

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, 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.

[CLICK HERE TO VIEW THE JUDGE'S SPECIAL PROCEDURES DURING THE GOVERNOR'S EMERGENCY DECLARATION DUE TO COVID-19.](#)

FIRST EVENTS

1. **What is the first event (i.e. pretrial, hearing, conference call) and what will occur?** *On every Hearing Notice, a Hearing Agenda will be printed telling the parties exactly what is expected of the parties at the first and every hearing. Counsel is advised to review the Hearing Agenda and be prepared. If counsel cannot comply with the Hearing Agenda, communicate this to the Judge's Office in advance. This can be accomplished through the requests section of WCAIS as a miscellaneous request. If there is no Hearing Agenda noted on the Hearing Notice, then the first hearing will be conducted as a Pretrial and the trial schedule will be placed on the record. If there is no Hearing Agenda noted on an interim hearing notice, the hearing will be conducted as a status hearing. Please note that no telephone calls, except for true emergencies, are accepted on the day of a scheduled hearing. If a true emergency occurs that will prevent the appearance of counsel or a party at the hearing, notice should be given to the Judge's office and to opposing counsel. If counsel or a party misses a hearing, it is appropriate to call opposing counsel to determine what happened at the hearing. Counsel is also advised to check the notes of testimony from the hearing to determine what transpired at the hearing.*
2. **List any documents required at the first Event:** *No memorandum or stipulation is required. If one is to be provided, it must be uploaded into WCAIS. If it is a stipulation agreed to by the parties, it can be uploaded in Exhibits. If it is a memorandum, it should be uploaded in documents and correspondence. At the first hearing, the Parties are required to provide all Bureau documents or Workers' Compensation Judges' decisions that codify the manner in which compensation was initiated and modified, suspended or terminated. A Statement of Wages should also be provided. These can be uploaded in advance into WCAIS in the exhibits section. The Parties should coordinate with each other to ensure that there no duplications in the record, complete documents are uploaded and the most legible document is uploaded. N.B. Please redact all dates of birth and social security numbers before uploading.*

SUPERSEDEAS PROCEDURES

1. **What are your procedures for supersedeas hearings?**
 - a. **Will testimony be heard?** *No No testimony will be heard at a supersedeas hearing. Supersedeas documents should be uploaded into the supersedeas section of WCAIS before the hearing whenever possible. Additional time will be given to the responding party to obtain evidence to oppose supersedeas. After both parties have submitted their evidence on supersedeas, a ruling will be issued. If no ruling is issued by the Judge, counsel may request a ruling through the requests section of WCAIS. The attorney fee should be uploaded as an exhibit in the case in chief. In addition, Bureau documents should be uploaded in the case in chief.*
 - b. **Is additional time generally granted to obtain medical evidence?** *Yes*
 - c. **Under what circumstances will you reconsider a supersedeas order?** *A supersedeas order will only be reconsidered based upon newly discovered, compelling evidence that was not available at the time of the original hearing. Each situation will be decided on the individual facts of the case. A request for reconsideration of a supersedeas ruling should be submitted through the requests section of WCAIS with the argument and evidence uploaded with the request.*
 - d. **Do you generally use written orders for denials?** *Yes After both parties have submitted their evidence on supersedeas, a ruling will be issued. If no ruling is issued by the Judge, counsel may request a ruling through the requests section of WCAIS.*

- e. **What is required for employee's counsel to obtain interim fee approval?** *Counsel can request an interim fee by uploading the fee agreement in the exhibits section of WCAIS and then requesting an order in the requests section of WCAIS.*

HEARINGS

1. **Describe the structure of your hearings and whether you are willing to change your hearing format:** *For each case, there are two hearings. The first hearing is a pretrial hearing where the trial schedule is placed on the record and the last hearing is scheduled several months later for brief update testimony from the Claimant and to close and certify the record. By the last hearing, all evidence should be uploaded in WCAIS so that the admissibility of the evidence can be ruled on and placed on the record. A third hearing is scheduled if the Employer has a particular interest in presenting a fact witness live. The Employer witness hearing is scheduled between the first and last hearing. Employer must notify the Judge's office within thirty (30) days of the first hearing if live witness testimony is requested. Employer witnesses are limited to two. All other witness testimony can be done by deposition. A final hearing date can be advanced if both parties have completed their respective cases. Generally, there will only be one hearing on a Petition to Compel. The Parties should be prepared to argue the merits of their position at the hearing. With Petitions to Terminate, Modify or Suspend, the first hearing will also be a supersedeas hearing. The first hearing on an Employee Challenge Petition will be for Claimant's live testimony.*

Judge Makin encourages the parties to avoid needless hearings. With the agreement of the parties, a pretrial can be accomplished through WCAIS. The parties can request that the first hearing be continued and a trial schedule be established. This can be done through the request section of WCAIS. The trial schedule will be communicated to counsel by Judge Communication in WCAIS. If a Judge Communication is not possible, the trial schedule will be communicated by e-mail and then uploaded by the Judge's office as a Judge's exhibit. A supersedeas hearing can be accomplished in the same manner. If the parties can agree to the granting of a Petition to Compel or a withdrawal, a request can be submitted through WCAIS to cancel the hearing and grant the Petition.

Counsel are encouraged to check his or her attorney profile in WCAIS. Many of the profiles do not contain current addresses, telephone numbers and e-mail addresses for counsel. Please update your attorney profile so that the Upper Darby Office can communicate with counsel.

2. **Are you willing to allow counsel to participate by telephone?** *Yes In certain circumstances, an attorney can participate by telephone. This is especially true of the first hearing where the trial schedule is established on the record or a supersedeas hearing where the evidence can be uploaded prior to the hearing. The attorney wishing to participate by telephone must have the agreement of all counsel and must notify the Judge's office in advance. This can be done in requests and a telephone number must be supplied where the attorney can be reached.*
3. **What procedure do you follow if a party fails to appear at a hearing?** *This is entirely dependent on the situation. Generally, counsel can rely on the hearing proceeding whenever possible. A record will be taken and counsel who missed the hearing can call opposing counsel or get the Notes of Testimony to ascertain what happened at the hearing. Do not call the Judge's office to determine what happened. Call opposing counsel.*

WITNESSES/EXHIBITS

1. **What are your rules regarding taking testimony?** *Claimant's testimony takes place at the final hearing and if limited to update testimony from the date of Claimant's deposition forward. If a request is made to present fact witness testimony live, this occurs after Claimant's deposition.*
- a. **If a counsel wishes to bring a witness to a hearing, do you require prior notice?** *Yes If yes:*
- i. **How much notice do you require?** *Testimony can be taken at a hearing or by deposition. As final hearings are scheduled at a specific time for Claimant's brief update testimony, any addition witnesses must be requested thirty days prior to the final hearing. The Parties wish to present testimony, notice must be given to the Judge upon receipt of the Hearing Notice. The request should be made through WCAIS. If Employer wants to present a fact witness live, a hearing is scheduled between the first and last hearing to present the witness. Employer must notify the Judge's office within thirty (30) days of the first hearing if live*

witness testimony is requested. Employer witnesses are limited to two. All other witness testimony can be done by deposition.

2. **Under what circumstances will you permit a party or witness (including an expert witness) to testify by deposition, phone, or videoconference, rather than appear at the hearing?** *Witnesses are generally always permitted to testify by deposition. Given the changes in litigation due to social distancing, if the parties agree, a witness may testify by telephone.
A Claimant may testify by telephone regarding a Compromise and Release Petition and Agreement if Claimant can be identified by Claimant's counsel.*
3. **What is your procedure regarding the order of testimony with respect to submission of medical evidence, particularly when cross petitions are filed?** *A trial schedule is established based on the individual facts of each set of Petitions. There is no hard or fast rule for every situation.*
4. **Do the parties need to upload the Bureau and WCOA documents as exhibits or will you admit them electronically as Judge exhibits?** *Parties Upload The Parties are requested to upload their exhibits being mindful to redact Claimant's social security number and date of birth.*
5. **Do you require counsel to upload exhibits to WCAIS before or after the hearing?** *Before If before: Parties should upload their evidence as it is developed in the course of litigation.*
 - a. **What is the latest day before the hearing that they may be uploaded?** *The Parties must upload exhibits prior to hearings. This way any objections can be dealt with at the final hearing. If exhibits are not uploaded, another hearing will be scheduled.*
6. **Do you require counsel to bring exhibit hard copies to the hearing?** *This Judge appreciates hard copies and will accept them if they are offered at hearings. However, hard copies are not required.*
7. **When will you rule on objections to exhibits?** *Objections will be ruled on at the final hearing.*
8. **What is your procedure for handling discovery disputes, e.g. do you employ telephone conferences, do you prefer to attend certain depositions, etc.?** *This Judge has attended deposition when requested to do so by the parties or to see a witness live who is deposed frequently. A ruling on discovery disputes should be brought to the Judge's attention by way of a request in WCAIS.*
9. **What is the last day to file written preservations of deposition objections?** *The Appeal Board requires that the preserved objections be admitted as an exhibit. That way the objections are preserved for appeal and are reviewable. They should be preserved in a separate writing submitted as an exhibit. They should be uploaded prior to the final hearing.*

COMPROMISE & RELEASES (C&Rs)

Describe your procedures regarding the review of C&R Agreements: *Compromise and Release Hearings will be conducted by telephone. Please ensure that Claimant gets notice and is available by telephone and can dial in or is on the telephone with Claimant's attorney and can be identified by Claimant's counsel.*

Before the hearing, Counsel must upload two copies of the Compromise and Release agreement: one redacted and one not redacted to be reviewed in advance by the Judge. I am unable to sign a Bench Order, but the decision will be issued promptly. Claimant must have a copy of the C&R during the hearing. MAKE SURE THE C&R AGREEMENT IS CORRECT.

- 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?** *Amendments are permissible.*
- b. **Are parties required to provide a draft of the C&R Agreement before the hearing?** *Yes If yes:*
 - i. **How far in advance of the hearing do you need to receive it?** *The agreement must be provided several days before the hearing so an errors can be corrected. An unredacted copy and a redacted copy must be uploaded.*

- c. **Should the parties upload the C&R Agreement, including the fee agreement and any other attachments, before or after the hearing?** *The agreement must be uploaded several days prior to the hearing so that it can be reviewed. An unredacted copy and a redacted copy must be uploaded.*
- d. **Should child support docs be uploaded as a separate exhibit?** *No Click or tap here to enter text.*
- e. **What other exhibits should be uploaded as part of the C&R Agreement or as separate exhibits (i.e., waiver of appeal, medical bills, etc.)?** *The Compromise and Release Agreement, the Bench Order, the Child Support documents and the fee agreement should be uploaded as one exhibit. The waiver of appeal and the Alternative Delivery form if they are part of the agreement must be uploaded with the Agreement.*
- f. **Should they be a part of the C&R Agreement or separate exhibits?** *Everything should be one exhibit.*
- g. **When should SSNs and other confidential information be redacted from the C&R Agreement and Act 109 documents?** *An unredacted copy and a redacted copy must be uploaded. Only the redacted copy will be attached to the decision.*
- h. **Will you sign bench orders?** *No As all Compromise and Release Hearings are conducted remotely, no bench orders will be signed.*
- i. **Describe any other procedures you have for C&R Agreements:** ******This Judge requires that paragraph ten of the Compromise and Release Agreement contain certain information in the first lines of the paragraph and not in any addendum. The first three typed lines of paragraph ten of the C&R agreement must have the total amount of the settlement, any deductions from the settlement and the amounts of the deductions (attorney fee, child support, reimbursement to a litigation loan company, etc.) and finally, the net to the Claimant.*

STIPULATIONS (STIPs) RESOLVING DISPUTES

1. **What are your usual procedures regarding the submission, review, and adoption?** *The parties can submit the stipulation as an exhibit and then request that it be adopted through the request section of WCAIS.*
2. **Should the fee agreement be part of the stip or separate exhibit?** *Separate Exhibit*
3. **Should child support documents be uploaded as a separate exhibit?** *Yes Separate Exhibit*
4. **What other exhibits should be uploaded (i.e. medical bills, etc.)?** *Only the Stipulation will be attached to the decision. Other evidence can be uploaded as separate exhibits.*
5. **When should SSNs and other confidential information be redacted from the stip and Act 109 documents?** *All confidential information should be redacted prior to uploading*

BRIEFS AND POST-HEARING SUBMISSIONS

1. **Will you close a case via WCAIS submission or is a final hearing required?** *Final Hearing A final hearing is needed to certify the record and ensure all evidence is uploaded.*
2. **What are the time requirements for submissions and what procedures are taken when time requirements aren't met?** *All evidence must be uploaded prior to the final hearing. If the evidence is not uploaded, a hearing will be scheduled to complete the record.*

The moving party is generally given 60 days from the final hearing to submit proposed findings of fact and conclusions of law with a brief. The responding party is given 90 days from the day of the final hearing to submit proposed findings of fact and conclusions of law and a brief. In cases where cross petitions have been filed, the parties will be given either 60 or 90 days for simultaneous submissions. If a party fails to submit proposed findings of fact, conclusions of law and their brief, this Judge may write the decision without the submissions.

3. **Describe any preferences regarding the format and content of submissions:** **Please see attached decision outline.**

MANDATORY MEDIATIONS

1. **List the offices where you conduct mandatory mediations:** *I conduct Mandatory Mediations by telephone and at the Upper Darby Office.*
2. **Do you require all participants to attend in-person?** *No*
 - a. **Under what circumstances do you permit attendance by phone?** *The attorneys must be present.*
3. **Do you require a Mediation Statement? Yes If yes:**
 - a. **What information do you require in that Statement?** *****The mediation statement must be completed in full and must be received by this Judge five days prior to the mandatory mediation. If the mediation statement is incomplete or is not received timely, the mediation will not take place. The Mediation Disclosure Form is on the Philadelphia Bar Association's web site on the Workers' Compensation Section Page. [The Mediation Disclosure](#) Form is attached.*
 - b. **What documents, if any, must accompany the Statement?** *Nothing is required but please attach anything the you think would be helpful to this Judge.*
 - c. **How far in advance of the mediation must the parties submit the Statement and accompanying documents?** *The mediation statements must be received five days before the mandatory mediation. If they are not timely received, the mediation will not take place.*
4. **After you approve a Mediation Request, how long until it's scheduled?** *The time of the mediation is set by the assigned Judge.*
5. **Are you willing to conduct more than one session per Dispute?** *No* [Click or tap here to enter text.](#)
6. **If the party wants to request cancellation or postponement of a mediation on a Dispute assigned to you, should they contact you or the mediating Judge?**

Because the mediations are scheduled several months in advance and because of the backlog in mandatory mediations, no postponements are allowed by this Judge. It is always appropriate to contact this Judge if a party is opposed to mediation and wants a decision in a certain matter. Under certain circumstances, this may mean the mediation is futile as no party should be made to talk settlement if they believe in their case or defense. If both parties are in agreement that the mediation if futile, the parties may contact this Judge and the mediation will not take place.

 - a. **What is the latest day before the mediation that cancellation or postponement, absent an emergency, can be requested?** *The request must be made five days prior to the mediation.*
7. **What else should the parties know or do before the mediation?** *All parties are expected to discuss the mediation process and settlement with their clients before the date of the mediation. Employer counsel must have authority to resolve the case. The Parties are expected to convey their demand to opposing counsel prior to mediation.*

VOLUNTARY MEDIATIONS

1. **Do you conduct Voluntary Mediations?** *No*
2. **Do you mediate Disputes assigned to you for hearing and decision?** *No*
3. **Do you mediate Disputes in which one or both parties are unrepresented?** *No* **If yes:**

REQUESTS/MISCELLANEOUS

- 1. How far in advance do you require Requests for continuances, changes in hearing times, and extensions to be uploaded into WCAIS?** The parties must upload these types of requests at least five business days before the event.
- 2. Under what circumstances do you conduct conference calls?** This Judge will conduct a conference call on the rare occasion that a dispute cannot be resolved through the WCAIS tools.
- 3. Under what circumstances do you accept faxes and e-mails from parties?** *NO SHOULD BE SENT. The Upper Darby Office is paperless and we do not accept paper copies of anything. Do not copy this Judge on deposition notices or other correspondence. Upload it into WCAIS. This Judge will accept an e-mail from counsel if WCAIS cannot be used for the request. Only counsel are permitted to e-mail the Judge.*
- 4. Do you adhere strictly to duration listed for a Hearing or Mediation?**

The following procedure is followed when hearings are not conducted remotely. During the first 1½ hours of a hearing day, shorter cases are scheduled. The hearings are every five minutes. If all parties arrive early during this time period, the case can be heard early. Otherwise the case will be heard at the time noted on the hearing notice.

After 10:00 am or 10:30 am, the cases are listed for testimony every half hour. The cases are not taken out of order unless there is an opening and the parties are present and ready. Cases listed in the afternoon are heard in the afternoon. Thus, the hearing will occur at the time on the Hearing Notice.

If the parties can agree to a different time because of their schedule and the docket can accommodate the change, just ask through the 'requests' section of WCAIS. Do not ask for a time change without agreement of all parties. This Judge attempts to keep to the scheduled time for every hearing. If testimony is not completed within the allotted time, the matter will be continued so that testimony can be completed by deposition.

Mediations proceed at the time scheduled.

- 5. What is the best way to contact you in an urgent situation?** *For Judge Makin, when a true emergency occurs that will result in the inability of counsel or a party to appear, a telephone call to the office is appropriate. No other calls, late or otherwise, will be taken on the day of the hearing.*
- 6. What is your snow/emergency cancellation policy (i.e., do you follow a specific school district closing schedule, etc.)?** *The Upper Darby Office is in the Southeastern Region and follows the procedure for the Philadelphia Office. When the Philadelphia Public and Parochial Schools are closed, any hearings or mediations will be cancelled and rescheduled for a future available date. If the Philadelphia Public and Parochial Schools open late, there is no change in the hearing or mediation schedule.*