

Decorum in the Court

Part III: Mediation

- ▶ Moderator:
Judge Pamela B. Johnson
- ▶ Panelists:
Judge Joshua Baker
Judge Robert Durham
Judge Amber Luttrell
Brian Holmes, MOST Director

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- ▶ The views, opinions, and behavior displayed herein are not endorsed or condoned by the Bureau of Workers' Compensation or the Court of Workers' Compensation Claims.

The background features a dark blue gradient on the right side, transitioning into a white area on the left. Overlaid on this are several overlapping, semi-transparent geometric shapes in various shades of blue, including triangles and trapezoids, creating a modern, abstract design.

Screenplay:


Judge Robert Durham

Editing:

Kyle Jones,
Communication Coordinator

Let's get started...

SCENE 1

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**What ethical violations did
you see?**

Scene 1 Ethical Issues

- ▶ Should Marci have announced her prior employment by Nicky?
- ▶ Is Rochelle committing the unauthorized practice of law?
- ▶ Can Marci as mediator accept gifts from Rochelle/ Nicky?

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SCENE 2

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Scene 2 Ethical Issues

- ▶ Is it appropriate for Jack and Rochelle to attack each other?
 - Are there potential conflicts of interest between Marci and Nicky and Rochelle and Jack given their respective histories?
- ▶ Is Jack negotiating in good faith if he disputes everything at mediation?
 - What if Mike Overstreet, the employer, sides with Andy Greenwood, employee, and agrees that injury happened at work?
 - Would it matter if carrier has accepted claim as compensable?

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Scene 3 Ethical Issues

- ▶ Did Jack have an ethical obligation to notify Mike Overstreet of the mediation even though any benefits will be paid by the carrier?
- ▶ Is it appropriate for Marci/BWC to contact Mike Overstreet, party represented by counsel?
- ▶ Is it appropriate for Jack to suggest (threaten) that Mike Overstreet may lose his coverage if he actively participates in the case?


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Scene 4 Ethical Issues

- ▶ Is it appropriate for Rochelle to resist calling Nicky with initial offer from Jack?
- ▶ Is it unethical for Marci to reveal information that the parties intended to keep confidential?
- ▶ Was it appropriate for Nicky to tell Andy not to work while his case was in litigation?
 - Now that Nicky knows that Andy has been working on the side, is it unethical to keep it concealed? When does it become unethical?


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Scene 5 Ethical Issues

- ▶ Are the attorneys making offers representing their clients' (Andy's and Mike's) interests and decisions?
 - When is it unethical for attorneys to try and persuade clients to agree to settlement terms that the clients objected to?
 - Is the carrier's position on closed meds appropriate?
- ▶ Must Jack actively involve carrier in mediation? Must he communicate the offers?
- ▶ Is it appropriate for Marci to ask to see Jack's phone to verify that he texted carrier?
- ▶ Is it unethical for Marci to volunteer "knowledge" about what will happen at trial or afterwards?


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- ▶ Is it ethical for Jack to represent to Marci that he had surveillance of Andy when he did not?
 - When, if ever, is “bluffing” about the facts or law ethical?
- ▶ Is it bad faith to begin mediation requesting impasse and continuing to request impasse report throughout mediation?
 - Did attorneys make good faith effort to resolve case at mediation?

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