

Lex and Verum



The National Association of Workers' Compensation Judiciary

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First Impressions,

Lasting Memories

By Hon. Elizabeth C. Lanier*



As I entered the Marriott Convention Center last August, I was overwhelmed by the vastness of the Educational Conference and the number of participants walking through the corridors. I never attended a Workers' Compensation Institute Educational Conference or a National Association of Workers' Compensation Judiciary College. I never encountered such a large scale, diverse and organized Conference dedicated exclusively to the workers' compensation arena. I was astounded.

Once I adjusted my bearings, I made my way to the NAWCJ section of the Convention Center. After picking up my red Conference binder at the registration booth, I entered the NAWCJ College classroom. I was humbled by the number of judges in attendance. There were judges from many of the states comprising our United States. Everyone was there to learn more about this workers' compensation world of ours. I could feel the positive energy in the room. I could see the willingness to absorb the information.

As I listened to the instructors and reviewed the materials, I said to myself, "What a fabulous agenda!" I was impressed by the speakers, their credentials and the knowledge they possessed over their subject matter. Every topic was of a current and pertinent area of interest. The NAWCJ College refreshed my knowledge of evidence, ethics, judicial writing, judicial roles, social media concerns, medical information and so much more.

In addition to the fabulous agenda and knowledgeable speakers, the Conference offered me the ability to brainstorm with other Workers' Compensation Judges. Whether it was during the Comparative Law Panel luncheon, the SAWCA break out session or on an individual basis, I learned many of my fellow Judges experience similar hurdles and successes with their position as with mine.

Continued, Page 2.

First Impressions, from Page 1.

Talking to other Workers' Compensation Judges afforded me the opportunity to learn how other Judges handle their cases and dockets. Sharing ideas is always a win-win situation for everyone.

As I walked out of the Marriott Convention Center doors at the end of the Conference, I reflected on my experience. I departed the Conference with a sense of accomplishment and purpose. I felt invigorated with pride in knowing I was now associated with this great organization. I was honored to be amongst this caliber of professionalism. I didn't want the conference to end. I absorbed all of the information like a sponge. I learned the world of workers' compensation operates like a well-oiled machine.

There are many players comprising the Workers' Compensation arena. Everyone involved is working hard at keeping the integrity of the system running. I confirmed my expectation; I verified there is a large group of individuals comprising the Workers' Compensation Judiciary who are knowledgeable, intelligent and of esteemed character. I encourage all Workers' Compensation Judges to attend the NAWCJ College. It is an experience of a lifetime. It is an amazing opportunity to meet others working in the same profession. The connections you make, the people you meet, the subject matter you learn is well worth the trip to Orlando.

ELIZABETH C. LANIER has served with the Louisiana Workforce Commission, Office of Workers' Compensation for over 16 years. She presently serves as the Workers' Compensation District Judge for District 9 in Houma, Louisiana. Her Court presides over 9 parishes in the South Louisiana area. Previously, she served as a workers' compensation Mediator. Judge Lanier received both her undergraduate and Juris Doctorate degrees from Louisiana State University. She served as an Assistant Louisiana Attorney General. Judge Lanier has spoken at various venues regarding workers' compensation Law. She is currently involved with her agency in educating health care providers on the nuances of the newly enacted Louisiana State Medical Treatment Guidelines. She has conducted several Guideline seminars around the state on behalf of the Louisiana Workforce Commission.

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Workers' Compensation Mediation Programs Among States: A Comparative Table

By Hon. David Torrey*

“There is a developing trend in workers’ compensation. Mediation is becoming the norm rather than the exception.” So declared Florida Judge David Langham, the editor of this newsletter, in his June 17, 2014 blog posting.¹

Judge Langham, notably, was echoing many observers of the scene, including former D.C. ALJ Howard Cummins. Judge Cummins observed, in 2010, that “ALJs across the nation are finding alternative dispute resolution (ADR) is a cost-effective tool for resolving conflicts.” And, in his article, he examined carefully the mediation schemes of the Oregon and Virginia administrative systems.²

Mediation came to this writer’s state (Pennsylvania) several years ago and, under a 2006 amendment to the law, it is indeed now largely the norm rather than the exception. Each case is to be referred to mediation unless the WCJ is convinced that the process would be futile. The sessions themselves are done almost completely in-house, with judges mediating each other’s cases. All WCJs who mediate must complete a week of training and post his or her protocols on the agency website.

Although I’m not the best mediator, I try to read everything I can get my hands on addressing the topic, and in recent issues of *Lex & Verum* I’ve publicized the two best new books on the topic. I recommend them once again.³ Of course, a major mediation education conference unfolds in conjunction with the Workers’ Compensation Institute’s annual Orlando CLE.⁴

At NAWCJ and other meetings we inevitably compare notes on this increasingly critical aspect of our field. I learned early, for example, that when a Florida judge refers to her system as one of *mandatory* mediation, she *means it*. “No one gets to see me,” admonished Tampa Judge Ellen Lorenzen, at ABA Tucson 2008, “until they’ve been through mediation!” And she’s exactly right.

This regular comparing of notes raised, in my mind, a major query: what would a nationwide review of laws and regulations reveal? My assistant and I sought to answer this question. Research, mostly carried out this past winter, indicates that at least thirty-four states and the District of Columbia have express provisions, within their compensation laws, for mediation. At least ten states, meanwhile, have mandatory mediation as in Florida. In the chart that follows, we have identified those states as California, Florida, Maine, Massachusetts (called conciliation), New Mexico, New York (also called conciliation – not always ordered), Pennsylvania (can be waived by WCJ if session thought to be futile), Tennessee, Texas, and Washington.

What can be learned from a review of these provisos?

- While the term mediation is surely universal, laws and regulations in fact use various terms to define pre-trial sessions where the focus is on informal interaction between the parties and efforts to find common ground – in the hope of compromise settlement or other voluntary resolution. For example, in Alabama the term is “Benefit Review Conference,” in Massachusetts “Conciliation,” and in Washington “Settlement Conference.”
- Many, if not most, states in the present day feature websites that explain the mediation process to both sides in plain English. Massachusetts, Minnesota, and Texas are all examples.

Continued, Page 4.

- Variations in enforcement of mediation may well vary. A California lawyer complains, “Some judges do not mind setting cases for trial and trying them and other judges use a lot of pressure to settle a case.” Presumably, judges in the latter category will be more likely to pressure parties to mediate. In Pennsylvania, meanwhile, mandatory mediation is the rule in the Philadelphia area, but the session is more likely to be waived in the Pittsburgh area.
- Some statutes feature remarkable enforcement provisos. The Louisiana statute, for example, states that “if any party fails to appear at a mediation conference ordered by the judge or requested by the parties after proper notice, the workers’ compensation judge upon request of a party may fine the delinquent party an amount not to exceed five hundred dollars, which shall be payable to the Office of Workers’ Compensation Administrative Fund....”
- Several provisos prevent the settlement conference judge from adjudicating the same case. The Minnesota statute, for example, states, “The hearing must be held before a compensation judge other than the compensation judge who conducted the settlement conference.”
- Some schemes, like that of North Carolina, are remarkable for the exquisite detail with which they define the mediation process.
- In some jurisdictions, the agency maintains a mediation unit (as in Washington), whereas in others mediation is undertaken by private mediators whose names are found on an approved list (as in Vermont.)

The chart which follows features links so that the information provided can be easily accessed, verified, and enjoyed. A review of these sites will reveal to the reader the remarkable variety of these statutes. Policymakers who are considering introducing or refining mediation will, through these links, find many well thought-out models of active systems.

The author (Torrey) welcomes any additions or changes before we post this table on the NAWCJ website! If your state is not listed here, it’s because my redoubtable assistant (Mr. Yskamp) and I could not discern an officially-sanctioned mediation program. By all means let me know if I have somehow neglected to locate your jurisdiction’s information. Contact: DTorrey@pa.gov.

¹ <http://www.flworkerscomp.org/wcs-blogs/viewpost/272.html>.

² Howard W. Cummins, *From Conflict to Conflict Resolution: Establishing ALJ Driven Mediation in Workers’ Compensation Cases*, 30 N.A.A.L.J. 391 (2010).

³ ERIC R. GALTON & LELA P. LOVE, EDS., *STORIES MEDIATORS TELL* (American Bar Association 2012); SPENCER PUNNETT, *REPRESENTING CLIENTS IN MEDIATION* (American Bar Association 2013).

⁴ For the program of the 2014 Professional Mediation Conference, see <https://www.wci360.com/conference/professional-mediation-conference>.

* Judge David Torrey is the President of the National Association of Workers’ Compensation Judiciary. He is a Workers’ Compensation Judge in Pittsburgh, PA and an Adjunct Professor of Law, University of Pittsburgh School of Law.

NAWCJ Austin, Texas

The NAWCJ teamed with the International Association of Accident Boards and Commissions (IAIABC) to present a judicial education program at the IAIABC 100th Annual Convention in Austin. The program was co-chaired by Maryland Commission Chair Karl Aumann and Pennsylvania Workers’ Compensation Office of Adjudication Director Elizabeth Crum. The program was presented on the first day of the convention with adjudicators from across the country.

Speakers addressed the appellate process, mediation, and the interaction between adjudicators and legislators. A panel of adjudicators addressed similarities and distinctions among various jurisdictions, their organization and operation.

Texas Judge Jennifer Hopens, NAWCJ Secretary, welcomed the assembly to Texas and opened the program. The NAWCJ gratefully acknowledges the IAIABC, Chair Aumann, Director Crum, Judge Hopens and all who contributed to this outstanding program. More on page 23.

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Workers' Compensation Mediation Programs Among States: A Comparative Table



By: James A. Yskamp, J.D.
and David B. Torrey, WCJ (Sept. 2014)
contact DTorrey@pa.gov (corrections welcome)

State	Statute	Regulation	Program Name Agency and/or private website(s) providing public information	Miscellaneous/ Illustrative case
AL	Ala. Code §25-5-290 ¹ §25-5-291 §25-5-292 (added 1992).	Ala. Admin. Code Rule 480-5-1-.08 ²	Benefit Review Conference (Mediation) http://dir.alabama.gov/docs/1aw/wc_mediation_overview.pdf ³	<i>Ex parte Ford</i> , 782 So. 2d 185 (Ala. 2000) (trial court did not have jurisdiction to set aside workers' compensation settlement agreement entered into by claimant and employer at benefit-review conference conducted by ombudsman; claimant did not seek to have agreement set aside, as required, within 60 days of agreement).
AR	Ark. Code Ann. §11-9-703 ⁴	Code Ark. Rule 099.26 (Ark WC Comm'n) ⁵	Preliminary Conference http://www.awcc.state.ar.us/div.html#3.Legal Advisor	2012 Report states, "Another service offered by the [Legal Advisor] division is mediation, a process through which a neutral party helps resolve disputes without the necessity of a hearing." ⁶
AZ	A.R.S. sec. 23- 197(A)(3)		Voluntary Mediation (available upon agreement of the parties)	

Continued, Page 7.



CA	Cal. Lab. Code §5502(d) ⁷	Cal. Code Regs. tit. 8, §10607	<p>Mandatory Settlement Conference</p> <p>An extensive review is at the website of Robert S. Havens, Esq.: http://hurtworker.com/california-workers-compensation-articles/mandatory-settlement-conference-workers-comp/⁸</p>	<p><i>Cnty. of Sacramento v. Workers' Comp. Appeals Bd.</i>, 68 Cal. App.4th 1429 (1999) (purpose of statute requiring that discovery in workers' compensation cases be closed at time of mandatory settlement conference is to guarantee a productive dialogue either leading to the resolution of the dispute or thoroughly and accurately framing the stipulations and issues for hearing).</p>
CO	§8-40-201(2) (def.); §8-43-205 (med.); ⁹ §8-43-206 (Setlmt conf.) ¹⁰	7 Colo. Code Regs. § 1101-3:9 (addressing Mediation-Settlement Conferences-prehearing conferences - arb'trat'n). ¹¹	<p>Mediation Settlement Conference</p> <p>https://www.colorado.gov/pacific/cdle/prehearings-and-settlements.</p> <p>A review is at the website of R. Mack Babcock, Esq.: http://www.injurylawcolorado.com/attorney.html</p>	
DE	Del. Code Ann. tit. 19, § 2348A ¹²			
FL	Florida Statutes §440.25 ¹³	Fl. Admin. Code, Rules of WC Adj. Proc., §§ 60Q-6.110, .111, 6.112 ¹⁴	<p>(Mandatory) Mediation</p> <p>http://www.myfloridacfo.com/Division/WC/pdf/mediation.pdf (schematic)¹⁵</p>	<p><i>Cabrera v. Outdoor Empire et al.</i>, 108 So.3d 691 (Fla. 1st DCA 2013) (<i>pro se</i> claimant who agreed to settlement at end of mediation before state WC mediator was not bound by same, and hence JCC committed error in enforcing agreement); <i>Scotty's Hardware, Inc. v. Northcutt</i>, 883 So.2d 859 (Fla. 1st DCA 2004) (claimant's failure to raise issue of attendant care in prior mediation proceedings barred award of retroactive attendant care benefits, under doctrine of res judicata).</p>

Continued, Page 8.

GA	Ga. Code Ann. § 34-9-100(b) ¹⁶	GA Board Rule 100 ¹⁷ GA Board Rule 200.1(e)(3) ¹⁸	Mediation http://sbwc.georgia.gov/mediation	
ID		Rules of Prac. & Proc. No. 17 (May 2013) ¹⁹	Mediation http://www.iic.idaho.gov/faqs/faqs_injured_worker.html - mediation	
IA	Iowa Code Ann. § 86.44 (Confidentiality) ²⁰	876 Iowa Admin. Code r. 4.40 ²¹	Dispute Resolution (Mediation) http://www.iowaworkinjuryblog.com/mediation-iowa-workers-compensation-case/ .	
KS	Kan. Stat. Ann. §44-5,117 ²² (WC Act)	Kan. Stat. Ann. § 5-501 through § 5-516 (Arbitration & Award) ²³	Mediation http://www.dol.ks.gov/WorkComp/mediation.aspx	
LA	La. Rev. Stat. Ann. §23:1310.3 ²⁴	La. Admin. Code tit. 40, §5813, ²⁵ 5817, 5819	Voluntary Mediation http://www.davidbuie.com/a/6_mediation_conferences_and_trials.html (attorney website remarking on practical needs of carriers in the mediation/settlement process).	[obsolete]: <i>Ware v. Holmes</i> , 719 So. 2d 1147 (La. Ct. App. 1998) (failure to comply with mandatory requirements of mediation proviso as to conference and subsequent report by mediator, rendered all subsequent actions taken in case void; under repealed statutory scheme, scheduling mediation conference prior to service of petition was mandatory, as was mediator's report on outcome of conference, and it was only upon notice from mediator that parties were unable to resolve dispute that service of process was to be effected). ²⁶

Continued, Page 9.

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ME	Me. Rev. Stat. tit. 39-A, §313 ²⁷	Code Me. R. 90-351, Ch. 11, §§ 1, 2 ²⁸	<p>Mediation (Mandatory)</p> <p>http://www.state.me.us/wcb/departments/crs/index.htm (discussing “Claims Resolution Specialists”)²⁹</p>	<i>Commercial Union Ins. Co. v. Maine Employers' Mut. Ins. Co.</i> , 794 A.2d 77 (Me. 2002)(signed mediation agreement is binding on parties in a workers' compensation proceeding to same extent as a final decree by hearing officer; however, mediation agreements, like formal decrees, can be modified upon a finding of “changed circumstances.”).
MA	Mass. Gen. Laws Ann. ch. 152 §10 ³⁰ (conciliation) Mass. Gen. Laws Ann. ch. 152, §10B(5) ³¹ (mediation)	.	<p>Conciliation³²</p> <p>(Mandatory, state-run)</p> <p>Mediation (private)</p>	<i>Nolan v. Commissioner, Department of Industrial Accidents</i> , 2009 Mass. Super. LEXIS 216 (Mass. Super. 2009) (if conciliator dismisses claimant’s petition, and Administrative Judge affirms, appeal is available via writ of certiorari to superior court; thus, claimants were mistaken in filing a declaratory judgment/mandamus action against agency head).
MI	Mich. Comp. Laws Ann. §418.847 (3) ³³		<p>Mediation</p> <p>http://www.michigan.gov/wca/0,4682,7-191-26919-268732--,00.html (Alternate Dispute Resolution Policy, January 9, 2012) (indicating that mediation is mandatory for certain cases)</p> <p>http://www.bcpwq.com/workers-compensation-defense/claim-timeline/ (attorney website describing process)</p>	

Continued, Page 10.

MN	Minn. Stat. Ann. § 176.305 ³⁴	Minn. R. 5220.2670 ³⁵	<p>Settlement Conference/ Mediation</p> <p>http://www.dli.mn.gov/wc/FaqADR.asp³⁶</p> <p>http://www.dli.mn.gov/wc/PDF/mediation_brochure.pdf (brochure)</p> <p>http://www.dli.mn.gov/wc/Pdf/mediation_at_DLI.pdf (information sheet with links).</p> <p>http://cousineaulaw.com/la/Workers_Compensation_Litigation_Process.pdf (lawyer website explaining litigation process and describing settlement conference as typically being held in most cases).</p>	
MS			<p>Voluntary Mediation (Encouraged)</p> <p>http://www.mwcc.state.ms.us/LAWCLMS/mediationpolicyMemorandum10-2005.pdf³⁷</p>	
MO	Mo. Ann. Stat. §287.460 ³⁸	Mo. Code Regs. Ann. tit. 8, §50-2.050 ³⁹	<p>Mediation</p> <p>http://labor.mo.gov/DWC/Division_Units/dispute_management_unit_Conference</p> <p>http://labor.mo.gov/DWC/Injured_Workers/legal_process#LegalProcess2⁴⁰</p>	<p><i>Shelton v. Missouri Baptist Med. Ctr.</i>, 42 S.W.3d 700 (Mo. Ct. App. 2001) (claimant's claim was dismissed during mediation because she failed to comply with court order to attend doctor appointments – claimant argued that dismissal of her claim was improper because it was dismissed during mediation; court held that ALJ was authorized to dismiss claim for failure to prosecute during mediation).</p>

Continued, Page 11.

<p>MT</p>	<p>Mont. Code Ann. § 39-71-2401⁴¹ <i>See also</i> § 39-71-2406,⁴² § 39-71-2407,⁴³ § 39-71-2408,⁴⁴ § 39-71-2409,⁴⁵ § 39-71-2410,⁴⁶ § 39-71-2411⁴⁷</p>	<p>Mont. Admin. R. 24.28.101 thru 112 <i>See</i> http://www.mtrules.org/gateway/ruleno.asp?RN=24%2E28%2E101 Of note: Rule 24.28.107 (Role of Mediator – Unrepresented Claimant).</p>	<p>Mediation (Mandatory) http://erd.dli.mt.gov/workers-comp-claims-assistance/mediation-unit.html http://erd.dli.mt.gov/workers-comp-claims-assistance/mediation-unit/mediation-guide-for-insurers.html</p>	<p><i>Weidow v. Uninsured Employers' Fund</i>, 246 P.3d 704 (Mt. 2010) (equitable tolling applied so that claimant's failure to meet 60-day claim filing period – after failure of mediation – was excused).</p>
<p>NE</p>	<p>Nebraska Work Comp Ct Rule 6,⁴⁸ Rule 48⁴⁹ <i>See also</i> Neb. Rev. Stat. § 48-168⁵⁰</p>		<p>Settlement Conference http://www.wcc.ne.gov/publications/idr information sheet.pdf⁵¹</p>	
<p>NM</p>	<p>N.M. Stat. Ann. §52-5-5 Subpart C⁵²</p>	<p>N.M. Admin. Code § 11.4.4 but specifically N.M. Admin. Code § 11.4.4.10⁵³ (Mediation Rules)</p>	<p>Mediation (Mandatory) http://www.workerscomp.state.nm.us/pdf/booklets/C1.pdf http://www.workerscomp.state.nm.us/pdf/booklets/C3.pdf</p>	<p><i>Schultz ex rel. Schultz v. Pojoaque Tribal Police Dep't.</i>, 2013 WL 1482949 (N.M. Apr. 11, 2013) (claimant, widow of tribal police officer, appealed denial of her claim in connection with her husband/officer's death; dispute was over the tolling of the limitations period – discussion of mediation process toward the end of the opinion; court noted that mediators can't dismiss a claim with prejudice like a judge could).</p>

Continued, Page 12

“A compromise is the art of dividing a cake in such a way that everyone believes he has the biggest piece.”

Ludwig Erhard

<p>NY</p>	<p>N.Y. Workers' Comp. Law §25 section 2-b⁵⁴</p>	<p>N.Y. Comp. Codes R. & Regs. tit. 12, § 312.1 through § 312.5⁵⁵</p>	<p>Conciliation⁵⁶</p> <p>http://www.wcb.ny.gov/content/main/forms/cb11.pdf ("Claimant's Guide to the Conciliation Process")</p>	<p><i>Employer: Brand Mgmt. Inc.</i>, 2010 WL 4231331 (N.Y. Work. Comp. Bd., Oct. 21, 2010) (court could not review final conciliation decision where party did not object within the statutory period); <i>Employer: Gloria Parks Cmty. Ctr</i>, 2006 WL 1859655 (N.Y. Work. Comp. Bd., June 21, 2006) (carrier contended that conciliator inappropriately converted conciliation into pre-hearing conference when scheduling depositions; Board held that at end of pre-hearing conference WCLJ is to issue written order limiting issues to be tried, and naming the witnesses so matter may move forward – <i>that</i> order is interlocutory and cannot be reviewed).</p>
<p>NC</p>	<p>N.C. Gen. Stat. Ann. § 97-80(c)⁵⁷</p>	<p>4 N.C. Admin. Code §10G.0101 through .0112 (also cited as Rule 1-12)⁵⁸</p>	<p>Mediation (generally mandatory)</p> <p>http://www.ic.nc.gov/faqs.html (noting that mediation is generally mandatory).</p> <p>http://www.ic.nc.gov/mediation.html (detailing responsibilities of NCIC Mediation Section)</p> <p>http://www.wci360.com/news/article/we-dont-need-no-stinking-hearings-mediations-in-nc-an-attractive-alternativ (title marred by unexplained vulgarity, but features detailed lawyer's explanation of the process).</p>	<p><i>Lemly v. Colvard Oil Co.</i>, 577 S.E.2d 712 (Ct. Appeals 2003) (agreement obtained at mediation that complied with law will be enforced against employee absent a defense in contract law); <i>Knight v. Wal-Mart Stores, Inc.</i> 562 S.E.2d 434 (Ct. Appeals 2002), <i>aff'd</i> (2003) (failure to award employer and insurer a credit for having advanced workers' compensation claimant's share of mediator's fee against the compensation due claimant was not erroneous, even though rule for mediated settlements provided that parties pay equal shares; Commission had authority to order payment of costs in a different apportionment).</p>

Continued, Page 13

<p>OK</p>	<p>Okla. Stat. Ann. tit. 85A, § 110⁵⁹</p>	<p>OK WC Rules 52 and 53⁶⁰</p>	<p>Mediation (Voluntary)</p> <p>http://www.owcc.state.ok.us/mediation.htm (Court of Existing Claims)</p> <p>http://www.ok.gov/oid/documents/111413_The%20WC%20PP%2011%2012%2013.pdf (slide show detailing reform to an administrative system and referencing mediation)⁶¹</p>	
<p>OR</p>	<p>Or. Rev. Stat. Ann. § 656.307 (6)⁶²</p> <p>Or. Rev. Stat. Ann. §36.224(5)⁶³</p>	<p>Or. Admin. R. 438-019-0000 through 438-019-0060⁶⁴</p>	<p>Mediation (Voluntary)</p> <p>http://www.cbs.state.or.us/wcb/mediation/mediatoravail.htm</p> <p>http://www.cbs.state.or.us/wcb/mediation/mediation.htm</p>	
<p>PA</p>	<p>Sections 401.1, 401 of the WC Act, 77 Pa. Stat. Ann. tit. 77, §§ 710, 701⁶⁵</p>	<p>34 Pa. Code § 131.59 § 131.59a § 131.59b⁶⁶</p>	<p>Mediation (Mandatory in most cases, though not in the Florida sense, as judge may waive mandate if session deemed futile)</p> <p>http://www.portal.state.pa.us/portal/server.pt/community/alternative_dispute_resolution/10414</p>	<p><i>Webb v. WCAB (Am. Cancer Society)</i>, 2011 Pa. Commw. Unpub. LEXIS 395 (May 19, 2011) (claimant's argument that WCJ committed error in not directing parties to mandatory mediation before grant of termination petition held waived and hence not addressed by court).</p>

Continued, Page 14.



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<p>SC</p>	<p>Mediation introduced in 2013 via regulatory authority</p> <p>Note: Private mediators are utilized</p>	<p>SC Code of Regs. § 67-1801 through § 67-1809⁶⁷</p>	<p>Mediation (Mandatory for certain classes of claims)</p> <p>http://www.wcc.sc.gov/Pages/MediationRegulation.aspx</p> <p>http://www.wcc.sc.gov/judicial/Pages/Mediation.aspx</p> <p>http://www.wcc.sc.gov/Documents/What%27sNew/Judicial Notices/2013 Mediation Regulation Info Sheet FINAL.pdf (FAQ's in brochure form)</p>	
<p>SD</p>	<p>S.D. Codified Laws § 62-7-37⁶⁸</p>	<p>S.D. Admin. R. 47:03:01:17 (repeats language of statute)</p>	<p>Mediation</p> <p>http://dlr.sd.gov/workerscomp/mediation.aspx</p> <p>http://dlr.sd.gov/workerscomp/publications/mediation process_infographic.pdf (easy-use schema)</p>	
<p>TN</p>	<p>Tenn. Code Ann. § 50-6-203⁶⁹ § 50-6-236 [major section] Tenn. Code Ann. § 50-6-239</p> <p>All for new Court of WC Claims⁷⁰</p>	<p>See [Proposed] Rule 0800-02-21-.11 (Alternative Dispute Res. Proc.)</p>	<p>Mediation (Mandatory)</p> <p>http://www.tn.gov/labor-wfd/wcomp/CourtofWorkersCompClaims_andAppealsBoard.shtml</p> <p>http://www.tn.gov/labor-wfd/wcomp/wc_2013_ReformAct_faqs.shtml (FAQ's).</p>	

Continued, Page 15.



“A lean compromise is better than a fat lawsuit.”

George Herbert

<p>TX</p>	<p>Tex. Labor Code Ann. § 410.023 (By Request)⁷¹ Tex. Labor Code Ann. § 410.024 (Mandatory)⁷² Tex. Labor Code Ann. §413.0311 (Party to medical dispute not obliged to undergo BRC).⁷³</p>	<p>28 Tex. Admin. Code § 141.1 through 141.5, and § 141.7⁷⁴</p>	<p>Benefit Review Conference (Mediation)⁷⁵ (Generally Mandatory) http://www.tdi.texas.gov/wc/idr/brcinfo.html (detailed review of BRC/mediation) http://www.oiec.texas.gov/topics/benefitreview.html (video in English, Spanish, to help prepare for BRC) http://www.tdi.texas.gov/WC/employee/dispute.html (comprehensive review of entire Texas process)</p>	<p><i>Thomas v. Am. Home Assur. Co.</i>, 403 S.W.3d 512 (Tex. App. 2013) (injured worker failed to exhaust administrative remedies under Act relating to extent of compensability for knee injury; case gives overview of Texas process, including necessity of benefit review conference).</p>
<p>UT</p>	<p>Statutory authority for mediation TBD</p>		<p>Mediation/Claims Resolution http://laborcommission.utah.gov/FAQ/workers_comp_problems.html (FAQs) http://laborcommission.utah.gov/divisions/IndustrialAccidents/mediation_claims_resolution.html (explaining claims resolution program) http://laborcommission.utah.gov/divisions/IndustrialAccidents/WCClaimsProcess.html (detailing claims process in general)</p>	<p><i>Reese v. Tingey Const.</i>, 177 P.3d 605 (Utah 2008) (given Supreme Court's holding that any oral agreement reached in the course of mediation between workers' compensation claims service and claimant was confidential, portions of record in claimant's personal injury action against third party disclosing confidential mediation information would be ordered sealed, and judges who reviewed confidential information from the mediation would be required to recuse themselves from further proceeding).</p>
<p>VT</p>	<p>Vt. Stat. Ann. tit. 21, § 663A⁷⁶</p>	<p>13-4 Vt. Code R. § 1 (parts 2 & 3 discuss what disputes not required for mediation)⁷⁷</p>	<p>Mediation (Mandatory at discretion of the Commissioner) http://159.105.83.163/Portals/0/WP%20Safety/Approved%20Mediator%20List.pdf⁷⁸</p>	

<p>VA</p>	<p>Va. Code § 65.2-201 (general duties and powers of Commission)</p>	<p>Commission Rule 1.9</p>	<p>Mediation</p> <p>http://www.courts.state.va.us/courtadmin/aoc/djs/program/s/drs/mediation/resources/resolutions/2000/september/workers_comp.html (broad description of genesis of program).</p> <p>http://www.vwc.state.va.us/content/alternative-dispute-resolution-adr (description of program)</p> <p>http://www.vwc.state.va.us/sites/default/files/documents/Mediation-Pamphlet.pdf.</p>	<p><i>Willis R. Surrett, Jr., Claimant</i>, 211-17-53, 2007 WL 1652426 (Virginia WC Comm'n) (May 9, 2007) (mediation does not necessarily continue a hearing).</p>
<p>WA</p>	<p>RCW sec. 51.52.095⁷⁹</p>	<p>WAC § 263-12-090 (in general)⁸⁰</p> <p>WAC § 263-12-092 (confidentiality and privilege)⁸¹</p> <p>WAC § 263-12-093 (disposition via agreement)</p> <p>WAC § 263-12-095 (conference procedures)</p>	<p>Settlement Conference</p> <p>(aka Mediation)⁸² (Mandatory)</p> <p>http://blog.fosterstaton.com/the-board-of-industrial-insurance-appeals-its-purpose-and-importance-in-workers-compensation-appeals (attorney site explaining process).</p>	
<p>WV</p>	<p>W. Va. Code Ann. § 23-5-9(b)⁸³</p>	<p>W. Va. Code R. § 93-1-17⁸⁴</p>	<p>Mediation</p>	

“For every credibility gap there is a gullibility gap.”

Richard Cobden



<p>DC</p>		<p>D.C. Mun. Regs. tit. 7, § 219⁸⁵</p>	<p>Informal Procedures (Mediation)</p> <p>http://does.dc.gov/node/192372 (characterizing D.C. system in general)</p> <p>http://does.dc.gov/page/workers-compensation-does (referencing mediation)</p>	<p><i>Hensley v. D.C. Dep't of Employment Servs.</i>, 49 A.3d 1195 (D.C. 2012) (res judicata did not apply in part because the court reasoned “[i]t is far from clear that a DOES Informal Conference, conducted pursuant to 7 DCMR § 219, is the ‘essential equivalent of a judicial proceeding.’ We note that such conferences, which may be held over the telephone, do not require that all interested parties be present, no stenographic records are kept, and “no witnesses shall be called.”); <i>Travelers Indemn. Co. of Illinois v. D.C. Dep't of Employment Servs.</i>, 975 A.2d 823 (D.C. 2009) (memorandum of informal conference issued by a claims examiner, in a workers' compensation case, is, in effect, a recommendation for settlement, which the parties can either accept or reject and, thus, the memorandum acquires the force of law only if it is accepted by the parties).</p>
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Endnotes Page 27-30.



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 Workers' Compensation Judiciary
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Judiciary College 2014



Richard Sicking, Esq., author of the 2014 moot court problem, explained the complexities of the problem and possible conclusions to the judges at the Zehmer Moot Court luncheon on Sunday before the preliminary rounds.

The 2014 Zehmer Moot Court program brought a new paradigm. The semi-final round was argued Monday morning, followed by the traditional final round Monday afternoon. This innovation was made possible by many retired judges volunteering for Monday. Pictured here, left to right are former compensation judges Kathleen Hudson, Alan Kuker, and Kathryn Pecko.



Concurrent with the NAWCJ Judicial College, the Southern Association of Workers' Compensation Administrators produced a Regulator's College. There is something for everyone at the Judiciary College. Pictured, from left to right are Roger Williams, Virginia Commission Chair and SAWCA President, and Gary Davis, SAWCA Secretary/Treasurer.



From the Pages of **workcompcentral**[®]

Golden State Accounts for Nearly 20% of U.S. Benefits

By Greg Jones

Injured workers in California received nearly 20% of the \$181.4 billion in medical and indemnity benefits paid by state and federal workers' compensation programs between 2010 and 2012, according to data from the National Academy of Social Insurance.

During this period, California's workers' compensation system accounted for about 11.4% of all covered workers in the country and 13% of covered wages. The NASI data underscores the importance of the state's workers' compensation system from a national perspective, according to a California Workers' Compensation Institute analysis.

CWCI noted that the \$11.5 billion paid in medical and indemnity benefits in California was "by far the highest in the nation, exceeding the combined total of New York, Pennsylvania and Florida, which ranked second, third and fourth among all states."

New York paid \$5.4 billion in benefits in 2012, while Pennsylvania paid \$2.9 billion and Florida paid \$2.8 billion, according to the NASI data. The total amount paid by all states and the District of Columbia in 2012 was \$58.1 billion. Adding the compensation paid to federal employers and to miners filing federal black lung claims, the total payout for all U.S. comp systems totaled \$61.9 billion in 2012.

The \$11.5 billion paid in California accounted for 19.8% of benefits paid by state systems in 2012, and 18.6% of all benefits paid, including federal compensation programs. New York accounted for 8.7% of all benefits paid in 2012, Pennsylvania accounted for 4.7% and Florida accounted for 4.6%.

The NASI data also shows total benefit payments in California increased faster than they did in all but two states between 2010 and 2012. Medical and indemnity payments in California totaled \$9.6 billion in 2010, so the \$11.5 billion paid out two years later represents a 20.2% increase, according to CWCI's analysis. In North Dakota, the value of paid benefits increased by 31.4% and in Maine by 21.7%. Those were the only states that exceeded the growth rate in California.

Among the Top 10 states in terms of total benefits paid over this period, only New York and Texas saw increases similar to those observed in California. Total benefit payments increased 16.8% in the Empire State and 14% in the Lone Star State. Total payments nationwide increased just 5.8% during the same three-year period. Medical benefit payments increased 27.1% in California from \$5.2 billion in 2010 to \$6.6 billion in 2012, the third-largest increase in the country. North Dakota, where medical benefits increased 32.2% to \$90.9 million from \$68.7 million, saw the largest percentage increase followed by New York, where medical payments increased 7.5% to \$1.8 billion from \$1.7 billion.

The 11.7% increase in indemnity payments in California – from \$4.4 billion in 2010 to \$4.9 billion in 2012 – was higher than all but six other states. North Dakota again saw the largest increase, 30%, followed by Maine at 27.1%. New York ranked third in terms of percentage growth in indemnity payments, with the \$3.5 billion paid in 2012 being 22.4% more than the \$2.9 billion paid in 2010.

As a measure of benefits paid per \$100 of covered wages, California ranked No. 7 in 2012 at \$1.38, according to the NASI data. States beating out California include West Virginia at \$1.81, Montana at \$1.67, Washington at \$1.63, Alaska at \$1.61, Oklahoma at \$1.52 and Maine at \$1.43. The national average excluding federal programs was 95 cents per \$100 of covered wages.

Continued, Page 20.

In terms of employer costs, California was the fourth-most expensive state, with businesses paying \$1.85 for every \$100 in covered wages. Only Alaska at \$2.74, Montana at \$2.49 and Oklahoma at \$2.22 topped California. Among all state programs, the average cost was \$1.29 per \$100 of payroll.

California employers paid \$1.85 for every \$100 in covered wages for workers' compensation insurance and carries paying benefits that amount to \$1.38 of every \$100 in wages, leaving 47 cents to cover administrative costs and expenses. Put another way, the NASI data indicates that 74.6% of employer premium dollars are being directed to injured workers in the way of indemnity benefits or medical care. That compares to a national average of 73.6% of premium dollars being directed to injured workers. The conclusion is that California has an expensive system, but its administrative costs are in line with other states, said Frank Neuhauser, a researcher with the University of California, Berkeley.

Neuhauser cautioned that it's important to keep in mind that employer costs are what businesses pay in any given year to purchase workers' compensation insurance and benefits paid are similarly measured on a calendar-year basis. Because premium dollars paid in one year can cover benefit payments for the next 30 years it's not a perfect way to measure administrative costs, but it's still "reasonably fair" to use for cross-state comparisons, he said. "Benefits paid out this year represent an approximate measure of the relationship between what employers pay and what benefit payments are, it's just kind of discounted," he said. "I think as a first approximation, it's reasonable to think of benefits paid versus employer costs as a ratio of what's paid as a portion of premium."

But Neuhauser also said he believes that the NASI data "substantially underestimates" the amount of premium that is used to cover administrative costs. From a national perspective, he estimated that only 45 cents to 50 cents of every dollar in premium is paid in benefits and the rest is either profit or administrative expenses such as medical cost containment and legal fees. Other insurance products, such as automobile coverage, are similar, with some 50% to 60% of premium dollars being spent on administrative fees, Neuhauser said. However, work comp stands in stark contrast to group health, where only about 12% to 13% of premiums are used to cover carrier expenses.

Amidst the run-up to the passing of the Affordable Care Act, people were "apoplectic" over the fact that 12 cents to 13 cents of every dollar paid to group health carriers was going to administrative costs and profit, Neuhauser said. Workers' compensation pays about 14% of premium dollars just on medical cost-containment programs such as bill review. "We're paying more for medical cost containment in workers' compensation than group health pays for everything they do," he said. "That's the nature of the kind of insurance that comp sells. Workers' compensation is a really expensive way to sell health insurance."

Neuhauser said the two primary factors that drive workers' compensation costs are medical inflation and system complexity. If industrial injuries were covered by group health, and the medical component was removed from the work comp system, it would create huge savings for employers and create a system that is much easier for injured workers to navigate, he said. Additional savings could be realized if the California State Disability Insurance program administered by the Employment Development Department was expanded to include occupational as well as non-occupational injuries.

Continued, Page 21.



Neuhauser said he doesn't think such changes are likely, because the complex nature of California's workers' compensation is a boon to trade organizations, employer associations, labor unions, media outlets, researchers and others. Everyone except "individual businesses and workers" benefits from the system being "complicated and contentious."

ALJ Denies Pacific Hospital Lien, Says it Should be Sanctioned for Bringing Claim

An administrative law judge at the Oxnard Workers' Compensation Appeals Board last week ruled that the Pacific Hospital of Long Beach could take nothing on its \$138,134.78 lien based on its former owner's admissions of fraud. Judge Bonita Edelberg also issued a notice of intent to sanction the hospital and its lien representative \$2,500 and the cost of the defense attorney fees, for insisting on a trial without having relevant and probative evidence to establish its claim.

Former Pacific Hospital owner Michael D. Drobot earlier this year pleaded guilty to charges that he paid kickbacks to dozens of doctors, chiropractors, marketers and others for their referring workers' compensation patients to Pacific Hospital for spinal surgeries, other types of surgeries, magnetic resonance imaging, toxicology, durable medical equipment and other services.

He also admitted bribing state Sen. Ron Calderon, D-Montebello, to influence legislation that affected his ability to perpetuate a scheme to over-bill insurance companies for the procedures performed at the hospital. Among the schemes Drobot confessed to was using a company that he owned, called International Implants, to purchase spinal hardware from manufacturers and sell it to Pacific Hospital at grossly inflated prices, and then pass these inflated charges on to insurance carriers.

In light of these admissions by Drobot, Edelberg said she was "confounded" by the hospital's prosecution of its lien from Albert Valenzuela's back surgery to "collect more money for these fraudulent activities." Venezuela had suffered a compensable back injury and undergone spinal surgery at Pacific Hospital in December 2004, during the time Drobot admitted the fraudulent billing practices at the hospital were happening.

Edelberg, in an opinion last Monday, castigated the hospital and its representative for having the "audacity" to introduce a purchase order for spinal implant hardware totaling \$45,141, as well as its bill to the insurance carrier for Valenzuela's employer for \$96,810 – more than twice the price the hospital paid. Edelberg said that other aspects of the hospital's bill were "outrageous" as well, including a \$9 charge for toothpaste, \$40 for body wash, \$26 for mouthwash, \$35 for a razor and \$26 for baby powder. She thus denied the hospital's request for payment and opined that sanctions were warranted. The judge gave the hospital and its lien representative 20 days in which to respond to her notice of intent to sanction them, jointly and severally.



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Live, From Austin, Its IAIABC's 100th!

By: David Langham

The International Association of Accident Boards and Commissions (IAIABC) convened its 100th annual convention in Austin, Texas the week of September 29, 2014. Administrators, commissioners, programmers, adjudicators and regulators from a vast assortment of jurisdictions gathered to discuss the state of workers' compensation across the world. This international contingent brought a variety of topics to a free-flowing round-table format. Discussions included what is affecting various jurisdictions workers' compensation systems and a spirited discussion of what makes the various jurisdictions unique.

Various jurisdictions are engaged in innovation and development. There is a vast array of technological tools being deployed to modernize and simplify the various important aspects of the industry. Electronic Data Interchange, or "EDI" is always a hot topic in this gathering. The IAIABC has led the marketplace towards the deployment of EDI, but more importantly led a concerted effort at uniformity among jurisdictions that deploy EDI. This is a benefit to the marketplace as vendors, carriers and other constituents do business in and with a variety of jurisdictions.

This is illustrative of a significant point to be gleaned from the discussions in Austin. Though the various jurisdictions have the foundation of workers' compensation in common, it is astounding how very different the laws and practices are in the various represented jurisdictions.

Some agencies are headed by commissioners, others by directors. Some leadership is appointed by a governor, some by a governor with approval of a legislative body, some are appointed by the legislature itself, and for the most part everyone believes they each have a process that is the best. Some agencies combine the regulatory and adjudicatory processes, while others distribute various workers' compensation functions among state agencies. There are jurisdictions literally steeped in due process, and others in which there is little discovery or preparation prior to the first hearing by the adjudicator assigned.

Discussions abound regarding the modernization. Jurisdictions are paperless, moving towards being paperless or struggling with whether the time is ripe for such a transition. There are states with advisory committees that shepherd legislative and regulatory change, and others employ a less structured process.

In short, though there are similarities, it seems that the various jurisdictions have more distinctions in the details than similarities. There is value in that. First, innovation and experimentation occur at a more local level with the local advantages that inure. More importantly, however, these experiments and trials are measured and evaluated in these individual incubators across the marketplace. Then the successes and failures are brought together in forums like the IAIABC and discussed, dissected and described.

Attendees have the opportunity to share the success and failure of their own jurisdiction, and to hear innovative ideas and feedback from a variety of other jurisdictions that have tried the same or similar processes or ideas, or at least faced similar challenges. The presentations are enlightening.

During the Judicial Program this year, we heard from Texas about its trial and appeals process. Texas Hearing Officers hear about 6,000 cases each year, that is, 200 to 300 per hearing officer. We heard from Maryland, whose Commissioners hear 12 to 22 cases each day. Most of the adjudicators described processes in which rules of evidence were not controlling or were of limited application.

The program included an in depth description of mediation programs in workers' compensation. Some states have full time mediators like Florida. Other states utilize their judges or hearing officers in both the adjudicatory and conciliator roles. Some states require mediation, some "strongly recommend" mediation, some offer mediation but remain uncommitted to the tool, and some jurisdictions do not offer it. The conversation about mediation was particularly relevant and timely in light of Judge Torrey's table above regarding the variety of mediation approaches.

The IAIABC offered a unique opportunity to glean substantive knowledge, comparative perspective and to discuss the why and how with officials from other jurisdictions.

SAWCA Returns!

All Committee Conference

November 11-14, 2014

Hilton Head Island, SC

The Southern Association of Workers' Compensation Administrators is a group of 19 jurisdictions. It is focused on making available and present instruction by means of forums, lectures, meetings, and written material regarding the administration of workmen's laws and to provide an avenue by which those interested in workers' compensation may interact with one another to share information and address issues common to the jurisdictions that are members of the association.

Each fall, SAWCA gathers for its All Committee Conference. This fall, the gathering is in Hilton Head, South Carolina. The program is packed with substantive information critical to the administration of effective workers' compensation programs:

Tuesday November 11

Executive Committee Meeting 2:00pm - 5:00pm
Executive Committee Reception & Dinner 6:30pm -9:00pm

Wednesday November 12

General Session: 9:00am - Noon
Join Distinguished Panels of Workers' Comp Professionals and Special Guest Speakers For In-Depth Analyzes of the Challenges & Issues Faced By Regulators & Industry
Committee Meetings: 2:00pm - 5:00pm
Administration & Procedures Committee
Self-Insurance & Insurance Committee
President's Reception 6:00pm - 8:00pm

Thursday November 13

Committee Meetings: 9:00am - Noon
Medical Rehabilitation Committee
Claims Administration Committee
Convention Lunch
Committee Meetings: 2:00pm - 5:00pm
Management Information Systems Committee
Adjudicator's Committee - Open Roundtable
Coffee Cordials & Confections 8:30pm - 10:00pm

Friday November 14

Farewell Breakfast 8:00am
General Session Convention Wrap-up

Judge Agrees not to Sanction RI Workers' Compensation Lawyer

BY KAREN LEE ZINER
kziner@providencejournal.com

PROVIDENCE - A Workers Compensation Court judge agreed Wednesday not to cite lawyer Stephen J. Dennis with criminal contempt for interrupting her on Sept. 3. Dennis spent an hour in a courthouse cell that day, after Associate Judge Janette A. Bertness had him handcuffed and removed from her courtroom. Saying that Dennis was in contempt, Bertness ordered him to sit in the cell for an hour "to figure out what it means to respect the court," according to a court transcript.

Amato A. DeLuca, Dennis's lawyer, appealed to Bertness, saying that a criminal contempt citation would likely harm Dennis's reputation and potentially affect his ability to practice. DeLuca said Dennis "was very anxious" as he tried to explain to Bertness why he had failed to appear as scheduled at 10 a.m. that day to represent a client.

Bertness said she would vacate the criminal contempt citation, but noted that she had had "some problems" with Dennis's explanation of why he was late to court, and that his failure to appear and show up on time "is awful - that's just terrible" for the client.

She also noted that Dennis "had interrupted eight times." Dennis also apologized. "I did not intend to challenge your authority. I did not mean to ..." Dennis said. "I did make a mistake but that was unintentional." He added, "I think that what we do is good, and honorable and noble. If I don't respect you, I don't respect myself."

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<http://www.providencejournal.com/>

Interesting Workers' Compensation Blogs

DePaolo's Work
Comp World

<http://daviddepaolo.blogspot.com/>

New Jersey Workers' Compensation
Blog

<http://www.njworkerscompblog.com/>

Florida Workers'
Compensation Adjudication

<http://fjojcc.blogspot.com/>

Managed Care Matters

<http://www.joepaduda.com/>

Workers' Comp Gazette

<http://workerscompgazette.com/>

Workers' Compensation

<http://workers-compensation.blogspot.com/>

Alabama Workers'
Compensation Blawg

<http://www.alabamaworkerscompblawg.com/>

Maryland Workers'
Compensation Blog <http://www.coseklaw.com/blog/>

Workers' Comp Insider

<http://www.workerscompinsider.com/>

CDC NIOSH Science Blog

<http://blogs.cdc.gov/niosh-science-blog/2014/01/10/workers-comp/>

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Torrey-Greenberg
Pennsylvania Workers'
Compensation treatise, as
published by Thomson-
Reuters.

- ¹ See <http://www.legislature.state.al.us/codeofalabama/1975/25-5-290.htm>.
- ² See <http://alabamaadministrativecode.state.al.us/docs/lab/480-5-1.pdf>
- ³ Defines mediation and sets forth rules.
- ⁴ See <http://law.justia.com/codes/arkansas/2010/title-11/chapter-9/subchapter-7/11-9-703>.
- ⁵ See <http://www.awcc.state.ar.us/rules/rule26.pdf>.
- ⁶ See <http://www.awcc.state.ar.us/reports/biennial/fullbiennialreportfor2012.pdf>.
- ⁷ See <http://codes.lp.findlaw.com/cacode/LA/B/1/d4/4/3/s5502>.
- ⁸ Noting, among other things, "Some judges do not mind setting cases for trial and trying them and other judges use a lot of pressure to settle a case. Your attorney will usually know the personality of the judge you are dealing with. Your case is usually not set for trial with the same judge who handled the settlement conference. If the case does not settle, another judge will be assigned as the trial judge. The personality of that judge will be a factor that your attorney will discuss with you in regard to whether or not you should settle your case...."
- ⁹ See <http://www.colorado.gov/cs/Satellite?c=Page&childpagename=CDLE-WorkComp%2FCDLELayout&cid=1251567766098&pagename=CDLEWrapper#Mediation>.
- ¹⁰ See http://www.colorado.gov/cs/Satellite?c=Page&childpagename=CDLE-WorkComp%2FCDLELayout&cid=1251567766098&pagename=CDLEWrapper#Settlement_conference_procedures
- ¹¹ See <http://www.workerscompensation.com/regulations/stateitem.php?ID=2457&state=colorado&Parent=252&title=>
- ¹² See <http://delcode.delaware.gov/title19/c023/sc03/index.shtml>.
- ¹³ See <http://www.flsenate.gov/Laws/Statutes/2011/440.25>.
- ¹⁴ See generally websites commencing at <http://florida.eregulations.us/rule/60q-6.110>.
- ¹⁵ See also Bolton, Enforcement of Workers' Compensation Settlements, 83 FL. BAR JOURNAL (Apr. 2009), available at <http://www.floridabar.org/divcom/jn/jnjournal01.nsf/Subjects/3154B67A06C3A4FF8525758A004DE136>
- ¹⁶ See <http://law.justia.com/codes/georgia/2010/title-34/chapter-9/article-3/part-2/34-9-100>.
- ¹⁷ See <https://sbwc.georgia.gov/board-rule-100>.
- ¹⁸ See <http://law.justia.com/codes/georgia/2010/title-34/appendix-appendix/title-34-appx-bd-work-comp-r-200-1>.
- ¹⁹ See http://www.iic.idaho.gov/disputed_claims/jrp.pdf.
- ²⁰ See <http://coolice.legis.iowa.gov/CoolICE/default.asp?category=billinfo&service=IowaCode&ga=83&input=86.44>.
- ²¹ See <https://www.legis.iowa.gov/docs/ACO/IAC/LINC/07-28-2010.Agency.876.pdf>. Rule 4.40 is intended to implement Iowa Code § 17A.10 (Admin. Pro.); § 86.8 (duties of Commissioner); and § 86.13 (compensation payments).
- ²² See http://statutes.laws.com/kansas/chapter44/article5/statutes_19136.
- ²³ See http://kansasstatutes.lesterama.org/Chapter_5/Article_5/.
- ²⁴ See <http://legis.la.gov/lss/lss.asp?doc=83494> (providing, among other things, that "if any party fails to appear at a mediation conference ordered by the judge or requested by the parties after proper notice, the workers' compensation judge upon request of a party may fine the delinquent party an amount not to exceed five hundred dollars, which shall be payable to the Office of Workers' Compensation Administrative Fund. In addition, the workers' compensation judge may assess against the party failing to attend costs and reasonable attorney fees incurred by any other party in connection with the conference. The penalties provided for in this Subsection shall be assessed by the workers' compensation judge only after a contradictory hearing which shall be held prior to the hearing on the merits of the dispute.").
- ²⁵ See http://www.workcompcentral.com/wiki/index.php/Louisiana_Regulations_I.5813.
- ²⁶ Mediation is no longer mandatory, so this case may be of limited precedential value.
- ²⁷ See <http://www.mainelegislature.org/legis/statutes/39-a/title39-Asec313.html> (providing, among other things, "The board may assess a forfeiture in the amount of \$100 against any employer or representative of the employee, employer or insurer who participates in mediation without full authority to make decisions regarding the claim. If a representative of the employer, insurer or employee participates in mediation or any other proceeding of the board, the representative shall notify the employer, insurer or employee of all actions by the representative on behalf of the employer, insurer or employee and any other actions at the proceeding.").
- ²⁸ See <http://www.workerscompensation.com/regulations/stateitem.php?ID=5950&state=maine&Parent=681&title=>; <http://www.workerscompensation.com/regulations/stateitem.php?ID=5949&state=maine&Parent=681&title=>.



- ²⁹ The Maine agency website does not seem to direct injured workers to a link by which they can obtain a claim form or the like. See also Benjamin R. Hutchinson, *It has to End Somewhere: Feiereisen v. NewPage Corp. and the Scope of the Employment Contract*, 64 MAINE LAW REVIEW 326 (2012) (discussing case [5 A.3d 669] where hearing officer and court held that claimant injured in MVA on trip to mandatory mediation did not sustain injury arising in course of employment).
- ³⁰ See <https://malegislature.gov/laws/generalaws/parti/titlexxi/chapter152/section10>.
- ³¹ See <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXXI/Chapter152/Section10B>. See subsection (5). This is also the rare workers' compensation statute that seems to allow for arbitration.
- ³² According to the DIA website, "When you, or your attorney files claim for benefits or the insurer files a complaint to stop or modify your benefits, a Conciliation is scheduled. A Conciliation is an informal meeting between you, your attorney, the insurer, and a conciliator from the DIA. At the Conciliation we will attempt to reach a voluntary agreement between you and the insurer. If a voluntary agreement cannot be reached, the status of your claim would remain the same as before." See also <http://blog.mass.gov/jobs/workers-compensation/conciliators/>.
- ³³ Section 3 was added in 2011 by 2011 Mich. Legis. Serv. P.A. 266 (H.B. 5002), to provide, "If the agency or the Michigan administrative hearing system determines that a case may be resolved by mediation, the case may be mediated by the parties. If the matter is not resolved by the mediation, the case shall be set for hearing."). See also [http://www.legislature.mi.gov/\(S\(ngaymz554slh4x55n5aa4jay\)\)/mileg.aspx?page=GetMCLDocument&objectname=mcl-418-847](http://www.legislature.mi.gov/(S(ngaymz554slh4x55n5aa4jay))/mileg.aspx?page=GetMCLDocument&objectname=mcl-418-847).
- ³⁴ See <https://www.revisor.mn.gov/statutes/?id=176.305> (noting, among other things, "The hearing must be held before a compensation judge other than the compensation judge who conducted the settlement conference.").
- ³⁵ See <https://www.revisor.mn.gov/rules/?id=5220.2670>.
- ³⁶ This website, which features FAQ's, commences with the following explanation: "The Alternative Dispute Resolution (ADR) unit at the Minnesota Department of Labor and Industry (DLI) seeks early intervention in workers' compensation disputes through conference and mediation. It handles calls from the workers' compensation hotline and responds to questions from injured workers and their employers."
- ³⁷ Policy Statement declaring, inter alia, "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."
- ³⁸ See <http://www.moga.mo.gov/statutes/C200-299/2870000460.HTM>.
- ³⁹ See <http://www.workerscompensation.com/regulations/stateitem.php?ID=8017&state=missouri&Parent=851&title>.
- ⁴⁰ Stating, inter alia, "A conference is a proceeding before an administrative law judge held in cases where no claim for compensation has been filed. A conference is an opportunity for the injured worker to meet with the attorney for the employer/insurer, discuss the case, and attempt to resolve the case by settlement, if appropriate."
- ⁴¹ See http://leg.mt.gov/bills/MCA_toc/39_71_24.htm.
- ⁴² See <http://leg.mt.gov/bills/mca/39/71/39-71-2406.htm>.
- ⁴³ See <http://leg.mt.gov/bills/mca/39/71/39-71-2407.htm>.
- ⁴⁴ See <http://leg.mt.gov/bills/mca/39/71/39-71-2408.htm>.
- ⁴⁵ See <http://leg.mt.gov/bills/mca/39/71/39-71-2409.htm>.
- ⁴⁶ See <http://codes.lp.findlaw.com/mtcode/39/71/24/39-71-2410>.
- ⁴⁷ See <http://leg.mt.gov/bills/mca/39/71/39-71-2411.htm>.
- ⁴⁸ See <http://www.wcc.ne.gov/publications/rules.pdf>. Rule 6
- ⁴⁹ See id., Rule 49.
- ⁵⁰ See <http://nebraskalegislature.gov/laws/statutes.php?statute=48-168>.
- ⁵¹ According to the Court Administrator, the "court does have the authority to facilitate mediation. In fact, the court has three staff attorneys who are trained as mediators and conduct mediations as part of their duties. All petitioned cases involving pro se plaintiffs are automatically forwarded to our staff attorneys to attempt informal resolution, and our public information and compliance staff members also refer callers interested in mediation to the attorneys. ... [Also,] some private practice attorneys also conduct mediations. This is done largely outside the statutory dispute resolution processes, with the exception that any resulting agreement becomes final and binding only if it results in a settlement agreement or release in accordance with §48-139." Memorandum from Mr. Glenn Morton to DBT (9/24/2014).
- ⁵² See <http://law.justia.com/codes/new-mexico/2013/chapter-52/article-5/section-52-5-5>.
- ⁵³ See <http://www.workerscomp.state.nm.us/pdf/rules/rule4.pdf> (includes remarkable proviso, "The mediator shall be addressed in a courteous and respectful manner by all parties.").
- ⁵⁴ See [http://public.leginfo.state.ny.us/LAWSSEAF.cgi?QUERYTYPE=LAWS+&QUERYDATA=\\$\\$WKC25\\$\\$@TXWK C025+&LIST=LAW+&BROWSER=+&TOKEN=30768548+&TARGET=VIEW](http://public.leginfo.state.ny.us/LAWSSEAF.cgi?QUERYTYPE=LAWS+&QUERYDATA=$$WKC25$$@TXWK C025+&LIST=LAW+&BROWSER=+&TOKEN=30768548+&TARGET=VIEW).

⁵⁵ See <http://www.wcb.ny.gov/content/main/wclaws/312.jsp>.

⁵⁶ May be mandatory in some cases. A lawyer website states, Your case may also be scheduled for a “conciliation meeting. This is similar to a hearing, except that any findings made must be by agreement. This is less formal than a hearing. Unfortunately, the Workers’ Compensation Board will often schedule conciliation meetings when a hearing is necessary to deal with problems that we cannot agree on. Usually, there is little we can do about this, and the conciliation meeting may not be very helpful. We will try to avoid this when we can. If this does happen, the conciliator will usually schedule a hearing after the meeting.”). See http://www.chellislaw.com/Frequent_Questions.html. For a 2006 blog posting that criticizes mandatory conciliation, see <http://www.disabledworkerlaw.com/2006/02/articles/ny-workers-compensation-claims/ny-workers-comp-alliance-position-paper-2006/>. This item is obviously dated but points up standard criticisms of mandatory processes that delay a case from reaching a WCJ.

⁵⁷ See <http://www.ic.nc.gov/ncic/pages/statute/97-80.htm>. See generally Lex Larson, Mediation of Industrial Commission Cases, 17 CAMPBELL L. REV. 395 (1995). As to enforceability of mediated settlement in North Carolina, see <http://www.wci360.com/news/article/enforceability-of-mediated-settlement-agreements-north-carolina-law>.

⁵⁸ “Order for Mediated Settlement Conference”:
<http://reports.oah.state.nc.us/ncac/title%2004%20-%20commerce/chapter%2010%20-%20industrial%20commission/subchapter%20g/04%20ncac%2010g%20.0101.pdf>; “Selection of Mediator”:
<http://reports.oah.state.nc.us/ncac/title%2004%20-%20commerce/chapter%2010%20-%20industrial%20commission/subchapter%20g/04%20ncac%2010g%20.0102.pdf>; “The Mediated Settlement Conference”:
<http://reports.oah.state.nc.us/ncac/title%2004%20-%20commerce/chapter%2010%20-%20industrial%20commission/subchapter%20g/04%20ncac%2010g%20.0103.pdf>; “Duties of Parties, Representatives, and Attorneys”:
<http://reports.oah.state.nc.us/ncac/title%2004%20-%20commerce/chapter%2010%20-%20industrial%20commission/subchapter%20g/04%20ncac%2010g%20.0104.pdf>; “Sanctions (Effective July 1, 2014)”:
<http://reports.oah.state.nc.us/ncac/title%2004%20-%20commerce/chapter%2010%20-%20industrial%20commission/subchapter%20g/04%20ncac%2010g%20.0105.pdf>; “Authority and Duties of Mediators”:
<http://reports.oah.state.nc.us/ncac/title%2004%20-%20commerce/chapter%2010%20-%20industrial%20commission/subchapter%20g/04%20ncac%2010g%20.0106.pdf>; “Compensation of the Mediator”:
<http://reports.oah.state.nc.us/ncac/title%2004%20-%20commerce/chapter%2010%20-%20industrial%20commission/subchapter%20g/04%20ncac%2010g%20.0107.pdf>; “Mediator Certification and Decertification”:
<http://reports.oah.state.nc.us/ncac/title%2004%20-%20commerce/chapter%2010%20-%20industrial%20commission/subchapter%20g/04%20ncac%2010g%20.0108.pdf>; “Neutral Evaluation”:
<http://reports.oah.state.nc.us/ncac/title%2004%20-%20commerce/chapter%2010%20-%20industrial%20commission/subchapter%20g/04%20ncac%2010g%20.0109.pdf>; “Waiver of Rules”:
<http://reports.oah.state.nc.us/ncac/title%2004%20-%20commerce/chapter%2010%20-%20industrial%20commission/subchapter%20g/04%20ncac%2010g%20.0110.pdf>; “Motions”:
<http://reports.oah.state.nc.us/ncac/title%2004%20-%20commerce/chapter%2010%20-%20industrial%20commission/subchapter%20g/04%20ncac%2010g%20.0111.pdf>



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**National Association of Worker's Compensation
Judiciary**

P.O. Box 200, Tallahassee, FL 32302; 850.425.8156 Fax 850.521-0222



- ⁵⁹ [New Administrative System]: <http://www.oklegislature.gov/osstatuestitle.html>.
- ⁶⁰ [Court of Existing Claims]: http://www.owcc.state.ok.us/PDF/CEC%20rules%20as%20approved%20by%20Sup%20Ct_2014%20OK%202.pdf.
- ⁶¹ See also <https://www.travelers.com/claim/iw-documents/workers-compensation/OK.Admin.WC.Act.S1.Title85A.2013.pdf>.
- ⁶² See <http://www.oregonlaws.org/ors/656.307>.
- ⁶³ See <http://www.oregonlaws.org/ors/36.224>.
- ⁶⁴ See http://arcweb.sos.state.or.us/pages/rules/oars_400/oar_438/438_019.html.
- ⁶⁵ See <http://www.portal.state.pa.us/portal/server.pt?open=514&objID=553004&mode=2>; See D. TORREY & A. GREENBERG, PA WORKERS' COMPENSATION: LAW & PRACTICE, § 16:102 et seq. (Thomson-Reuters 3rd ed 2008 & Supp. 2013) (reviewing mediation law and practice).
- ⁶⁶ See <http://www.portal.state.pa.us/portal/server.pt?open=514&objID=553004&mode=2>.
- ⁶⁷ See <http://www.wcc.sc.gov/Documents/Wha%27s%20New/Regulations/Mediation%20Regulation%2067%201801/Final%20Mediation%20Regulation%20eff%202013%2006%2028.pdf>. For a lawyer website which summarizes the 2013 enactment, see <http://www.constangy.com/communications-460.html>.
- ⁶⁸ See <http://legis.sd.gov/statutes/DisplayStatute.aspx?Type=Statute&Statute=62-7-37>.
- ⁶⁹ Stating, inter alia, "No request for a hearing by a workers' compensation judge under this chapter shall be filed with the court of workers' compensation claims, other than a request for settlement approval, until a workers' compensation mediator has issued a dispute certification notice certifying issues in dispute for hearing before a workers' compensation judge." Proviso also limits issues for hearing to those raised at mediation (with exceptions.)
- ⁷⁰ See generally <https://www.travelers.com/claim/iw-documents/workers-compensation/Tennessee.WC.Reform.2013.pdf>
- ⁷¹ See <http://www.statutes.legis.state.tx.us/Docs/LA/htm/LA.410.htm#410.021>.
- ⁷² See <http://www.statutes.legis.state.tx.us/Docs/LA/htm/LA.410.htm#410.021>.
- ⁷³ See <http://www.statutes.legis.state.tx.us/Docs/LA/htm/LA.413.htm>.
- ⁷⁴ See <http://www.tdi.texas.gov/wc/rules/documents/141.pdf>.
- ⁷⁵ The regulations, at § 141.5(b), characterize the conference as follows: "Overview of the benefit review conference. The benefit review conference consists of three parts: opening, mediation, and closing."
- ⁷⁶ See <http://www.leg.state.vt.us/statutes/fullsection.cfm?Title=21&Chapter=009&Section=00663a>.
- ⁷⁷ <http://labor.vermont.gov/workers-compensation/workers-compensation-rules/>. (Includes rules, approved mediator list, and report on program).
- ⁷⁸ See <http://labor.vermont.gov/workers-compensation/injured-workers/dispute-resolution/>. (This site details informal dispute resolution, which is different from mediation.)
- ⁷⁹ See <http://app.leg.wa.gov/RCW/default.aspx?cite=51.52.095> ("Conference for disposal of matters involved in appeal/Mediation of disputes").
- ⁸⁰ See <http://app.leg.wa.gov/wac/default.aspx?cite=263-12-090>. Providing, inter alia, "No industrial appeals judge who mediates in a particular appeal may, without the consent of the parties, participate in writing the proposed decision and order in the appeal"
- ⁸¹ See <http://app.leg.wa.gov/wac/default.aspx?cite=263-12-092>.
- ⁸² One agency report explains: "Workers, employers, and other parties who dispute DLI orders have a limited time within which to file appeals with the BIIA. Once an appeal is filed, the BIIA has up to sixty days to accept (grant) or deny the appeal. Specially trained support staff first develop historical summaries and prepare case files. An appeal is then assigned to an industrial appeals judge who has expertise in mediation and settlement skills (a mediation/review judge). ... In the event an appeal is not settled or dismissed, the case is assigned to an industrial appeals judge (a hearings judge) for a hearing on the merits of the appeal. The hearing process is adversarial in nature; attorneys represent over 90% of all parties...." <http://ofm.wa.gov/budget/manage/strategic/0709/190strategicplan.pdf>.
- ⁸³ See <http://www.legis.state.wv.us/wvcode/ChapterEntire.cfm?chap=23&art=5>.
- ⁸⁴ See http://www.workerscompensation.com/regulations/stateitem.php?ID=18694&state=west_virginia&Parent=2004&title=.
- ⁸⁵ See <http://www.dcregs.dc.gov/Gateway/RuleHome.aspx?RuleNumber=7-219>.

