

RAWLE & HENDERSON LLP

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G. MICHAEL SPATES
412-261-5703
gmspates@rawle.com

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www.rawle.com

THE HENRY W. OLIVER BUILDING
SUITE 1000, 535 SMITHFIELD ST.
PITTSBURGH, PA 15222

TELEPHONE: (412) 261-5700
FACSIMILE: (412) 261-5710

March 19, 2014

Elizabeth A. Crum, Director
Department of Labor & Industry
Bureau of Workers' Compensation
Workers' Compensation Office of Adjudication,
1010 North Seventh Street
Harrisburg, PA 17102.

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RE: WCAB/WCJ Regulations-Comments

Dear Ms. Crum:

I currently practice law in the Commonwealth of Pennsylvania as a workers' compensation defense attorney for the above noted law firm. I submit the following written comments to the proposed Department amendments to Chapter 131, Section 131.81(b) of the Special Rules of Administrative Practice and Procedure Before Workers' Compensation Judges (34 Pa. Code § 131.81(b)), as an interested party, on my own behalf and not on behalf of my Law Firm.

The following, is in pertinent part, the proposed Department amendment:

§ 131.81. Subpoenas.

(b) Any objections to a request for a subpoena shall be made within 7 calendar days of the date of the request. Subpoenas may not be served until the expiration of the 7 calendar day period unless waived by agreement of the parties.

I fully support establishing a specific time frame for subpoena procedures under Section 131.81 of the Special Rules, but I believe that the "7 calendar day" provision is too short of a time frame for a Party to submit a written objection before the subpoena is issued.

A subpoena request filed electronically under this proposed rule would effectively provide only five (5) days from the filing for an attorney to review and object to the subpoena,

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Elizabeth A. Crum, Director
 March 19, 2014
 Page 2

absent weekends. This assumes that electronic filing provides immediate electronic service of the subpoena request to the opposing party. Should a subpoena request be made where there is a Monday holiday, this reduces the time frame to four (4) days, which again assumes that immediate electronic service of the subpoena request has occurred to the opposing counsel.

I argue that the "7 calendar day" provision is too short. It is inconceivable that there could be an exigency that would require a workers' compensation subpoena to be issued, which would justify the "7 calendar day" provision in the proposed amendment to Section 131.81, as opposed to the "10 calendar day" provision, that I recommend be adopted by the Department.

In addition, the proposed amendments to Section 131.81 do not provide any procedures for what is to occur following the filing of an objection to a subpoena. I therefore propose for adoption by the Department, the following amendments to the proposed Department amendments to Section 131.81, relating to Subpoenas:

§ 131.81. Subpoenas.

(b) Any objections to a request for a subpoena shall be made within 10 calendar days of the date of the request. An interlocutory order denying the motioning party's objection to the subpoena shall be circulated prior to a subpoena being issued by the judge.

(c) Subpoenas may not be served until the expiration of the 10 calendar day period unless waived by agreement of the parties.

[(b)] (d) The party, counsel of record or their respective agents requesting a subpoena shall serve the subpoena upon the witness or person subpoenaed and upon opposing counsel.

* * * * *

[(c)] (e) 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, promptly quash or limit the scope of a subpoena issued or served.

[(d)] (f) If the person fails to appear, or has given notice of the intention not to appear, as required by a subpoena duly served, the 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)] (g) Subsections [(a)—(d)] (a)—(f) supersede 1 Pa. Code §§ 35.139 and 35.142 (relating to fees of witnesses; and subpoenas).

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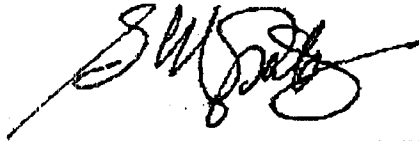
Page 3

Please note that only the amendments that I have proposed to the Department's proposed amendments to Section 131.81 are in bold and are underlined above.

Thank you for your kind review of my suggestions to the Department's proposed workers' compensation procedural rule changes.

Very truly yours,

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G. MICHAEL SPATES, ESQUIRE

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