

RULES AND REGULATIONS

Title 34—LABOR AND INDUSTRY

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 Workers' Compensation Judges

The Department of Labor and Industry (Department), Bureau of Workers' Compensation (Bureau), adopts the following amendments to clarify and provide detailed guidance for practice and procedure before workers' compensation judges ("judges," formerly "referees") and the Workers' Compensation Appeal Board ("Board," formerly, "Workmen's Compensation Appeal Board"). The Department also amends Chapters 111 and 131 (relating to special rules of administrative practice and procedure before the Workers' Compensation Appeal Board; and special rules of administrative practice and procedure before workers' compensation judges) to provide additional guidance for the litigation of matters before judges and the Board and to refine existing regulations governing practices and procedures before judges and the Board.

Statutory Authority

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

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 final-form 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 Commonwealth 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 final-form 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 meets at least annually. In March 1998, the committee circulated its first draft of the proposed proposed changes to the Rules. Additionally, the committee has met with the Workers' Compensation Advisory Council (Advisory Council). In a meeting on September 17, 1998, the committee explained to the Advisory Council the committee's purpose and the process by which it reviewed commentary or suggested regulatory amendments.

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

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

Purpose

The final-form rulemaking clarifies and expedites the hearing and determination of matters in the workers' compensation system and updates 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); the act of February 23, 1995 (P. L. 1, No. 1); and the act of June 24, 1996 (P. L. 350, No. 57). The final-form rulemaking incorporates 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 the final-form rulemaking include workers' compensation judges, Workers' Compensation Appeal Board Commissioners and officials, employees of the Department, Bureau of Workers' Compensation and Workers' Compensation Appeal Board, and attorneys and litigants in the Commonwealth workers' compensation system.

Fiscal Impact

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

Response to Comments

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

Chapter 111

As a general comment, IRRC noted that some of the section titles in Chapter 111 were inconsistent. In response, the Department revised the section titles for §§ 111.16 and 111.21 (relating to briefs: content and form and time for filing; and content and form) to make these section titles consistent with § 111.11 (relating to content and form).

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

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

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

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

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

Chapter 131

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

The Department had amended § 131.5 to include definitions for the terms "Bureau record," "insurer" and "judge," and to delete the definitions of the terms "close of the record" and "referee." IRRC commented that the definition of the term "insurer" in the regulation differs from that found in section 109 of the act (77 P. S. § 29), and that the definition in the regulation should be replaced with a citation to section 109 of the act. The term "insurer" is defined in more than one place in the act, however as this final-form rulemaking is procedural in nature, the Department chose as its analytical framework the procedural definition of the term which is found in section 401 of the act (77 P. S. § 701). Thus, the Department has not changed the definition to that found in section 109 of the act. The Department also has amended § 131.5 to include the definitions for the terms "challenge proceeding," "penalty proceeding" and "supersedeas" to further clarify the final-form rulemaking.

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

Section 131.21 had provided for identification of submissions in proceedings before judges by the social security number of the employee, unless another identifying number has been assigned by the Bureau. IRRC and PWCJPA commented that, for confidentiality reasons, social security numbers should not be used for purposes of identification. IRRC further suggested that the use of

the phrase "another identifying number" is unclear and should be deleted. The Department agrees with the confidentiality concerns of IRRC and PWCJPA, and has amended § 131.21(a) to eliminate reference to social security numbers and to simply indicate that submissions in proceedings before judges shall be identified "by an identifying number assigned by the Bureau."

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

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

The Department had amended § 131.32 (relating to petitions except petitions for joinder and challenge proceedings) to provide that petitions shall be on a Bureau petition form. In addition, this amendment had clarified that the number of copies required shall be as prescribed on the Bureau form. Additionally, the amendment had required that the facts on which a cause of action or defense is based shall be stated in a concise and summary form. IRRC raised concerns about the service of the notice of assignment of petitions under § 131.32(b). IRRC suggested the inclusion of a timeline for assignment by the Bureau and a description of what will constitute notice. The Department has not made this change. The Department believes that it is inappropriate to include this information in these rules because these regulations govern procedures before judges, and not Bureau procedures themselves.

The Department had amended § 131.33 (relating to answers except answers to petitions for joinder and challenge proceedings) to clarify that a failure to answer a claim petition within 20 days of assignment of 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 amendment further clarifies that all petitions other than claim petitions may be answered within 20 days after assignment by the Bureau. Further, this amendment specifies the form and number of copies of answers, as well as service requirements for answers. IRRC commented that the phrase "challenge proceeding" should be defined. The Department has added

a definition of the term "challenge proceeding" in § 131.5. IRRC further questioned whether the term "claim petition" was synonymous with the term "petition" as used elsewhere in the rulemaking and, if not, commented that the term "claim petition" should be described or defined. There are many types of petitions, including a claim petition, addressed throughout the regulations. The Department does not believe that a description or definition of the self-evident term "claim petition" is warranted in the final-form rulemaking, however, as the act itself specifically refers to and describes a claim petition in sections 410 and 416 of the act (77 P. S. §§ 751 and 821).

In addition, IRRC suggested that the term "adequate excuse" in § 131.33(a) is unclear and should either be defined or explained by example. PWCJPA commented that the changes to § 131.33 that reflected case law and addressed what may or may not be contested on a petition should be eliminated. Attorney Lowry additionally requested that § 131.33(b) be clarified to reflect that, under that subsection, the filing of an answer to petitions other than claim petitions was not mandatory. In light of the changing case law in this area and to avoid confusion, the Department has redrafted subsection (a), thereby removing the reference to "adequate excuse" in the final-form rulemaking and replacing it with a general reference to section 416 of the act. This change further allowed the Department to consolidate subsections (a) and (b) to improve the clarity of the section regarding the filing of answers.

Attorney Lowry further commented that the requirement that answers must be responsive in denying or admitting allegations in § 131.33(e) is in the nature of "notice pleading," which unfairly burdens employers in light of time constraints in the transmittal of files to employer counsel. Attorney Lowry further questions whether this will open the door for a "motion for judgment on the pleadings" practice in workers' compensation. The Department does not agree with this position. The Department believes that meaningful, responsive answers are possible under this section without creating these problems. The Department does not believe the requirements of § 131.33(e) place an undue burden on respondents, particularly in light of the existing, more detailed requirements for answers filed with State courts. In addition, the issue of time constraints in the transmittal of files from employers to their counsel is an internal issue that is not appropriately addressed in the final-form rulemaking.

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

context and plain meaning of this section and because there is a specific Bureau form for joinder of an additional defendant.

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

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

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

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

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

Attorney Lowry also commented that the discretionary nature of the first hearing procedures allowed by § 131.52 may lead to widespread differences among judges and may lead to conflicts for a busy law practice. The Department believes no change is warranted, as any conflicts caused by the scheduling of judges should be worked out between the judge and the parties on a case-by-case basis. Attorney Lowry further commented that this section is at variance with the time periods set forth for the exchange of information in § 131.61 (relating to exchange of information). The Department disagrees with this position, insofar as § 131.53a (relating to consolidated hearing procedure) gives the judge authority to waive or modify the rules in § 131.61 for the purposes of conducting a 1-day trial.

The Department had added § 131.53a to provide a mechanism for the implementation of expedited hearing procedures including 1-day trials. The amendment further had provided that trial or deposition testimony may be taken from witnesses prior to a party’s obligation to conduct medical depositions. IRRC questioned the reasonableness of the provision in subsection (a) which allows judges to waive or modify rules to accommodate 1-day trials. IRRC further suggested that subsections (a) and (b) be consolidated into one subsection. The Department has not adopted this suggestion. The Department believes that the waiver provision is necessary to allow judges to manage their caseload and to be flexible to meet docket demands. In addition, the Department believes that combining the subsections would reduce clarity.

IRRC also commented that the terms “trial deposition” and “medical deposition” in § 131.53a are not defined. PWCJPA also requested that the term “trial deposition” be changed simply to “deposition.” The Department utilized the term “trial deposition” to distinguish it from a discovery deposition, which is not allowed in workers’ compensation matters. The term “trial deposition” is used to provide clarity to indicate that the deposition is to be for use at the hearing rather than as a means of discovery prior to the hearing. The term “medical deposition” is commonly used in workers’ compensation proceedings and its meaning is obvious by its use, without further definition. Thus, the Department has declined to accept these suggestions. PWCJPA further commented that subsection (b)(2) should be redrafted to specifically address concerns about parties waiting months to testify. The Department believes that this suggestion is not warranted, as it would interfere with the judge’s existing ability to set hearing procedures under the Rules. Moreover, the Rules already provide the judge with the discretion to vary the hearing procedures in any given case.

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

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

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

The Department had added § 131.58 (relating to informal conferences) to provide procedures for requesting and participating in informal conferences. The amendment had provided that requests for informal conferences shall be recorded on a form prescribed by the Bureau, and shall be filed with the judge to whom a pending petition has been assigned. If no petition is pending, a petition and the request for informal conference shall be filed with the Bureau. IRRC commented that the instructions and procedures specified in the Bureau form and section 402.1 of the act (77 P.S. § 711.1), which are referenced in subsection (e), should be specifically included. The Department does not believe the inclusion of this information is warranted, however, as the Bureau form already contains the necessary instructions and procedures for the parties. Moreover, the procedures in this area are new and evolving.

The Department had amended § 131.61 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 amendment had clarified the requirement that the moving party provide this information prior to the first hearing and that the respondent provide it within 45 days after the first hearing. PWCJPA commented that the phrase "no later than" in subsection (b) was redundant and should be stricken in light of the Department's addition of the phrase "prior to" in that subsection. The Department agrees and, accordingly, has removed the "no later than" language from this subsection.

The Department had amended § 131.81 (relating to subpoenas) to require that witness fees for witness testimony and travel: (1) be tendered upon the witness' 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). PWCJPA suggested that subsection (b)(3), providing for subpoena fees, be stricken in its entirety. PWCJPA commented that this subsection will complicate cases and place individuals who are receiving no income at a disadvantage. The Department does not agree with this position. This provision reflects the current state of the law and is intended to provide necessary notice since this statutory requirement is in addition to those requirements found in the act.

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

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

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

Section 131.122 (relating to other penalty proceedings) had provided that penalty proceedings not conducted

under § 131.121 will be conducted in accordance with other applicable regulations of the Bureau. IRRC commented that the Department should provide a citation for the other “applicable regulations” referenced in this section. The Department concurs and has therefore included in § 131.122 a citation to the regulations in Chapter 121 (relating to general provisions).

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

Reporting, Recordkeeping and Paperwork Requirements

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

Effective Date

The final-form rulemaking will be effective on publication in the *Pennsylvania Bulletin*.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 7, 2002, the Department submitted a copy of the notice of proposed rulemaking, published at 32 Pa.B. 1518, to IRRC and to the Chairpersons of the Senate Committee on Labor and Industry and the House Labor Relations Committee for review and comment.

Under section 5(c) of the Regulatory Review Act (71 P. S. § 745.5(c)), IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing this final-form rulemaking, the Department has considered the comments received from IRRC, the Committees and the public.

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), on October 14, 2002, this final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on October 24, 2002, and approved the final-form rulemaking.

Contact Persons

The contact persons are Elizabeth A. Crum, Acting Deputy Secretary of Compensation and Insurance, Department of Labor and Industry, 1700 Labor and Industry Building, Seventh and Forster Streets, Harrisburg, PA 17120, (717) 787-5082; and Susan McDermott, Chairperson, Workers’ Compensation Appeal Board, 1712 State Office Building, 1400 Spring Garden Street, Philadelphia, PA 19130, (215) 560-4583.

Findings

The Department finds that:

(a) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968

(P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202), and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(b) The amendment of the regulations of the Department in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

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

(a) The regulations of the Department, 34 Pa. Code Chapters 111 and 113, are amended by adding §§ 131.15, 131.24, 131.30, 131.40, 131.53a, 131.57 and 131.58; and by amending §§ 111.1—111.3, 111.11—111.18, 111.21—111.24, 111.31—111.35, 131.1—131.5, 131.11—131.13, 131.21, 131.22, 131.31—131.36, 131.41—131.43, 131.49, 131.50, 131.50a, 131.52—131.55, 131.61—131.70, 131.81, 131.91, 131.101, 131.102, 131.111, 131.112, 131.121 and 131.122 to read as set forth in Annex A.

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

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

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

JOHNNY J. BUTLER,
Secretary

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

(Editor’s Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 32 Pa.B. 5582 (November 9, 2002).)

Annex A

TITLE 34. LABOR AND INDUSTRY

PART VII. WORKERS’ COMPENSATION APPEAL BOARD

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

Subchapter A. GENERAL PROVISIONS

§ 111.1. Scope.

(a) This chapter applies to proceedings before the Board under the act and the Disease Law.

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

§ 111.2. Applicability of 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). The General Rules of Administrative Practice and Procedure are not applicable to activities of and proceedings before the Board.

(b) Subsection (a) supersedes 1 Pa. Code § 31.4 (relating to 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 Workers' Compensation Act (77 P. S. §§ 1—1041.4 and 2501—2506).

Appeal—A proceeding to review a ruling or decision by a judge.

Board—The Workers' Compensation Appeal Board.

Bureau—The Bureau of Workers' Compensation of the Department.

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

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

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

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

Petitioner—Anyone seeking to review a ruling or decision by a 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 judge or other than the moving party in any petition filed under Subchapter D.

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

Supersedeas—A temporary stay affecting a workers' compensation case.

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

Subchapter B. APPEALS

§ 111.11. Content and form.

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

(1) The name and address of the claimant, name and address of the defendant, date of the injury, type of petition, Bureau claim number, insurance carrier and circulation date of the decision at issue.

(2) A statement of the particular grounds upon which the appeal is based, including reference to the specific findings of fact which are challenged and the errors of the law which are alleged. General allegations which do not specifically bring to the attention of the Board the issues decided are insufficient.

(3) A statement of the relief which is requested.

(4) A statement whether the petitioner seeks an opportunity to file a brief or present oral argument or whether the case should be heard on the record without brief or oral argument.

(5) Identification of the judge whose decision is in question, including as an attachment, a copy of that judge's decision.

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

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

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

(d) Subsections (a)—(c) supersede 1 Pa. Code §§ 31.5, 33.1—33.4, 33.11, 33.12, 35.17 and 35.20.

§ 111.12. Filing, service and proof of service.

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

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

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

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

(1) A statement of the date of service.

(2) The names of parties and judge served.

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

(e) Subsections (a)—(d) supersede 1 Pa. Code §§ 31.26, 33.15, 33.21—33.23, 33.32, 33.33 and 33.35—33.37.

§ 111.13. Processing of appeals and cross appeals.

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

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

(c) Subsections (a) and (b) supersede 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 of service of the appeal or the cross appeal.

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

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

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

(e) An original and 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 also supersede Chapter 35, Subchapter D.

§ 111.15. No other pleadings allowed.

(a) Other than a motion to quash as set forth in § 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.

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

(a) A brief on behalf of a petitioner shall be filed with the Board at or before the date of oral argument. If oral argument is waived, petitioner shall file a brief within 30 days of the date of the Board's acknowledgment of receipt of the appeal 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 30 days after oral argument. Otherwise, the respondent shall file a brief with the Board within 60 days of the date of the Board's acknowledgment of receipt of the appeal as set forth in § 111.13.

(c) Upon written request of a party directed to the Secretary of the Board or upon oral request at the time of oral argument, and with notice to all parties, the Board may extend or shorten the time for filing of the party's brief only for good cause shown. A party shall present a request to extend or shorten the time at or before the date set for filing that party's brief.

(d) Briefs not filed with the Board in accordance with the schedule in this section or as modified by the Board under subsection (c), will not be considered and will result in disposition of the appeal without further notice or consideration of the brief of the party failing to comply with these deadlines or schedule.

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

- (1) A short statement of the questions involved.
 - (2) A statement of the facts by the petitioner, or counterstatement of the facts by the respondent.
 - (3) The argument.
 - (4) A short conclusion setting forth the precise relief sought.
 - (5) A proof of service as specified in § 111.12(d) (relating to filing, service and proof of service) insofar as applicable.
- (f) An original and two copies of briefs shall be filed.
- (g) Briefs shall be served on all parties.
- (h) Subsections (a)—(g) supersede 1 Pa. Code §§ 31.15, 33.37, 35.212 and 35.221 and also supersede Chapter 35, Subchapter F.

§ 111.17. Oral argument.

(a) The Board will schedule oral argument in every appeal or cross appeal unless all parties to the appeal or the cross appeal, upon receiving the acknowledgment of

appeal or cross appeal, indicate that no oral argument is requested, or that it is waived.

(b) The Board will hear oral argument on appeals and cross appeals according to a schedule prepared in advance for each calendar year. Oral argument will be conducted in Harrisburg, Philadelphia and Pittsburgh and in other locations throughout this Commonwealth, as the Board may schedule, or, as is appropriate in the Board's judgment.

(c) Oral argument will be scheduled at the earliest possible date pursuant to the schedule as established by the Secretary of the Board.

(d) Parties shall be advised as far in advance as possible of the date of oral argument by the acknowledgment of appeal or cross appeal as specified in § 111.13(b) (relating to processing of appeals and cross appeals).

(e) Oral argument shall consist of a presentation, including rebuttal, if necessary, by the petitioner and respondent.

(f) A petitioner or respondent represented by counsel need not be present at oral argument.

(g) Oral argument may be conducted before one or more members of the Board.

(h) Subsections (a)—(g) supersede 1 Pa. Code §§ 33.51, 35.204, 35.214 and 35.221.

§ 111.18. Decisions of the Board.

(a) The decision of the Board on an appeal and a cross appeal shall be issued as promptly as possible following oral argument or the receipt of briefs, whichever occurs later.

(b) Decisions of the Board on an appeal shall be issued under section 441 of The Administrative Code of 1929 (71 P. S. § 151).

(c) Decisions of the Board will be served on all parties and the 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. Content and form.

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

- (1) A copy of the decision of the judge or order and opinion of the Board from which the supersedeas is requested.
- (2) A short statement setting forth reasons and bases for the request for supersedeas.
- (3) A specific statement as to the issues of law, if any, involved in the underlying appeal.
- (4) Information on the current employment status of the claimant, if known.
- (5) The court, if any, to which an appeal from the Board decision has been taken.

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

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

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

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

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

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

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

(c) Subsections (a) and (b) supersede 1 Pa. Code §§ 35.1, 35.2, 35.17, 35.190 and 35.225.

§ 111.22. Filing.

(a) A request for supersedeas from the judge's decision shall be filed with the Board within the time specified in section 423(a) of the act (77 P. S. § 853).

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

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

(d) A request for supersedeas shall be served on all the parties and be accompanied by a proof of service as specified in § 111.12(d) (relating to filing, service and proof of service).

(e) Subsections (a)—(d) supersede 1 Pa. Code § 33.15 (relating to number of copies).

§ 111.23. Answers.

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

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

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

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

(e) Subsections (a)—(d) supersede 1 Pa. Code §§ 33.15 and 35.35 (relating to number of copies; and answers to complaints and petitions).

§ 111.24. Disposition of request for supersedeas.

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

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

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

Subchapter D. OTHER PETITIONS

§ 111.31. Applicability.

This subchapter applies to the following petitions or requests:

(1) A petition under section 306 of the act (77 P. S. § 513).

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

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

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

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

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

(7) A petition for attorney's fees under 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:

(1) A short statement setting forth the reasons and basis for the petition or request.

(2) The facts upon which the petition or request is based.

(3) A specific statement as to the issues of law, if any, involved in the petition or request.

(4) An explanation as to the status of the case, including the status of a pending appeal or petition before a judge, the Board or a court.

(5) The employment status of the claimant.

(6) A proof of service as specified in § 111.12(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 judge if the case is pending before a judge.

(c) An original and two copies of petitions and requests shall be filed.

(d) Subsections (a)—(c) 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.

§ 111.33. Specific petitions/requirements.

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

(1) The decision or document evidencing the employer/insurer's or self-insurer's responsibility to make current workers' compensation payments.

(2) The affidavit of the claimant, stipulation or other agreement signed by the parties which, if approved, will form the basis of the proposed commutation.

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

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

(1) The document or agreement evidencing the annuity or trust.

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

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

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

§ 111.34. Answers to petitions.

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

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

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

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

(e) Subsections (a)—(d) supersede 1 Pa. Code §§ 33.15 and 35.35 (relating to number of copies; and answers to complaints and petitions).

§ 111.35. Dispositions of petitions.

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

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

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

(d) The Board may, if appropriate, or will, if required by law, refer a petition or request to a 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.

CHAPTER 131. SPECIAL RULES OF ADMINISTRATIVE PRACTICE AND PROCEDURE BEFORE 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 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 judges under the act and the Disease Law.

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

§ 131.3. Waiver and modification of rules.

(a) The 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 judge's own motion.

(b) Subsection (a) supersedes 1 Pa. Code §§ 33.61, 35.18, 35.54 and 35.55 and also supersedes 1 Pa. Code Chapter 35, Subchapter D.

§ 131.4. Applicability of 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). The General Rules of Administrative Practice and Procedure are not applicable to activities of and proceedings before judges.

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

§ 131.5. Definitions.

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

Act—The Pennsylvania Workers' Compensation Act (77 P. S. §§ 1—1041.4 and 2501—2506).

Additional defendant—An insurance carrier, the Commonwealth or an employer, other than the insurance carrier or employer against which the original petition was filed, joined under this chapter.

Bureau—The Bureau of Workers' Compensation of the Department.

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

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

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

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

Department—The Department of Labor and Industry of the Commonwealth.

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

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

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

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

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

Records of work environment—Records and documents relating to work place health, safety, hazards and exposure, including records or documents which may be obtained under the Worker and Community Right-to-Know Act (35 P. S. §§ 7301—7320) and 29 CFR 1901.1—1928.1027 (relating to Occupational Safety and Health Administration, Department of Labor).

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

Supersedeas—A temporary stay affecting a workers' compensation case.

(b) Subsection (a) supersedes 1 Pa. Code §§ 31.3 and 33.33 (relating to definitions; effect of service upon an attorney).

Subchapter B. TIME

§ 131.11. Filing, service and proof of service.

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

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

(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:

- (1) A statement of the date of service.
- (2) The names of the judge and others served.
- (3) The mailing address, the applicable zip code and the manner of service on the judge and others served.

(e) Unless otherwise specifically provided in this chapter, whenever the filing or service is required to be made upon the Bureau, it shall be made to the principal office of the Bureau at: 1171 South Cameron Street, Harrisburg, Pennsylvania 17104-2501, (717) 783-5421, or another address and telephone number as may be published in the *Pennsylvania Bulletin*.

(f) Subsections (a)—(e) supersede 1 Pa. Code §§ 31.5, 31.11, 31.13, 31.14, 31.26, 33.32 and 33.34—33.36.

§ 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 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 judge upon the 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 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 judge.

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

(c) Subsections (a) and (b) supersede 1 Pa. Code §§ 31.6, 31.11, 31.15 and 35.18.

§ 131.13. Continuances or postponements of hearings.

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

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

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

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

- (1) Made in writing or at a hearing. If not made in writing or at a hearing, confirmed in writing as required by this subsection and served as required by subsection (h).
- (2) Made not later than 10 calendar days prior to the hearing date, except as set forth in subsection (f).

(e) Prior to the request for a continuance or a postponement, the party requesting the continuance or postponement shall ascertain the position of all counsel of record and unrepresented parties in the case relating to the continuance or postponement and shall advise the 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 judge is satisfied that circumstances relating to the requested continuance or postponement occurred within 10 calendar days of the hearing date.

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

- (1) The identity of the requesting party.

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

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

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

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

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

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

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

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

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

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

(6) The desirability of unrepresented parties obtaining counsel.

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

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

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

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

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

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

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

(3) Issue a written order modifying in whole or in part a supersedeas ordered or denial previously entered or

modifying an order previously entered upon a showing of compliance with the directions of the 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 judge may limit the disallowance of interest to a specified period on good cause shown.

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

(n) Subsections (a)—(m) 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.

(a) Pleadings, documents and other submittals filed in a proceeding shall be identified by an identifying number assigned by the Bureau.

(b) Subsection (a) supersedes 1 Pa. Code § 31.5, 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 judge, the Bureau will promptly reassign the case or petition. Notice of reassignment will be given to all parties.

(b) Transfer or reassignment under subsection (a) will take place prior to the date of the first hearing unless circumstances dictate otherwise.

§ 131.24. Recusal of judge.

(a) The judge may recuse himself on the judge's own motion.

(b) A party may file a motion for recusal, which shall be addressed to the judge to whom the proceeding has been assigned. The judge will conduct an evidentiary hearing and issue a decision within 15 days following receipt of the evidentiary hearing transcript and post-hearing submissions of the parties. The decision will be interlocutory, unless the judge certifies the record for immediate appeal to the Board.

(c) Subsections (a) and (b) supersede 1 Pa. Code §§ 35.54, 35.55, 35.186, 35.190 and 35.225 and also supersede 1 Pa. Code, Subchapter D.

§ 131.30. Consolidation.

(a) Where proceedings involve a common question of law or fact, the judge may consolidate the proceedings for hearing on all matters in issue, and may make any appropriate orders concerning the conduct of the proceedings to avoid any unnecessary costs or delay.

(b) Subsection (a) supersedes 1 Pa. Code § 35.45 (relating to consolidation).

PLEADINGS

§ 131.31. Form of pleadings.

(a) All proceedings, except challenges under sections 413(c) and 413(d) of the act (77 P. S. §§ 774.2 and 774.3), shall be initiated by petition.

(b) Subsection (a) supersedes 1 Pa. Code §§ 33.1—33.4, 33.11, 33.12 and 35.17.

§ 131.32. Petitions except petitions for joinder and challenge proceedings.

(a) Petitions shall be in the form prescribed by the Bureau.

(b) 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) 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) 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 challenge proceedings.

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

(b) If the answer is filed on a Bureau answer form, an original and the number of copies specified on the answer form shall be filed with the judge to whom the petition has been assigned. If there is no applicable Bureau answer form available, an original of the answer shall be filed with the judge to whom the petition has been assigned.

(c) Concurrently with filing the answer with the judge, the responding party shall serve a copy of the answer on unrepresented parties and on counsel of record.

(d) An answer shall admit or deny each averment of fact in the petition or any part of the averment to which it is responsive. A party denying only a part of the averment shall specify so much of it as is admitted and shall deny the remainder. Where applicable, admissions and denials in an answer shall refer to the specific paragraph in which the averment admitted or denied is set forth.

(e) Subsections (a)—(d) 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.

§ 131.34. Other filings.

(a) Unless otherwise specifically provided by this chapter, the party filing or submitting a document to the judge shall serve an original on the 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.

§ 131.35. Amendments to pleadings.

(a) A party has the right to amend a pleading at any time in a proceeding before a judge, unless the 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.

§ 131.36. Joinder.

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

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

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

(d) An original and the number of copies specified on the Bureau petition for joinder form shall be filed no later than 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 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 judge to whom the case has been assigned.

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

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

(h) A proof of service shall be attached to the petition for joinder or answer.

(i) After joinder, the original petition shall be deemed amended to assert a claim of the claimant against an additional defendant. The additional defendant is liable to any other party as the judge orders. The additional defendant shall have the same rights and responsibilities under this chapter as the original defendant.

(j) The judge may strike the petition for joinder, and the judge may order the severance or separate hearing of a claim presented therein, or as a result of the joinder.

(k) The 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 judge.

(m) 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 and also supersede 1 Pa. Code Chapter 35, Subchapter D.

§ 131.40. Frivolous pleadings.

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

SUPERSEDEAS

§ 131.41. Request for supersedeas or reconsideration of supersedeas.

(a) When a petition contains a request for supersedeas, or when a request for supersedeas is made, the judge may rule on the request only after a hearing.

(b) After a hearing, the judge may grant or deny the request for supersedeas in whole or in part. The grant or denial may be for specified or indefinite periods and may be subject to conditions that the judge orders to implement the intent of the act, Disease Law or this chapter. If a supersedeas has been granted or denied in whole or in part, the judge may, upon request and after hearing, review and modify the grant or denial as warranted.

(c) The decision of a judge on a request for or reconsideration of a supersedeas is an interlocutory order.

(d) Subsections (a)—(c) 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 judge may consider, one or more of the following solely in relation to a request for supersedeas.

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

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

§ 131.43. Disposition of request for supersedeas.

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

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

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

(a) The filing of a petition alleging full recovery, accompanied by a physician's affidavit to that effect, which was

prepared in connection with an examination of the employee no more than 21 days from the filing of the petition, shall act as an automatic request for supersedeas.

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

(c) The judge 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 establishes by a preponderance of the evidence a likelihood of prevailing on the merits of the employee's defense. In making this determination the judge will consider the physician's affidavit alleging full recovery and may consider the following:

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

(d) If the judge to whom the special supersedeas request has been assigned fails to hold a hearing within 21 days of assignment of the request to the judge or fails to issue a written order within 7 days of the hearing of the supersedeas request, the automatic request for supersedeas will be deemed denied. The automatic request for supersedeas 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.

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

(b) The insurer shall complete and file the form prescribed by the Bureau. The form shall be provided to the employee, employee's counsel, if known, and the 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 benefits under sections 413(c) or 413(d) of the act (77 P. S. §§ 774.2 and 774.3), to effectuate a subsequent modification or suspension of the employee's workers' compensation benefits, the insurer shall file the form specified in subsection (b), indicating the change in the employee's wages and corresponding change in the 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 request for special supersedeas hearing under section 413(c) and (d) of the act.

(a) This section governs the disposition of an employee's request for a special supersedeas hearing made in connection with a challenge to the suspension or modification of

workers' compensation benefits under sections 413(c) and 413(d) of the act (77 P. S. §§ 774.2 and 774.3).

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

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

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

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

HEARING PROCEDURE

§ 131.51. Assembly of medical records.

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

§ 131.52. First hearing procedures.

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

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

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

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

- (1) Allegations and issues of fact and law involved in the moving party's petition.
- (2) Proposed amendments to pleadings.
- (3) Stipulations of fact.
- (4) Names, addresses and method of presentation of witnesses.
- (5) Whether the items and information specified in § 131.61(a) (relating to exchange of information), which are intended to be used as evidence or exhibits, have been provided to the responding party at or before the first hearing.
- (6) Dates of depositions.
- (7) Estimate of hearing time.
- (8) Other subjects which may aid in the disposition of the proceeding.

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

(f) The parties shall provide the judge with all documents required by law to be filed with the Bureau and which are relevant to issues in dispute with the same injury date and pertaining to the same claim. The judge

will place those documents in evidence along with any other documents required to be filed by law with the Bureau or prior judges and which the judge deems relevant to the proceeding. The judge and the employee may not introduce the Employer's Report of Occupational Injury or Disease into evidence.

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

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

(i) Subsections (a)—(h) 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.

§ 131.53. 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(d) (relating to first hearing procedures) and shall submit, in writing, to the judge, with copies to counsel of record and unrepresented parties, the items and information specified in § 131.52(d).

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

(c) The 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 judge in writing within 21 days after conduct of the hearing or deposition at which the testimony to be rebutted or surrebutted has been given.

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

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

(g) Subsections (a)—(f) 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.

§ 131.53a. Consolidated hearing procedure.

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

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

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

(c) A witness whose identity has not been revealed as provided in this chapter may 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)—(c), the judge may proceed under § 131.13(m) (relating to continuances or postponements of hearings).

(e) Subsections (a)—(d) supersede 1 Pa. Code §§ 31.21—31.23, 31.27 and 31.28 and also supersede 1 Pa. Code Chapter 35, Subchapter E.

§ 131.55. 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 insurer has contested liability in whole or in part, the employee or a dependent, in whose favor the proceeding has been finally decided, will be awarded attorney fees and costs against the employer or insurer, unless the employer or insurer had a reasonable basis for contesting the petition.

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

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

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

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

(f) Subsections (a)—(e) 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 INFORMATION AND DEPOSITIONS AND DISCOVERY

§ 131.61. Exchange of 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) The moving party shall provide the items and information referred to in subsection (a) to the responding party prior to the commencement of the first pretrial hearing or hearing actually held. The responding party shall provide 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) may 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 as provided in subsections (a) and (b), which becomes available after the times set forth in subsection (b) shall be exchanged within 15 days after receipt by the party of the item or information.

(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 judge's rulings, as appropriate.

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

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

§ 131.62. Oral depositions.

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

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

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

(d) Subsections (a)—(c) supersede 1 Pa. Code §§ 35.145—35.152.

§ 131.63. Time for taking oral depositions.

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

(b) Oral depositions shall be completed so as not to delay unreasonably the conclusion of the proceedings, and within a time schedule agreed upon by the parties and approved by the 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 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 judge in writing within 21 days after the conduct of the hearing or deposition at which the testimony to be rebutted or surrebutted has been given.

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

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

(g) Subsections (a)—(f) supersede 1 Pa. Code §§ 35.145—35.152, 35.161 and 35.162.

§ 131.64. Notice of oral depositions.

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

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

(1) The name or identity, address and occupation of the witness.

(2) The date, time and place of the taking of the oral deposition.

(3) A statement of a relevant reason for the taking of the oral deposition.

(4) The following legend:

Notice to Parties and/or Witness:

You may object to this oral deposition by mailing or delivering a letter listing your objections to (name and address of party scheduling deposition) at least 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 judge.

(d) Subsections (a)—(c) supersede 1 Pa. Code §§ 33.33 and 35.145—35.152.

§ 131.65. Objections to taking of oral depositions.

(a) A party or witness may object to the oral deposition by serving, at least 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 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 judge.

(b) A party or witness may request a ruling on objections by filing a written request with the 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 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 judge may direct, rule on the objections within 5 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 (relating to oral depositions) or upon waiver of the formal requirements of those sections by

agreement of all parties, will be admissible at the time of hearing or by mail if allowed by the judge in the same manner as if the deponent appeared before the judge and testified.

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

(c) Subsections (a) and (b) supersede 1 Pa. Code §§ 35.126, 35.151, 35.161 and 35.162.

§ 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 judge may order the payment of reasonable expenses of attorneys, not including counsel fees, to attend the deposition.

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

§ 131.68. Discovery of records.

(a) A party may schedule and take the deposition of a custodian of records or a person in a similar capacity. A party has the right to inspect and analyze the records listed in this subsection. Title 42 Pa.C.S. §§ 6151—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:

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

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

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

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

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

(f) A deposition under this section shall be in the form of a written affidavit of the custodian of records as deponent without interrogation. The affidavit shall be in the form, and contain the information specified in § 131.69 (relating to form of deposition affidavit). Title 42 Pa.C.S. §§ 6151—6160 shall be followed, if applicable.

(g) The deposition affidavit and the records or items authenticated thereby will be admissible into evidence in the proceeding before the judge in the same manner as if the deponent appeared before the 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), 131.61(d) and 131.61(e) (relating to continuances or postponements of hearings; and exchange of 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 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:

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

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

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

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

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

§ 131.70. Discovery of statements of parties or witnesses.

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

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

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

(d) Failure to adhere to this section may result in the application of §§ 131.13(m), 131.61(d) and 131.61(e) (relating to continuances or postponements of hearings; and exchange of 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 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 a subpoena shall serve the subpoena upon the witness or person subpoenaed and upon opposing counsel.

(1) Service shall be made by one of the following:

(i) Personal service under the Pennsylvania Rules of Civil Procedure.

(ii) 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).

(2) 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 1 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, 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 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 judge to whom the case has been assigned.

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

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

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

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

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

§ 131.101. Briefs, findings of fact and close of record.

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

(b) Submissions referred to in subsection (a) shall be made within the time specified by the 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 record or in writing.

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

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

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

(g) Proposed findings of fact, proposed conclusions of law, briefs and certification of the evidentiary record not timely filed with the 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 judge for good cause shown.

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

(1) A short statement of the questions involved.

(2) A statement of the facts by the moving party or counter-statement of the facts by the responding party.

(3) An argument.

(4) Short conclusions setting forth the precise relief sought.

(5) A proof of service.

(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 and also supersede 1 Pa. Code Chapter 35, Subchapter D.

§ 131.102. Oral argument.

(a) The judge, with notice to the parties, may require oral argument at any time before or after the close of the evidentiary record. A party may request oral argument at any time prior to the submission of the parties 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 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 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, 31.14, 35.190, 35.201—35.207, 35.225, 35.226 and 35.241.

§ 131.112. Correction or amendment of decision.

(a) A decision or an order of a judge may be amended or corrected by the 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 judge's motion or on the motion of one or both parties. Other amendments or corrections will be made only upon written agreement of the parties. A request for correction or amendment shall be made within 20 days of the date of service of notice of the decision and order.

(b) The corrected decision and order will specifically set forth the items in the prior decision and order which are being corrected and amended, and will contain the following provision: "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 as to any part of that decision and order which is not the subject of the request for correction or amendment.

(d) Subsections (a)—(c) supersede 1 Pa. Code §§ 31.13, 31.14, 35.54, 35.55, 35.190 and 35.211—35.214 and also supersede 1 Pa. Code Chapter 35, Subchapter D.

PENALTY PROCEEDINGS**§ 131.121. Penalty proceedings initiated by a party.**

(a) Penalty proceedings may be initiated by a party filing a petition for penalties as provided in § 131.32

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

(b) Penalty proceedings initiated by a party in a pending proceeding may be initiated by a petition 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 subsection (a), it appears to the judge in proceedings before the judge that there has been noncompliance with the act or this chapter, the 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 judge's own motion unless waived.

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

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

(f) At the penalty hearing, the judge will take testimony, receive evidence and hear arguments necessary to create a record sufficient to support, defend or appeal the decision of the 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 judge, in a separate order prior to a final order or in conjunction with the final decision in the proceeding, will rule on the request for penalties and will determine whether noncompliance with the act or this chapter exists, and, if appropriate, impose penalties.

(i) Subsections (a)—(h) supersede 1 Pa. Code §§ 35.1, 35.2, 35.5—35.7, 35.9—35.11, 35.14, 35.17—35.20, 35.23, 35.24, 35.35—35.41, 35.54, 35.55 and 35.251 and also supersede 1 Pa. Code Chapter 35, Subchapter D.

§ 131.122. Other penalty proceedings.

(a) Penalty proceedings not conducted under § 131.121 (relating to penalty proceedings initiated by a party) will be conducted in accordance with 34 Pa. Code Chapter 121 (relating to general provisions).

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

[Pa.B. Doc. No. 02-2209. Filed for public inspection December 6, 2002, 9:00 a.m.]

