

School: ATEC – Legal
Course: Making Mediation Work for You: Negotiation Strategies and Tactics
Faculty: Phyllis Phillips, Principal, Mediation Works LLC

Summary

Phyllis Phillips, a seasoned mediator with extensive experience in workers' compensation claims, provides a detailed overview of effective negotiation strategies and tactics in her course "Making Mediation Work for You: Negotiation Strategies and Tactics." Phillips draws on her rich background, which includes roles as a senior administrative law judge, insurance company co-owner, and private practice lawyer, to offer practical insights into the mediation process.

Phillips begins by emphasizing the importance of selecting the right mediator. She explains that mediators, injured workers, adjusters, and attorneys bring diverse styles to the negotiating table, influenced by factors such as age, gender, cultural background, and experience. For injured workers, who often find mediation very personal and unfamiliar, having a mediator who can relate to them is crucial. Phillips asserts that a mediator's subject matter expertise in workers' compensation is also vital, as it lends credibility and understanding to the process.

One of the core concepts Phillips discusses is game theory, specifically the Prisoner's Dilemma, which illustrates the benefits of cooperation over adversarial tactics. She outlines four rules for successful negotiation derived from this theory: begin cooperatively, match moves and forgive, avoid envy, and be clear rather than clever. These rules help foster a collaborative environment conducive to achieving mutually beneficial outcomes.

Phillips delves into the concept of anchoring, where the initial offer sets a reference point that can heavily influence the negotiation. She stresses that anchoring only works if the initial data points are within a reasonable range. Extreme or absurd anchors can derail negotiations by making the other party lose interest or feel insulted. Phillips advises starting with credible offers to keep the negotiation process constructive.

The use of brackets is another strategy Phillips highlights. Brackets involve proposing a range within which both parties agree to move, helping to expedite the negotiation by combining multiple moves into one. This technique can break through negotiation logjams and bring parties closer to settlement more quickly. Phillips provides examples of how to effectively use brackets to narrow the gap between offers and demands.

Phillips also addresses the critical issue of managing expectations and emotions. Mismanaged expectations, especially among injured workers, can lead to impasse. Phillips advises setting realistic settlement goals and using reality testing to help parties understand the strengths and weaknesses of their positions. She emphasizes the mediator's role in allowing parties to vent and validate their emotions, which can clear the path for rational decision-making.

Throughout the mediation process, Phillips underscores the importance of preparation, flexibility, and strategic cooperation. She encourages parties to avoid vindictiveness, focus on their own gains rather than the opponent's, and be patient, as mediation is a process that typically takes all day. Phillips concludes by reminding participants that even if a settlement is not reached immediately, the time spent in mediation provides valuable insights into the other side's position and helps refine future negotiation strategies.

Phillips' course provides a comprehensive guide to making mediation work effectively, offering practical strategies and tactics that enhance the likelihood of achieving successful settlements in workers' compensation disputes.

Learning Objectives

1. Understand the importance of choosing the right mediator based on their style, experience, and ability to relate to the injured worker.
2. Learn about negotiation strategies and tactics, including the concept of game theory and the Prisoner's Dilemma.
3. Explore the four rules that govern successful negotiations and how to apply them in mediation.
4. Gain insights into the role of anchoring and how to use brackets effectively to narrow the gap in negotiations.
5. Develop skills to manage mismanaged expectations, emotions, and principles to avoid impasse and achieve successful settlements.

Primary Takeaways

1. Selecting a mediator who can relate to the injured worker and has subject matter expertise in workers' compensation is crucial for successful mediation.
2. Cooperation and strategic moves, rather than adversarial tactics, lead to better negotiation outcomes.
3. Anchoring and bracketing are powerful tools to influence negotiation dynamics and reach settlements more efficiently.
4. Understanding and addressing the different definitions of fairness and risk tolerance for each party can help bridge gaps in negotiations.

5. Preparation, flexibility, and realistic goal-setting are essential for effective mediation, recognizing that mediation is a process, not an event.

Course Outline

- 1) Introduction to Negotiation Strategies
 - a) Importance of Choosing the Right Mediator
 - i) Mediator's style, experience, and relatability
 - ii) Subject matter expertise in workers' compensation
 - b) Overview of Game Theory and the Prisoner's Dilemma
 - i) Robert Axelrod's study and its relevance
 - ii) Concepts of social Darwinism and reciprocal altruism
- 2) Four Rules of Successful Negotiation
 - a) Begin Cooperatively
 - i) Making the first offer
 - ii) Setting a cooperative tone
 - b) Match Moves and Forgive
 - i) Rewarding good behavior
 - ii) Responding to bad behavior
 - c) Avoid Envy
 - i) Focus on own gains
 - ii) Not comparing with the opponent
 - d) Be Clear, Not Clever
 - i) Clear communication
 - ii) Avoiding mixed messages
- 3) The Role of Anchoring and Bracketing
 - a) Anchoring Effect
 - i) Importance of the first data point
 - ii) Studies on anchoring
 - b) Effective Use of Brackets
 - i) Combining multiple moves into one
 - ii) Examples and applications
- 4) Managing Fairness and Risk Tolerance
 - a) Different Definitions of Fairness
 - i) Legal, equitable, needs-based, and faith-based fairness
 - ii) Impact on negotiation dynamics
 - b) Assessing Risk Tolerance

- i) Injured worker's perspective
 - ii) Adjuster's perspective
- 5) Strategies to Avoid Impasse
- a) Addressing Mismanaged Expectations
 - i) Setting realistic settlement goals
 - ii) Communicating effectively
 - b) Handling Emotions and Principles
 - i) Venting and validating emotions
 - ii) Balancing principles with practicality
 - c) Dealing with Legal Disagreements and Authority Issues
 - i) Ensuring adequate settlement authority
 - ii) Using undisclosed information appropriately
- 6) Conclusion
- a) Key Takeaways
 - i) Importance of strategic cooperation
 - ii) Flexibility and realistic goal-setting
 - b) Final Thoughts
 - i) Mediation as a process
 - ii) Encouragement for effective negotiation

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