

<h1>Regulatory Analysis Form</h1>		This space for use by IRRC
(1) Agency Department of Labor & Industry Bureau of Workers' Compensation		IRRC Number: <b>2259</b>
(2) I.D. Number (Governor's Office Use)  12-61		
(3) Short Title Special Rules of Administrative Practice and Procedure before the Workers' Compensation Appeal Board; Special Rules of Administrative Practice and Procedure before Workers' Compensation Judges.		
(4) PA Code Cite  34 Pa. Code, Chapter 111 34 Pa. Code, Chapter 131	(5) Agency Contacts & Telephone Number <b>Primary Contact:</b> Elizabeth A. Crum, Acting Deputy Secretary of Compensation and Insurance, Department of Labor & Industry 717-787-5082; Susan McDermott, Chairman, Workers' Compensation Appeal Board 215-560-4583 <b>Secondary Contact:</b> Thomas J. Kuzma, Deputy Chief Counsel 717-783-4467	
(6) Type of Rulemaking (Check One)  <input type="checkbox"/> Proposed Rulemaking <input checked="" type="checkbox"/> Final Order Adopting Regulation <input type="checkbox"/> Final Order, Proposed Rulemaking Omitted		(7) Is a 120 Day Emergency Certification Attached?  <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes: By the Attorney General <input type="checkbox"/> Yes: By the Governor
(8) Briefly explain the regulation in clear and nontechnical language.  The Department of Labor and Industry (Department), Bureau of Workers' Compensation (Bureau) adopts these amendments to clarify and provide detailed guidance for Practice and Procedure before workers' compensation judges (judges, formerly referees) and the Workers' Compensation Appeal Board (the Board, formerly the Workmen's Compensation Appeal Board). The Department amends Chapters 111 and 131 of 34 Pa. Code to provide additional guidance for the litigation of matters before judges and the Board, and to refine existing regulations governing practice and procedures before judges and the Board.		
(9) State the Statutory Authority for the regulation and any relevant state or federal court decisions.  The Department adopts these Special Rules of Administrative Practice and Procedure before Workers' Compensation Judges and Special Rules of Administrative Practice and Procedure before the Workers' Compensation Appeal Board under the authority contained in sections 401.1 and 435(a) and (c) of the Workers' Compensation Act (act) (77 P.S. §§ 710 and 991(a) and (c)), section 2205 of the Administrative Code of 1929 (71 P.S. § 565) and section 414 of the Occupational Disease Act (77 P.S. § 1514).		

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- (10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.**

The regulations are not mandated by any law. Regulatory action is required, however, to update certain portions of the regulations in accordance with amendments to the acts passed in 1993 (Act 44) and 1996 (Act 57). Moreover, the regulations have not been revised since 1991 and do not reflect technological changes subsequently implemented by the Bureau and the legal community.

- (11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?**

The regulations provide guidance to judges, Board Commissioners, Bureau and Board staff, and litigants in the workers' compensation system, regarding practice and procedures before judges and the Board. These regulations address changes made in practice and law since the rules were last reviewed and altered. The regulations also expedite the adjudication of workers' compensation claims, reduce paperwork requirements among litigants, reflect statutory changes to the act and reduce expenses for litigants by lessening paperwork and incorporating technology into workers' compensation proceedings.

- (12) State the public health, safety, environmental or general welfare risks associated with non-regulation.**

Non-regulation would lead to inconsistencies in the manner in which judges, the Board and litigants address procedural circumstances or requirements that are not currently regulated.

- (13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)**

The Bureau, judges and Board personnel who utilize the regulations in forums designed for resolution of workers' compensation litigation, and the workers' compensation insurers, employers (including self-insured employers) and injured workers (claimants) who litigate in these forums will benefit from the regulations. For example, these regulations now allow for presentation of evidence by electronic means, and more clearly specify the mailing requirements under the act and these regulations.

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- (14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

No one will be adversely affected by the updated regulations.

- (15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

The persons, groups or entities that will be required to comply with the regulations are as follows: 90 judges, 12 Board Commissioners and their staff, employees of the Bureau, approximately 300 workers' compensation insurance carriers, approximately 1,000 self-insured employers, all Commonwealth employers subject to the act and claimants and attorneys litigating before judges and the Board.

- (16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

In 1996, the Rules Committee, which was established by the Secretary of the Department in 1980, met again to incorporate legislative amendments and changes in workers' compensation jurisprudence which occurred since these regulations were last amended in 1991. The committee received written comments from various parties and issued written reports regarding any recommended changes. Similarly, the committee allowed interested parties an opportunity to address the committee, and has undertaken an outreach program through announcements and addresses at workers' compensation section meetings of the Pennsylvania Bar Association. Finally, the committee met with the Workers' Compensation Advisory Council in 1998 and explained to the Advisory Council the committee's purpose and process by which commentary or suggested amendments were reviewed.

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- (17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.**

No costs are anticipated. The regulations may provide the following savings to the regulated community: (1) reduced travel costs, as hearings may now take place electronically; (2) reduced copying costs, reflecting the regulations' reduced copy requirements; and (3) reduced overall litigation expenses attributable to the more expeditious process defined by the regulations.

- (18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.**

No costs are anticipated. The regulations may provide the following savings to local governments, to the extent that the local governments are litigants in workers' compensation proceedings: (1) reduced travel costs, as hearings may now take place electronically; (2) reduced copying costs, reflecting the regulations' reduced copy requirements; and (3) reduced overall litigation expenses attributable to the more expeditious process defined by the regulations.

- (19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.**

No costs are anticipated. The regulations may provide the following savings to state government, to the extent that state government is a litigant in workers' compensation proceedings: (1) reduced travel costs, as hearings may now take place electronically; (2) reduced copying costs, reflecting the regulations' reduced copy requirements; and (3) reduced overall litigation expenses attributable to the more expeditious process defined by the regulations.

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(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY+1 Year	FY+2 Year	FY+3 Year	FY+4 Year	FY+5 Year
<b>SAVINGS:</b>						
Regulated Community						
Local Government						
State Government						
<b>Total Savings</b>						
<b>COSTS:</b>						
Regulated Community						
Local Government						
State Government						
<b>Total Costs</b>						
<b>REVENUE LOSSES:</b>						
Regulated Community						
Local Government						
State Government						
<b>Total Revenue Losses</b>						

(20a) Explain how the cost estimates listed above were derived.

There are no means to estimate savings. However, the regulations may provide the following savings to workers' compensation litigants: (1) reduced travel costs, as hearings may now take place electronically; (2) reduced copying costs, reflecting the regulations' reduced copy requirements; and (3) reduced overall litigation expenses attributable to the more expeditious process defined by the regulations.

# Regulatory Analysis Form

**(20b) Provide the past three year expenditure history for programs affected by the regulation.**

Program	FY-3	FY-2	FY-1	Current FY
Bureau/ Board	\$42,261,000.00	\$47,086,000.00	\$46,388,000.00	\$55,435,000.00

**(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.**

There are no adverse effects and costs. However, the regulations may provide the following savings to workers' compensation litigants: (1) reduced travel costs, as hearings may now take place electronically; (2) reduced copying costs, reflecting the regulations' reduced copy requirements; and (3) reduced overall litigation expenses attributable to the more expeditious process defined by the regulations.

**(22) Describe the non regulatory alternative considered and the costs associated with those alternatives. Provide the reasons for their dismissal.**

Non-regulatory alternatives cannot create a legally enforceable standard and are therefore unsuited to the purposes of these regulations, which are to provide updated information and guidance to an already existing act and regulations. Procedures of practice must be enacted through regulation.

**(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.**

Other alternative schemes were considered by the Rules Committee but were ultimately deemed not appropriate because they were not significantly supported by the regulated community.

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- (24) **Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.**

There is no comparable federal equivalent.

- (25) **How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?**

Pennsylvania will likely be placed at an improved competitive advantage by these regulations because the amendments will provide up-to-date guidance for litigation of workers' compensation matters. The amendments will expedite workers' compensation adjudication, increase the effectiveness of the system, and facilitate the just resolution of claims. Beyond the foregoing, comparison to other states' provisions is impractical because statutory requirements and systems differ from state to state.

- (26) **Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.**

Yes. These regulations amend 34 Pa. Code Chapters 111 (relating to Workers' Compensation Appeal Board) and 131 (relating to Bureau of Workers' Compensation). The regulations provide additional guidance for the litigation of matters before judges and the Board, and refine existing regulations governing practice before judges and the Board. The regulations also incorporate changes made necessary by recent legislative amendments and ensure that parties will continue to be advised of up-to-date rules for practice and procedures before judges and the Board.

- (27) **Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.**

No. Significant input from the workers' compensation community was provided in the drafting process.

# Regulatory Analysis Form

- (28) **Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.**

The regulations will not require the creation of any new forms. Existing forms relating to practice before the Board and judges require few modifications. Therefore, the regulations will not impose any additional reporting, recording or paperwork requirements on the Commonwealth or the regulated community.

- (29) **Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.**

There is no need for special provisions. The amendments as a whole expedite procedures and assist all workers' compensation litigants.

- (30) **What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?**

The final regulations will be effective upon publication in the Pennsylvania Bulletin. These regulations require no new licenses, permits or approvals.

- (31) **Provide the schedule for continual review of the regulation.**

The Department will continually monitor the effectiveness of the regulations during their use in proceedings before the Board and judges. Participants in workers' compensation proceedings will likely raise issues relating to the regulations. Corrections can be initiated, as necessary, based upon information obtained in these proceedings. Additionally, the Workers' Compensation Rules Committee will continuously monitor the effectiveness of these regulations as they have since 1991.



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DO NOT WRITE IN THIS SPACE

**FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU  
(Pursuant to Commonwealth Documents Law)**

2259

<p>Copy below is hereby approved as to form and legality. Attorney General</p> <p>BY:</p> <p align="center">DEPUTY ATTORNEY GENERAL</p> <p align="center">DATE OF APPROVAL</p> <p><input type="checkbox"/> Check if applicable Copy not approved. Objections attached.</p>	<p>Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:</p> <p align="center">Department of Labor &amp; Industry (AGENCY)</p> <p>DOCUMENT / FISCAL NOTE NO. 12-61</p> <p>DATE OF ADOPTION: <i>5/3/80</i></p> <p>BY:</p> <p align="center">Johnny J. Butler</p> <p>TITLE:</p> <p align="center">Secretary (EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)</p>	<p>Copy below is hereby approved as to form and legality. Executive or Independent Agencies.</p> <p>BY:</p> <p align="center"><i>[Signature]</i> DATE OF APPROVAL</p> <p align="center">(Deputy General Counsel <del>(Chief Counsel, Independent Agency)</del> <del>(Strike inapplicable title)</del>)</p> <p><input type="checkbox"/> Check if applicable. No Attorney General approval or objection within 30 days after submission.</p>
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# FINAL-FORM REGULATION

34 PA. CODE CHAPTERS 111 and 131

**Special Rules of Administrative Practice and Procedure Before the Workers' Compensation Appeal Board; Special Rules of Administrative Practice and Procedure Before Workers' Compensation Judges**

**FINAL-FORM REGULATION**  
**Title 34 – Labor and Industry**  
**Part VII [Workmen’s] Workers’ Compensation Appeal Board**  
**Chapter 111**  
**[34 Pa. Code Chapter 111]**  
**Part VIII Bureau of Workers’ Compensation**  
**Chapter 131**  
**[34 Pa. Code Chapter 131]**

The Department of Labor and Industry (Départment), Bureau of Workers’ Compensation (Bureau), adopts the following amendments to clarify and provide detailed guidance for Practice and Procedure before workers’ compensation judges (“judges,” formerly “referees”) and the Workers’ Compensation Appeal Board (the “Board,” formerly, the “Workmen’s Compensation Appeal Board”). The Department also amends Chapters 111 and 131 of 34 Pa. Code in order to provide additional guidance for the litigation of matters before judges and the Board, and to refine existing regulations governing practices and procedures before judges and the Board.

**Statutory Authority**

The Department adopts these Special Rules of Administrative Practice and Procedure before Workers’ Compensation Judges and Special Rules of Administrative Practice and Procedure before the Workers’ Compensation Appeal Board (collectively, the “Rules”) under the authority contained in sections 401.1 and 435(a) and (c) of the Workers’ Compensation Act (the “act”) (77 P.S. §§ 710 and 991(a) and (c)), and section 2205 of The Administrative Code of 1929 (71 P.S. § 565), as well as section 414 of the Occupational Disease Act (77 P.S. § 1514).

**Background**

In 1980, the Secretary of the Department established a Rules Committee to develop rules and procedures for the workers’ compensation system. The committee consisted of workers’ compensation judges, as well as equal numbers of representatives of the claimant’s and defense bar and representatives of the Department. This committee was reactivated in 1987 to revise the existing rules. These revisions were published in 1991 and this rulemaking is intended to amend the 1991 publication. The committee, composed of the same general representation, again met in 1996 to review the Rules because of amendments to the act. The committee wanted to incorporate legislative amendments and changes in workers’ compensation jurisprudence which occurred since the 1991 publication. Since assembling in 1996, the committee has established various subcommittees to review various subchapters and specific provisions of the regulations. From 1991 to the present, the committee received written comments from various parties suggesting changes to the 1991 publication of the Rules. The commentators included members of the bar and representatives of various parties who litigate within the Pennsylvania workers’ compensation system. The committee as a whole reviewed these comments and forwarded the meritorious comments to subcommittees for further review and analysis. In response, the various subcommittees issued written reports regarding the recommended changes. Thereafter, the committee as a whole drafted proposed revisions which have been incorporated into this rulemaking.

Similarly, the committee allowed interested parties an opportunity to address the committee. Since at least 1996, the committee has undertaken an outreach program through announcements and addresses at workers' compensation section meetings of the Pennsylvania Bar Association, which met at least annually. In March 1998, the committee circulated its first draft of these proposed amendments to the Rules. Additionally, the committee has met with the Workers' Compensation Advisory Council. In a meeting on September 17, 1998, the committee explained to the Advisory Council the committee's purpose and the process by which it reviewed commentary or suggested regulatory amendments.

The Department previously submitted these regulations for review as a final-omitted rulemaking on November 16, 2001 and withdrew this final-omitted rulemaking on December 7, 2001.

At 32 Pa. B. 1518 (March 23, 2002), the Department published the notice of proposed rulemaking. As a result, the Department received written comments from the following group and individual: the Pennsylvania Workers' Compensation Judges' Professional Association (PWCJPA) and Thomas C. Lowry, Esquire. The Department also received written comments from the Independent Regulatory Review Commission (IRRC), by means of a letter dated May 23, 2002. In response to comments received, some changes have been made in the final-form regulation.

### **Purpose**

These amendments clarify and expedite the hearing and determination of matters in the workers' compensation system and update existing regulations to ensure timely and fair disposition of matters as required by the act. The present Rules have not been comprehensively reviewed since at least 1991. Since that time, the act has been amended on at least three occasions (Act 44 of 1993, Act 1 of 1995 and Act 57 of 1996). The amendments incorporate changes made necessary by these legislative amendments and ensure that parties will continue to be advised of up-to-date rules for practice and procedures before judges and the Board.

### **Affected Persons**

Those affected by these amendments include workers' compensation judges, Workers' Compensation Appeal Board Commissioners and officials, employees of the Pennsylvania Department of Labor and Industry, Bureau of Workers' Compensation and Workers' Compensation Appeal Board, and attorneys and litigants in the Pennsylvania workers' compensation system.

### **Fiscal Impact**

There is no significant fiscal impact associated with this rulemaking. However, the regulations may provide the following savings to the regulated community: (a) reduced travel costs, as hearings may now take place electronically; (b) reduced copying costs, reflecting the regulations' reduced copy requirements; and (c) reduced overall litigation expenses attributable to the more expeditious process defined by the regulations.

## Response to Comments

The comments received as a result of the notice of proposed rulemaking are addressed below on a section-by-section basis.

### **Chapter 111 Special Rules of Administrative Practice and Procedure before the Workers' Compensation Appeal Board**

As a general comment, IRRC noted that some of the section titles in Chapter 111 (relating to special rules of administrative practice and procedure before the Workers' Compensation Appeal Board) were inconsistent. In response, the Department revised the section titles for § 111.16 (relating to briefs: content and form and time for filing) and § 111.21 (relating to content and form) to make these section titles consistent with § 111.11 (relating to content and form).

The Department had amended § 111.3 (relating to definitions) to clarify that documents are properly filed and served by mail only upon deposit in the United States mail as evidenced by a United States Postal Service postmark. By way of comment to this section, IRRC noted that a number of sections in Chapters 111 (relating to special rules of administrative practice and procedure before the Workers' Compensation Appeal Board) and 131 (relating to special rules of administrative practice and procedure before workers' compensation judges) contain language referring to forms provided or prescribed by the Board or the Department. IRRC suggested that the Department add information identifying and addressing the handling of these forms, including reference to either the form number or title. The Department does not believe, however, that reference to specific form titles or numbers is helpful with respect to these rules, given the unusually large number of forms used in the workers' compensation system. Consistent with longstanding practice, forms are easily attainable by title by contacting the Bureau's helpline at 1-800-482-2383 or 717-772-4447 or accessing the Department's website at [www.dli.state.pa.us](http://www.dli.state.pa.us). In light of IRRC's comment that § 131.5 should include a definition of supersedeas, the Department has added a definition of "Supersedeas" in § 111.3.

The Department had amended § 111.11 (relating to content and form) to provide for cross appeals. IRRC commented with regard to a separate section (§ 131.21(a) (relating to identifying number)) that, for confidentiality reasons, social security numbers should not be used for purposes of identification. The Department generally agrees with these confidentiality concerns and has amended § 111.11(a)(1) to replace the reference to the social security number of the claimant with a reference to the Bureau claim number.

The Department had amended § 111.16 (relating to briefs: content and form and time for filing) to modify the time periods for filing of briefs before the Board. IRRC commented that the Department should clarify the Board's ability to extend or shorten the time for filing a brief "[u]pon request of a party" in § 111.16(c) to indicate how and to whom such requests may be made. As a result, the Department has amended the first sentence of § 111.16(c) to indicate that

a party's request may be made in writing to the Secretary of the Board or orally at the time of oral argument.

The Department had amended § 111.18 (relating to decisions of the Board) to provide for the filing of cross appeals. IRRC further requested that a time limit for Board decisions be included in § 111.18(a), suggesting that the phrase "as promptly as possible" is vague in this regard. The Department did not make this change because no time period could be given in light of the many variables involved in the issuance of a decision, including briefing schedules, obtaining a complete record for adjudicating the appeal, resolving Commonwealth Court remands and the possibility of resolution by agreement of the parties. These issues are often outside the Board's control and make it difficult to determine a specific time period.

The Department had amended § 111.22 (relating to filing) to provide that only two copies of the request for supersedeas, rather than four, must be filed with the Board. The amendments now further provide for the time period in which requests for supersedeas from a judge's decision or from a Board order shall be filed. IRRC suggested that the Department should include in § 111.22(a) either the specific time period allowed for a supersedeas request to be filed or the statutory citation where that time period can be found because the phrase "within the time allowed by law" is unclear. The Department agrees and has modified this section accordingly for both supersedeas requests from a judge's decision and from a Board order.

### **Chapter 131** **Special Rules for Administrative Practice and Procedure before** **Workers' Compensation Judges**

Section 131.3 (relating to waiver and modification of rules) allows judges to waive or modify provisions within Chapter 131 (relating to special rules for administrative practice and procedure before workers' compensation judges) for good cause, upon motion or agreement. PWCJPA suggested that the language "for good cause" should be replaced by "within the Judge's discretion" for consistency and to prevent litigation of what constitutes good cause. The Department determined that it is not necessary to change this language because the "good cause" requirement is intended to limit waiver or modification to cases with specific facts that warrant such action and to discourage blanket waiver of rules in all cases. Moreover, judges may still use their discretion to determine whether good cause exists in a given case.

The Department had amended § 131.5 (relating to definitions) to include definitions for the terms "Bureau record," "Insurer" and "Judge," and to delete the definitions of the terms "Close of the record" and "Referee." IRRC commented that the definition of the term "insurer" in the regulation differs from that found in section 109 of the act (77 P.S. § 29), and that the definition in the regulation should be replaced with a citation to section 109 of the act. The term "insurer" is defined in more than one place in the act, however. As these regulations are procedural in nature, the Department chose as its analytical framework the procedural definition of the term which is found in section 401 of the act (77 P.S. § 701). Thus, the Department has not changed the definition to that found in section 109. The Department also has amended § 131.5 to include the definitions for the terms "Challenge proceeding," "Penalty proceeding" and "Supersedeas" in order to further clarify the regulations.

The Department had amended § 131.11 (relating to filing, service and proof of service) to clarify that items required to be served upon a party must also be served upon the party's attorney in the same manner as the party is served, and that documents are properly filed and served by mail only upon deposit in the United States mail as evidenced by a United States Postal Service postmark. PWCJPA requested that the language "as evidenced by the postmark" in § 131.11(b) be left unchanged, without specific reference to a "United States Postal Service" postmark. The Department does not concur, as the inclusion of this reference reflects the current workers' compensation case law, as articulated in the Pennsylvania Supreme Court case of *Sellers v. Workers' Compensation Appeal Board*, 713 A.2d 87 (Pa. 1998).

Section 131.21 (relating to identifying number) had provided for identification of submissions in proceedings before judges by the social security number of the employee, unless another identifying number has been assigned by the Bureau. IRRC and PWCJPA commented that, for confidentiality reasons, social security numbers should not be used for purposes of identification. IRRC further suggested that the use of the phrase "another identifying number" is unclear and should be deleted. The Department agrees with the confidentiality concerns of IRRC and PWCJPA, and has amended § 131.21(a) to eliminate reference to social security numbers and to simply indicate that submissions in proceedings before judges shall be identified "by an identifying number assigned by the Bureau."

Section 131.22 (relating to transfer of cases or petitions on agreement of all parties) had provided for the transfer or reassignment of cases upon agreement of the Bureau, the parties and the judge. PWCJPA suggested that the reference to the Bureau be deleted, such that only agreement of the parties and the judge would be necessary for the transfer of a case. The Department chose not to adopt this suggestion, as it is necessary for the Bureau to retain the discretion in the transfer and reassignment of cases in order to properly manage case loads and limit forum shopping.

The Department had amended this chapter to add § 131.24 (relating to recusal of judge), requiring that the judge hold a hearing regarding a motion for recusal and issue a decision within 15 days following receipt of the evidentiary hearing transcript and post-hearing submissions. The amendment also had provided that decisions on motions for recusal are interlocutory unless certified for immediate appeal. PWCJPA requested the addition of language indicating that recusal may be upon the judge's own motion and that, for privacy reasons, the judge may recuse himself or herself "without comment." The Department has modified and rearranged this section to set forth in subsection (a) the judge's inherent right to recuse himself on the judge's own motion. The language formerly in subsections (a) and (b) in the notice of proposed rulemaking may now be found in subsections (b) and (c), respectively. The Department did not accept the suggestion to allow recusal "without comment," however, as the Department believes that the parties have a right to know the reason for the judge's recusal.

The Department had amended § 131.32 (relating to petitions except petitions for joinder and challenge proceedings) to provide that petitions shall be on a Bureau petition form. In addition, this amendment had clarified that the number of copies required shall be as prescribed on the Bureau form. Additionally, the amendment had required that the facts on which a cause

of action or defense is based shall be stated in a concise and summary form. IRRC raised concerns about the service of the notice of assignment of petitions under § 131.32(b). IRRC suggested the inclusion of a timeline for assignment by the Bureau and a description of what will constitute notice. The Department has not made this change. The Department believes that it is inappropriate to include this information in these rules because these regulations govern procedures before judges, and not Bureau procedures themselves.

The Department had amended § 131.33 (relating to answers except answers to petitions for joinder and challenge proceedings) to clarify that a failure to answer a claim petition within 20 days of assignment of such petition shall result in the admission of all allegations of the claim petition, and that answers must specifically admit or deny the averments of each paragraph of the petition, where applicable. The amendment further clarifies that all petitions other than claim petitions may be answered within 20 days after assignment by the Bureau. Further, this amendment specifies the form and number of copies of answers, as well as service requirements for answers. IRRC commented that the phrase “challenge proceeding” should be defined. As such, the Department has added a definition of the term “challenge proceeding” in § 131.5 (relating to definitions). IRRC further questioned whether the term “claim petition” was synonymous with the term “petition” as used elsewhere in the regulations and, if not, commented that the term “claim petition” should be described or defined. There are many types of petitions, including a claim petition, addressed throughout the regulations. The Department does not believe that a description or definition of the self-evident term “claim petition” is warranted in the regulations, however, as the act itself specifically refers to and describes a claim petition in sections 410 and 416 of the act (77 P.S. §§ 751 and 821).

In addition, IRRC suggested that the term “adequate excuse” in § 131.33(a) (relating to answers except answers to petitions for joinder and challenge proceedings) is unclear and should either be defined or explained by example. PWCJPA commented that the changes to § 131.33 that reflected case law and addressed what may or may not be contested on a petition should be eliminated. Thomas C. Lowry, Esquire additionally requested that § 131.33(b) be clarified to reflect that, under that subsection, the filing of an answer to petitions other than claim petitions was not mandatory. In light of the changing case law in this area and in order to avoid confusion, the Department has redrafted subsection (a), thereby removing the reference to “adequate excuse” in the regulation and replacing it with a general reference to section 416 of the act (77 P.S. § 821). This change further allowed the Department to consolidate subsections (a) and (b) to improve the clarity of the section regarding the filing of answers.

Thomas C. Lowry, Esquire further commented that the requirement that answers must be responsive in denying or admitting allegations in § 131.33(e) (relating to answers except answers to petitions for joinder and challenge proceedings) is in the nature of “notice pleading,” which unfairly burdens employers in light of time constraints in the transmittal of files to employer counsel. Attorney Lowry further questions whether this will open the door for a “motion for judgment on the pleadings” practice in workers’ compensation. The Department does not agree with this position. The Department believes that meaningful, responsive answers are possible under this section without creating these problems. The Department does not believe the requirements of § 131.33(e) place an undue burden on respondents, particularly in light of the existing, more detailed requirements for answers filed with state courts. In addition, the issue of

time constraints in the transmittal of files from employers to their counsel is an internal issue that is not appropriately addressed in these regulations.

The Department had amended § 131.36 (relating to joinder) to require that the petition for joinder have attached to it a list of the dates and locations of all prior hearings held and depositions taken, to require that an original and the number of copies specified on the Bureau petition for joinder form be filed and to provide that answers to petitions for joinder may be filed within 20 days following service of the petition for joinder. IRRC and PWCJPA suggested that the Department revise the language in subsection (f) to reflect the fact that, although the filing of the joinder petition itself is optional, the timeline following the filing of a joinder petition is mandatory. In response, the Department acknowledges the validity of these suggestions and thus has amended § 131.36(f) to remove any ambiguity about the timeline. IRRC additionally commented that the term “joinder” was unclear and suggested that it be defined. The Department has determined that it is not necessary to define the term, as the meaning of the term is obvious from the context and plain meaning of this section and because there is a specific Bureau form for joinder of an additional defendant.

The Department had amended this chapter to add § 131.40 (relating to frivolous pleadings) to provide a mechanism for the dismissal or other disposition of frivolous pleadings. IRRC commented that the phrase “or issue some other decision within the judge’s discretion” in this section is vague. IRRC suggested that the Department specify the types of decision, other than dismissal, which can be issued. The Department believes that inclusion of such a list here is not warranted, as there are several alternatives to dismissing a petition that may be appropriate based upon individual circumstances including, among others, the options discussed in § 131.13(m) (relating to continuances or postponement of hearings).

Section 131.41 (relating to request for supersedeas or reconsideration of supersedeas) had addressed the procedural aspects of requests for supersedeas before judges. IRRC commented that there is no definition of the term “supersedeas” in § 131.5 (relating to definitions) and suggested that the Department explain the meaning of the term as used in this section. The Department agrees and has included a definition of this term in § 131.5.

The Department had amended § 131.52 (relating to first hearing procedures) to clarify the chapter’s purpose of providing a fair and prompt hearing process, and of allowing all parties to introduce appropriate evidence and to receive a timely decision from the judge. The Department also had amended § 131.52 to reaffirm that, where practicable and appropriate, the entire record shall be completed at the first hearing. The amendment further had provided that the procedures utilized for hearings may differ based upon a number of factors and that the process ultimately utilized in any particular case is within the discretion of the judge. IRRC commented that subsections (a) and (b) of this section are redundant insofar as the general purpose and scope of this chapter are addressed by § 131.1 (relating to purpose) and § 131.2 (relating to scope). The Department does not concur. Although these sections address common issues, the information in § 131.52 is specific to first hearing procedures and does not appear to be redundant in light of §§ 131.1 and 131.2.



IRRC further commented that the phrase "all documents required by law" in § 131.52(f) (relating to first hearing procedures) is vague and should be replaced with a citation to applicable law or a list of specific documents. The Department determined that it is not necessary to replace this language as there are numerous sections of the act, regulations and other acts that may require the filing of documents, and citation to all of these provisions would unreasonably lengthen the regulation.

PWCJPA additionally commented that § 131.52(f) (relating to first hearing procedures) should be revised to require that the Bureau, in addition to the parties, shall provide the judge with all documents required by law. The Department has declined to place an additional administrative burden on the Bureau, which is not a party, by subjecting it to this requirement in all cases. Moreover, it is up to the parties to determine what documents may be relevant for introduction in any given case. PWCJPA further requested the removal of the sentence in § 131.52(f) prohibiting the judge and employee from introducing the Employer's Report of Occupational Injury or Disease. The Department does not believe that removal of the sentence is warranted because the language is consistent with the statutory prohibition on the use of such reports as evidence against employers, found in section 438 of the act (77 P.S. § 994).

Thomas C. Lowry, Esquire also commented that the discretionary nature of the first hearing procedures allowed by § 131.52 (relating to first hearing procedures) may lead to widespread differences among judges and may lead to conflicts for a busy law practice. The Department believes no change is warranted, as any conflicts caused by the scheduling of judges should be worked out between the judge and the parties on a case-by-case basis. Attorney Lowry further commented that this section is at variance with the time periods set forth for the exchange of information in § 131.61 (relating to exchange of information). The Department disagrees with this position, insofar as § 131.53a (relating to consolidated hearing procedure) gives the judge authority to waive or modify the rules in § 131.61 for the purposes of conducting a one-day trial.

The Department had amended this chapter to add § 131.53a (relating to consolidated hearing procedure) to provide a mechanism for the implementation of expedited hearing procedures including one-day trials. The amendment further had provided that trial or deposition testimony may be taken from witnesses prior to a party's obligation to conduct medical depositions. IRRC questioned the reasonableness of the provision in subsection (a) which allows judges to waive or modify rules to accommodate one-day trials. IRRC further suggested that subsections (a) and (b) be consolidated into one subsection. The Department has not adopted this suggestion. The Department believes that the waiver provision is necessary to allow judges to manage their caseload and to be flexible to meet docket demands. In addition, the Department believes that combining the subsections would reduce clarity.

IRRC also commented that the terms "trial deposition" and "medical deposition" in § 131.53a (relating to consolidated hearing procedure) are not defined. PWCJPA also requested that the term "trial deposition" be changed simply to "deposition." The Department utilized the term "trial deposition" to distinguish it from a discovery deposition, which is not allowed in workers' compensation matters. As such, the term "trial deposition" is used to provide clarity to indicate that the deposition is to be for use at the hearing rather than as a means of discovery

prior to the hearing. The term “medical deposition” is commonly used in workers’ compensation proceedings and its meaning is obvious by its use, without further definition. Thus, the Department has declined to accept these suggestions. PWCJPA further commented that subsection (b)(2) should be redrafted to specifically address concerns about parties waiting months to testify. The Department believes that this suggestion is not warranted, as it would interfere with the judge’s existing ability to set hearing procedures under the rules. Moreover, the rules already provide the judge with the discretion to vary the hearing procedures in any given case.

The Department had amended § 131.54 (relating to manner and conduct of hearings) to clarify that hearings may, at the discretion of the judge, be conducted by telephone or other electronic means if the parties do not object. The amendment also had provided that a witness whose identity has not been revealed as provided in this chapter shall not be permitted to testify on behalf of the defaulting party unless the testimony is allowed within the judge’s discretion. PWCJPA suggested that the “if the parties do not object” language would limit the judge’s use of his or her discretion where a party objects. PWCJPA therefore requested that it be stricken. The Department does not concur, as a party’s objection and the judge’s discretion are not mutually exclusive. In addition, the inclusion of this language necessarily addresses due process and fairness concerns in these circumstances.

The Department had amended § 131.55 (relating to attorney fees and costs) to provide that a decision on the fee award will be made on the application and response submitted, if any, and the record of the case. If deemed appropriate by the judge, a hearing may be held and evidence presented. PWCJPA commented that the phrasing of subsection (d), requiring that the decision will be made “based on the application and response submitted, if any, and the record of the case,” is in conflict with current case law on this subject. In response, for purposes of clarity, the Department has rearranged the language to provide that a decision will be made “based on the record of the case and, if filed, the application and response.”

The Department had amended this chapter to add § 131.57 (relating to compromise and release agreements) which delineates procedures for the filing and approval of compromise and release agreements under section 449 of the act (77 P.S. § 1000.5). The proposed amendment had clarified that compromise and release agreements are subject to an expedited resolution, and that the judge will circulate a decision within 30 days after a hearing on the compromise and release agreement. IRRC commented that the phrase “[t]he judge will circulate a decision” in subsection (d) is vague. IRRC requested an explanation as to whom the decision is distributed. The Department disagrees and believes that the parties to whom the decision is circulated is clear from the language of this section and the context of section 449 of the act (77 P.S. § 1000.5). PWCJPA requested that the language “after the hearing” in subsection (d) be changed to “after the close of the record” to reflect that the record may stay open after the hearing for exhibits. The Department does not believe that such a change is necessary, as the language “after the hearing” is a valid interpretation of the statutory provision.

The Department had amended this chapter to add § 131.58 (relating to informal conferences) which provides procedures for requesting and participating in informal conferences. The amendment had provided that requests for informal conferences shall be recorded on a form

prescribed by the Bureau, and shall be filed with the judge to whom a pending petition has been assigned. If no petition is pending, a petition and the request for informal conference shall be filed with the Bureau. IRRC commented that the instructions and procedures specified in the Bureau form and section 402.1 of the act (77 P.S. § 711.1), which are referenced in subsection (e), should be specifically included. The Department does not believe the inclusion of this information is warranted, however, as the Bureau form already contains the necessary instructions and procedures for the parties. Moreover, the procedures in this area are new and evolving.

The Department had amended § 131.61 (relating to exchange of information) to clarify that digital recordings, including CD ROMs and diskettes, are included in the types of information which must be exchanged prior to the first hearing. Additionally, the amendments had clarified the requirement that the moving party provide this information prior to the first hearing and that the respondent provide it within 45 days after the first hearing. PWCJPA commented that the phrase "no later than" in subsection (b) was redundant and should be stricken in light of the Department's addition of the phrase "prior to" in that subsection. The Department agrees and, accordingly, has removed the "no later than" language from this subsection.

The Department had amended § 131.81 (relating to subpoenas) to require that witness fees for witness testimony and travel (1) be tendered upon the witness's demand at the time of the service of the subpoena or (2) accompany the subpoena if served by mail. The fee for one day's attendance and roundtrip mileage is as prescribed in 42 Pa. C.S. §§ 5901 – 5988 (relating to depositions and witnesses). PWCJPA suggested that subsection (b)(3), providing for subpoena fees, be stricken in its entirety. PWCJPA commented that this subsection will complicate cases and place individuals who are receiving no income at a disadvantage. The Department does not agree with this position. This provision reflects the current state of the law and is intended to provide necessary notice since this statutory requirement is in addition to those requirements found in the act.

The Department had amended § 131.101 (relating to briefs, findings of fact and close of record) to set forth that the record is closed when the parties have submitted all of their evidence and rested, or when the judge has closed the evidentiary record on a party's motion or on the judge's own motion. The amendment also had provided that the judge may hold open the record if the judge determines that additional hearings are necessary, additional evidence needs to be submitted, or, if the judge schedules additional written or oral argument, the evidentiary record may be held open by the judge. The amendment further had provided for certification of the record at or before the filing of proposed findings of fact, conclusions of law or briefs. The amendment had provided that the judge will specify the contents of the evidentiary record in the decision. IRRC and PWCJPA suggested that the final use of the word "evidentiary" in the last sentence of § 131.101(c) was not necessary and should be deleted. The Department concurs with this suggestion. As a result, the Department has clarified the sentence by removing the final "evidentiary" reference in that sentence. PWCJPA also commented that, since certification of the record is not required in each case, the word "shall" in the first sentence of § 131.101(f) should be changed to "may." The Department has not made this change, as the use of the word "shall" was intended to provide a clear directive to the parties of their obligation to provide a

certification of the record, in order to assist the judges in identifying the evidentiary record and properly deciding cases.

PWCJPA further commented regarding § 131.101 (relating to briefs, findings of fact and close of record) that the judge should have discretion to have the parties' written arguments submitted in a format most useful to the judge, and therefore requested that the word "shall" in § 131.101(h) be changed to "may." The Department does not agree. The intent of the change is to provide uniform state-wide standards with respect to the content and form of briefs; however, judges may still waive or modify requirements pursuant to § 131.3 (relating to waiver and modification of rules).

The Department had amended § 131.121 (relating to penalty proceedings initiated by a party) to clarify that answers may be filed as provided in § 131.33 (relating to answers except answers to petitions for joinder and challenge proceedings). Additionally, the amendment had specified that penalty proceedings may be initiated by petition or by motion on the record of a pending proceeding. Further, the amendment had provided that a party complaining of a violation of the act or this chapter bears the burden of proving the violation. IRRC requested that the Department include a definition of the term "penalty proceeding." In response, the Department has added a definition of the term "penalty proceeding" in § 131.5 (relating to definitions). PWCJPA suggested that § 131.121(g), which refers to the burden of proof, be stricken because it is substantive and follows case law rather than the act. The Department disagrees with this suggestion. This subsection is merely informational with the intent to give guidance to the parties.

Section 131.122 (relating to other penalty proceedings) had provided that penalty proceedings not conducted under § 131.121 (relating to penalty proceedings initiated by a party) will be conducted in accordance with other applicable regulations of the Bureau. IRRC commented that the Department should provide a citation for the other "applicable regulations" referenced in this section. The Department concurs and has therefore included in § 131.122 a citation to the regulations in 34 Pa. Code Chapter 121 (relating to general provisions).

PWCJPA proposed that the Department further add a new § 131.59 to this chapter with language reflecting the use of mediation and settlement conferences and the Bureau's effort to promote the use of alternative dispute resolution within the workers' compensation system. The Department does not believe that the addition of this new section is warranted, however, as the procedures in this area are still new and evolving. In addition, the Department believes that the use of these conferences is presently encompassed under the language in § 131.53a (relating to consolidated hearing procedure).

### **Reporting, Recordkeeping and Paperwork Requirements**

The regulations do not require the creation of any new forms. Existing forms relating to practice before the Board and judges require few modifications. Therefore, the regulations do not impose any additional reporting, recording or paperwork requirements on either the Commonwealth or the regulated community.

### **Effective Date**

These amendments will be effective on publication in the *Pennsylvania Bulletin*.

### **Regulatory Review**

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on March 7, 2002, the Department submitted a copy of the proposed rulemaking, published at 32 Pa.B. 1518, to IRRC and the Chairpersons of the Senate Committee on Labor and Industry and the House Labor Relations Committee. In addition to submitting the proposed rulemaking, the Department provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department. In compliance with section 5(c) of the Regulatory Review Act (71 P.S. § 745.5(c)), the Department also provided IRRC and the Committees with copies of the comments received during the public comment period, as well as other documents when requested.

In preparing these final-form regulations, the Department has considered all comments received from IRRC, stakeholders and the public. These final-form regulations were deemed approved by the House Committee on \_\_\_\_\_, and deemed approved by the Senate Committee on \_\_\_\_\_. IRRC met on \_\_\_\_\_, and approved the regulations in accordance with section 5.1(e) of the Regulatory Review Act (71 P.S. § 745.5a(e)).

### **Contact Persons**

The contact persons are: (a) Elizabeth A. Crum, Acting Deputy Secretary of Compensation and Insurance, Department of Labor and Industry, 1700 Labor and Industry Building, Seventh and Forster Streets, Harrisburg, Pennsylvania 17120; and (b) Susan McDermott, Chairman, Workers' Compensation Appeal Board, 1712 State Office Building, 1400 Spring Garden Street, Philadelphia, Pennsylvania 19130. Ms. Crum's phone number is 717-787-5082. Chairman McDermott's phone number is 215-560-4583.

### **Findings**

The Department finds that:

- (a) Public notice of intention to amend the administrative regulations amended by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and the regulations thereunder in 1 Pa. Code §§ 7.1 and 7.2.
- (b) The amendment of the regulations of the Department in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

### **Order**

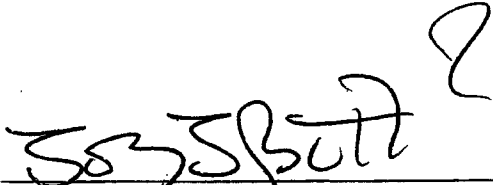
The Department, acting under the authorizing statutes, orders that:

(a) The regulations of the Department, 34 Pa. Code, are amended by adding §§ 131.15, 131.24, 131.30, 131.40, 131.53a, 131.57 and 131.58; by amending §§ 111.1-111.3, 111.11-111.18, 111.21-111.24, 111.31-111.35, 131.1-131.5, 131.11-131.13, 131.21, 131.22, 131.31-131.36, 131.41-131.43, 131.49, 131.50, 131.50a, 131.52-131.55, 131.61-131.70, 131.81, 131.91, 131.101, 131.102, 131.111, 131.112, 131.121 and 131.122, to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) The Secretary of the Department shall submit this order and Annex A to the Office of Attorney General and the Office of General Counsel for approval as to legality and form as required by law.

(c) The Secretary of the Department shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect upon publication in the *Pennsylvania Bulletin* as a final-form regulation.

  
\_\_\_\_\_  
JOHNNY J. BUTLER  
Secretary

**FISCAL NOTE:** Fiscal Note 12-61 remains valid for the final adoption of the subject regulations.

ANNEX A

PART VII. [WORKMEN'S] WORKERS' COMPENSATION APPEAL BOARD

CHAPTER 111. SPECIAL RULES OF ADMINISTRATIVE PRACTICE AND PROCEDURE  
BEFORE THE [WORKMEN'S] WORKERS' COMPENSATION APPEAL BOARD

Subchapter A. GENERAL PROVISIONS

§ 111.1. Scope [of chapter].

(a) This chapter applies to proceedings before the Board under the act and the Disease Law. [Insofar as practicable, this chapter applies to proceedings pending on or after April 8, 1989.]

(b) Subsection (a) supersedes 1 Pa. Code § 31.1 (relating to scope of part).

§ 111.2. Applicability of [g]General [r]Rules of Administrative Practice and Procedure.

(a) [The General Rules of Administrative Procedure set forth in 1 Pa. Code Part II, are not applicable to the activities of and proceedings before the Board. This chapter is intended to supersede the General Rules of Administrative Practice and Procedure and establish special rules for practice before the Board.] This chapter is intended to supersede 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure). The General Rules of Administrative Practice and Procedure are not applicable to activities of and proceedings before the Board.

(b) [The following sections of the General Rules of Administrative Practice and Procedure are not applicable to activities of and proceedings before the Board.

- (1) 1 Pa. Code § 31.4 (relating to information and special instructions).
- (2) 1 Pa. Code § 31.5(c) and (d) (relating to communications and filings generally).
- (3) 1 Pa. Code § 31.6 (relating to amendments to rules).
- (4) 1 Pa. Code § 31.11 (relating to timely filing required).
- (5) 1 Pa. Code § 31.12 (relating to computation of time).
- (6) 1 Pa. Code § 31.13 (relating to issuance of agency orders).
- (7) 1 Pa. Code § 31.14 (relating to effective dates of agency orders).
- (8) 1 Pa. Code § 31.15(b) (relating to extensions of time).
- (9) 1 Pa. Code § 31.21 (relating to appearance in person).
- (10) 1 Pa. Code § 31.22 (relating to appearance by attorney).
- (11) 1 Pa. Code § 31.23 (relating to other representation prohibited at hearings).
- (12) 1 Pa. Code § 31.24 (relating to notice of appearance).
- (13) 1 Pa. Code § 31.25 (relating to form of notice of appearance).
- (14) 1 Pa. Code § 31.27 (relating to contemptuous conduct).

- (15) 1 Pa. Code § 31.28 (relating to suspension and disbarment).
- (16) 1 Pa. Code § 33.2 (relating to form).
- (17) 1 Pa. Code § 33.3 (relating to incorporation by reference).
- (18) 1 Pa. Code § 33.4 (relating to single pleadings or submittal covering more than one matter).
- (19) 1 Pa. Code § 33.11 (relating to execution).
- (20) 1 Pa. Code § 33.12 (relating to verification).
- (21) 1 Pa. Code § 33.21 (relating to filing fees).
- (22) 1 Pa. Code § 33.22 (relating to mode of payment of fees).
- (23) 1 Pa. Code § 33.23 (relating to copy fees).
- (24) 1 Pa. Code § 33.33 (relating to effect of service upon an attorney).
- (25) 1 Pa. Code § 33.34 (relating to date of service).
- (26) 1 Pa. Code § 33.41 (relating to amendments).
- (27) 1 Pa. Code § 33.42 (relating to withdrawal or termination).
- (28) 1 Pa. Code § 33.51 (relating to docket).
- (29) 1 Pa. Code § 33.61 (relating to applications for waiver of formal requirements).
- (30) 1 Pa. Code § 35.1 (relating to applications generally).
- (31) 1 Pa. Code § 35.2 (relating to contents of applications).
- (32) 1 Pa. Code § 35.5 (relating to form and content of informal complaints).
- (33) 1 Pa. Code § 35.6 (relating to correspondence handling of informal complaints).
- (34) 1 Pa. Code § 35.7 (relating to discontinuance of informal complaints without prejudice).
- (35) 1 Pa. Code § 35.9 (relating to formal complaints generally).
- (36) 1 Pa. Code § 35.10 (relating to form and content of formal complaints).
- (37) 1 Pa. Code § 35.11 (relating to joinder of formal complaints).
- (38) 1 Pa. Code § 35.14 (relating to orders to show cause).
- (39) 1 Pa. Code § 35.18 (relating to petitions for issuance, amendments, waiver, or repeal of regulations).
- (40) 1 Pa. Code § 35.19 (relating to petitions for declaratory orders).
- (41) 1 Pa. Code § 35.20 (relating to appeals from actions of the staff).
- (42) 1 Pa. Code § 35.23 (relating to protest generally).
- (43) 1 Pa. Code § 35.24 (relating to effect of protest).
- (44) 1 Pa. Code §§ 35.27 - 35.30 (relating to initiation of intervention; eligibility to intervene; form and contents of petitions to intervene; and filing of petitions to intervene).
- (45) 1 Pa. Code § 35.45 (relating to consolidation).
- (46) 1 Pa. Code §§ 35.48 - 35.51 (relating to amendment and withdrawal of pleadings).
- (47) 1 Pa. Code §§ 35.54 and 35.55 (relating to motions).
- (48) 1 Pa. Code Chapter 35 Subchapter B (relating to hearings and conferences).



- (49) 1 Pa. Code Chapter 35 Subchapter C (relating to evidence and witnesses).
- (50) 1 Pa. Code Chapter 35 Subchapter D (relating to motions).
- (51) 1 Pa. Code Chapter 35 Subchapter E (relating to presiding officers).
- (52) 1 Pa. Code § 35.191 (relating to proceedings in which briefs are to be filed).
- (53) 1 Pa. Code Chapter 35 Subchapter G (relating to proposed reports).
- (54) 1 Pa. Code § 35.221 (relating to briefs and oral arguments in absence of proposed report).
- (55) 1 Pa. Code §§ 35.225 and 35.226 (relating to interlocutory orders; and final orders).
- (56) 1 Pa. Code §§ 35.231-35.233 (relating to reopening of record).
- (57) 1 Pa. Code § 32.241 (relating to application for rehearing or reconsideration).
- (58) 1 Pa. Code § 35.251 (relating to reports of compliance).]

[(c)] Subsection[(s)] (a) [and (b)] supersedes 1 Pa. Code § [31.1] 31.4 (relating to [scope of part] information and special instructions).

### § 111.3. Definitions.

(a) The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

*Act* - [The] Pennsylvania [Workmen's] Workers' Compensation Act (77 P.S. §§ 1- [1031]1041.4 and §§ 2501-2506).

*Appeal* - A proceeding to review a ruling or decision by a [referee] judge.

*Board* - The [Workmen's] Workers' Compensation Appeal Board.

*Bureau* - The Bureau of Workers' Compensation of the Department.

*Disease Law* - The Pennsylvania Occupational Disease Act (77 P.S. §§ 1201 - 1603).

*Filing* - Delivery in person or by mail. If filing is by mail, it is deemed complete upon deposit[ing] in the United States mail, [postage or charges prepaid,] as evidenced by [the] a United States Postal Service postmark, properly addressed, with postage or charges prepaid.

*Judge* - A workers' compensation judge assigned by the Bureau as provided in section 401 of the act (77 P.S. § 701) or assigned by the Bureau to determine a petition filed under the Disease Law.

*Party* - A petitioner or respondent. An act required or authorized by this chapter, to be done by or to a party, may be done by or to that party's counsel of record.

*Petitioner* - Anyone seeking to review a ruling or decision by a [referee] judge or the moving party in a petition filed under Subchapter D (relating to other petitions).

*Respondent* - Anyone in whose favor the matter was decided by the [referee] judge or other than the moving party in any petition filed under Subchapter D.

*Service* - Delivery in person or by mail. If service is by mail, it is deemed complete upon deposit[ing] in the United States mail, [postage or charges prepaid,] as evidenced by [the] a United States Postal Service postmark, properly addressed, with postage or charges prepaid.

*Supersedes* - A temporary stay affecting a workers' compensation case.

- (b) Subsection (a) supersedes 1 Pa. Code §§ 31.3, 31.11 and 33.34 (relating to definitions; **timely filing required; and date of service**).

#### Subchapter B. APPEALS

##### § 111.11. Content and form.

- (a) An appeal [to the Board] or cross appeal shall be filed with the Board on a form provided by the Board or on a form containing substantially the following information:

- (1) The name and address of the claimant, name and address of the defendant, date of the injury, type of petition, ~~social security number of claimant~~ Bureau claim number, insurance carrier and circulation date of the decision at issue.
- (2) A statement of the particular grounds upon which the appeal is based, including reference to the specific findings of fact which are challenged and the errors of the law which are alleged. General allegations which do not specifically bring to the attention of the Board the issues decided are insufficient.
- (3) A statement of the relief which is requested.
- (4) A statement whether the petitioner seeks an opportunity to file a brief or present oral argument or whether the case should be heard on the record without brief or oral argument.
- (5) Identification of the [referee] judge whose decision is in question, including as an attachment, a copy of that [referee's] judge's decision.

(6) A proof of service as specified in § 111.12[(c)] (d) (relating to filing, service and proof of service).

(b) An appeal or a cross appeal shall be served on all parties and the [referee] judge.

(c) A request for supersedeas, if desired, shall be indicated on the appeal and shall conform to § 111.21 (relating to ~~form/content~~ content and form).

(d) Subsections (a) - (c) inclusive supersede[s] 1 Pa. Code §§ 31.5 [(a) and (b) and], 33.1 - 33.4, 33.11, 33.12, 35.17 and 35.20 [(relating to communications and filings generally; and petitions generally)] .

§ 111.12. Filing, service and proof of service.

(a) An original and [four] two copies of each appeal or cross appeal shall be filed. Only the original appeal shall have attached a copy of the [referee's] judge's decision which is in question as required by § 111.11(a)(5) (relating to content and form).

(b) The petitioner shall serve a copy of any appeal upon all parties and the [referee] judge.

(c) The respondent shall serve a copy of any cross appeal upon all parties and the judge.

(d) The petitioner or respondent shall, concurrently with the filing of an appeal or a cross appeal, on a form prescribed by the Board or in substantial compliance therewith, file a proof of service with the Board containing:

(1) A statement of the date of service.

(2) The names of parties and [referee] judge served.

(3) The mailing address, the applicable zip code and the manner of service on the parties and [referee] judge served.

(e) Subsections (a) - (d) inclusive supersede[s] 1 Pa. Code §§ 31.26, 33.15, 33.21 - 33.23, 33.32, 33.33 and 33.35 - 33.37 [(relating to number of copies)] . [Subsection (b) supersedes 1 Pa. Code § 31.26 (relating to service on attorneys). Subsection (c) supersedes 1 Pa. Code §33.32 (relating to service by a participant). This section supersedes 1 Pa. Code §§ 33.35 and 33.36 (relating to proof of service; and form of certificate of service).]

§ 111.13. Processing of appeals and cross appeals.

(a) Upon receipt of an appeal or a cross appeal, the Board will acknowledge receipt to all parties. The date of acknowledgment will be 3 days subsequent to the date the acknowledgment is mailed.

(b) The Board will, in addition to acknowledging receipt of the appeal or the cross appeal, establish the briefing schedule and indicate that the appeal and the cross appeal will be scheduled for oral argument unless all parties agree to submission of the case on only briefs or record.

(c) Subsections (a) and (b) supersede[s] 1 Pa. Code § 33.31 (relating to service by the agency).

§ 111.14. Motions to quash.

(a) A party may submit a motion to quash an appeal or a cross appeal within 20 days [following receipt of the acknowledgment described in § 111.13 (relating to processing of appeals). A motion to quash may be presented prior to the scheduling of oral argument so that the motion may be considered and decided at the time of oral argument] of service of the appeal or the cross appeal.

(b) A motion to quash shall be served on all parties.

(c) A motion to quash shall be accompanied by a proof of service conforming to § 111.12[(c)] (d) (relating to filing, service and proof of service), insofar as applicable.

(d) The Board shall dispose of motion to quash in conformity with the procedures set forth in § 111.35 (relating to dispositions of petitions).

(e) An original and [four] two copies of a motion to quash shall be filed.

(f) Subsections (a) - (e) inclusive supersede 1 Pa. Code §§ 31.26, 33.15, 33.32, 33.33, 33.35 - 33.37, 35.54 and 35.55 and also supersede Chapter 35, Subchapter D.

§ 111.15. No other pleadings allowed.

(a) Other than a motion to quash as set forth in [this subchapter] § 111.14 (relating to motions to quash) and a cross-appeal, as set forth in § 111.11 (relating to content and form), no answer or other pleading may be filed or considered in conjunction with an appeal or a cross appeal.

(b) Subsection (a) supersedes 1 Pa. Code §§ 31.24, 31.25, 33.41, 33.42, 33.61, 35.1, 35.2, 35.5 - 35.7, 35.9 - 35.11, 35.14, 35.18, 35.19, 35.23, 35.24, 35.27 - 35.30, 35.35 - 35.41, 35.48 - 35.51, 35.54, 35.55, 35.211, 35.213, 35.231, 35.241 and 35.251 [(relating to answers to complaints and petitions)] .

§ 111.16. Briefs: ~~time for filing and content~~ content and form and time for filing.

- (a) A brief on behalf of a petitioner shall be filed with the Board **at or before the date of oral argument**. **If oral argument is waived, petitioner shall file a brief** within 30 days of the date of the Board's acknowledgment of receipt of the appeal **[by the Board]** as set forth in § 111.13 (relating to processing of appeals and cross appeals).
- (b) A brief on behalf of a respondent shall be filed with the Board **[within]** 30 days after **[service of the brief of the petitioner]** oral argument. Otherwise, the respondent shall file a brief with the Board within 60 days of the date of the Board's acknowledgment of receipt of the appeal as set forth in § 111.13.
- (c) Upon written request of a party directed to the Secretary of the Board or upon oral request at the time of oral argument, and with notice to all parties, the Board may extend or shorten the time for filing of the party's brief only for good cause shown. A party shall present a request to extend or shorten the time **[in advance of]** **at or before the date set for filing [of]** that party's brief.
- (d) Briefs not filed with the Board in accordance with the schedule in this section or as modified by the Board under subsection (c), will not be considered and will result in disposition of the appeal without further notice or consideration of the brief of the party failing to comply with these deadlines or schedule.
- (e) Briefs, except as otherwise allowed, shall consist of the following items, separately and distinctly set forth:
- (1) A short statement of the questions involved.
  - (2) A statement of the facts by the petitioner, or counterstatement of the facts by the respondent.
  - (3) The argument.
  - (4) A short conclusion setting forth the precise relief sought.
  - (5) A proof of service as specified in § 111.12[(c)] (d) (relating to filing, service and proof of service) insofar as applicable.
- (f) An original and **[four]** **two** copies of briefs shall be filed.
- (g) Briefs shall be served on all parties.
- (h) Subsections [(d)] (a) - (g) inclusive supersede[s] 1 Pa. Code §§ 31.15[(a)], 33.37, 35.212 and 35.221 [(relating to extensions of time).] and also supersede Chapter 35, Subchapter F. [Subsection (e) supersedes 1 Pa. Code § 35.192 (relating to content and form of briefs). Subsections (a), (b) and (e)(5) supersede 1 Pa. Code § 35.193 (relating to filing and service of briefs).]

§ 111.17. Oral argument.

- (a) The Board will schedule oral argument in every appeal **or cross appeal** unless all parties to **[that] the appeal or the cross appeal**, upon receiving the acknowledgment of appeal **or cross appeal**, indicate that no oral argument is requested, or that it is waived.
- (b) The Board will hear oral argument on appeals **and cross appeals** according to a schedule prepared in advance for each calendar year. Oral argument will be conducted in Harrisburg, Philadelphia and Pittsburgh and in other locations throughout this Commonwealth, as the Board may schedule, or, as is appropriate in the Board's judgment.
- (c) Oral argument will be scheduled at the earliest possible date **[following the close of the briefing schedule]** pursuant to the schedule as established by the Secretary of the Board.
- (d) Parties shall be advised as far in advance as possible of the date of oral argument by the acknowledgment of appeal **or cross appeal** as specified in § 111.13(b) (relating to processing of appeals **and cross appeals**).
- (e) Oral argument shall consist of a presentation, including rebuttal, if necessary, by the petitioner and respondent.
- (f) A petitioner or respondent represented by counsel need not be present at oral argument.
- (g) Oral argument may be conducted before one or more members of the Board.
- (h) **Subsections (a) - (g) inclusive supersede 1 Pa. Code §§ 33.51, 35.204, 35.214 and 35.221.**

§ 111.18. Decisions of the Board.

- (a) The decision of the Board on an appeal **and a cross appeal** shall be issued as promptly as possible following oral argument or the receipt of briefs, whichever occurs later.
- (b) Decisions of the Board on an appeal shall be issued under section 441 of The Administrative Code of 1929 (71 P.S. § 151).
- (c) Decisions of the Board will be served on all parties and the **[referee] judge** from whose decision the appeal was taken.
- (d) **Subsections (a) - (c) inclusive supersede 1 Pa. Code §§ 31.13, 31.14, 35.201 - 35.207 and 35.226.**

Subchapter C. SUPERSEDEAS ON APPEAL TO THE BOARD AND COURTS

§ 111.21. ~~Form/content~~ Content and form.

(a) A request for supersedeas shall **[contain]** be filed as a separate petition from the appeal and be accompanied by the following:

(1) A copy of the decision of the **[referee]** judge or order and opinion of the Board from which the supersedeas is requested.

(2) A short statement setting forth reasons and bases for the request for supersedeas.

(3) A specific statement as to the issues of law, if any, involved in the underlying appeal.

(4) Information on the current employment status of the claimant, if known.

(5) The court, if any, to which an appeal from the Board decision has been taken.

(6) Other relevant information for the Board's consideration in determining **whether** the supersedeas request **meets the following standards:**

(i) **The petitioner makes a strong showing that it is likely to prevail on the merits.**

(ii) **The petitioner shows that, without the requested relief, it will suffer irreparable injury.**

(iii) **The issuance of a stay will not substantially harm other interested parties in the proceeding.**

(iv) **The issuance of a stay will not adversely affect the public interest.**

(7) A proof of service as specified in § 111.12~~[(c)]~~ (d) (relating to filing, service and proof of service), insofar as applicable.

(b) Requests for supersedeas shall be served on all parties.

(c) Subsections (a) and (b) supersede[s] 1 Pa. Code §§ 35.1, 35.2, 35.17, 35.190 and 35.225 ~~[(relating to petitions generally)]~~.

§ 111.22. Filing.

(a) A request for supersedeas from the judge's decision shall be filed with the Board within the time allowed by law for appeal from the ~~the [referee's] judge's decision or Board order from which the supersedeas is requested~~ specified in section 423(a) of the act (77 P.S. § 853).

(b) A request for supersedeas from a Board order shall be filed under the applicable Pennsylvania Rules of Appellate Procedure.

(c) An original and **[four] two** copies of the request for supersedeas shall be filed. Only the original request for supersedeas shall have attached a copy of the **[referee's] judge's** decision or Board order from which the supersedeas is requested.

(d) A request for supersedeas ~~not served as part of an appeal~~ shall be served on all the parties and be accompanied by a proof of service as specified in § 111.12[(c)] (d) (relating to filing, service and proof of service), ~~insofar as applicable, and shall be filed within the time limits specified in subsection (a).~~

(e) Subsections **[(b)] (a) - (ed) inclusive** supersede[s] 1 Pa. Code § 33.15 (relating to number of copies).

#### § 111.23. Answers.

(a) An answer to a request for supersedeas may be filed with the Board within 10 days of service of the request for supersedeas.

(b) An original and **[four] two** copies of an answer shall be filed.

(c) An answer filed under this subsection shall be served on all **[of the]** parties.

(d) An answer filed under this subsection shall be accompanied by a proof of service as specified in § 111.12[(c)] (d) (relating to filing, service and proof of service), insofar as applicable.

(e) Subsections **[(b)] (a) - (d) inclusive** supersede[s] 1 Pa. Code §§ 33.15 **[(relating to number of copies)]** and **[generally supersedes 1 Pa. Code §] 35.35** (relating to **number of copies; and** answers to complaints and petitions).

#### § 111.24. Disposition of request for supersedeas.

(a) The Board may grant the request for supersedeas in whole or in part.

(b) The Board will rule on requests for supersedeas within 20 days of the date when the answer is due **[or the answer is received, whichever occurs first]**, or the request shall be deemed denied.



(c) Subsections (a) and (b) supersede 1 Pa. Code §§ 35.190 and 35.225 (relating to appeals to agency head from rulings of presiding officers; and interlocutory orders).

#### Subchapter D. OTHER PETITIONS

##### § 111.31. Applicability.

This subchapter applies to the following petitions or requests.

- (1) A petition under section 306 of the act (77 P.S. § 513).
- (2) **[A petition for further medical expenses under section 306(f) of the act in effect prior to May 1, 1972, if applicable.]** A petition for appointment of guardian under section 307 of the act (77 P.S. § 542).
- (3) A petition alleging a meretricious relationship under section 307 of the act (77 P.S. § 562).
- (4) **[A request for physical examinations under section 314 of the act (77 P.S. § 651).]** A petition for commutation under section 316 of the act (77 P.S. § 604).
- (5) A petition under section 317 of the act (77 P.S. § 603).
- (6) A petition for rehearing under section 426 of the act (77 P.S. § 871).
- (7) A petition for attorney's fees under sections 442 or 501 of the act (77 P.S. §§ 998 or 1021).

##### § 111.32. Form/content.

- (a) Petitions and requests shall contain and be accompanied by the following:
  - (1) A short statement setting forth the reasons and basis for the petition or request.
  - (2) The facts upon which the petition or request is based.
  - (3) A specific statement as to the issues of law, if any, involved in the petition or request.
  - (4) An explanation as to the status of the case, including the status of a pending appeal or petition before a [referee] judge, the Board or a court.
  - (5) The employment status of the claimant.

- (6) A proof of service as specified in § 111.12[(c)] (d) (relating to filing, service and proof of service), insofar as applicable.
- (b) Petitions and requests shall be served on all parties and on the [referee] judge if the case is pending before a [referee] judge.
- (c) An original and [four] two copies of petitions and requests shall be filed.
- (d) Subsections (a) - (c) inclusive supersede[s] 1 Pa. Code §§ 31.5, 33.1 - 33.4, 33.11, 33.12, 33.15, 33.21 - 33.23, 35.1, 35.2 and 35.17 [(relating to petitions generally)] .

§ 111.33. Specific petitions/requirements.

(a) **[A request for physical examinations under section 314 of the act (77 P.S. § 651), in addition to the information required by § 111.32(a) (relating to form/content) shall state:**

- (1) **The date of the last examination of claimant by or at the request of the defendant, employer, insurer or self-insurer.**
- (2) **The name, address and specialty of the physician proposed to perform the examination.**
- (3) **The current address of the claimant.]**

A petition for commutation under section 316 of the act (77 P.S. § 604), in addition to the information required by § 111.32(a) (relating to form/content), shall have attached to it:

- (1) The decision or document evidencing the employer/insurer's or self-insurer's responsibility to make current workers' compensation payments.
- (2) The affidavit of the claimant, stipulation or other agreement signed by the parties which, if approved, will form the basis of the proposed commutation.
- (3) An original and one copy of an order to be made by the Board if the commutation is approved.

(b) A petition under section 317 of the act (77 P.S. § 603), in addition to the information required by § 111.32(a), shall have attached to it:

- (1) The document or agreement evidencing the annuity or trust.
- (2) The stipulation or agreement, if any, entered into by the party which, if approved, would form the basis of the approval of the annuity or trust.

(3) An original and one copy of an order to be made by the Board if the annuity or trust is approved.

(c) Subsections (a) and (b) supersede 1 Pa. Code §§ 33.15, 35.17 and 35.155 (relating to **number of copies; petitions generally; and presentation and effect of stipulations**).

§ 111.34. Answers to petitions.

(a) An answer to a petition or request may be filed with the Board within 20 days of service of the petition or request.

(b) An original and ~~[four]~~ two copies of an answer shall be filed.

(c) An answer filed shall be served on all parties.

(d) An answer filed shall be accompanied by a proof of service as specified in § 111.12[(c),] (d) (relating to filing, service and proof of service), insofar as applicable.

(e) Subsections (a) - (d) inclusive supersede[s] 1 Pa. Code §§ 33.15 and 35.35 [(relating to answers to complaints and petitions) and subsection (b) supersedes 1 Pa. Code § 33.15] (relating to number of copies; and answers to complaints and petitions).

§ 111.35. Dispositions of petitions.

(a) The Board will allow and consider briefs which are submitted simultaneously with the petition or request or answer thereto. A brief which is not submitted simultaneously with the petition, request or answer thereto, will not be considered by the Board and the petition or request may be determined on the petition or request and answer thereto without further argument or brief.

(b) A brief submitted with a petition, request or answer thereto shall conform to the requirements of § 111.16 (e) - (g) (relating to briefs).

(c) Oral argument on a petition may be scheduled at the discretion of the Board. Parties will be notified of the scheduling of oral argument as far in advance of the argument date as possible. The scheduling and conduct of oral argument will conform to the requirements of § 111.17 (relating to oral argument).

(d) The Board may, if appropriate, or will, if required by law, refer a petition or request to a **[referee] judge** for conducting hearings, preparing findings or proposed orders. Thereafter, the petition or request shall, if appropriate or required, be returned to the Board.

(e) Subsections (a) - (d) inclusive supersede 1 Pa. Code Chapter 35, Subchapters B, C, E and I.

CHAPTER 131. SPECIAL RULES OF ADMINISTRATIVE PRACTICE AND PROCEDURE  
BEFORE [REFEREES] WORKERS' COMPENSATION JUDGES

Subchapter A. GENERAL PROVISIONS

§ 131.1. Purpose.

(a) The purpose of this chapter is to promote, consistent with fairness and due process, the orderly and expeditious determination of proceedings before [referees] judges under the act and the Disease Law to implement the remedial intent of the act and the Disease Law.

(b) Subsection (a) supersedes 1 Pa. Code § 31.2 (relating to liberal construction).

§ 131.2. Scope.

(a) This chapter applies to proceedings before [referees] judges under the act and the Disease Law. [Insofar as practicable, this chapter applies to proceedings pending on March 30, 1991.]

(b) Subsection (a) supersedes 1 Pa. Code § 31.1 (relating to scope of part).

§ 131.3. Waiver and modification of rules.

(a) The [referee] judge may, for good cause, waive or modify a provision of this chapter upon motion of a party, agreement of all parties or upon the [referee's] judge's own motion.

(b) Subsection (a) supersedes 1 Pa. Code §§ 33.61, 35.18, 35.54 and 35.55 [(relating to petitions for issuance, amendment, waiver or deletion of regulations)] and also supersedes 1 Pa. Code Chapter 35, Subchapter D.

§ 131.4. Applicability of [g]General [r]Rules of Administrative Practice and Procedure.

(a) This chapter is intended to supersede 1 Pa. Code Part II (relating to [g]General [r]Rules of [a]Administrative [p]Practice and [p]Procedure). The [g]General [r]Rules of [a]Administrative [p]Practice and [p]Procedure are not applicable to activities of and proceedings before [referees] judges.

(b) [The following sections of the general rules of administrative practice and procedure are not applicable to activities of and proceedings before referees:

(1) 1 Pa. Code § 31.4 (relating to information and special instructions).

(2) 1 Pa. Code § 31.5(c) and (d) (relating to communications and filings generally).

- (3) 1 Pa. Code § 31.6 (relating to amendments to rules).
- (4) 1 Pa. Code § 31.13 (relating to issuance of agency orders).
- (5) 1 Pa. Code § 31.14 (relating to effective dates of agency orders).
- (6) 1 Pa. Code § 31.15(b) (relating to extensions of time).
- (7) 1 Pa. Code § 31.21 (relating to appearance in person).
- (8) 1 Pa. Code § 31.22 (relating to appearance by attorney).
- (9) 1 Pa. Code § 31.23 (relating to other representation prohibited at hearings).
- (10) 1 Pa. Code § 31.24 (relating to notice of appearance).
- (11) 1 Pa. Code § 31.25 (relating to form of notice of appearance).
- (12) 1 Pa. Code § 33.3 (relating to incorporation by reference).
- (13) 1 Pa. Code § 33.4 (relating to single pleading or submittal covering more than one matter).
- (14) 1 Pa. Code § 33.11 (relating to execution).
- (15) 1 Pa. Code § 33.12 (relating to verification).
- (16) 1 Pa. Code § 33.21 (relating to filing fees).
- (17) 1 Pa. Code § 33.22 (relating to mode of payment of fees).
- (18) 1 Pa. Code § 33.23 (relating to copy fees).
- (19) 1 Pa. Code § 33.42 (relating to withdrawal termination).
- (20) 1 Pa. Code § 33.51 (relating to docket).
- (21) 1 Pa. Code § 33.61 (relating to applications for waiver of formal requirements).
- (22) 1 Pa. Code § 35.1 (relating to applications generally).
- (23) 1 Pa. Code § 35.2 (relating to contents of applications).

- (24) 1 Pa. Code § 35.5 (relating to form and content of informal complaints).
- (25) 1 Pa. Code § 35.6 (relating to correspondence handling of informal complaints).
- (26) 1 Pa. Code § 35.7 (relating to discontinuance of informal complaints without prejudice).
- (27) 1 Pa. Code § 35.11 (relating to joinder of formal complaints).
- (28) 1 Pa. Code § 35.14 (relating to orders to show cause).
- (29) 1 Pa. Code § 35.19 (relating to petitions for declaratory orders).
- (30) 1 Pa. Code § 35.20 (relating to appeals from actions of the staff).
- (31) 1 Pa. Code § 35.23 (relating to protest generally).
- (32) 1 Pa. Code § 35.24 (relating to effect of protest).
- (33) 1 Pa. Code § 35.27-35.32 (relating to intervention).
- (34) 1 Pa. Code § 35.36 (relating to answers to petitions to intervene).
- (35) 1 Pa. Code § 35.37 (relating to answers to orders to show cause).
- (36) 1 Pa. Code § 35.38 (relating to respondents seeking affirmative relief).
- (37) 1 Pa. Code § 35.39 (relating to replies to respondents seeking affirmative relief).
- (38) 1 Pa. Code § 35.40 (relating to answers to amendments of pleadings).
- (39) 1 Pa. Code § 35.41 (relating to satisfaction of complaints).
- (40) 1 Pa. Code § 35.45. (relating to consolidation).
- (41) 1 Pa. Code § 35.49-35.51 (relating to amendments to conform to the evidence; directed amendments; and withdrawal of pleadings).
- (42) 1 Pa. Code § 35.54 and 35.55 (relating to motions as to complaint; and motions as to answer).
- (43) 1 Pa. Code § 35.101-35.106, 35.111-35.116 and 35.121-35.128.

- (44) 1 Pa. Code § 35.161 (relating to form and admissibility of evidence).
- (45) 1 Pa. Code § 35.165 (relating to public documents).
- (46) 1 Pa. Code § 35.166 (relating to prepared expert testimony).
- (47) 1 Pa. Code § 35.168 (relating to form and size of documentary evidence).
- (48) 1 Pa. Code § 35.173 (relating to official notice of facts).
- (49) 1 Pa. Code Chapter 35, Subchapter D (relating to motions).
- (50) 1 Pa. Code Chapter 35, Subchapter E (relating to presiding officers).
- (51) 1 Pa. Code Chapter 35, Subchapter G (relating to proposed reports).
- (52) 1 Pa. Code Chapter 35, Subchapter H (relating to agency action).
- (53) 1 Pa. Code § 35.226 (relating to final orders).
- (54) 1 Pa. Code §§ 35.231-35.233 (relating to reopening of record).
- (55) 1 Pa. Code § 35.241 (relating to application for rehearing or reconsideration).
- (56) 1 Pa. Code § 35.251 (relating to application for rehearing or reconsideration).]

Subsection (a) supersedes 1 Pa. Code § 31.4 (relating to information and special instructions).

[(c) Subsections (a) and (b) supersede 1 Pa. Code § 31.1 (relating to scope of part).]

#### § 131.5. Definitions.

(a) The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

*Act* - [The] Pennsylvania [Workmen's] Workers' Compensation Act (77 P.S. §§ 1-[1031] 1041.4 and §§ 2501-2506).

*Additional defendant* - An insurance carrier, the Commonwealth or an employer, other than the insurance carrier or employer against which the original petition

was filed, joined under this chapter.

*Bureau* - The Bureau of Workers' Compensation of the Department.

*Bureau record* - Official copies of documents received by the Bureau, on forms prescribed by the Bureau, if forms prescribed by the Bureau are available, or official copies of documents received by the Bureau on forms prepared by a party if no forms prescribed by the Bureau are available, which record transactions between the parties and which are determined by the judge to pertain to the case.

Challenge proceeding - A proceeding governed by § 131.50a (relating to employe request for special supersedeas hearing under sections 413(c) and 413(d) of the act).

*Claimant* - An individual who files a petition for, or otherwise receives, benefits under the act or the Disease Law.

[*Close of the record* - That date as established by the referee, of which the parties are advised, on which the record will be deemed closed.]

*Defendant* - An employer, insurance carrier and the Commonwealth, unless specifically designated individually.

*Department* - The Department of Labor and Industry of the Commonwealth.

*Disease Law* - The Pennsylvania Occupational Disease Act (77 P.S. §§ 1201-1603).

*Insurer* - A workers' compensation insurance carrier or self-insured employer, as applicable.

*Judge* - A workers' compensation judge assigned by the Bureau as provided in section 401 of the act (77 P.S. § 701) or assigned by the Bureau to determine a petition filed under the Disease Law.

*Party* - A claimant, defendant, employer, insurance carrier, additional defendant and, if relevant, the Commonwealth. An act required or authorized by this chapter, to be done by or to a party, may be done by or to that party's counsel of record.

Penalty proceeding - A proceeding governed by section 435(d) of the act (77 P.S. § 991(d)).

*Records of work environment* - Records and documents relating to work place health, safety, hazards and exposure, including records or documents which may



be obtained under the Worker and Community Right-to-Know Act (35 P.S. §§ 7301-7320) and 29 CFR 1901.1-[1928.110] 1928.1027 (relating to Occupational Safety and Health Administration, Department of Labor).

**[Referee - A workers' compensation referee assigned by the Bureau as provided in section 401 of the act (77 P.S. § 701) or assigned by the Bureau to determine a petition filed under the Disease Law.]**

*Statement previously made* - A written statement signed or otherwise adopted or approved by the persons making it, or a stenographic, mechanical, electrical, computer-generated or other recording, or transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded. The term does not include statements made by parties which are protected by the attorney-client privilege or which are protected as the work product of counsel.

*Supersedeas - A temporary stay affecting a workers' compensation case.*

(b) Subsection (a) supersedes 1 Pa. Code §§ 31.3 and 33.33 (relating to definitions; effect of service upon an attorney) [; various sections of 1 Pa. Code part II (relating to general rules of administrative practice and procedure); and specifically, the term "party" supersedes 1 Pa. Code § 33.33 (relating to effect of service upon an attorney)].

#### Subchapter B. TIME

#### § 131.11. Filing, service and proof of service.

(a) Whenever filing is required by this chapter, it **[will be]** is deemed complete upon delivery in person or, if by mail, upon deposit in the United States Mail, as evidenced by **[the]** a United States Postal Service postmark, properly addressed, with postage or charges prepaid.

(b) Whenever service is required by this chapter, it **[will be]** is deemed complete upon delivery in person or, if by mail, upon deposit in the United States Mail, as evidenced by **[the]** a United States Postal Service postmark, properly addressed, with postage or charges prepaid, except as provided in § 131.81(b) (relating to subpoenas).

(c) Any notice or other written communication required to be served upon or furnished to a party shall also be served upon or furnished to the party's attorney in the same manner as it is served upon the party.

**[(c)]** (d) Whenever a proof of service is required by this chapter, the proof of service shall contain the following:

(1) A statement of the date of service.

(2) The names of the **[referee] judge** and others served.

(3) The mailing address, the applicable zip code and the manner of service on the **[referee] judge** and others served.

**[(d)] (e)** Unless otherwise specifically provided in this chapter, whenever the filing or service is required to be made upon the Bureau, it shall be made to the principal office of the Bureau at: 1171 South Cameron Street, Harrisburg, Pennsylvania 1710~~1~~4-2501, (717) 783-5421, or another address and telephone number as may be published in the *Pennsylvania Bulletin*.

**[(e)] (f)** Subsections (a) **[and (b)] - (e) inclusive** supersede 1 Pa. Code §§ 31.5, 31.11, 31.13, 31.14, 31.26, 33.32, **[and] 33.34 - 33.36 [(relating to timely filing required; service by a participant; and date of service.)** Subsection (c) supersedes 1 Pa. Code § 33.36 (relating to form of certificate of service)].

§ 131.12. Modification of time.

(a) Except for answers to petitions as set forth in § 131.33 (relating to answers except **answers** to petitions for joinder and **[penalty] challenge** proceedings), the time fixed or the period of time prescribed in this chapter may, in the exercise of sound discretion and for good cause, be shortened or extended by the **[referee] judge** upon the **[referee's] judge's** motion or at the request of a party.

(b) Modifications of time, other than continuances or postponements of hearings, will be governed by the following:

(1) Requests for extensions of time shall be filed at least 3 days before the time specified or as shortened or extended. Requests made within 3 days prior to the time specified or as shortened or extended may be considered if the **[referee] judge** is satisfied that the circumstances relating to the request occurred within those 3 days. After the expiration of the time specified, the act may be permitted to be done if reasonable grounds are shown for the failure to act within the time specified or as previously shortened or extended.

(2) Requests for extensions of time shall be made in writing and state the facts upon which the request rests. During the course of a hearing, the request may be made by oral motion to the **[referee] judge**.

(3) Requests for extensions of time, except those made orally at a hearing, shall be filed with the **[referee] judge**, served upon all parties, and a proof of service of same shall be filed with the **[referee] judge**.

(c) Subsections (a) and (b) supersede 1 Pa. Code §§ 31.6, 31.11, 31.15 and 35.18 [(relating to timely filing required; extensions of time; and petitions for issuance, amendment, waiver or deletion of regulations)].

§ 131.13. Continuances or postponements of hearings.

(a) It is the intent of this chapter to discourage repeated continuances or postponements of hearings.

(b) Parties shall make every effort to avoid continuances or postponements by the prompt scheduling and submission of expert and medical testimony and by the prompt presentation of lay testimony.

(c) A continuance or postponement may be granted as set forth in this [sub]chapter for substantial or compelling reasons at the discretion of the [referee] judge, if the continuance or postponement is consistent with this chapter and its purpose of providing an orderly and expeditious determination of proceedings before [referees] judges.

(d) Requests for a continuance or postponement shall be:

(1) Made in writing or at a hearing. If not made in writing or at a hearing, confirmed in writing as required by this subsection and served as required by subsection (h).

(2) Made not later than 10 calendar days prior to the hearing date, except as set forth in subsection (f).

(e) Prior to the request for a continuance or a postponement, the party requesting the continuance or postponement shall ascertain the position of all counsel of record and unrepresented parties in the case relating to the continuance or postponement and shall advise the [referee] judge of the foregoing at the time of the request.

(f) A request for a continuance or postponement made within 10 calendar days prior to the hearing date will not be considered unless the [referee] judge is satisfied that circumstances relating to the requested continuance or postponement occurred within 10 calendar days of the hearing date.

(g) Requests for a continuance or postponement or written confirmation of the continuance or postponement shall contain at least the following information:

(1) The identity of the requesting party.

(2) A detailed statement of the position of all counsel of record and unrepresented parties on the request for a continuance or postponement or an explanation of why counsel of record or unrepresented parties could not be contacted.

(3) A detailed statement of the reasons why the continuance or postponement is requested and the date on which the need to request a continuance or postponement arose.

(4) A summary of prior continuances or postponements in the case, at whose request the continuances or postponements were granted and the position of other parties in each continuance or postponement.

(h) A party requesting or confirming in writing a request for a continuance or a postponement other than a request made at a hearing shall serve a copy of the request or the confirmation upon all counsel of record, unrepresented parties and the [referee] judge. Counsel requesting or confirming in writing a request for a continuance or a postponement shall serve a copy of the request or confirmation on counsel's client.

(i) Anyone requesting a continuance or postponement shall concurrently with the service of the request or the confirmation file a proof of service with the [referee] judge.

(j) In ruling on requests for a continuance or postponement, the [referee] judge may consider one or more of the following, giving consideration to subsection (a):

(1) The positions of the various parties relating to the request for a continuance or postponement.

(2) The number of prior continuances or postponements or denials of continuances or postponements and at whose request they were granted or denied.

(3) Whether the requested continuance or postponement will work an undue hardship on a party.

(4) The unavailability of the parties, witnesses or counsel.

(5) The illness or death of the parties or counsel or members of their immediate families.

(6) The desirability of unrepresented parties obtaining counsel.

(7) The necessity to replace the services of an expert witness who becomes unavailable.

(8) Another reason deemed to be substantial or compelling by the [referee] judge and consistent with this chapter and the purposes of the act and the Disease Law.

(k) A scheduling conflict in another tribunal may be considered but may or may not be determinative.

(l) If a continuance or a postponement is granted, the [referee] judge may impose conditions and direct action by the parties which the [referee] judge deems reasonable under the circumstances.

(m) In addition to the conditions and actions referred to in subsection (l), the [referee] judge may:

(1) Determine why the proceeding should not be dismissed for lack of prosecution or grant the relief sought without the receipt of further evidence or testimony upon the making of appropriate findings of fact.

(2) Schedule a hearing to determine whether to impose penalties under section 435(d) of the act (77 P.S. § 991(d)) and issue an appropriate written order.

(3) Issue a written order modifying in whole or in part a supersedeas ordered or denial previously entered or modifying an order previously entered upon a showing of compliance with the directions of the [referee] judge.

(4) Issue a written order at the end of the case, in the case of a claim petition, with appropriate findings of fact, directing that interest be disallowed. The [referee] judge may limit the disallowance of interest to a specified period on good cause shown.

(5) Issue a written order with appropriate findings of fact closing the record and deciding a case if a party has unreasonably delayed the proceeding.

(n) Subsections (a) - (m) inclusive supersede 1 Pa. Code §§ 31.15, 33.33 and 35.102 (relating to extensions of time; effect of service upon an attorney; and hearing calendar).

#### § 131.15. Computation of time.

(a) Except as otherwise provided by law, in computing a period of time prescribed or allowed by this chapter, the day of the act, event or default after which the designated period of times begins to run may not be included. The last day of the period so computed shall be included, unless it is Saturday, Sunday or a legal holiday in this Commonwealth, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday nor a legal holiday. A part-day holiday shall be considered as other days and not as a legal holiday. Intermediate Saturdays, Sundays and legal holidays shall be included in the computation.

(b) Subsection (a) supersedes 1 Pa. Code § 31.12 (relating to computation of time).

## GENERAL

### § 131.21. Identifying number.

- (a) Pleadings, documents and other submittals filed in a proceeding shall be identified by ~~the social security number of the employe, unless another~~ an identifying number has been assigned by the Bureau.
- (b) Subsection (a) supersedes 1 Pa. Code § 31.5[(a)], 33.1 and 33.51 (relating to communications and filings generally; title; and docket).

### § 131.22. Transfer of cases or petitions on agreement of **all** parties.

- (a) If the transfer of the case is agreed to by the Bureau, the parties and the [referee] **judge**, the Bureau will promptly reassign the case or petition. Notice of reassignment will be given to all parties.
- (b) Transfer or reassignment under subsection (a) will take place prior to the date of the first hearing unless circumstances dictate otherwise.

### § 131.24. Recusal of judge.

- (a) The judge may recuse himself on the judge's own motion.
- (b) **A party may file a motion for recusal, which shall be addressed to the judge to whom the proceeding has been assigned. The judge will conduct an evidentiary hearing and issue a decision within 15 days following receipt of the evidentiary hearing transcript and post-hearing submissions of the parties. The decision will be interlocutory, unless the judge certifies the record for immediate appeal to the Workers' Compensation Appeal Board.**
- (c) Subsections (a) and (b) supersedes 1 Pa. Code §§ 35.54, 35.55, 35.186, 35.190 and 35.225 and also supersedes 1 Pa. Code, Subchapter D.

### § 131.30. Consolidation.

- (a) **Where proceedings involve a common question of law or fact, the judge may consolidate the proceedings for hearing on all matters in issue, and may make any appropriate orders concerning the conduct of the proceedings to avoid any unnecessary costs or delay.**
- (b) Subsection (a) supersedes 1 Pa. Code § 35.45 (relating to consolidation).

## PLEADINGS

### § 131.31. Form of pleadings.

(a) [Sections 402 and 416 of the act (77 P.S. §§ 711 and 821) and sections 403 and 416 of the Disease Law (77 P.S. §§ 1503 and 1516) provide that petitions and answers shall be in the form prescribed by the Bureau.] All proceedings, except challenges under sections 413(c) and 413(d) of the act (77 P.S. §§ 774.2 and 774.3), shall be initiated by petition.

(b) Subsection (a) supersedes 1 Pa. Code §§ 33.1 – 33.4, [33.2] 33.11, 33.12 and 35.17 [(relating to title; form; and petitions generally)].

§ 131.32. Petitions except petitions for joinder and [penalty] challenge proceedings.

(a) [Proceedings, except petitions for joinder and penalty proceedings, shall be initiated by petition.] Petitions shall be in the form prescribed by the Bureau.

(b) [An original and four copies of a petition shall be filed with the principal office of the Bureau. The Bureau will serve a copy of the petition on all parties.] If the petition is filed on a Bureau petition form, an original and the number of copies specified on the petition form shall be filed with the Bureau. If there is no applicable Bureau petition form available, an original of the petition shall be filed with the Bureau. The Bureau will serve a notice of assignment specifying the judge to whom the petition has been assigned. The notice will be served on the parties named in the petition.

(c) [At the time of filing a petition,] Concurrently with filing the petition with the Bureau, the moving party shall serve a copy of the petition on all other parties, including the insurance carrier, if the insurance carrier is known [.] , and on the attorneys of all other parties, if the attorneys are known.

(d) [Subsection (a) supersedes 1 Pa. Code § 35.17 (relating to petitions generally). Subsection (b) supersedes 1 Pa. Code § 33.37 (relating to number of copies). Subsection (c) supersedes 1 Pa. Code § 33.32 (relating service by a participant).] The material facts on which a cause of action or defense is based shall be stated in a concise and summary form.

(e) Subsections (a) - (d) inclusive supersede 1 Pa. Code §§ 31.26, 33.15, 33.21 - 3.23, 33.31, 33.32, 33.37, 35.1, 35.2, 35.5 - 35.7, 35.9 - 35.11, 35.14, 35.17 - 35.20, 35.23, 35.24 and 35.27 - 35.32.

§ 131.33. Answers except answers to petitions for joinder and [penalty] challenge proceedings.

(a) [Except for petitions for joinder and penalty proceedings, a responding party may file an answer within 15 days following service by the Bureau of a petition under the act and within 20 days following service by the Bureau of a petition under the Disease Law.] ~~Failure to file an answer to a claim petition within 20 days after the date of assignment without adequate excuse shall result in the admission of all~~

allegations in the claim petition. Answers to all petitions except petitions for joinder and challenge proceedings shall be filed in accordance with section 416 of the act (77 P.S. § 821) within 20 days after the date of assignment by the Bureau to the judge.

(b) [An original and four copies of an answer filed, together with a proof of service, shall be filed with the referee to whom the petition has been assigned. A responding party shall serve a copy of any answer filed on unrepresented parties and on counsel of record.] ~~A responding party may file an answer to all petitions other than claim petitions within 20 days after the date of assignment by the Bureau.~~ If the answer is filed on a Bureau answer form, an original and the number of copies specified on the answer form shall be filed with the judge to whom the petition has been assigned. If there is no applicable Bureau answer form available, an original of the answer shall be filed with the judge to whom the petition has been assigned.

(c) [Subsection (a) supersedes 1 Pa. Code § 35.35 (relating to answers to complaints and petitions). Subsection (b) supersedes 1 Pa. Code § 33.37 (relating to number of copies).] ~~If the answer is filed on a Bureau answer form, an original and the number of copies specified on the answer form shall be filed with the judge to whom the petition has been assigned. If there is no applicable Bureau answer form available, an original of the answer shall be filed with the judge to whom the petition has been assigned.~~ Concurrently with filing the answer with the judge, the responding party shall serve a copy of the answer on unrepresented parties and on counsel of record.

(d) ~~Concurrently with filing the answer with the judge, the responding party shall serve a copy of the answer on unrepresented parties and on counsel of record.~~ An answer shall admit or deny each averment of fact in the petition or any part of the averment to which it is responsive. A party denying only a part of the averment shall specify so much of it as is admitted and shall deny the remainder. Where applicable, admissions and denials in an answer shall refer to the specific paragraph in which the averment admitted or denied is set forth.

(e) ~~An answer shall admit or deny each averment of fact in the petition or any part of the averment to which it is responsive. A party denying only a part of the averment shall specify so much of it as is admitted and shall deny the remainder. Where applicable, admissions and denials in an answer shall refer to the specific paragraph in which the averment admitted or denied is set forth.~~ Subsections (a) - (d) inclusive supersede 1 Pa. Code §§ 33.15, 33.37, 35.35 - 35.41, 35.54, 35.55 and 35.161 and also supersede 1 Pa. Code Chapter 35, Subchapter D.

(f) ~~Subsections (a) - (e) inclusive supersede 1 Pa. Code §§ 33.15, 33.37, 35.35 - 35.41, 35.54, 35.55 and 35.161 and also supersede 1 Pa. Code Chapter 35, Subchapter D.~~



(a) Unless otherwise specifically provided by this chapter, the party filing or submitting a document to the **[referee] judge** shall serve an original on the **[referee] judge** and shall serve a copy on unrepresented parties and counsel of record.

(b) Subsection (a) supersedes 1 Pa. Code §§ **31.24, 31.25, 33.42, 35.51 and 35.169** **[(relating to copies to parties and agency)]** .

§ 131.35. Amendments to pleadings.

(a) A party has the right to amend a pleading at any time in a proceeding before a **[referee] judge**, unless the **[referee] judge** determines that another party has established prejudice as a result of the amendment.

(b) Subsection (a) supersedes 1 Pa. Code §§ **33.41, 33.42, 35.40 and 35.48 - 35.51** **[(relating to amendments; and amendments of pleadings generally)]** .

§ 131.36. Joinder.

(a) A party desiring to join another defendant to assert a claim relevant to the pending petition may do so as a matter of right by filing a petition for joinder.

(b) A petition for joinder shall set forth the identity of employers and insurance carriers sought to be joined and the reasons for joining a particular employer or insurance carrier as well as the specific facts and the legal basis for the joinder.

(c) The petition for joinder shall have attached to it copies of petitions and answers previously filed **and a list of the dates and locations of all prior hearings held and depositions taken.**

(d) **[A] An original and the number of copies specified on the Bureau** petition for joinder **form** shall be filed no later than **[15] 20** days after the first hearing at which evidence is received regarding the reason for which joinder is sought, unless the time is extended by the **[referee] judge** for good cause shown.

(e) The petition for joinder shall be filed with the Bureau and **an original** of any answer shall be filed with the office of the **[referee] judge** to whom the case **[is] has been** assigned.

(f) ~~An answer to a petition for joinder may include a motion to strike the joinder and may be filed within [15] 20 days following service of the petition for joinder by the Bureau. An answer to a petition for joinder shall be filed in accordance with section 416 of the act (77 P.S. § 821) within 20 days after the date of assignment by the Bureau to the judge and may include a motion to strike.~~

(g) A party filing a petition for joinder or an answer to it shall serve unrepresented parties and counsel of record.

- (h) A proof of service shall be attached to the petition for joinder or answer.
- (i) After joinder, the original petition shall be deemed amended to assert a claim of the claimant against an additional defendant. The additional defendant is liable to any other party as the [referee] judge orders. The additional defendant shall have the same rights and responsibilities under this chapter as the original defendant.
- (j) The [referee] judge may strike the petition for joinder, and the [referee] judge may order the severance or separate hearing of a claim presented therein, or as a result of the joinder.
- (k) The [referee] judge will issue an order when the motion to strike a petition for joinder is granted.
- (l) An order to strike a petition for joinder does not preclude or delay further proceedings before the [referee] judge.
- (m) Subsections [(f)] (a) - (l) inclusive supersede[s] 1 Pa. Code §§ 31.5, 33.41, 33.42, 35.11, 35.35, 35.40, 35.48 - 35.51, 35.54 and 35.55 [(relating to answers to complaints and petitions)] and also supersede 1 Pa. Code Chapter 35, Subchapter D.

**§ 131.40. Frivolous pleadings.**

**If a judge determines after a hearing that a petition or other pleading is frivolous, the judge may, upon the judge's own motion or upon motion by a party, issue a decision dismissing the petition or pleading or issue some other decision within the judge's discretion.**

**SUPERSEDEAS**

**§ 131.41. Request for supersedeas or reconsideration of supersedeas.**

- (a) When a petition contains a request for supersedeas, or when a request for supersedeas is made, the [referee] judge may rule on the request only after a hearing.
- (b) After a hearing, the [referee] judge may grant or deny the request for supersedeas in whole or in part. The grant or denial may be for specified or indefinite periods and may be subject to conditions that the [referee] judge orders to implement the intent of the act, Disease Law or this chapter. If a supersedeas has been granted or denied in whole or in part, the [referee] judge may, upon request and after hearing, review and modify the grant or denial as warranted.
- (c) The decision of a [referee] judge on a request for or reconsideration of a supersedeas is an interlocutory order.

(d) Subsections (a) - (c) **inclusive** supersede[s] 1 Pa. Code §§ 35.190 and 35.225 (relating to **appeals to agency head from rulings of presiding officers; and** interlocutory orders).

§ 131.42. Evidence relating to supersedeas.

(a) A party has the right to submit, and the [referee] judge may consider, one or more of the following solely in relation to a request for supersedeas.

- (1) Testimony of a party or witness.
- (2) The report of a physician.
- (3) The records of a physician, hospital, clinic or similar entity.
- (4) The written statements or reports of another person expected to be called by a party at the hearing of the case.
- (5) The report of an organization or governmental body or agency stating the right of the claimant to receive, be denied, have increased or decreased benefits, and the amount of the benefits being paid or payable to the claimant.
- (6) Other materials relevant to the request for supersedeas.

(b) Subsection (a) supersedes 1 Pa. Code §§ 35.137, 35.138, 35.161, 35.162 and 35.166.

§ 131.43. Disposition of request for supersedeas.

(a) The [referee] judge hearing the request for supersedeas [shall] will, within 14 days of the hearing, issue a written decision on the request for supersedeas, if granted. Unless a supersedeas is granted by a written order, it will be deemed denied from the date of filing of the request.

(b) Subsection (a) supersedes 1 Pa. Code §§ 35.190 and 35.225 (relating to **appeals to agency head from rulings of presiding officers; and** interlocutory orders).

§ 131.49. Disposition of automatic request for special supersedeas under section 413(a.1) of the act (77 P.S. § 774(1)).

(a) The filing of a petition alleging full recovery, accompanied by a physician's affidavit to that effect, which was prepared in connection with an examination of the employe no more than 21 days from the filing of the petition, shall act as an automatic request for supersedeas.

(b) A special supersedeas hearing will be held within 21 days of the assignment of the petition filed under this section.

(c) The [workers' compensation] judge [shall] will approve the request for supersedeas if prima facie evidence of a change in the medical status or of any other fact which would serve to modify or terminate the payment of compensation is submitted at the hearing, unless the employe establishes by a preponderance of the evidence a likelihood of prevailing on the merits of the employe's defense. In making this determination the [workers' compensation] judge [shall] will consider the physician's affidavit alleging full recovery and may consider the following:

- (1) The report of the physician.
- (2) The testimony of a party or witness.
- (3) The records of a physician, hospital or clinic or other similar entity.
- (4) The written statements or reports of another person expected to be called by a party at the hearing of the case.
- (5) Other evidence relevant to the request for supersedeas.

(d) If the judge to whom the special supersedeas request has been assigned fails to hold a hearing within 21 days of assignment of the request to the judge or fails to issue a written order within 7 days of the hearing of the supersedeas request, the automatic request for supersedeas [shall] will be deemed denied. The automatic request for supersedeas [shall] will remain denied until the judge issues a written order granting the supersedeas, in whole or in part.

(e) Subsections (a) - (d) inclusive supersede 1 Pa. Code §§ 35.137, 35.138, 35.161, 35.162, 35.166, 35.190 and 35.225.

§ 131.50. Return to work-modification or suspension.

(a) If an employe returns to work, the insurer may modify or suspend the workers' compensation benefits.

(b) The insurer shall complete and file [Form LIBC - 751, "Notification of Suspension or Modification Pursuant to §§ 413(C) & (D)."] the form prescribed by the Bureau. The form shall be provided to the employe, employe's counsel, if known, and the [Department] Bureau within 7 days of the effective date of the suspension or modification of the workers' compensation benefits.

(c) When the insurer previously modified or suspended the employe's benefits under sections 413(c) or 413(d) of the act (77 P.S. §§ 774.2 and [§] 774.3), to effectuate a subsequent modification or suspension of the employe's workers' compensation benefits, the

insurer shall file the form **[under] specified in** subsection (b), indicating the change in the employe's wages and corresponding change in the employe's workers' compensation benefits.

**(d) Subsections (a) - (c) inclusive supersede 1 Pa. Code § 33.33 (relating to effect of service upon an attorney).**

§ 131.50a. Employe request for special supersedeas hearing under sections 413(c) and 413(d) of the act.

(a) This section governs the disposition of an employe's request for a special supersedeas hearing made in connection with a challenge to the suspension or modification of workers' compensation benefits under sections 413(c) and 413(d) of the act (77 P.S. §§ 774.2 and 774.3).

(b) A special supersedeas hearing will be held within 21 days of the employe's filing of the notice of challenge.

(c) The **[workers' compensation]** judge to whom the notice of challenge has been assigned will issue a written order on the challenge within 14 days of the hearing.

(d) If the judge fails to hold a hearing within 21 days or fails to issue a written order approving the suspension or modification of benefits within 14 days of the hearing, the insurer shall reinstate the employe's workers' compensation benefits at the weekly rate the employe received prior to the insurer's suspension or modification of benefits under sections 413(c) or 413(d) of the act (77 P.S. §§ 774.2 and 774.3).

**(e) Subsections (a) - (d) inclusive supersede 1 Pa. Code §§ 35.161, 35.162, 35.190 and 35.225.**

#### HEARING PROCEDURE

§ 131.51. Assembly of medical records.

The moving party shall assemble medical records to the extent practical prior to the filing of a petition.

§ 131.52. First hearing procedures.

(a) **The purpose of this chapter is to provide a fair and prompt hearing process, to allow all parties to introduce appropriate evidence and to receive a timely decision from the judge. Where practicable and appropriate, the entire record relating to any petition shall be completed at the initial hearing.**

(b) The hearing process may differ based upon several variables including geographic location, number of parties involved, case volume and availability of experts for testimony.

(c) The hearing process chosen in any specific case, including a determination of whether testimony will be accepted at the initial hearing, is within the discretion of the judge.

(d) The moving party, at the first hearing, shall [orally or in writing as directed by the referee] advise the [referee] judge and opposing parties of the following:

- (1) Allegations and issues of fact and law involved in the moving party's petition.
- (2) Proposed amendments to pleadings.
- (3) Stipulations of fact.
- (4) Names, addresses and method of presentation of witnesses.
- (5) Whether [T]the items and information specified in § 131.61(a) (relating to exchange of [documents and records] information), which are intended to be used as evidence or exhibits, have been provided to the responding party at or before the first hearing.
- (6) Dates of depositions.
- (7) Estimate of hearing time.
- (8) Other subjects which may aid in the disposition of the proceeding.

(e) The moving party, at the first hearing, unless otherwise directed by the [referee] judge, shall offer and have marked for identification available exhibits of the moving party.

(f) The parties shall provide the judge with all documents required by law to be filed with the Bureau and which are relevant to issues in dispute with the same injury date and pertaining to the same claim. The [referee] judge [shall] will place those documents in evidence [as Bureau exhibits current Bureau documents with the same injury date and pertaining to the same claim, with the exception of the Employer's Report of Occupational Injury or Disease and pleadings of the parties] along with any other documents required to be filed by law with the Bureau or prior judges and which the judge deems relevant to the proceeding. The judge and the employe may not introduce the Employer's Report of Occupational Injury or Disease into evidence.

(g) Evidence furnished under this section does not become part of the record, unless otherwise admissible.

(h) Unless otherwise ordered by the [referee] judge, the moving party shall present testimony.

(i) Subsections (a) - [(e)] (h) inclusive supersede 1 Pa. Code §§ 35.101 - 35.106, 35.111 - 35.116, [and] 35.121 - 35.128, 35.137, 35.138, 35.155 and 35.161 - 35.169. [Subsection (c) supersedes 1 Pa. Code §§ 35.164 and 35.167 (relating to documents on file with agency; and records in other proceedings).]

§ 131.53. Procedures subsequent to the first hearing.

(a) Within 45 days after the date of the first hearing actually held, the responding party shall comply with § 131.52[(a)](d) (relating to first hearing procedures) and shall submit, in writing, to the [referee] judge, with copies to counsel of record and unrepresented parties, the items and information specified in § 131.52[(a)](d).

(b) The responding party, in accordance with the directions of the [referee] judge, shall offer and have marked for identification the responding party's exhibits.

(c) The [referee] judge may issue an order directing the parties to proceed with the litigation in a manner that promotes expeditious resolution and avoids delay.

(d) A party wishing to present testimony in the form of rebuttal or surrebuttal shall notify the [referee] judge in writing within [14] 21 days after conduct of the hearing or deposition at which the testimony to be rebutted or surrebutted has been given.

(e) Following a request to present rebuttal or surrebuttal testimony, the testimony shall be presented at a hearing or deposition provided the testimony shall be taken no later than 45 days after the conclusion of the case of the party presenting the testimony or evidence to be rebutted or surrebutted.

(f) Dates of the medical examinations, if not scheduled prior to the first hearing actually held, shall be scheduled within 45 days after the first hearing actually held.

(g) Subsections (a) - [(c)] (f) inclusive supersede 1 Pa. Code §§ 35.101 - 35.106, 35.111 - 35.116, [and] 35.121 - 35.128, 35.137, 35.138, 35.155 and 35.161 - 35.169.

§ 131.53a. Consolidated hearing procedure.

(a) One day trials or other consolidated hearing procedures may be scheduled and conducted pursuant to these rules to the extent practical. The judge may waive or modify these rules as may be appropriate and adopt and direct procedures which are fair and just for a determination of the issues.

**(b) Subject to the provisions of § 131.3(a) (relating to waiver and modification of rules) in cases proceeding under a consolidated hearing procedure:**

**(1) Upon request, or on the judge's own motion, testimony from a party or witness may be taken by a trial deposition prior to the obligation of a party to conduct medical depositions, or at another appropriate time to clarify the issues.**

**(2) Upon request, a party shall have the opportunity to testify before the judge at the pretrial or other hearing prior to the obligation of a party to conduct medical depositions, or at another appropriate time to clarify the issues.**

**(c) Subsections (a) and (b) supersede 1 Pa. Code §§ 35.101 - 35.106, 35.111 - 35.116, 35.121 - 35.128, 35.137, 35.138, 35.155 and 35.161 - 35.169.**

§ 131.54. Manner and conduct of hearings.

**(a) The [referee] judge will conduct [a] fair and impartial [hearing] hearings and maintain order. At the discretion of the judge, the hearings may be conducted by telephone or other electronic means if the parties do not object. Disregard by participants or counsel of record of the rulings of the [referee] judge shall be noted[,] on the record, and if the [referee] judge deems it appropriate, [shall] will be made the subject of a [special] written report[,] to the Bureau's Director of Adjudication together with recommendations.**

**(b) If the participants or counsel are guilty of disrespectful, disorderly or contumacious language or conduct in connection with a hearing, the [referee] judge may suspend the hearing or take other action as [in the discretion of] the [referee] judge [may be] deems appropriate, including the submission of a written report to the Bureau's Director of Adjudication together with recommendations.**

**(c) A witness whose identity has not been revealed as provided in this chapter shall not be permitted to testify on behalf of the defaulting party unless the testimony is allowed within the judge's discretion.**

**(d) In addition to subsections (a) [and b] - (c) inclusive, the [referee] judge may proceed under § 131.13(m) (relating to continuances or postponements of hearings).**

**(e) Subsections (a) [and (b)] - (d) inclusive supersede 1 Pa. Code §§ 31.21 - 31.23, 31.27[,] and 31.28 [and 35.189 (relating to contemptuous conduct; suspension and disbarment; and manner of conduct of hearings)] and also supersede 1 Pa. Code Chapter 35, Subchapter E.**

§ 131.55. Attorney['s] fees and costs.



(a) Under section 440 of the act (77 P.S. § 996), in a disputed claim under the act when the employer or [insurance carrier] insurer has contested liability in whole or in part, the employe or a dependent, in whose favor the proceeding has been finally decided, will be awarded attorney fees and costs against the employer or [insurance carrier] insurer, unless the employer or insurer had a reasonable basis for contesting the petition[, or otherwise tendered payment under section 440 of the act, in which case attorneys fees will not be awarded].

(b) Claimant's counsel may file an application for quantum meruit fees at or before the filing of proposed findings of fact, proposed conclusions of law and briefs, and if there are no proposed findings of fact, proposed conclusions of law or briefs requested, at or before the close of the record. The application shall detail the calculation of the fee requested, shall itemize the services rendered and time expended and shall address all factors enumerated in section 440 of the act (77 P.S. § 996) in support of the application.

(c) Within 15 days after service of the application for quantum meruit fees, an opposing party may file a response to the application detailing the objections to the fee requested.

(d) ~~A decision on the fee award will be made based on the application and response submitted, if any, and the record of the case.~~ A decision on the fee award will be made based on the record of the case and, if filed, the application and response. If deemed appropriate by the judge, a hearing may be held and evidence presented.

(e) The application and response will be made exhibits of record and shall be served on unrepresented parties and counsel of record as provided in § 131.34(a) (relating to other filings).

(f) Subsections (a) - (e) inclusive supersede 1 Pa. Code §§ 35.1 and 35.2 (relating to applications generally; and contents of applications).

#### § 131.57. Compromise and release agreements.

(a) Under section 449 of the act (77 P.S. § 1000.5), upon or after filing a petition, the parties may engage in a compromise and release of any and all liability which is claimed to exist under the act on account of injury or death, subject to approval by the judge after consideration at a hearing.

(b) Proposed compromise and release agreements, including the stipulations of the parties, shall be recorded on a form prescribed by the Bureau. The parties may attach additional information to the form if circumstances so require.

(c) If another petition is pending before a judge at the time of the agreement of the parties to compromise and release the claim, any party may, in writing, request the judge to schedule a hearing on the proposed compromise and release agreement.

The written request will be treated as an amendment of the pending matter to a petition to seek approval of a compromise and release agreement.

(d) The judge will expedite the convening of a hearing on the compromise and release agreement. The judge will circulate a written decision on the proposed compromise and release agreement within 30 days after the hearing.

(e) Subsections (a) - (d) inclusive supersede 1 Pa. Code §§ 33.42, 35.40, 35.41, 35.48 - 35.51, 35.101 - 35.106, 35.111 - 35.116, 35.121 - 35.128 and 35.155.

**§ 131.58. Informal Conferences.**

(a) Under section 402.1 of the act (77 P.S. § 711.1), the parties upon, or after, filing a petition may agree to participate in an informal conference.

(b) All parties must agree to participate in the informal conference.

(c) The request for the informal conference shall be recorded on a form prescribed by the Bureau and filed with the judge to whom the pending petition has been assigned.

(d) If no petition is pending, a petition and corresponding request for the informal conference shall be filed with the Bureau on a form prescribed by the Bureau.

(e) The informal conference will be governed by the instructions and procedures specified on the form prescribed by the Bureau and by section 402.1 of the act (77 P.S. § 711.1).

(f) The request shall be served on all parties and the adjudicating judge.

(g) Subsections (a) - (f) inclusive supersede 1 Pa. Code §§ 31.21 - 31.23 and 35.111 - 35.116.

**EXCHANGE OF [DOCUMENTS AND RECORDS] INFORMATION AND DEPOSITIONS  
AND DISCOVERY**

**§ 131.61. Exchange of [documents and records] information.**

(a) Parties shall exchange all items and information, including medical documents, reports, records, employment records, wage information, affidavits, tapes, films and photographs, lists of witnesses, CD ROMs, diskettes and other digital recordings, to be used in or obtained for the purpose of prosecuting or defending a case, unless the foregoing are otherwise privileged or unavailable, whether or not intended to be used as evidence or exhibits.

(b) [These items and information shall be exchanged, to the extent practicable, prior to the first hearing actually held.] The moving party shall provide [these] the items and information referred to in subsection (a) to the responding party or parties ~~no later than~~ prior to the commencement of the first pretrial hearing or hearing actually held. [and t]The responding party or parties shall provide [these] the items and information referred to in subsection (a) to the moving party no later than 45 days after the first pretrial hearing or hearing actually held.

(c) A witness whose identity has not been revealed as provided in subsections (a) and (b) shall not be permitted to testify on behalf of the defaulting party unless the testimony is allowed within the judge's discretion.

(d) An item or information not exchanged [under subsection (b)] as provided in subsections (a) and (b), which becomes available after the times set forth in subsection (b) shall be exchanged within [10] 15 days after receipt by the party of the item or information. [A witness whose identity has not been revealed as provided in this chapter is not permitted to testify on behalf of the defaulting party.]

(e) Statements, documents or other records required to be provided by this chapter, if not provided within the time periods in this chapter or modified under § 131.12 (relating to modification of time), will not be admitted, relied upon or utilized in the proceedings or [referee's] judge's rulings, as appropriate.

[A witness whose identity has not been revealed as provided in this chapter is not permitted to testify on behalf of the defaulting party.]

(f) Failure to comply with this section may result in the application of § 131.13(m) (relating to continuances or postponements of hearings).

(g) Subsections (a) - (f) inclusive supersede 1 Pa. Code §§ 35.161 and 35.162 (relating to form and admissibility of evidence; and reception and ruling on evidence).

§ 131.62. Oral depositions.

(a) The oral deposition of a witness other than a party may be taken and, if taken, may be used only as evidence at hearings. Depositions for discovery may be taken only as provided in § 131.68 (relating to discovery of records).

(b) The oral deposition of a party may be taken only upon approval of the judge and, if taken, may be used only as evidence.

(c) Depositions may be taken by telephone or other electronic means upon agreement of counsel of record and unrepresented parties or, upon motion, as directed by the judge.

(d) Subsections (a) [and (b)] - (c) inclusive supersede 1 Pa. Code §§ 35.145 - 35.152 [(relating to depositions)] .

§ 131.63. Time for taking oral depositions.

(a) An oral deposition may be taken at any time subsequent to 30 days after the date of service of the petition by the Bureau.

(b) Oral depositions shall be completed so as not to delay unreasonably the conclusion of the proceedings, and within a time schedule agreed upon by the parties and approved by the [referee] judge provided that medical depositions shall be completed as specified in subsections (c) and (e).

(c) The deposition of a medical expert testifying for the moving party shall be taken within 90 days of the date of the first hearing scheduled unless the time is extended or shortened by the [referee] judge for good cause shown. The deposition of a medical expert testifying for the responding party shall be taken within 90 days of the date of the deposition of the last medical expert testifying on behalf of the moving party.

(d) A party wishing to present depositions for rebuttal or surrebuttal shall notify the [referee] judge in writing within [14] 21 days after the conduct of the hearing or deposition at which the testimony to be rebutted or surrebutted has been given.

(e) Depositions for rebuttal or surrebuttal shall be taken in accordance with § 131.53(e) (relating to procedures subsequent to the first hearing).

(f) If a party fails to abide by the time limits established by this section for submitting evidence, the evidence will not be admitted, relied upon or utilized in the proceedings or [referee] the judge's rulings.

(g) Subsections (a) - (f) inclusive supersede 1 Pa. Code §§ 35.145 - 35.152, 35.161 and 35.162 [(relating to depositions)] .

§ 131.64. Notice of oral depositions.

(a) The notice of an oral deposition shall be served at least [15] 20 days prior to the date scheduled for the taking of the deposition.

(b) The notice of an oral deposition shall contain the following:

- (1) The name or identity, address and occupation of the witness.
- (2) The date, time and place of the taking of the oral deposition.
- (3) A statement of a relevant reason for the taking of the oral deposition.

- (4) The following legend:

Notice to Parties and/or Witness:

You may object to this oral deposition by mailing or delivering a letter listing your objections to (name and address of party scheduling deposition) at least **[seven (7)] 10** days before (date of deposition).

(c) The notice of an oral deposition shall be served by the party scheduling the deposition upon each witness to be deposed, counsel of record, unrepresented parties and the **[referee] judge**.

(d) Subsections (a) - (c) **inclusive** supersede 1 Pa. Code §§ 33.33 and 35.145 - 35.152 **[(relating to depositions)]** .

§ 131.65. Objections to taking of oral depositions.

(a) A party or witness may object to the oral deposition by serving, at least **[7] 10** days prior to the scheduled date of the oral deposition, a written notice upon the party who has scheduled the oral deposition, counsel of record, unrepresented parties and the **[referee] judge**. The objections shall state the specific reason supporting the objections. The objections shall stay the deposition until it is ordered to be held by the **[referee] judge**.

(b) A party or witness may request a ruling on objections by filing a written request with the **[referee] judge**, which shall be accompanied by a copy of the notice of an oral deposition, any subpoena and the objections lodged as required by subsection (a). The requesting party shall serve a copy of the request for ruling on counsel of record, unrepresented parties and the objecting witnesses.

(c) Upon receipt of a request for ruling, as specified in subsection (b), the **[referee] judge** will, after giving parties and objecting witnesses notice and opportunity to be heard by written submission, in person, or by telephone conference, as the **[referee] judge** may direct, rule on the objections within 5 **[working] business** days after the parties and objecting witnesses are heard.

(d) Subsections (a) - (c) **inclusive** supersede 1 Pa. Code §§ 35.145 - 35.152.

§ 131.66. Admissibility of oral depositions.

(a) Oral depositions taken in accordance with §§ 131.62-131.65 **(relating to oral depositions)** or upon waiver of the formal requirements of those sections by agreement of all parties, will be admissible at the time of hearing or by mail if allowed by the **[referee] judge** in the same manner as if the deponent appeared before the **[referee] judge** and testified.

(b) Objections shall be made and the basis for the objections stated at the time of the taking of the depositions. Only objections which are identified in a separate writing, introduced prior to the close of the **evidentiary record, as close of the record is specified in §§ 131.101(c), 131.101(d) and 131.101(e) (relating to briefs, findings of fact and close of record)**, and stating the specific nature of the objections and the pages where they appear in the deposition will be preserved for ruling. Objections not so preserved **[will be] are waived.**

(c) Subsections (a) and (b) supersede[s] 1 Pa. Code §§ 35.126, 35.151, 35.161 and 35.162 **[(relating to status of deposition as part of record; and reception and ruling on evidence)]** .

§ 131.67. Expenses of taking depositions.

(a) If a deposition is to be taken more than 100 miles from where the hearing is or would be scheduled, the **[referee] judge** may **[make an] order [requiring]** the payment of reasonable expenses of attorneys, not including counsel fees, to attend the deposition.

(b) Subsection (a) supersedes 1 Pa. Code §§ 35.148 and 35.152 (relating to officer before whom deposition is taken; and fees of officers and deponents).

§ 131.68. Discovery of records.

(a) A party may schedule and take the deposition of a custodian of records or a person in a similar capacity. A party has the right to inspect and analyze the records listed in this subsection. Title 42 **[of the Pennsylvania Consolidated Statutes] Pa. C.S. §§ 6151-61[59]60** (relating to medical records) shall be followed, if applicable. The deposition may be used to locate, authenticate and obtain copies of records which are material and relevant to the proceeding, including:

- (1) Employment, earnings or work environment.
- (2) Treatment, including vocational and physical rehabilitation.
- (3) Mental or physical examination.
- (4) Hospitalization.
- (5) Testing.
- (6) X-rays.
- (7) Autopsy.
- (8) Tissue slides and samples.

(9) Surveillance.

(b) A party may take the discovery deposition at any time after the assignment of the petition to a **[referee] judge**.

(c) The notice of discovery shall conform to § 131.64(b) (relating to notice of oral depositions) and shall also contain a description of the items to be produced at the deposition.

(d) The service of **the** notice of discovery shall conform to § 131.64(c).

(e) Objections shall conform to § 131.65 (relating to objections to taking of oral depositions).

(f) A deposition under this section shall be in the form of a written affidavit of the custodian of records as deponent without interrogation. The affidavit shall be in the form, and contain the information specified in § 131.69 (relating to form of deposition affidavit). Title 42 **[of the Pennsylvania Consolidated Statutes] Pa. C.S. §§ 6151-61[59]60** shall be followed, if applicable.

(g) The deposition affidavit and the records or items authenticated thereby will be **[eligible for admission] admissible** into evidence in the proceeding before the **[referee] judge** in the same manner as if the deponent appeared before the **[referee] judge** and testified to the authenticity of the records or items.

(h) Failure to comply with this section may result in the application of §§ 131.13(m), **[and] 131.61(d) and 131.61(e)** (relating to continuances or postponements of hearings; and exchange of **[documents and records] information**).

(i) **Subsections (a) - (h) inclusive supersede 1 Pa. Code §§ 35.145 - 35.152.**

§ 131.69. Form of deposition affidavit.

(a) The deposition affidavit required by § 131.68(f) (relating to discovery of records) shall be in the following form:

DEPOSITION AFFIDAVIT **[OR]** OF RECORD CUSTODIAN

I, the undersigned, being duly sworn according to law, depose and say, that I am the duly authorized custodian of records for (name of hospital, doctor, employer, etc.) with the authority to certify said records, and I hereby certify to the following:

**[(a)] (1)** The records attached hereto are true and correct copies of the records in my custody, pertaining to **[-]** (claimant or decedent); and

**[(b)] (2)** All records called for in the attached subpoena duces tecum, including this certification, which are in my custody, have been photocopied at my office, in my presence, at my discretion and under my supervision, by (name of copy service, if any); and

**[(c)] (3)** All records produced in my presence, unless qualified below, were prepared in the ordinary course of business by authorized persons or personnel at or near the time of the act, condition or event; and

**[(d)] (4)** A careful search has been made by me or at my direction for records pertaining to the above identified individual and the records produced pursuant to the attached subpoena duces tecum constitute all of the records of the individual so identified.

**(b) Subsection (a) supersedes 1 Pa. Code § 35.149 (relating to oath and reduction to writing).**

§ 131.70. Discovery of statements of parties or witnesses.

(a) Upon written request, a party is entitled to receive a photostatic copy or other reproduction of a statement previously made concerning the petition or its subject matter by that party, another party or a witness.

(b) Upon written request, a person not a party, is entitled to receive a photostatic copy or other reproduction of a statement concerning the petition or its subject matter previously made by that person.

(c) This section **[does]** shall not apply to statements made by a party to the party's counsel which are protected by the attorney-client privilege or which are protected as the work product of counsel.

(d) Failure to adhere to this section may result in the application of §§ 131.13(m), **[or]** 131.61(d) and 131.61(e) (relating to continuances or postponements of hearings; and exchange of **[documents and records] information**), as appropriate.

**(e) Subsections (a) - (d) inclusive supersede 1 Pa. Code §§ 35.145 - 35.152.**

SUBPOENAS

§ 131.81. Subpoenas.

(a) Upon **written** request of a party or counsel of record in a pending proceeding, the **[referee] judge** will issue a subpoena to compel the attendance of a witness or require the production of books, documents, records, **CD ROMs, diskettes, other digital recordings** or **other** things relevant to the proceeding at a scheduled hearing or deposition within the scope of, and scheduled under, this chapter. **The party requesting a sub-**



poena shall serve the judge with the original written request and shall serve a copy of the written request on unrepresented parties and counsel of record as provided in § 131.34(a) (relating to other filings).

(b) The party, counsel of record or their respective agents requesting [the] a subpoena shall serve the subpoena upon the witness or person subpoenaed and upon opposing counsel. **Service shall be made in the following manner:**

(1) **By personal service pursuant to the Pennsylvania Rules of Civil Procedure, or**

(2) **By any form of mail requiring a return receipt postage prepaid, restricted delivery or as provided in § 131.11(b) (relating to filing, service and proof of service).**

(3) **The fee for one day's attendance and roundtrip mileage shall be tendered upon demand at the time the person is served with the subpoena. If a subpoena is served by mail, a check in the amount of one day's attendance and round-trip mileage shall be enclosed with the subpoena. The fee for one day's attendance and roundtrip mileage is as prescribed in 42 Pa. C.S. §§ 5901-5988 (relating to depositions and witnesses).**

(c) Upon the filing of written objections by a person served with a subpoena or a party, **the judge may**, after notice to counsel of record and unrepresented parties, [the referee may] promptly quash or limit the scope of a subpoena issued or served.

(d) If the person fails to appear, or has given notice of the intention not to appear, as required by a subpoena duly served, the [referee] **judge** will upon request of a party, communicate to the witness the requirements of the act that the person so appear and advise the person of the enforcement provisions under section 436 of the act (77 P.S. § 992).

(e) **Subsections (a) - (d) inclusive supersede 1 Pa. Code §§ 35.139 and 35.142 (relating to fees of witnesses; and subpoenas).**

#### STIPULATIONS

§ 131.91. Stipulations of fact.

(a) Stipulations of fact may be filed with the [referee] **judge** to whom the case has been assigned.

(b) The [referee] **judge** may issue a decision based on stipulations of fact, if the [referee] **judge** is satisfied that:

(1) The stipulations of fact are fair and equitable to **the** parties involved.

(2) The claimant understands the stipulations of fact and the effect of the stipulations of fact on future payments of compensation and medical expenses.

(c) Subsections (a) and (b) supersede 1 Pa. Code § 35.155 (relating to presentation and effect of stipulations).

#### BRIEFS, FINDINGS OF FACT, CLOSE OF RECORD AND ORAL ARGUMENT

##### § 131.101. Briefs [and], findings of fact and close of record.

(a) The [referee] judge may require [or] the parties [may] to submit proposed findings of fact, conclusions of law and legal briefs or memoranda to the [referee] judge for review and consideration.

(b) Submissions referred to in subsection (a) shall be made within the time specified by the [referee] judge, but not later than 30 days following the close of the record.

(c) **The evidentiary record is closed when the parties have submitted all of their evidence and rested or when the judge has closed the evidentiary record on a party's motion or the judge's own motion. If the judge determines that additional hearings are necessary, or that additional evidence needs to be submitted, or if the judge schedules additional written or oral argument, the evidentiary record may be held open by the judge. When the judge determines that the evidentiary record is closed, the judge will notify the parties that the evidentiary record is closed on the evidentiary record or in writing.**

(d) **Any party may move to close the evidentiary record and all other parties shall advise the judge within 20 days as to whether the evidentiary record is closed or whether there is additional evidence to be submitted. At the conclusion of the 20 day period, the judge will determine whether the evidentiary record will be closed or will remain open.**

(e) **A judge may close the evidentiary record on the judge's own motion even if all parties have not rested when the judge determines that the parties have had reasonable opportunity to present their case, provided that reasonable notice of the closing of the evidentiary record has been given to all parties.**

(f) **All parties shall provide a certification of the contents of the evidentiary record before the judge, including hearing dates, a list of witnesses testifying and a list of offered exhibits. The certification of the evidentiary record shall be provided to the judge after the close of the evidentiary record and at or before the filing of proposed findings of fact, conclusions of law or brief. The judge will specify the contents of the evidentiary record in the decision.**

**(g) [Briefs and proposed] Proposed findings of fact, proposed conclusions of law, briefs and certification of the evidentiary record not timely filed with the [referee] judge [under this section will] may not be considered unless, in advance of the date specified in this section, a request for an extension of time has been made to, and granted by, the [referee] judge for good cause shown. [Failure to comply with this subsection will result in disposition of the proceeding without further notice or consideration of the brief or findings of fact of the party failing to comply.]**

**(h) Briefs submitted under this section [may] shall consist of at least the following items[,], separately and distinctly set forth:**

- (1) A short statement of the questions involved.**
- (2) A statement of the facts by the moving party or counter-statement of the facts by the responding party.**
- (3) An argument.**
- (4) Short conclusions setting forth the precise relief sought.**
- (5) A proof of service.**
- [(6) A specification of the contents of the record before the referee, including hearing dates, a list of witnesses testifying and a list of exhibits of record.]**

**(i) Subsections [(d)(6)] (a) - (h) inclusive supersede[s] 1 Pa. Code §§ 35.54, 35.55, 35.131 - 35.133, 35.163, 35.173, 35.191 - 35.193, 35.212, 35.221 and 35.231 - 35.233 [(relating to designation of relevant portions of documentary evidence)] and also supersede 1 Pa. Code Chapter 35, Subchapter D. [Subsections (a) - (d) supersede 1 Pa. Code §§ 35.191 - 35.193 (relating to briefs).]**

§ 131.102. Oral argument.

**(a) The [referee] judge, with notice to the parties, may require [,or a party may request, a closing] oral argument at any time before or after [completion of the evidentiary portion of the case] the close of the evidentiary record. A party may request oral argument at any time prior to the submission of their proposed findings of fact, proposed conclusions of law or brief. If no proposed findings of fact, proposed conclusions of law or brief are filed, a party may request oral argument prior to the close of the evidentiary record.**

**(b) Subsection (a) supersedes 1 Pa. Code §§ 35.204, 35.214 and 35.221 (relating to oral argument before presiding officer; oral argument on exceptions; and briefs and oral argument in absence of proposed report).**

§ 131.111. Decision of judges.

- (a) Following the close of the **evidentiary record and the hearing of oral argument, if any, as provided in § 131.102(a) (relating to oral argument)**, the **[referee] judge** will issue a written decision, which will contain findings of fact, conclusions of law and an appropriate order based upon the entire **evidentiary record**.
- (b) The decision of the **[referee] judge** will be a final order, subject to correction or amendment under § 131.112 (relating to correction or amendment of decision), or appeal.
- (c) Subsections (a) and (b) supersede 1 Pa. Code §§ 31.13**[and]**, 31.14, **35.190, 35.201 - 35.207, 35.225, 35.226 and 35.241 [(relating to issuance of agency orders; and effective dates of agency orders)]** .

§ 131.112. Correction or amendment of decision.

- (a) A decision or an order of a **[referee] judge** may be amended or corrected by the **[referee] judge** subsequent to the service of notice of the decision and order. A typographical or clerical error or **obvious omission or error on the part of the judge** may be corrected on the **[referee's] judge's** motion or on the motion of one or both parties. Other amendments or corrections will be made only upon written agreement **[to]** of the parties. A request for **correction or amendment** shall be made within 20 days of the date of service of notice of the decision and order.
- (b) The corrected decision and order[s] will specifically set forth the items in the prior decision and order which are being corrected and amended, and will contain the following provision **[that]**: "In all other respects the prior decision and order in the case are hereby reaffirmed."
- (c) Neither the request for correction nor the corrected decision and order will extend the appeal period of the original decision and order **[or of a portion of the original decision and order not corrected]** as to any part of that decision and order which is not the subject of the request for correction or amendment.
- (d) Subsections (a) **[and (b)] - (c) inclusive** supersede 1 Pa. Code §§ 31.13, 31.14, 35.54, 35.55, 35.190 and 35.211 - 35.214 **[(relating to issuance of agency orders)]** and also supersede 1 Pa. Code Chapter 35, Subchapter D.

PENALTY PROCEEDINGS

§ 131.121. Penalty proceedings **[in pending cases]** initiated by a party.

- (a) Penalty proceedings **may be initiated by a party [in a pending proceeding may be initiated by]** filing a petition **[or a motion on the record in the pending proceeding]** for penalties as provided in § 131.32 (relating to petitions except petitions for

joinder and challenge proceedings). Answers shall be filed as provided in § 131.33 (relating to answers except answers to petitions for joinder and challenge proceedings).

(b) Penalty proceedings initiated by a party in a pending proceeding may be initiated by a petition pursuant to subsection (a) or by motion on the record in the pending proceeding. If penalties are requested by motion on the record, an answer may be made either orally on the record or as provided in subsection (a).

(c) If, in a pending proceeding where no separate penalty petition has been filed in accordance with [this part] subsection (a), it [is alleged by a party or it] appears to the [referee] judge in proceedings before the [referee] judge that there has been noncompliance with the act or this chapter, the [referee] judge will schedule a hearing for the purpose of determining if noncompliance has occurred **unless the hearing is waived by the parties**. The hearing will be scheduled **either** upon motion of a party or on the [referee's] judge's own motion **unless waived**.

(d) The [referee] judge will give notice of the scheduling of [a] any penalty hearing to all parties and this notice will specify the nature of the penalty proceeding and that the hearing will involve the question of the imposition of penalties under the act or this chapter.

(e) The penalty hearing may be conducted in conjunction with a hearing on the merits in a pending proceeding or at a separate hearing.

(f) At the penalty hearing, the [referee] judge will take testimony, receive evidence and hear arguments necessary to create a record sufficient to support, defend or appeal the decision of the [referee] judge regarding noncompliance with the act or this chapter and the imposition of penalties.

(g) A party complaining of a violation of the act or this chapter shall have the burden of proving the violation.

(h) The [referee] judge, in a separate order prior to a final order or in conjunction with the final decision in the proceeding, will rule on the request for penalties and will determine whether noncompliance with the act or this chapter exists, and, if appropriate, impose penalties.

(i) Subsections [(b) - (e)] (a) - (h) inclusive supersede 1 Pa. Code §§ 35.1, 35.2, 35.5 - 35.7, 35.9 [, and 35.10] - 35.11, 35.14, 35.17 - 35.20, 35.23, 35.24, 35.35 - 35.41, 35.54, 35.55 and 35.251 [(relating to formal complaints generally; and form and content of formal complaints)] and also supersede 1 Pa. Code Chapter 35, Subchapter D.

§ 131.122. Other penalty proceedings.

(a) Penalty proceedings not conducted under § 131.121 (relating to penalty proceedings **[in pending cases] initiated by a party**) will be conducted in accordance with ~~other applicable regulations [in this part] of the Bureau~~ 34 Pa. Code Chapter 121 (relating to general provisions).

(b) **Subsection (a) supersedes 1 Pa. Code §§ 35.14, 35.37 and 35.251 (relating to orders to show cause; answers to orders to show cause; and reports of compliance).**



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September 24, 2002

The Honorable John R. McGinley, Jr.  
Independent Regulatory Review Commission  
14<sup>th</sup> Floor, Harristown 2  
333 Market Street  
Harrisburg, Pennsylvania 17101

Re: Final-Form Regulation  
Labor & Industry- Procedural Rules  
No. 12-61

Dear Chairman McGinley:

Enclosed for your review is a final-form regulation that will provide guidance for practice and procedure before the Workers' Compensation Appeal Board (Board) and workers' compensation judges (judges) under the Pennsylvania Workers' Compensation Act (Act). This regulation will amend the Pennsylvania Code (34 Pa. Code, Chapters 111 and 131) to clarify and expedite the hearing and determination of matters in the workers' compensation system and update exiting regulations to ensure timely and fair disposition of matters as required by the Act. These amendments will incorporate changes that are necessary by Act 44 of 1993, Act 1 of 1995 and Act 57 of 1996 and ensure that parties utilize up-to-date rules for practice and procedure before the Board and judges.

Written comments, suggestions or questions regarding this final-form regulation may be directed to Elizabeth A. Crum, Acting Deputy Secretary of Compensation and Insurance, Department of Labor & Industry, 1700 Labor and Industry Building, Seventh and Forster Streets, Harrisburg, Pennsylvania 17120 (Telephone 717-787-5082).

The Department's staff will provide your staff with any assistance needed to facilitate a thorough review of this proposal.

Sincerely,

Johnny J. Butler  
Secretary

**Final-form regulation, No. 12-61**

**Page 2**

Enclosures

cc: Elizabeth A. Crum, Acting Deputy Secretary  
Roger H. Caffier, Chief Counsel



TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE  
REGULATORY REVIEW ACT

I.D. NUMBER: 12-61

SUBJECT: Special Rules of Administrative Practice and Procedure Before the  
Workers' Compensation Appeal Board and Workers' Compensation Judges

AGENCY: DEPARTMENT OF LABOR & INDUSTRY

TYPE OF REGULATION

Proposed Regulation

X Final Regulation

Final Regulation with Notice of Proposed Rulemaking Omitted

120-day Emergency Certification of the Attorney General

120-day Emergency Certification of the Governor

Delivery of Tolled Regulation

a. With Revisions                      b. Without Revisions

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
<u>9/24/02</u>	<u>M. Eckert</u>	HOUSE COMMITTEE ON LABOR RELATIONS
<u>9/24/02</u>	<u>J. Grabowski</u>	
<u>9/24/02</u>	<u>J. Merice</u>	SENATE COMMITTEE ON LABOR & INDUSTRY
<u>9/24/02</u>	<u>D. Muddock</u>	
<u>9/24/02</u>	<u>T. Eckert</u>	INDEPENDENT REGULATORY REVIEW COMMISSION
_____	_____	ATTORNEY GENERAL
_____	_____	LEGISLATIVE REFERENCE BUREAU

September 18, 2002