

**A G E N D A**

**SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION**

1333 Main Street, 5<sup>th</sup> Floor  
Columbia, South Carolina 29201

**April 9, 2012 – NOON**

Commission Hearing Room A

*This meeting agenda was posted prior to the meeting and proper advance notice was made to all concerned parties in compliance with requirements in the Freedom of Information Act.*

**SPECIAL BUSINESS MEETING**

- |    |   |                      |
|----|---|----------------------|
| 1. | CALL TO ORDER                             | <b>CHAIRMAN BECK</b> |
| 2. | APPROVAL OF AGENDA                        | <b>CHAIRMAN BECK</b> |
| 3. | PROPOSED NEW REGULATION 67-1801 MEDIATION | <b>CHAIRMAN BECK</b> |
| 4. | ADJOURNMENT                               | <b>CHAIRMAN BECK</b> |

# *State of South Carolina*

1333 Main Street, 5<sup>th</sup> Floor  
P.O. Box 1715  
Columbia, S.C. 29202-1715



TEL: (803) 737-5700  
FAX: (803) 737-5764

## *Workers' Compensation Commission*

**TO:** Workers' Compensation Commissioners  
**FROM:** Gary M. Cannon  
**DATE:** April 5, 2012  
**RE:** Proposed Regulation 67-1801 Mediation

The Commission approved promulgation of Mediation Regulation R 67-1801 at the January 17, 2012 Business Meeting. The Notice of Drafting was published in the February 24 issue of the *State Register*. The deadline to receive comments was 5:00 p.m. on March 26, 2012.

Attached you will find the proposed Mediation Regulations 67-1801; Forms 21, 50, 51, and 70; and comments from American Insurance Association and Samuels Law Firm.

The purpose of the Special Business Meeting on April 9, 2012 is to approve the language for the Proposed Mediation Regulation. The proposed regulations, call for public comments and notice of the public hearing will be published in the April 27 issue of the *State Register*.

The Public Hearing will be May 29, 2012. A Special Business Meeting will follow the Public Hearing to consider final approval of the proposed language.

#### 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 the Commissioner 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, unless the Commissioner so chooses, only until those pending issues are resolved.

(3) A Commissioner's authority to order mediation in any pending claim is not limited by claims listed in Section 67-1802.

#### 67-1802. Mediation Required with Certain Claims

Claims arising under Section 42-9-10, or claiming permanent and total disability pursuant to Section 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 must be mediated prior to a hearing.

(1) In contested death claims, a Commissioner must still make a finding that a good faith dependency investigation has been completed.

(2) Except for contested death claims, all claims listed in this section would apply only to claims where compensability of the accident is admitted by the employer/carrier.

(3) 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.

#### 67-1803. Mediation Requested by Parties.

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 67-1802 A, either party may object to mediation by the proper submission of the Form 21, Form 50, or the response to the Form 21. If the parties do not agree to mediation, pursuant to this section, then the case shall be set by the Judicial Department in the normal course of the docket scheduling.

#### 67-1804. Selection of Mediator and Required Schedule.

A. The parties may consent to use any mediator who is duly qualified. The mediator must be certified as a mediator per the certification process established by the South Carolina Bar Association.

B. The parties must select a mediator within ten 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.

C. The mediation must be completed within sixty days of the filing of the Form 51 or the response to the Form 21, unless otherwise agreed to by the parties. If the mediation is not completed within the sixty day timeframe then the case shall be set by the Judicial Department in the normal course of the docket scheduling.

D. If the parties cannot agree on a mediator, the Commission shall appoint a duly qualified mediator for them.

#### 67-1805. Parties Represented.

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 shall 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.

#### 67-1806. Mediation Communications Confidential.

A. All communications and statements that 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 requirements described above.

B. 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.

#### 67-1807. Expense of Mediation.

A. The parties shall share the cost of mediation equally, unless otherwise agreed by the parties, or as otherwise ordered by the Commission.

#### 67-1808. Penalties.

B. 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.

#### 67-1809. Forms Required Upon Completion.

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.

# FORMS

**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 required mediation.
- d. This case is not subject to required mediation.

- 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](http://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 required mediation.

16b. This case is not subject to required mediation.

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 required mediation.  
 13b. I am not requesting mediation of this case.  14b. This case is not subject to required mediation.

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.**

**Comments  
Received**



American Insurance Association

2101 L Street NW  
Suite 400  
Washington, DC 20037  
202-828-7100  
Fax 202-293-1219  
www.aiadc.org

**VIA ELECTRONIC MAIL**

March 26, 2012

Gary M. Cannon  
Executive Director  
South Carolina Workers' Compensation Commission  
1333 Main Street  
Post Office Box 1715  
Columbia, SC 29202-1715

**RECEIVED**  
MAR 26 2012  
S. C. WORKERS' COMP. COMM.  
EXECUTIVE DIRECTOR

Re: Proposed Regulation 67-1801, Mediation

Dear Mr. Cannon:

The American Insurance Association (AIA) appreciates the opportunity to provide comments on Regulation 67-1801, Mediation. AIA represents approximately 300 major property and casualty insurers that write nearly \$100 billion in premiums each year, including more than \$1 billion in South Carolina. AIA's member companies write nearly \$194 million in workers' compensation insurance in South Carolina, representing 33% of the market.

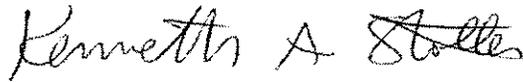
Overall, we support the proposed regulation, since the mediation option will provide an opportunity to settle certain claims before engaging in costly and protracted litigation, which in some cases can be detrimental to both the injured worker and the employer.

However, AIA objects to the requirement in Section I that each party have their attorney present at mediation. Some insurers would like to reserve the right to decide whether this is necessary, especially since Section I already requires parties to have a representative with negotiation authority attend the mediation. Requiring attorney involvement in every mediation runs contrary to the notion that mediation should be viewed as an alternative to litigation. Furthermore, there is no evidence that mandating attorney involvement at this pre-litigation stage would enhance the possibility of resolving claims. Insurance company adjusters already work directly with claimant attorneys as a matter of course to settle the vast majority of claims before Commission

involvement even becomes necessary, and the decision of whether and when to assign an attorney to a particular claim should be left to the discretion of each company.

We appreciate your consideration of these comments. Please call me at (202) 828-7167 if you have any questions.

Respectfully submitted,

A handwritten signature in black ink that reads "Kenneth A. Stoller". The signature is written in a cursive style with a large, stylized initial 'K'.

Kenneth A. Stoller  
Senior Counsel



**SAMUELS  
LAW • FIRM**

Stephen B. Samuels, Attorney at Law

P.O. Box 50349 • Columbia SC 29250-0349  
1527 Blanding Street • Columbia SC, 29201  
803-779-4000 office, 803-779-4004 facsimile  
www.SamuelsLawFirm.net

March 23, 2012

The Honorable Gary Cannon, Executive Director  
SC Workers' Compensation Commission  
1333 Main Street  
Post Office Box 1715  
Columbia, SC 29202-1715

**RECEIVED**

MAR 26 2012

S. C. WORKERS' COMP. COMM.  
EXECUTIVE DIRECTOR

**RE: New Regulation, R 67-1801 Mediation**

Dear Mr. Cannon:

I am writing to offer public comment to the Commission's proposed Regulation on mediation. By way of background, I have been a practicing attorney for almost fifteen years. A majority of my practice involves representing injured workers before the Commission. I also represent plaintiffs in personal injury, employment and insurance disputes. As such, I am very familiar with the mediation process both in workers' compensation and in civil cases. Please note that while I am a member of IWA and SCWCEA, my comments are being offered solely as an individual and not on behalf of either organization.

I endorse the Commission's efforts towards increased mediation of complex workers' compensation cases. I would oppose mandatory mediation of every case as unduly expensive and burdensome.

I do have specific suggestions to make the process more effective which I would request the Commission consider.

• 67-801 C:

The specific enumeration of certain classes of cases as in 67-801(c) is a good solution provided there is an opt out provision. For example, there are cases where the employee is claiming permanent and total disability, but the defendants strongly disagree. These cases may involve low impairment ratings but high restrictions; disputed body parts or medical conditions; denied liability,; or extensive future medical treatment. While at first blush one might think these are the perfect cases to mediate, that can only happen if the parties come to the table with the ability to compromise. In some cases, the employer/carrier simply has no intention of making a settlement offer that would resolve the case within the claimant's demand. Or the employer/carrier will only settle on a clincher where the claimant needs medical treatment to remain open.

Rather than require the parties to appear for a pointless five-minute mediation (as sometimes happens in circuit court), the parties should be allowed to either opt out of mediation by joint written agreement or file a motion to defer or exempt a case from mediation for case specific reasons. I would propose a separate form be created to simplify the opt out process.

- 67-801 I.

The proposed regulation reads:

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 shall 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.

In my experience, when an adjuster attends a mediation by telephone, the chances of settlement drop exponentially. I have been burned several times by this and will no longer mediate without a live representative from the carrier. In practice, the adjuster sits at her desk attending to her normal activities. Periodically she takes phone calls from the defense attorney who relays updates to her. The adjuster never meets the claimant; never sees the opening presentation; and rarely engages with the mediator.

I recognize requiring physical attendance creates a cost to the carrier. However, the cases in which mediation will be required all have exposure in the \$100,000+ range, if not substantially more. A plane ticket and hotel room can easily be managed for under \$1,000.00 – an amount far less than the mediator’s fee, a doctor’s deposition, an IME, or video surveillance by a private investigator.

The Judicial Department’s ADR rules specifically address this issue by requiring all parties to physically attend the mediation (unless otherwise agreed by the parties). I would request the Commission adopt the same rule. It states:

(b) Attendance. The following persons shall physically attend a mediation settlement conference unless otherwise agreed to by the mediator and all parties or as ordered or approved by the Chief Judge for Administrative Purposes of the circuit:

- (1) The mediator;
- (2) All individual parties; or an officer, director or employee having full authority to settle the claim for a corporate party; or in the case of a governmental agency, a representative of that agency with full authority to negotiate on behalf of the

agency and recommend a settlement to the appropriate decision-making body of the agency;

- (3) The party's counsel of record, if any; and
- (4) For any insured party against whom a claim is made, a representative of the insurance carrier who is not the carrier's outside counsel and who has full authority to settle the claim.

#### Rule 6, SCADR

An additional problem arises when the adjuster does not come to mediation with settlement authority to meet the claimant's demand or the potential exposure in the case. Sometimes adjusters have no authority to leave the medical treatment open; other times they only have authority up to "their evaluation." Sometimes a case cannot settle because the reserves have been set too low.

The South Carolina Supreme Court recently defined "full authority" in the above rule as "an individual who is empowered with the decision to offer a settlement sum up to the existing demand of the Plaintiff or the policy limits of coverage, whichever is less." Full settlement authority for any party "means the party individually or a representative who has binding authority to make a decision for that party." See Order of the South Carolina Supreme Court, 2008-7-23-01. The Commission should adopt a similar definition.

I would emphasize that coming to a mediation with full authority does not bind a party to offer that amount. It simply means that the mediation can go forward without an arbitrary take it or leave it stopping point set by a carrier beforehand. Most cases resolve outside the settlement range of both parties – it is the mediation process that forces people outside of their comfort zones and makes them rethink their positions. Allowing a party to put a preset limit on settlement eviscerates the very process which makes mediation effective.

#### ● 67-801 M.

The proposed regulation states: "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."

I would suggest this language is unclear. Is the fine payable to the aggrieved party or to the Commission? Does "actual cost of the mediation" refer only to the mediator's fee – or does it include the expenses incurred by the party including attorney's fees, travel, and so forth?

The Judicial Department's ADR rules are much more specific. I would suggest the Commission adopt similar language with reference to § 42-3-150 in place of Rule 37.

If any person or entity subject to the ADR Rules violates any provision of the ADR Rules without good cause, the court may, on its own motion or motion by any party, impose upon that party, person or entity, any lawful sanctions,

including, but not limited to, the payment of attorney's fees, neutral's fees, and expenses incurred by persons attending the conference; contempt; and any other sanction authorized by Rule 37(b), SCRPC.

Rule 6, SCADR

Thank you for considering my comments. I do feel this is a positive step for the Commission and applaud Commissioner Williams and other individuals who have spearheaded this effort. I hope you find my comments helpful.

With kindest regards, I am

Yours very truly,

A handwritten signature in black ink, appearing to read 'Stephen B. Samuels', with a stylized flourish at the end.

Stephen B. Samuels

SBS/aro