. 2002), it is my practice to limit the evidence presented at a special supersedeas hearing scheduled pursuant to an Employee Challenge solely to the very narrow issues dealing with the suspension or modification pursuant to section 413 of the Workers' Compensation Act (Act). However, if an employer has already filed a Petition to Modify or Suspend prior to the time of the hearing on the Employee Challenge, I will conduct a regular pre-trial on the Modification/Suspension Petition reviewing the legal, factual, medical, and procedural issues therein and receive supersedeas exhibits in the normal course.

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

Further explanation:

Reasonable requests will generally be granted.

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

Change of circumstances, error, new evidence

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

Further explanation:

[Click here to enter text.](#)

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

Submit a written fee agreement, request approval of the fee, obtain a positive result for the claimant.

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

Further explanation:

[Click here to enter text.](#)

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

Further explanation:

See 3a.

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.

I conduct serial hearings except as the parties may otherwise agree with approval of the WCJ. In general, the claimant's testimony and lay witness testimony will be presented at separate hearings. If the parties believe that all the testimony can be completed at one hearing, this may be considered. Lay witness testimony may be presented by deposition, depending on the circumstances. Expert testimony will generally be presented by deposition, but if a party wishes to present an expert's testimony at a hearing, arrangements will be discussed as to how it will be presented. The parties are expected to reveal the identities of witnesses to each

other prior to hearings as soon as possible and according to the Rules.

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

Further explanation:

I will allow telephone participation by counsel upon good cause with the agreement of opposing counsel and the WCJ with the understanding that counsel will be as prepared for a telephone hearing as they would be if counsel was present in person. Telephone participation where testimony is taken will be rare.

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

It depends on the circumstances. If a party fails to appear without good cause, I may dispose of the petition on the basis of the evidence received or dismiss the petition as I deem appropriate.

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

Further explanation:

At the pretrial hearing, a more detailed discussion may take place as to the method of proceeding with lay and expert testimony and the differing burdens of proof in psychological injury cases. Depending on the case, all lay testimony from the claimant and the defendant may be taken before the depositions of the doctors are taken.

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:

In general, the claimant's testimony and lay witness testimony are to be presented at hearings. Lay witness testimony may be presented by deposition, depending on the circumstances. Expert testimony will generally be presented by deposition, but if a party wishes to present an expert's testimony at a hearing, arrangements will be discussed as to how it will be presented. The parties are expected to reveal the identities of witnesses to each other prior to hearings as soon as possible and according to the Rules.

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?

As noted above in #8b Further explanation, experts will generally testify by deposition based on the wishes of the parties. In cases where in-person testimony of a party or lay witness is very difficult to arrange, telephone testimony or deposition testimony will be discussed.

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

In general, the moving party will schedule its depositions first pursuant to the Rules or orders from the bench. These matters will generally be discussed at the pretrial hearing or subsequent hearings as necessary.

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:

See #13 below.

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

Further explanation:

Counsel are to bring hard copies of exhibits to the hearing. I will number them, name them, and hopefully rule on admissibility at that time. I will then ask counsel to upload those exhibits as I have numbered and named them into WCAIS after the hearing so that all parties are on the same page with regard to the identity and content of the exhibits. My staff will upload the Bureau documents.

14. When will you rule on objections to exhibits?

As soon as possible, hopefully at the hearing.

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 conference calls or telephone hearings on discovery and any other issues needing the WCJ's involvement may be requested. If there is enough time, a telephone hearing will probably be convened. The WCJ will generally not attend depositions.

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

Briefing on the merits of the case. In fact, this is encouraged so that all such objections are located in one place in the file as opposed to receiving them piece-meal through the litigation.

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:

There will be times when a separate C&R petition will need to be filed, but those situations will be discussed in advance.

- 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:

[Click here to enter text.](#)

- 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:

My staff will upload the C&R Agreement and attendant documents that have been presented at the hearing to ensure that SSN's are properly redacted and that the C&R Agreement is composed of the documents reviewed at the hearing by the WCJ on the record.

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

Further explanation:

My staff will upload them as separate exhibits with the SSN's redacted.

- 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.

The documents that are necessary to implement the C&R Agreement will all be a part of the C&R without being given separate exhibit numbers and should NOT be uploaded before the hearing. I will identify each document on the record as being a component part of the C&R and my staff will upload the entire document as described at the hearing.

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

My staff will do this.

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

Further explanation:

On extremely rare occasions where truly dire, exigent circumstances exist.

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

Further explanation:

Completely and properly executed Compromise & Release (C&R) Agreements are required.

I require a signature of a representative of the "Fund/Employer/Insurer/Third Party Administrator" on the certification page. The signature of defense counsel on the third line of the form is not sufficient unless defense counsel is, in fact, an employee of the "Fund/Employer/Insurer/Third Party Administrator." Section 449 (b) of the Act requires that the C&R be signed by both parties and Section 449 (d) directs the Department of Labor and Industry to prepare the form. The C&R form has a separate line for the parties and their counsel.

A separate fee agreement should be presented with the C&R at the C&R hearing.

It is expected that the claimant's counsel will present a thorough review of the terms of the C&R with the claimant through direct examination at the hearing and that the claimant's testimony will show that the claimant understands the full legal significance of the document. Claimant's counsel should review with the claimant on the record the nature and extent of all the benefits available to the claimant under the Act including total disability benefits, partial disability benefits, specific loss benefits, scarring benefits, and medical benefits because these are the rights and benefits the claimant is giving up. The full legal significance of Medicare Set-Asides dealing with the problems that may arise, which may include but not be limited to the out of pocket costs that the claimant may incur in the future and risks of Medicare finding non-compliance with the Medicare Set-Aside in the future must be discussed on the record.

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 be in writing with the hard copy sent to me and uploaded into WCAIS by the party submitting the Stipulation. The claimant's SSN should NOT appear in the Stipulation. The Child Support documents should NOT be uploaded into WCAIS but should be sent to me as separate documents. All Stipulations will be subject to review and approval by the WCJ.

- 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:

The child support documents should be sent as separate documents to my office along with the Stipulation fully completed and executed. My staff will redact the SSN's and upload the child support documents into WCAIS.

- 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 should stand on its own with all the information necessary to enforce the agreement of the parties contained within the Stipulation. Hopefully, the Stipulations will embody the understandings of the parties without needing include voluminous attachments.

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

No. My staff will redact the SSN's before they are uploaded.

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

Further explanation:

The claimant should sign the Stipulation personally. Counsel's signature, alone, is not sufficient.

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:

I require that a hard copy of the briefs be sent to me and uploaded into WCAIS.

I do not require a final hearing to close the record in terms of submitting final exhibits. The final exhibits, generally doctor depositions, should be sent by mail and uploaded into WCAIS by the submitting party, although a telephone hearing may be conducted to make sure the record is complete.

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?

A briefing letter will be issued setting the time limits. Litigation costs, objection preservations, and Act 109 documents may be submitted with the briefs. If post-hearing submissions are not timely submitted, the case may be decided without them.

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

Certification of record: hearings, witnesses, and exhibits.

Procedural history, Proposed Findings of Fact, Conclusions of Law, and Proposed Order.

The Proposed Findings/Conclusions should be in a format consistent with that of a decision.

The specific relief being requested should be presented with as much detail as possible: dates of suspension, modification, termination, dates of partial disability/total disability, etc.

An accompanying brief/legal argument is helpful, with appropriate case-specific citations, knowing that these cases are fact specific.

The WCJ appreciates learning from each party why one witness should be credited versus another witness. The rationale for making credibility determinations should be presented to the WCJ from each party.

Mandatory Mediations

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

Williamsport

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:

[Click here to enter text.](#)

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:

Adjustors and employer representatives who have control over settlement are required to be available by phone. Counsel and the claimant are required to be present, although there have been rare occasions when claimants have participated by telephone.

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

If so:

a. What information do you require in that Statement?

Enough information to give me a handle on the case regarding the legal, factual, medical, and procedural issues involved and to show that the parties have, in fact, given thought and preparation for the mediation

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?

Three to four days is desirable.

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

Thirty to forty five days.

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?

Both

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?

Two to three days

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

Yes **No**

Further explanation:

The parties are to be prepared in the same way they would be prepared for a Common Pleas or Federal Court settlement conference. The claimant should have a clear understanding of the process of the mediation and the issues that will be discussed because the claimant's lawyer has had a meaningful discussion of the mediation process and the issues involved well in advance of the mediation. Social Security consequences, retirement plan consequences, future medical treatment needs and bills should all be well known so that a meaningful discussion can occur.

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.

Williamsport

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

Yes **No**

Further explanation:

The parties must agree on the record or via a Voluntary Mediation Agreement that it is acceptable that I conduct the mediation and remain the adjudicating judge.

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:

I would not mediate one of my own cases with an unrepresented party.

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:

Only in cases that are assigned to me. Please use the attached form. (Insert link to Kenneth P. Walsh Form - VOLUNTARY MEDIATION AGREEMENT here)

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 the answer to #24 above.

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

Further explanation:

See #25 above

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?

See #26 above

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?

Both

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?

I would like to be contacted two to three days in advance of the mediation, but I am aware that discussions sometimes break down the night before the mediation. I expect counsel to be responsible to each other, their clients, and the tribunal and avoid last minute cancellations whenever possible.

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

Yes **No**

Further explanation:

See #29 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?

Communications with me should be in writing by fax or regular mail, not both. The correspondence should indicate on its face that it has been sent via fax and WCAIS, regular mail and WCAIS, or "CC:WCAIS" at the bottom of the correspondence. The correspondence should include the Confirmation of Submission showing that correspondence has been uploaded into WCAIS.

As noted in the Rules, Requests for continuances of hearings are discouraged, but are granted for good cause shown. The Rules should be consulted, especially with regard to continuance requests made ten days or less before the hearing.

Under certain circumstances, pre-trial hearings may be conducted by mail if a thorough review of the issues is undertaken by both parties. I will also conduct pre-trial hearings and status hearings by telephone when necessary.

I have prepared a Request for Continuance form asking for particular information underlying the continuance request. The form should be fully completed. The form is attached or may be obtained from my office. (Insert link to Kenneth P. Walsh Form - Request For Continuance or Postponement here) It is my expectation that a sincere effort will be made to avoid the continuance, and an explanation of that effort should be set forth in the request.

Changes in hearing times on a particular day will be considered to avoid the continuance. Counsel should review their time problems with each other prior to contacting my office to see if another time on that day can be arranged.

Continuances and extensions are to be requested in accordance with the Rules. They should be submitted in writing in a hard copy by fax or regular mail, not both, and uploaded into WCAIS.

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

Further explanation:

I will conduct conference calls. Generally, these will take the form of telephone hearings when possible.

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

Yes **No**

Further explanation:

E-mails: NO. Faxes, yes, with the Confirmation of Submission to WCAIS attached to the fax.

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:

I try to be reasonable. Hearings or mediations may be extended depending on the circumstances and schedule.

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

Contact my office by telephone, 570-327-3735

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

I do not follow a specific school district closing schedule and I deal with weather problems on a day to day basis. If an attorney wants a continuance, contact opposing counsel and contact my office as soon as possible, with a standard continuance request if there is enough time.

Attachments:

- [Moving Party Filing](#)
- [Request for Continuance or Postponement](#)
- [Responding Party Memo](#)
- [Stipulation of Undisputed Facts](#)
- [Voluntary Mediation Agreement](#)