

## 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?

*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. Are any first hearing filings or documents required at the first Event with the judge? If so, what are they? **Yes**  **No**

**Further explanation:**

*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 insure 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.*

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

**Exhibits**  **Documents**

**Further explanation:**

*See above.*

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

**Before**  **After**

**Further explanation:**

*See above.*

3. What are your procedures for supersedeas hearings?

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

**Further explanation:**

*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**  **No**

**Further explanation:**

*See above.*

- 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**  **No**

**Further explanation:**

*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.*

- 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:**

[Click here to enter text.](#)

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.

*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 is 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.*

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

**Further explanation:**

*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.*

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

*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.*

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

**Further explanation:**

[Click here to enter text.](#)

**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:**

*Testimony can be taken at a hearing or by deposition. If the Hearing agenda on the Hearing Notice indicates that testimony is to be taken, no advance notice of the testimony expected need be provided. If the Hearing Agenda does not anticipate testimony and 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. This Judge prefers to have Claimant testify live at some point during the litigation. In addition, if the Employer has a particular interest in presenting 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.*

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?

*Witnesses are generally always permitted to testify by deposition. It is very rare that a situation presents itself where it is appropriate for a witness to testify by telephone. A Claimant may testify by telephone regarding a Compromise and Release Petition and Agreement but only if Claimant is ill or outside the jurisdiction.*

10. 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.*

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:**

*The Parties are encouraged to upload exhibits prior to hearings. This way any objections can be dealt with at the final hearing. All exhibits must be uploaded within thirty days of the final hearing.*

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

**Further explanation:**

*This Judge appreciates hard copies and will accept them if they are offered at hearings. However, hard copies are not required.*

14. When will you rule on objections to exhibits?

*Objections will be ruled on at the final 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.?

*This Judge has attended deposition when requested to do so by the parties and simply to see live a witness who is deposed frequently. A ruling on discovery disputes should be brought to the Judge's attention by way of a request in WCAIS.*

16. What is the last day the parties may 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.*

**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:**

[Click here to enter text.](#)

- 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:**

*The only time that this Judge requires a Compromise and Release Agreement in advance is where there has already been one hearing to approve the Agreement and problems were discovered at the hearing. In those cases the Agreement must be submitted in advance to make sure that no additional problems arise.*

- 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 parties should upload the Compromise and Release Agreement, the Bench order and all attachments including the child support documents as one exhibit after the hearing where the Agreement was approved.*

- 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.

*The Compromise and Release Agreement, the Bench Order, the Child Support documents, the fee agreement and waiver of appeal should be uploaded as one exhibit.*

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

*The parties should redact before uploading.*

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

**Further explanation:**

[Click here to enter text.](#)

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

**Further explanation:**

*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.*

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?

*The parties can submit the stipulation as an exhibit and then request that it be adopted through the request section of WCAIS.*

- 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.

*Only the Stipulation will be attached to the decision. Other evidence can be uploaded as separate exhibits.*

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

*All confidential information should be redacted prior to uploading.*

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

**Further explanation:**

[Click here to enter text.](#)

**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:**

*A final hearing is needed to certify the record.*

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?

*All evidence must be uploaded within thirty days of the final hearing. 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 partes 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 will write the decision without the submissions.*

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

*Please see attached decision outline.*

**Mandatory Mediations**

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

*I conduct Mandatory Mediations at the Upper Darby Office.*

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:**

*The attorneys must be present. The Claimant should be present. The representatives of the Employer can participate by telephone if authority to resolve the matter has been given to counsel.*

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

If so:

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.*

*See:*

*<http://philadelphiabar.org/WebObjects/PBAReadOnly.woa/Contents/WebServerResources/CMSResources/MEDIATIONDISCLOSUREFORM.pdf>*

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.*

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

*The time of the mediation is set by the assigned Judge.*

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?

*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 is futile, the parties may contact this Judge and the mediation will not take place.*

- 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?

*The request must be made five days prior to the mediation.*

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

Yes  No

**Further explanation:**

[Click here to enter text.](#)

**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.

[Click here to enter text.](#)

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:**

Click here to enter text.

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?

*Because the mediations are scheduled several months in advance and because of the backlog in mandatory mediations, no postponements are allowed by this Judge. If the Parties communicate facts to this Judge showing the futility of the mediation, this Judge will cancel the 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?

*All requests must be submitted five business days before the mandatory mediation.*

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

Yes  No

**Further explanation:**

*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.*

**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?

*The parties must upload these types of requests at least five business days before the event.*

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

**Further explanation:**

*This Judge will conduct a conference call on the rare occasion that a dispute cannot be resolved through the WCAIS tools.*

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

Yes  No

**Further explanation:**

*This Judge will accept faxed mandatory mediation statements only. NO OTHER FAXES 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.*

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:**

*During the first 1½ hours of a hearing day, shorter cases are scheduled for status hearings, pre-trials, supersedeas hearing and C&R testimony. 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.*

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

46. 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.*

**Attachments:**

[Mandatory Mediation Disclosure Report](#)  
[Decision Outline](#)