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COMMENTS OF THE WORKERS' COMPENSATION SECTION
OF THE PENNSYLVANIA BAR ASSOCIATION ON THE
PROPOSED RULEMAKING REGARDING THE SPECIAL RULES
OF ADMINISTRATIVE PRACTICE AND PROCEDURE BEFORE
WORKERS' COMPENSATION JUDGES

By the Regulations Subcommittee,
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INDEPENDENT REGULATORY
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The Department of Labor and Industry published in the September 6, 2008 *Pennsylvania Bulletin* Proposed Rules for practice before the Workers' Compensation Judges. The changes are to primarily address the amendments to the Pennsylvania Workers' Compensation Act by Acts 109 and 147 of 2006. The Regulations Subcommittee of the Pennsylvania Bar Association Workers' Compensation Section has fully reviewed the Proposed Rules. There are only two proposed Rules which the Section believes should be amended from the proposed form.

34 Pa. Code §131.52. First hearing procedures

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

The Section believes the underlined language should be added given the current practice of some Workers' Compensation Judges. It will require the WCJ to consult with the parties about the best date for the mandatory mediation. Some Judges have been requiring mandatory mediation without consulting the parties who believe it would be futile. That is a waste of administrative resources. At other times, the parties would most likely be amenable to mandatory mediation, but at a time later than the WCJ may believe, given the nature of the case. The Section believes that this change would result in the better scheduling of mandatory mediation.

34 Pa. Code §131.53b. Bifurcation.

(b) The decision of the judge on the bifurcated issues shall be interlocutory unless it results in the dismissal of the petition.

[(b)] (c) Subsection (a)

The Section believes that the underlined paragraph should be added and the current proposed subsection (b) renumbered (c). This addition will mandate that any determination on a bifurcated issue will be an interlocutory decision except if the petition is dismissed. The Section is concerned that if this is not mandated, a WCJ could issue

a final decision on an issue that would not fully resolve the case and that issue would be appealed delaying the final adjudication of the underlying petition.

For example, in a claim petition where jurisdiction of the WCJ is at issue if the WCJ determines there is jurisdiction, but a final order on that is issued, the decision could then be appealed. This would deprive the WCJ of the ability to issue a final decision on the merits and leave the injured worker without benefits for how ever long the appeals last. Where the WCJ found there is no jurisdiction that would result in a dismissal of the petition, allowing for a final order.

It has been reported by attorneys practicing in the field that WCJs do occasionally issue a final order on a bifurcated issue that does not dispose of the entire petition. Absent the parties consenting to such an order, it is procedurally unfair to the party against whom the final order is issued to have to wait for any appeals for the entire petition to be adjudicated. The Section believes that adding this language will promote administrative efficiency and fairness in the proceedings.