

# Regulatory Analysis Form

(Completed by Promulgating Agency)



## SECTION I: PROFILE

(1) Agency:

Department of Labor and Industry,  
Workers' Compensation Appeal Board and  
Office of Adjudication

(2) Agency Number:

Identification Number: 12-84

IRRC Number: 2721

(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 (collectively, the Rules).

(4) PA Code Cite:

34 Pa. Code Chapter 111  
34 Pa. Code Chapter 131

(5) Agency Contacts (List Telephone Number, Address, Fax Number and Email Address):

Primary Contact: For Judge's Rules- Elizabeth Crum, Deputy Secretary for Compensation and Insurance, 651 Boas Street, Harrisburg, PA 17121, (717) 787-5082; For Board Rules- Susan McDermott, Chairperson, Workers' Compensation Appeal Board, 901 North 7<sup>th</sup> Street, 3<sup>rd</sup> Floor South, Harrisburg, PA 17102-1412, (215) 560-4583

Secondary Contact: Thomas J. Kuzma, Deputy Chief Counsel, Bureau of Worker's Compensation, 1171 South Cameron Street, Room 324, Harrisburg, PA 17104, (717) 783-4467

(6) Primary Contact for Public Comments (List Telephone Number, Address, Fax Number and Email Address) – Complete if different from #5:

(All Comments will appear on IRRC'S website)

(7) Type of Rulemaking (check applicable box):

- Proposed Regulation
- Final Regulation
- Final Omitted Regulation
- Emergency Certification Regulation;
  - Certification by the Governor
  - Certification by the Attorney General

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(8) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

The Department of Labor and Industry (Department), Workers' Compensation Appeal Board (Board) and Office of Adjudication (Office), has promulgated this final-form rulemaking for Chapters 111 and 131 of 34 Pa. Code to clarify and provide detailed guidance for practice and procedure before the Board and workers' compensation judges (judges), to provide additional guidance for the litigation of matters before the Board, the Office and judges, and to refine existing rules governing practice and procedures.

(9) Include a schedule for review of the regulation including:

- |   |   |
|---|---|
| A. The date by which the agency must receive public comments:                               | <u>N/A</u>                                    |
| B. The date or dates on which public meetings or hearings will be held:                     | <u>N/A</u>                                    |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | <u>2009</u>                                   |
| D. The expected effective date of the final-form regulation:                                | upon publication<br>in the <i>Pa Bulletin</i> |
| E. The date by which compliance with the final-form regulation will be required:            | upon publication<br>in the <i>Pa Bulletin</i> |
| F. The date by which required permits, licenses or other approvals must be obtained:        | <u>N/A</u>                                    |

(10) Provide the schedule for continual review of the regulation.

The Department does not have a set schedule for review of the regulations. The Department will continue to monitor the impact and effectiveness of the regulations.

**SECTION II: STATEMENT OF NEED**

(11) State the statutory authority for the regulation. Include specific statutory citation.

The Department has promulgated this final-form rulemaking of the Rules under the authority contained in sections 401.1 and 435(a) and 435(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).

(12) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as any deadlines for action.

The final-form regulations are not mandated by any law. Regulatory action is required, however, to update certain portions of the Rules in accordance with amendments to the act passed in 2006 in the act of November 9, 2006 (P. L. 1362, No. 147) (Act 147), and an amendment that impacts the act (the act of July 7, 2006 (P. L. 1055, No. 109) (Act 109)). Moreover, the Rules have not been revised since 2002 and do not reflect technological advances subsequently implemented and anticipated by the Board and Bureau of Workers' Compensation (Bureau).

(13) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

This final-form rulemaking is promulgated to ensure that judges, Board Commissioners, Bureau and Board staff, and litigants in the workers' compensation system, will have a clear understanding of practice and procedures before the Board, the Office and judges. This final-form rulemaking addresses changes made in practice and law since the Rules were last reviewed and altered. The final-form rulemaking will also expedite the adjudication of workers' compensation claims, reduce paperwork requirements among litigants, and reduce expenses for litigants by incorporating technology into workers' compensation proceedings.

(14) If scientific data, studies, references are used to justify this regulation, please submit material with the regulatory package. Please provide full citation and/or links to internet source.

There are no scientific data, studies, or references relied upon by the Department to justify this regulation.

(15) Describe who and how many will be adversely affected by the regulation. How are they affected?

No one will be adversely affected by the regulations.

(16) 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 required to comply with the final-form regulations: approximately 300 workers' compensation insurers, including the State Workers' Insurance Fund; approximately 800 self-insured employers, including the Commonwealth; approximately 90 judges; Board commissioners and officials; employees of the Department; and participants in the Pennsylvania workers' compensation system, including injured employees, health care providers, employers, workers' compensation insurers and their respective counsel.

### SECTION III: COST AND IMPACT ANALYSIS

(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. Explain how the dollar estimates were derived.

No significant costs or savings are anticipated. The final-form regulations may provide the following savings to the regulated community: (1) reduced copying and mailing costs, as Board and Bureau forms may be filed and served electronically; and (2) 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. Explain how the dollar estimates were derived.

No significant costs or savings are anticipated. To the extent that the local governments are an employer, the final-form regulations may provide the following savings: (1) reduced copying and mailing costs, as Board and Bureau forms may be filed and served electronically; and (2) 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. Explain how the dollar estimates were derived.

No significant costs or savings are anticipated. To the extent that state government is an employer, the final-form regulations may provide the following savings: (1) reduced copying and mailing costs, as Board and Bureau forms may be filed and served electronically; and (2) reduced overall litigation expenses attributable to the more expeditious process defined by the regulations.

(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.

	<b>Current FY Year</b>	<b>FY +1 Year</b>	<b>FY +2 Year</b>	<b>FY +3 Year</b>	<b>FY +4 Year</b>	<b>FY +5 Year</b>
<b>SAVINGS:</b>	\$N/A	N/A	N/A	N/A	N/A	N/A
<b>Regulated Community</b>	N/A	N/A	N/A	N/A	N/A	N/A
<b>Local Government</b>	N/A	N/A	N/A	N/A	N/A	N/A
<b>State Government</b>	N/A	N/A	N/A	N/A	N/A	N/A
<b>Total Savings</b>						
<b>COSTS:</b>	None	None	None	None	None	None
<b>Regulated Community</b>	None	None	None	None	None	None
<b>Local Government</b>	None	None	None	None	None	None
<b>State Government</b>	None	None	None	None	None	None
<b>Total Costs</b>						
<b>REVENUE LOSSES:</b>	None	None	None	None	None	None
<b>Regulated Community</b>	None	None	None	None	None	None
<b>Local Government</b>	None	None	None	None	None	None
<b>State Government</b>	None	None	None	None	None	None
<b>Total Revenue Losses</b>	None	None	None	None	None	None

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

<b>Program</b>	<b>FY -3</b>	<b>FY -2</b>	<b>FY -1</b>	<b>Current FY</b>
Workers' Comp. Administration Fund	\$ 57,525,000	\$ 60,231,000	\$ 63,383,000	\$76,366,000 (appropriation for year)
Non-BWC programs that may be impacted	Unquantifiable	Unquantifiable	Unquantifiable	Unquantifiable

(21) Explain how the benefits of the regulation outweigh any cost and adverse effects.

There are no adverse effects or costs.

(22) Describe the communications with and input from the public and any advisory council/group in the development and drafting of the regulation. List the specific persons and/or groups who were involved.

In the fall of 2006, the Rules Committee, which was established by the Secretary of the Department of Labor and Industry in 1980, reconvened to incorporate into the Board and judges Rules the Department's ability to accept filings electronically, various legislative amendments and appellate decisions, as well as comments received from interested practitioners in the field since 2002. The Rules Committee includes certain members of the legislature, Department, judges, and representatives of the claimant's and defense bars.

At 38 Pa. B. 4902 (Sept. 6, 2008), the Department published the notice proposed rulemaking. As a result, the Department received written comments from the following: Terry Bashline, Esquire; Lawrence R. Chaban, Esquire (on behalf of interested practitioners in the field including Workers' Compensation Judge Ada Guyton and R. Burke McLemore, Jr., Esquire); Christian A. Davis, Esquire (on behalf of the firm Weber, Gallagher, Simpson, Stapleton, Fires & Newby, L.L.P.); Paul J. Dellasega, Esquire; Thomas C. Lowry, Esquire; Samuel R. Marshall, Esquire (on behalf of The Insurance Federation of Pennsylvania, Inc. (IFP)); and Joseph A. Prim, Esquire. The Department also received written comments from the Independent Regulatory Review Commission (IRRC) dated November 5, 2008. In response to the comments received, the Rules Committee met on December 5, 2008, and approved the changes that are incorporated into this final-form regulation.

(23) Include a description of any alternative regulatory provisions which have been considered and

rejected and a statement that the least burdensome acceptable alternative has been selected.

Alternative regulatory schemes were not considered because the Department considers the current amendments as the most appropriate and reasonable method for up-to-date guidance for litigation of workers' compensation matters.

(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 regulations.

There are no comparable federal standards.

(25) How does this regulation compare with those of other states? How will this affect Pennsylvania's ability to compete with other states?

Comparison to other states' provisions is impractical because statutory requirements and systems differ from state to state. However, the final-form regulations are likely to enhance the Commonwealth's competitive advantage because the Rules provide up-to-date guidance for litigation of workers' compensation matters. The final-form regulations address changes made in practice and law since the Rules were last reviewed and altered, expedite the adjudication of workers' compensation claims, reduce paperwork requirements among litigants, and reduce expenses for litigants by incorporating technology into workers' compensation proceedings.

(26) Will the regulation affect any other regulations of the promulgating agency or other state



agencies? If yes, explain and provide specific citations.

Yes. The final-form regulations amend 34 Pa. Code Chapter 111 and 131. The Rules provide additional guidance for the litigation of matters before the Board, the Office and judges, and refine existing Rules governing practice before the Board, the Office and judges. The regulations incorporate changes made necessary by recent legislative amendments and advise the parties of up-to-date rules for practice and procedure before the Board, the Office and judges.

(27) Submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

The final-form regulations do not require the creation of any new forms. However, the final-form regulations incorporate the mandate in Act 109 to report the existence or non-existence of any child support order to a judge before the award of certain benefits under the act, and whether payments are current. There are no other additional reporting, recording or paperwork requirements for either the Commonwealth or the regulated community.

(28) 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 final-form regulations as a whole will expedite the procedures and assist all workers' compensation litigants.

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**FACE SHEET  
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<p>Copy below is hereby approved as to form and legality. Attorney General</p> <p>BY:</p> <p>DEPUTY ATTORNEY GENERAL</p> <p>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 <b>12-84</b></p> <p>DATE OF ADOPTION:</p> <p>BY:</p> <p align="center"><b>Sandi Vito</b> Secretary</p> <p>TITLE: (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>DATE OF APPROVAL: <b>Andrew C. Clark</b> Deputy General Counsel <b>JUN 25 2009</b></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 RULEMAKING

**34 Pa. Code Chapter 111**

**Special Rules of Administrative Practice and Procedure Before the Workers'**

**Compensation Appeal Board**

**34 Pa. Code, Chapter 131**

**Special Rules of Administrative Practice and Procedure**

**Before Workers' Compensation Judges**

**DEPARTMENT OF LABOR  
AND INDUSTRY**

**[34 PA. CODE CHS. 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**

The Department of Labor and Industry (Department), Workers' Compensation Appeal Board (Board) and Office of Adjudication (Office) amends Chapters 111 and 131 (relating to special rules of administrative practice and procedure before the Workers' Compensation Appeal Board; and special rules of administrative practice and procedure before workers' compensation judges) (Rules) to read as set forth in Annex A. The rulemaking clarifies and provides detailed guidance for practice and procedure before the Board, the Office and workers' compensation judges (judges).

*Statutory Authority*

This final-form regulation is published 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)), 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 (committee) to develop rules and procedures for the workers' compensation system. The committee consisted of a Board representative, judges, equal numbers of representatives of the claimant and defense bar and Department representatives. This committee has met at various times since its inception to amend the Board and judges Rules. The most recent version of the Rules became effective December 7, 2002.

In the fall of 2006, the committee reconvened to incorporate into the Board and judges Rules the Department's ability to accept filings electronically, various legislative amendments and appellate decisions, as well as comments received from interested practitioners in the field since 2002. At 38 Pa. B. 4902 (Sept. 6, 2008), the Department published the notice of proposed rulemaking. As a result, the Department received written comments from the following: Terry L.M. Bashline, Esquire; Lawrence R. Chaban, Esquire (on behalf of interested practitioners in the field including Workers' Compensation Judge Ada Guyton and R. Burke McLemore, Jr., Esquire); Christian A. Davis, Esquire (on behalf of the firm Weber, Gallagher, Simpson, Stapleton, Fires & Newby, L.L.P.); Paul J. Dellasega, Esquire; Thomas C. Lowry, Esquire; Samuel R. Marshall, Esquire (on behalf of The Insurance Federation of Pennsylvania, Inc. (IFP)); and Joseph A. Prim, Esquire. The Department also received written comments from the

Independent Regulatory Review Commission (IRRC) dated November 5, 2008. In response to the comments received, the committee met on December 5, 2008, and approved the changes that are incorporated into this final-form regulation.

### *Purpose*

The rulemaking clarifies and expedites the procedures in the workers' compensation system and updates existing Rules to ensure compliance with amendments to the act and various appellate court decisions. The present Rules have not been comprehensively reviewed since 2002. Since that time, the act has been amended, and a change was made to the law governing child support payments that impacts certain workers' compensation awards. *See* the act of November 9, 2006 (P. L. 1362, No. 147) (Act 147); and the act of July 7, 2006 (P. L. 1055, No. 109) (Act 109). Additionally, advances in technology, including the ability of the Bureau of Workers' Compensation (Bureau) to accept certain filings electronically and the anticipation that the Board will also obtain such capability, prompted the need for these amendments. The amendments incorporate these necessary changes, and ensure that parties will continue to be advised of up-to-date Rules for practice and procedures before the Board, the Office and judges.

### *Summary of Final-Form Regulations and Responses to Comments*

The IRRC made the general comment that the Department should only list the General Rules of Administrative Practice and Procedure (GRAPP) provisions that are actually superseded by the specific regulatory language found in the regulations. The Department notes that it has always been its intent for the regulations governing workers' compensation proceedings to supersede the GRAPP. Nonetheless, the Department reviewed the regulations and have amended them to ensure that only those specific provisions of GRAPP that are being superseded by that particular section of the regulations are listed as being superseded.

The IRRC commented that references to electronic filing in §§ 111.3 (relating to definitions), 111.11 (relating to content and form) and 111.12 (relating to filing, service and proof of service) should be omitted since the Board currently lacks the technological capability to accept electronic filings. The Department disagrees since it believes that electronic filing will likely result in significant time and cost savings for all parties and does not think that allowing for electronic filing in the regulations before the Board can accept electronic filings will result in widespread confusion in the regulated community. The IRRC additionally stated that should the Department retain the phrase "electronic filing," the final-form regulations should further explain what is meant by the term and when the Department expects to implement electronic filing. The Department disagrees, believing that not specifically defining the term enables filing with the Department to evolve as technology evolves. Moreover, it would be difficult for the Department to determine with specificity when the Board will begin implementing electronic filing as there are many variables at play in such a process.

The IRRC also commented that should the Department choose to retain the reference to electronic filing in § 111.3, § 111.11 should be amended to provide specific instruction as to where the electronic format may be accessed. In response, the Department amends § 111.11 to

provide that the Department will notify the public of the required electronic format in the *Pennsylvania Bulletin* or on the Department's website.

The IFP also commented with respect to §§ 111.3 and 131.11 (relating to filing, service and proof of service) that the Board and the Bureau respectively should make the "formats and forms" of the electronic filing a part of the regulation in order to subject them to public comment. The Department disagrees, noting that it would be unwieldy and inefficient to go through the legislative process each time a new form is created or modified. The Department will continue to proceed cautiously by soliciting shareholder comment, as it has in the past, when implementing new forms for electronic filing.

The IRRC questioned what constitutes an "original of each appeal and cross-appeal" for purposes of electronic filing as referenced in § 111.12(b). In response, the Department amends § 111.12(b) by deleting the requirement to file an original of an appeal or cross-appeal when filing electronically, since the requirement is redundant and therefore unnecessary.

Mr. Davis provided a general comment in relation to electronic filing, requesting the promulgation of specific rules to permit answers to claim petitions to be filed electronically with either the judges or Bureau and to determine when something is timely filed in the event of a system crash. The Department responds that it intends that all forms will one day be capable of being electronically filed, and that it is unnecessary to have a specific regulation governing the filing of one type of electronic form. In regards to specific regulations governing the timeliness of the filing of an answer, the Department notes that the question of a petition's timeliness is a factual matter that can be decided by a judge on a case-by-case basis.

There were numerous comments made by IRRC and the IFP regarding additional definitions added to § 131.5 (relating to definitions) in response to Act 147's addition of mandatory mediation to the act, and the Department agrees that the definitions needed further clarification. Specifically, the Department amends § 131.5 by adding a definition for "mandatory mediation", renaming "voluntary settlement conferences" to "voluntary mediation", and clarifying the definition for voluntary mediation for reasons spelled out further in the discussion accompanying § 131.59a (relating to mediation). Also pursuant to an IRRC comment, the Department agrees to add a definition for "resolution hearing", using the definition provided in the act. The Department additionally amends the definition of "mediation" to clarify that mediation encompasses both "mandatory mediation" and "voluntary mediation".

Mr. Davis expressed concern about removing the "substantial or compelling" language in § 131.13 (relating to continuances or postponements of hearings) for a judge to grant a continuance and replacing it with "good cause". Mr. Davis states that it would be beneficial for the final-form regulations to include a definition of "good cause". The Department believes, however, that it is complying with Act 147 in making this change, and that case law will eventually provide the parties with guidance regarding how this standard is to be applied in comparison with the "substantial or compelling" standard.

Mr. Prim commented that § 131.41 (relating to request for supersedeas or reconsideration of supersedeas) should not be amended to permit a judge to alter a prior supersedeas

determination on the judge's own motion. The Department responds that the regulation as revised promotes the expeditious administration of the act, and notes that other commentators have indicated their support for the amendment.

The IRRC commented that the use of the term "challenge hearing" in § 131.50a(c) (relating to employee request for special supersedeas hearing under sections 413(c) and (d) of the act) was not consistent with existing regulatory terminology. The Department agrees and amends the section by replacing the phrase "challenge hearing" with "challenge proceeding".

In response to the IFP comments, the Department amends § 131.50a(d) by clarifying that a judge may receive evidence on a supersedeas request only if the introduction of evidence does not prejudice the claimant at the time of the challenge proceeding. The Department agrees with the IFP that the previous wording did not make sense, as the concern addressed by the regulation is whether claimant is procedurally prejudiced by the admission of evidence at that time.

Mr. Chaban commented that § 131.52(b)(3) (relating to first hearing procedures) should be amended to require a judge to consult with the parties about the "best date" for the mandatory mediation conference. In response, the Department notes that most judges routinely consult with counsel when scheduling mandatory mediation. Nonetheless, the Department chooses not to incorporate the suggestion, since it is not always practical for judges utilizing the one day hearing format to consult with the parties ahead of time and still be compliant with Act 147's mandates.

The IFP recommended that § 131.52(b)(1) (relating to first hearing procedures) be revised to allow the judge to alter deadlines for good cause shown. The Department responds that a judge is already permitted this flexibility under § 131.3 (relating to waiver and modification of rules). The IFP further questioned why a judge is permitted to establish a trial schedule before an initial hearing. The Department responds that permitting a judge to establish a trial schedule before an initial hearing allows judges using a one day hearing format to comply with Act 147's mandates.

The Department amends § 131.52 (b)(4) (relating to first hearing procedures) by adding a reference to § 131.53(g) (formerly § 131.53(f)), which requires that medical examinations be scheduled within 45 days of the first hearing actually held, if they have not already been scheduled prior to the first hearing. Several commentators expressed concern about the elimination of this requirement in the proposed regulations. The Department agrees that this provision should not be eliminated, and reinstates former § (f) of 131.53 (relating to procedures subsequent to the first hearing) as new subsection (g).

Messrs. Chaban and Prim commented that § 131.53b (relating to procedures subsequent to the first hearing) should be amended to make clear that a judge's decision on a bifurcated issue does not result in a final, appealable order. The IFP notes its concern that the section grants the judge "unilateral power" to bifurcate issues. The Department disagrees, noting that a judge does not have unlimited authority to bifurcate issues, and that case law provides parties with sufficient guidance regarding a judge's power.

Mr. Bashline commented that § 131.53(d) (relating to procedures subsequent to the first hearing) should be amended to include the phrase “or hearing” because he is concerned that the use of the word “conference” alone can be read to specifically exclude the judge from permitting attendance at a hearing by telephone. The Department disagrees, noting that telephone hearings are already authorized under § 131.54(a) (relating to manner and conduct of hearings).

The Department renumbers § 131.56a to § 131.56 (relating to withdrawal of appearance). § 131.56 is an entirely new section; therefore there is no need to create a section numbered 131.56a.

With respect to § 131.59 (relating to mediation), the IRRC commented that the final-form regulation should define the term “alternative dispute resolution” or provide a cross-reference to an appropriate statutory definition. In response, the Department has removed the reference to alternative dispute resolution and renamed the section “mediation”. The term mediation is now defined in § 131.5 (relating to definitions). Additionally, the Department has eliminated the phrase “conventional adjustment of the claim” from § 131.59(a), agreeing with the IFP that the phrase was ambiguous.

In response to the concerns raised by the IRRC and the IFP, the Department amends § 131.59a by renaming the section “voluntary mediation” and clarifying that an adjudicating judge may conduct a voluntary mediation upon the agreement of the parties and the judge. The Department further amends § 131.59a to eliminate the reference to “adjudicating” judges, because voluntary mediation may be requested at any time during the proceedings, for example, after mandatory mediation has already occurred, and may not necessarily be conducted by the adjudicating judge.

The IRRC commented that § 131.59b (relating to mandatory mediation) was ambiguous by not defining “mandatory mediation”. In response, the Department has added a definition for “mandatory mediation” in § 131.5 (relating to definitions). Additionally, the Department agrees with the IRRC that it was confusing to reference 42 Pa.C.S. § 5949 (relating to confidential mediation communications and documents) in § 131.59b (relating to mandatory mediation), and therefore amends the regulation to delete the statutory reference.

The IRRC also requested that the Department specify its authority in § 131.59b to prohibit an adjudicating judge from conducting a mandatory mediation conference. The Department responds by noting that Act 147 mandates that the parties engage in a mandatory mediation conference, but that the judge conducting the conference is “not necessarily the judge assigned to the actual case involving the parties”. This phrase grants the Department the discretion to assign a judge to conduct the mandatory mediation conference who is different from the one assigned to adjudicate the underlying claim. The Department’s position is consistent with section 501 of the Internal Operating Procedures of the Pennsylvania Commonwealth Court (210 Pa. Code § 67.471) and protects the integrity of the workers’ compensation proceeding. Furthermore, the Department notes that the parties can consent to having the adjudicating judge mediate the case by requesting voluntary mediation pursuant to § 131.59a (relating to voluntary mediation).

The IRRC further questioned the Department's statutory authority to limit confidentiality in subsection 131.59b(b) in circumstances where a party has not complied with the mandatory mediation provisions. Initially, the Department notes that the amended section no longer references 42 Pa.C.S. § 5949. The Department maintains it has implicit authority to craft limited exceptions to the regulations' general requirement for confidentiality in mediation conferences in order to enforce compliance with Act 147's mandates.

Mr. Dellasega commented that mandatory mediation should not be compelled where the cost of mediation exceeds the worth of the case. The Department responds that Act 147 does not provide for any such exception; rather, mandatory mediation is compelled unless, upon good cause shown, the judge determines that mediation would be futile.

The IRRC commented that § 131.60(g) (relating to resolution hearings) should clarify what constitutes "proof" that a petition has been filed so as to enable a judge to proceed with a resolution hearing. In response, the Department amends the regulation by requiring that the parties show proof that a petition has been filed "pursuant to § 131.11 (relating to filing, service, and proof of service)." As previously noted, the Department has also added a definition for "resolution hearing" in § 131.5 (relating to definitions) in response to the IRRC's comment that the term resolution hearing was undefined.

Finally, the IFP commented that § 131.111(c) (relating to decisions of judges) should be amended to provide that interest is suspended if there is a delay incurred due to the claimant's failure to comply with the Act 109 requirements of a written statement and documentation from the Pennsylvania Child Support Enforcement System website. The Department responds that whether interest can be suspended pending receipt of the required documentation is a substantive, rather than a procedural, issue best resolved elsewhere.

#### *Affected Persons*

Those affected by these final-form regulations include the Board Commissioners and officials, employees of the Department, the Office and judges, as well as attorneys and litigants in the Pennsylvania workers' compensation system.

#### *Fiscal Impact*

There is no significant impact associated with this final-form regulation.

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

The final-form regulations do not require the creation of new forms. However, the amendments do incorporate Act 109's mandate to report the existence or non-existence of any child support order to a judge before the award of certain benefits under the act, and whether the support payments are current. There are no other additional reporting, recording or paperwork requirements on either the Commonwealth or the regulated community.



### *Effective Date*

This final-form rulemaking is immediately effective upon its publication in the *Pennsylvania Bulletin*.

### *Sunset Date*

No sunset date is necessary for these regulations. The Department will continue to monitor the impact and effectiveness of the regulations.

### *Contact Persons*

Persons who require additional information about these final-form regulations may contact: (1) with respect to the judges' Rules, Elizabeth A. Crum, Deputy Secretary for Compensation and Insurance, Department of Labor and Industry, 651 Boas Street, Harrisburg PA 17121, (717) 787-5082; and (2) with respect to the Board Rules, Susan McDermott, Chairperson, Workers' Compensation Appeal Board, 901 North Seventh Street, 3<sup>rd</sup> Floor South, Harrisburg, PA 17102-1412, (215) 560-4583.

### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on \_\_\_\_\_, the Department submitted a copy of the proposed rulemaking, published at 38 Pa.B. 4902 (Sept. 6, 2008), to the IRRC and to the Chairpersons of the Senate Committee on Labor and Industry and the House Labor Relations Committee. In addition, the Department also provided the IRRC and the Senate and House Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department.

The Department also provided the Committees and the IRRC with copies of the comments received as well as other documents when requested. In preparing these final-form regulations, the Department considered all the comments from the IRRC and public. The Senate Committee on Labor and Industry and the House Labor Relations Committee did not comment.

Under section 5.1(j.1)-(j.3) of the Regulatory Review Act (71 P.S. § 745.5a(j.1)-(j.3)), these final-form regulations were approved/deemed approved by the Senate and House Committees on \_\_\_\_\_, 2009. IRRC met on \_\_\_\_\_, 2009 and approved this regulation in accordance with section 5.1(e) of the Regulatory Review Act (71 P.S. § 745.a(e)).

## *Findings*

The Department finds that:

(a) Public notice of proposed rulemaking was 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 related regulations at 1 Pa. Code §§ 7.1 and 7.2.

(b) A public comment period was provided as required by law and all comments were considered.

(c) The final-form regulations are necessary and appropriate for the administration and enforcement of the authorizing statute.

## *Order*

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

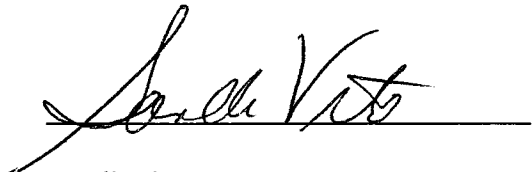
(a) The regulations of the Department, 34 Pa. Code, are amended by adding §§ 131.53b, 131.56, 131.59, 131.59a, 131.59b, and 131.60; and by amending §§ 111.3, 111.11, 111.12, 131.3, 131.5, 131.11, 131.13, 131.22, 131.41, 131.50a, 131.52, 131.53, 131.53a, 131.54, 131.57, 131.66, and 131.111, to read as set forth in Annex A.

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

(c) The Secretary of the Department shall submit this order and Annex A to the IRRC, the Senate Labor and Industry Committee and the House Labor Relations Committee as required by law.

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

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



Sandi Vito  
Secretary

**Fiscal Note:** 12-84.

Annex A

TITLE 34. LABOR AND INDUSTRY

PART VII. WORKERS' COMPENSATION APPEAL BOARD

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

Subchapter A. GENERAL PROVISIONS

§ 111.3. Definitions.

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

\* \* \* \* \*

*Filing* – Delivery [in person or] by mail, in person or electronically. If filing [is] by mail, it is deemed complete upon deposit in the United States mail, as evidenced by a United States Postal Service postmark, properly addressed, with postage or charges prepaid. If filing by hand delivery or electronically, the filing date is the Board's date of receipt.

\* \* \* \* \*

Subchapter B. APPEALS

§ 111.11. Content and form.

(a) An appeal 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:]. All references to forms mean paper forms or an electronic format prescribed by the Board AND PUBLISHED IN THE PENNSYLVANIA BULLETIN OR THE DEPARTMENT'S WEBSITE LOCATED AT WWW.DLI.STATE.PA.US. All forms shall contain the following information:

\* \* \* \* \*

§ 111.12. Filing, service and proof of service.

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

~~(b) When filing electronically, an original of each appeal or cross appeal shall be filed. If the appeal is filed electronically, WHEN FILING ELECTRONICALLY, the Board will obtain a copy of the judge's decision from the Office of Adjudication.~~

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

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

[(d)] (e) The petitioner or respondent shall, concurrently with the filing of an appeal or 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 judge served.

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

[(e)] (f) Subsections (a) – [(d)] (e) supersede 1 Pa. Code §§ 31.26, 33.15, ~~33.21-33.23~~, 33.32, 33.33 and 33.35 – 33.37.

## **PART VIII. BUREAU OF WORKERS' COMPENSATION**

### **CHAPTER 131. SPECIAL RULES OF ADMINISTRATIVE PRACTICE AND PROCEDURE BEFORE WORKERS' COMPENSATION JUDGES**

#### **Subchapter A. GENERAL PROVISIONS**

##### **§ 131.3. Waiver and modification of rules.**

(a) The judge may, for good cause, waive or modify a provision of this chapter, **except as otherwise provided in § 131.59b(a) (relating to mandatory mediation)**, upon motion of a party, agreement of all parties or upon the judge's own motion.

\* \* \* \* \*

##### **§ 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 Workers' Compensation Act (77 P. S. §§ 1 — 1041.4 and 2501--  
[2506] 2708).

*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, **not including the Uninsured Employers Guaranty Fund.**

*Adjudicating judge* – A judge assigned to hold hearings and issue decisions relating to a petition or petitions.

\* \* \* \* \*

*Defendant*—An employer, insurance carrier and the Commonwealth, unless specifically designated individually, **and the Uninsured Employers Guaranty Fund, except for purposes of joinder, penalties or assessment of counsel fees under section 440 of the act (77 P.S. § 996).**

*Director of Adjudication* – The individual specified in section 1402 of the act (77 P.S. § 2502).

\* \* \* \* \*

*Judge*—A workers' compensation judge assigned by the **[Bureau] Office of Adjudication** as provided in **[section] sections 401 and 401.1** of the act (77 P.S. §§ 701 and 710) or assigned by the **[Bureau] Office of Adjudication** to determine a petition filed under the act or the Disease Law.

*Judge Manager* – A workers' compensation judge with management responsibilities appointed under the Civil Service Act (71 P.S. §§ 741.1 – 741.1005).

*MANDATORY MEDIATION* – A MEDIATION CONDUCTED BY A MEDIATING JUDGE PURSUANT TO § 131.59b (RELATING TO MANDATORY MEDIATION).

*Mediating judge* – A judge assigned to mediate petitions in accordance with sections 401 and 401.1 of the act (77 P.S. §§ 701 AND 710) and this chapter.

*Mediation* – A conference conducted by a judge, ~~as authorized by sections 401 and 401.1 of the act,~~ having as its purpose an attempt to reconcile any or all disputes under the act or this chapter existing between contending parties. MEDIATION CAN BE EITHER MANDATORY OR VOLUNTARY.

*Office of Adjudication* – The Office of the Department created by section 1401(a) of the act (77 P.S. § 2501).

*Party*—A claimant, defendant, employer, insurance carrier, additional defendant, **health care provider** and, if relevant, the Commonwealth **and the Uninsured Employers Guaranty Fund.** 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.

\* \* \* \* \*

**RESOLUTION HEARING** – A PROCEDURE ESTABLISHED BY THE OFFICE OF ADJUDICATION WITH THE SOLE PURPOSE OF PROVIDING A VENUE TO PRESENT A COMPROMISE AND RELEASE TO A JUDGE IN AN EXPEDITED FASHION.

**Uninsured Employers Guaranty Fund** – The special fund established by Article XVI of the act.

**Voluntary ~~settlement conference~~ MEDIATION** – A ~~conference~~ MEDIATION conducted by a judge at the request of contending parties, ~~having as its purpose an attempt to reconcile any or all disputes existing between those parties~~ PURSUANT TO § 131.59a (RELATING TO VOLUTARY MEDIATION) UPON THE AGREEMENT OF THE CONTENDING PARTIES AND THE JUDGE.

### **Subchapter B. TIME**

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

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

(1) Delivery in person.

(2) If by electronic submission, upon receipt at the electronic address and in a format as prescribed by the Department and published in the *Pennsylvania Bulletin* OR THE DEPARTMENT’S WEBSITE LOCATED AT WWW.DLI.STATE.PA.US.

(3) If by mail, upon deposit in the United States Mail, as evidenced by a United States Postal Service postmark, properly addressed, with postage or charges prepaid.

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

(1) Delivery in person.

(2) If by electronic submission, upon receipt and in a format as prescribed by the Department and published in the *Pennsylvania Bulletin* OR THE DEPARTMENT’S WEBSITE LOCATED AT WWW.DLI.STATE.PA.US.

**(3) If by mail, upon deposit in the United States Mail, as evidenced by a United States Postal Service postmark, properly addressed, with postage or charges prepaid, except as provided in § 131.81(b) (relating to subpoenas).**

\* \* \* \* \*

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

\* \* \* \* \*

(3) The mailing address, the applicable zip code and the manner of service on the judge and others served, **and, if applicable, the email ELECTRONIC address to which service was made.**

(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 17104-2501, (717) 783-5421, or another address and telephone number as may be published in the *Pennsylvania Bulletin* OR THE DEPARTMENT'S WEBSITE LOCATED AT WWW.DLI.STATE.PA.US. **Electronic filing and service on the Bureau shall be at the electronic address and in a format as prescribed by the Bureau and published in the *Pennsylvania Bulletin* OR THE DEPARTMENT'S WEBSITE LOCATED AT WWW.DLI.STATE.PA.US.**

\* \* \* \* \*

**§ 131.13. Continuances or postponements of hearings.**

\* \* \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

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

**Subchapter C. FORMAL PROCEEDINGS**

**GENERAL**

**§ 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] Office of Adjudication, the parties and the judge, the [Bureau] Office of Adjudication will promptly reassign the case or petition. Notice of reassignment will be given to all parties.

\* \* \* \* \*

**SUPERSEDEAS**

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

\* \* \* \* \*

(b) After a hearing, the 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 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 judge may, upon request or on the judge's own motion, and after hearing, review and modify the grant or denial as warranted.

\* \* \* \* \*

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

\* \* \* \* \*

(c) During the course of a challenge hearing proceeding, the issues are limited to determining whether the claimant has stopped working or is earning the wages stated in the Notice of Suspension or Modification under sections 413(c) or 413(d) of the act (77 P.S. §§ 774.2 and 774.3) and the challenge shall be decided only on those issues.

(d) If the employer has filed a separate petition requesting supersedeas, the judge may receive evidence and issue a separate decision on the request for supersedeas if the judge determines the claimant will not be prejudiced by a ruling at that time THE INTRODUCTION OF EVIDENCE ON THE SUPERSEDEAS REQUEST AT THE TIME OF THE CHALLENGE PROCEEDING.

(e) The 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)](f)** 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 employee's workers' compensation benefits at the weekly rate the employee 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)] (g)** Subsections (a) – **[(d)] (f)** supersede 1 Pa. Code §§ 35.161, 35.162 AND 35.190 and 35.225.

## **HEARING PROCEDURE**

### **§ 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], recognizing that 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)] (b)** 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. **At or before the initial hearing by written order or on the record, the judge shall establish:**

**(1) Specific deadlines for the presentation of evidence by the parties.**

**(2) Dates for future hearings.**

**(3) Specific date and time for the mediation conference unless, for good cause shown, the judge determines at the first hearing or subsequently that mediation would be futile.**

**(4) Dates for setting any medical examinations to be scheduled CONSISTENT WITH § 131.53(g) (RELATING TO PROCEDURES SUBSEQUENT TO THE FIRST HEARING).**

**[(d)] (c)** The moving party, at the first hearing, shall advise the judge and opposing parties of the following:

\* \* \* \* \*

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

**[(f)] (e)** 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 judge will place those documents in evidence 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 employee may not introduce the **[Employer's Report of Injury or Occupational Disease] First Report of Injury** into evidence.

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

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

**[(i)] (h)** Subsections (a) – **[(h)] (g)** supersede 1 Pa. Code §§ ~~35.101—35.106, 35.111—35.116, 35.121—35.128, 35.137, 35.138, 35.161—35.169~~ 35.123, 35.125 – 35.128, 35.155, 35.164 AND 35.169.

**§ 131.53. Procedures subsequent to the first hearing.**

\* \* \* \* \*

**(d) The parties or the judge may request a conference at any time which may be held in person, by telephone, video, or any other electronic manner as directed by the judge.**

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

**[(e)] (f)** 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.

**(g) 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)](H)** Subsections (a) – **(f)** (g) supersede 1 Pa. Code §§ ~~35.101—35.106, 35.111—35.116, 35.121—35.128, 35.126 – 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] this chapter** to the extent practical. The judge may waive or modify **[these rules] this chapter** as may be appropriate and adopt and direct procedures which are fair and just for a determination of the issues **consistent with THE act**.

**§ 131.53b. Bifurcation.**

**(a) The judge may, upon request or upon the judge's own motion, consider bifurcation of issues to promote expeditious resolution of cases.**

**(b) Subsection (a) supersedes 1 Pa. Code §§ 33.61, 35.18, 35.54 and 35.55, and also supersedes 1 Pa. Code Chapter 35, Subchapter D (relating to motions) 35.180 AND 35.225.**

**§ 131.54. Manner and conduct of hearings.**

**(a) The judge will conduct fair and impartial 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 judge shall be noted on the record, and if the judge deems it appropriate, will be made the subject of a 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 judge may suspend the hearing or take other action as the judge deems appropriate, including the submission of a written report to the [Bureau's] Director of Adjudication together with recommendations.**

\* \* \* \* \*

**§ 131.56a. Withdrawal of appearance.**

**(a) An attorney may withdraw his or her appearance without leave if another attorney has previously entered or is simultaneously entering an appearance on behalf of the party.**

**(b) Leave to withdraw an appearance shall be sought by written request to the adjudicating judge. An attorney may not withdraw representation until the adjudicating judge grants the request.**

**(c) In requesting a withdrawal of appearance, the attorney shall:**

**(1) Verify whether any party has any objection to the withdrawal request.**

**(2) Serve notice of the request to withdraw on his or her own client, all unrepresented parties and counsel of record for all represented parties.**

**(3) File a proof of service as provided in § 131.11(d) (relating to filing, service and proof of service).**

**(d) Except for withdrawals of appearance under subsection (a), the adjudicating judge shall, after conducting a hearing on any objection, or on the adjudicating judge's own**

**motion, issue an interlocutory order granting the request unless the adjudicating judge determines that there will be prejudice to the parties or to the proceedings.**

**(e) Upon withdrawal of appearance, in the event of a fee dispute, the adjudicating judge shall have the authority to determine entitlement to receipt of counsel fees and costs, whether under sections 440 or 442 of the act (77 P. S. §§ 996 and 998), IF so long as the fee agreement or petition has been filed before discharge or withdrawal of counsel.**

**(f) Subsections (a)-(e) supersede 1 Pa. Code §§ 31.5, 33.32 -- 33.37, 35.1, 35.2, 35.121--35.128, 35.123, 35.124, 35.225 AND 35.226.**

**§ 131.57. Compromise and release agreements.**

\* \* \* \* \*

**(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. This subsection does not apply if a resolution hearing has been requested in accordance with § 131.60 (relating to resolution hearings).**

\* \* \* \* \*

**§ 131.59. ~~Alternative Dispute Resolution~~ MEDIATION.**

**(a) ~~Mandatory Mmediation and other forms of alternative dispute resolution~~ may be utilized by the parties under this chapter and will not be limited in purpose to achieving a compromise settlement (compromise and release agreement), but may have as a goal ~~conventional adjustment of the claim~~ the narrowing of issues by means of stipulation for decision by the ~~adjudicating judge~~ or other amicable resolution.**

**(b) Subsection (a) supersedes 1 Pa. Code §§ 31.21-31.23, 33.42, 35.41, 35.48-35.51 35.111-35.116, 35.155 35.186 AND 35.188.**

**§ 131.59a. ~~Voluntary settlement conference~~ MEDIATION.**

**(a) ~~Nothing in this chapter precludes the parties from participating in a voluntary settlement conference, subject to 42 Pa.C.S. § 5949 (relating to confidential mediation communications and documents).~~**

**(b) If all parties and the adjudicating judge agree, the adjudicating judge may conduct the ~~voluntary settlement conference~~ MEDIATION and may subsequently participate in a decision on the merits of the petition or petitions if they are not resolved amicably.**

**(B) VOLUNTARY MEDIATION ACTIVITIES CONDUCTED BY JUDGES ~~SHALL BE~~ ARE CONFIDENTIAL.**

**(c) Subsections (a) -- (b) supersede 1 Pa. Code §§ 31.21 -- 31.23, ~~33.42, 35.41, 35.48 -- 35.51, and 35.111 -- 35.116 AND 35.188 and also supersede 1 Pa. Code Chapter 35, Subchapter E (relating to presiding officers).~~**

**§ 131.59b. Mandatory mediation.**

**(a) A mandatory mediation will not be assigned to an adjudicating judge. Petitions not resolved by mediation will proceed before the adjudicating judge as if mediation had not occurred. The mediating judge will not participate in any decision on the merits of the petition or petitions. This subsection cannot be waived or modified, as otherwise provided in § 131.3 (relating to waiver and modification of rules).**

**(b) Mandatory mediation activities conducted by mediating judges ~~shall be~~ ARE CONFIDENTIAL ~~subject to 42 Pa.C.S. § 5949 (relating to confidential mediation communications and documents)~~ except that :**

**~~(1) The definition of "mediation" in section 401 of the act (77 P.S. § 701) shall be applicable.~~**

**~~(2) Communications~~ COMMUNICATIONS, conduct or documents are not confidential if relevant to establish that a party or counsel failed to do one of the following:**

**~~(i)~~(1) Appear for a mediation without prior approval of the mediating judge.**

**~~(ii)~~ (2) Attend a mediation in person or by teleconference, as required by the mediating judge.**

**~~(iii)~~ (3) Have requisite authority to accept, modify or reject settlement proposals offered at the mediation, whether at the mediation, or within a reasonable period of time after the mediation as established by the mediating judge.**

**(c) The adjudicating judge shall possess authority to impose sanctions for the failure of the parties to comply with the mediation provisions of sections 401 and 401.1 of the act (77 P.S. §§ 701 and 710) and may consider sections 435(b) and 435(d) of the act (77 P.S. §§ 991(b) and 991(d)), as well as circumstances and sanctions set forth in §§ 131.13(j) and 131.13(m) (relating to continuances and postponement of hearings).**

**(d) Nothing in this chapter precludes the parties from participating in a voluntary MEDIATION ~~settlement conference, subject to 42 Pa.C.S. § 5949 (relating to confidential mediation communications and documents).~~**

**(e) Subsections (a) -- (d) supersede 1 Pa. Code §§ 31.21 -- 31.23, ~~33.42, 35.41, 35.48 -- 35.51 and 35.111 -- 35.116, AND 35.188 and also supersede 1 Pa. Code Chapter 35, Subchapter E (relating to presiding officers).~~**

**§ 131.60. Resolution hearings.**

- (a) A resolution hearing must be requested in writing.**
- (b) Counsel for either party, or any unrepresented party, may request a resolution hearing at any time after all parties are prepared to proceed within the time limits prescribed by the act and this rule for resolution hearings.**
- (c) If a petition is pending before a judge, the request for a resolution hearing must be directed to the assigned judge.**
- (d) If a petition is not pending before a judge, the request for a resolution hearing must be directed to the Judge Manager for the judge's office serving the county of the claimant's residence. If the claimant resides outside of this Commonwealth, the request must be directed to the Judge Manager for the judge's office most proximate to the claimant's residence. The Judge Manager will assign a judge to conduct the resolution hearing.**
- (e) The assigned judge's office shall schedule the resolution hearing within 14 business days of receiving the request for a resolution hearing.**
- (f) The Judge Manager may reassign any case from one judge to another to ensure compliance with the resolution hearing requirements of sections 401 and 401.1 of the act (77 P.S. §§ 701 and 710). The Judge Manager shall notify both judges of the reassignment.**
- (g) The judge conducting the resolution hearing shall require proof that a petition has been filed with the Bureau PURSUANT TO § 131.11 (RELATING TO FILING, SERVICE, AND PROOF OF SERVICE), and will make the proof a part of the record. Upon receiving the proof, the judge shall proceed with the hearing and shall circulate a final decision within 5 business days of the hearing.**
- (h) The assigned judge need not comply with the procedures in this rule if any party is unable to proceed within the time limits established by the act for resolution hearings.**
- (i) Subsections (a)--(h) supersede 1 Pa. Code §§ ~~31.5, 31.13—31.51, 31.21 — 31.23, 33.42, 35.41, 35.48 — 35.51, 35.111 — 35.116, 35.155, 35.185, —35.190, 35.201 — 35.207, 35.211—35.214, 35.225, AND 35.226 35.231—35.233 and 35.241.~~**

\* \* \* \* \*

**EXCHANGE OF INFORMATION AND DEPOSITIONS AND DISCOVERY**

**§ 131.66. Admissibility of oral depositions.**

\* \* \* \* \*

(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) -- (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 or the exhibits to which they refer will be preserved for ruling. Objections not so preserved are waived.

\* \* \* \* \*

## DECISIONS

### § 131.111. Decisions of judges.

\* \* \* \* \*

(c) In any petition which may result in the payment of a monetary award subject to 23 Pa. C.S. § 4308.1 (relating to collection of overdue support from monetary awards), a decision will not be issued until the claimant provides to the judge a written statement signed by the claimant and made subject to 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities), including:


- (1) The claimant's full name, mailing address, date of birth and Social Security number.
- (2) Whether there is an outstanding child support order against the claimant, and if so, whether payments are current or in arrears.
- (3) Written documentation of arrears from the Pennsylvania Child Support Enforcement System website, or, if no arrears exist, written documentation from the website indicating no arrears.

[(c)] (d) Subsections (a)[and (b)] -- (c) supersede 1 Pa. Code §§ 31.13, 31.14, 35.190, 35.201 – 35.207, 35.225, 35.226 and 35.241.



COMMONWEALTH OF PENNSYLVANIA  
GOVERNOR'S OFFICE OF GENERAL COUNSEL

**TO:** The Honorable Arthur Coccodrilli  
Chairman, Independent Regulatory Review Commission

**FROM:** Thomas J. Kuzma   
Deputy Chief Counsel

**DATE:** July 13, 2009

**RE:** Final-Form Regulation  
Department of Labor & Industry  
Special Rules of Administrative Practice and Procedure Before the  
Workers' Compensation Appeal Board  
Special Rules of Administrative Practice and Procedure Before the  
Workers' Compensation Judges, No. 12-84

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Below is a list of the names and addresses of commentators who requested additional information on the final-form regulation. Should you need additional information, please feel free to contact me.

Christian A. Davis  
Weber, Gallagher, Simpson,  
Stapleton, Fires & Newby, L.L.P.  
2000 Market Street, 13<sup>th</sup> Floor  
Philadelphia, PA 19103

Joseph A. Prim, Esquire  
Duca & Prim  
1500 Walnut Street, Suite 900  
Philadelphia, PA 19102

Lawrence R. Chaban, Esquire  
PBA Workers' Compensation Section  
Regulations Subcommittee  
330 Grant Street  
2727 Grant Building  
Pittsburgh, PA 15219

Samuel R. Marshall  
The Insurance Federation of Pa.  
1600 Market Street, Suite 1520  
Philadelphia, PA 19102

Thomas C. Lowry, Esquire  
Plymouth Meeting Executive Campus  
600 W. Germantown Pike, Suite 100  
Plymouth Meeting, PA 19462





COMMONWEALTH OF PENNSYLVANIA

July 9, 2009

The Honorable Arthur Coccodrilli  
Chairman, Independent Regulatory Review Commission  
333 Market Street, 14<sup>th</sup> Floor  
Harrisburg, PA 17101

**Re: Final-Form Regulation  
Department of Labor & Industry  
Special Rules of Administrative Practice and Procedure Before the  
Workers' Compensation Appeal Board  
Special Rules of Administrative Practice and Procedure Before the  
Workers' Compensation Judges, No. 12-84**

Dear Chairman Coccodrilli:

Enclosed is a final-form rulemaking package consisting of a face sheet, preamble, annex, regulatory analysis form and a document listing the names and addresses of commentators who requested additional information on the final-form regulation. These regulations relate to the rules governing proceedings before the Workers' Compensation Appeal Board and Workers' Compensation Judges.

Comments, suggestions or questions should be directed to (1) with respect to the Judges' Rules, Elizabeth A. Crum, Deputy Secretary for Compensation and Insurance, Department of Labor and Industry, 651 Boas Street, Harrisburg, PA 17121, (717)787-5082; and (2) with respect to the Board Rules, Susan McDermott, Chairperson, Workers' Compensation Appeal Board, 901 North Seventh Street, 3<sup>rd</sup> Floor South, Harrisburg, PA 17102-1412, 560-4583.

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

Sincerely,

  
Sandi Vito  
Secretary

TK/kjr

cc wo/encl: Jane C. Pomerantz, Chief Counsel  
Neil E. Cashman, Jr., Senior Advisor for External Affairs  
Elizabeth A. Crum, Deputy Secretary for Compensation and Insurance  
Susan McDermott, Chairperson, Workers' Compensation Appeal Board  
Daniel Ruzansky, Director of Legislative Affairs  
Thomas J. Kuzma, Deputy Chief Counsel

OFFICE OF THE SECRETARY | Department of Labor & Industry | 651 Boas Street |  
Room 1700 | Harrisburg, PA 17121 | 717.787.3756 | [www.dli.state.pa.us](http://www.dli.state.pa.us)

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**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE  
REGULATORY REVIEW ACT**

**I.D. NUMBER:** 12-84

**SUBJECT:** SPECIAL RULES OF ADMINISTRATIVE PRACTICE AND PROCEDURE

**AGENCY:** DEPARTMENT OF LABOR & INDUSTRY

**TYPE OF REGULATION**

- Proposed Regulation
- 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

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 JUN 13 AM 10 16  
 INDEPENDENT REGULATORY REVIEW COMMISSION

RECEIVED

**FILING OF REGULATION**

DATE	SIGNATURE	DESIGNATION
7/13/09	<u>James Langston</u>	HOUSE COMMITTEE ON LABOR RELATIONS
7/13/09	<u>Jennifer Kotac</u>	MAJORITY CHAIRMAN <u>Robert E. Belfanti</u>
7/13	<u>Emilio Restagno</u>	SENATE COMMITTEE ON LABOR & INDUSTRY
7/13	<u>Bki</u>	MAJORITY CHAIRMAN <u>John R. Gordner</u>
7/13/09	<u>Kathy Cooper</u>	INDEPENDENT REGULATORY REVIEW COMMISSION
_____	_____	ATTORNEY GENERAL
_____	_____	LEGISLATIVE REFERENCE BUREAU