
INTEROFFICE MEMORANDUM

TO: COMMISSIONERS BECK, BARDEN, LYNDON, MCCASKILL, ROCHE,
AND WILKERSON

FROM: COMMISSIONER WILLIAMS *John*

SUBJECT: PROPOSED MEDIATION REGULATION

DATE: 1/9/2012

CC: GARY CANNON, RENEE SMITH

PROPOSED MEDIATION REGULATION (REG. 67-1801)

In advance of our Full Commission Business Meeting on next Tuesday, I wanted to provide you all with a copy of the proposed mediation regulation (and revised forms as a result of the regulation) that my committee has now completed. I will be presenting this to you for your consideration on next Tuesday, but I wanted you all to have a chance to digest the information before the meeting. The proposed regulation itself is self-explanatory; however, I wanted to provide you all with a brief summary of the proposed regulation, the changes to the Forms 21, 50, and 51 that would accompany the regulation, and the addition of a Form 70 as a result of the proposed regulation.

Our committee met twice – October 28, 2011 and December 2, 2011 – and had a lot of discussion via e-mail to tweak any language in the regulation. The committee was made up of several defense and claimant's attorneys, self-insured representatives, and industry group representatives. The committee had the following members: Earl Ellis, Lana Sims, Mills Gallivan, Stan Lacy, Buster Holland, Allison Carter, Cindy Dooley, Hugh McAngus, Ann Mickle, Kathryn Williams, David Pearlman, Andy Safran, Mark Arden, Kenny Harrell, Hood Temple, Matt Robertson, Latonya Edwards, Clifford Bourke, Leslie Mitchum, Ken Stoller, Ashley Hunter, Clara Smith, Michaela Isler and Ginger Crocker. Dave DeMasters was the Commission staff person assigned to help me with the committee, and he was an excellent right hand throughout this process. The main goals in drafting the proposed regulation were to 1) give Commissioners explicit authority to order mediations, 2) create a list of cases for which mediation before any hearing would be beneficial to all the parties, and 3) deal with

any procedural issues in requesting mediations, choosing mediators, splitting costs, etc. I am happy to state that there was consensus among the committee on nearly every major part of the proposed regulation.

This purpose of the regulation is to establish a defined mechanism to resolve disputes without the necessity of a hearing. The goal is to afford a meaningful opportunity to the parties to achieve an efficient and a just resolution of their disputes in a timely and a cost-effective manner. **The goal was not to draft a regulation for mandatory mediation of all cases.** I personally thought that would be counterproductive to our current system to have mandatory mediation on all cases, as we run efficiently and effectively. However, the committee members agreed that defining certain cases for mediation would be beneficial.

The major highlights of the regulation are as follows: 1) Commissioners would have authority to order mediation in any case, 2) admitted cases under §42-9-10, 42-9-30 (21), occupational disease cases, 3rd party lien cases, mental/mental cases, and concurrent jurisdiction cases under the Federal Longshore Act would be mediated before any hearing on the claims, 3) contested death cases would be mediated before a hearing is held, 4) mass facility cases would be mediated before any hearings held, 5) the Forms 21, 50, 51, and the response to the Form 21 would be the mechanism to request mediation or to "opt out" of mediation, 6) the mediator must go through the SC Bar training, 7) selection must take place within 10 days of filing of the 51 or response to the Form 21, 7) the mediation must be completed within 60 days, 8) proper representatives must be present, but may attend by telephone, 9) communications within the mediation are confidential, and 10) parties who do not mediate in good faith are subject to sanctions, fines, or penalties.

If implemented, the regulation would require some minor changes to the Forms 21, 50, and 51. Namely, the parties would check off a box on the forms indicating whether they are requesting mediation, opting out of mediation, whether the case is subject to mediation under the regulation, or whether the case is not subject to mediation under the regulation. These are minor changes to the forms, but they are necessary to ensure that cases on the mediation track are not scheduled for a hearing before they are mediated.

Finally, a "Form 70" has been proposed to be used by the mediators to update the Commission on whether the case was successfully mediated or not. This form would only be for tracking purposes and would not become a part of the Commission file. I thought it was important that we track the mediation progress going forward, to determine if it is working or not. This form would be helpful also in either placing the file back in the normal docket to be scheduled, or to remove the case as a settlement or agreement has been reached.

I look forward to sharing this information with you all in detail on next Tuesday. In advance of next week, please do not hesitate to contact me for any clarification or to answer any questions about the proposed regulation.

67-1801. Mediation.

- A. This mediation regulation is established to resolve disputes without the necessity of a hearing. The purpose is to afford a meaningful opportunity to the parties to achieve an efficient and a just resolution of their disputes in a timely and a cost-effective manner.
- B. A Commissioner has the discretion to order mediation in any pending claim before them and to select a duly qualified mediator.
 - (1) A Commissioner must retain jurisdiction of the claim solely for those issues being mediated.
 - (2) A Commissioner does not retain jurisdiction of the claim for the life of the claim, only until those pending issues are resolved.
- C. Required Mediation:
 - (1) Claims arising under §42-9-10, §42-9-30 (21), occupational disease cases, third-party lien reduction claims, contested death claims, mental/mental injury claims, and cases of concurrent jurisdiction under the South Carolina Workers' Compensation Act and the Federal Longshore and Harbor Workers' Compensation Act must be mediated prior to a hearing.
 - (a) In contested death claims, a Commissioner must still make a finding that a good faith dependency investigation has been completed.
 - (b) Except for contested death claims, all claims listed in section (C)(1) would apply only to claims where compensability of the accident is admitted by the employer/carrier.
 - (2) Claims involving multiple employees arising out of employment with the same Employer, whether or not compensability has been admitted, shall be subject to a scheduling order and shall be mediated prior to a hearing. Participation in mediation in no way constitutes an admission of compensability at any subsequent proceeding.
 - (3) A Commissioner's authority to order mediation in any pending claim is not limited by the claims listed in section (C) (1) and (C) (2).
- D. The parties may request mediation by the proper submission of a Form 21, Form 50, Form 51, or the response to the Form 21, indicating a request for mediation. Except as provided in section (C), either party may object to mediation by the proper submission of the Form 21, Form 50, Form 51, or the response to the Form 21.
- E. The parties may consent to use any mediator who is duly qualified.
 - (1) The mediator must be qualified to be certified as a mediator per the certification process established by the South Carolina Bar Association.

- F. The parties must select a mediator within ten (10) days of the filing of the Form 51 or the response to the form 21, and must promptly notify the Commission of the mediator and proposed mediation date.
- G. The mediation must be completed within sixty (60) days of the filing of the Form 51 or the response to the form 21, unless otherwise agreed to by the parties.
- H. If the parties cannot agree on a mediator, the Commission shall appoint a duly qualified mediator for them.
- I. In addition to their attorney being present, each party shall provide a representative, who shall attend the mediation in person or via telephone. The representative should have authority to enter into negotiations, in good faith, to resolve the issues in dispute. If the representative attends via telephone, they shall be available by telephone for the duration of the mediation. Reasonable notice shall be provided to the opposing party concerning attendance via telephone, prior to the mediation.
- J. All communications and statements, which take place within the context of mediation, shall be confidential and not subject to disclosure. Such communications or statements shall not be disclosed by any mediator, party, attorney, or attendee and may not be used as evidence in any proceeding. An executed agreement resulting from mediation is not subject to the confidentiality described above.
- K. Neither the mediator nor any third-party observer may be subpoenaed or otherwise required to testify concerning a mediation or settlement negotiation in any proceeding. The mediator's notes shall not be placed in the Commission's file, shall not be subject to discovery, and shall not be used as evidence in any proceeding.
- L. The parties shall share the cost of mediation equally, unless otherwise agreed by the parties, or as otherwise ordered by the Commission.
- M. Any party who refuses or neglects to act in good faith during the mediation may be subject to a fine not to exceed the actual cost of the mediation. Any party who believes this provision has been violated may file a Motion for a Rule to Show Cause before the jurisdictional Commissioner for purposes of assessing fines and penalties. The parties shall have the right of review and appeal as in other cases.

N. A Form 70 shall be filed by the Mediator with the Judicial Department at the conclusion of the mediation. A Form 70 shall not become a part of the Commission's file and will solely be used for tracking purposes.

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5675



WCC File #: _____
Carrier File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: _____ SSN: _____ - _____ - _____ Employer's Name: _____
Address: _____ Address: _____
City: _____ State: _____ Zip: _____ City: _____ State: _____ Zip: _____
Home Phone: () - _____ Work Phone: () - _____ Insurance Carrier: _____
Preparer's Name: _____ Law Firm: _____ Preparer's Phone #: () - _____

The date of injury reported on Form 12A is: _____ (m/d/yyyy)

Check appropriate section(s). The employer's representative requests a hearing to:

I. **Stop payment of compensation.** Claimant has reached maximum medical improvement and Claimant continues to receive temporary compensation payments. The employer's representative requests a hearing pursuant to § 42-9-260(D) to stop payment of temporary compensation. A hearing requested pursuant to this section must be held within sixty days of the date of the request.

Claimant reached maximum medical improvement on _____ (m/d/yyyy) (copy of medical report must be attached).
Compensation payments are current as of _____ (m/d/yyyy) and shall continue until otherwise ordered or until Form 17 is signed by the claimant.
A Form 17 was offered and refused on _____ (m/d/yyyy).

II. **Address suspension, termination, or reduction of temporary disability payments for any cause.**

- a. At any time pursuant to § 42-9-260(E).
- b. After the one-hundred-fifty day period has expired pursuant to § 42-9-260(F), R.67-505 and R.67-506.

The basis for the termination/ suspension is _____

III. **Determine if compensation is due** pursuant to § 42-9-10, § 42-9-20 or § 42-9-30 and, if so, in what amount, based on the following grounds:

Claimant reached maximum medical improvement on _____ (m/d/yyyy) (copy of medical report must be attached).

IV. **Request Credit for Overpayment of temporary compensation pursuant to § 42-9-210.**

V. **Determine amount of compensation for claims involving a fatality.** (Dependency investigation must be attached).

- a. Payment of unpaid balance of compensation when employee dies pursuant to § 42-9-280.
 - b. Amount of compensation for death of employee due to accident pursuant to § 42-9-290.
- A hearing requested pursuant to this section will be set on an expedited basis.

VI. **Mediation**

- a. I am requesting mediation of this case.
- b. I am not requesting mediation of this case.
- c. This case is subject to mediation pursuant to Reg. 67-1801.
- d. This case is not subject to mediation pursuant to Reg. 67-1801.

- A \$ 25.00 filing fee and updated Form 18 must be included with an employer's request for a hearing.
- An employer requesting a hearing must include certification that the request has been served on all parties in compliance with R.67-211.

Preparer's Signature _____ Title _____ Date _____

Address _____

Questions about the use of this form should be directed to the Judicial Department at 803-737-5675, or visit us online at www.wcc.sc.gov. Refer to R. 67-1801 for mediation



Claimant's Name: _____ SSN: _____ - - Employer's Name: _____
 Address: _____ Address: _____
 City: _____ State: _____ Zip: _____ City: _____ State: _____ Zip: _____
 Home Phone: () - _____ Work Phone: () - _____ Insurance Carrier: _____
 Preparer's Name: _____ Law Firm: _____ Preparer's Phone #: () - _____

Complete each information blank. To request a hearing, check Box 13b, indicate the kinds of benefits claimed by checking the box(es) at Lines 6, 7, 8, and 9, and file this form in duplicate.

A claim for workers' compensation benefits is made based on the following grounds: _____ **Date of Injury or Illness:** _____

- Injury Illness Repetitive Trauma
- 1a. The claimant sustained an injury to _____ (Part(s) of Body Injured) ON _____ (Month/Day/Year) in _____ county, state of _____.
- 1b. Body part(s) affected are: _____
 Briefly describe how the accident occurred. _____
- 2. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
- 3. The relationship of employer and employee existed at the time of injury.
- 4. At the time of the injury the claimant was performing services arising out of and in the course of employment.
- 5. Notice of the accidental injury was given to the Employer on _____ (Month/Day/Year) in the following manner: _____
- 6. Due to injury, the claimant is in need of (check one):
 (a) medical examination and treatment for: _____
 (b) additional medical examination and treatment for: _____
- 7. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of: _____
- 8. Due to the injury, the Claimant has permanent disability of the following nature and extent (check one):
 (1) General Disability: Total (2) Specific Disability: Total
 (3) Wage Loss Partial Partial
- 9. Due to the injury, the Claimant has a serious bodily disfigurement consisting of: _____
- 10a. At the time of the injury, the Claimant was paid weekly wages of \$_____, and demands accounting of days worked and wages earned as provided by law.
- 10b. Give names and addresses of all employers for whom the Claimant has worked since the date of the accident: _____
- 11a. Further grounds or unusual aspects of claim: _____
- 11b. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident: _____
- 11c. To the best of your knowledge, did you have any prior permanent disability? _____
 If yes, describe: _____
- 12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.
- 13a. **I am filing a claim. I am not requesting a hearing at this time.** 15a. I am requesting mediation of this case.
- 13b. **I am requesting a hearing. A \$25 fee is required.** 15b. I am not requesting mediation of this case.
- 16a. This case is subject to mediation pursuant to Reg. 67-1801.
- 16b. This case is not subject to mediation pursuant to Reg. 67-1801.
- 14. Estimated time needed for hearing: _____

I verify the contents of this form are accurate and true to the best of my knowledge.

Preparer's Signature _____ Title _____ Email _____ Date _____

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Refer to R. 67-1801 for mediation. Questions about the use of this form may be directed to the Commission's Claims Dept.



Claimant's Name: _____ SSN: _____ Employer's Name: _____
 Address: _____ Address: _____
 City: _____ State: _____ Zip: _____ City: _____ State: _____ Zip: _____
 Home Phone: () - _____ Work Phone: () - _____ Insurance Carrier: _____
 Date of Injury: _____
 Preparer's Name: _____ Law Firm: _____ Preparer's Phone #: () - _____

Date of Injury or Illness:

Complete each information blank. Specify clearly when contentions are admitted in part and denied in part. The employer/carrier in answer to the claim, respectfully shows:

1. It is **Admitted / Denied** the employee sustained an injury or illness on or about the date set forth in the Form 50. The reasons for denial are:

2. It is **Admitted / Denied** both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are:

3. It is **Admitted / Denied** the relationship of employer and employee existed at the time in question. The reasons for denial are:

4. It is **Admitted / Denied** at the time in question the employee was performing services arising out of and in the course of employment. The reasons for denial are:

5. It is **Admitted / Denied** notice of injury was given the employer. The reasons for denial are:

6. It is **Admitted / Denied** the employee **Needs / Is Entitled to Additional** medical care as a result of injury or illness. The reasons for denial are:

7. It is **Admitted / Denied** the employee is entitled to temporary total disability for the period(s) of :

8. It is **Admitted / Denied** the employee is permanently disabled. The reasons for denial are:

9. It is **Admitted / Denied** the employee has serious disfigurement.
10. It is contended that an average weekly wage of \$ _____ applies, according to attached Form 20 as provided by law.
11. Further contentions, grounds of defense, or unusual aspects are:

12. Estimated time needed for hearing: _____

- 13a. I am requesting mediation of this case. 14a. This case is subject to mediation pursuant to Reg. 67-1801.
 13b. I am not requesting mediation of this case. 14b. This case is not subject to mediation pursuant to Reg. 67-1801.

I certify I have served this document pursuant to R.67-212 by delivering a copy to:

Name: _____

Address: _____

on the ____ day of _____, _____ by first class mail personal service certified mail.

I verify the contents of this form are accurate and true to the best of my knowledge.

Preparer's Signature _____ Title _____ Email _____ Date _____

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Refer to R. 67-1801 for mediation. Questions about the use of this form may be directed to the Commission's Judicial Department. Pursuant to R.67-606, a Form 20 must be filed with the Claims Department at least 30 days from the date of filing this form.

South Carolina Workers' Compensation Commission

1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5739
www.wcc.sc.gov



MEDIATOR REPORT FORM

WCC File No: _____

Claimant's Name: _____

Employer's Name: _____

Address: _____

Address: _____

City: _____ State: _____ Zip: _____
::: _____ : _____

City: _____ State: _____ Zip: _____

Home Phone: () - _____ Work Phone: () - _____

Carrier: _____

Preparer's Phone #: () - _____

Preparer's Name: _____

The undersigned mediator reports the following results of a mediated settlement conference in this case:

Mediation was held and completed on: _____

_____ was held and not completed because: _____

_____ was not held because: _____

The parties reached: _____ agreement on all issues _____ a partial agreement _____ an impasse

The party who will submit the Final Agreement & Release, Consent Order, or Form 16A to the Commission is:

_____ Claimant _____ Defendants

The parties request: _____ the case be set for a hearing _____ the case be returned to general files pending a hearing request from either party

Mediator Signature: _____

Date: _____

This report is to be returned to the Commission in all cases, whatever the mediation results. This form is used solely for tracking purposes and does not become a part of the Commission file.