

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

**NAME:** Paul E. Baker

**OFFICE:** Pottsville

**DISTRICT:** Central

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

Pottsville and Harrisburg.

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

Yes, but I use a facilitative approach rather than an evaluative approach when mediating my own cases.

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

I would be willing to try. At the time the mediation is scheduled, I would provide all parties with some type of a "disclaimer" concerning my role and would at that time strongly recommend that the unrepresented party retain counsel. I would also insist that the unrepresented party sign a form indicating that he/she has read and understands the role of the mediator as set forth on the "disclaimer." If the mediation results in a tentative agreement, I would again advise the unrepresented party to strongly consider seeking the advice of counsel prior the hearing to approve the Compromise and Release.

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

Only when I am mediating a case that is not assigned to me. The agreement to mediate includes provisions dealing with mediator impartiality, disclosures, confidentiality, and the role of the mediator.

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

Three (3) hours.

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

Only when I am mediating another judge's case.

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

I send a form to counsel that is termed a "Confidential Information Form."

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

None.

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

Ten (10) days.

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

Where the case is assigned to another judge, I will have a phone discussion with each attorney after I receive the Confidential Information Form.

**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?**

I will permit the adjuster/employer representative to participate by phone.

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

Thirty (30) days.

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

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

The process is different depending on whether it is my case or another judge's case. Because I seldom mediate my own cases, the steps set forth below apply where I mediate another judge's case.

1. I give an introductory statement emphasizing how my role as a mediator differs from my responsibilities as a workers' compensation judge. I also explain how the mediation process will proceed.
2. The moving party (where a petition is pending) makes an opening statement setting forth that party's "interests." I encourage the actual party to make the opening "interests" statement, but in most cases they defer to their attorney. In most cases, however, I do succeed in getting the claimant and adjuster/employer representative to contribute to the opening statement.
3. The other party, normally the attorney for that party, then presents that party's "interests" statement.
4. I then ask each party to explain how that party arrived at their "demand," in the case of the claimant, and the "offer" or "counter-offer", in the case of the employer/insurer.
5. I then discuss the areas in which there are common interests/agreement before turning to the areas where there remain conflicting interests, i.e., disagreement.
6. I will then meet individually with each party and their attorney to discuss what that party considers to be the strengths and weaknesses of his/her/its position. Naturally I will "test" the validity of that party's beliefs by asking appropriate questions and expressing my thoughts as a type of "reality check."

- **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.**

If I am mediating my own case, I will use a facilitative approach. When I mediate another judge's case, I initially use a facilitative approach. If that method does not result in an agreement, I will shift to a more evaluative approach in an effort to facilitate an agreement.

**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?**

No.