

WORKER'S COMPENSATION APPELLATE MEDIATION
SUPREME COURT RULE 37
PERIODIC EVALUATION REPORT

July 2, 2010

This periodic evaluation will focus on the time period of July 1, 2009, through June 30, 2010. During this time period, the Administrative Office of the Courts received 81 evaluations. Of the 81 evaluations received, 35 responses were from the respondent's attorney, 40 responses were from the appellant's attorney, 4 responses were from the appellant, and 2 responses were from the appellee/respondent.

Of those responding, 14 stated that all issues were resolved (17.3%). Eleven stated that all issues were resolved directly by mediation (13.6%); there were two that responded that all issues were resolved indirectly by mediation (2.5%). There was one that responded that some issues were resolved directly by mediation. Sixty-five (80.2%) responded that no issues were resolved.

During this time period, the survey results indicate that notification of selection for mediation took an average of 1.8 weeks, including the one significant outlier in this field of 11 weeks between filing a notice of appeal and notification of selection for mediation. Excluding that outlier, the average time between filing a notice of appeal and notification of selection for mediation was 1.7 weeks. The amount of time it took for scheduling averaged 2.7 weeks, including four significant outliers of 10, 12, 13, and 16 weeks. If you exclude those outliers, the amount of time it took for scheduling averaged 2.0 weeks.

It took an average of 2.5 weeks before the first mediation session occurred, including one outlier of 12 weeks. Excluding the outlier, the average time that the first mediation took place after scheduling is 2.4 weeks. All respondents indicated that only one session occurred. Each session lasted, on average, 1.9 hours.

The amount of time taken for resolution after filing the notice of appeal averaged 2.5 months, with only seventeen respondents reporting for this field. Two of these seventeen responses did not indicate during which part of the process the matter was resolved. Five respondents indicated that issues were resolved before record preparation; 6 resolved during record preparation; 2 resolved before brief preparation; and 2 resolved during brief preparation. A total of 64 indicated that the case did not resolve at any time in the process.

Attorney fees were reduced due to mediation overall by \$13,716.00 in five cases, averaging \$2,743.20 per case. Eight other responses indicated that attorney fees were reduced but no amount was provided. Taking into account these eight responses, the average amount that attorney fees were reduced is \$1,055.07 per case. In 15 cases, attorney fees were increased by a total of \$10,520.00, an average of \$701.33 per case. Three other responses indicated that attorney fees were increased but no amount was provided. Taking into account these three responses, the average amount that attorney fees were increases is \$584.44 per case.

Seven responded that other costs were reduced but only one response provided an amount. The total amount reported for the reduction in costs was \$500.00. Twenty responded that other costs were increased by a total of \$6,426.00, for an average of \$321.30 per case. Four other responded that other costs increased but did not provide an amount of the increase. Including those four responses, the average increase of other costs is \$267.75 per case. One response indicated that there was not an increase in other costs but proceeded to state that other costs increased by \$500.00 therefore I

included that response in the above calculations. Ten responded that court time was reduced but only four of those provided the number of months that court time was reduced. The responses indicate that court time was reduced by a total of 30 months. When using the responses that reported a number of months, the average decrease in court time is 7.5 months per case. Three responded that court time was increased with only two responses providing the number of months. Court time was reduced by a total of 4 months. When using the responses that reported a number of months, the average increase in court time is 2 months per case.

Overall, respondents indicate that they were very satisfied with the mediation process. This includes selection, fairness, participation, confidentiality, and satisfaction with outcome. The lowest level of satisfaction was in the fields "Appropriateness of mediation process to dispute" with an average of 2.8 (5.0 being very satisfied) and the "Outcome of the Mediation process" with an average of 2.9. Sixty-one respondents, or 75.3%, stated they would use the mediation process again.

This year again, respondents indicated that they were very satisfied with the mediators. They were pleased with the mediators' impartiality, temperament, knowledge of mediation process, and knowledge of subject. Approximately 94% of respondents would use the same mediator again.

In conclusion, the majority of those involved in this process are satisfied with the mediation process, the mediators, the other side's actions, and the administration of the program. There continue to be concerns with the program being mandatory. The percentage of cases having all issues resolved through this process dropped to under 20% for the time.

If this office can be of further assistance or provide further information, please contact me.

Anne-Louise Wirthlin
Programs Manager
Administrative Office of the Courts

Exhibit A*
Compilation of Evaluations 2004-2009

| | 6/1/05 - 5/31/06 | 6/1/06 - 5/31/07 | 6/1/07 - 6/30/08 | 6/1/08 - 6/30/09 | 7/1/09 - 6/30/10 |
|---|--|--|--|--|---|
| Number of respondents | 165 | 144 | 116 | 93 | 81 |
| All issues resolved | 51 (31%) | 40 (28%) | 28 (24%) | 20 (21.5%) | 14 (17.3%) |
| Some issues resolved | 4 | 1 | 3 | 2 | 1 (1.2%) |
| No issues resolved | 109 (66%) | 102 (71%) | 85 (73%) | 71 (76.3%) | 65 (80.2%) |
| Notification of mediation | Average 1.8 weeks | Average 2.9 weeks | Average 1.7 weeks | Average 1.9 weeks | Average 1.8 weeks |
| Scheduling of mediation after notification | Average 2.7 weeks | Average 2.8 weeks | Average 2.2 weeks | Average 2.3 weeks | Average 2.7 weeks |
| First session occurred | Average 3.7 weeks | Average 3.9 weeks | Average 3.0 weeks | Average 4.1 weeks | Average 2.5 weeks |
| Length of mediation and how many sessions | 1 session lasting an average of 2.2 hours | 1 session lasting an average of 2.5 hours | 1 session lasting an average of 2.5 hours | 1 session lasting an average of 2.2 hours | 1 session lasting an average of 1.9 hours |
| Length of time between filing & resolution | Average 2.4 months | Average 2.4 months | Average 2.0 months | Average 2.4 months | Average 2.5 months |
| Case resolved before record preparation | 26 | 17 | 13 | 7 | 5 |
| Case resolved during record preparation | 13 | 11 | 9 | 7 | 6 |
| Case resolved before brief preparation | 11 | 12 | 4 | 2 | 2 |
| Case resolved during brief preparation | 4 | 2 | 2 | 3 | 2 |
| Did not resolve | 108 out of 165 (65%) | 102 out of 144 (71%) | 102 out of 116 (88%) | 70 out of 93 (75.2%) | 64 out of 81 (79.0%) |
| Attorney fees reduced | By average of \$2,733.20 in 18 cases | By average of \$5,000.00 in 9 cases | By average of \$2,780.00 in 5 cases | By average of \$1,872.14 in 7 cases | By average of \$1,055.07 in 13 cases |
| Attorney fees increased | By average of \$617.28 in 39 cases | By average of \$849.00 in 34 cases | By average of \$1,343.00 in 19 cases | By average of \$305.71 in 28 cases | By average of \$584.44 in 18 cases |
| Other costs reduced | By average of \$688.89 per case in 9 cases | By average of \$1,062.50 per case in 4 cases | By average of \$866.00 per case in 3 cases | **By average of \$8,968.71 per case in 7 cases | 7 reported reduction but only one amount - \$500.00 |
| Other costs increased | By average of \$403.10 in 39 cases | By average of \$551.15 in 39 cases | By average of \$398.00 in 27 cases | By average of \$218.59 in 39 cases | By average of \$267.75 in 24 cases |
| Court time reduced | By an average of 4.8 months | By an average of 8.1 months | By an average of 6.8 months in 10 cases | By an average of 6.4 months in 12 cases | By average of 7.5 months in 4 cases |
| Court time increased | By an average of 4.6 months | By an average of 7.8 months | By an average of 3.6 months in 3 cases | By an average of 2 months in 5 cases | By average of 2 months in 2 cases |

* Some respondents did not respond to every question. Therefore, calculations for some questions may not be equal to the total number of evaluations received.

Exhibit B

| | | 6/1/05 – 5/31/06 | 6/1/06 – 5/31/07 | 6/1/07 – 6/30/08 | 6/1/08 – 6/30/09 | 7/1/09 – 6/30/10 |
|--|---|--|--|--|--|--|
| Satisfaction with mediation process: | <i>Appropriateness</i> | Somewhat satisfied | Satisfied | Satisfied | Somewhat Satisfied | Somewhat satisfied |
| | <i>Selection</i> | Satisfied | Satisfied | Satisfied | Satisfied | Satisfied |
| | <i>Fairness</i> | Satisfied | Satisfied | Satisfied | Satisfied | Satisfied |
| | <i>Opportunity to participate</i> | Satisfied | Satisfied | Satisfied | Satisfied | Satisfied |
| | <i>Confidentiality</i> | Satisfied | Satisfied | Satisfied | Satisfied | Satisfied |
| | <i>Outcome</i> | Satisfied | Satisfied | Satisfied | Somewhat Satisfied | Somewhat satisfied |
| | <i>Use of process again</i> | Approximately 67% of respondents would use process again | Approximately 77% of respondents would use process again | Approximately 77% of respondents would use process again | Approximately 65% of respondents would use process again | Approximately 75% of respondents would use process again |
| Satisfaction with the mediator: | <i>Impartiality</i> | Very satisfied | Very satisfied | Very satisfied | Very satisfied | Very satisfied |
| | <i>Temperament</i> | Very satisfied | Very satisfied | Very satisfied | Very satisfied | Very satisfied |
| | <i>Knowledge of mediation process</i> | Very satisfied | Very satisfied | Very satisfied | Very satisfied | Very satisfied |
| | <i>Knowledge of subject matter</i> | Very satisfied | Very satisfied | Very satisfied | Very satisfied | Very satisfied |
| | <i>Use of mediator again</i> | Approximately 90% of respondents will use mediator again | Approximately 94% of respondents will use mediator again | Approximately 93% of respondents will use mediator again | Approximately 95% of respondents will use mediator again | Approximately 94% of respondents will use mediator again |
| Satisfaction with the other side: | <i>Participation</i> | Satisfied | Satisfied | Satisfied | Satisfied | Satisfied |
| | <i>Reasonableness</i> | Satisfied | Satisfied | Satisfied | Satisfied | Satisfied |
| | <i>Forthrightness</i> | Satisfied | Satisfied | Satisfied | Satisfied | Satisfied |
| | <i>Preparation for mediation process</i> | Satisfied | Satisfied | Satisfied | Satisfied | Satisfied |
| Satisfaction with program administration: | <i>Efficiency</i> | Satisfied | Satisfied | Satisfied | Satisfied | Satisfied |
| | <i>Paperwork</i> | Satisfied | Satisfied | Satisfied | Satisfied | Satisfied |
| | <i>Courtesy & cooperation</i> | Satisfied | Satisfied | Satisfied | Satisfied | Satisfied |
| | <i>Mandatory participation</i> | Satisfied | Satisfied | Satisfied | Somewhat Satisfied | Somewhat satisfied |

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| <p style="text-align: center;">Exhibit C Additional evaluation comments: (mediator, process, suggestions for improvement)</p> |
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1. Mediator was very professional and had a good disposition.
2. Good experience with mediator in that he was truly interested in trying to bring about settlement.
3. The mediator was competent and knowledgeable.
4. This claim was not amendable to the mediation process. Both sides recognized this but there was no way to "opt out" through consent of the parties.
5. Don't require this mediation. Make it optional.
6. Optional mediation in workers compensation cases should be the standard or rule.
7. I think it is very difficult for the mediation process to work once a case has been tried and one party has won and another has lost.
8. I am a mediation advocate. I appreciate the opportunity to mediate at every stage.
9. I do not believe that required mediation is appropriate when a decision has been made to appeal the Judgment of the Trial Court. Inexperienced attorneys will not use required mediation thoughtfully.
10. Provide more persons to be allowed to opt out.
11. Excellent process but were at loggerheads as regards to the notice defense and the trial court's ruling.
12. If both parties submit that a BRC was engaged in and that there is no possibility of mediation resolution then I respectfully state that mandatory mediation is futile.
13. Require defendant to have party representative present, in addition to the defense attorney.
14. Mediation should not be automatically mandatory for every case.
15. Allow the state BRC specialists to mediate the post-judgment claims at a lesser fee. These specialists are highly knowledgeable of the comp law.
16. If anything, the process is a valuable tool for honing the parties' positions and reducing the number of issues that could realistically be presented on appeal.