



Mississippi Workers' Compensation Commission

1428 Lakeland Drive / Post Office Box 5300

Jackson, Mississippi 39296-5300

(601) 987-4200

<http://www.mwcc.state.ms.us>

Liles Williams, Chairman
Barney J. Schoby, Commissioner
Lydia Quarles, Commissioner

Ray Minor, Executive Director

MEMORANDUM

**TO: Ladies and Gentlemen of the Bar
Administrative Law and Workers' Compensation Section**

FROM: Liles Williams, Chairman

DATE: November 4, 2005

RE: Mediation

Recently, the Commission adopted a policy statement concerning the use of mediation as a tool to help resolve workers' compensation claims. The Commission firmly believes that parties to workers' compensation claims should have the freedom to try reasonable, alternative methods of dispute resolution, and we fully support the use of mediation in workers' compensation claims.

Importantly, our support for mediation comes with no strings attached. The Commission supports mediation by parties on any terms they choose. We have deliberately refused to regulate the conduct of mediation, or to endorse or even recommend any particular mediation procedures or lists of mediators. As our policy makes clear, a system of completely voluntary mediation where the parties are free to select a mediator of their choosing, and to conduct mediation according to procedures agreeable to them, without interference from the Commission, is necessary in order for mediation to ultimately succeed. The Commission's ultimate authority to review and approve, or not, any settlement agreement reached through mediation is all the control needed by the Commission.

A copy of the Commission's policy statement on mediation is included for your review and reference. Please feel free to contact myself or other Commissioners anytime you have questions or issues about mediation, or if you have any other concerns you would like to share with the Commission.



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MEDIATION POLICY MEMORANDUM - OCTOBER 2005

This policy memorandum is intended to clarify the Commission's general position on the use of alternative dispute resolution, and more specifically, mediation, as a tool to help resolve workers' compensation claims and issues without resort to costly and time consuming litigation. The Commission is aware that mediation is currently being used by parties to workers' compensation claims. Unofficially, the reported success rate for claims submitted to mediation is high. After careful study and deliberation, the Commission firmly believes that mediation is a valuable tool that parties to workers' compensation claims should be encouraged to use in an effort to resolve differences that would otherwise have to be litigated, at significant expense and delay to those involved. Based on the foregoing, the Commission does hereby declare the following policy concerning mediation:

a. The Commission is committed to the use of mediation in workers' compensation claims, and all parties to workers' compensation claims are strongly encouraged to voluntarily consider mediation as an alternative to traditional litigation for the resolution of their disputes. Administrative Judges of the Commission are uniquely positioned to promote the use of mediation, and they are each encouraged to inquire of the parties to claims whether mediation would be beneficial and would promote a more amicable resolution of disputes, and reduce the delay and expense associated with the litigation of claims. In this regard, the Commission may, in its discretion, develop internal procedures to help identify claims which may be appropriate for mediation.

b. Any mediation of workers' compensation claims should ultimately be the product of a purely voluntary undertaking by the parties. In no event should an inquiry about mediation by the Commission or a Judge of the Commission be viewed as a compulsion to mediate. Philosophically, this runs counter to the whole concept of mediation as we appreciate it. Practically, a compulsion to mediate, whether real or perceived, raises the risk that participation will be merely perfunctory, and that one or all parties might no longer have the necessary will to mediate because of the perception that they have been forced to the table. We believe mediation is a process that will work best if there is free will on the part of all sides to mediate. Parties to a dispute should be free to mediate those disputes, or to refuse to mediate, or to walk away from mediation, without question or cause or consequence.

c. The Commission believes that mediation which is undertaken voluntarily by the parties to a workers' compensation dispute should be conducted by a mediator freely selected by the parties to the dispute, and should be conducted in accordance with whatever procedures the parties

agree to invoke. The Commission is aware of a number of different mediation models already in use in the alternative dispute resolution environment to which parties can look for guidance in the conduct of mediation. We specifically refuse to endorse or recommend any particular mediation model or program, or any particular mediator or list of mediators. The Commission does not believe that it needs to rigidly regulate the use of mediation, or prescribe particular rules of practice and procedure, or designate particular mediators. A system of completely voluntarily mediation is adequately protected from abuse by the Commission's ultimate authority to consider and approve, or not, any settlement agreement reached through mediation.

d. The Commission believed that the costs associated with the use of voluntary mediation should not cause a reduction in the benefits to which an injured worker would otherwise be entitled under the Law. Any mediation which has the effect of reducing the net benefit payable to an injured worker raises a serious question of whether the mediation is in the best interest of the injured worker. We believe the employer and carrier are better positioned to absorb the costs associated with the use of mediation. However, allocation of the costs of mediation is an item subject to negotiation among the parties, and ultimately, to review by the Commission should mediation result in a settlement agreement requiring Commission approval.

e. The Commission believes that, to provide the most benefit and create the best opportunity for successful resolution of the disputes, mediation should be undertaken well in advance of any evidentiary or other merit hearing. Mediation conducted on the eve of trial, while not always inappropriate, nonetheless creates additional delay of the kind mediation is designed to avoid. While the parties to a dispute are free to determine the timing of mediation, the Commission encourages the parties to explore the possibility of mediation sooner rather than later. The Commission also encourages its Administrative Judges to allow the parties adequate time to conduct a meaningful mediation of their disputes if so requested, but to be mindful of the need to avoid undue delay solely for the sake of mediation.

f. It is the Commission's belief that any and all disputes arising under the Workers' Compensation Law are susceptible to resolution through mediation, and nothing stated herein should be construed as an attempt to limit or otherwise control the types and kinds of issues which may be submitted by parties to mediation.

g. The Commission encourages the parties to workers' compensation disputes to provide feedback to the Commission as to the frequency of mediation, and the success or failure thereof. The Commission encourages parties to a successful mediation to indicate in the settlement agreement presented to the Commission whether the agreement was reached as the result of mediation.

This the 3rd day of November, 2005.

/s/ Liles Williams

/s/ Barney Schoby

/s/ Lydia Quarles

COMMISSIONERS

Attest: /s/ Phyllis Clark
Commission Secretary