



The Mediation Tsunami

Workers' Compensation Summit

June 17, 2015

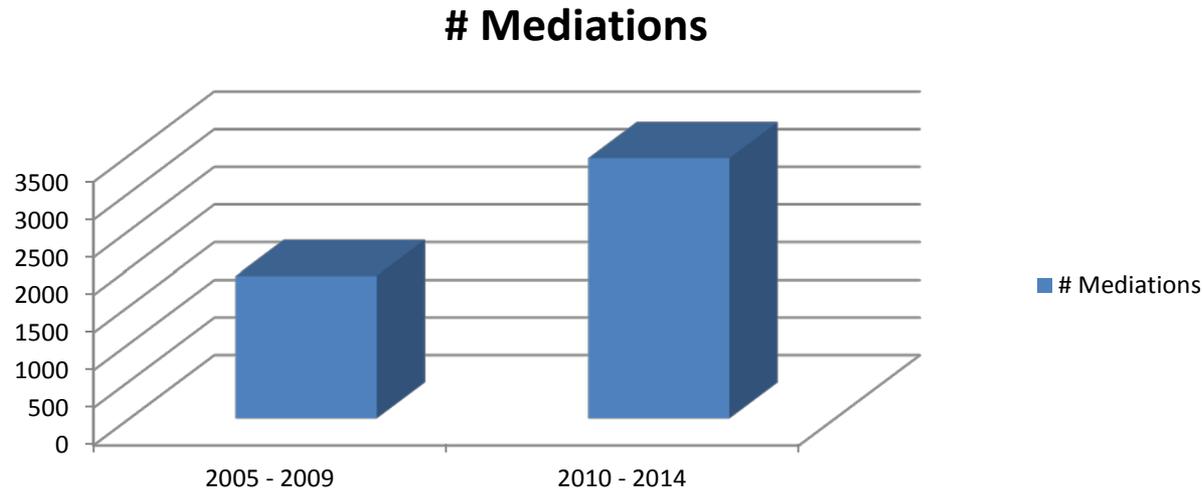
What Is Mediation?

An informal process where a neutral third party – a mediator – assists disputing parties in reaching a mutually acceptable resolution. A structured negotiation and settlement session.

- Voluntary (in Minnesota)
- Confidential
- Not arbitration – mediator has no decision-making authority

Mediation Is On The Rise

Mediations Conducted at Minnesota Department of Labor and Industry



2005 – 2009

1894

2010 – 2014

3455

Mediation Is On The Rise

“OAH believes that mediation can be a valuable part of the workers’ compensation claim process, and is therefore seeking to offer you more resources in this area. Many of the judges will be going through mediation training this summer.”

-- Chief Judge Tammy Pust’s April 2015 Bar Update –

Mediation Is On The Rise

- More private mediations
- More private mediators

Mediation Is On The Rise

“Mediation is the most **promising** form of dispute resolution.”

Measuring Dispute Resolution Outcomes: A Literature Review with Implications for Workers' Compensation. Duncan S. Ballantyne and Christopher J. Mazingo. April 1999. WC-99-1.

Workers' Compensation Research Institute

“There is a developing trend in workers' compensation. Mediation is becoming the **norm** rather than the exception.”

Florida Deputy Chief Judge David Langham, in his June 17, 2014 blog. See <http://www.flworkerscomp.org/wcsblogs/viewpost/272.html>.

Mediation Is On The Rise

- At least 35 states have an officially-sanctioned mediation program.
- At least 10 states have mandatory mediation.

WORKERS' COMPENSATION MEDIATION PROGRAMS AMONG STATES: AN
INTRODUCTION WITH COMPARATIVE RESOURCE TABLE

David B. Torrey and James A. Yskamp

Pennsylvania Bar Association Workers' Compensation Law Section Newsletter,
December, 2014

Pre-Mediation Statement

- Itemization of benefit claims/defenses and potential recovery/exposure;
- Expectations regarding reasonable settlement range;
- Status of any negotiations/offers/demands;
- Assessment of strong and weak points;
- Intangibles or dynamics that could affect achieving a resolution;
- Pertinent medical or vocational records/reports, IME's; IVE's;
- Confirmation that all interveners and/or potential interveners have been properly notified.

Choosing the Right Mediator

- **Facilitative:** mediator avoids making recommendations/risk and valuation assessment/predictions on possible outcomes at trial, believing that the role of the mediator is simply to facilitate a resolution.
- **Evaluative:** mediator points out risks, probable outcomes at trial, provides opinions on case evaluation, and may even suggest settlement outcomes.

MN Rules of Professional Conduct for Lawyers

- Lawyers serving as mediators
 - conflicts
- Lawyers serving as advocates in mediation setting: generally the same obligations as in litigation/transactional matters
 - competence
 - diligence
 - communication