

MEDIATION 101

A Practical Guide to Mediation From Brief to Bargain

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**Practical preparation. Better
conversations. Stronger settlement
opportunities.**

Today's Roadmap

Six stages that shape the mediation process before, during, and after the session.

01
**Pre-Mediation
Preparation**

02
Selection of Experts

03
Preparing the Client

04
The Mediation Brief

05
**Negotiating at
Mediation**

06
**Documenting the
Settlement**

The through-line: prepare early enough that the mediation day can focus on decision-making—not information gathering.

01

Pre-Mediation Preparation

Know the case, know the goal, and remove avoidable obstacles before the session begins.

Before You Schedule: Define the Mediation Strategy

The “why now?” question should have a concrete answer.

Know the Case

Evaluate liability, damages, fee exposure, collectability, insurance, and the practical risks that may affect settlement value.

Know the Goal

Are you satisfying a contractual requirement, testing settlement early, avoiding a major cost milestone, or genuinely ready to close?

Know the Timing

Early mediation can reduce cost and entrenchment—but only if the parties have enough information to make informed decisions.

Decision point

What would need to be true for this case to be meaningfully negotiable on mediation day?

Use that answer to drive timing, discovery, expert work, authority, and information exchange.

Build the Session for Decision-Making

Logistics are not housekeeping—they determine whether negotiation can actually move.

SESSION DESIGN

- Choose in-person or virtual intentionally
- Select a mediator suited to the dispute and personalities
- Schedule enough time for the full process
- Make experts available when their input may be needed

INFORMATION FLOW

- Exchange key damages / defect / repair information early
- Tender and report claims to carriers promptly
- Publish expert reports when they will advance discussion
- Arrange a pre-mediation call with the mediator

PRACTICE POINT

The right people + the right information + enough time = a session with a real chance to resolve.

Pre-Mediation: Do / Don't

Most avoidable mediation problems are visible before the day starts.

DO

- Clarify the settlement objective
- Exchange the information the other side needs to evaluate risk
- Have decision-makers and authority available for the full session
- Use the pre-mediation call to flag obstacles and dynamics
- Think through the form of settlement before negotiations begin

DON'T

- Wait too long to tender or report a claim
- Skip the pre-mediation call
- Arrive with limited authority or a decision-maker who must leave early
- Wait until the last minute to exchange critical information
- Show up with expectations that have never been stress-tested

02

Selection of Experts

Use experts to clarify and solve—not to recreate the adversarial process inside the mediation.

The Right Expert Can Move the Room

Expert participation should make the dispute easier to evaluate, not harder to negotiate.

1. Credible

Knowledgeable, experienced, and able to explain the issue in a way that both the mediator and opposing side can understand.

2. Collaborative

Prepared to engage with opposing experts, test assumptions, narrow disagreements, and identify workable solutions.

3. Prepared

Knows the file, understands the mediation objective, and can respond efficiently when a technical issue becomes a negotiation issue.

Avoid the expert who becomes another advocate.

The expert's value is often greatest when they help the parties narrow the problem.

03

Preparing the Client

A well-prepared client understands the process, the emotional dynamics, and the possibility of compromise.

Reset Expectations Before the Session

Clients often arrive expecting a verdict. Mediation asks them to make a business or personal decision under uncertainty.

1 Mediation is not a trial

The mediator does not decide who wins.

2 Mediation is not an exercise in fairness

The negotiation may reflect risk, cost, timing, collectability, relationships, and uncertainty—not just who feels “right.”

3 There will be movement and posturing

Offers and demands can carry messages. Prepare the client for an ebb and flow rather than a straight line.

4 Compromise is part of the process

A client who expects total vindication is harder to move when the real tradeoffs become clear.

Prepare the Client for Mediation Confidentiality

California Evidence Code § 1129 requires a specific client disclosure and acknowledgment in most represented mediations.

PRACTICAL CHECKLIST

- Provide the disclosure as soon as reasonably possible before the client agrees to participate
- Use the client's preferred language and at least 12-point font
- Keep it to a single page and separate from other documents
- Include attorney and client names, signatures, and dates
- Use the conversation to explain what confidentiality means in practice

IMPORTANT

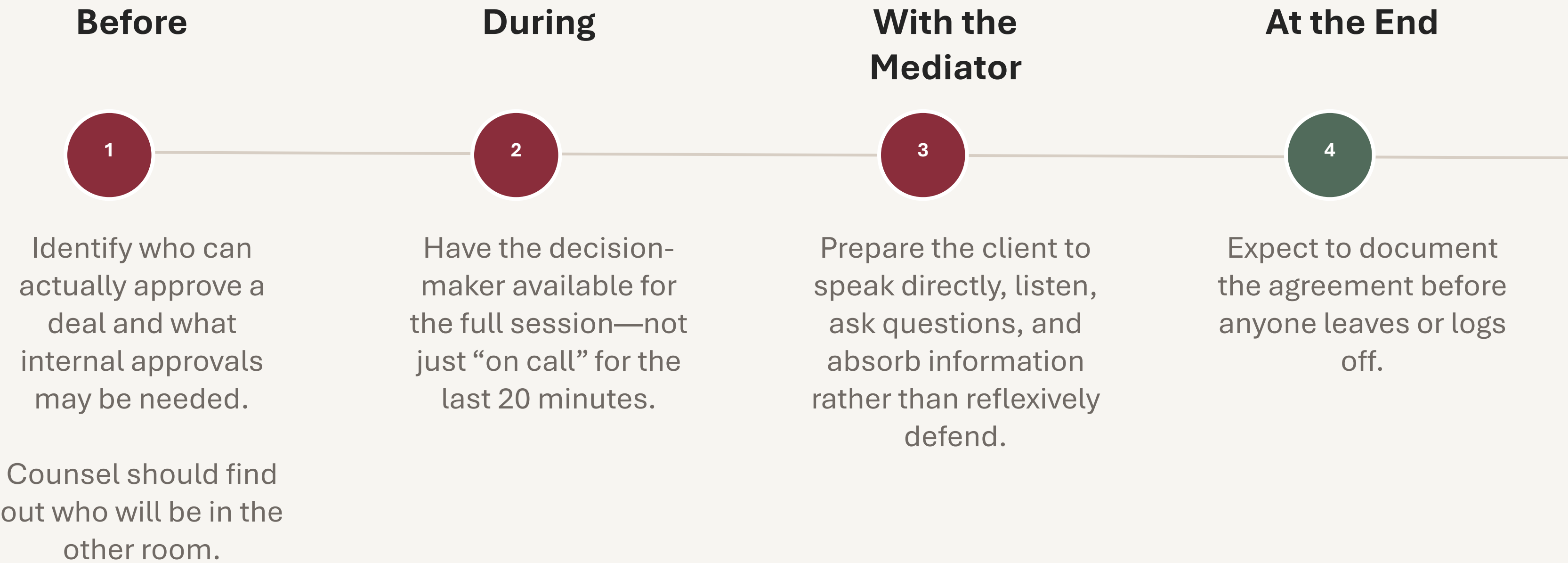
Client disclosure requirement is in Evidence Code § 1129.

Use the current statutory form and confirm any exceptions or case-specific requirements.

Source: Cal. Evid. Code § 1129 (current through Sept. 2026).

Put the Real Decision-Maker in the Room

Authority delayed is often settlement delayed.



For virtual mediation: test technology, choose a private setting, and block the full time allotted.

04

The Mediation Brief

Give the mediator what they need to understand the dispute, the negotiation history, and what may unlock movement.

An Effective Mediation Brief Answers Six Questions

A useful brief is a working document for the mediator—not a recycled motion.

1 Who is involved?

Parties, counsel, decision-makers, insurers or other stakeholders.

2 What is the dispute?

A concise description of the case, claims, and counterclaims.

3 What matters most?

Significant facts and legal issues that affect evaluation or leverage.

4 Where are negotiations?

Prior demands, offers, brackets, or other settlement history.

5 What does the mediator need?

Chronology, damages information, key documents, client dynamics, or other settlement-relevant context.

6 What happens if it settles?

In a complex case, consider bringing a draft term sheet or settlement agreement.

Mediation Brief: Do / Don't

Credibility is built as much by what you leave out as what you put in.

DO

- 1 Send it early enough to be read and used
- 2 Pay attention to names, numbers, dates, and factual accuracy
- 3 Focus on information that can move negotiations
- 4 Exchange briefs when appropriate to educate the other side
- 5 Use attachments selectively

DON'T

- 1 Send it the night before—or the morning of—the session
- 2 Attach the entire pleading and discovery file
- 3 Over-argue or rely on hyperbole
- 4 Use a brief full of typos or internal inconsistencies
- 5 Assume the mediator will infer your settlement objective

Ask: “What does the mediator need to know that is not obvious from the pleadings?”

Using AI on the Mediation Brief? Own Every Word.

AI can accelerate drafting. It cannot replace lawyer judgment or factual verification.

- 1 Draft** Use AI for structure, condensation, chronology, or a first-pass summary.
- 2 Verify** Check every fact, quotation, citation, number, and characterization against the source material.
- 3 Protect** Do not input confidential or sensitive information into a system unless your use complies with applicable duties, policies, and safeguards.
- 4 Edit** Make the final brief sound like counsel who knows the case—not generic machine-generated advocacy.

Rule of thumb: if you would be embarrassed to have the mediator ask, “Where did this come from?”—verify it before it goes in.

05

Negotiating at Mediation

A quick orientation to the mechanics—without trying to turn Mediation 101 into a negotiation masterclass.

Negotiation Mechanics: Know the Vocabulary

These tools matter, but they work best when the client understands what each move is trying to accomplish.

Opening demand / offer

Sets an anchor and signals how each side is framing the case.

Counteroffer

Moves the negotiation while communicating pace, range, and responsiveness.

Bracket

A conditional range used to test whether the parties can narrow the gap.

Bottom line

Information about a party's limit; sharing it can help—or eliminate leverage—depending on context.

Joint session

A direct conversation that may help when information, emotion, or misunderstanding is blocking progress.

Mediator's proposal

A mediator-generated settlement figure or set of terms, usually presented after ordinary bargaining has stalled.

06

Documenting the Settlement

Do not let a hard-won agreement become a new dispute about what the parties actually agreed to.

Settlement Document Suggestions

The form of the agreement is part of mediation strategy—not an afterthought.

SHORT FORM / TERM SHEET

- A short form settlement agreement is almost always all that is necessary to document the material terms of a settlement
- Identify all material terms—not just the payment amount (confidentiality, releases, liens, indemnity, tax, non-disparagement, or performance terms may be negotiated) **DON'T WAIT UNTIL THE LAST MINUTE TO RAISE THESE ISSUES!**
- State what still must happen before a long-form agreement is signed
- Consider asking the mediator for a short form template ahead of the mediation
- KISS: Resist the temptation to over-lawyer the settlement agreement
- Make sure your mediator will be there until the bitter end

CA Drafting Note

Evidence Code § 1123 addresses when a written mediation settlement agreement is not protected from disclosure; CCP § 664.6 provides a procedure for entering judgment on qualifying settlements in pending litigation.

**Confirm the agreement language and enforcement mechanism appropriate to the case.
Find sample form agreements in handout materials.**

The 10-Point Mediation Readiness Check

Before the session, can you answer “yes” to all ten?

- ✓ We know why we are mediating now.
- ✓ We have enough information to evaluate the case.
- ✓ The carrier / necessary stakeholders have been notified.
- ✓ The right mediator has been selected.
- ✓ Experts are prepared and available if needed.
- ✓ The client understands the process and confidentiality.
- ✓ The real decision-maker will be present with sufficient authority.
- ✓ The mediation brief is accurate, focused, and timely.
- ✓ The client is prepared for compromise and negotiation movement.
- ✓ We know how we plan to document a settlement.

Preparation does not guarantee settlement. It gives the mediation the best possible conditions for meaningful negotiation.

**Prepare the case.
Prepare the client.
Prepare to close.**

Questions & Discussion



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_____	)	CASE NO.
	)	
Plaintiff(s),	)	
vs.	)	STIPULATION FOR SETTLEMENT AND
	)	MUTUAL RELEASE OF CLAIMS
	)	(Code Civ. Proc. §664.6)
_____	)	
Defendant(s).	)	
	)	
_____	)	

This case having come on for voluntary mediation on _____, it is hereby stipulated by the undersigned parties that the matter is deemed settled pursuant to the following terms and conditions:

1. Defendant(s) _____ shall pay to Plaintiff(s) _____ the sum of \$ _____ as a full and complete settlement of all claims giving rise to the parties' dispute, including any claims or causes of action, known or unknown, related to or arising out of the claims or causes of action asserted. All parties agree that this settlement is final and binding on the parties and their heirs, successors and assigns, and accept this settlement with the knowledge that all parties will be barred from proceeding against any person or entity in the future regarding any claims or causes of action related to this matter.

2. Other Terms:

3. Each party will bear their own attorneys' fees and costs. The parties agree that this provision includes any fees or costs recoverable as a result of an outstanding, rejected or expired CCP §998 offer to compromise.

4. The parties stipulate that this settlement *does not* constitute and shall not be deemed as an admission of liability, including any act, omission, or damages of any party.

5. In order to effectuate the above-specified terms of settlement, the parties further agree to the following:

- a. If a court action is pending, Plaintiff(s)/Cross-Complainant(s) will execute a request for dismissal of the action with prejudice to be filed after all settlement documents have been signed and a proper request has been submitted asking the Court to retain jurisdiction to enforce the settlement pursuant to Code of Civil Procedure section 664.6; and

- b. The undersigned expressly acknowledges and agrees that this settlement and mutual release is intended to extinguish all claims of every type, including those known and unknown and those suspected and unsuspected, without regard to whether they are now known or suspected, even if those claims may materially affect the undersigned's decision to enter into this release. This is a full and final mutual release, and the undersigned expressly waives any right under Civil Code section 1542, which provides:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”

Although it is possible that the undersigned may discover new or additional damages or injuries, this release is intended to include all claims against all settling parties and to extinguish all obligations in favor of the undersigned arising from the dispute(s) at issue.

6. This Stipulation for Settlement may be enforced pursuant to Code of Civil Procedure section 664.6. Pursuant to Evidence Code section 1123, the parties acknowledge that this agreement is exempt from the confidentiality provisions of Evidence Code section 1152, et seq., and is admissible in evidence to enforce the settlement. In any proceeding to enforce this settlement agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs incurred therein.

7. The parties do ____ / do not ____ intend to prepare a more formal agreement of settlement and mutual release which shall include the material terms of this stipulation. Although the parties may contemplate entering into a more formal agreement, failure to execute such formal agreement shall not affect this Stipulation, which shall remain in full force and effect.

8. This Stipulation for Settlement is intended to be fully and formally binding and enforceable and is effective this ____ day of _____, 20____. It contains the entire understanding and agreement between the parties concerning the resolution of all disputes between them and has been executed without reliance on any promise, representation or warranty not contained herein. *A copy of this agreement may be used in lieu of the original for all purposes.*

9. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all such counterparts shall together constitute one and the same Agreement. Each party agrees that this Agreement and any other documents to be delivered in connection herewith may be electronically signed, and that any electronic signatures appearing on this Agreement or such other documents are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility. Emailed photographs of signatures shall also be valid as originals.

The Parties, by their signatures below, have executed this Agreement and agree to be bound by it.

Plaintiff (print name)

Signature

Counsel for Plaintiff (print name)

Signature

Defendant (print name)

Signature

Counsel for Defendant (print name)

Signature

Plaintiff (print name)

Signature

Plaintiff (print name)

Signature

Defendant (print name)

Signature

Defendant (print name)

Signature