

WORKERS' COMPENSATION JUDGES' MEDIATION PROCEDURES

NAME: David B. Torrey

OFFICE: Pittsburgh

DISTRICT: Western

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

Any location in the Western region.

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

Potentially yes; I will have to make such a determination on a case-by-case basis.

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

If a case is already in litigation, I likely would not.

If a case is not already in litigation (i.e., not yet subject to a petition), I would be willing to mediate a claim in which one or both parties are not represented by counsel.

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?

One to three hours.

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

Yes, although a simple narrative position letter is the preferred format.

- **What information must be contained in the memorandum?**

A brief statement of the facts and the critical disputes between the parties that form the basis for the request for mediation.

A statement of what the parties desire as the outcome of the mediation.

- **What documents, if any, must accompany the memorandum?**

If I possess the file (our current custom and practice), I will usually have the critical documents. Reports and depositions that have not yet been offered into evidence should be submitted beforehand, so that I can read them and better understand and evaluate the case.

- **How far in advance of the mediation must the parties submit the memorandum and accompanying documents?**

Forty-eight (48) hours.

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 claimant and the lawyers should normally be present personally. Employer and carrier representatives may be by phone.

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

Approximately 1 to 4 weeks.

10. Describe generally how you conduct a mediation session.

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

I review the file and the record, along with the pre-mediation submissions.

I meet with all parties together to ensure that an amicable resolution is, indeed, a possibility in the dispute in question.

If appropriate, I note my own belief that not every case must be subject to a lump sum Compromise & Release; a worker with a serious, uncontested, permanent disability or medical condition should be cautious about tendering a release.

I advise the parties what I understand the facts and issues to be, and ask a number of questions of the parties and the lawyers, in order to make sure that I understand the facts and issues.

I ask the lawyers to advise me if I am understanding the case correctly. I solicit them for information that is perhaps not of record, and/or facts of which the adjudicating officer is not aware.

I let the lawyers and/or parties give me their positions and/or make their statements.

If the issue is money (usually the case), I inquire as to whether demands/offers have been communicated.

We break up, and I meet with each side separately.

I convey any amended demands/offers, or other information.

We almost invariably meet again together, whether or not a final resolution is achieved.

- **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.**

A combination, but chiefly evaluative.

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?

As foreshadowed above, I like to know what the parties seek to gain from the mediation. Also, I need all non-submitted items of evidence to review.