

Reports of Mediator Procedures and Best Practices

Reports of Mediator are Required to be Filed in All Cases under the Jurisdiction of the Industrial Commission Mediation Program (whether or not the mediation is held or completed)

In all Industrial Commission cases either: (1) ordered into mediation; or (2) made subject to the mediation program by the parties choosing to mediate voluntarily, the designated mediator is required to report the results of the mediation on an Industrial Commission *Form MSC5 Report of Mediator* ("*Report of Mediator*").

A *Report of Mediator* is required to be filed not only when reporting that a mediated settlement conference was held and completed, but also to report that a mediated settlement conference was not held or was held but not completed by the mediation deadline.

A mediator is required to file the *Report of Mediator* within **seven (7) days of the expiration of the deadline to mediate the case, or within seven (7) days of completion of the mediation conference if that date is earlier.**

Promptly filing the *Report of Mediator* is important for several reasons:

1. The *Report of Mediator* is an important case management tool for the Commission to properly docket matters.
2. Upon receipt of a *Report of Mediator*, 11 NCAC 23E .0203 requires the Commission to invoice fees that are essential to funding its operations. Delays in receiving a *Report of Mediator* adversely impact invoicing and thus the ability of the Commission to meet its obligations under the Workers' Compensation Act. Additionally, delays in receiving a *Report of Mediator*, and thus delays in invoicing, may create administrative hurdles for law firms and carriers who are attempting to close their files.
3. Rule 11 NCAC 23G .0106 of the Mediated Settlement Conference Rules explains that the requirement to file a *Report of Mediator* is necessary for providing statistical data to the Commission for evaluation of its mediation program.

Finally, certified mediators should be familiar with Advisory Opinion Number 18 (2011), adopted by the North Carolina Dispute Resolution Commission, which notes that mediator reports should be filed timely and completely so that case management efficiencies are not compromised and caseload statistics accurately reflect a mediation program's true impact on the courts. As summed up in that Advisory Opinion, "The assignment of case management duties, including the filing of timely and complete Reports, is as integral to the design of the mediation programs in this State as is certification itself. Simply put, the price for making money in the court system as a certified mediator is completion of administrative duties assigned by the Rules."

Extensions of Time to Complete Mediation

Rule 11 NCAC 23G .0103(c) of the Mediated Settlement Conference Rules allows the Commission to extend the deadline to complete a mediated settlement conference, not only by motion or stipulation of the parties, but also by suggestion of the mediator.

Therefore, if all parties and the mediator agree that an extension of time to complete mediation should be allowed, a mediator may notify the Commission that an extension of time is needed. (In the alternative, one of the parties may notify the Commission).

The preferred procedure for notifying the Commission that an extension of time is needed to mediate the case is to email mediation@ic.nc.gov and state that the parties and mediator agree that an extension of time to complete mediation is needed, up to and including a date certain, with the date being included in the email. All parties to the mediation (or their counsel, if represented) should be copied on the email.

Please note that the parties and mediator can assume that an extension of time to complete the mediation has been allowed unless they are notified by the Commission to the contrary. No order granting the extension of time will be issued.

Extensions of Time to File a Form MSC5 Report of Mediator

The *Form MSC5 Report of Mediator* (“*Report of Mediator*”) indicates that the report should be filed within seven (7) days of the conclusion of a mediated settlement conference. (This is a shorter time period for filing the Commission’s *Report of Mediator* than required in Superior Court cases, in which there is a ten-day deadline).

The *Report of Mediator* also states that it is to be returned to the Commission in all cases, whatever the mediation result. Therefore, as noted above, in cases where a mediated settlement conference was not held, or was held but not completed, mediators still must complete and file the *Report of Mediator*.

Mediators who believe, in their professional judgment, that there is a good reason to delay filing the *Report of Mediator* in a particular case may email Acting Dispute Resolution Coordinator Tammy Nance at tammy.nance@ic.nc.gov to request an extension of time to file the *Report of Mediator* up to and including a date certain, with the date being included in the email.

Please note that it is not appropriate to request an extension of time to file a *Report of Mediator* in cases where the mediation deadline has passed. In those cases, the mediator is required to file the *Report of Mediator* with seven (7) days of the expiration of the mediation deadline.

An example of an appropriate situation in which to request an extension of time to file a report of mediator may be a case where the mediated settlement conference was held and completed, no settlement was reached, but the parties and the mediator have good reason to believe that a short additional amount of time is needed to resolve the case through mediation.