



The Ethics of Negotiation – How to Do Right without Doing Wrong

Chairperson: Phyllis Phillips, Esq.

- Lisa Anastos, Esq.
- Alice Hathaway
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- Heidi Groff, Esq.

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2:10-3:10pm

Morals vs. Ethics

Morals = an individual's personal compass of right vs. wrong

Ethics = the rules of conduct recognized in respect to a particular class of human actions or a particular group or culture

- Criminal defense attorney –
 - Morally opposed to murder, but ethically obligated to defend accused
- Oncologist –
 - Morally in favor of death with dignity, but ethically obligated to “first do no harm”
- CBS “Survivor” contestant –
 - Morally opposed to lying, but ethically ok in this context

- “My client will not accept less than X dollars to settle their workers’ comp claim,” when in fact they will.
- Or the opposite from defense counsel, “My client will not pay more than Y dollars to settle this claim,” when in fact they will.
- Is that different from, “This is all the settlement authority I have,” when in fact you have more?

- “I have a witness who will say ‘X,’ which will be very damaging to your case,” when in fact no such witness exists.
- Injured worker’s counsel withholds medical treatment records that are detrimental to their case and about which opposing counsel knows nothing
- Counsel “coaches” injured worker not to divulge the treatment during their deposition because “it’s none of their business”

- Adjuster (or defense counsel) “coaches” IME doc to find “Waddell’s signs indicative of malingering” ahead of their examination
- Adjuster (or defense counsel) “hints” at more business to come if IME doc complies
- Adjuster (or defense counsel) does more than hint: “Give me what I need and I will send you 5 more cases tomorrow.”

- Employer's HR manager does not tell either adjuster or defense counsel that injured worker will likely be included in next round of layoffs and as a result will lose very generous group health insurance coverage
- HR manager tells adjuster and defense counsel of impending layoffs, but instructs them not to convey this information to injured worker
- HR manager tells adjuster and defense counsel of impending layoffs and suggests they inform injured worker, but they decide not to do so

- Employer requires “voluntary” resignation as condition of workers’ comp settlement
- Adjuster requires “voluntary” resignation as condition of workers’ comp settlement

- Injured worker inadvertently misstates a key fact to adjuster during recorded statement; later advises adjuster of inaccuracy, but adjuster purposefully fails to note the correction and denies that the injured worker ever recanted
- Injured worker admits to counsel on eve of deposition that they have lied about a key fact; counsel advises them not to divulge the truth unless directly asked

- Counsel strongly advises injured worker to accept a “bad” settlement because they’re too busy to prepare the case for hearing
- Injured worker insists on accepting a “bad” settlement, one that counsel knows is unfair and will be detrimental to their long-term interests

2023

**Work Related Injuries
Workshop**



“Do what is right,
not what is easy . . .”

-- Roy T. Bennett

“A man without
ethics is a wild beast
loosed upon the
world.”

-- Albert Camus