

PROPOSED RULEMAKING

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 and the Workers' Compensation Judges

The Department of Labor and Industry (Department), Bureau of Workers' Compensation (Bureau), proposes 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 proposes to amend 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 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 proposes these Rules 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 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 (Council). In a meeting on September 17, 1998, the committee explained to the 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.

Purpose

These proposed 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. See the act of July 2, 1993 (P. L. 190, No. 44) (Act 44); act of February 23, 1995 (P. L. 1, No. 1) (Act 1); and the act June 24, 1996 (P. L. 350, No. 57) (Act 57). These proposed 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 proposed amendments include workers' compensation judges, Workers' Compensation Appeal Board Commissioners and officials, employees of the 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 impact associated with this proposed rulemaking. However, the proposed amendments 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.

Summary of Proposed Rulemaking

These proposed amendments clarify and provide detailed guidance for practice and procedure before workers' compensation judges and the Worker's Compensation Appeal Board.

Chapter 111

Special Rules of Administrative Practice and Procedure before the Workers' Compensation Appeal Board

The Department proposes to amend Chapter 111 by removing all references to the "Workmen's Compensation Appeal Board" and substituting "Workers' Compensation Appeal Board."

Similarly, the Department proposes to amend § 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.

The Department proposes to amend:

Section 111.11 (relating to content and form) to provide for cross appeals.

Section 111.12 (relating to filing, service and proof of service) to provide that two copies of an appeal or a cross appeal, rather than four, must be filed with the Board.

Section 111.13 (relating to process of appeals and cross appeals) to provide for cross appeals.

Section 111.14 (relating to motions to quash) to clarify that a motion to quash may be filed within 20 days of service of the appeal or the cross appeal, and that two copies of a motion to quash, rather than four, must be filed with the Board.

Section 111.15 (relating to no other pleadings allowed) to provide for cross appeals.

Section 111.16 (relating to briefs: time for filing and content) to provide that petitioner's brief must be filed before oral argument, or, if oral argument is waived, within 30 days of the date of the Board's acknowledgment of receipt of the appeal. Also, the Department proposes to amend § 111.16 to provide that respondent's brief must be filed 30 days after oral argument, and that two copies of briefs, rather than four, must be filed with the Board.

Section 111.17 (relating to oral argument) to clarify that oral argument will be scheduled by the Secretary of the Board, rather than established by the closing of the briefing schedule. The proposed amendment also provides for cross appeals.

Section 111.18 (relating to decisions of the Board) to provide for cross appeals.

Section 111.21 (relating to form/content) to clarify that a request for supersedeas must be filed as a separate petition from the appeal, and to set forth the criteria for determining whether supersedeas is appropriate.

Section 111.22 (relating to filing) to provide that only two copies of a request for supersedeas, rather than four, must be filed with the Board. The proposed amendments also provide that a request for supersedeas shall be filed within the time set for appealing the judge's decision.

Section 111.23 (relating to answers) to provide that only two copies of an answer, instead of four, shall be filed with the Board.

Section 111.24 (relating to disposition of request for supersedeas) to clarify that the Board will rule on requests for supersedeas within 20 days of the date when the answer is due, regardless of when the answer is received.

Section 111.31 (relating to applicability) to remove references to sections 306(f) and 314 of the act (77 P. S. §§ 531(f) and 651) as these sections of the act have been amended.

Section 111.32 (relating to form/content) to provide that only two copies of petitions and requests, rather than four, must be filed with the Board.

Section 111.33 (relating to specific petitions/requirements) to remove references to section 314 of the act as this section of the act has been amended.

Section 111.34 (relating to answers to petitions) to provide that two copies of an answer, rather than four, must be filed with the Board.

Chapter 111 by removing all references to "referees" and substituting "judges." Similarly, the Department proposes to amend Chapter 111 by specifically superseding each applicable General Rule of Administrative Practice and Procedure.

Chapter 131

Special Rules for Administrative Practice and Procedure before Workers' Compensation Judges

The Department, through this proposed rulemaking, proposes to:

Amend § 131.5 (relating to definitions) to include definitions for the following terms: "Bureau record," "insurer" and "judge." In addition, this proposed rulemaking deletes the following terms: "close of the record" and "referee." The proposed amendments to this section are intended to define terms used throughout this chapter and remove definitions for terms that these amendments have eliminated in this chapter.

Amend § 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.

Add § 131.15 (relating to computation of time). To promote consistency, these proposed amendments adopt the method of calculation currently utilized in proceedings under the General Rules of Administrative Practice and Procedure.

Add § 131.24 (relating to recusal of judge). The proposed amendments require 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 proposed amendment also provides that decisions on motions for recusal are interlocutory unless certified for immediate appeal.

Add § 131.30 (relating to consolidation) to provide a mechanism for a judge to consolidate proceedings involving a common question of law or fact and to provide for the expeditious and economical disposition of proceedings.

Amend § 131.31 (relating to form of pleadings) to clarify that all proceedings, with the exception of challenges under sections 413(c) and 413(d) of the act (77 P. S. §§ 774.2 and 774.3), shall be initiated by petition.

Amend § 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, these proposed amendments clarify that the number of copies required shall be as prescribed on the Bureau form. Additionally, the proposed amendments require that the facts on which a cause of action or defense is based shall be stated in a concise and summary form.

Amend § 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 the 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 proposed amendments further clarify that all petitions other than

claim petitions may be answered within 20 days after assignment by the Bureau. Further, these proposed amendments specify the form and number of answers, as well as service requirements for answers.

Amend § 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.

Amend this chapter to add § 131.40 (relating to frivolous pleadings) to provide a mechanism for the dismissal or other disposition of frivolous pleadings.

Amend § 131.50 (relating to return to work-modification or suspension) to clarify that the form utilized under this section shall be the form prescribed by the Bureau.

Amend § 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 proposes to amend § 131.52 to reaffirm that, where practicable and appropriate, the entire record shall be completed at the first hearing. The proposed amendments further provide 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.

Amend § 131.53 (relating to procedures subsequent to the first hearing) to provide that a party wishing to present rebuttal or surrebuttal testimony must notify the judge within 21 days after the initial testimony is presented, instead of notifying the judge within 14 days.

Amend this chapter to add § 131.53a (relating to consolidated hearing procedure) to provide a mechanism for the implementation of expedited hearing procedures including 1 day trials. The proposed amendments further provide that trial or deposition testimony may be taken from witnesses prior to a party's obligation to conduct medical depositions.

Amend § 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 proposed amendments also provide that a witness whose identity has not been revealed as provided in this chapter will not be permitted to testify on behalf of the defaulting party unless the testimony is allowed within the judge's discretion.

Amend § 131.55 (relating to attorney fees and costs) to provide for the calculation of quantum meruit fees, objections to these fees and the issuance of decisions awarding quantum meruit fees. The proposed amendments allow applicants for quantum meruit attorney fees to submit a detailed itemized calculation of these fees. The opposing party may then respond to the request within 15 days after service of the application. 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. The application and response will be made exhibits and must be served upon the judge, counsel and unrepresented parties according to § 131.34(a) (relating to other filings).

Amend 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 amendments also provide that proposed compromise and release agreements, including the parties' stipulations, shall be recorded on a form prescribed by the Bureau, and that the parties may attach additional information to the form if circumstances so require. The proposed amendments further provide that a pending matter may, at the request of one or more parties, be amended to a Petition to Seek Approval of a Compromise and Release Agreement. Additionally, the proposed amendments clarify 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.

Add § 131.58 (relating to informal conferences) which provides procedures for requesting and participating in informal conferences. The proposed amendments provide 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.

Amend § 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 proposed amendments clarify 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. The proposed amendments also provide that information that was not exchanged prior to the first hearing, which becomes available after the times set forth in subsection (b), must be provided within 15 days after a party's receipt of the item or information. Formerly, this section required disclosure of the material within 10 days of receipt. Finally, the proposed amendments provide that witnesses may not be permitted to testify and statements, documents or other records may be excluded if a party fails to comply with this section.

Amend § 131.62 (relating to oral depositions) to provide that the deposition of a party may only be taken upon approval of the judge and, if taken, may be used only for evidence. The proposed amendments also provide that depositions may be taken by other electronic means, in addition to the telephone, upon motion as directed by the judge, in addition to being taken upon agreement of counsel of record and unrepresented parties.

Amend § 131.63 (relating to time for taking oral depositions) to provide that a party wishing to present depositions for rebuttal or surrebuttal must notify the judge within 21 days, rather than 14 days, after the hearing or deposition at which the initial testimony was given.

Amend § 131.64 (relating to notice of oral depositions) to provide that the notice of oral deposition shall be served at least 20 days, rather than 15 days, prior to the date scheduled for the taking of the deposition and to provide notice that objections must be mailed or delivered at least 10 days, rather than 7 days, before the deposition.

Amend § 131.65 (relating to objections to taking of oral depositions) to provide that objections to an oral deposi-

tion must be served no later than 10 days, rather than 7 days, prior to the scheduled date of the deposition.

Amend § 131.81 (relating to subpoenas) to clarify that digital recordings, including CD ROMS and diskettes, are among the items subject to subpoena. The Department proposes to amend this section to provide that service of a subpoena under this section shall be made by personal service, by any form of mail requiring a return receipt, postage prepaid and restricted delivery, or by first-class United States mail as provided in § 131.11(b). Further, the Department proposes to amend this section 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 1 day's attendance and roundtrip mileage is as prescribed in 42 Pa.C.S. §§ 5901—5988 (relating to depositions and witnesses).

Amend § 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 proposed amendments also provide 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. Any party may move to close the 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. The proposed amendments further provide for certification of the record at or before the filing of proposed findings of fact, conclusions of law or briefs. The proposed amendments provide that the judge will specify the contents of the evidentiary record in the decision.

Amend § 131.102 (relating to oral argument) to clarify that a party may request oral argument any time prior to the submission of its proposed findings of fact, conclusions of law or brief. If these submissions are not filed, a party may request oral argument prior to the close of the evidentiary record.

Amend § 131.112 (relating to correction or amendment of decision) to clarify that a judge may correct an "obvious omission or error" either on the judge's motion or on the motion of one or both parties.

Amend 131.121 (relating to penalty proceedings initiated by a party) to clarify that answers may be filed as provided in § 131.33. Additionally, the proposed amendments specify that penalty proceedings may be initiated by petition or by motion on the record of a pending proceeding. Further, the proposed amendment provides that a party complaining of a violation of the act or this chapter bears the burden of proving the violation.

Amend Chapter 131 by removing all references to "referees" and substituting "judges." Similarly, the Department proposes to amend Chapter 131 by specifically superseding each applicable General Rule of Administrative Practice and Procedure.

Reporting, Recordkeeping and Paperwork Requirements

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

Effective Date

These proposed 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 this proposed rulemaking to the Independent Regulatory Review Commission (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 has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department.

Under section 5(g) of the Regulatory Review Act (71 P. S. § 745.5(g)), if IRRC has objections to any portion of the proposed rulemaking, it shall notify the Department within 10 days after the expiration of the Committees' review period. The notification shall specify the regulatory review criteria that have not been met by the portion of the proposed rulemaking to which an objection is made. The Regulatory Review Act specifies detailed procedures for review, prior to final-form publication of the regulations, by the Department, the General Assembly and the Governor of objections raised.

Contact Persons and Public Comment

The contact persons are: (1) Elizabeth A. Crum, Director of Adjudication, Bureau of Workers' Compensation, Department of Labor and Industry, 1171 South Cameron Street, Room 324, Harrisburg, PA 17104-2501 (717) 783-5421; and (2) Susan McDermott, Chairperson, Workers' Compensation Appeal Board, 1712 State Office Building, 1400 Spring Garden Street, Philadelphia, PA 19130 (215) 560-4583.

Interested persons may submit written comments to Elizabeth A. Crum, Director of Adjudication, Bureau of Workers' Compensation, Department of Labor and Industry, WCAB/WCJ Regulations Comments, P. O. Box 15121, Harrisburg, PA 17106, within 30 days of the publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Written comments received by the Department may be made available to the public.

JOHNNY J. BUTLER,
Secretary

Fiscal Note: 12-61. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 34. LABOR AND INDUSTRY

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 [general rules] General Rules of Administrative Practice and Procedure.

(a) [The General Rules of Administrative Practice and 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 pleading 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, amendment, 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 § 35.241 (relating to application for rehearing or reconsideration).

(58) 1 Pa. Code § 35.251 (relating to reports of compliance).

(c) Subsections] Subsection (a) [and (b) supersede] 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.

* * * * *

Filing—Delivery in person or by mail. If filing is by mail, it is deemed complete upon [depositing] deposit 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.

* * * * *

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 [depositing] deposit 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.

(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:

* * * * *

(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.

* * * * *

(d) [Subsection] Subsections (a)—(c) [supersedes] supersede 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.

[(c)] (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:

* * * * *

(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.

[(d) Subsection] (e) Subsections (a)—(d) [supersedes] supersede 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) [**Subsection**] **Subsections (a) and (b) [supersedes] supersede** 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.

* * * * *

(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.

* * * * *

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

(f) **Subsections (a)—(e) supersede 1 Pa. Code §§ 31.26, 33.15, 33.32, 33.33, 33.35—33.37, 35.54 and 35.55 and 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.

(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 request of a party, 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.

* * * * *

(e) Briefs, except as otherwise allowed, shall consist of the following items, separately and distinctly set forth:

* * * * *

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

(f) An original and [**four**] **two** copies of briefs shall be filed.

* * * * *

(h) [**Subsection (d) supersedes**] **Subsections (a)—(g)] supersede** 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 **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**] **under 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**).

* * * * *

(h) **Subsections (a)—(g) 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.

* * * * *

(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) 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.

(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.

* * * * *

(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.

* * * * *

(c) [Subsection] Subsections (a) and (b) [supersedes] supersede 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 shall be filed with the Board within the time allowed by law for appeal from the [referee's] judge's decision or Board order from which the supersedeas is requested.

(b) 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.

(c) 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).

(d) [Subsection (b) supersedes] Subsections (a)—(c) supersede 1 Pa. Code § 33.15 (relating to number of copies).

§ 111.23. Answers.

* * * * *

(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) [Subsection (b) supersedes] Subsections (a)—(d) supersede 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.

* * * * *

(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.

* * * * *

[(2) A petition for further medical expenses under section 306(f) of the act in effect prior to May 1, 1972, if applicable.]

[(3)] (2) A petition for appointment of guardian under section 307 of the act (77 P. S. § 542).

[(4)] (3) A petition alleging a meretricious relationship under section 307 of the act (77 P. S. § 562).

[(5) A request for physical examinations under section 314 of the act (77 P. S. § 651).]

[(6)] (4) A petition for commutation under section 316 of the act (77 P. S. § 604).

[(7)] (5) A petition under section 317 of the act (77 P. S. § 603).

[(8)] (6) A petition for rehearing under section 426 of the act (77 P. S. § 871).

[(9)] (7) A petition for attorney's fees under [sections] [section] 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:

* * * * *

(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.

* * * * *

(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) [Subsection] Subsections (a)—(c) [supersedes] supersede 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.]

[(b)] 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:

* * * * *

[(c)] (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:

* * * * *

[(d)] (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.

* * * * *

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

* * * * *

(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) [Subsection] Subsections (a)—(d) [supersedes] supersede 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.

* * * * *

(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) supersede 1 Pa. Code Chapter 35, Subchapters B, C, E and I.

PART VIII. BUREAU OF WORKER'S COMPENSATION

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 (relating to motions).

§ 131.4. Applicability of [general rules] General Rules of Administrative Practice and Procedure.

(a) This chapter is intended to supersede 1 Pa. Code Part II (relating to [general rules of administrative practice and procedure] General Rules of Administrative Practice and Procedure). The [general rules of administrative practice and procedure] General Rules of Administrative Practice and Procedure [are] do not [applicable] apply 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 re-opening 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).

* * * * *

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.

* * * * *

[*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.]

* * * * *

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.

* * * * *

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.]

* * * * *

(b) Subsection (a) supersedes 1 Pa. Code §§ 31.3 and 33.33 (relating to definitions; and 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.

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

* * * * *

(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 [17101] 17104-2501, (717)

783-5421, or another address and telephone number as may be published in the *Pennsylvania Bulletin*.

[(e)] (f) Subsections (a) [and (b)]—(e) 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.

* * * * *

(c) A continuance or postponement may be granted as set forth in this [subchapter] 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.

* * * * *

(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.

* * * * *

(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):

* * * * *

(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.

* * * * *

(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:

* * * * *

(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.

* * * * *

(n) Subsections (a)—(m) 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).

Subchapter C. FORMAL PROCEEDINGS

GENERAL

§ 131.21. Identifying number.

* * * * *

(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.

* * * * *

§ 131.24. Recusal of judge.

(a) A motion for recusal 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.

(b) Subsection (a) supersedes 1 Pa. Code §§ 35.54, 35.55, 35.186, 35.190 and 35.225 and also supersedes 1 Pa. Code Chapter 35, Subchapter D (relating to motions).

§ 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 [33.2]—33.4, 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 initialed 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) 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 part 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.

(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.

(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.

(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.

(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. When applicable, admissions and denials in an answer shall refer to the specific paragraph in which the averment admitted or denied is set forth.

(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 (relating to motions).

§ 131.34. Other filings.

(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.

* * * * *

(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.

* * * * *

(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) [Subsection (f) supersedes] Subsections (a)—(l) supersede 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 (relating to motions).

§ 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) [Subsection] Subsections (a)—(c) [supersedes] supersede 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.

* * * * *

(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.

* * * * *

(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 [employee] employee establishes by a preponderance of the evidence a likelihood of prevailing on the merits of the employee'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:

* * * * *

(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) 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.

* * * * *

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

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

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

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

* * * * *

(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] section 413(c) or 413(d) of the act.

(e) Subsections (a)—(d) supersede 1 Pa. Code §§ 35.161, 35.162, 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. When 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:

* * * * *

(5) [The] Whether 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.

* * * * *

[(b)] (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.

[(c)] (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 shall] judge 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 employee may not introduce the Employer's Report of Occupational Injury or Disease into evidence.

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

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

[(f)] (i) Subsections (a)—[(e)] (h) 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.

* * * * *

(g) Subsections (a)—[(c)] (f) 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 under this part 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 § 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] 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 will 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), the [referee] judge may proceed under § 131.13(m) (relating to continuances or postponements of hearings).

[(d)](e) Subsections (a) [and (b)]—(d) 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 (relating to presiding officers).

§ 131.55. [Attorney's] Attorney 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 [employee] employee 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 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. 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) 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) 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 shall 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) 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 the]** 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) will 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.

[(d)] (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.

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

* * * * *

(g) Subsections (a)—(f) 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.

* * * * *

(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.**

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

§ 131.63. Time for taking oral depositions.

* * * * *

(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.

* * * * *

(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) 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:

* * * * *

(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) 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) 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 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)–(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) [Subsection] Subsections (a) and (b) [supersedes] supersede 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.

* * * * *

§ 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–[6159] 6160 (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:

* * * * *

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

* * * * *

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

* * * * *

(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–[6159] 6160 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 (e) (relating to continuances or postponements of hearings; and exchange of [documents and records] information).

(i) Subsections (a)–(h) 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) * * *

[(c)] (3) * * *

[(d)] (4) * * *

(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.

* * * * *

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

(e) Subsections (a)–(d) 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 subpoena 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 one of the following manners:**

(1) **By personal service under 231 Pa. Code (relating to Pennsylvania Rules of Civil Procedure).**

(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 1 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 1 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) 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.

* * * * *

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.**

[(c) Briefs and proposed] (g) Proposed findings of fact, proposed conclusions of law, briefs and certification of the evidentiary record not timely filed with the [referee under this section will] judge 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.]

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

* * * * *

[(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.]

[(e) Subsection (d)(6) supersedes] (i) Subsections (a)—(h) supersede 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 (relating to motions). [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 [the 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).

DECISIONS

§ 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 orders 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)** 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 (relating to motions).

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).

(b) **Penalty proceedings initiated by a party in a pending proceeding may be initiated by a petition under 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.**

[(c)] (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.

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

[(e)] (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.

[(g)] (i) Subsections [(b)—(e)] (a)—(h) 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 (relating to motions).

§ 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.

(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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