

# VERDICTS & SETTLEMENTS

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## The power of communication in keeping cases moving and clients happy

Cases stall not from law, but from silence. A quick call or mediated chat can clear confusion, build trust and move settlements forward.

By Robyn E. Frick

By this point in the year, most New Year's resolutions have quietly faded. Calendars are full again, inboxes are overflowing, and whatever good intentions were set in January have been overtaken by deadlines and daily pressure. There is little appetite for adding one more obligation to an already demanding practice.

Fortunately, improving efficiency does not always require doing more.

### Background

The way lawyers communicate with one another has changed significantly over the last several years, and not always for the better. Email, text, electronic filings and virtual appearances have made practice more efficient, but they have also reduced the number of direct conversations between counsel.

As a result, communication has become more guarded and more positional. Important information is often exchanged slowly or incompletely, and misunderstandings linger longer than they should. These changes may seem minor, but their impact on case resolution is substantial.

### The problem

The problem is not a lack of diligence or professionalism, but a breakdown in direct communication. Many cases do not stall because the law is unclear or the numbers cannot work. They stall because information is not exchanged early enough, clearly enough, or in a way that builds trust.



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Written communication has its place, but it often reinforces positions rather than clarifying them. Without conversation, uncertainty grows, assumptions harden and mistrust can take hold. Once that happens, even otherwise resolvable cases become difficult to move forward.

Effective communication is also tied to core professional obligations under the California Rules of Professional Conduct. Competence under Rule 1.1 and diligence under Rule 1.3 require more than knowing the law and meeting deadlines. They require actively engaging with the substance of a case, understanding what information is necessary to evaluate it,

and communicating in a way that allows the matter to move forward rather than stagnate.

### Examples from practice

From a mediator's chair, the consequences of inconsistent communication are apparent.

In one recent mediation involving multiple parties, counsel for some of the parties had been in regular contact well before the session. They exchanged key information, including materials necessary for meaningful evaluation, and discussed the strengths, risks and settlement considerations of the case. By the time the mediation began, those parties shared a

common understanding of the issues and entered the process with realistic expectations.

Communication among the remaining participants was less consistent. Outreach in advance of the mediation had been sporadic, and information was exchanged in a more limited and incomplete way. That gap became apparent during the session, as issues surfaced that others believed had already been addressed. The result was predictable. The parties who had meaningfully communicated before the mediation were able to reach a resolution, while the others were not. The gap was not just legal. It was communicative.

That same dynamic appeared in a different way in another recent mediation.

In that case, the parties were close to resolution but stalled on a final issue. Each side needed additional information before the remaining gap could be bridged. Without that exchange, uncertainty developed, along with concern that important details remained unresolved. That uncertainty became the obstacle to settlement.

One lawyer expressed hesitation about communicating directly and asked that the exchange take place with the mediator's assistance. That request was entirely appropriate. Using a mediator to structure communication is often exactly what allows the process to move forward. Once the information was shared in a clear and supported way, concerns eased and positions became more flexible. Although the case did not resolve that day, the parties agreed to reconvene. When they returned, the earlier uncertainty was no longer the obstacle and the case ultimately settled.

### **The solution**

The solution is straightforward: when communication stalls, direct conversation, whether between coun-

sel or with a mediator's guidance, can make the difference between impasse and resolution. Direct communication does not undermine advocacy. In practice, it often strengthens it.

A brief conversation can clarify what information is missing, identify what actually matters to each side and prevent misunderstandings from hardening into positions. This is especially important at key inflection points, such as before mediation or when negotiations begin to narrow.

This can be particularly challenging for newer lawyers. Many entered the profession in an era shaped by email, text and remote learning, where picking up the phone may feel uncomfortable or risky. That discomfort is understandable, but it has consequences. Issues that could be resolved through a short conversation instead turn into prolonged disputes, unnecessary motion practice and increased costs for clients.

The California Rules of Professional Conduct also emphasize fairness in dealing with opposing parties and counsel under Rule 3.4. In mediation, that principle shows up through meaningful participation and good-faith information exchange.

While advocacy remains essential, withholding communication or avoiding engagement can undermine both the process and the potential for resolution.

### **Conclusion**

Most civil cases do not need more briefing or sharper motions. They need clearer communication at the right moment. The State Bar's MCLE civility requirements reflect this reality, but civility is not a box to check. It shows up in how lawyers communicate with judges, courtroom staff, opposing counsel, mediators and settlement officers.

In practice, very few cases are ever decided by a jury. They resolve through exchanged information, candid assessment of risk, and conversations that happen long before trial. Mediation works best when those conversations have already begun, or when the parties are at least open to starting them.

As the year moves on and the initial momentum of resolutions fades, this is one practice still worth trying. Before drafting the next email or filing the next motion, consider a conversation. A little cooperation, at the right moment, can go a long way toward getting cases resolved.

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