

A Month of Connection and Collaboration



ABOTA - Judge Ochoa, Judge Byrdsong, Lisa Payne



CLA - Anthony Khoury, Daniela Mares, Marina Kats Fraigun



ASCDC: Lisa Payne, Anthony Khoury, Andrew Smith, Marjorie Luna

July was another busy month here at ARC, and honestly, we wouldn't have it any other way!

Our team attended the American Board of Trial Advocates Los Angeles Chapter (ABOTA-LA) Annual Judicial Reception at the stunning Jonathan Club rooftop in Downtown Los Angeles. Local judiciary members were honored and America's 250th anniversary was celebrated! We were also excited to attend the California Lawyers Association (CLA) Advanced Wage & Hour and Labor & Employment Annual Conference in Pasadena. And finally, we were able to spend time with colleagues at the Association of Southern California Defense Counsel (ASCDC).

Each event brought something different to the table, from honoring members of the local judiciary to digging into the latest developments in labor and employment law. The ABOTA-LA reception was also a fun way to celebrate 250 years of the United States.

July gave us plenty of reasons to get out of the office and enjoy the month!

ARC's Distinguished Panel Welcomes...

Hon. Gary Y. Tanaka

Los Angeles County Superior Court, Retired

Judge Gary Y. Tanaka (Ret.) brings 17 years of distinguished judicial experience and a deep understanding of what drives successful case resolution. During his tenure on the Los Angeles Superior Court from 2009 to 2026, Judge Tanaka presided over more than 25,000 cases and over 250 jury and bench trials, developing a reputation as a thoughtful, prepared, and highly effective judicial officer. Judge Tanaka served in some of the busiest and most complex civil assignments, including presiding over a Personal Injury Hub trial court and an Independent Calendar Unlimited Jurisdiction Civil Court for the South Central and Southwest Districts.



Prior to his elevation to the bench, Judge Tanaka built a diverse legal background spanning both the private and public sectors. He began his career as a civil transactional attorney specializing in real estate, corporate transactions, finance, taxation, and estate planning, before serving the County of Los Angeles as a deputy public defender, deputy alternate public defender, and senior deputy county counsel.

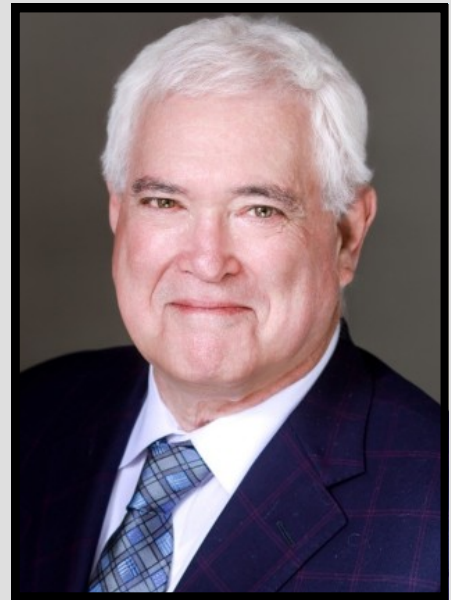
Known for his exceptional settlement skills and practical approach to dispute resolution, Judge Tanaka was frequently sought out by attorneys and litigants to conduct both voluntary and mandatory settlement conferences. He brings a unique ability to evaluate cases from the perspective of a trial judge—assessing the evidence, identifying strengths and weaknesses, understanding witness credibility, and helping parties realistically evaluate risk. He understands that successful resolution requires more than identifying legal issues; it requires managing expectations, recognizing human factors, and helping parties make informed decisions based on the realities of litigation.

His practice areas include Civil rights, municipal liability, personal injury, premises liability, employment, construction, malpractice, business, real estate, habitability, HOA, landlord-tenant and neighbor disputes, and probate estate disputes.

**Message from a Mediator...****THE MEDIATION TOOLBOX FOR THE SAVVY CIVIL LITIGATOR:****A Mediator's Reflection on His Past and Present**

In the modern civil litigation landscape, the mediator often finds herself in a rather uncertain space - neither judge nor advocate, neither juror nor strategist, yet somehow a little of each. Lawyers often speak of mediation as confidential negotiation, a structured conversation, a chance to step outside the adversarial frame. But seasoned litigators know that a skilled mediator becomes something more: a living, breathing focus group, a jury consultant in real time, offering each side a glimpse—however imperfect—of how their case might play in the minds of neutral decision-makers. The mediator's room becomes a laboratory of persuasion, and the mediator, like a focus group moderator, becomes the instrument through which counsel tests themes, tones, and theories. If the mediator is honest with himself, he will usually keep in mind that the lawyer before him has many considerations regarding his case and the question of settlement or trial.

In a litigated case, especially one with high emotional or financial stakes, lawyers hunger for feedback unfiltered by advocacy. They want to know how a neutral reacts to the story they have been telling themselves for months or years. A mediator's raised eyebrow, a probing question, a moment of hesitation—these become data points. Counsel watches closely: Does the mediator seem troubled by our damages model? Does the timeline confuse them? Do they instinctively sympathize with the plaintiff's narrative? In this sense, the mediator becomes a proxy for the future jury, a single but highly trained sample of the broader civic audience that might one day sit in judgment.



Gary N. Stern, Esq.
Mediator, Arbitrator,
Discovery Referee

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Yet the mediator's role is more dynamic than that of a focus group facilitator. A focus group merely reports reactions; a mediator can shape them. The mediator listens, reflects, reframes, and challenges. They test the strength of a party's convictions to help see the terrain ahead. A mediator might ask, "Help me understand how a jury might respond to this or that." The mediator is not predicting any particular verdict. Instead, she is inviting counsel to confront the uncertainties that litigation so often obscures. In this way, the mediator becomes a kind of cognitive mirror, revealing blind spots and amplifying the faint signals of risk.

This is where evaluative techniques enter the picture. Although mediation is often described in the gentle vocabulary of facilitation—interests, options, dialogue—litigated cases frequently demand something sturdier. Parties want to know not only what the other side thinks, but what a judge might do. And so the mediator, cautiously and with the humility of one who knows the limits of foresight, may begin to speak in the idiom of judicial settlement conferences: the strengths and weaknesses of claims, the likely admissibility of evidence, the range of verdicts in comparable cases. This evaluative mode does not transform the mediator into a judge, but it echoes the judicial voice—firm, reality-based, and grounded in experience. Such a mode comes with a credibility test. The mediator entering this frame of reference needs to have the confidence of years spent celebrating success and licking her wounds.

The resemblance to the judicial settlement conference is not superficial. Judicial settlement conferences often hinge on the judge's candid assessment of the case. When mediators adopt evaluative techniques, they mimic this function, offering a preview of the kind of sober, dispassionate analysis that a bench officer might deliver. The difference, of course, is that the mediator's evaluation is not binding; it is an invitation to reconsider, not a ruling to obey. But for many litigants, the effect is similar: the mediator becomes the first neutral to speak with the authority of experience, and that voice can shift the negotiation's gravitational pull.

In the end, the mediator's dual identity—as facilitator and evaluator, as focus group and quasi-judicial sounding board—reflects the complexity of civil dispute resolution itself. Mediation is not merely a softer alternative to litigation; it is a parallel process of meaning-making, where lawyers test their narratives, parties confront their risks, and a neutral helps them see the case not as they wish it to be, but as it might appear to those who will ultimately decide it. In that delicate space, the mediator becomes both a mirror and a guide, helping adversaries navigate the uncertain terrain between conflict and resolution.

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Latent Symptoms: The Physician Defendant

By Paul J. Molinaro, M.D., Esq.

I am a physician, an attorney, a mediator, and an arbitrator. Those are not just credentials. These are four different positions that provide me with an uncommon perspective into the medical malpractice cases in which I have been involved. What I have observed has led me to a consistent conclusion: The physician defendant is often the least understood person in the room, and that misunderstanding has real consequences for how cases resolve.



Most people view the plaintiff as the center of a medical malpractice case, and that is understandable because his or her emotional state is expected to be overtly presented. Plaintiff's counsel discusses emotional issues with him or her and makes sure to present these issues in the complaint, in discovery, and through testimony. The physician defendant, on the other hand, is not often given the opportunity to discuss his or her psychological reactions to being sued with counsel let alone present as an emotional witness. Unaddressed, the psychological effects of the lawsuit will show up in the defendant physician's deposition, at the mediation table, and in front of a jury.

The Manifestation of Symptoms

The first reaction when a physician is served with a lawsuit is almost universally indignation. "How dare they?" "I did my best." Defense counsel sees this in the first meeting and typically redirects the conversation to the legal standard of care. While that is the correct legal move, it does not address the festering anger, anxiety, depression, and self-doubt.

Alone, late at night, the physician defendant starts to wonder. "Could I have caught this earlier?" "Have I been wrong about my own competence all these years?" That self-doubt is as common as it is consequential, and it is rarely addressed by anyone. I have deposed physician defendants whose performance had nothing to do with the strength of the case and everything to do with unchecked anxiety that had become hardened into unconcealed defensiveness. Fortunately, there are steps to take to avoid this outcome.

The Underlying Causes

License loss is one fear, and it is almost always out of proportion to the actual risk. Under California Business and Professions Code section 801.01, a physician's malpractice insurer is required to report any settlement over \$30,000 and any judgment to the Medical Board. Receiving that report is not discipline. The Board evaluates each report on its own facts, and a single lawsuit that ends in settlement does not automatically constitute grounds for disciplinary action. Physician defendants need to hear this clearly and early, because fear of license loss consumes mental energy that should be directed toward the defense of the case.

Professional reputation is another fear, and it too tends to be overestimated. The physician defendant becomes convinced that colleagues will discover the lawsuit and stop making referrals. The reality is that physicians who are sued rarely tell anyone outside of their legal team. Therefore, most physicians do not know which of their colleagues have been sued, because those colleagues never told them. In most cases, colleagues will never learn of the lawsuit and will continue referring as they always have.

Another significant fear is that the lawsuit has revealed a genuine deficiency. This one cannot be dismissed with statistics. It has to be worked through. A deposition preparation session is not the place to work through it.

Knowledge Is the Cure

The physician defendant who understands the legal standard of care is better positioned at every stage of the case. The standard is not perfection. It is not what the best physician in the world would have done. Under California's jury instruction, it is the level of skill, knowledge, and care that other reasonably careful practitioners would use in the same or similar circumstances. In plain terms, the standard is average. Most physicians have never been told this, and explaining it clearly changes the frame of reference for everything that follows.

A physician who arrives at mediation having worked through the psychological weight of the litigation, rather than suppressed it, is a physician who can evaluate a resolution on its actual merits. The psychological work that was not done earlier in the case will show up at the mediation table. A mediator with a medical and legal background can speak the language of both rooms, which matters more in these cases than most litigants think to ask about when selecting a neutral.

This is the first in a three-part series. Part two will address the plaintiff in medical malpractice cases. Part three will address the mediator's role. Both will appear in upcoming issues of this newsletter.

ARC Perspective

A note from the CEO
Nicole Bethurum



The Value of Pre-Mediation Preparation in California Cases

In California litigation, we continue to see that the most productive mediations are those that are well-prepared in advance. As cases grow more complex—particularly in employment, commercial, and multi-party disputes—pre-mediation preparation has become essential to achieving meaningful progress.

This preparation goes beyond exchanging briefs. It includes clarifying decision-makers, identifying key issues early, and ensuring that all parties arrive with a realistic understanding of both risk and opportunity. When this groundwork is done well, the mediation itself becomes significantly more efficient.

We continue to see strong results in this space and welcome the opportunity to discuss whether early mediation may be appropriate for your case.