

# **How to Have an Effective Mediation In a Workers' Compensation Case**

## **Speakers:**

Honorable Lee Schaefer

St. Louis Office, Division of Workers' Compensation

Honorable Lawrence Kasten

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Honorable Paula McKeon

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Honorable Robert Miner

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Honorable Robert Dierkes

Jefferson City Office, Division of Workers' Compensation

## **Before the Mediation**

1. Gather ALL of the necessary medical records.
  - If there is a particular issue you need to address, make sure you have the relevant medical records.
  
2. To make your Medical report useful, make sure that it:
  - Contains a rating if you are ready to settle the case;
  - Contains specific information/recommendations if you are denying/seeking additional treatment;
  - Contains a medical causal opinion, using the correct legal standard, if medical causation is an issue.
  
3. If you know there are particular factual issues to be discussed at the Mediation, have the necessary information/documentation for those discussions, including:
  - Wage Statements;
  - Drug/Alcohol Policies (for penalties);
  - Safety policies (for safety violations);
  - Medical Bills (if you are seeking reimbursement).
  
4. Unless it is a denied case, you should have engaged in negotiations prior to the Mediation, and know the issues to be mediated.
  
5. Discuss the case with your attorney or client prior to the Mediation so that everyone has realistic expectations going into the Mediation.
  
6. Have your client present, have reasonable settlement authority, or be able to contact your client by phone at the time of the Mediation.
  
7. If your case is particularly complicated, notify the ALJ, they may want to give you an extended time period for the Mediation.
  
8. Don't take depositions before the Mediation unless they are absolutely necessary to clarify an issue.
  - Often, the money spent taking depositions can make it difficult to settle smaller cases.

## **During the Mediation**

1. Be respectful.
  - Do not interrupt;
  - Listen patiently;
  - Don't be a teenager (Don't roll your eyes, don't make faces when the other party is talking, etc.).
  
2. Know your file.
  - You should know the facts and arguments of your case without having to page through your file.
  - The ALJ will rely on the party who appears to be more familiar with the facts of the case.
  - If you are citing to a particular fact/finding in a report, know where to find that fact/finding:
    - What doctor;
    - Date of report or records;
    - Where in the report or records.
  
3. If you are making a legal argument, have a copy of the statute and case law you are relying on for both the ALJ and your opponent.
  
4. Limit your comments/arguments to relevant matters.
  - Stay away from personal attacks on the Claimant, the adjuster, the Employer, or the doctor.
  
5. Tell the ALJ if there are particular weaknesses in your case, don't wait for your opponent to mention them.
  
6. Answer the ALJ's questions in a direct fashion; don't simply repeat your earlier arguments.
  
7. Raise all of the issues in the case at the Mediation, don't come back later with: "Just one more thing...".
  
8. Be prepared to negotiate, Mediations are an attempt to resolve cases.

## After the Mediation

1. Follow up with additional tasks as soon as possible:
  - Scheduling Claimant for an additional examination/treatment;
  - Getting additional medical records/medical reports;
  - Obtaining additional documentation (wage statements, employment files, etc.).
2. When your opponent contacts you after the Mediation, respond to their inquiry, even if you don't have an answer yet.
3. Don't *ex parte* the ALJ to discuss what happened at the Mediation.
4. If you and your opponent do not agree on what the ALJ recommended, go in **together** to discuss it with the ALJ.