

WORKERS' COMPENSATION OFFICE OF ADJUDICATION

Judges' Office
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May 20, 2004

RE: Claimant.v.Employer
Bureau Claim No(s): _____
Injury Date(s): _____

Dear Counsel:

This will confirm the scheduling of a mediation session for _____ a.m./p.m. on _____, 2004. The mediation will take place at _____

The following rules apply to this mediation. Participation in the mediation is deemed to be acceptance of these rules by the parties and their counsel. Counsel are responsible for explaining these rules to the parties.

1. The provisions of 42 PA. C.S.A. Section 5949 (relating to confidential mediation communications and documents) apply to all participants. Accordingly, the process by which I assist the parties in amicably resolving their disputes constitutes "mediation", and I am a "mediator", within the meaning of 42 Pa.C.S.A. Section 5949(c). A copy of this provision is attached to this letter. In the event the parties require a higher degree of confidentiality than is afforded by the statutory privilege, counsel should contact me to discuss a pre-mediation agreement.
2. If petitions relating to this claim are currently pending before me, I will proceed to hear and decide those petitions if the claim is not resolved amicably. The parties waive any motion for my recusal based on any event or disclosure related to the mediation process.
3. I may, at my discretion, meet with any of the parties and/or any of their counsel, outside of the presence of any other parties or their counsel. Such meetings shall not constitute ex parte communications for any purpose, including but not limited to matters arising pursuant to Section 1404 (a)(3) of the Pennsylvania Workers' Compensation Act. I will not disclose information received in such meetings without first obtaining the consent of the party providing that information.
4. The parties must appear in person. If a party's personal attendance is not practical due to

health concerns or travel distance, that party must be immediately available by telephone. All counsel must appear in person. Employer or insurer representatives must possess a level of settlement authority appropriate to the circumstances of the claim.

5. Prior to the mediation, the parties must exchange all discoverable documents and disclose the names of all witnesses, as required by the Special Rules.
6. The mediation process does not suspend or alter the provisions of the Special Rules of Practice and Procedure, 34 Pa. Code Section 131.1 et seq., or of any scheduling order entered by any Workers' Compensation Judge, including but not limited to any time limits or deadlines for the completion of any event or submission of any hearing testimony, deposition testimony or other evidence.
7. I may adjourn, reconvene or end the mediation process at any time, at my discretion.

I look forward to working with you. If you have any questions, please do not hesitate to write. Thank you for your anticipated cooperation.

Very truly yours,

David A. Cicola
Workers' Compensation Judge

DAC:mp
Attachment

42 Pa.C.S. § 5949 (2001)

§ 5949. Confidential mediation **communications and documents**

(A) GENERAL RULE.-- Except as provided in subsection (b), all mediation communications and mediation documents are privileged. Disclosure of mediation communications and mediation documents may not be required or compelled through discovery or any other process. Mediation communications and mediation documents shall not be admissible as evidence in any action or proceeding, including, but not limited to, a judicial, administrative or arbitration action or proceeding.

(B) EXCEPTIONS.--

(1) A settlement document may be introduced in an action or proceeding to enforce the settlement agreement expressed in the document, unless the settlement document by its terms states that it is unenforceable or not intended to be legally binding.

(2) To the extent that the communication or conduct is relevant evidence in a criminal matter, the privilege and limitation set forth in subsection (a) does not apply to:

(i) a communication of a threat that bodily injury may be inflicted on a person;

(ii) a communication of a threat that damage may be inflicted on real or personal property under circumstances constituting a felony; or

(iii) conduct during a mediation session causing direct bodily injury to a person.

(3) The privilege and limitation set forth under subsection (a) does not apply to a fraudulent communication during mediation that is relevant evidence in an action to enforce or set aside a mediated agreement reached as a result of that fraudulent communication.

(4) Any document which otherwise exists, or existed independent of the mediation and is not otherwise covered by this section, is not subject to this privilege.

(C) DEFINITIONS.-- As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"MEDIATION." The deliberate and knowing use of a third person by disputing parties to help them reach a resolution of their dispute. For purposes of this section, mediation commences at the time of initial contact with a mediator or mediation program.

"MEDIATION COMMUNICATION." A communication, verbal or nonverbal, oral or written, made by, between or among a party, mediator, mediation program or any other person present to further the mediation process when the communication occurs during a mediation session or outside a session when made to or by the mediator or mediation program.

"MEDIATION DOCUMENT." Written material, including copies, prepared for the purpose of, in the course of or pursuant to mediation. The term includes, but is not limited to, memoranda, notes, files, records and work product of a mediator, mediation program or party.

"MEDIATION PROGRAM." A plan or organization through which mediators or mediation may be provided.

"MEDIATOR." A person who performs mediation.

"SETTLEMENT DOCUMENT." A written agreement signed by the parties to the agreement.