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JUDICATE WEST

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Resolving construction disputes through mediation

A PRIMER FOR CONSTRUCTION-DEFECT LAW AND MEDIATING A CONSTRUCTION DISPUTE

Disputes about construction projects can be costly and time-consuming. Early resolution of such disputes saves months or years of construction delay and substantial sums in avoidable damages and attorneys' fees. Informal resolution between the parties is often the first step in addressing construction disputes, but when informal resolution does not work, mediation can be a highly effective next step. Successful resolution of a construction dispute at mediation almost always requires that the dispute be adequately worked up before mediation.

Knowledge of the construction project

The kind of workup necessary for settlement at mediation depends on the sort of construction project involved. Following is a brief description of types of construction commonly encountered by counsel, along with a description of the sort of workup necessary to effectively position the dispute for resolution at mediation.

- **Private commercial.** These projects include gas stations, convenience stores, car washes, and office buildings. They can either be a small project (such as construction of tenant improvements in an existing building), a moderate project (such as construction of a new restaurant), a large project (such as construction of a large shopping mall), or an industrial project (such as construction of a factory).
- **Private residential.** These projects include remodeling or expansion of an existing residential property or new construction of a custom designed single-family home.
- **Private common-interest development residential projects.** These disputes frequently involve claims that construction was defectively performed; such claims often arise after the project is completed.

A Homeowners Association (HOA) at a condominium project may become aware of defects in roofs, windows, decks, or other components of such projects (often because of visible water intrusion during rainstorms). When this happens, the HOA engages a construction professional to assess the scope and nature of the problems. If the problems appear throughout the project, the HOA may engage legal counsel to sue the general contractor, who, in turn, sues their subcontractors. The defendant contractors and subcontractors often

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have insurance policies covering these claims.

These lawsuits tend to be significant, and a court will usually appoint a special master to coordinate discovery and settlement activities. Handling such claims can be a niche practice.

- **Public improvement projects.** These projects include construction of roads, dams, bridges, buildings and other works of improvement constructed by public entities.

Settlement of construction defect claims on new residential construction

Due in part to the high levels of construction-defect litigation involving new residential construction, the California Legislature has adopted a construction Right to Repair Act. (Civ. Code, §§ 896, 938.) The act requires homeowners to allow builders to fix certain construction defects before commencing litigation against them. It only applies to original construction intended to be sold as an individual dwelling. The act does not cover personal-injury claims, fraud-based claims, claims to enforce a contract or specific other claims. If the act does not apply, the construction dispute is generally governed by construction-dispute statutes and case law.

An owner and contractor can often informally resolve a "Right to Repair" dispute without the assistance of a mediator. But if they cannot agree on whether or not an item is defective or on the scope of repair, then a voluntary mediation is a way to resolve the dispute without litigation.

Construction contracts

In some situations, the approach to settlement is partly driven by the kind of contract the parties used on the project because construction contracts often contain specific terms concerning dispute resolution. However, the terms of a construction contract dispute resolution can vary. In the event of a dispute, the construction contract will be a crucial document in determining the rights and obligations of the parties and the procedures to be followed.

Construction contracts come from several different sources; such contracts may vary in the provisions they include for dispute resolution. Examples are contracts to:

- Construct a new custom-built home may be drafted by the attorney for the owner or the homebuilder using a form of contract supplied by the American Institute of Architects (AIA). An AIA contract may require that a construction dispute be referred to the architect for resolution before any other dispute resolution steps are taken.
- Remodel a home may be drafted by the contractor or their attorney.
- Construct a small commercial building may be drafted by the attorney for the contractor using a form of contract supplied by the Associated General Contractors of America (AGC).
- Construct tenant improvements in a commercial building drafted by the attorney for either the contractor or the building owner.
- Construct a large project such as a shopping mall or a large commercial building may be drafted by the attorney for the owner (with input by the attorney from the contractor).
- Complete only a portion of the work of improvement (i.e., a subcontract) may be prepared either by the attorney for the contractor or the subcontractor.

No one size fits all. Most construction contracts will contain several common terms, including:

- The cost to construct the work of improvement;
- Allocation of responsibility for developing plans and specifications;
- Obtaining permits; and
- Time for completion.

Common construction disputes

Defective construction

These disputes generally take one of two different forms: Pre-completion or post-completion.

Pre-completion (claims arising during construction). If during construction the owner discovers the contractor is doing improper work, the owner may demand that the contractor remove and replace the defective work or that they change their construction procedures.

If the owner and contractor cannot come to agreement on how the work is to be done, then the contractor may discontinue working on the project, thereby delaying completion. Interest and penalties under the construction contract may begin accruing.

The contractor may record a mechanic's lien, thereby clouding title to the property. The contractor may issue a Stop Payment Notice which can interfere with the owner's financing of the construction project.

Early settlement of such disputes can forestall damages that may otherwise make settlement difficult if not impossible after further delay. A determination whether construction is in fact defective may require involvement of third parties such as the architect, expert consultants or other third parties.

Post-construction

If the owner discovers defective construction after the project is completed, then the owner and contractor may have a payment dispute. However, the escalating delay damages commonly encountered with disputes occurring during construction may not be present. In these situations, the owner's damages may consist of the cost of repair along with damages for loss of use plus attorney's fees.

Many residential construction projects (such as condominium or other projects with common areas) have a homeowner association (HOA). Sometimes residential projects are built with construction defects. Where HOAs exist, they may engage legal counsel to address construction defects post-completion of the project. A lawsuit for construction defects is often filed only against the general contractor, who in turn sues the subcontractors who worked on the project. Coordinating the various claims and discovery in such cases is a logistical challenge. Often, a court will appoint a special master to oversee discovery, coordinate investigations, and

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conduct settlement discussions. These are highly specialized proceedings and a more in-depth discussion of them is outside the scope of this article.

Nonperformance

Sometimes a contractor or subcontractor runs out of funds, loses construction workers, or encounters other reasons they cannot complete the work. When this happens, the owner is left with an uncompleted project, sometimes with disputed outstanding claims by the contractor for payment.

If the contractor has not paid their subcontractors or materials suppliers then those subcontractors or suppliers may record their own mechanic's liens against the project. If the owner is financing the project through a construction loan, then the lender may stop advancing further funds until construction resumes. In these situations, it is in the best interests of all parties to get these claims resolved as soon as possible.

Delay

Construction projects should run on a tight schedule – but they often fail to do so. Delay can occur for all kinds of reasons. Subcontractors may breach their subcontract agreement so that the general contractor must get a new subcontractor. Contractors may be conflicted with other projects which may compete for their time and attention. Delivery of materials may be delayed. Governmental authorities may limit the work or stop it all together.

Delay is expensive. Materials costs and wages can increase; construction-loan interest will continue to accrue; and the owner may not be able to lease out the project. Whenever possible it is best to resume construction as soon as possible and thereby limit the damages that may be caused by further delay.

Change orders and unforeseen problems

Sometimes a contractor will bid a project on the assumption that the soil can be readily worked but instead find that rock must be excavated before foundations can be constructed. Other times hazardous materials are discovered during the course of excavation. And occasionally designs and plans are imperfect and the project cannot be built as designed.

An owner's directive to the contractor that the construction project be changed is commonly referred to as a "change order." The owner and contractor may disagree about the necessity of a change order or the appropriate cost of such change orders. When such disagreements arise, it is in the parties' best interests to resolve such disputes as quickly as possible in order to avoid potentially significant delay damages.

Nonpayment

Sometimes owners run out of money. Sometimes general contractors either can't or won't pay their subcontractors. Many construction contracts contain certain "milestones" that specify when certain payments (commonly referred to as "progress payments") are to be made. Sometimes there is disagreement between the owner and the contractor as to whether the milestone has been reached such that payment is due.

Regardless of the reason, nonpayment claims are common with construction projects. If the contractor is unable or unwilling to complete construction until the dispute is resolved, then it is in the parties' best interests to quickly resolve the dispute in order to avoid significant delay damages.

Mediation as a condition precedent

Because delay damages can quickly become significant, it often makes sense to get a construction dispute into mediation as soon as the claims have been fully identified, documented and worked up. However, there are additional reasons mediation may be a critical first step toward resolution before filing a complaint or instituting arbitration.

Some construction contracts provide that mediation is a "condition precedent" to further legal action. For example, the Standard Form of Agreement (or Construction Contract) drafted by the American Institute of Architects (AIA) provides that "Claims, disputes and other matters in question" concerning the AIA construction contract must be submitted to mediation as a "condition precedent" to "binding dispute resolution." (See AIA Document A110-2021 Standard Form of Agreement Between Owner and Contractor for a Custom Residential Project.)

Why is this important? If counsel files a lawsuit or institutes binding arbitration proceedings without having first mediated their claims, then opposing counsel can later argue that the lawsuit or arbitration is premature. If a judge or arbitrator agrees, the proceeding could be dismissed. Not only would such a dismissal be potentially expensive, but it could also create even more delay on the project. The claim may even be time-barred if a statute of limitations has run during the proceedings.

Some contracts provide that if a party fails to mediate before commencing an action (or if, before suit is filed a party refuses to mediate after being asked to do so), then that party waives any right to recover attorney fees even if that party prevails at trial and would otherwise be entitled to an award of attorney fees. (See the form prepared by the California Association of Realtors (C.A.R.), California Residential Purchase Agreement and Joint Escrow Instructions, C.A.R. form RPA, revised 12/22. California courts will enforce an attorney fee waiver. (See *Frei v. Davey* (2004) 124 Cal.App.4th 1506.)

Preparing for mediation

Often, a contractor or subcontractor will be insured under an insurance policy that will cover damages arising from defective construction. It may be advisable to ensure that counsel for the contractor or subcontractor has tendered defense and indemnity to any insurer that may provide a defense. In many construction-defect suits the insurer – not the contractor – funds the settlement. (For further information about the role of insurance in settling construction defect claims, see the treatise published by Continuing Education of the Bar, 2 Pierce and Sullivan, California Construction Contracts, Defects, and Litigation (2023)

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(Cal CEB), §12.1, Construction Defects: Insurance and Express Indemnity.)

Many construction defects and damages are not readily apparent to untrained persons. Parties to construction disputes frequently engage consultants to identify the defects, develop a scope of repair and testify regarding the repair costs. An owner who is experiencing significant damages due to construction defects or delay damages may need a consultant to testify about such damages. In appropriate cases, the expense of having an expert prepare a report for use at mediation may be justified. An expert opinion or report prepared by such a consultant can be essential to meaningful settlement discussions.

Mediation briefs

If a construction dispute is scheduled for mediation, adequate preparation must be stressed. A thorough mediation brief is the key to settling many construction disputes. If the dispute centers on claims of construction defects, the claimant must clearly demonstrate the nature of the defects. This may require clear photographs of the construction defects or the damage caused by the defects. Briefs that include photos of the defective components with contrasting photographs of undamaged components can be very helpful in settlement discussions. In some situations, a sample of the damaged or defective component can be persuasive.

If a construction dispute is based on delay, then it may be essential for the claimant to provide documentation as to the cause of the delay and the damages caused by the delay. If a construction dispute is based on a contractor's abandonment of the project, or if for any reason the project must be completed by a different contractor, the claimant may need to obtain new bids to complete the project. Such new bids should be included with the mediation brief so that these "cost to complete" damages are clearly and persuasively communicated to the mediator and the opposing party.

If a construction dispute is based on new, different, or unexpected conditions, it may be necessary to engage an expert consultant. The consultant should be able to describe the proper approach to remediating the condition and the projected additional costs.

Regardless of the nature of the construction dispute, resolution can often be facilitated if the party claiming damage provides clear proof of liability, along with clear documentation as to damages incurred or to be incurred.

The best way to position a construction issue for settlement is for the claimant to provide the opposition with all documentation that it may need to fully understand the scope and nature of the defects, costs of repair, and all attendant damages.

Pre-mediation conferences

A pre-mediation conference is an ideal way to address any gap in information or documentation that the mediator may raise at the mediation. The effectiveness of the pre-mediation conference is enhanced if it is held after the mediator reads submitted briefs. If the mediator needs additional information or documentation, then there may still be time to assemble and provide it without rescheduling the mediation.

The mediation

It may not be necessary to have construction or damages experts attend the mediation, but when technical questions arise, such consultants' "live" input can be invaluable. Having experts available on standby for a phone or Zoom call on the day of the mediation can significantly enhance the effectiveness of a mediation. Settlement of some cases at mediation may only be possible if construction experts actively participate in the mediation. Counsel's evaluation as to whether such consultant input will be necessary should be done well in advance of the mediation so that the experts can be available on-call.

Settlement

Some construction disputes are highly complex and may require opposing counsel to work together. If resolution of the construction dispute involves any degree of complexity, then preparing a proposed settlement agreement before the mediation may prove very useful. By preparing a draft form of a settlement agreement in advance, counsel can carefully consider the sequencing and procedures of any future remedial construction work.

Mediator selection

A key factor for mediation success may depend on selecting a mediator who understands the dynamics of the construction dispute and who can skillfully discuss the issues. An ideal candidate for more complex mediation is a mediator who has the interpersonal skills to bring the parties together and can bring creative solutions to complex construction problems that may not otherwise be apparent.

Conclusion

The key steps for positioning most construction disputes for settlement at mediation are: Fully document the nature and scope of the problem; fully document the necessary fix or repairs; fully document all related damages (such as delay damages); provide such documentation to the other side and the mediator; have experts available as appropriate; and select an experienced mediator who will understand the issues and can bring the parties to consensus.

Robert Jacobs is a mediator and arbitrator with 30+ years of litigation experience. He is affiliated with Judicate West. *Before becoming a neutral, he had more than 25 years of experience representing builders, developers, general contractors, and owners in many construction disputes. He presently mediates and arbitrates real estate, construction, business, personal injury, employment and trust litigation cases. Reach him at Bob@attorney-mediator.law.*

Tanya Gomerman, Esq.
Robert Hester, Esq.
Alexander Aronov, Esq.
Felipe Garcia, Esq.

GOMERMAN | BOURN
& ASSOCIATES

Maria Bourn, Esq.
Ashley Pellouchoud, Esq.
Michael Brooks, Esq.
Anthony Tartaglio, Esq.

Date, 2024

Re: ***Tax Acknowledgement***

Dear Client,

Your mediation is scheduled for Date, 2024. During your mediation the parties will discuss how to resolve your case. That may include a payment to you. That payment to you is taxable income. Our retainer agreement makes it clear that we do not provide tax advice. In advance of your mediation, we suggest you contact a tax consultant to get advice on any tax consequences regarding a payment to you to settle your claims.

By signing this you acknowledge we informed you we do not provide tax advice and advised you to seek tax advice if you have any questions regarding the taxability of any potential settlement. We encourage you to have a tax consultant available to answer any tax questions during your mediation.

Date: _____

_____
Client Name

Thank you for giving me the opportunity to represent you in this matter. Please call me with any questions or concerns.

Yours,

_____
Attorney Name

ashley@gobolaw.com ◆ phone: 415-545-8608 ◆ fax: 855-545-8608 ◆ 825 Van Ness Avenue, Suite 502, San Francisco, CA 94109

Date	Invoice No.	Payment Type	Name of Vendor/Contact	Description of Service/Charge	Amount
				Total	123
				Total Costs	123

SETTLEMENT AWARD	ATTORNEYS FEES (40%)	COSTS (APPROX)	TOTAL FEES AND COSTS	CLIENT AWARD (pre-tax)
$100,000.00	$40,000.00	$123.00	$40,123.00	$59,877.00
$98,000.00	$39,200.00	$123.00	$39,323.00	$58,677.00
$96,000.00	$38,400.00	$123.00	$38,523.00	$57,477.00
$94,000.00	$37,600.00	$123.00	$37,723.00	$56,277.00
$92,000.00	$36,800.00	$123.00	$36,923.00	$55,077.00
$90,000.00	$36,000.00	$123.00	$36,123.00	$53,877.00
$88,000.00	$35,200.00	$123.00	$35,323.00	$52,677.00
$86,000.00	$34,400.00	$123.00	$34,523.00	$51,477.00
$84,000.00	$33,600.00	$123.00	$33,723.00	$50,277.00
$82,000.00	$32,800.00	$123.00	$32,923.00	$49,077.00
$80,000.00	$32,000.00	$123.00	$32,123.00	$47,877.00
$78,000.00	$31,200.00	$123.00	$31,323.00	$46,677.00
$76,000.00	$30,400.00	$123.00	$30,523.00	$45,477.00
$74,000.00	$29,600.00	$123.00	$29,723.00	$44,277.00
$72,000.00	$28,800.00	$123.00	$28,923.00	$43,077.00
$70,000.00	$28,000.00	$123.00	$28,123.00	$41,877.00
$68,000.00	$27,200.00	$123.00	$27,323.00	$40,677.00
$66,000.00	$26,400.00	$123.00	$26,523.00	$39,477.00
$64,000.00	$25,600.00	$123.00	$25,723.00	$38,277.00
$62,000.00	$24,800.00	$123.00	$24,923.00	$37,077.00
$60,000.00	$24,000.00	$123.00	$24,123.00	$35,877.00
$58,000.00	$23,200.00	$123.00	$23,323.00	$34,677.00
$56,000.00	$22,400.00	$123.00	$22,523.00	$33,477.00
$54,000.00	$21,600.00	$123.00	$21,723.00	$32,277.00
$52,000.00	$20,800.00	$123.00	$20,923.00	$31,077.00
$50,000.00	$20,000.00	$123.00	$20,123.00	$29,877.00
$48,000.00	$19,200.00	$123.00	$19,323.00	$28,677.00
$46,000.00	$18,400.00	$123.00	$18,523.00	$27,477.00
$44,000.00	$17,600.00	$123.00	$17,723.00	$26,277.00
$42,000.00	$16,800.00	$123.00	$16,923.00	$25,077.00
$40,000.00	$16,000.00	$123.00	$16,123.00	$23,877.00
$38,000.00	$15,200.00	$123.00	$15,323.00	$22,677.00
$36,000.00	$14,400.00	$123.00	$14,523.00	$21,477.00
$34,000.00	$13,600.00	$123.00	$13,723.00	$20,277.00
$32,000.00	$12,800.00	$123.00	$12,923.00	$19,077.00
$30,000.00	$12,000.00	$123.00	$12,123.00	$17,877.00
$28,000.00	$11,200.00	$123.00	$11,323.00	$16,677.00
$26,000.00	$10,400.00	$123.00	$10,523.00	$15,477.00
$24,000.00	$9,600.00	$123.00	$9,723.00	$14,277.00
$22,000.00	$8,800.00	$123.00	$8,923.00	$13,077.00
$20,000.00	$8,000.00	$123.00	$8,123.00	$11,877.00

Attorney's fees (%)	40
High award estimate	$ 100,000.00
Low award estimate	$ 20,000.00
increments between awards	$2,000.00
costs to date	$123.00

A Deliberate Brief

Here's a bit of feedback from one who reads briefs for a living.

Before you begin writing, take a moment and reflect on the purpose of your brief. Important threshold questions might include the following:

- Who is my audience?
- What does my audience need?
- How do I best communicate with my audience?
- What do I hope to accomplish with my brief?

The answers to these questions can make a big difference on what your brief looks like.

Let's take a look at the first question: Who is my audience?

There are four possible answers.

1. The Mediator
2. Opposing counsel
3. The Client
4. Yourself

<u>The Mediator</u>

If your primary intended audience is your mediator, then take a moment to analyze what your mediator needs in order to do their job.

A highly effective mediator will take the information from your brief and use it in the other room. If your brief describes facts that advance your client's claims or defenses, then your mediator should discuss those facts with the other side. Include background facts in your brief only to the extent your mediator needs them in order to understand the flow of important events. Stay away from facts that serve no meaningful purpose, but don't skimp on key facts. You want to lay out key facts with enough clarity and detail that your mediator can persuasively discuss them with the other side. If the other side is unaware of your key facts or if they dispute those facts, consider including persuasive evidence as exhibits that your mediator can use in the other room. An effective brief describes the key facts and evidence and doesn't dilute them with information that advances neither a claim nor a defense.

Facts are powerful. They build sympathy. They invoke compassion. They highlight equity. Mediators are people too. Facts, briefs and trials all focus on one primary thing: to persuade. In a mediation, the first person you want to persuade is your mediator. If you convince your

mediator early on that your client has been terribly wronged or that your client is blameless you will have cleared the first hurdle toward reaching a successful resolution. If your mediator is convinced, they'll discuss your facts with the other side and invite their response. Marshall the facts in your brief in a way that will persuade the reader that a judge or jury will want to side with your client. Begin your discussion of the facts with a discussion of to what the other side has done or hasn't done and then describe the effects, results and consequences of the facts in such a way that it will be clear that the trier of fact will want to vote for your side.

Before you begin discussing the law, evaluate your mediator's needs. If your mediator works with cases like yours five days a week, you might not need to cite much law. But if you don't know whether your mediator is highly conversant on the law in your case, avoid the temptation to skimp on your discussion of the law. I look up and read some of the cases and statutes cited in briefs when they involve key legal points. Reading cases and statutes help me discuss key legal points when I'm in the other room exploring the strong points of your case with opposing counsel. If you don't provide your mediator with such citations then you may lose an important opportunity to have the mediator explore with opposing counsel key legal points which may be in your favor.

Opposing Counsel

A key audience for your brief is your opposing counsel. I've seen attorneys become convinced by their opponent's brief (and the exhibits that accompany it). In addition to building their own case, opposing counsel must understand your case or they risk being blindsided at trial. Opposing counsel may never openly acknowledge that your brief has persuaded them as to the merit of your case, but I see it happen. A well-written brief with a clear statement of facts, a concise statement of the law and some dynamite exhibits is a powerful tool. This kind of brief not only has a significant effect on the opposing counsel and client, but also provides the mediator with important material they need in order to do their job effectively. Such a brief and exhibits can make a material difference on whether or not a case settles at mediation.

Analyze your opponent's case. Identify both the strong and the weak points and address them directly in your own brief. This will not only highlight the key issues for the mediator, but will also let opposing counsel see how your arguments and evidence will likely come across to a judge or jury at trial.

I sometimes get confidential briefs that aren't shared with opposing counsel. This can be a missed opportunity. Even if opposing counsel knows your case well, share your brief. If you write a great brief and persuade your mediator as to the strength of your case but if you then don't share it with opposing counsel, what can your mediator do? Your mediator needs to be able to discuss with your opponent all the facts and law that make your claims or your defenses so powerful. If there's something you need to confidentially communicate to the mediator, prepare a short supplemental brief to be shared only with them.

The Client

Every mediation involves at least two sets of clients. Sometimes the needs of these clients determine the tone of the brief.

In some cases, clients are outraged, frustrated and angry. If they've been terribly wronged, then they want that expressed in the brief. Some clients almost insist that their attorney's brief be aggressive. When this happens, the tone of the brief can be highly critical, accusatory and condemning of the opposing party. If your client insists on this then you may have to prepare such a brief. But words are powerful. They can cut to the quick. They can invoke anger and frustration with a very few keystrokes. Remember that the person you attack in your brief is the same person you are trying to convince. If that person is highly defensive or angry because you have attacked their character, their motives or their actions, the focus of the mediation may shift from the issues at hand to something far more volatile: pride or ego. When that shift happens it's far more difficult to get people to hear reason. If the mediation becomes a stare-down about pride, control or respect, then other considerations such as money may take a back seat. Once that happens, it can be nearly impossible to settle until the focus returns to the actual issues in the case.

Yourself

My father taught English at a major university for 39 years. He used to say that resumes, reports and other documents are "You on paper." In other words, the written document represents the writer.

He was right. Briefs and other written documents speak volumes about the author. If the brief is full of typos, sentence fragments or incorrectly used words then it conveys a certain message about the author. If the brief is tightly written with a clear statement of facts and a concise statement of law, a different message is conveyed. At a mediation everybody sizes up everybody else – client, attorney, and mediator. Your written work absolutely conveys a message to the other side about who you are, how you do business and how you are likely to try the case.

Attorneys take their work seriously. And they often have deep feelings about their client's situation. If an attorney feels their client has been disabused, wronged or disrespected, or if counsel on the other side appears to be stubborn, uncooperative, unyielding or aggressive then temperatures can rise. Sometimes litigation frustration escalates to a significant level. When it does, counsel may "take it out" on the opposing client or counsel in the brief.

Use care when doing this. If you're dealing with an impossible client or counsel on the other side, take three deep breaths before writing anything. Let cooler heads prevail. Analyze your audience before committing yourself to paper. If an aggressive brief will advance your client's cause and make settlement more likely, then write one. But if an accusatory brief is more likely to spin things up and shift the focus of the mediation to ego or pride, forego the opportunity of speaking your mind or venting your own anger on paper and instead draft your brief as outlined above.

There are many considerations involved in preparing an effective brief; these are some of the major ones. Carefully analyze your audience before starting your brief and you'll find yourself turning out written work product that moves your case closer to settlement rather than farther away.

Robert Jacobs is a neutral with Judicate West. He has litigated cases throughout California for more than 30 years. He serves as a mediator and arbitrator in Real Estate, Business, Construction, Personal Injury, Wrongful Death, Medical and Dental malpractice and Trust Litigation cases.