

**STATE OF CALIFORNIA**  
**LABOR AND WORKFORCE DEVELOPMENT AGENCY**  
**DEPARTMENT OF INDUSTRIAL RELATIONS**

**DIVISION OF**  
**WORKERS' COMPENSATION**

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**WORKERS' COMPENSATION**  
**APPEALS BOARD**

**POLICY AND PROCEDURAL MANUAL**



**2003 Revision**

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Division of Workers' Compensation – Workers' Compensation Appeals Board  
POLICY AND PROCEDURAL MANUAL  
2003 Revision

**State of California**

## MEMORANDUM

**Date:** October 6, 2003

**To:** WORKERS' COMPENSATION ADMINISTRATIVE LAW JUDGES  
Workers' Compensation Appeals Board

**From:** MERLE C. RABINE                      RICHARD P. GANNON  
Chairman                                      Administrative Director  
Workers' Compensation                  Division of Workers' Compensation

**Subject:** DWC/WCAB POLICY AND PROCEDURAL MANUAL  
2003 REVISION

This Policy and Procedural Manual is operative as of October 6, 2003, and all prior versions and sections are rescinded and deemed inoperative as of October 6, 2003.

This is not a final document. The Appeals Board and the Administrative Director will entertain suggestions for additional sections. Those suggestions may be forwarded to

WORKERS' COMPENSATION APPEALS BOARD  
Post Office Box 429459  
San Francisco CA 94142-9459

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## PROJECT MANAGER

**RICHARD NEWMAN**

**Workers' Compensation Administrative Law Judge**

**Division of Workers' Compensation, San Francisco**

## INTRODUCTION

This 2003 DWC/WCAB Policy and Procedural Manual was prepared under the direction of the Administrative Director of the Division of Workers' Compensation (DWC) and Chairman of the Workers' Compensation Appeals Board (WCAB) pursuant to Labor Code Section 133, which section confers on the DWC Administrative Director, the Court Administrator and the Appeals Board the power and jurisdiction "to do all things necessary or convenient in the exercise of any power or jurisdiction conferred upon it under this code."

This manual consists of policies and procedures that DWC/WCAB employees are required to follow and to assist the DWC and the WCAB in providing uniformity and direction to its employees in the day-to-day operation of the Board and its district offices.

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## 1.0 EX PARTE ORAL AND WRITTEN COMMUNICATIONS

Issued by

**MERLE C. RABINE**

Chairman

Workers' Compensation Appeals Board

**RICHARD P. GANNON**

Administrative Director

Division of Workers' Compensation

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When a WCJ receives an ex parte letter or other document from any party or lien claimant in a case pending before the WCJ, he or she shall serve copies of the letter or document on all other parties to the case with a cover letter explaining that the letter or document was received ex parte in violation of WCAB Rule 10324.

## 1.5 PETITIONS FOR AUTOMATIC REASSIGNMENT

Issued by

**MERLE C. RABINE**

Chairman

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**RICHARD P. GANNON**

Administrative Director

Division of Workers' Compensation

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Reassignments pursuant to WCAB Rule 10453 shall be made, to the extent possible, in such a manner that the identity of the WCJ to whom the case is reassigned is unpredictable. Use of random rotation systems is encouraged.

All WCJs in an office must be included in initial assignments to try cases. The fact that a particular attorney, law firm, employer or carrier regularly challenges a particular WCJ is not a sufficient reason to exclude that WCJ from an initial assignment to a case.

Upon timely request to reassign, the matter shall promptly be reassigned to another WCJ. If another WCJ is not available in the district office, the PWCJ shall advise the court administrator and request reassignment.

## 1.10 DECLARATIONS OF READINESS TO PROCEED

Issued by

**MERLE C. RABINE**

Chairman

Workers' Compensation Appeals Board

**RICHARD P. GANNON**

Administrative Director

Division of Workers' Compensation

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A. Review of declarations of readiness to proceed (DORs) by the PWCJ or his or her designee is no longer required. However, review of the following categories of DORs is permissible prior to calendaring:

1. DORs filed by lien claimants, to determine whether the case-in-chief has been resolved (see Labor Code Section 4903.5(d)); and
2. DORs to proceed to expedited hearing, to determine whether an expedited hearing is appropriate under Labor Code Section 5502(b).

Otherwise, hearings shall be calendared on request, subject to WCAB Rule 10416. Nonetheless, if prior to a scheduled hearing both parties inform the WCJ that the disputes in issue have been resolved, the hearing shall be taken off calendar without requiring appearances by the parties.

B. After trial and service of a recommended rating, a party may file a DOR, noting under "other issues" that the party wishes to cross-examine the disability evaluator and/or present rebuttal evidence. The DOR shall be delivered to the office of the WCJ who has heard the case or shall be filed by mail to the personal attention of the WCJ. Upon receipt of the DOR, the WCJ shall schedule the case for trial pursuant to his or her discretion under WCAB Rule 10420.



## 1.15 REQUESTS FOR EXPEDITED HEARING

Issued by

**MERLE C. RABINE**

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Declarations of readiness to proceed to expedited hearing may not be filed in person pursuant to the walk-through calendar setting procedure established in WCAB Rule 10417.

## 1.20 SCOPE AND REDESIGNATION OF EXPEDITED HEARINGS

Issued by

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An expedited hearing may be set upon request where an injury has been accepted as compensable by the employer and the issues include medical treatment or temporary disability indemnity for a disputed body part or parts. However, a WCJ assigned to a case involving a disputed body part or parts may re-designate the hearing as a mandatory settlement conference, receive a pretrial conference statement pursuant to Labor Code Section 5502(e)(3), close discovery, and schedule the case for trial on the issues presented, if the WCJ determines, in consultation with the PWCJ, that the case is not appropriate for expedited determination. Such re-designation may be appropriate in this type of case where, for example, the direct and cross-examination of the applicant will be prolonged, or where there are multiple witnesses who will offer extensive testimony.

## 1.25 WALK-THROUGH CALENDAR SETTING

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Administrative Director

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Where a party or law firm representing a party or parties files declarations of readiness pursuant to WCAB Rule 10417, the conference dates may be obtained by principals or employees of the party or law firm. Conference dates may not be obtained by interpreters or other "independent contractors" employed by a party or law firm for the purpose of obtaining dates.

## 1.30 CALENDAR CLERK CANCELLATION OF HEARING

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**MERLE C. RABINE**

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Administrative Director

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When a WCJ orders the cancellation of a hearing prior to the date of hearing, the WCJ or the WCJ's secretary shall immediately advise the calendar clerk of the cancellation. The calendar clerk will then substitute another proceeding, or proceedings, consistent with legal notice requirements.

The PWCJ will periodically monitor the calendar for compliance with this rule.

## 1.35 TRIAL PRIORITIES

Issued by

**MERLE C. RABINE**

Chairman

Workers' Compensation Appeals Board

**RICHARD P. GANNON**

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The WCJ conducting a trial should proceed at the time scheduled, allowing a minimal amount of time for settlement negotiations. The parties should be encouraged to appear earlier than the scheduled time to conduct negotiations. Where several trials are scheduled to begin at the same time (e.g., 8:30 a.m. or 1:30 p.m.), the trial judge will determine case priority with due consideration being given to an expeditious determination and the setting of priorities discussed below.

### PROCEEDING PRIORITIES

Cases set on the trial calendar shall be subject to the following priorities:

1. Cases which are returned to the calendar for cross-examination of the disability evaluation specialist;
2. Continued cases in which testimony has been received (The judges are encouraged to have these cases set on the first available opening in their calendar with notice waived.);
3. Cases in which the applicant is not working and is receiving no benefits and/or in which the applicant or any witnesses have traveled from out of state or a significant distance within the state to appear;
4. Cases that were previously set for trial but did not commence;

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5. Cases in which no benefits have been furnished but the applicant is working;
6. All other cases.

Cases described in (1) and (2) should be used for filling in spaces created by orders taking off calendar, calendar continuances or resolution of cases by settlement or stipulation. Continuances are not favored and the parties should be fully prepared to present their evidence at the time of trial, pursuant to WCAB Rule 10548. The presiding judge shall have authority to assign or transfer cases as necessary pursuant to WCAB Rule 10346, including the utilization of a "rotational calendar" to assign pending trials. When the first trial in order is about to commence, other cases scheduled at the same time shall be referred to the PWCJ for assignment to other available WCJs, when feasible.

## UNREPRESENTED PARTIES

At a hearing, the WCJ should inform the unrepresented applicant of his/her right to counsel and may refer the applicant to Information and Assistance, if appropriate.

The WCJ should inform the unrepresented employer of the employer's right to counsel and the serious nature of the proceedings, since many employers may be facing substantial liability.

## 1.40 EVIDENCE, HOSPITAL AND MEDICAL RECORDS

Issued by

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Workers' Compensation Appeals Board

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The receipt and retention of voluminous hospital and medical records create a storage problem and make review by the WCAB difficult, and parties should be discouraged from filing any unnecessary or duplicate documents. In accordance with WCAB Rule 10626, specific reference should be made to the relevant portions of records which are offered, and only the relevant excerpts of medical records should be admitted into the evidentiary record. The designation of specific records or portions thereof must be made by the parties at the mandatory settlement conference, unless good cause is shown to allow such designation subsequent to the mandatory settlement conference.

At the conclusion of testimony, the WCJ should return all duplicate or unidentified materials and any unexcerpted portions of records to the offering party. In accordance with WCAB Rule 10630, 60 days after a final decision, or when disposition is by an interim order, such as off calendar, any physical, mechanical, or demonstrative exhibits should be returned to their source or the party producing them with direction to act as their custodian pending further order.

## 1.45 CONFERENCE AND TRIAL MINUTES AND SUMMARY OF EVIDENCE

Issued by

**MERLE C. RABINE**

Chairman

Workers' Compensation Appeals Board

**RICHARD P. GANNON**

Administrative Director

Division of Workers' Compensation

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### A. CONFERENCE MINUTES

The WCJ is responsible for the completion of conference minutes for each case assigned to him or her in any conference setting. Hearing reporters are generally not to be used for conferences, and the WCJ shall use either the Minutes of Hearing form or, if a trial is being set, the Pretrial Conference Statement. The minutes of each conference should be prepared for each case as soon as a disposition is reached, or as soon thereafter as possible.

Regardless of which form is used, or in the event a hearing reporter is used, the minutes for each conference shall contain, at a minimum, the following information, written legibly:

Name of WCJ

Date, time and place of hearing

Appearances by parties and attorneys

Interim orders

Stipulations and issues (trial setting)

Exhibits offered or received into evidence (trial setting)

Disposition



## 1. When Matter is Not Being Set for Trial

For any disposition other than trial setting, the WCJ shall use the Minutes of Hearing form. The disposition shall clearly specify any one or more of the following: (1) a compromise and release or stipulations with request for award have been submitted and approved, (2) a specified number of days is allowed for submission of a compromise and release or stipulations with request for award, (3) the matter is continued to another conference, (4) the matter is taken off calendar.

For purposes of this part of the Policy and Procedure Manual, a continuance occurs when a matter set for mandatory settlement conference or other conference is allowed to be set for further conference hearing of any type on a subsequent calendar, and where a matter set for trial is allowed to be set for any type of hearing on a subsequent calendar. For purposes of this part of the Policy and Procedure Manual, the progression of a case not resolved at a mandatory settlement conference hearing, or other conference hearing, to a trial hearing where testimony is to be received is not a continuance.

Should a matter be taken off calendar or continued for further conference, the appropriate boxes on the Minutes of Hearing form should be checked, and a clear and concise statement of the basis for continuing the matter or taking it off calendar should also be provided. Merely checking the boxes without providing a basis for continuance or off-calendar status in writing may not constitute a sufficient record. The minutes shall be prepared so that they are clear and legible and served on all parties and lien claimants, and their representatives.

Stipulations and/or interim order(s) should be included on separate pages and attached to and clearly referenced in the first page of the minutes. The original of the minutes will be placed in the legal file and will become part of the legal file.

The PWCJs may periodically monitor minutes of hearings prepared at the direction of the WCJs working under their supervision to ensure that good cause has been shown for continuance orders and orders taking off calendar, and that such good cause is stated in the minutes or orders.

## 2. When Matter is Being Set for Trial

Whenever the parties are unable to resolve an issue or issues, and it is appropriate to set the matter for trial, the WCJ should direct the parties to complete the Pretrial Conference

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Statement. The WCJ shall ensure that the form is complete and contains the following information for each case being set: (1) the parties' stipulations, including all body parts admitted or claimed, (2) the issues raised, including any liens, (3) benefits paid, (4) exhibits, and (5) witnesses.

When the matter has been set for a mandatory settlement conference, the WCJ should take care to ensure that the requirements of Labor Code Section 5502 are properly being followed, and that all witnesses and exhibits are clearly identified at the time of the conference. Where good cause is shown, additional time may be allowed to prepare and file excerpts of records following the conference.

The disposition box on the first page of the Pretrial Conference Statement shall be prepared by the WCJ and shall include: (1) any appropriate discovery or other interim orders (additional pages or minutes using a hearing reporter may be utilized where appropriate), (2) the date and time of trial, (3) the WCJ to whom the trial is assigned, and (4) the time allotted for trial.

### 3. Time Allotted for Trial

Generally, trials should not be set for more than a full day. For good cause shown, however, a trial may be set for two or more consecutive days. More than one day may be required, for example, when it is clear that, based on the complexity of the issues and/or number of witnesses presented, the trial cannot reasonably be completed in one day. A WCJ shall not set a trial for more than one day without the approval of the PWCJ.

### 4. Pro Per Applicant

In a case involving an applicant appearing in propria persona, the WCJ should ensure that the unrepresented applicant understands how to prepare the pretrial conference statement, and understands the legal effect of the statement. If necessary, the WCJ should dictate the minutes to a hearing reporter, taking care to ensure that all of the elements required for a trial setting (discussed above) are set forth in the minutes.

## B. TRIAL MINUTES: WCJ PROCEDURE

The WCJ shall conduct the proceedings so as to ensure that the minutes are complete and contain a proper record in accordance with WCAB Rule 10566. The stipulations and issues should be recited into the record, noting any changes in either the stipulations or

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issues as set forth in the MSC statement. The parties' agreement as to the accuracy of the stipulations and issues should be obtained on the record.

The appearances of all parties and attorneys should be noted. All exhibits offered on behalf of the parties should be identified in the minutes, along with any objections to any exhibits, and the WCJs rulings on such objections.

All exhibits should be placed on a backer and marked, with each exhibit identified as to the party offering the exhibit. Stacks of records or reports should not be admitted as one exhibit; however, all reports from a single physician may be identified as one exhibit, provided that the dates of each report are specified in the record. Records from a single provider or entity may also be listed as one exhibit, as long as separate pages from such exhibit can be easily identified.

Where testimony is taken, the WCJ shall ensure that all witnesses are clearly identified for the reporter, and that names are spelled out and titles identified. The WCJ shall provide a fair and unbiased summary of the testimony given by each witness, and clearly identify direct and cross-examination, redirect and recross-examination, and examination by the WCJ. Where motion pictures are presented as evidence, the Summary of Evidence shall include a brief summary of the contents of the motion pictures.

The WCJ shall provide the disposition order, including the time and action, if any, required for submission. If the disposition is for an order taking off calendar or continuance, the reason for such disposition shall be clearly stated in the record.

The WCJ shall dictate the summary of evidence to the hearing reporter or provide it to the hearing reporter as soon after the hearing as possible and, unless authorized by the PWCJ, no more than three business days after the date of hearing, unless the case is settled after the taking of testimony.

When no evidence is admitted and a trial is continued, taken off calendar, or the issue or issues for which the trial has been set are resolved, a WCJ may proceed without a hearing reporter and prepare the minutes by hand, utilizing the Minutes of Hearing form.

## C. TRIAL MINUTES: HEARING REPORTER PROCEDURE

The minutes of each trial will be prepared by the hearing reporter as soon after completion of the hearing as possible. The minutes shall contain:

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Name of WCJ and hearing reporter;  
Date, time and place of hearing;  
Starting and ending time of hearing;  
Appearances by parties and attorneys;  
Names of witnesses and by whom they are called;  
Stipulations, admissions and issues;  
Interlocutory orders made;  
A descriptive list of all exhibits offered for identification only (with the identity of the party offering the same);  
Exhibits received into evidence and the party offering the same;  
Disposition ordered, which shall include the time and action, if any, required for submission.

An estimate of the number of pages of transcript will be noted on the lower left-hand corner of the first page of the minutes.

Where testimony is received, the caption "Summary of Evidence" will follow the disposition order and will be single-spaced.

The original of the minutes and summary will be placed in the legal file. Copies for service will be placed on the inner-left side of the folder if served by the WCJ's secretary rather than the hearing reporter, consistent with local office practice. Whenever possible, on multiple trial days, the summary of evidence should be served on the parties before the next trial session.

## 1.46 FILING & ORGANIZATION OF TRIAL EXHIBITS

Issued by

**MERLE C. RABINE**

Chairman

Workers' Compensation Appeals Board

**RICHARD P. GANNON**

Administrative Director

Division of Workers' Compensation

Effective: 4/1/04

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When parties request a trial date, the WCJ shall carefully review the parties' pretrial conference statement to ensure that it is complete and that all the parties' stipulations, issues and exhibits are listed. Each listed exhibit should be clearly identified as to the type of document offered, the provider, and date.

When exhibits are filed, each exhibit shall be organized and labeled so as to specify which party is offering the exhibit (e.g., Applicant's 1, 2, 3, et seq. and Defendant's A, B, C, et seq.) Medical reports or records from each provider shall be filed in chronological order with the most recent report or record on top. Records or reports from a single provider may be filed as a single exhibit.

WCJs shall not require that the parties organize and/or label exhibits in a manner which varies from the basic requirements set forth in this section.

## 1.50 PROCEDURES FOLLOWING SUBMISSION OF FORMAL RATING INSTRUCTIONS

Issued by

**MERLE C. RABINE**

Chairman

Workers' Compensation Appeals Board

**RICHARD P. GANNON**

Administrative Director

Division of Workers' Compensation

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Following a WCJ's submission of formal rating instructions to the Disability Evaluation Unit pursuant to AD Rule 10156, the WCJ shall not discuss the instructions or any other aspect of the case with the assigned disability evaluator, except to clarify or correct clerical or technical errors or omissions (e.g., to add the correct occupational group or indemnity rate). Any questions that a WCJ has concerning the correctness of a rating based on his or her instructions shall be communicated by memorandum to the disability evaluator. Any response to this memorandum by a disability evaluator shall also be by memorandum, together with a corrected formal rating, if appropriate.

If a disability evaluator is unable to prepare a formal rating based on a WCJ's instructions, the evaluator shall not discuss the instructions with the WCJ, but shall provide the WCJ with a memorandum specifically explaining why a formal rating cannot be issued based on the instructions (e.g., instructions are ambiguously worded, factors of disability are insufficient, etc.) A memorandum is not required where the inability to prepare a rating is due solely to a clerical or technical error or omission, in which case the disability evaluator may informally discuss the instructions with the WCJ to correct or clarify the instructions.

Where corrected formal rating instructions are submitted following receipt of a memorandum from the disability evaluator, and a formal rating is prepared, the memorandum should be served on all parties and lien claimants, and their representatives, together with the formal rating, the WCJ's instructions, and all previous

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instructions, previous ratings, and, all memoranda between the WCJ and the disability evaluator concerning this rating.

## 1.55 TAKING CASES OFF CALENDAR AND TIMING OF SUBMISSIONS

Issued by

**MERLE C. RABINE**

Chairman

Workers' Compensation Appeals Board

**RICHARD P. GANNON**

Administrative Director

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The PWCJ may require that: (1) at any time after the commencement of a trial, and before submission of the issues tried, no order taking the case off calendar shall issue from a WCJ without prior consultation with, and approval of, the PWCJ; and/or (2) following submission of an issue or issues, no order to vacate said submission shall issue by the assigned WCJ without prior consultation with, and approval of, the PWCJ.

Judges should not unnecessarily delay the date of submission of issues following the conclusion of testimony. For example, it is inappropriate to delay submission for any of the following reasons:

1. until dictation of the summary of evidence to the hearing reporter is completed. WCJs shall dictate the summary within three working days from the conclusion of testimony, unless the PWCJ approves of a longer period.
2. until transcription of the Minutes of Hearing and Summary of Evidence by court reporter. Where there is a delay by the court reporter in transcribing the Minutes of Hearing and Summary of Evidence, the WCJ shall consult with the PWCJ, who shall take appropriate action;



3. for receipt of post-trial briefs unless the issues tried are unique or unusually complex. In the event post-trial briefs are allowed, the time frames should be as short as reasonably possible and specifically identified; and
4. for a potential request for a formal permanent disability rating from the Disability Evaluation Unit beyond 30 days from the conclusion of testimony. If the WCJ believes that there is need for such delay, the WCJ shall consult with the PWCJ who shall take appropriate action.

## 1.60 PROCEDURES FOR PETITIONS FOR RECONSIDERATION

Issued by

**MERLE C. RABINE**

Chairman

Workers' Compensation Appeals Board

**RICHARD P. GANNON**

Administrative Director

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### A. PETITIONS FOR RECONSIDERATION FILED AT THE INCORRECT DISTRICT OFFICE

WCAB Rule 10840 requires that petitions for reconsideration from final orders, decisions or awards be filed at the district office of the WCAB from which the order, decision or award issued. If a petition for reconsideration is filed or received at a district office other than the correct district office, the petition shall be returned to the petitioner with a letter referencing WCAB Rule 10840, noting that the petition was not filed at the correct district office, and indicating that the petition should be filed consistent with the rule. The supervising clerk or other individual who receives a petition that appears to have been improperly filed under this rule, shall immediately consult with the PWCJ or his/her designee to determine whether the petition should be returned to the petitioner.

### B. WCJ PROCEDURES FOR HANDLING PETITIONS FOR RECONSIDERATION

Within 15 calendar days following the filing of a petition for reconsideration, a WCJ may modify or amend decisions for substantive or clerical error(s), or may rescind a decision and conduct further proceedings pursuant to WCAB Rule 10859. If a WCJ elects to amend, modify, or rescind a decision under this rule, the WCJ shall advise the Appeals Board by sending the pink Due-Dates Record to San Francisco with a signed notation that an order, decision or award has issued in accordance with WCAB Rule 10859 and the date the decision issued, or attach a copy of the order of modification, amendment or

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rescission to the pink Due-Dates Record. The issuance of the modified or amended order, decision or award or the order of rescission must be recorded on the on-line system.

If a petition for reconsideration on a single issue has been filed, the WCJ may exercise any of the options set forth in WCAB Rule 10859.

If (1) a petition for reconsideration is filed on multiple issues on the same case, or (2) multiple petitions for reconsideration are filed by the parties on the same case, or (3) petitions for reconsideration are filed on multiple cases, the WCJ must do one of the following:

1. issue a modified or amended Finding(s) and Award(s) and/or Order(s) granting all of the relief requested by the petitioner(s); or
2. rescind the entire Findings and Award and initiate any further proceedings required within 30 days; or
3. prepare and submit a report and recommendation on the merits of the petition(s), which may include a recommendation to grant part of the relief sought but deny relief on other contentions.

It is not permissible for a WCJ to issue a modified or amended decision which does not grant relief to the petitioner(s) with respect to all of the issues raised by the petitioner(s), or to issue a modified or amended decision addressing some issues and a report and recommendation on reconsideration on other issues.

WCAB Rule 10859 requires that where an order, decision or award is rescinded, further proceedings must be initiated within 30 days from the order of rescission. This means that any further hearing must be scheduled and a notice of hearing must issue within 30 days from the order of rescission. Any referral on board motion for further medical evaluation and/or any other action to develop the record required by the WCJ must begin within 30 days from issuance of the order of rescission.

After 15 calendar days have elapsed following the filing of a petition for reconsideration, a WCJ shall not make any order or correct any error in the case until the Appeals Board has denied or dismissed the petition for reconsideration or issued a decision and order after reconsideration.

## C. MAIL RECEIVED AFTER PETITION FOR RECONSIDERATION FILED

After a petition for reconsideration has been filed and the file forwarded to the WCAB Reconsideration Unit in San Francisco with the WCJ's report and recommendation, and prior to the return of the file to the district office, only the following mail is to be forwarded from the district office to the Appeals Board in San Francisco:

1. any other petition(s) for reconsideration and any answers to petition(s) for reconsideration;
2. all letters from the parties related to the reconsideration process such as petitions to dismiss the petition for reconsideration or letters seeking withdrawal of the petition for reconsideration;
3. any stipulations with request for award or compromise and release agreement;
4. all change of address notifications from the parties or lien claimants, and
5. all responsive pleadings related to the reconsideration process.

All other mail is to be kept by the district office until the file is returned by the Appeals Board. If there is any question whether mail should be forwarded to the Appeals Board, the Control Unit of the Appeals Board in San Francisco should be contacted immediately by telephone at (415) 703-4550.

## 1.65 REPORT OF WORKERS' COMPENSATION JUDGE ON RECONSIDERATION

Issued by

**MERLE C. RABINE**

Chairman

Workers' Compensation Appeals Board

**RICHARD P. GANNON**

Administrative Director

Division of Workers' Compensation

Effective: October 6, 2003

Amended: December 14, 2005

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Pursuant to Rule 10860, a WCJ shall prepare a report and recommendation on reconsideration, which shall be sent to the Appeals Board and served on the parties and any affected lien claimants no later than 15 days following the filing of the petition for reconsideration. Extensions of this time limit may be granted by the Appeals Board for good cause.

If a WCJ exercises either of the options provided under Rule 10859 (i.e., modifying and reissuing decision or rescinding entire decision and initiating further proceedings, within 15 days of the filing of the petition for reconsideration), a report is not required. The WCJ however, should forward the pink Due-Dates Record with a description of the action taken by the WCJ and/or attach a copy of the modification/rescission order.

If a WCJ does not exercise either of these options within the prescribed 15 days, the WCJ must prepare a report in the format set forth below. The report shall generally be comprised of four parts: an introduction, a statement of facts, a discussion, and a recommendation.

### I INTRODUCTION

The following information shall be contained in the introduction of the report:

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1. Applicant's occupation, age at injury, date of injury, part(s) of body injured or alleged to be injured, and the manner in which the injury occurred or was alleged to have occurred.
2. Identity of petitioner(s), and whether the petition is timely filed and verified or is legally defective. If it appears that a petition for reconsideration is untimely, and/or is procedurally defective for any other reason, the WCJ shall note the untimeliness and/or procedural defect in the WCJ's report on reconsideration, and shall also discuss the merits of the petition. The WCJ, after reviewing the file, may recommend that the board grant reconsideration on its own motion pursuant to Labor Code Section 5900(b).
3. The decision or order and issuance date, with specific reference to the portion of the decision or order for which reconsideration is requested.
4. The petitioner(s)'s contentions.

## II FACTS

The report shall contain a brief summary of facts sufficient to enable a proper understanding of the issues raised.

## III DISCUSSION

1. The discussion portion shall contain the basis for a WCJ's decision, order or other action from which reconsideration is sought, and a reply to each and every contention raised in the petition(s) for reconsideration. The report should contain a sufficient discussion of the facts and legal issues raised so as to explain the petitioner's contentions and to support the WCJ's recommendation(s). However, extensive discussion of established legal principles is unnecessary.
2. The discussion shall reflect a professional attitude, and shall contain no contumacious, demeaning, or derogatory comments with respect to any individual or entity, regardless of provocation. It should be noted that such comments in a report and recommendation on reconsideration reflect poorly upon the professionalism and judicial integrity of the WCAB and the WCJ issuing the report and recommendation; furthermore, such comments preclude the Appeals Board from denying reconsideration and incorporating the report and recommendation as its basis for denial.

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3. The WCJ should note any apparent violations of WCAB Rule 10842. Any attachment to the petition for reconsideration that duplicates documents in the record should be removed; other attachments should not be removed. A WCJ need only comment on misstatements of material facts.

4. In order to enable the Appeals Board to deny a petition and adopt and incorporate the WCJ's report as its basis for decision, the report should not incorporate by reference any documents, such as the opinion on decision, any answer to the petition for reconsideration, or any medical report(s). Only pertinent parts of the WCJ's opinion on decision should be quoted or summarized to support the recommendation, but generally should not be incorporated by reference. A WCJ may set forth relevant portions of his or her original decision to the extent that it explains or justifies the decision in light of the contentions raised in the petition. Painter v. WCAB (1985), 50 CCC 224.

#### IV RECOMMENDATION

1. Every report must contain a recommendation to dismiss, deny, or grant the petition in whole or in part.

2. A recommendation of dismissal or denial generally requires no further elaboration.

3. A recommendation to grant should include suggestions for specific actions to be taken by the Appeals Board, such as the following:

- a. that a decision after reconsideration issue, recommending specific findings fact and/or provisions to be included in an award;
- b. that the matter be referred to the Disability Evaluation Unit with new or amended rating instructions;
- c. that the record in the case be further developed;
- d. that the matter be returned to the trial calendar for further hearing on all or specific issues.

V.  
GENERAL

Reports should be in clear language that employees and employers can easily understand. To this end, reports should be as brief and concise as possible, eliminating unnecessary and immaterial verbiage.

The WCJ shall timely submit a report and recommendation on each case in which reconsideration is sought. Repeated tardiness or failure of a WCJ to complete and forward reports and recommendations on reconsideration shall be brought to the attention of the chief judge for appropriate action.



## 1.70 REFERRAL TO WCJ FOR HEARING FOLLOWING A GRANT OF RECONSIDERATION

Issued by

**MERLE C. RABINE**

Chairman

Workers' Compensation Appeals Board

**RICHARD P. GANNON**

Administrative Director

Division of Workers' Compensation

Effective: October 6, 2003

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The Appeals Board may, after granting a petition for reconsideration, but without issuing a decision, refer the case for assignment to a WCJ for hearing to develop and/or supplement the record. The assigned WCJ shall follow the specific instruction(s) of the Appeals Board in conducting the directed proceedings.

In such cases, the district office should include in the notice of hearing a statement of the purpose and nature of the hearing. This notice may refer to or quote the Appeals Board's *Opinion and Order Granting Reconsideration* or calendar memorandum.

The WCJ assigned to such cases shall conduct further proceedings pursuant to WCAB Rule 10862. Upon completion of the hearing, the WCJ shall then serve the minutes on the parties pursuant to WCAB Rule 10862 and return the file with the minutes of hearing and summary of testimony to the Appeals Board. Any motions, trial briefs, or other pleadings received from a party following the hearing should not be acted upon by a WCJ, but should be forwarded to the Appeals Board.

Any compromise and release or stipulations with request for award filed in relation to such proceedings should be returned to the Appeals Board for action. If before, during, or after the hearing, there are any questions regarding the scope of the proceedings or potential rulings, the WCJ should contact a deputy commissioner of the Appeals Board.

Where a petition for reconsideration from a decision issued by the Appeals Board is filed at a district office, the petition shall be returned to the petitioner with a letter referencing WCAB Rule 10840, noting that the petition should be filed with the Appeals Board, P.O. Box 429459, San Francisco, California 94142-9459, and that delivery of the petition for reconsideration to the district office does not constitute filing of the petition for reconsideration for any purpose. The supervising clerk or other individual who receives a petition that appears to have been improperly filed under this rule, shall immediately consult with the PWCJ or his/her designee to determine whether the petition should be returned to the petitioner. No report and recommendation on reconsideration shall be prepared by a WCJ who acted as the hearing officer.

## 1.75 PETITIONS TO REMOVE

Issued by

**MERLE C. RABINE**

Chairman

Workers' Compensation Appeals Board

**RICHARD P. GANNON**

Administrative Director

Division of Workers' Compensation

Effective: October 6, 2003

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Pursuant to WCAB Rule 10843, within 15 days of the filing of a petition to remove, a WCJ may rescind the order in question or take other action to resolve the issue raised. If the WCJ so acts, or if the petition to remove is withdrawn at any time, the petition is deemed automatically dismissed and requires no further action by the Appeals Board.

If the petition to remove has been entered in the online system, the WCJ shall attach a copy of the rescission order or the withdrawal document to the pink Due-Dates Record and forward to the Appeals Board in San Francisco.

If the petition to remove has not been entered in the online system, the petition may simply be placed in the legal file with the rescission order or withdrawal document.

## 1.80 REPORT OF WORKERS' COMPENSATION JUDGE ON REMOVAL

Issued by

**MERLE C. RABINE**

Chairman

Workers' Compensation Appeals Board

**RICHARD P. GANNON**

Administrative Director

Division of Workers' Compensation

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Pursuant to WCAB Rule 10860, a WCJ shall prepare a report and recommendation on removal, which shall be sent to the Appeals Board and served on the parties and any affected lien claimants no later than 15 days following the filing of the petition for removal. Extensions of this time limit may be granted by the Appeals Board for good cause.

If a WCJ exercises either of the options provided under WCAB Rule 10843 (i.e., rescinds order or decision in question or takes other action to resolve issue being raised, within 15 days of the filing of the petition for removal) or if the petition is withdrawn at any time, a report is not required. The WCJ however, should forward the pink Due-Dates Record with a description of the action taken by the WCJ and/or attach a copy of the relevant order which renders the petition as deemed automatically dismissed.

If a WCJ does not exercise either of the aforementioned options or if the petition is not withdrawn, the WCJ must prepare a report in the format set forth below. The report should generally be comprised of four parts: an introduction, a statement of the facts, a discussion and a recommendation.

### I INTRODUCTION

The following information shall be contained in the introduction of the report:

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2003 Revision

1. The decision, order or other action complained of and date issued, with specific reference to the portion for which removal is requested.
2. The identity of petitioner, whether the petition is timely filed or is otherwise defective. A discussion on the merits regardless of timeliness or other defect is required.
3. If a further hearing has been scheduled, the date of such hearing.

## II FACTS

The report shall contain a brief summary of facts sufficient to enable a proper understanding of the issues raised, which, where appropriate, should note the chronology and context of the order or other action from which removal is sought (e.g., a discovery ruling at a MSC or trial).

## III DISCUSSION

1. The discussion portion shall contain the basis for a WCJ's decision, order or other action from which removal is sought and a reply to each and every contention raised in the petition. The report should contain a sufficient discussion of the facts and legal issues raised so as to explain the petitioner's contentions and to support the WCJ's recommendation(s). However, extensive discussion of established legal principles is unnecessary.
2. The discussion shall reflect a professional attitude, and shall contain no contumacious, demeaning, or derogatory comments with respect to any individual or entity, regardless of provocation. It should be noted that such comments in a report and recommendation on removal reflect poorly upon the professionalism and judicial integrity of the WCAB and the WCJ issuing the report and recommendation; furthermore, such comments preclude the WCAB from denying reconsideration and incorporating the report and recommendation as its basis for denial.
3. In order to enable the Appeals Board to deny a petition and adopt and incorporate the WCJ's report as its basis for decision, the report should not incorporate by reference any documents, such as the WCJ's decision or order, any answer to the petition for removal, or any medical report(s). Pertinent parts of the WCJ's decision or order may be quoted or summarized to support the recommendation, but generally should not be incorporated by reference. A WCJ may set forth relevant portions of his or

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her original decision to the extent that it explains or justifies the decision in light of the contentions raised in the petition. Cf., Painter v WCAB (1985), 50 CCC 224.

#### IV RECOMMENDATION

1. Every report must contain a recommendation to dismiss, deny, or grant the petition in whole or in part.
2. A recommendation of dismissal or denial generally requires no further elaboration.
3. A recommendation to grant should include suggestions for specific actions to be taken by the Appeals Board, such as the following:
  - a) return to WCJ for further proceedings, either at trial or at further conference;
  - b) return to have WCJ admit disputed document, amend prior order, or other specific action (e.g., allow for completion of discovery);
  - c) that a particular order, such as a discovery order, be issued or rescinded.

#### V GENERAL

Reports should be in clear language that employees and employers can easily understand. To this end, reports should be as brief and concise as possible, eliminating unnecessary and immaterial verbiage.

It is essential to the timely disposition of matters that the WCJ submit a timely report and recommendation on each case in which removal is sought. Repeated tardiness or failure of a WCJ to complete and forward reports and recommendations on removal shall be brought to the attention of the chief judge for appropriate action.

## 1.85 REPORT OF WORKERS' COMPENSATION JUDGE ON DISQUALIFICATION

Issued by

**MERLE C. RABINE**

Chairman

Workers' Compensation Appeals Board

**RICHARD P. GANNON**

Administrative Director

Division of Workers' Compensation

Effective: October 6, 2003

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Pursuant to WCAB Rule 10860, a report and recommendation on a petition for disqualification is required to be prepared by a WCJ and sent to the Appeals Board and served on the parties and any affected lien claimants. The report and recommendation shall be sent to the Appeals Board and served no later than 15 days following the filing of the petition for disqualification. Extensions of this time limit may be granted by the Appeals Board for good cause. The WCJ should prepare a report in the format set forth below.

The report should generally be comprised of four parts: an introduction, a statement of the facts, a discussion and a recommendation.

### I INTRODUCTION

The following information shall be contained in the introduction of the report:

1. Statement of the contentions raised by the petition.
2. Identity of the petitioner, whether the petition is timely filed or legally defective (i.e., any failure by petitioner to comply with the procedures set forth in WCAB Rule 10452 and/or the provisions of Labor Code Section 5311) and whether any witnesses have been sworn.

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## II FACTS

The report shall contain a brief summary of facts sufficient to enable a proper understanding of the alleged basis for disqualification.

## III DISCUSSION

1. The discussion portion shall contain a specific response to the allegations being made. The report should contain a sufficient discussion of the facts and legal issues raised so as to explain the petitioner's contentions and to support the WCJ's recommendation. The WCJ should specifically comment on whether he or she is biased as alleged. However, extensive discussion of established legal principles is unnecessary.
2. The discussion shall reflect a professional attitude, and shall contain no contumacious, demeaning, or derogatory comments with respect to any individual or entity, regardless of provocation. It should be noted that such comments in a report and recommendation on reconsideration reflect poorly upon the professionalism and judicial integrity of the WCAB and the WCJ issuing the report and recommendation; furthermore, such comments preclude the Appeals Board from denying reconsideration and incorporating the report and recommendation as the basis for denial.
3. In order to enable the Appeals Board to deny a petition and adopt and incorporate the WCJ's report as the basis for decision, the report should not incorporate by reference any documents, including any answer to the petition.

## IV RECOMMENDATION

1. Every report must contain a recommendation to dismiss, deny, or grant the petition.
2. A recommendation of dismissal or denial generally requires no further elaboration.
3. A recommendation to grant should include suggestions for specific actions to be taken by the Appeals Board. If the WCJ is persuaded that disqualification is justified, the basis for disqualification should be clearly and specifically explained.



## 1.90 COMPROMISE AND RELEASE AND STIPULATIONS WITH REQUEST FOR AWARD

Issued by

**MERLE C. RABINE**

Chairman

Workers' Compensation Appeals Board

**RICHARD P. GANNON**

Administrative Director

Division of Workers' Compensation

Effective: October 6, 2003

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A WCJ to whom a compromise and release or stipulations with request for award is assigned should initiate appropriate action within fifteen 15 days of its assignment. Pursuant to WCAB Rule 10346(b), if a compromise and release or stipulations with request for award has not been approved, disapproved, or noticed for trial on the issue of adequacy and other disputed issues within 45 days after filing, the file shall be returned to the PWCJ for review.

Appropriate action will generally include one or more of the following:

1. Following a review and determination that a proposed settlement is adequate, issuing an order approving compromise and release, or an award pursuant to stipulations.
2. If necessary to determine adequacy, referral of the case to the Disability Evaluation Unit, and issuing an order suspending action or other appropriate notice to the parties, pending further review after receipt of the requested consultative rating(s). Once the file is returned to the WCJ with the requested rating(s), the WCJ shall have no more than 15 days to take further action (e.g., issue an order approving the settlement, or setting the case on the issue of adequacy).

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3. If the settlement cannot be determined to be adequate, the WCJ should: issue an order suspending action that notifies the parties of the inadequacy and allows the parties additional time not to exceed 30 days to modify the agreement such that it is adequate. If the agreement is not so modified, the matter should be set for a conference on adequacy.

An order suspending action on the settlement shall be served on all parties and lien claimants, and their representatives.

In accordance with WCAB Rules 10870 and 10882, WCJs should carefully review settlements to ensure that they are adequate. Routinely setting hearings on adequacy of compromise and release proposals is not an appropriate alternative to careful review of the materials submitted with the settlement. A WCJ may refuse to approve a compromise and release agreement unless it is amended in a manner suggested by the WCJ; however, the WCJ cannot rewrite the agreement without the parties' consent. (See Burbank Studios v. WCAB (Yount) (1982) 47 Cal. Comp. Cases 832, at 836.)

Where a settlement of vocational rehabilitation is requested pursuant to Labor Code Section 4646(a), a simple statement that injury was in issue or that some other threshold issue was present is insufficient unless supporting facts are alleged in Paragraph 10 of the agreement, demonstrated elsewhere in the record, or offers of proof are filed as to those issues so that an appropriate determination is supported by the record.

Where the employer has filed a written request under Labor Code Section 3761, the WCJ shall ensure that the proposed compromise and release agreement was or stipulations were served on the employer at least 15 days prior to the date of action on the release or stipulations, and that proof of such service is filed. The WCJ may act on a proposed compromise and release agreement or stipulations without such service or proof of service, but the employer is thereafter entitled to a hearing on the issue of compensability. If the employer prevails on that issue, it is entitled to recover a setoff against costs or reserves effecting premium costs and sanctions. (See Labor Code Section 3761 and WCAB Rule 10875.)

When parties who are present at a hearing indicate they have reached an agreement for settlement by compromise and release or stipulations with request for award, they should be encouraged to prepare and submit a compromise and release agreement or stipulations with request for award at that hearing, rather than to seek to continue the matter or take it off calendar.

## 1.91 SUBMISSION AND APPROVAL OF SETTLEMENTS DETERMINATION OF ADEQUACY

Issued by

**MERLE C. RABINE**

Chairman

Workers' Compensation Appeals Board

**RICHARD P. GANNON**

Administrative Director

Division of Workers' Compensation

Effective: 4/1/04

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### A. SUBMISSION OF PRO PER SETTLEMENTS

When a Compromise and Release or Stipulations with Request for Award involving an unrepresented employee is submitted to the WCAB for approval, the following documents should be included and clearly marked or indexed:

1. All medical reports of treating physicians and QMEs, filed in chronological order with the most recent report on top;
2. A brief explanation of the basis of settlement;
3. Ratings of all P&S reports, whether by DEU, a private rater, or claims examiner. In cases involving multiple body parts, upper extremities, or non-scheduled ratings, a DEU rating should be included;
4. Basis and calculation of average weekly earnings if less than maximum;
5. All notices sent to the employee pertaining to the settlement;
6. All letters advising applicant of the QME process.
7. Where benefits have been provided, a current computer printout of all benefits paid.

A properly submitted settlement, either by Stipulations with Request for Award or Compromise and Release shall be approved by a WCJ if the settlement is found to be adequate and meets regulatory requirements. A walk-through settlement involving an unrepresented employee shall be reviewed pursuant to WCAB Rule 10890(h).

## B. CONSIDERATION OF ADEQUACY OF ALL SETTLEMENTS

Stipulations with Request for Award shall be considered adequate and an Award shall issue if the stipulated level of permanent disability is reasonably within the range of evidence based on the medical reports submitted, medical care is awarded where appropriate based upon the medical reports submitted, and any other issues are adequately resolved by the stipulations.

If compensability is not disputed, a Compromise and Release shall be considered adequate and shall be approved where the settlement is properly executed, and the amount of the settlement includes consideration for: (1) permanent and temporary disability that is reasonably within the range of evidence based on the medical reports submitted, (2) medical treatment, where appropriate, based on a reasonable estimate of future medical expenses; (3) any other issues included in the settlement, such as penalties or the right to reopen, in a reasonable amount.

In cases dealing with threshold issues (i.e. injury AOE/COE, employment, jurisdiction or statute of limitations), when assessing the adequacy of a settlement, consideration shall be given to the viability of these issues.

A determination that a settlement is adequate based upon the preceding analysis should be approved; the settlement should not be disapproved nor should the case be set for adequacy based solely on the WCJ's belief that the settlement is less than the optimal amount.

## C. PREREQUISITES FOR SETTING A CASE FOR ADEQUACY

1. If a WCJ concludes that a settlement submitted by mail or delivered on a walk-through basis may be inadequate, the WCJ must give notice to the parties of the reasons for the apparent inadequacy by serving the parties with an Order Suspending which identifies a substantial issue, as described in number (2) below. The parties shall be given 30 days within which to address the problems identified by the WCJ.

2. A substantial issue regarding the adequacy of a settlement, in light of the documentary evidence provided, may consist of the following:

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(a) The permanent disability stipulated to, or the amount paid in a Compromise and Release for permanent disability, is not reasonably within the range of the medical evidence provided.

(b) The award for medical treatment, or the amount paid in a Compromise and Release for medical treatment, is not reasonably within the range of the medical evidence provided.

(c) The period of temporary disability provided for in the settlement is outside of the range of the medical evidence provided, or cannot be verified.

(d) A lien claim or lien claims have been left unresolved, and no good faith effort to resolve them has been shown.

(e) The medical evidence provided is insufficiently developed on its face making it impossible to define the range of evidence.

(f) In pro per cases only: (i) the documentary evidence provided does not demonstrate that the defendant has provided the applicant with required notices, where relevant; and/or (ii) the indemnity rate is less than maximum and either inconsistent with the earnings information provided, or cannot be verified for a lack of earnings information.

(g) The settlement document has not been served pursuant to WCAB Rule 10886.

(h) Other issue of similar substantiality is identified that requires correction and/or consultation with the parties.

(3) If the issues identified in the Order Suspending are not satisfactorily addressed by the parties within the specified time, the WCJ may set the case for a status conference on the issue of adequacy, but must include in that notice the reasons in writing for setting the matter and the specific issues the WCJ expects the parties to address (i.e., issues not satisfactorily addressed.) If the parties satisfactorily addressed the issues after notice of the status conference, but before the conference, the settlement should be approved, the status conference should be cancelled, and no appearances should be required.

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If new issues regarding adequacy are identified by the WCJ subsequent to the Order Suspending, the WCJ should follow the procedure outlined in the paragraph immediately above, prior to setting the matter for conference.

(4) Setting a case for adequacy (a) without any substantial issue(s) regarding adequacy, (b) without providing the parties with notice in writing of the reasons for the setting, or (c) without providing the parties with an opportunity to address the identified inadequacies, is an inefficient use of court time and constitutes an abuse of discretion.

(5) Where an Order Suspending issues in violation of this section, a party may request that the PWCJ review the order and take appropriate action to redress the violation, if any.

## 1.93 UNINSURED EMPLOYERS, ORDERS APPROVING COMPROMISE & RELEASE

Issued by

**MERLE C. RABINE**

Chairman

Workers' Compensation Appeals Board

**RICHARD P. GANNON**

Administrative Director

Division of Workers' Compensation

Effective: 4/1/04

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Prior to approval of a compromise and release involving an uninsured employer, the WCJ shall require that the uninsured employer file the executed compromise and release, together with either (1) a certified check (s), (2) a cashier's check(s), or (3) money order (s) made payable to applicant, and any lien claimants or others benefiting from the settlement. No order approving compromise and release shall issue unless all lien claims have been resolved and paid or withdrawn.

The order approving the compromise and release, whether on a pre-printed form or dictated on the record, shall include a caption entitled "Order Approving Compromise and Release and Award," and, in the body of the order, the following language:

"Award is made in favor of [name of applicant] against [name of uninsured employer] in the sum of \$\_\_\_\_\_ payable forthwith, together with interest as provided by law."

## 1.95 PROCEDURE AFTER TRANSFERRING FILE TO PWCJ

Issued by

**MERLE C. RABINE**

Chairman

Workers' Compensation Appeals Board

**RICHARD P. GANNON**

Administrative Director

Division of Workers' Compensation

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After transfer of a file to the PWCJ for review pursuant to WCAB Rule 10346(b), the PWCJ may:

1. return the file to the WCJ previously assigned where the PWCJ determines that the WCJ is proceeding appropriately;
2. reassign the file to another WCJ;
3. reassign the file to himself or herself for disposition of the proposed settlement;
4. take any other appropriate action to assure prompt disposition of the proposed settlement.



## 1.97 VENUE FOR CLAIMS OF DWC EMPLOYEES

Issued by

**MERLE C. RABINE**

Chairman

Workers' Compensation Appeals Board

**RICHARD P. GANNON**

Administrative Director

Division of Workers' Compensation

Effective: 4/1/04

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When a DWC employee files a workers' compensation claim in the same district office where he or she is or has been assigned to work, the application shall be transferred to a different district office within a reasonable geographic distance from the employee's district office. The case shall be assigned to a WCJ who is unfamiliar with the employee. The parties may agree on the appropriate venue, other than the district office where the employee works, subject to the approval of the PWCJ.

If the parties are unable to agree on a suitable venue, or for any other good cause shown, the PWCJ shall consult with the Secretary of the Appeals Board to determine the appropriate venue for a DWC employee's claim, with the Secretary issuing the appropriate order for change of venue. When appropriate, a WCJ from a region other than the employee's region shall be assigned by the Secretary of the Appeals Board.

## 1.100 SIGNING OF STIPULATIONS WITH REQUEST FOR AWARD

Issued by

**MERLE C. RABINE**

Chairman

Workers' Compensation Appeals Board

**RICHARD P. GANNON**

Administrative Director

Division of Workers' Compensation

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Where parties file Stipulations with Request for Award (DWC WCAB Form 3), the stipulations shall be signed by the applicant, applicant's attorney (if any), and the attorney or authorized representative for defendant.

## 1.105 DISPOSITION OF LIEN CLAIMS IN SETTLEMENTS

Issued by

**MERLE C. RABINE**

Chairman

Workers' Compensation Appeals Board

**RICHARD P. GANNON**

Administrative Director

Division of Workers' Compensation

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Where a compromise and release agreement or stipulations with request for award is filed with lien claims that remain unresolved after good-faith attempts to resolve them, the WCJ reviewing the settlement should approve the settlement, if it is otherwise adequate, and initiate proceedings to resolve the liens pursuant to WCAB Rule 10888. It is inappropriate for a WCJ to refuse to consider the adequacy of a settlement until all lien claims have been resolved.

## 1.110 SERVICE OF SETTLEMENTS ON LIEN CLAIMANTS

Issued by

**MERLE C. RABINE**

Chairman

Workers' Compensation Appeals Board

**RICHARD P. GANNON**

Administrative Director

Division of Workers' Compensation

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When a settlement document is filed personally or by mail, all lien claimants whose liens have not been resolved or withdrawn shall be served with the document no later than concurrently with filing (see also WCAB Rule 10890(d)).

When a settlement document is drafted and filed at a conference or trial, the WCJ shall order service of the document on all lien claimants whose liens have not been resolved or withdrawn and shall institute proceedings pursuant to WCAB Rule 10888.

## 1.115 REFERRALS TO DIVISION OF LABOR STANDARDS ENFORCEMENT

Issued by

**MERLE C. RABINE**

Chairman

Workers' Compensation Appeals Board

**RICHARD P. GANNON**

Administrative Director

Division of Workers' Compensation

Effective: October 6, 2003

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Pursuant to Labor Code Section 3710, a WCJ should use the form contained in Microsoft Outlook to refer a matter to DLSE for enforcement, as follows:

1. Open Microsoft Outlook.
2. Click on "File."
3. Click on "New."
4. Click on "Choose Form."
5. In the drop-down menu, select "Organizational Forms Library."
6. Select form and complete.
7. In the "To" line of the email, insert "DLSE Info" and send the form.

## 1.120 APPEARANCE BY NON-ATTORNEY REPRESENTATIVES

Issued by

**MERLE C. RABINE**

Chairman

Workers' Compensation Appeals Board

**RICHARD P. GANNON**

Administrative Director

Division of Workers' Compensation

Effective: October 6, 2003

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### A. APPEARANCES

In each case in which a law firm representing an injured worker appears by an employee not holding current active membership in the State Bar of California, the employee shall file at the time of his or her first appearance at the WCAB a document that:

1. discloses that he or she is not licensed to practice law in the State of California;
2. states the name of the attorney directly responsible for supervising the employee;
3. specifically states that the employee is authorized by the supervising attorney to sign settlement documents; and
4. is signed by the supervising attorney and the client.

In each case in which a law firm representing a defendant appears by an employee not holding current active membership in the State Bar of California, the employee shall file at the time of his or her first appearance at the WCAB a document that complies with the paragraph above, except that it need not be signed by the client.

## B. SETTLEMENT DOCUMENTS

Where a settlement signed by a non-attorney law firm employee is submitted to a WCJ for approval, the settlement need not be signed or specifically authorized by the supervising attorney if the attorney has previously signed and filed a general authorization for the employee to sign settlement documents in the case or cases being settled.

## 1.125 FRAUD REPORTING BY WCJS

Issued by

**MERLE C. RABINE**

Chairman

Workers' Compensation Appeals Board

**RICHARD P. GANNON**

Administrative Director

Division of Workers' Compensation

Effective: October 6, 2003

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If, in the course of adjudicating a claim for workers' compensation benefits, a WCJ discovers conduct that appears to constitute workers' compensation fraud, AD Rule 9721.32 provides that:

"When circumstances warrant, a referee [WCJ] shall take or initiate appropriate disciplinary measures against a referee [WCJ], lawyer, party, witness, or other person who participates in the workers' compensation process for unprofessional, fraudulent or other improper conduct of which the referee becomes aware. "

If a WCJ becomes aware of possible workers' compensation fraud during proceedings, the WCJ should be sensitive to his or her obligations under the Code of Judicial Ethics as the case progresses.

The obligation imposed by AD Rule 9721.32 to report misconduct and fraud must be balanced against a recognition that the Code of Judicial Ethics, out of concern that a judge's actions not diminish the appearance of fairness and objectivity in judicial proceedings, places limits on a judge's communications involving pending cases.

Under Canon 3A(7), a judge is prohibited from discussing a pending or impending case outside the presence of the parties.



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Canon 3A(9) prevents a judge from making a nonpublic comment that "might substantially interfere with a fair trial or hearing."

If a WCJ determines that he or she is aware of reportable misconduct, the WCJ may report that misconduct to the appropriate authorities once the case in which that misconduct occurred is no longer pending before the WCJ.

In view of the ethical demands required of WCJs by the Code of Judicial Ethics, the Division would prefer that WCJs not directly refer cases involving suspected fraud to outside authorities.

A WCJ who desires to report misconduct should refer the matter, with as much specificity and documentary evidence as is available to them, to the chief judge. This course of action would be consistent with Canon 3B(7)(b), which allows judges to consult with court personnel whose function it is to advise the judge in carrying out the judge's responsibilities.

## 1.130 SELF-INSURED EMPLOYERS, CERTIFICATE OF CONSENT

Issued by

**MERLE C. RABINE**

Chairman

Workers' Compensation Appeals Board

**RICHARD P. GANNON**

Administrative Director

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If it is necessary to determine whether a given employer was self-insured as of a specified date, that information may be obtained by contacting the manager of Self-Insurance Plans. The contact information for SIP is as follows:

web site: <http://www.dir.ca.gov/SIP>

email: [sip@dir.ca.gov](mailto:sip@dir.ca.gov)

## 1.135 TRANSCRIPT REQUESTS

Issued by

**MERLE C. RABINE**

Chairman

Workers' Compensation Appeals Board

**RICHARD P. GANNON**

Administrative Director

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Requests for transcripts are to be referred to the PWCJ or his or her designee, to make sure the request is proper and to determine the relative priority of the request (see below). The PWCJ may contact the requesting party to determine whether the request is necessary in lieu of a summary of testimony, and whether a partial transcript, instead of an entire transcript, would be sufficient. The PWCJ shall then refer the request to one of the reporters in his or her district office who is designated as the transcript clerk.

Requests for transcripts shall be granted when the request is determined to be proper, and the request is properly completed and accompanied by the appropriate fee (AD Rules 9990 through 9994 and WCAB Rule 10740). The request should clearly and legibly provide the following information:

- a. the name, mailing address and daytime phone number of the requestor;
- b. the name of the applicant, date of hearing and case number;
- c. a brief explanation of the basis for the request;
- d. the portion of the transcript requested;
- e. the date the transcript is needed.

The transcript request must include a deposit in the form of a check or money order made payable to the Division of Workers' Compensation in the amount of the estimated transcript fee. The requestor should be advised of the transcript cost per page and that the estimated number of pages of the entire transcript is located on the lower left-hand corner of the cover sheet of the minutes of hearing and summary of evidence. The name

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and phone number of the transcript clerk shall be provided to the requestor to address any questions concerning the request and the fee.

A request for a transcript does not obviate the WCJ's duty to timely prepare a summary of evidence following each hearing [see Section 1.45], except where the PWCJ permits, for good cause, a transcript to be prepared in lieu of a summary of evidence. Requests for transcripts made by the Appeals Board and/or appellate courts must comply with specified due dates unless an extension is granted. Requests for approval for complete or partial transcripts, ordered by a WCJ, shall be made in writing to the PWCJ and supported by reasons for such request. A commissioner or deputy commissioner acting for the Appeals Board may also order a transcript of proceedings. All parties shall be notified of a transcript request unless the requesting party has already done so.

Each transcript invoice must include the case number, case title, date of hearing, names of the WCJ and reporter, and the number of pages of the transcript and any copies. The deposit fee shall be collected in advance of preparing a transcript, based on an estimate of the number of pages to be provided. Fees collected in excess of the deposit shall be returned to the requesting party. Any fee balance remaining shall be paid prior to issuing the transcript. The transcript clerk shall be responsible for collecting the fee and preparing the invoice.

The following is a recommended priority system:

- a. Court of Appeal transcript requirements;
- b. Minutes of Hearing and Summary of Evidence;
- c. Appeals Board-required transcripts;
- d. requests by law enforcement authorities or district attorneys;
- e. party-requested transcripts;
- f. non-party requested transcripts other than in (d) above; and
- g. requests made before the record in a case is concluded, other than in (d) above.

## 1.140 ATTORNEY'S FEES, LIEN FOR

Issued by

**MERLE C. RABINE**

Chairman

Workers' Compensation Appeals Board

**RICHARD P. GANNON**

Administrative Director

Division of Workers' Compensation

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The Labor Code imposes an obligation on WCJs to determine what is a reasonable attorney's fee in cases submitted to them for decision.

The WCAB recognizes the valuable service rendered to applicants by competent attorneys. The WCAB recognizes, too, that reasonable fees must be sufficient to encourage such competent attorneys to participate in this field of practice. The WCAB has seen instances where fees appear to be unreasonably low or high. The WCAB has seen, too, instances where attorneys accept sizeable fees for services which are largely unnecessary because there is little dispute and little time, effort or skill involved.

The WCAB also recognizes that because of the lack of any increase in permanent disability benefits since April 1, 1972 in many cases a fee based solely on a percentage of permanent indemnity may be inadequate to compensate an attorney for his services.

To encourage attorneys to render a more balanced service and to increase opportunity for attorneys to be more adequately compensated (particularly in view of increased statutory temporary disability) the following is promulgated as a guideline for the use of the WCJs.

1. In cases of average complexity, the WCAB believes that a reasonable fee will be in the range of 9 percent to 12 percent of the permanent disability indemnity, death benefit or compromise and release awarded. In addition thereto, a fee equivalent to 9 percent to 12 percent of the temporary disability indemnity and

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out-of-pocket medical benefits to the extent that they are obtained or awarded as a result of applicant's attorney's services may be allowed.

2. In cases of above average complexity, a fee in excess of the normal upper limit of 12 percent applicable to all benefits described in Paragraph 1 hereof is warranted. Such cases may include, but are not limited to:
  - a. cases establishing a new or obscure theory of injury or law;
  - b. cases involving highly disputed factual issues, where detailed investigation, interrogation of prospective witnesses, and participation in lengthy hearings are involved;
  - c. cases involving highly disputed medical issues;
  - d. cases involving multiple defendants.
3. In cases of below average complexity, the fee applicable to all benefits described in Paragraph 1 hereof may range downward from the 9 percent – 12 percent range to as low as 1 percent. Such cases may include, but are not limited to:
  - a. the uncontested death cases where normal proof of dependency is all that is required of counsel;
  - b. the undisputed statutory 100% permanent disability case or other undisputed presumption cases;
  - c. other essentially undisputed cases.

A \$750 fee in a \$75,000 death benefit award provides ample compensation for the time and skill involvement of applicant's attorney where counsel is required to do no more than provide a marriage certificate and birth certificate. The WCAB emphatically rejects the theory that the applicant in such a case should pay a higher fee to provide an offset for the cases which counsel handles at a loss. There is no reason for the deserving widow, the blind, the paraplegic or other employee with a major disability to underwrite the case of the employee with a minor or questionable claim.

4. In considering the value of counsel's services, the criteria set forth in Bentley v. IAC, 11 CCC 204, and Rose, Klein & Marias v. WCAB, 39 CCC 771, are to be given full consideration. It should be realized that the time involvement of a

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recognized specialist, who has demonstrated his skill in the field, is to be valued much more highly on an hourly basis than the time involvement of a person less knowledgeable and skilled in the field of workers' compensation law.

5. If the record does not establish, to the satisfaction of the WCJ, a sufficient basis for determining the value of counsel's services, the WCJ should request counsel to supply the desired information. This need not be done orally on the record or by written communication, but the WCJ should be satisfied that there is an adequate basis for justifying the fee determination if it should be made an issue."

## 1.145 DEATH CASES - FINDINGS AND AWARD WHERE NO DEPENDENTS EXIST

Issued by

**MERLE C. RABINE**

Chairman

Workers' Compensation Appeals Board

**RICHARD P. GANNON**

Administrative Director

Division of Workers' Compensation

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Labor Code Section 4706.5, as amended, provides in part that where a deceased employee leaves no person entitled to a dependency death benefit, a death benefit equal to the total dependency death benefit that would be payable to a surviving spouse with no minor children is to be paid to the State of California, Department of Industrial Relations.

In all death cases in which the date of injury is on or after March 7, 1973, and there are no surviving dependents, the following paragraph shall be included as an order in the judge's decision:

"Award is made in favor of the State of California against (employer/carrier) of (\$25,000 for injuries during 1973) or (\$40,000 for injuries January 1, 1974 and after) payable at the statutory maximum temporary disability rate commencing (the day after the date of death) and continue weekly until the total amount thereof shall have been paid."

### ORDER

"It is ordered that all accrued payments together with the unpaid balance commuted as of the date of this award pursuant to Labor Code Section 5101(b) shall be paid forthwith to the Director of the Department of Industrial Relations."



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A copy of the Findings and Award is to be forwarded to the Director of the Department of Industrial Relations (Fiscal Officer) when issued.

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## 1.150 SUBSEQUENT INJURIES BENEFITS TRUST FUND

Issued by

**MERLE C. RABINE**

Chairman

Workers' Compensation Appeals Board

**RICHARD P. GANNON**

Administrative Director

Division of Workers' Compensation

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A specific finding with respect to potential credit under Labor Code Section 4753 should be made in each award against the Subsequent Injuries Benefits Trust Fund as follows:

"The amount awarded against the Subsequent Injuries Benefits Trust Fund shall be reduced to the extent of any monetary payments received by the employee, for or on account of preexisting disability or impairment, as provided by Labor Code Section 4753, with jurisdiction reserved."