

School: ATEC – Legal
Course: Making Mediation Work for You: Why Mediate and Why a Mediator?
Faculty: Phyllis Phillips, Principal, Mediation Works LLC

Summary

In her presentation "Making Mediation Work for You: Why Mediate and Why a Mediator?" Phyllis Phillips, an experienced mediator from Vermont, delves into the benefits and processes of mediation, particularly in workers' compensation cases. Drawing on her extensive background as a mediator, administrative law judge, insurance company co-owner, and private practice lawyer, Phillips offers a comprehensive overview of mediation's advantages over litigation.

Phillips begins by highlighting the fundamental differences between mediation and litigation. Litigation is described as expensive, time-consuming, and public, with a narrow focus on disputed issues. In contrast, mediation is quicker, less costly, private, and confidential, with a broader focus on the parties' needs and interests. Mediation allows for more flexibility and creativity in resolving disputes, offering a platform where both parties can express their frustrations and validate their feelings, which is particularly important for injured workers.

A critical aspect of mediation is the control it offers to both parties over the process and outcome. Unlike litigation, where a judge dictates the result, mediation enables parties to settle on terms acceptable to them, ranging from zero to infinite dollars. Phillips emphasizes that successful mediation often leaves both parties satisfied, contrary to the notion that a good mediation results in mutual dissatisfaction.

Phillips outlines her role as a mediator, which involves extensive pre-mediation preparation. This includes soliciting suggestions, negotiating agreements on time, place, and participants, and reviewing mediation statements. In the post-COVID era, she prefers a hybrid approach, combining in-person interactions with Zoom meetings to facilitate communication and support, particularly for injured workers who may be new to the process.

During mediation, Phillips focuses on building trust and rapport, expressing empathy and compassion, and conducting reality testing to highlight the strengths and weaknesses of each party's position. She emphasizes the importance of addressing below-the-line interests—personal and emotional needs that go beyond legal positions. By understanding these interests, Phillips can help parties find common ground and work towards a mutually acceptable resolution.

Phillips also discusses the strategic management of mediation flow. She highlights the importance of starting with areas of agreement, setting aside contentious issues until later in the process, and suggesting constructive consequences for the parties' actions. Her goal is to maintain the momentum towards settlement while ensuring that both parties feel heard and respected.

In the event that a mediation does not result in an immediate settlement, Phillips stresses the importance of reviewing any agreements reached during the process and encouraging further negotiations. She reassures parties that settlement offers are typically not withdrawn if they need additional time to consider them.

Ultimately, Phillips underscores the value of mediation in allowing parties to regain control over their lives, particularly in situations where they may feel powerless. A good mediator, she concludes, combines empathy, tension-breaking skills, and reality testing to maximize cooperation and enhance settlement opportunities.

Phillips' presentation offers a thorough and practical guide to making mediation work, highlighting its advantages over litigation and the crucial role of the mediator in facilitating successful outcomes.

Learning Objectives

1. Understand the key differences between mediation and litigation in workers' compensation cases.
2. Learn the benefits of mediation for both parties involved, including cost-effectiveness and confidentiality.
3. Gain insights into the mediator's role and the strategies they use to facilitate successful mediation.
4. Explore the process and techniques used in mediation to achieve settlement and resolve disputes.
5. Recognize the importance of empathy, trust-building, and reality testing in effective mediation.

Primary Takeaways

1. Mediation is a quicker, less expensive, and more private process compared to litigation, offering parties more control over the outcome.
2. The mediator's role includes facilitating communication, managing expectations, and helping parties explore creative solutions.
3. Mediation allows injured workers to regain control over their future medical care, vocational path, and financial decision-making.

4. Successful mediation can provide valuable information for future negotiations, even if a settlement is not immediately reached.
5. Building rapport, expressing empathy, and maintaining a focus on areas of agreement are crucial strategies for effective mediation.

Course Outline

- 1) Introduction to Mediation
 - a) Speaker Background
 - i) Phyllis Phillips' experience and qualifications
 - ii) Personal insights and philosophy on mediation
 - b) Importance of Mediation
 - i) Mediation vs. Litigation
 - ii) Abraham Lincoln's perspective on mediation
- 2) Differences Between Mediation and Litigation
 - a) Cost and Time
 - i) Litigation is expensive and time-consuming
 - ii) Mediation is quicker and less costly
 - b) Information Sharing and Confidentiality
 - i) Public nature of litigation
 - ii) Private and confidential nature of mediation
 - c) Control Over Process and Result
 - i) Judge's control in litigation
 - ii) Parties' control in mediation
- 3) Benefits of Mediation
 - a) Emotional and Psychological Benefits
 - i) Venting frustrations and validating feelings
 - ii) Regaining control over personal decisions
 - b) Practical Benefits
 - i) Eliminating the risk of unfavorable outcomes
 - ii) Creative problem-solving opportunities
- 4) Mediator's Role and Techniques
 - a) Pre-Mediation Preparation
 - i) Setting up the mediation
 - ii) Reviewing mediation statements
 - b) During Mediation
 - i) Establishing rapport and building trust

- ii) Reality testing and highlighting weaknesses
- iii) Focusing on below-the-line interests
- c) Post-Mediation
 - i) Reviewing settlement terms
 - ii) Encouraging further negotiation if no settlement is reached

- 5) Key Mediation Strategies
 - a) Empathy and Compassion
 - i) Differentiating empathy from pity
 - ii) Expressing genuine understanding and support
 - b) Managing the Flow of Mediation
 - i) Keeping the process moving
 - ii) Addressing areas of agreement first
 - c) Strategic Cooperation
 - i) Enhancing settlement opportunities
 - ii) Balancing interests and expectations

- 6) Conclusion
 - a) Summary of Key Points
 - i) Value of control in mediation
 - ii) Role of a good mediator
 - b) Final Thoughts and Encouragement
 - i) Importance of strategic cooperation
 - ii) Enhancing settlement opportunities through mediation

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