

ADMINISTRATIVE BULLETIN #13.2

To: All Parties
From: Omar Hernández, Senior Judge
Re: Dispute Resolution Process
Date: April 23, 2025

I have been asked by the members of the Massachusetts workers' compensation bar to further clarify the Court's expectations with respect to our processes and procedures outlined in Bulletin 13.1. The intent of Bulletins 13 and 13.1, and once again the Court's expectations, are listed below.

MOTIONS

All motions shall be in the form of a pleading and must be served on the appropriate party by email or regular mail. The respondent shall have 10 business days from receipt of the motion to file a response, which must be in the form of a pleading. Motions will be decided on the papers unless the parties specifically request in a timely manner to be heard at a virtual motion conference.

If a response to the motion is not filed within 10 business days, the Judge assigned to the case shall issue a ruling.

Intent of this paragraph: More often than not, a motion is filed, and the respondent fails to file any response. To maintain the integrity of the court file and to create a record for potential appellate review, all motions and responses to motions and court rulings must be in the form of pleading. This is consistent with practice before other workers' compensation courts and the Massachusetts trial courts. Email responses to motions are not acceptable.

DISCOVERY

All requests for production of documents shall be in the form of a pleading and in conformity with our statute and regulations. The respondent shall have **20** calendar days from receipt of the motion to file a response, which must be in the form of a pleading. The respondent shall clearly respond to each of the moving party's requests and raise any defenses with particularity. An email response is not acceptable. If the respondent fails to respond, or if there is a disagreement over the respondent's responses, the moving party may file a motion to compel production of documents. Any failure to respond to a discovery request must be reported to the Judge assigned to the case (or Senior Judge) in a timely manner so that remedial action can be taken.

Intent of this paragraph: To maintain the integrity of the court file and to create a record for potential appellate review, all discovery requests and responses to said requests must be in the form of pleading. This is consistent with practice before other workers' compensation courts and the Massachusetts trial courts. Email responses are unacceptable as the court file must accurately reflect all motion responses and court rulings. The court should not be required to repeatedly conduct an email query to determine whether the respondent has replied and/or complied with the discovery request.

10A CONFERENCES

All motions must be marked up, heard and ruled on prior to the Section 10A Conference. There will be no exceptions to this requirement absent exigent circumstances.

Counsel shall electronically file an unlocked DIA Form 140 no later than two business days prior to the Section 10A conference. The Form 140 must be complete in all aspects and signed by counsel. The same is true for medical records, non-medical exhibits and hypothetical questions – filed two business days prior to the Conference. I have instructed my staff to continue the Conference if the above is not accomplished absent a showing of exigent circumstances. Non-compliance with the above must be reported to the Judge assigned to the case (or Senior Judge) in a timely manner so that remedial action can be taken.

Conference packets shall have an annotated index making clear which medical records and/or reports support the parties' respective claims and defenses. For example:

Dr. Sullivan - being offered to support insurer's 1(7A) defense

Dr. Brown - being offered to refute the insurer's 1(7A) defense

Intent of this paragraph: With respect to the annotated index exhibits, a brief statement of the exhibit's relevance and pagination range is sufficient. The court often receives hundreds of pages of medical documents at Conference. To better facilitate the review of these records, the court requests that the parties annotate the specific records that reflect their claims/defenses. To comply with the longstanding requirements of Conference submissions, all documents must have functioning bookmark links, pagination of all pages and be in optical character recognition (OCR) format.

PRE-HEARING CONFERENCE

****** It is expected that by the time the Pre-Hearing Conference is scheduled, motions pertaining to additional claims, defenses, parties, the 11A report, etc. will have been filed, marked up and ruled on. There will be no exceptions to this requirement.

Bulletin 13 required counsel to request a Pre-Hearing Conference upon receipt of the Section 11A report. This was so that counsel had a clear signpost to remind them to start the pre-hearing process. Moving forward, do not request a date for a Pre-Hearing Conference until you are ready to fully complete the pre-hearing memo. In other words, counsel must be prepared to identify all claims, defenses, and stipulations. Moreover, counsel must be prepared to specifically name all witnesses (and summarize their anticipated testimony). There will be no exceptions to this requirement.

Intent of this paragraph: Counsel shall be prepared to discuss all elements of the case with the judge. The Pre-Hearing conference is not simply a pro forma event, but an opportunity for the parties to narrow the issues and explore the possibility of resolution.

PRE-HEARING MEMORANDUM

The Pre-Hearing Memorandum must be fully completed, signed by counsel and filed with the Judge five business days prior to the Pre-Hearing Conference. There will be no exceptions to this requirement (absent a showing of exigent circumstances) and all judicial support staff have been directed to cancel the Pre-Hearing Conference if this timeline is not followed. The Pre-Hearing Conference must take place no later than ten business days prior to the Hearing. Again, there will be no exceptions to this requirement, absent a showing of exigent circumstances. I have directed the judicial support staff to convert the Hearing into a mandatory Pre-Hearing Conference if counsel fails to abide by the aforementioned timeline. That said, if the Pre-Hearing memorandum is not complete, the mandatory Pre-Hearing Conference may be converted to a status conference at the Judge's discretion.

Intent of this paragraph: Pre-Hearing Memorandum is not an exercise in formality. Counsel shall complete this form in great detail. Simply writing "Reserved" is not acceptable. The parties are directed to contact the judge's office if opposing counsel fails to complete the Pre-Hearing Memorandum within the aforementioned timelines. Unnecessary delays or obstruction of the litigation process will not be tolerated.

SECTION 11 HEARING

Counsel shall file their respective Hearing forms and additional medical evidence no later than five business days prior to the Hearing. If this is not done, all judicial support staff have been instructed to place the case back into the assigned Judge's Hearing queue. Additional medical evidence shall have an annotated index. The index shall list by page number every medical record offered and specifically identify which medical reports/record support the parties' respective claims and defenses.

Judges have discretion in the appropriate circumstances to decide whether witness testimony shall be in person or by deposition.

LUMP SUM AGREEMENTS

Counsel shall file a completed and signed lump sum agreement with the Administrative Judge's office two business days prior to the lump sum settlement conference. The settlement documents must be legible and cannot be photographs of the actual documents. If counsel does not have an employer consent form (and a lien release, if necessary) and a completed OEVR form, they must request a new date from the appropriate judicial support staff. Counsel is responsible for double-checking the settlement agreement to make sure that it is in proper form, i.e. names and settlement amount are correct, the conditional lien releases are updated and that the net to the employee is correct once the appropriate deductions are made.

Intent of this paragraph: The Court has repeatedly instructed the parties to carefully review lump sum agreements for completeness before confirming a lump sum conference date. The parties need to be mindful of the detrimental impact that repeated continuances have upon the Court's docket as well as other litigants waiting for their respective court dates.

MEDIATION PROCESS

Mediations shall be scheduled in four-hour increments, unless the parties request otherwise. Mediations may exceed the four-hour increment at the Judge's discretion. A follow-up mediation may be scheduled at the Judge's discretion.

Mediation memoranda must be filed with the Administrative Judge's office two business days prior to the mediation. It is expected that by the time of the mediation a demand has been made, and authority has been secured. The adjuster must be present physically or virtually for the entirety of the mediation. Phone notice or availability is not acceptable.

The parties are responsible for providing a report to the assigned Judge about whether the case has been resolved.

Intent of this paragraph: The parties should not schedule a mediation unless both parties are willing to negotiate in good faith. Without exception, the parties' respective clients must attend the mediation so that there is no possibility that one side or the other misunderstands the strengths and weaknesses of their respective claims and defenses.

INTERPRETERS

If an interpreter is needed for any proceeding, he or she must be from an independent agency so as to avoid any appearance of bias.

I have once again instructed all Administrative Judges and their support staff that the rules set forth in Bulletin 10 and Bulletin 11 (as well as M.G.L. Ch. 152 Title 452 of the Code of Massachusetts Regulations) must be followed without exceptions. If you have any questions or concerns, please do not hesitate to contact this office.

DEADLINES

This note explains how to compute time periods under Massachusetts Rule of Civil Procedure 6 and state law, identify triggering events, calculate forward-looking and backward-looking deadlines.

Forward-Counting Deadlines

Forward-counting deadlines are measured by counting the number of days after a triggering event. For example, a respondent shall have 10 business days from receipt of a motion to file a response.

Backward-Counting Deadlines

Backward-counting deadlines are measured by counting the number of days **before** a triggering event.

For example:

A Hearing is scheduled for Friday March 14. The parties compute the deadline by counting backwards 5 business days beginning on Thursday, March 13, which leads to Friday March 7. The parties must file their documents with the Court by

Friday March 7. If the preceding Friday is a legal holiday, the motion should be filed on the preceding Thursday (and so on, if Thursday is a legal holiday).

***For purposes of calculating business days, please note that the business day ends at 5:00 p.m. Any state and federal holiday shall not be counted as a business day.