

# COMMONWEALTH OF PENNSYLVANIA



## BOARD OF CLAIMS

Board of Claims Act  
Board of Claims Rules of Procedure

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## TABLE OF CONTENTS

	Page
Introduction	1
Board of Claims Act	2
Board of Claims Rules of Procedure	12

## INTRODUCTION

The Board of Claims was created by the Legislature in 1937 to decide claims arising from contracts with the Commonwealth. The Board's jurisdiction is set forth in the Board of Claims' Act, [72 P.S. §§ 4651-1 to 10]. All matters before the Board are governed by the Pennsylvania Rules of Civil Procedure and by the Rules of Procedure adopted by the Board [61 PA. Code §§ 899-101 to 801].

Counsel representing parties before the Board should be aware that matters involving procurement contracts may also be governed by the Procurement Code [62 Pa.C.S. § 1712].

# BOARD OF CLAIMS ACT

72 P.S. §§ 4651-1 to 10

## § 4651-1. Board of Claims; creation

There is hereby created an independent administrative board known as the Board of Claims, the duty of which shall be to arbitrate claims against the Commonwealth arising from contracts entered into by the Commonwealth, and to adjust and settle certain other claims against the Commonwealth formerly handled by the Auditor General and State Treasurer acting as the Board of Claims. Any reference in this or any other act to this board shall be deemed a reference to the Board of Claims. Administrative services for the Board of Claims shall be provided by the Department of the Auditor General. Such board shall consist of three members appointed by the Governor by and with the advice and consent of a majority of the elected members of the Senate, one of whom shall be learned in the law and shall be chairman of the board, another of whom shall be a registered civil engineer. The third member of the board shall be a citizen and resident of the Commonwealth. The lawyer member shall hold the title of chief administrative judge, one member shall have the title of engineer member and one member shall have the title of citizen member. Two members of the board shall constitute a quorum. The members shall be appointed for terms of four, six and eight years, and shall serve until their respective successors shall be duly appointed and qualified. Their successors shall each be appointed for a term of eight years. In the event any member

shall die or resign during his term of office the Governor shall appoint a successor who shall hold office for such unexpired term. Each member of the board shall receive an annual compensation as may be fixed by the Executive Board and each member of the board and the executive secretary of the board shall also be entitled to all necessary traveling and other expenses incurred by him in the discharge of his official duties. Each member of the board shall be required to devote full-time to the duties imposed by this act and shall perform no duties inconsistent with their duties and responsibilities as board members.

The Board of Claims may, in its discretion appoint three hearing panels consisting of two individuals each, one of whom shall be a registered engineer and the other of whom shall be learned in the law and shall be the chairman. These individuals shall receive actual traveling expenses and per diem compensation at the rate of one hundred fifty dollars (\$150) per day for the time actually devoted to the business of the board, but no panel member shall be paid more than ten thousand dollars (\$10,000) per diem compensation in any calendar year. The hearing panels shall be denominated the Eastern, Middle and Western District Hearing Panel, respectively, and shall have jurisdiction in areas of the Commonwealth coterminous with the three judicial districts of the United States District Courts in the Commonwealth established by section 118 of the Judicial Code and Judiciary, act of June 25, 1948, as amended June 2, 1970 (Public Law 91-272), 28 U.S.C. section 118.

1937, May 20, P.L. 728, No. 193, § 1. Amended 1939, June 26, P.L. 1081, § 1; 1951 July 19, P.L. 1079, § 1; 1961, Sept. 29, P.L. 1738, § 1; 1978, Oct. 5, P.L. 1104, No. 260, § 2, imd. effective; 1980, Dec. 5, P.L. 1110, No. 192, § 1, imd. effective; 1982, Dec. 15, P.L. 1307, No. 294, § 1, imd. effective; 1984, Dec. 12, P.L. 966, No. 189, § 1, imd. effective. Reenacted and amended 1988, Dec. 5, P.L. 1118, No. 143, § 1, imd.

effective.

### **§ 4651-1.1. Hearing panels; per diem compensation**

Notwithstanding section 1,<sup>1</sup> beginning with the effective date of this section, the compensation for members of the hearing panels established in section 1 shall be two hundred dollars (\$200) per day for the time actually devoted to the business of the board, but no panel member shall be paid more than fifteen thousand dollars (\$15,000) per diem compensation in any calendar year.

1937, May 20, P.L. 728, No. 193, § 1.1, imd. effective, added 1988, Dec. 5, P.L. 1118, No. 143, § 2, imd. effective.

### **§ 4651-2. [Repealed. 1961, Sept. 29, P.L. 1738, § 2]**

### **§ 4651-2.1. Executive secretary; employees; expenses; office; notes of testimony, charges**

The board shall appoint an executive secretary and shall have the power to and may, at its pleasure, appoint such employees including lawyers, engineers and stenographers as are needed in the proper exercise of its functions. The executive secretary and each employee of the board for the purposes of the Part XXV of Title 71 of the Pennsylvania Consolidated Statutes (relating to retirement for State

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<sup>1</sup> 72 P.S. § 4651-1.

employees and officers)<sup>2</sup> shall be considered a State employee. Any employee of the board shall receive all necessary traveling and other expenses incurred in the discharge of his official duties elsewhere than in Harrisburg. The board shall maintain its office in Harrisburg. No charge shall be made against the Commonwealth for copies of notes of testimony or other papers furnished to the Commonwealth. The claimant or any other party may purchase a copy of testimony directly from the official stenographer. The board shall employ a reporter, whose duty it shall be to catalogue and have published all opinions of the court.

1937, May 20, P.L. 728, No. 193, § 2.1, added 1961, Sept. 29, P.L. 1738, § 3. Amended 1978, Oct. 5, P.L. 1104, No. 260, § 2, imd. effective.

### **§ 4651-3. Seal**

The board shall adopt an official seal, which shall authenticate its proceedings.

1937, May 20, P.L. 728, No. 193, § 3.

### **§ 4651-4. Powers of board**

The Board of Claims shall have exclusive jurisdiction to hear and determine all claims against the Commonwealth arising from contracts hereafter entered into with the Commonwealth, where the amount in controversy amounts to \$300.00 or more. The board shall also have exclusive jurisdiction to hear and determine those claims authorized by

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<sup>2</sup> 71 Pa.C.S.A. § 5101 et seq.

the act of March 30, 1811 (P.L. 145, Ch. XCIX), entitled “An act to amend and consolidate the several acts relating to the settlement of the public accounts and the payment of the public monies, and for other purposes,” and continued by Article X, act of April 9, 1929 (P.L. 343, No. 176), known as “The Fiscal Code,”<sup>3</sup> wherein the Auditor General and State Treasurer were granted the power to adjust and settle certain claims against the Commonwealth.

1937, May 20, P.L. 728, No. 193, § 4. Amended 1961, Sept. 29, P.L. 1738, § 4; 1978, Oct. 5, P.L. 1104, No. 260, § 3, imd. effective.

### **§ 4651-5. Place of hearings**

The board shall hold hearings at such place and time as the board shall determine within the Commonwealth of Pennsylvania. When cases are at issue, as is hereinafter provided, the secretary of the board shall list such cases for hearing at the earliest available date, and shall cause to be served upon the claimants in such cases thirty days written notice, setting forth the time and place of such hearing.

1937, May 20, P.L. 728, No. 193, § 5. Amended 1951, July 19, P.L. 1079, § 2.

### **§ 4651-6. Procedure**

The board shall have no power and exercise no jurisdiction over a claim asserted against the Commonwealth unless the claim shall have been filed within six months after it accrued. The claimants shall advise the department involved, in writing, of such claim, specifying the details

thereof, and shall, within the same period, file with the secretary of the board a concise and specific written statement of this claim, signed and verified by the claimant before an officer authorized to administer oaths.

The claimant at the time of filing such statement shall file therewith four copies of said statement, and the secretary of the board shall forthwith deliver one copy to the secretary of the department involved and one copy to the Attorney General.

At the time of filing his statement of claim, the claimant shall pay to the State Treasury, through the secretary of the board, the sum of \$50.00 as a filing fee. All fees so received shall be credited to the General Fund.

Within thirty days after such statement shall be filed with the secretary of the board, and served upon the secretary of the department involved, and the Attorney General, the Commonwealth shall file with the secretary of the board an answer in writing to the averments of the claimant’s statement or other pleading, which shall be signed and verified by the secretary of the department involved, and shall, at the same time, file two copies of the same, one of which shall be served by the secretary on the Attorney General, and the other forwarded to the claimant.

When the pleadings shall be complete and the case shall be deemed to be at issue, and the secretary of the board shall list such case for hearing before the board at the earliest available date, but not earlier than thirty (30) days after the filing of such answer. When, in the opinion of the secretary of the board, a decision by the board is unlikely to be made within sixty (60) days from the date of the hearing, as provided in

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<sup>3</sup> 72 P.S. § 1001 et seq.

section 8,<sup>4</sup> the secretary of the board may refer the case, together with all pleadings, to one of the three hearing panels established pursuant to section 1,<sup>5</sup> within its jurisdiction. The hearing panel shall list the case for hearing at the earliest available date after receipt of the case from the secretary of the board. The hearing panel shall be subject to all the requirements of this act as to procedure, hearings and opinions, as the board. The hearing panel shall forward its recommendation or recommendations to the board, within the time established pursuant to section 8.

All cases shall, as far as practicable, be listed for hearing in the order of the date of the filing of the respective claims, and the secretary shall cause to be served upon all claimants by registered mail thirty (30) days' written notice, which notice shall set forth the time and place of such hearing.

The board shall have power to order the interpleader or impleader of other parties whenever necessary for a complete determination of any claim or counterclaim.

1937, May 20, P.L. 728, No. 193, § 6. Amended 1939, June 26, P.L. 1081, § 2; 1961, Sept. 29, P.L. 1738, § 5; 1978, Oct. 5, P.L. 1104, No. 260, § 4, imd. effective.

***Repealed in Part***

*Section 6(c) of Act 1998, May 15, P.L. 358, No. 57, which enacted the Commonwealth Procurement Code, repealed this section only insofar as it is inconsistent with the procedure provided for in 62 Pa.C.S. § 1712 regarding the resolution of a contract controversy by the head of a purchasing agency.*

**§ 4651-7. Subpoenas**

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<sup>4</sup>72 P.S. § 4651-8.

<sup>5</sup>72 P.S. § 4651-1.

The secretary of the board shall have the power to issue subpoenas at the request of either the Commonwealth or the claimant, and to require the attendance of witnesses and the production of books, documents, and papers pertinent to any cause before the board.

All subpoenas so issued shall be in such form as shall be prescribed by the board, and shall be signed by the secretary, or such person as may be designated by the secretary, and may be served by any adult in any part of the Commonwealth.

Any person who refuses to obey such subpoena, or who refuses to be sworn to testify, or who fails to produce any papers, books or documents touching upon the case in which he is subpoenaed, or who is guilty of any contempt after summoned to appear, may be punished for contempt of court. Witness fees and expenses shall be divided between the Commonwealth and the claimant in such proportion as the board may direct.

1937, May 20, P.L. 728, No. 193, § 7. Affected 1978, April 28, P.L. 202, No. 53, § 2(a)[1183], effective June 27, 1978.

**§ 4651-8 Hearings; opinions; awards; costs**

All hearings before the board or hearing panel shall be public. All matters before the board or hearing panel shall be governed by all of the rules of Pennsylvania Civil Procedure not inconsistent with this act. After consideration of the pleadings filed with it and the testimony given at the hearing before it, the board or hearing panel, shall either dismiss the claim of the claimant or make an award in favor of the claimant of such sum as it shall determine the claimant is legally and rightfully entitled to receive, which decision shall

be made by the board within a reasonable time from the date of the hearing. If the hearing is before a panel, such panel shall make its recommendation or recommendations to the board within thirty (30) days after the hearing, and the board shall enter its said action in a book to be kept by it for that purpose. It shall file a written opinion, setting forth the reasons for its action. The board in dismissing any claim or in making any award shall dispose of all costs of the proceedings by providing for the payment thereof by the Commonwealth or by the claimant, or by providing that such costs shall be shared by the said parties in such proportions as the board in its discretion shall direct.

1937, May 20, P.L. 728, No. 193, § 8. Amended 1939, June 26, P.L. 1081, § 3; 1961, Sept. 29, P.L. 1738, § 5. Affected 1978, April 28, P.L. 202, No. 53, § 2(a)[1183], effective June 27, 1978. Amended 1978, Oct. 5, P.L. 1104, No. 260, § 5, imd. effective.

### **§ 4651-9 Payment of awards; costs**

Within thirty (30) days after any final action is taken by the board, the secretary of the board shall certify to the secretary of the department involved, under the seal of the board, a statement of such action including the amount of costs assessed against the Commonwealth or the claimant, or both, and the persons entitled thereto. The amount of any award shall be paid by said department out of any funds appropriated against the contract out of which the claim upon which the award is based was originally charged, to the claimant, and any costs assessed against the Commonwealth shall be paid by said department out of said fund or appropriation to such persons as may be entitled thereto as evidenced by said certificate of the secretary of the board, in the manner now provided by law. In the event that costs are

assessed against the claimant, the amount of such costs shall be deducted from whatever balance may be due the claimant upon the contract out of which the claim arose and shall be paid by the department to the persons entitled thereto as evidenced by the said certificate.

1937, May 20, P.L. 728, No. 193, § 9. Amended 1939, June 26, P.L. 1081, § 4.

### **§ 4651-10. Rules and regulations**

The Board shall establish such rules for its government, and regulations governing practice before it as it shall deem proper and necessary. All papers herein filed shall be matters of public record, and the public, subject to the reasonable requirements of the board, shall at all times have access thereto and shall be permitted to examine the same.

1937, May 20, P.L. 728, No. 193, § 10.

# RULES OF PROCEDURE

[61 PA. CODE, CHAPTER 899]

Sub Chap.	Rule
A. PRELIMINARY PROVISIONS	101
B. PLEADINGS	201
C. MOTIONS	301
D. DISCOVERY	401
E. PRE-HEARING	501
F. HEARING	601
G. SETTLEMENT	701
H. POST-HEARING MOTIONS	801

## Subchapter A. PRELIMINARY PROVISIONS

### Rule 101. Title and citation of rules.

These rules shall be known as the Board of Claims Rules of Procedure and may be cited as “BOC R.P.”.

### Rule 102. Scope of rules.

(a) These rules and the Pennsylvania Rules of Civil Procedure (“Pa. R.C.P.”) govern all matters before the Board. If a discrepancy between these rules and the Pa. R.C.P. arises, these rules apply.

(b) When circumstances arise in individual cases when the application of any Board rule is impractical or inequitable, the Board, on its own motion or upon the request of a party and after notice to the parties, may prescribe other procedures as may be required by the circumstances in the particular case.

### Rule 103. Definitions.

The Board adopts by reference the definitions at Rule 76 of the Pa. R.C.P. with the following exceptions:

(1) Board - - The Board of Claims of the Commonwealth.

(2) Rule - - A rule adopted by the Board.



(3) Claim - - The statement of facts describing the furnishing of goods or services, or both, to the Commonwealth, actions or inactions by Commonwealth employees which give rise to a demand for payment, and refusal by the Commonwealth to make payment.

**Rule 104. Principles of interpretation.**

The principles of interpretation and rules of construction embodied in Rules 101-153 of Pa. R.C.P. apply to these rules.

**Rule 105. Jurisdiction of the Board.**

The Board shall have jurisdiction to hear and determine:

(a) claims against the Commonwealth arising from contracts entered into with the Commonwealth when the amount in controversy is \$300.00 or more,

(b) claims against the Commonwealth for actions or inactions by its employees giving rise to implied contracts, and

(c) claims against the Commonwealth for goods or services, or both, furnished to the Commonwealth but not within the terms of valid, existing contracts.

**Rule 106. Representation by counsel.**

(a) A person may be represented before the Board by an attorney who is admitted to practice and is in good standing before the Supreme Court of Pennsylvania.

(b) Parties represented by counsel not admitted to practice in this Commonwealth shall associate counsel qualified under subsection (a).

**Rule 107. Entry of appearance.**

When counsel for plaintiff files a claim and counsel for defendant files a response, their appearances are deemed entered before the Board. Thereafter, a counsel's appearance for a party may not be withdrawn without leave of the Chief Administrative Judge, unless another lawyer has previously entered or simultaneously enters an appearance for the party.

**Rule 108. Service of legal papers other than the claim.**

Except for the claim and any amended claim, pleadings and other documents filed with the Board shall be served upon all parties to the action. A certificate of service shall be attached to all filings with the Board.

**Rule 109. Copy fees.**

The fee for copying shall be \$0.50 per page for opinions, pleadings, briefs and exhibits, and \$2.00 per page

for docket sheets. The fee for certifying any document shall be \$5.00.

## **Subchapter B. PLEADINGS**

### **Rule 201. Statement of Claim.**

(a) A plaintiff shall prepare a concise and specific written statement of the claim, signed and verified by the plaintiff. The caption of the claim shall contain the full names of all parties to the claim. Each claim shall contain the name, address, telephone number and Supreme Court Identification Number of counsel for the plaintiff.

(b) The plaintiff shall file an original and three copies of the claim with the Board, accompanied by a \$50.00 check made payable to the Commonwealth of Pennsylvania.

(c) Service of the claim and any amended claim will be made by the Board. The Board will serve one copy of the claim and any amended claim to the defendant involved, and one copy to the Attorney General.

### **Rule 202. Copies of written contracts.**

When the contract on which the claim is based is in writing, in whole, or in part, the plaintiff shall attach copies of the contract or relevant portions of the contract as an exhibit to all copies of the claim, unless;

(1) The plaintiff avers in the claim that all copies of the contract are in the possession of the defendant, or

(2) The Chief Administrative Judge directs that the contract or relevant portions not be attached.

### **Rule 203. Oral contracts.**

When the contract on which the claim is based is oral, in whole or in part, the plaintiff shall plead the terms and details of the contract with particularity, and shall identify all agents who are alleged to have contracted on behalf of the defendant.

### **Rule 204. Response to claim.**

Within 30 days of service of the claim, the defendant shall file an original and one copy of its answer or other response with the Board. The answer, or other response, shall contain the name, address, telephone number and Supreme Court Identification Number of counsel for the defendant. The defendant or its counsel shall sign and verify the answer or other response.

### **Rule 205. Preliminary Objections.**

(a) Preliminary Objections shall be filed with the Board and served upon the adverse parties or their counsel. Preliminary objections shall be accompanied by a supporting brief. Failure to file a brief may result in automatic dismissal

of the preliminary objections.

(b) Within 30 days after service of the preliminary objections, the adverse parties or their counsel shall file a response and a responsive brief with the Board and serve it upon the opposing parties or counsel.

**Rule 206. Amendment of pleadings.**

(a) Form of amended pleading. Except an amendment allowed in the course of a hearing, an amended pleading, whether filed under Pa. R.C.P., by the agreement of the parties or by leave of the Board, shall be entirely restated and comply with the form of the original pleading.

(b) Allowance by the Board.

(1) If the amended pleading requires leave of the Board before a hearing, the party seeking the amendment shall give 5 days notice to all parties of the intended application, enclosing a copy of the proposed amended pleading. The Board may allow the amendment or order the issue for argument.

(2) If the request for an amendment to a pleading is made at the hearing, the Board will dispose of the request at its discretion. If a continuance is granted by the Board, the party in whose favor the amendment is allowed shall file the amended pleading within 20 days after allowance by the Board, unless otherwise ordered.

**Subchapter C. MOTIONS**

**Rule 301. Motions and petitions.**

(a) Each motion or petition shall be deemed contested unless certified to the contrary by the moving party. Except as provided in subsection (c) of this Rule and Rule 402(b), a brief shall accompany each motion or petition. A motion or petition not accompanied by a brief may be dismissed by the Board.

(b) Each answering party shall file its response with the Board within 30 days of the date of service of the moving party's motion or petition. A response shall be accompanied by a supporting brief.

(c) If the moving party certifies that the motion or petition is uncontested, no brief is required.

**Rule 302. Form of briefs.**

A brief shall contain a statement of the pertinent facts of the case, the questions involved and the argument. The statement of questions involved shall be drawn so that the Board may quickly determine all the legal questions requiring determination. The argument shall be divided into as many parts as there are questions involved.

**Subchapter D. DISCOVERY**

**Rule 401. Discovery.**

(a) Except when required under paragraph (c) or (d), discovery material shall not be filed with the Board. The party serving the discovery material or taking the deposition shall retain the original and be custodian of it.

(b) If a part of discovery material is used as evidence in connection with a motion, the relevant part shall be set forth, verbatim, in the motion or response. If discovery material is used as evidence at the hearing, the party offering it shall read it into the record or, if directed to do so by the Board, offer it as an exhibit.

(c) The Board will resolve a dispute concerning the accuracy of a quotation of discovery material used as provided in paragraph (b) and may require production of the original paper or transcript.

(d) The Board, on its own motion, on the motion of a party or on an application by a nonparty, may require the filing of original discovery material. The parties may provide for the filing by stipulation.

(e) A party serving a request for discovery including depositions by oral examination, and a party filing written responses thereto shall file with the Board and serve upon all other parties or their counsel a "Notice of Service" substantially in the form prescribed by paragraph (f). A party which files a motion or petition pursuant to Rules 301 or 402 in response to a discovery request or a discovery response shall not be required to file and serve a Notice of Service in addition thereto.

(f) The Notice of Service required by paragraph (e) shall be substantially in the following form:

(CAPTION)

Notice of Service

You are hereby notified that on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, (identify discovery request or response) was served upon the following parties or their counsel via United States Mail, first class, postage prepaid, and addressed as follows:

(names and addresses to whom discovery request or response were directed)\_\_\_\_\_

Name  
Supreme Court I.D. No.  
Address  
Phone  
Attorneys for

**Rule 402. Discovery motions.**

(a) A discovery motion shall be prepared in accordance with Rule 301.

(b) A moving party filing a motion to compel answers to interrogatories or production of documents need not file a brief with the motion, if the motion avers only that a response or objection has not been timely served. The Pa. R.C.P. which are relied upon shall be cited in the motion. The Board may grant or deny the motion without waiting for a response.

**Rule 403. Limitation on discovery.**

(a) During the pendency of an action, a party may not serve on another party more than sixty (60) interrogatories, including all subparts and/or requests for admission.

(b) If the party files a motion showing good cause, the Chief Administrative Judge may allow a party to exceed the limit set forth in (a). The motion shall be prepared in accordance with Rule 301.

**Subchapter E. PRE-HEARING**

**Rule 501. Pre-hearing procedure.**

(a) Status conference.

(1) At the discretion of the Chief Administrative Judge, a status conference may be held within 120 days after the filing of the claim. The conference may be by telephone or in person. Matters to be considered at the conference include:

(i) Jurisdictional defects.

(ii) Prospects of amicable settlement.

(iii) Establishing a schedule for remaining pre-hearing proceedings including discovery deadlines and pre-hearing memoranda filings.

(2) A scheduling order will be issued as soon as practical after the conference.

(b) Pre-hearing memoranda. Pre-hearing memoranda shall be filed and served as directed by the Chief Administrative Judge in the scheduling order. Unless the scheduling order directs otherwise, the pre-hearing memorandum of each party shall include:

(1) A statement of the issues in the case.

(2) The identification and numbering of exhibits.

(3) A stipulation of facts not in dispute to be prepared jointly by the parties, which may include qualification of expert witnesses and admission of exhibits.

(4) Identification of witnesses who will appear at the hearing and a short summary of the testimony expected from each witness.

(5) Copies of expert witnesses' final reports.

(c) Pre-hearing conferences and settlement conferences.

(1) The Chief Administrative Judge will determine the necessity for the scheduling of, and the procedures for, a pre-hearing or settlement conference. Notice of a conference will be given to counsel or unrepresented parties.

(2) The Chief Administrative Judge may dismiss the case, or enter judgment against a party for failing to participate in a pre-hearing conference or failing to provide the required memorandum.

(3) The Board may refuse to allow a party to call witnesses or offer evidence not disclosed at the pre-hearing conference or in the pre-hearing memorandum.

## **Subchapter F. HEARINGS**

### **Rule 601. Place of hearings.**

Unless the Board directs another location, proceedings before the Board and its panels will be held in Harrisburg.

## **Subchapter G. SETTLEMENT**

### **Rule 701. Notice of Proposed Settlement.**

If during the pendency of an action before the Board the parties agree upon a proposed settlement, the parties shall immediately notify the Board.

**Rule 702. Termination of Case By Settlement.**

Within ten (10) days after the conclusion of the settlement, the parties shall notify the Board in writing. The Board will mark its record of the case “settled”.

**Subchapter H. POST-HEARING MOTIONS**

**Rule 801. No Post-Hearing Motions.**

After hearing and the issuance by the Board of its findings of fact, conclusions of law, opinion and order, post-hearing motions may not be filed. The findings of fact, conclusions of law, opinion and order are a final appealable order.