



# ADR STRATEGIES

## JOAN B. KESSLER, JD, PHD



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

I have always taken the position that as a mediator, I want it “done, done, done” when a settlement is reached. I have the parties agree in writing to the settlement terms and that any settlement is enforceable under California Code of Civil Procedure §664.6. At least in the 4<sup>th</sup> Appellate District (San Diego) as of May 30, 2012, it was “done, done, done.”

- Case: Bowers v. Raymond J. Lucia Companies Inc.
- \$5,000,000 “Binding Mediation” award enforced by Court of Appeal
- Parties agreed to the mediator picking a number, either \$100,000 or \$5,000,000 (“Baseball Arbitration”)
- Court held that “...binding mediation provisions in the parties’ settlement agreement were not too uncertain to be enforceable”
- Court also held that “...binding mediation is not a constitutionally or statutorily prohibited means of waiving jury trial rights where, as here, the parties have agreed to settle their dispute in a nonjudicial forum.”

End of story: If you agree that the mediation resolution terms are enforceable under CCP §664.6, a court may make that resolution stick!

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 25 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@adrservices.org](mailto:jkessler@adrservices.org).

To schedule a mediation or arbitration please call my case manager Eve Thorstens at (310) 201-0010 at ADR Services, Inc. If the date you desire is not available please call me on my direct dial number (310) 552-9800 and **WE WILL MAKE IT HAPPEN.**

To set up family business facilitation or to have me serve as a Special Administrator on an estate matter please call me directly at (310) 552-9800. I look forward to working with you.

Please visit my website: [www.joanbkessler.com](http://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@adrservices.org](mailto:jkessler@adrservices.org).

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