

WORKERS' COMPENSATION JUDGES' MEDIATION PROCEDURES

NAME: Robert J. Benischek

OFFICE: Lancaster

DISTRICT: Eastern

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

Lancaster.

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?

One and a half (1½) hour.

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

- What information must be contained in the memorandum?

I request a brief written summary of the issues before the mediation. A form memorandum can be obtained from the office. In the alternative, a letter accompanied by the key medical records (no more than would be presented for supersedeas) can be provided a few days before the mediation.

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

See above.

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

A few days before the mediation is sufficient.

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

No. However, at the beginning of the mediation, I discuss the process and the facts with the parties before we actually begin negotiations.

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 person with settlement authority on behalf of the Employer must be present or at least available by telephone. The Claimant and both lawyers must be present, unless there are exigent circumstances and my permission is granted beforehand.

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

Approximately one to two months.

10. Describe generally how you conduct a mediation session.

- Describe each step of the process.

Usually I discuss the procedure, the undisputed facts and the status of the negotiations at the beginning while the participants are together. I then separate the parties and discuss the strengths and weaknesses of their positions and determine what the parties really are seeking. I then perform "shuttle diplomacy," going back and forth between the parties to bring them to a reasonable resolution of the case.

- 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.

Each case is unique, but usually a mixed approach.

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?

Do not proceed with mediation if there is no interest in settlement or flexibility in your position.