

ARC Takes on the Combined Claims Conference

Our team headed to Orange County in May for the Combined Claims Conference, one of the premier gatherings for claims professionals, risk managers, attorneys, and industry leaders from across California. The conference featured a variety of educational sessions covering current developments in claims handling, litigation trends, dispute resolution strategies, and other emerging issues impacting the insurance and legal communities.

Beyond the educational programming, the event provided a great opportunity to reconnect with longtime colleagues, meet new professionals in the claims industry, and engage in meaningful conversations about the challenges and opportunities shaping the field. Our team always has a great time representing ARC, and meeting the great minds shaping the future of our field.

One of the highlights of the conference was raffling off Dodgers tickets at our table. Congratulations again to our lucky winner, we hope you enjoy a great day at the ballpark!

Thank you to everyone who stopped by to visit with us. We always appreciate the opportunity to connect with members of the claims community and look forward to seeing you again soon!



Lori M. Dobrin, Esq., Eydith J. Kaufman, Esq.

MCLE Presentation:

Elder Abuse and Dependent Adult Abuse Civil Restraining Orders: Who Can Bring Them and Will They Be Successful?



This presentation will provide a comprehensive overview of Elder Abuse and Dependent Adult Abuse Civil Restraining Orders, including the legislative history and public policy considerations that led to their creation. Participants will examine who qualifies for protection under these statutes, the types of conduct that constitute elder or dependent adult abuse, and the individuals or entities authorized to seek protective orders on behalf of vulnerable adults.

**Hon. Kim R.
Hubbard**
Orange County
Superior Court,
Retired

MCLE Credits provided
General – 1 hour

Date: June 30th, 2026
Time: 12:15 – 1:15 PM
Format: Zoom

REGISTER HERE



**Connect With Us On
Social Media!**

@alternativeresolutioncenters



Featured Neutral

Anthony Khoury, Esq., LL.M.

With more than 20 years of legal experience and a distinguished background as a judicial officer, litigator, and educator, Anthony Khoury brings exceptional depth and perspective to every mediation. A full-time mediator with ARC since 2023, Anthony handles a wide range of disputes, with a particular focus on Employment and Personal Injury matters. Prior to joining ARC, he served as a Court Commissioner in Kern County, where he developed and implemented innovative mediation and settlement programs designed to resolve disputes efficiently and effectively. As a former attorney representing both businesses and individuals, employers and employees, Anthony understands the unique challenges faced by all



sides of a dispute. Known for his professionalism, preparation, and practical approach to resolution, he is also an Arbitrator on the American Arbitration Association's National Roster of Employment Arbitrators, an Adjunct Professor at Pepperdine University's Straus Institute of Dispute Resolution, and an Adjunct Lecturer at USC Gould School of Law. Attorneys value Anthony's ability to navigate complex issues, foster productive dialogue, and help parties reach meaningful and lasting resolutions.

Specialties: personal injury, employment, business/contract, bad faith/insurance coverage, class actions and construction defect

Accessible, Reliable & Convenient Dispute Resolution Services.

Submit your case today.

SUBMIT >

If You Don't Succeed at Your First Mediation, Try, Try Again!

Settlement Is a Process, Not an Event

By Robert M. Cohen, Esq.

Over the years, I have mediated many cases that did not settle at the first mediation session. But that does not mean the mediation failed. Settlements often emerge through continued negotiation, new information and further mediation sessions.



When a mediation ends without a signed agreement, clients will often ask the same question: “Why did the mediation fail?” However, in the majority of cases that is the wrong question. A better question to ask the mediator and one’s attorney is whether the mediation moved the parties closer to dispute resolution.

Often times cases require more than one mediation session to settle. However, in almost every instance where a case settled after the first mediation session, that initial mediation session laid the foundation for the eventual settlement agreement. Settlement is a process, not a single event.

Preparation Matters

One of the most common mistakes attorneys make is underpreparing for mediation. A mediation session deserves the same rigor and intensity on the part of the attorney as a mini-trial. An effective mediation brief educates the mediator, frames the issues, identifies obstacles to settlement, and honestly addresses the weaknesses of the case.

In order to be successful at mediation, attorneys must persuade three audiences: their own client, the mediator, and opposing counsel. The client must understand the risks of continued litigation. The mediator must have a clear picture of the case’s strengths and downsides. Opposing counsel must appreciate the cost and uncertainty of going forward and the strengths of the other party’s claim.

Mediation Is Not About Winning

Many participants, both clients and attorneys, arrive at mediation with a trial mentality. Validation is wanted by way of a declaration from the mediator that they are right and the other side is wrong. But that is not what mediation is about. Mediation is about reaching a negotiated resolution: problem-solving is required, candor and sincerity is a must, and a willingness to evaluate risk honestly is the final piece of the equation.

Several years ago, I mediated a contentious homeowners association dispute. During a caucus with the attorneys for the HOA, I discussed with counsel that HOA mediations were particularly difficult to resolve. Her immediate response was, "I've won my fair share of HOA mediations." I was surprised by her response and I told her that no one wins a mediation - - the goal is resolution, not victory. Once the conversation shifted from winning to problem-solving and collaboration, meaningful progress followed.

Why I Often Continue Mediations

Many times, parties operate in good faith but cannot bridge the gap. In such instances, I frequently recommend continuing the mediation rather than declaring an impasse. A stalemate is often a pause but not necessarily an ending.

Mediation participants need time to reflect on what they have learned, reassess risk, gather additional information, and consult with outside advisors. Continued mediation sessions also allow trust to be developed between the parties themselves and counsel and between the parties and counsel and the mediator.

A Recent Example

Just recently I mediated a subrogation matter involving a \$25,000 policy limit for property damage against more than \$90,000 in claimed damages by the two plaintiffs. Counsel for the two separate plaintiffs could not reach an agreement with defense counsel to accept the policy limits of \$25,000 because critical financial information had not yet been produced. However, defense counsel could not produce the necessary documentation during the mediation. Therefore, instead of terminating the mediation process, we continued the mediation for a second session. The first session identified the precise obstacle to settlement and established a path toward dispute resolution. I fully expect the matter to settle for policy limits without requiring additional contribution by the defendant in excess of the policy once the necessary IRS tax lien documentation is provided to counsel for the plaintiffs.

Settlement Develops Over Time

As litigation progresses, uncertainty decreases. Through the discovery process, depositions are taken, experts are retained, documents are exchanged, and law and motion rulings are issued by the court. Each development gives the parties a more realistic basis for evaluating risk at trial.

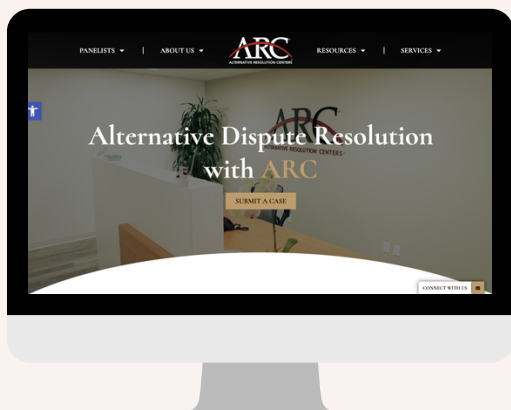
While the first mediation may create understanding, often times a second mediation will build momentum and because of the exchange of further information and investigation on the part of counsel, the matter will resolve. If the matter doesn't settle after the second mediation, occasionally there can be a third session. Perhaps the best way to bring a matter to a close is through continued mediator contact with counsel after the first or second session if the matter has not settled.

Conclusion

A mediation that does not produce a signed agreement may still be a success if the session has moved the parties closer to resolution. Therefore, mediation and settlement is a process, not an event! And keep in mind the old saying - - "If you don't succeed at first, try, try again."

About the Author

Robert M. Cohen is a full-time mediator and attorney based in Los Angeles, California. He serves on the ARC mediation panel and has mediated hundreds of disputes involving personal injury, homeowners associations, insurance, business, employment, and habitability matters.



Curious how ARC can help
your case?

Explore our services on our
website.

www.arc4adr.com

**Message from a Mediator...****AI: A Mediator's Perspective**

Judges, attorneys, clients, and neutrals may have read a recent article in the Daily Journal with unease: the Los Angeles County Superior Court contracted with an AI company, amusingly named Learned Hand, to test a tool that drafts research memos and tentative rulings for judges. Perhaps we are troubled that judges, who decide the fate of human beings, will cut corners and increasingly rely on soulless AI platforms – platforms lacking the emotion, insight, understanding, intuition, and experience that make judges human. Furthermore, we only have a general understanding of how AI platforms answer our questions, and its millions of operations are impenetrable.

The benefits of using widely available AI platforms such as Claude to judge are considerable. It is amazingly fast; it doesn't get bored or lose focus; it is logical; it can make use of its immense language database. It is most helpful when analyzing pure questions of law, though we expect it will increasingly be used to analyze human demeanor.

Adam Unikowsky, an appellate attorney at Jenner & Block, ran an experiment. He fed a term of Supreme Court briefs into a version of Claude weaker than today's. Most of the time Claude decided the cases the same way the Court did. When Claude's opinions diverged from the Court's, they were still reasonable. Sometimes those disagreements arose in cases that had split the Justices themselves. Who is to say Claude was "wrong"?

And yet, and yet. Turning over the judge's role to Claude, or ChatGPT, or Gemini seems a bridge too far. At least, for now.



Marc D. Alexander, Esq.
Mediator/Arbitrator

In mediation, the case for AI is currently more compelling, and less troubling, than it is for assisting a judge. A mediator may be evaluative, but does not decide the case. A mediator who is also an attorney (as all of ARC's mediators are) is bound by all the ethical constraints of both roles. A mediator does not decide the parties' fate and an ethical mediator cannot coerce a settlement. So AI serves a mediator as a genuine assistant, with no risk of issuing an award or judgment.

For the mediator, the use of a generative AI platform presents considerable advantages. Upload briefs and documents, and the platform can build chronologies and list players and entities. Those are simple tasks. The AI platform can identify issues, logical contradictions, strengths and weaknesses of an argument, and it can suggest talking points. It can suggest each party's negotiating leverage, as well as points that give the mediator persuasive leverage.

Because AI works so quickly, it promotes efficiency. Hours of preparation time can be shortened, saving the mediator time, and the client money. The time will come when not taking advantage of the capabilities of AI will noticeably add to the expense of mediations.

The speed of AI means that it can also be used "on the fly" during a mediation session, to analyze a dubious argument or legal proposition an attorney raises. And sometimes it can be used to help with drafting as the parties work through a written agreement.

Those are just some of the advantages that AI has to offer.

What are the disadvantages?

The first problem is that a mediator who leans too heavily on AI may compromise their own independent thinking. This is the same risk encountered by judges who overly rely on AI bench memos. An opinion that is logical and reduced to writing can be seductive. However, the mediator presents less risk of harm to the parties, because the mediator will not be using AI to draft opinions and render judgments.

The second problem is that AI still hallucinates, though recent versions of the most sophisticated programs are getting better, and careful prompts given to an AI program (such as: tell me if you do not have an answer; tell me if a case does not exist) mean that the problem should diminish over time. Implausible answers must be double-checked. However, hallucinations do not present the same problem for a mediator as they do for an attorney or judge, because the mediator will not be filing briefs or opinions containing non-existent cases and false citations.

The third problem is that communicating with an AI platform risks destroying confidentiality. The AI platform is not another attorney or client. Information uploaded to AI may be saved and even used for training the AI program to improve. Third parties, working for the AI company, may have access to information provided by the user. And in a high-profile case, the information on the company's servers could conceivably be subpoenaed.

Consumer-grade AI programs do not guarantee confidentiality. True, finding confidential information on an AI platform may be like looking for a needle in a hay stack. But search tools, like powerful magnets, could conceivably find that needle and compromise confidential information. And because third-parties could have access, a court might conclude that the information was never confidential in the first place.

On the subject of confidentiality, courts have reached differing conclusions. *Compare United States v. Heppner*, No. 25-cr-00503-JSR, 2026 WL 436479 (S.D.N.Y. Feb. 17, 2026): (documents created by criminal defendant using consumer version of Claude were not protected by attorney-client privilege or work-product doctrine; Claude is not an attorney, exchanges were not confidential given platform's data-use terms, and they were not made to obtain legal advice from counsel, nor was information prepared by or at the direction of counsel), *with Warner v. Gilbarco, Inc.*, No. 2:24-cv-12333, 2026 WL 373043 (E.D. Mich. Feb. 10, 2026): (a pro se plaintiff's ChatGPT-related litigation materials were protected work product, not waived by AI use, because work-product waiver requires disclosure to an adversary and ChatGPT is a tool, not a person.)

There are ways to address the confidentiality issue, none of which seem perfect, partly because of the current state of legal uncertainty. First, any information provided to an AI platform could be anonymized. Second, default settings for consumer-grade programs like Claude, which allow information to be used for “training”, must be avoided. Third, the mediator might make a disclosure of risks to the participants in a mediation, and ask for informed consent to use AI, balancing the advantages against the risks – a problematic approach. What would full disclosure look like, and how could clients provide fully informed consent? Fourth, some information by its nature is highly confidential, such as trade secrets, and information protected by non-disclosure agreements. Such information should not be exchanged with an AI platform. Fifth, so-called enterprise versions of AI platforms offer a greater expectation of privacy, though that expectation is only as strong as the provider’s contract and a court’s view of whether it was reasonable.

For core legal research directed to retrieving verified legal sources, Westlaw and Lexis are an excellent choice. They do not hallucinate, and they do not fabricate cases or citations. Nor do they have a knowledge cutoff date, because the established legal databases are continuously updated. By contrast, an attorney relying on Claude, ChatGPT, or Gemini to file accurate legal papers risks making serious mistakes. All cases and citations need to be independently checked.

But for legal reasoning and analysis, the generative AI programs are very useful, especially if a mediator exercises discretion by anonymizing queries, and using the tool as an assistant for analyzing issues, legal cases, and statutes.

If the main AI platforms, along with court opinions, eventually solve the problem of assuring confidentiality that will pass legal muster to users at a reasonable price point, the use of generative AI by mediators and other legal professionals, which is rapidly spreading, will become ubiquitous.

ARC Perspective

A note from the CEO
Nicole Bethurum



Navigating Multi-Party and Complex Disputes

Multi-party and complex disputes often require a more nuanced approach to mediation. Coordinating multiple stakeholders, aligning interests, and managing competing priorities can present unique challenges.

In these cases, process design becomes especially important. Clear communication, early organization, and thoughtful sequencing of discussions can make a meaningful difference in moving the matter toward resolution.

At ARC, we work closely with counsel to structure mediations in a way that fits the dynamics of the case—whether that involves pre-session coordination, staged negotiations, or targeted issue resolution. Flexibility is key, but so is maintaining momentum.

We have found that even in matters involving multiple parties or significant exposure, an efficient and well-managed process can lead to meaningful progress. Often, the ability to adapt in real time—while keeping the focus on resolution—drives the best outcomes.

Our goal remains the same: to provide a process that is both practical and effective, regardless of the complexity of the dispute.