SCHAU | mediation
Problem Solver. Mediator. Author. Ally.

# GETTING TO THE TRADING ZONE
# LESSON #3: TIME THE HEARING TO MAXIMIZE LIKELIHOOD OF SUCCESS

Up until recently, Los Angeles Courts routinely required every case in litigation to attempt mediation as a part of the regular case management process. Now that the Superior Court has abandoned the formal ADR program an anomalous result has occurred. I am seeing more and more disputes go through a formal mediation pre-litigation than ever in the past 12 years as a mediator.

***You don't need to wait for the Judge to order you to mediation if you do this.***

Generally, a represented litigant will send a well-prepared demand letter pre-litigation. I don't recommend that you ask for mediation in that letter, although occasionally that is effective. In response to the letter, the would-be defendant will generally have a lawyer either initiate an investigation or simply respond with the proposed defenses or both. When that has been received, it is the ideal time to go "old school" and pick up the telephone to engage in preliminary discussions about whether the matter can be the subject of a pre-litigation mediation. This will usually involve a candid conversation about the range of settlement values, irrespective of what has been communicated formally. If the range is something each party might consider, it's time to schedule a mediation hearing.

If it is clear that the parties are not within a zone of possible agreement, the likelihood is you may need to engage in further discovery, formal or informal, or trigger a lawsuit, establishing the legal claims and defenses, before both sides are ready to engage in negotiations. Just beware that as the expense and time wear on, both parties "positions" may change on the values as well as ultimate evaluation of the claims.