

**WORKERS' COMPENSATION JUDGES'  
MEDIATION PROCEDURES**

**NAME:** Brian M. Hemak

**OFFICE:** Wilkes-Barre

**DISTRICT:** Central

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

Wilkes-Barre

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

No.

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

No.

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

No.

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

Three (3) hours for voluntary mediations.

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

Not required, but such submissions are permitted.

**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?**

The attorneys for both sides, as well as the claimant, must be present. The adjuster/employer representative may be permitted to participate by telephone with the understanding that they are, in fact, immediately available and reachable by telephone during the mediation.

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

Typically within 30 days, but no more than 45 days.

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

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

Initially, I will conduct a joint session at which time we will identify the undisputed facts as well as both the factual and legal issues that need to be addressed. I will have each side explain their position and justify their settlement proposal. We will then break out into private sessions during which we will discuss the strengths and weaknesses of each party's position in greater detail and we will discuss each party's goal or what they would like to accomplish in the mediation.

Ultimately, we will reconvene in joint session. Depending upon what has transpired, the joint session would be used to confirm the terms of any agreement or to identify the issues that have been resolved and those that remain. The final joint session may also be used to address any sticking points that may be preventing a successful resolution.

- **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.**

I utilize a mixed approach, as the situation dictates.

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

Yes.

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

I do expect the parties to communicate with each other prior to the mediation and at the very least, exchange discovery and settlement proposals. I also expect the attorneys to communicate with their respective clients prior to the mediation to ensure that there is a genuine interest in mediation, that there is specific authority for resolution, and that the clients understand the strengths and weaknesses of each side's positions. I do require the parties themselves, especially the claimant, to actively participate in the mediation.