

#K-400

1/10/85

First Supplement to Memorandum 85-17

Subject: Study K-400 - Mediation Privilege

The attached letter from the San Diego Law Center supports a statutorily defined mediation privilege but strongly urges the Commission not to restrict the privilege to cases where there is a pending civil action. In Memorandum 85-17, the staff recommends that this restriction be eliminated from the proposed legislation.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

The San Diego Law Center



A Joint Project of the
University of San Diego School of Law
and
The San Diego County Bar Association



January 7, 1985

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John H. De Mouilly
Executive Secretary
California Law Revision Commission
4000 Middlefield Road
Suite D-2
Palo Alto, CA 94303

Dear Mr. De Mouilly:

I have recently become aware of the proposed legislation relating to the development of a mediator privilege. The San Diego Law Center, active in the field of business and community mediation, strongly supports a statutorily defined privilege but we are troubled by the apparent requirement that the privilege does not attach unless there is a pending judicial proceeding.

Our experience to date demonstrates that legal remedies are neither possible nor appropriate for the resolution of many disputes. Mediation tends to foster a conciliatory resolution process in contrast with the adversarial system, while providing guidance to parties in conflict as to how they may prevent or resolve future conflicts. The need to initiate litigation as a pre-condition to obtaining the protection of the proposed privilege would appear to further encourage resort to litigation and to suggest that mediation is appropriate only after the commencement of a lawsuit. We disagree both philosophically and practically.

We are hopeful that the Commission will reconsider the current statutory formulation and effectively contribute to the expanded use of the mediation process.

Sincerely,

Carol Rogoff Hallstrom
Carol Rogoff Hallstrom
Executive Director
Community Mediation Programs

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