



ADR STRATEGIES

JOAN B. KESSLER, JD, PhD

You are receiving this communication as a result of your interest in alternative dispute resolution (ADR).

- Please let me know how I can assist you in economically resolving a case through mediation or arbitration.
- Also, below is an article I wrote entitled **Reflecting back on 10 years of Advocate's ADR issue** which appeared in the August 2016 Advocate for your review.

Many years ago I received a Ph.D. from the University of Michigan in Communications. Before I went to law school I taught interpersonal relations, group interaction, conflict resolution, intercultural communication courses and served as a jury consultant. I apply the communication issues and solutions I taught, coupled with my 30 years of legal practice experience to my alternative dispute resolution practice.

THINK ABOUT THIS PRIOR TO YOUR NEXT MEDIATION/ARBITRATION

Please contact me to discuss your next mediation. You may call me on my direct line: (310) 552-9800 or e-mail me on my personal e-mail: jkessler@kesslerandkessler.com.

To schedule a mediation with me, please call my Case Manager Janis Watson at (310) 552-9800 and **WE WILL MAKE IT HAPPEN**. I am, also, available on the USDC Mediation Panel and as an Arbitrator or Mediator through the American Arbitration Association Arbitration and Mediation Panels. **PLEASE NOTE MY NEW STREET ADDRESS AND SUITE NUMBER 1880 Century Park East, Suite 1402, Los Angeles, California 90067.**

Please visit my website: www.joanbkessler.com

To change your address or remove your name from my list call me at (310) 552-9800 or just send me an email to jkessler@kesslerandkessler.com.

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Joan B. Kessler

Reflecting back on 10 years of Advocate's ADR issue

A wonderful run at the tables!

As I reflect back over my 10 years as associate editor for the annual ADR issue of *Advocate*, I am struck by the wonderful list of impressive neutrals who have agreed to write articles: judges, former judges, leaders in the ADR community (every President of the Southern California Mediation Association for 10 years straight), members of respected ADR organizations and innovators in the field.

There have been so many terrific and memorable articles over this past 10 years. My own articles have changed in focus as I have grown and developed from starting out as a relatively new neutral thinking about putting yourself in someone else's shoes and applying my legal skills and communication theory skills to my mediation and arbitration practice. The biggest changes I have seen is the welcomed improvement in collegiality of the lawyers and their clients during the mediations and arbitrations over these 10 years and the challenges to the confidentiality of the mediation process over that time (see, e.g., the two articles in this issue on confidentiality).

In my 2007 article, "Beyond the Golden Rule: Successful Intercultural Mediations," I encouraged participants in a mediation to put themselves in the other person's shoes and try to focus on how someone else would want to be treated and not just how you would want to be treated. This is especially true in intercultural communication settings. Focusing on mediation briefs, in 2008, my article, "Mediation Brief – Plain English Trumps Legalese," focused on a study I did on how plain English rather than legalese might be perceived as more credible by decision makers and by mediators.

I still believe that making a settlement stick may be as important as settling a matter and my 2009 article, "The Mediation isn't Successful if the Settlement Doesn't Stick," reinforced that issue, especially the importance of having something in writing that is enforceable. In 2010, "Key Elements of Mediation" I summarized what is still my view of key elements: brief briefs, proper assessment of what the parties really want, figuring out when the final offer is really final, avoiding getting weighed down by the facts and helping everyone to accept a realistic solution.

I still think that collegiality is critical in an ADR practice. In my 2011 article, "Is Collegiality a Thing of the Past," I encouraged a refocus on this as I do regularly in my sessions. A continuing topic of interest was my 2012 article's topic: "Caucus or Joint Session: To Meet or Not to Meet." I still grapple with this issue of whether and when to put all participants in the same room.

My 2013 article is truly the highlight of these 10 years. I was privileged to conduct an "Interview with Ken Feinberg." Ken is a world class neutral who has resolved disputes from Agent Orange to 9/11, etc. He reminded me about the importance of letting each claimant have "an opportunity to be heard"... "giving them a voice." When I resolve a painful case, the mediation setting may be the only chance for the claimants to express themselves and get real closure.

In 2014, my article on "Pre-Litigation Mediation, a Signal of Weakness or a Sign of Strength," was a signal of the movement in my practice to the many pre-litigation matters I help to resolve. Recently, I see more class actions where the class is not yet certified but matters can be resolved. Last year, I discussed various "Assessment Tools in Mediation" including our exciting technology, CXA, which allows online evaluative arbitrator's assessment of arbitrations, a big change in ADR!

Changes in ADR practice

I also, reflect back over these 10 years of my ADR practice and how the subject matter of my practice has changed so dramatically, paralleling the changes in cases filed in State and Federal Courts. I started out 10 years ago after practicing as a litigator for 20 years and mainly saw the sub-prime mortgage cases, banking cases generally, real estate (especially easement cases), business cases and of course employment and entertainment matters. Now, the shift to class actions in addition to single-plaintiff employment matters and the move to so many wage and hour, and Federal Credit Reporting Act cases has been a large revelation as I look over my mediation case load over these 10 years. I am told this move to

employment matters is consistent with the filings in the courts, and the class-action matters have increased as plaintiff and defense lawyers seek to settle these large, many times national matters, out of court. I have seen this shift in interest toward employment matters at the CAALA conventions when I see how jammed the Employment seminars are. I wonder what the next 10 years will hold in store for me as a neutral and for the attorneys reading this article.

Great honor to be co-editor

I have been honored by CAALA to be an associate-editor of this terrific convention issue for 10 years. It has been my privilege to do this work. Thank you to all *Advocate* readers, CAALA members, Rich Neubauer the publisher and especially to Cindy Cantu, who makes it all happen at CAALA. Special thanks to my dear longtime friend and colleague Jeff Ehrlich, the editor-in-chief of *Advocate* and the most wonderful appellate lawyer. I met him about 25 years ago when we worked on a couple of large cases together. Ten years ago Jeff asked me if I might want to help out on the ADR issue for the annual CAALA convention, and I am so glad I said yes. It truly has been a great RUN AT THE TABLES for me personally and professionally, and I will treasure my time working with *Advocate*.

Joan Kessler, a full-time mediator and arbitrator, received her Ph.D. in Communication before she attended law school. She was a jury consultant, Communications Professor and has practiced law for close to 30 years. Many of the communication strategies she taught and her extensive experience as a litigator enhance her mediation and arbitration practice. She specializes in employment, real estate, trust/estate, business, commercial, entertainment, and insurance cases. Ms. Kessler may be reached at: jkessler@kesslerandkessler.com or direct line (310) 552-9800. Ms. Kessler is on the American Arbitration Association panel of arbitrators and mediators, the United States District Court panel of mediators and she mediates and arbitrates matters independently. Her website is www.joanbkessler.com.