

## **WORKERS' COMPENSATION JUDGES' MEDIATION PROCEDURES**

**NAME:** Alfred L. Benedict

**OFFICE:** New Castle

**DISTRICT:** Western

**1. Please list the offices at which you will mediate a claim.**

New Castle.

**2. Are you willing to mediate claims that are assigned to you for hearing and decision?**

Yes.

**3. Are you willing to mediate claims in which one or both parties are not represented by counsel?**

If need be, yes.

**4. Do you require the parties to execute an agreement to mediate? If so, please describe briefly the matters addressed by the agreement.**

No written agreement is necessary. However, all of the parties must agree that a conciliation, or mediation, would be beneficial.

**5. How much time do you typically allow for a mediation session?**

Usually an hour to an hour and a half. If a settlement can be effectuated, it will normally be completed within that timeframe.

**6. Do you require the parties to submit a pre-mediation memorandum? If so:**

No pre-mediation memorandum is necessary.

**7. Do you conduct a pre-mediation conference? If so, please describe what takes place at that conference.**

No.

**8. Do you require all participants (claimant, adjustor/employer representative, counsel) to attend the mediation personally? Under what circumstances do you permit a participant to attend by telephone?**

Only the attorneys are required to attend, and preferably the attorneys only, with clients available by telephone. Telephone participation is certainly acceptable, when appropriate.

**9. Once you receive a mediation request, what is the usual amount of time elapsed until the mediation takes place?**

Usually within one or two weeks.

**10. Describe generally how you conduct a mediation session.**

- **Describe each step of the process.**

The first order of business is to ascertain if the matter is even resolvable, and if so, how far apart the parties are in terms of their respective positions. This is followed normally by the evaluative approach (discussing the respective strengths and weaknesses of everyone's position, as well as suggesting ranges of settlement value), and when appropriate, advising the respective parties of the likelihood of a certain result should the matter proceed to an adjudication on the merits.

- **Indicate whether you use a facilitative (i.e., helping the parties to communicate and generate their own solutions), evaluative (i.e., discussing the strengths and weaknesses of each party's case and/or offering an opinion as to the settlement value), or mixed approach.**

In my experience, when permission has been granted by all the parties to proceed in an ex parte manner, this approach seems to be most beneficial in terms of the actual effectuation of resolutions.

**11. Are you willing to conduct more than one session per claim?**

If appropriate and worthwhile, yes.

**12. Is there anything else the parties should know or do in advance of the mediation?**

All the parties to conciliations should enter into the same with realistic expectations and with the understanding that there must almost always be movement by both (or all) parties toward some middle ground, so to speak.