



INDUSTRIAL COMMISSION ARIZONA ADMINISTRATIVE LAW JUDGE DIVISION

INDUSTRIAL COMMISSION OF ARIZONA ALTERNATIVE DISPUTE RESOLUTION PROGRAM

OVERVIEW

The Administrative Law Judge Division (“ALJ Division”) of the Industrial Commission of Arizona (“ICA”) has offered alternative dispute resolution (“ADR”) services for nearly 20 years. These ADR services include both informal settlement conferences and formal mediations conducted by administrative law judges (“ALJs”) who are trained mediators.

Informal Pre-Litigation Conferences – ADR services can be highly effective during the A.R.S. § 23-1061(J) investigation process. Because the process of investigating requests under § 23-1061(J) (“J” requests) takes place *before* a matter is referred for formal hearing, ADR services can assist parties in quickly resolving “J” disputes without the need for a formal hearing. When the assigned “J” Duty Judge reviews “J” requests and responses, the Duty Judge may hold an informal pre-hearing conference with the parties to facilitate settlement discussions. Informal pre-litigation conferences will typically take less than 30 minutes and may be conducted in person, by phone, or by video conference.

Informal Settlement Conferences – The ALJ Division strongly encourages participation in ADR services during the formal hearing process when disputed issues may be easily resolved without the need for extensive litigation. Based on the experience of the ALJ Division, issues that are frequently resolved without protracted litigation included the following: loss of earning capacity, rearrangement, average monthly wage, and bad faith and or unfair claims processing practices. When a dispute involves any of these issues, the presiding ALJ may hold an informal settlement conference or schedule an informal settlement conference with another ALJ. Informal settlement conferences will typically take less than 30 minutes and may be conducted in person, by phone, or by video conference.

Voluntary Mediation – The ALJ Division encourages parties at any stage of a dispute to participate in voluntary mediation services offered by the ALJ Division, regardless of the nature of the disputed issues. The ALJ mediation program is voluntary and provides parties an opportunity to resolve disputes to their own satisfaction. Mediations are conducted by trained ALJ mediators with experience in workers’ compensation matters. Depending on the complexity of the disputed issues, mediation may take between one and four hours and may be conducted in person, by phone, or by video conference.

AUTHORITY

Arizona’s statutes and rules give the ICA authority to provide ADR services and approve resulting settlements. Specifically, A.R.S. § 23-107(3) grants the ICA the power, jurisdiction, and authority to “[p]romote voluntary arbitration, mediation and conciliation of disputes between employers and employees.” A.R.S. § 23-921(B) further permits the ICA to promulgate rules and regulations “for informal prehearing conferences in order to expedite claim adjudication, amicably dispose of controversies, narrow issues and simplify the method of proof at hearings.” The ICA has promulgated rules and regulations that address informal conferences and various formats for resolving issues (*i.e.*, settlements, stipulations, and resolutions). *See* Arizona Administrative Code R20-5-120, 139, 140, and 152.

SETTLEMENT CONFERENCES

INFORMAL PRE-LITIGATION CONFERENCES DURING AN INVESTIGATION PURSUANT TO A.R.S. § 23-1061(J)

While reviewing “J” requests and responses to “J” requests, the “J” Duty ALJ may determine that the parties will benefit from ADR services to facilitate dispute resolution prior to a formal hearing process. The “J” Duty judge may schedule an informal pre-litigation conference with the parties to promote settlement discussions. The “J” Duty ALJ will not hear the matter if it is subsequently referred to hearing.

Parties to an informal pre-litigation conference should be prepared to have a meaningful discussion regarding the “J” dispute, the party’s position, and the likelihood that the matter can be resolved without referral to hearing. The substance of the informal pre-litigation conference will be kept confidential and will not be added to either the Claims Division or ALJ files. The only information that will be recorded concerning an informal pre-litigation conference is the date and time that the conference was held.

If the matter resolves as a result of an informal pre-litigation conference, the parties can submit the settlement documents to the “J” Duty ALJ for disposition or request that the matter be assigned to a different ALJ for consideration of the settlement documents. If the matter does not resolve and is referred to hearing, it will be assigned to a different ALJ.

INFORMAL SETTLEMENT CONFERENCES DURING LITIGATION

During pending litigation, a presiding ALJ may determine that the matter will benefit from an informal settlement conference. The ALJ Division has identified several types of disputes that may be easily resolved without the need for extensive litigation. Based on the experience of the ALJ Division, issues that are frequently resolved without protracted litigation included the following: loss of earning capacity, rearrangement, average monthly wage, and bad faith and or unfair claims processing practices. When a dispute involves any of these issues, the presiding ALJ may hold an informal settlement conference or schedule an informal settlement conference with another ALJ. Informal settlement conferences will be scheduled in such a manner as to maintain the existing hearing schedule.

Parties to an informal settlement conference should be prepared to have a meaningful discussion regarding the dispute(s), the party’s position(s), and the likelihood that the matter can be resolved. The substance of an informal settlement conference will be kept confidential and will not be added to the Claims Division or ALJ File. The only information that will be recorded concerning an informal settlement conference are the date and time that the conference was held.

If a settlement is reached as a result of the informal settlement conference process, the parties will submit the settlement documents to the presiding ALJ for disposition. If the matter does not resolve, the formal hearing process will continue as scheduled.

VOLUNTARY MEDIATION

Mediation is an informal, voluntary dispute resolution process where a third-party (an ALJ mediator) facilitates discussions with the goal of helping parties reach a mutually-acceptable agreement. An ALJ mediator will not take sides, offer legal advice, decide who is “right” or who is “wrong,” forecast the outcome of a dispute, or impose any agreement upon the parties. Mediation provides parties an opportunity to resolve disputes to their own satisfaction while drawing on the expertise of a trained ALJ mediator with experience in workers’ compensation matters. As it has for nearly 20 years, the ALJ Division offers mediation services to facilitate dispute

resolution for any type of dispute and at any stage of a dispute. ALJ mediators are available at no cost to parties.

Mediation requires the voluntarily participation of all parties to a dispute. Parties participating in mediation must agree to participate in good-faith and have the authority to resolve disputes. Before starting mediation, the ALJ mediator will provide ground rules for the mediation, and the parties must agree to observe those ground rules.

Mediation ground rules will include the following:

1. Be respectful and courteous to all participants, including the ALJ mediator.
2. Do not interrupt others while they are speaking.
3. Speak in a civil manner to everyone in the session.
4. No screaming or shouting.
5. No name-calling or personal attacks.
6. Talk openly and honestly. Listen to others without planning a response while they are speaking.
7. Allow the ALJ mediator to decide when to end a mediation.
8. Focus on future actions rather than past events.
9. Allow the ALJ mediator to direct the flow of the session.
10. Think of solutions that will be acceptable to all parties.
11. Additional ground rules may be added by the parties.

The mediation process is confidential. Communications made during and materials created for mediation are confidential. *But see* A.R.S. § 12-2238(B)(1)-(4) (exceptions to the mediation process confidentiality rule). ALJ mediators may not be called to testify in hearings or court proceedings in the future about matters discussed during mediation. Similarly, the parties are generally prohibited from testifying at hearing or in court proceedings in the future about matters discussed during mediation. However, as required by law, an ALJ mediator will report any imminent threat or infliction of physical harm that occurs during mediation to appropriate authorities. By agreeing to mediation, the parties agree to maintain the confidentiality of the mediation. Parties will be required to sign or otherwise consent to an agreement to mediate that includes disclosures and confidentiality provisions.

Whenever feasible, the ALJ mediator will schedule a mediation date and time that maintains the existing hearing process and schedule. The ALJ mediator will outline ground rules for the mediation in a letter and may request the parties to file either a joint or separate mediation statements. Mediation statements are confidential and

will not be added to the Claims Division or ALJ files or become a part of the record. A party's separate mediation statement may only be shared with the other party with permission.

Typically, a mediation will begin with a joint session involving both parties. The ALJ mediator may choose to keep the parties together or elect to meet separately (caucus) with each party. Information discussed in caucus will be confidential unless a party expressly agrees that it can be shared with the other party. If the parties reach an agreement during or as a result of a mediation, a generalized draft of the agreement may be written and signed by the parties during the mediation. The parties will then file a formal settlement agreement for approval with the presiding ALJ (in the case of a pending matter) or the Chief ALJ (in cases of settlements reached before a matter has been filed or after a matter has been placed in abeyance). If the parties do not reach an agreement that resolves all disputed issues in a pending matter, the case will be referred to the presiding ALJ to conduct hearings and issue a decision.