

**JUDGE NAME: Robert O'Donnell DISTRICT: Eastern ASSIGNED OFFICE: Lancaster WCOA**

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### **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?**

For Claim & Reinstatement Petitions, it is expected that there will be in-person testimony from Claimant for a 30-minute hearing unless there is a request to conduct the hearing virtually by agreement of the parties. For all other petitions, including C&R petitions, the hearing will generally be listed for a virtual 15-minute hearing, unless there is a request to conduct the hearing in-person. All requests should be made through WCAIS at least 14 days prior to the hearing. Please note that the requirement is that for any hearing the parties and witnesses must either "all" appear in-person or "all" virtually. We cannot have some participants appear virtually for an in-person hearing.

##### **a. List any documents required at the first event:**

First hearing filings are not required. When possible, exhibits should be uploaded 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).**

Generally, serial hearings are conducted. On petitions filed by the Claimant, the first hearing will be scheduled for 30 minutes for Claimant's in-person testimony. For petitions filed by Employer, the first hearing will be scheduled for a virtual 15-minute hearing for supersedeas consideration and/or as a pre-trial hearing. At the end of the first hearing for all petitions, the parties will be given a trial schedule. Usually, the moving party is given 90 days to complete his or her case-in-chief, followed by 90 days thereafter for completion of evidence by the non-moving party. A status hearing is usually listed in the middle of the trial schedule for updated testimony and/or receipt of the moving party's evidence. The parties are given a mandatory mediation date at the first hearing, unless it is determined that a mediation would be futile. Generally, witness testimony in a contested matter will occur in-person unless a request is made to do so virtually or by deposition and by agreement of the parties.

#### **3. Are you willing to change the hearing format upon request?**

Yes.

#### **4. What factors will you consider in deciding whether to conduct a hearing in-person?**

Generally, the preference is to take in-person testimony from a party and/or a fact witness in a contested matter, and/or to view a disfigurement. Exceptions can be made to conduct a hearing virtually or by deposition upon request and when there is agreement by the parties to do so.

**5. What factors will you consider in deciding whether to conduct a virtual hearing by audio only or by audio with video?**

Generally, the preference is to conduct virtual hearings via video when possible.

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

If a party fails to appear at a scheduled hearing without explanation, he or she risks an adverse decision. If a party fails to appear at a scheduled mediation without explanation, he or she risks being sanctioned consistent the WCJ Rules. The party who fails to appear at a scheduled event, should notify the Judge through WCAIS with a copy to opposing counsel to explain why he or she failed to appear.

**7. Do you have special procedures for psychological injury cases?**

No.

**SUPERSEDEAS PROCEDURES**

**1. What are your procedures for supersedeas hearings?**

See below

**a. Will testimony be heard?**

No. Usually I do not expect testimony, but if a party wishes to present brief testimony at the supersedeas hearing, same will be allowed.

**b. Is additional time generally granted to obtain medical evidence?**

No. Requests for extensions of deadlines to obtain medical evidence will be decided on a case-by-case basis.

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

Generally, there will be no reconsideration of a supersedeas order absent additional or newly discovered evidence that was not available at the time the initial supersedeas order was issued. The party seeking reconsideration of supersedeas should request a hearing to review same through WCAIS and upload any evidence in support of the request prior to the anticipated hearing.

**d. Do you generally use written orders for denials?**

Yes, when the Claimant is receiving wage loss benefits. Written supersedeas orders are not issued when the Claimant is not receiving wage loss benefits. Instead, the denial of supersedeas is stated on the record at the hearing.

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

Submit the fee agreement into evidence and request that the fee agreement be approved at the hearing or through the WCAIS Request tab.

**f. Describe any other procedures for supersedeas hearings:**

None.

**g. Describe procedures for special supersedeas hearings, if different:**

None.

## WITNESSES/EXHIBITS

**1. What are your rules regarding taking testimony?**

Generally, the preference is to take in-person testimony in a contested matter from the Claimant or a fact witness unless there is a valid reason to do so virtually or by deposition and by agreement of the parties. Testimony for C&R Agreements will be scheduled virtually but can be conducted in-person by request and by agreement of the parties.

**2. Do you require testimony at a virtual hearing, an in-person hearing, or by deposition?**

See answer to Question 1 directly above.

**3. Under what circumstances will you change your requirements for presentation of testimony?**

By request of the parties and for good cause shown and/or whether there is agreement between the parties as to the request.

**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? At least 14 days.**

**5. What is your procedure regarding the order of expert medical testimony when cross petitions are filed?**

Generally, the party that filed the petition first, will be expected to proceed with their medical deposition first.

**6. Do the parties need to upload the Bureau and WCOA documents as exhibits or will you admit them electronically as Judge exhibits?**

Parties should upload Bureau and WCOA documents as exhibits. The exhibits can then be entered into evidence by motion at a subsequent hearing.

**7. Do you require counsel to upload exhibits to WCAIS before or after the hearing? Before the hearing when possible. If before, how far in advance of the hearing must they be uploaded? At least 24 hours before the hearing.**

**8. When will you rule on objections to exhibits? Rulings on objections to exhibits will be made at the hearing on the record. Objections made during a deposition can be decided at a later hearing upon request, or if preserved in a separate writing in accordance with the WCJ Rules. Said objections will be ruled upon by interlocutory order or within the final circulated Decision depending upon when they are presented to the Judge for consideration.**

**9. What is your procedure for handling discovery disputes?**

Generally, the preference is to make a ruling regarding discovery disputes at a hearing on the record. Telephone conferences can be scheduled to address same on a case-by-case basis.

**10. What is the last day to file written preservations of deposition objections?**

Generally, parties should submit written preserved objections before the close of the record if they want a ruling on the objection before the close of the record. Otherwise, parties can submit preserved objections in a separate writing with their proposed findings that will then be ruled upon within the circulated final decision.

## COMPROMISE & RELEASES (C&Rs)

### **1. Describe your procedures regarding the review of C&R Agreements:**

See below.

#### **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.

#### **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?**

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

Before the hearing.

#### **d. Should child support documents be uploaded as a separate exhibit?**

Yes.

#### **e. Should Social Security numbers and other confidential information be redacted from the C&R Agreement and Act 109 documents?**

Only from the C&R Agreement, as the C&R Agreement will be published with the Decision. The Act 109 documents should be uploaded as a separate exhibit with confidential information visible so said information can be verified by the Judge.

#### **f. Will you sign bench orders?**

Yes.

#### **g. Describe any other procedures you have for C&R Agreements:**

None.

## STIPULATIONS RESOLVING DISPUTES

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

An executed Stipulation should be uploaded as an exhibit for review. The parties should indicate whether the Stipulation resolves all pending petitions. If the Stipulation provides a net lump sum amount of \$5,000.00 or more to the Claimant, the parties should submit as a separate exhibit, child support documentation in accordance with Act 109. If the parties want the Stipulation approved by an Interim or Final Decision, a request for same should be made in WCAIS or at a hearing on the record.

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

Separate exhibit.

### **3. Should child support documents be uploaded as a separate exhibit?**

Yes.

**4. What other exhibits should be uploaded (i.e. medical bills, etc.)?**

Generally, exhibits should be uploaded separately and not attached to the Stipulation. Case by case exceptions can be made if there is a valid reason for attaching exhibits to the Stipulation. Please keep in mind that the executed Stipulation, along with any attachments, are published with the Decision approving same and therefore should not contain sensitive or confidential information.

**5. Should other exhibits uploaded as be part of the stipulation or as separate exhibits?**

See above.

**6. When should Social Security numbers and other confidential information be redacted from the stipulation and Act 109 documents?**

Social Security numbers and confidential information should not appear on the Stipulation as the Stipulation itself is published with the final Decision. This information should be included on the Act 109 documents and uploaded separately as an exhibit.

**7. Describe any other procedures you have for stipulations:**

None.

**BRIEFS AND PROPOSED FINDINGS**

**1. Will you close a case via WCAIS submission or is a final hearing required?**

WCAIS Submission or a final hearing, depending on when all of the exhibits are uploaded by the parties.

**2. What are the time requirements for final submissions and what procedures are taken when time requirements are not met?**

Generally, the moving party is given 30 days from the close of the record to submit his or her brief. The non-moving party is given 30 days thereafter whether or not the moving party has submitted their brief or not. If briefs are not received in a timely manner, and there is no request for an extension of time for submitting same, the dispute moves forward for a decision without the brief(s). Please note that any brief extension request must be made before the expiration of the due date for the brief. Attorneys will not be contacted for receipt of briefs that are late. All exhibits should be uploaded prior to the close of the record, however, litigation costs and quantum meruit exhibits can be submitted with the brief of Claimant. Opposing counsel can raise any objections to litigation costs and/or Q.M. exhibits in his or her brief, or a request can be made for a hearing or conference to address any issues with same prior to the issuance of a final decision.

**3. Describe any preferences regarding the format and content of final submissions:**

Briefs should generally list in a clear and concise way what petitions are pending for decision. The proposed findings of fact should state what if any bureau documents are relevant and/or controlling in the dispute. Then, the testimony of the parties, and of any witnesses should be summarized in proposed findings of fact with citations to the record for same. The exhibits of the parties should also be identified and summarized in the proposed findings of fact. Thereafter, proposed credibility findings should be drafted with a rationale as to why certain evidence or testimony is more credible than other evidence or testimony of record with regard to the pending issues of the dispute. The parties should then list proposed conclusions of law that address all of the legal issues and burdens of proof with regard to the pending litigation, including whether the contest of the petitions has been reasonable.

## MANDATORY MEDIATIONS

**1. List the offices where you conduct mandatory mediations:**

Lancaster.

**2. What factors will you consider in deciding whether to conduct a mandatory mediation virtually or in-person?**

The parties are free to attend the mediation virtually or in-person. Counsel for each party should inform the Judge's office within two weeks prior to the mediation if their party is appearing in-person as the Judge's office needs time to order security when any attorney or party will be appearing in-person for the mediation.

**3. What factors will you consider in deciding whether to conduct a virtual mandatory mediation by audio only or by audio with video?**

It is up to each parties' discretion whether a virtual mediation will be by audio only or by video.

**4. Are you willing to allow counsel or a party to participate virtually in an in-person mandatory mediation? If so, under what circumstances?**

See answer to #2 directly above.

**5. Do you require a Mediation Statement? Yes. If yes:**

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

Basic background information regarding the nature of the claim and the issues involved in the pending litigation. The parties should indicate what petitions are pending, and the relief sought in each. The parties should identify the assigned judge, the average weekly wage and compensation rate, and any other side issues that are relevant to a settlement, such as outstanding medical bills, child support arrears, litigation costs, the need for a resignation, and Claimant's Medicare status. Finally, the parties should state what demand and offers have been made to date.

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

None.

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

The day before the mediation.

**6. If there is a request to postpone a mandatory mediation, will it be rescheduled? Generally, no. The parties should go back to the litigating Judge for another mediation date. If so, how long until it is rescheduled? N/A.**

**7. Are you willing to conduct more than one mandatory mediation session per Dispute?**

Yes, if the parties are making progress towards a possible settlement.

**8. What is the latest day before the mediation that cancellation or postponement, absent an emergency, can be requested?**

Request should be made to the litigating Judge at least two weeks prior to the mediation date as this will allow enough time for the mediation time slot to be used by another party.

**9. What else should the parties know or do before the mediation?**

The Claimant should submit a demand if possible, well in advance of the mediation. Failure of the Claimant to submit a demand should not preclude the Employer from evaluating the dispute for possible settlement authority in time for the mediation.

**VOLUNTARY MEDIATIONS**

**1. Do you conduct Voluntary Mediations?**

Yes.

**2. How should the parties request a Voluntary Mediation?**

Parties should contact my Secretary for available voluntary mediations dates and times. After the parties have agreed upon a suitable time and date for a mediation, from the dates given from my Secretary, one of the parties should submit a request for a Voluntary Mediation through WCAIS with the agreed upon time and date of the mediation included with the request.

**3. List the locations where you conduct in-person voluntary mediations:**

Lancaster.

**4. Will you conduct virtual voluntary mediations? If yes, for which WCOA Districts will you conduct them?**

Yes. All WCOA Districts.

**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:**

Yes. No special procedures, except a written mediation memo is not expected from a pro se party.

**7. What factors will you consider in deciding whether to conduct a voluntary mediation virtually or in-person?**

It is really up to the parties to decide. The parties should know whether virtual or in-person attendance at the mediation of their respective clients will be beneficial in moving the dispute towards possible settlement.

**8. What factors will you consider in deciding whether to conduct a virtual voluntary mediation by audio only or by audio with video?**

It is up to the parties.

**9. Are you willing to allow counsel or a party to participate virtually in an in-person voluntary mediation? If so, under what circumstances?**

Yes.

**10. Do you require a Mediation Statement? Yes. If yes:**

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

Basic background information regarding the nature of the claim and the issues involved in the pending litigation, if any. The parties should indicate what petitions are pending, and the relief sought in each. The parties should identify the assigned judge, the average weekly wage and compensation rate, and any other side issues that are relevant to a settlement, such as outstanding medical bills, child support arrears, litigation costs, the need for a resignation, and claimant's Medicare status. Finally, the parties should state what demand and offers have been made to date.

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

None.

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

One day prior to the scheduled Mediation.

**11. After you approve a Voluntary Mediation Request, how long until it is scheduled?**

The parties should contact my Secretary for available mediation dates and time slots.

**12. Are you willing to conduct more than one voluntary mediation session per Dispute?**

Yes, if progress towards a settlement or resolution is being made.

**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?**

Request to cancel or postpone a voluntary mediation should be made to the mediating Judge.

**14. What is the latest day before the mediation that cancellation or postponement, absent an emergency, can be requested?**

Two weeks.

**15. What else should the parties know or do before the mediation?**

Please know that the demand for voluntary mediations is high and the request for same should only be made if there is a good faith intent from both parties to resolve a dispute or claim.

**REQUESTS/MISCELLANEOUS**

**1. How far in advance do you require Requests for continuances, changes in hearing times, and extensions to be uploaded into WCAIS?**

Requests should be made through the Request tab in WCAIS as early as possible.

**2. Under what circumstances do you conduct off the record conference calls?**

By WCAIS request of the parties.

**3. Under what conditions/circumstances do you accept e-mails from parties?**

I prefer all communications to go through WCAIS. However, if there is an emergency situation, I will accept emails as long as opposing counsel is copied on same. My email address is rodonnell@pa.gov.

**4. Do you adhere strictly to the duration listed for a Hearing or Mediation?**

Yes.

**5. What is the best way to contact you in an emergency situation?**

Email me at rodonnell@pa.gov or my Secretary Kandice at kanrichard@pa.gov or call Kandice at 717-299-7617.

**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.)?**

When possible, information will be posted on WCAIS regarding whether a hearing or a mediation is being postponed due to snow or an emergency, and/or whether the event can be conducted virtually instead. The request of any party to postpone a scheduled event due to a snow or an emergency will generally be granted so long as opposing counsel is made aware of the request prior to the scheduled event and opposing counsel does not object.

**Please see the Teams/Virtual Events Tips & Training tile on our [Website](#) for more information on how to use Microsoft Teams for WCOA Hearings and Mediations.**