

ADR and Mediation in the Virginia Workers' Compensation Commission

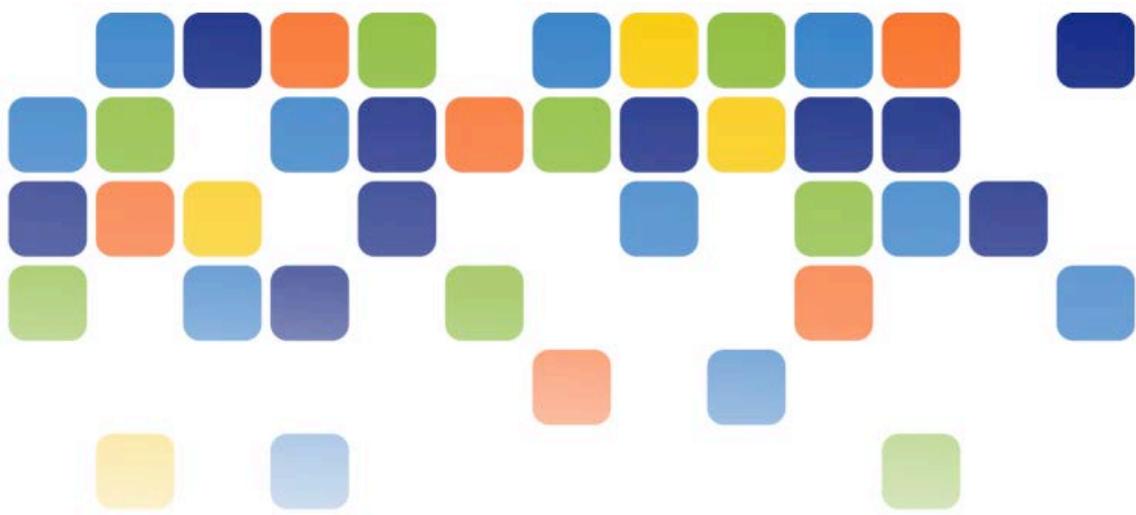
Presented By:

Deborah W. Blevins, Deputy Commissioner

Alfred Bridger, ADR Program Manager

Agenda

- **What is Mediation?**
- **Why Mediate?**
- **Types of ADR (Alternative Dispute Resolution) in the Virginia Workers' Compensation Commission**
- **Practical Issues in Workers' Compensation Mediations of Full and Final Settlements**



WHAT IS MEDIATION?

What is Mediation ?

- **Mediation, as defined in Virginia Code § 8.01-581.21, is “a process in which a mediator facilitates communication between the parties and, without deciding the issues or imposing a solution on the parties, enables them to understand and to reach a mutually agreeable resolution to their dispute.”**
- **Voluntary**
- **Confidential**
- **Purpose of mediation is to identify issues, clarify misunderstandings, explore solutions and negotiate an agreement.**

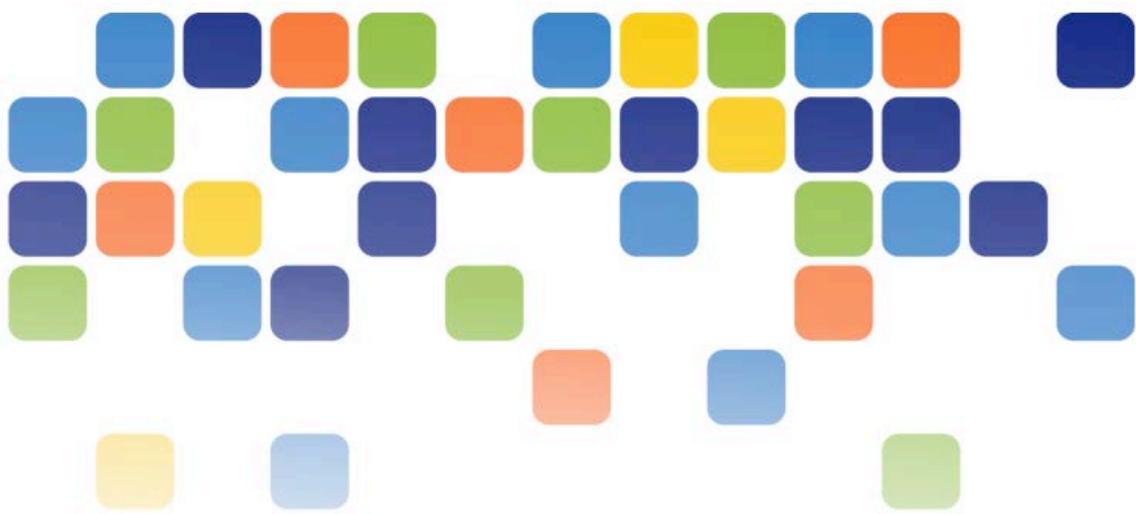
Role of a Mediator

■ DOES

- Facilitate conversation to assist parties in reaching an agreed resolution
- May share non-binding opinions in Neutral Evaluation

■ DOES NOT

- Coerce or tell parties what to do
- Make judgments
- Give legal advice



WHY MEDIATE?

Why Mediate?

- **Disputes are resolved quickly and confidentially.**
- **Costs of litigation are reduced.**
 - Representation by counsel is not required *except* for parties who are mediating a compromise settlement.
 - Mediation services are free using Commission mediators.
 - Over 80% of the disputed claims mediated by the Commission have been resolved.

ADR Statistics

- **In 2012, the Commission conducted 213 ADR events**
- **In 2013, the Commission conducted 410 ADR events**
- **In the first six months of 2014, the Commission conducted 298 ADR events**

Current Commission Mediators

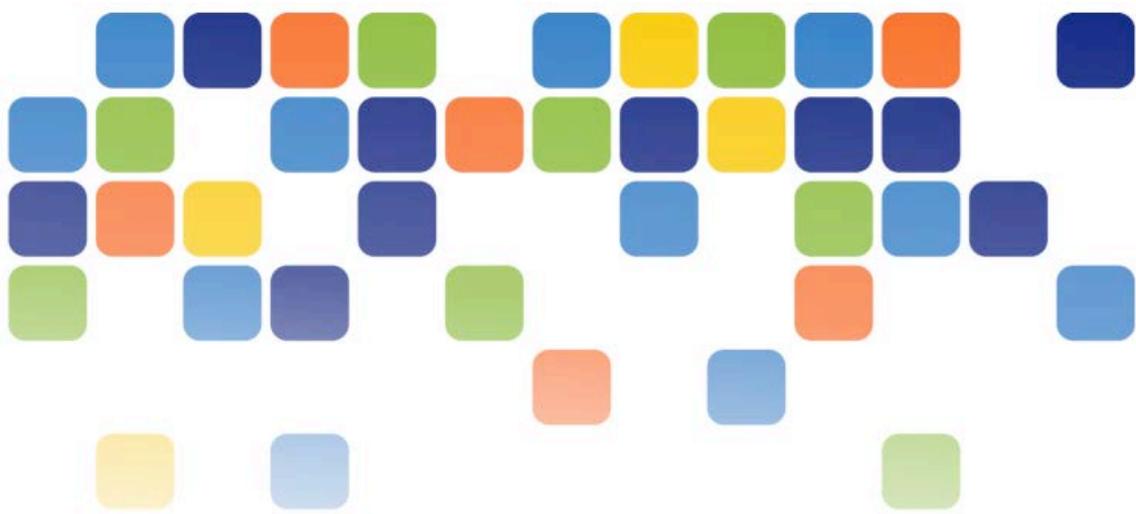
Retired Commissioner Dudley

**Deputy Commissioners Blevins, Culbreth, Ferris,
Himmel, Hunter, Mayo, Sherrill**

ADR Program Manager Bridger

ADR Consultant Farr

CMD Manager Crawford



TYPES OF ALTERNATIVE DISPUTE RESOLUTION (ADR) IN VWC

ADR TYPES

- Both **Issue Mediation** and **Issue Facilitation** are offered on a voluntary basis to resolve individual issues.
- Under **Rule 1.9** a Deputy Commissioner may order the parties to participate in ADR, which means they must participate in an **Orientation Session**.
- Most Orientation Sessions, Issue Mediation or Issue Facilitation conferences are conducted over the telephone.
- **Full & Final Mediation** is offered to resolve entire claims.

Issue Mediation

- Offered on a voluntary basis to resolve individual issues
- Usually conducted on telephone
- Parties sign consent form and fax to ADR Dept. in advance
- Attorneys may appear on behalf of parties so long as they have sufficient authority
- Usually scheduled for an hour and half
- Conducted by Deputy Commissioners or Staff Attorneys who are certified mediators

Issue Facilitation

- Like Issue Mediation, but less formal.
- Not confidential
- May involve telephone calls to & from parties to clarify issues and resolve them
- May be conducted by CSD (Claims Services Dept.) or ADR (Alternative Dispute Resolution Department)
- Trained VWC staff, some of whom are certified mediators

Orientation Session

- All parties and attorneys are ***required to attend***
- Typically done by telephone
- Discussion about mediation and whether it might be appropriate in this case
- Parties choose whether to mediate or not
- May become a mediation or facilitation session if parties choose (and if sign Mediation Consent form, in case of mediation)
- Conducted by Deputy Commissioners and Staff Attorneys who are certified mediators

Resolution

- **ADR may result in resolution by Stipulated Order, Stipulated Agreement, Withdrawal of Claims as Resolved, or submission of Agreement Forms.**

Full & Final Mediation

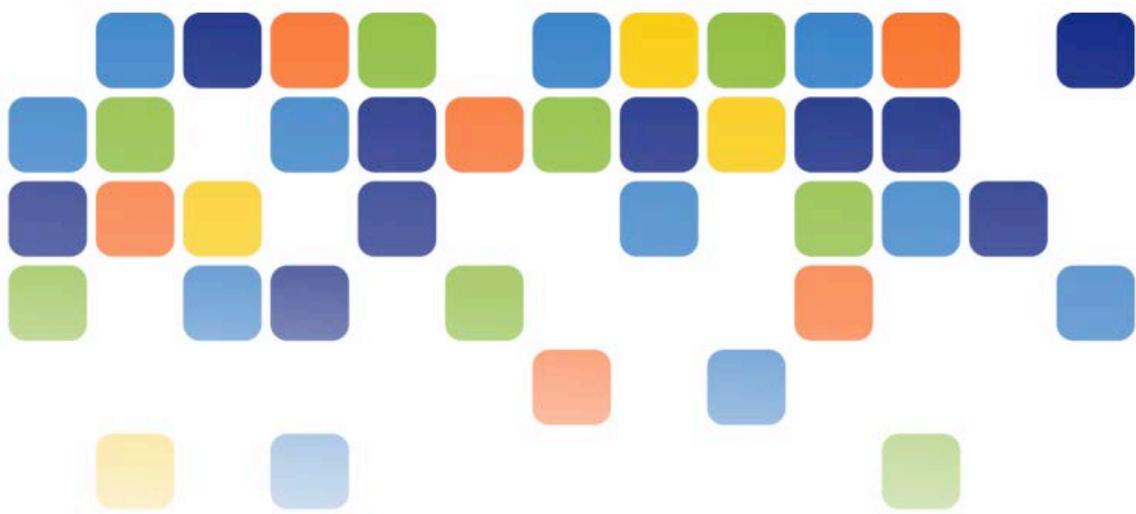
- Historically, mediation has primarily been used to assist in the negotiation of full and final settlement of claims (Petition and Order settlements).
- Any party to a claim may request mediation to negotiate the compromise settlement of a claim.
- The presence of both parties, in person or by telephone, is required for full and final mediation.
- Mediation can be requested at any time during the life of a case.
- Per Commission policy, *all parties* are required to be represented by counsel during full and final mediation.
 - A mediation request form is available on our website (<http://www.workcomp.virginia.gov>) or via Webfile.

Full & Final Mediation

- Conducted by Deputy Commissioners who have been certified by the Judicial Council of the Supreme Court of Virginia to mediate.
- Current mediators include Blevins (Roanoke, Abingdon, Wytheville), Culbreth (Harrisonburg), Ferris (Virginia Beach), Himmel (Abingdon, Roanoke), Hunter (Richmond, Manassas), Mayo (Richmond), and Sherrill (Manassas, Fairfax). Retired Commissioner William L. Dudley, Jr. is mediating on a part-time basis throughout the state.
- Mediations are generally scheduled for three hours. If you anticipate your mediation will take longer or requires additional space, notify the VWC ADR Dept. at the time the mediation is scheduled.
- A follow-up mediation session, either in person or by conference call, can be scheduled.

Mediation while on a hearing docket

- If the matter is set for hearing prior to the scheduled mediation, the parties must contact the Deputy Commissioner with whom the hearing is scheduled to request a continuance. Continuances are granted at the discretion of the Deputy Commissioner. Currently, there is no blanket approval policy.
- Parties retain their right to a hearing before the Commission if a dispute is not resolved through mediation.



PRACTICAL ISSUES IN WORKERS' COMPENSATION

and

MEDIATION OF FULL AND FINAL SETTLEMENTS

Structured Settlements

- **Have annuity company representative available to run numbers during the mediation.**
- **Guaranteed or not?**
- **Cost of annuities**
- **Determine impact of settlement on retirement benefits, long-term disability benefits, and/or union benefits.**

Medicare Set-Aside

- **CMS Approval**
- **Plan in advance – have up-to-date proposal and share it with opposing counsel pre-mediation.**
- **Discuss how Set Aside is to be funded – either by claimant, by carrier, with annuity?**
- **Prepare a written breakdown of anticipated Medicare costs beyond MSA to present to insurer.**

Medicals

- **Confirm current medical status and obtain latest medical records.**
- **Payments made to date, especially average monthly cost for last year.**
- **Recurrent treatment costs (often annual costs of prescriptions and office visits).**
- **Possible future treatment and projected cost (surgery).**
- **Value of medicals = recurrent treatment x life expectancy + other future treatment costs, reduced to Present Day Value.**

Likelihood of payment

- **Age/life expectancy/rated age**
- **Other health problems**
- **Geography**
- **Education**
- **Vocational Rehabilitation**
- **Likelihood of success if conflicts are litigated**
- **Cost fluctuations**

Strategies in Mediation

- Address the other party, as well as the mediator.
- Calm, cordial tone generally is best.
- Acknowledge the validity of other points of view. (“I realize this is your life, but at some point, this becomes a business decision. I’m sorry we have to discuss it in these terms, but it is necessary for me to do my job.”)
- **Let mediator know what information is to remain confidential between you and mediator.**
- **Good cop/Bad cop strategy.**
- **When and how to share the “bottom line.”**
- **Remember – opinion of the mediator is only an opinion.**

Questions?

Index cards or bulletin board by registration desk

OR

**Contact the Alternative Dispute Resolution
Department:**

- questions@workcomp.virginia.gov
- Toll free - 877-664-2566