Foreword

It is with great delight that I begin your reading experience today with an unqualified endorsement of this substantive and useful resource for attorneys and mediators alike. The drafting of a written, binding, enforceable settlement agreement requires an amount of attention, time, energy, and effort for which attorneys and mediators are seldom fully prepared. The lesson for lawyers in this book is quite clear: advocates for litigants must do a better job of preparing drafts of written agreements prior to their negotiations and mediations.

Brendon Ishikawa identifies the many elements of preparation, from drafting proposed settlement agreements prior to negotiations, to reviewing boilerplate provisions with language that may be contradictory to the provisions unique to the settlement negotiated, to identifying desirable nonmonetary terms for the settlement of "money only" cases, such as indemnity and confidentiality clauses and clearly enforceable payout schedules.

When Brendon and I first talked about his book, he made a most interesting observation: "This manuscript begins where most mediation trainings leave off." That statement matches my experience, particularly with regard to the initial training of prospective mediators.

That's not to say we don't discuss in training the importance of the parties' crafting binding and enforceable settlement agreements—we do—but that subject is overshadowed by discussions and practice of basic mediation skills used to help the parties reach an initial agreement. We don't adequately train mediators to facilitate the important end game in which an enforceable agreement is drafted.

This reality is demonstrated by my own experience with many prospective mediators observing mediations as a certification requirement. Although maintaining silence during the majority of the mediation as instructed, observers often become chatty with the parties and their attorneys when a verbal agreement is reached.

They wrongly assume that all the hard work has been done. This type of behavior illustrates Brendon's observation that not enough attention is given in initial mediation training to the drafting of written settlement agreements. This book fills that gap for mediators.

The breadth of Brendon's scholarship is evident throughout his book, from his review of the different ways our 50 states have defined the elements of an enforceable settlement agreement, to the detailed checklists he has provided for the busy reader. In my view, the checklists alone are worth the price of admission.

So, read on dear reader! I encourage you to learn the importance and benefit of carefully crafted settlement agreements and how to prepare them to protect the hard-earned agreements your litigant clients have successfully negotiated. It wouldn't surprise me if, after having read Brendon's book, you'll carry a copy of it with you to every mediation you attend.

—Andy Little
Author of Making Money Talk:
How to Mediate Insured Claims and Other Monetary
Disputes (ABA 2007).