

## Memorandum 2015-46

**Relationship Between Mediation Confidentiality and Attorney Malpractice  
and Other Misconduct: Public Comment**

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When it met in early August, the Commission decided to explore the general concept of creating an exception to the mediation confidentiality statutes to address “attorney malpractice and other misconduct.”<sup>1</sup> Since then, the Commission has received numerous comments relating to this study. Those comments are reproduced in the attached exhibit, which includes a table of contents.

In general, the new comments are quite polarized. To assist the Commission in reviewing them, the staff segregated the comments into two groups:

- (1) Comments that oppose the Commission’s preliminary approach.
- (2) Comments urging the Commission to recommend revisions of the mediation confidentiality statutes to promote attorney accountability.

Each group of comments is discussed below.

**COMMENTS THAT OPPOSE THE COMMISSION’S PRELIMINARY APPROACH**

The bulk of the new comments voice concern about the preliminary decisions that the Commission made in early August.<sup>2</sup> Many of these comments appear to be the result of an invitation to comment that mediator Ron Kelly released shortly after the Commission met, which is attached as an Exhibit.<sup>3</sup>

The comments in this category typically make the following points:

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1. See Draft Minutes (Aug. 7, 2015), p. 5.

Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission’s website ([www.clrc.ca.gov](http://www.clrc.ca.gov)). Other materials can be obtained by contacting the Commission’s staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

2. See Exhibit pp. 1-209.

3. See Exhibit pp. 1-2.

- (1) The sender “oppose[s] the Commission’s August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct.”<sup>4</sup>
- (2) The sender says that the right to choose confidential mediation has served Californians well for the past 30 years and should remain in place absent a strong showing of need. The sender encourages the Commission to pursue alternatives to “removing our confidentiality protections.”<sup>5</sup>
- (3) The sender urges the Commission not to turn its back on its own 1996 statement that “All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them.”<sup>6</sup>

Some of the communications contain additional or different reasons for opposing the Commission’s preliminary approach,<sup>7</sup> many of which have come up previously in this study but some of which are new or presented in a different way than before. We will refer to these at appropriate points as the Commission’s study progresses.

As of September 3, 2015, two organizations (Choice Mediation<sup>8</sup> and Community Boards Program<sup>9</sup>) and 181 individuals had submitted comments in this category since the August meeting. Of those individuals, six previously submitted comments in this study.<sup>10</sup> Another ten of them submitted comments

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4. See, e.g., Exhibit pp. 12 (comments of Mark Baril), 208 (comments of Barbara Youngman), 200 (comments of Michael H. White).

5. See, e.g., *id.*

6. See, e.g., *id.* The quoted statement is from the Commission’s recommendation relating to the current mediation confidentiality statutes: *Mediation Confidentiality*, 26 Cal. L. Revision Comm’n Reports 407, 425 (1996).

7. See, e.g., Exhibit pp. 17-18 (comments of Anne Bers), 19 (comments of ML Bishow), pp. 20-22 (comments of Lee Blackman), 23 (comments of Dudley Braun), 24 (comments of Hank Burgoyne), 26 (comments of Ralph Campbell), 27 (comments of Chuk Campos), 40 (comments of Philip Diamond), 45-46 (comments of Bill Eddy), 51 (comments of Therese Fey), 56 (comments of EJ Gibbons), 58 (comments of Paul Glusman), 63-64 (comments of Richard Gross), 67 (comments of James Hallett), 69 (comments of Lorraine Harris), 80 (comments of Vivian Holly), 84 (comments of Betsy Johnsen), 94 (comments of Guy Kornblum), 107-08 (comments of Timothy D. Martin), 109 (comments of Charles T. “Ted” Mathews), 124 (comments of Leslee Newman), 125 (comments of Trish Nugent), 131-32 (comments of Nancy Powers), 135 (comments of Tom Reese), 137-38 (comments of Cynthia Remmers), 145-46 (comments of Larry Rosen), 176-77 (comments of Stephen Sulmeyer), 181 (comments of Margaret Tillinghast), 186-87 (comments of Alexander van Broek), 194-96 (comments of Harris Weinberg), 203 (comments of Randall Wulff), 205-06 (comments of Daniel Yamshon).

8. Exhibit p. 3.

9. Exhibit p. 4; see also Exhibit p. 5 (comments of “SF Resident, Community Boards Staff”). For an earlier comment from this group, see First Supplement to Memorandum 2013-47, Exhibit p. 26 (comments of Darlene Weide, Executive Director).

10. The following persons commented previously: Margaret L. Anderson, Kevin C. Coleman, Paul Glusman, Nancy Powers, Tom Reese, and Daniel Yamshon.

on AB 2025 (Gorell/Wagner), which were reproduced in Memorandum 2013-39.<sup>11</sup>

COMMENTS URGING REVISIONS OF THE MEDIATION CONFIDENTIALITY STATUTES  
TO PROMOTE ATTORNEY ACCOUNTABILITY

In addition to the comments expressing concern about the Commission's preliminary decisions, there is some new input urging the Commission to recommend revisions of the mediation confidentiality statutes to promote attorney accountability. That new input is of several different types:

- (1) An online petition directed to the Commission, plus related email messages sent to the staff.
- (2) Other comments submitted by email.
- (3) Written materials submitted at recent Commission meetings.

Each type of input is discussed below.

### **Online Petition**

Since the Commission met in August, the staff has received a number of email messages regarding an online petition by "Citizens Against Legalized Malpractice," which is on the Change.org website.<sup>12</sup> The pertinent part of that website provides some information about California's mediation confidentiality statutes (see Exhibit pp. 210-11), and then seeks support for the following petition:

Letter to  
California Law Revision Commission Barbara Gaal  
Dear Ms. Gaal,

As a member of the public, I do not support allowing attorneys to legally commit malpractice against clients. Attorneys need to be held accountable for their misdeeds just like everyone else whether in mediation or any other context. No other state allows this and I do not believe California should allow it either.

I would not make use of mediation if it allows my attorney to use the state statutes to commit acts against me more severe than

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11. The following persons submitted comments on AB 2025 (Gorell/Wagner), which were reproduced in Memorandum 2013-39: Dudley Braun, Chuk Campos, John Levy, Cynthia Remmers, Unmani Sarasvati, Joanne Sferrati, Malcolm Sher, Yaroslav Sochynsky, Margaret Tillinghast, and Douglas Voorsanger.

12. See [https://www.change.org/p/the-california-law-revision-commission-change-the-statutes-that-legalize-malpractice?response=b21b75d0be86&utm\\_source=target&utm\\_medium=email&utm\\_campaign=twenty](https://www.change.org/p/the-california-law-revision-commission-change-the-statutes-that-legalize-malpractice?response=b21b75d0be86&utm_source=target&utm_medium=email&utm_campaign=twenty).

what led to the mediation. That is the conclusion from Justice Chin's comment that an attorney can get away with anything unless they can be criminally charged. The Hadley v. Cochran case sure suggests that I have surrendered all my rights if the attorney can legally fabricate an agreement that could be very damaging to me without my knowing about it.

I do not believe it was the CLRC or the California Legislatures intent to create this windfall for attorneys when it updated the mediation statutes in 1997. I urge you to correct the mistake. The attorneys who have written to support keeping the statutes the same which also keeps malpractice legal, do not represent my point of view only their own.<sup>13</sup>

The staff has no previous experience with this type of petition, so we are not sure that we are interpreting the website information correctly. We asked Bill Chan whether our interpretation as of August 27, 2015, was correct, because he had emailed us to see if the Change.org website was properly sending us messages regarding the petition by Citizens Against Legalized Malpractice. Mr. Chan has not yet responded to our inquiry.

As best we can tell, about 26 people had signed the online petition as of the date of September 3, 2015.<sup>14</sup> Their names, locations (if disclosed), and supplemental comments (if any) are shown in the attached Exhibit.<sup>15</sup> Two of those individuals appear to have previously submitted comments in this study.<sup>16</sup>

### **Other Comments Submitted By Email**

By email, the Commission also received five new comments from individuals who recommend revising the mediation confidentiality statutes to promote attorney accountability. Two of those new comments are from people who have previously commented:

- Nancy Yeend expresses enthusiasm regarding the Commission's preliminary approach and dismay regarding Ron Kelly's effort to generate opposition. She also says "[t]here is no evidence to support the 'sky is falling' predictions that people will not use

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13. See *id.*

14. The website refers to "27 supporters," but the staff could only find names of 26 supporters (as of September 3, 2015).

15. See Exhibit pp. 212-13.

16. The list of petitioners includes Deborah Blair Porter (who has submitted a number of written comments and twice testified before the Commission) and Jullie Moseley-Doyle of Lomita, California (presumably this is the same person as Jullie Doyle, who submitted a comment that is reproduced in Memorandum 2014-36).

mediation if there is an exception to confidentiality regarding malpractice.”<sup>17</sup>

- Richard Zitrin writes regarding a recent complaint he received about a lawyer who “signed or had someone else’s name signed” to a mediated settlement agreement. He “suspect[s] this case would have come out the same way as *Cassel*” and he says that “speaks loudly to the problem with the extreme nature of the current statutes.”<sup>18</sup>

The other three comments are from new participants in this study:

- Peter Robinson<sup>19</sup> says “I FAVOR the revision” of mediation confidentiality law that the Commission is exploring.<sup>20</sup>
- Ira Spiro recommends that “the mediation confidentiality statute should be amended so that in a malpractice or similar case by a client against the client’s own attorney for something the client alleges the attorney did or said in the mediation, there should be no confidentiality.”<sup>21</sup> He further recommends that “there should be no confidentiality if, for some reason, an attorney sues a client for something that allegedly happened in the mediation.”<sup>22</sup> Finally, he says there should be a provision providing for a protective order in the lawsuit between attorney and client, which “would provide that the mediation statements and events disclosed in the lawsuit cannot be disclosed to people other than the parties to the suit, the court, experts, and others usually specified in such protective orders.”<sup>23</sup>
- David Zeff responds to a comment by Guy Kornblum, in which Mr. Kornblum urged the Commission to change course because its approach to mediation confidentiality would disrupt finality and lead to a flood of litigation by clients with buyer’s remorse.<sup>24</sup> Mr. Zeff disagrees, saying that “the blanket confidentiality has been abused in many forms” and “is much too broad.”<sup>25</sup>

To that, Mr. Kornblum pointed out that the approach “invites abuse BUT a) allows any litigant to sue his lawyer because of settlers remorse — instead of just backing out of the settlement, the

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17. Exhibit p. 217. Ms. Yeend has submitted numerous comments throughout this study.

18. Exhibit pp. 219-20. For previous input from Mr. Zitrin, see Memorandum 2014-6, Exhibit pp. 16-20.

19. Mr. Robinson’s scholarly writing on this subject is discussed to some extent in Memorandum 2015-35, pp. 24-26.

20. Exhibit p. 214.

21. Exhibit p. 215.

22. *Id.*

23. *Id.*

24. Mr. Kornblum’s comment is reproduced at Exhibit p. 94.

25. Mr. Zeff’s comment is reproduced at Exhibit p. 218.

client sues the lawyer, and b) litigation explosion just like in Royal Globe days.”<sup>26</sup> In his view, “[t]here has to be closure.”<sup>27</sup>

### Written Materials Submitted at Recent Commission Meetings

At the two most recent Commission meetings, reform advocates submitted some written materials relating to this study. In particular, Deborah Blair Porter supplemented her previous submissions by providing some information on special education mediations at the August meeting.<sup>28</sup>

In addition, the Commission received a big binder of materials, a flash drive, and a compact disc from attorney Patrick J. Evans at the August meeting, which contain (1) publicly filed documents and transcribed court proceedings from one of his cases, (2) a deposition transcript, exhibits, and video from the same case, (3) a cover letter to the Commission, and (4) transcribed web comments by Art Hinshaw and Michael Moffitt regarding “mediator horror stories.” Mr. Evans testified about the case and his views on mediation confidentiality at both the June and the August Commission meetings. Two of his clients testified at the August meeting, and one of them (Bonnie Harris) submitted written comments.

As Mr. Evans states in his cover letter, his clients’ complaint “alleges dual mediator misconduct: (i) threat to have *ex parte* communication with trial judge falsely maligning plaintiffs as the reason for no settlement and (ii) failure to disclose that the mediator and the mediation company have hired or were trying to hire the litigating parties’ trial judge.”<sup>29</sup> Ms. Harris provides further detail in her letter.<sup>30</sup> The case is currently pending on appeal.

Mr. Evans and his clients brought the case to the Commission’s attention because the case “is public record”<sup>31</sup> and it “must ... be placed before the legislature starting with the Commission, since issues and solutions are largely legislative.”<sup>32</sup> Ms. Harris “suggest[s] that this commission recommend taking away the mediation immunity, provide more transparency, limit the length of time for mediation and put a monetary cap on the amount a mediation company charges allowing for fair access by those with less means.”<sup>33</sup> She “believe[s] that once mediation immunity is removed that the companies along with the

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26. Exhibit p. 218.

27. *Id.*

28. See Exhibit pp. 221-28.

29. Exhibit p. 230.

30. Exhibit pp. 234-35.

31. Exhibit p. 229.

32. *Id.* at 230.

33. Exhibit p. 235.

mediators would find their own ways to provide ethical and fair treatment of clients.”<sup>34</sup>

The cover letter from Mr. Evans,<sup>35</sup> the web comments to which it refers,<sup>36</sup> and the comments from Ms. Harris<sup>37</sup> are reproduced in the Exhibit, with some identifying information redacted. The other materials are not included because they are bulky, that level of detail does not seem necessary for the Commission’s purposes at the present time, the Commission does not want to interfere with pending litigation, and there might be legal complications (e.g., allegations of republishing defamatory material, violating copyright restrictions on reproduction of transcripts, or breaching mediation confidentiality protections).

Respectfully submitted,

Barbara Gaal  
Chief Deputy Counsel

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34. *Id.*

35. Exhibit pp. 229-31.

36. Exhibit pp. 232-33.

37. Exhibit pp. 234-35.

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**Comments Urging Revisions of the Mediation Confidentiality Statutes to Promote Attorney Accountability**

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*Written Materials Submitted at Recent Commission Meetings*

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# Confidentiality Will End Unless You Take Action Now!

August 10, 2015 at 1:33pm

Are you willing to invest just a few minutes to help save mediation confidentiality?

## What Happened?

On August 7, 2015 the California Law Revision Commission voted 4-1 to draft a recommendation removing our current protections. Nearly all its recommendations become law.

The legislation will remove current protections whenever a mediation party alleges misconduct by their lawyer advocate or lawyer mediator.

## 3 Ways This Law Will Destroy Mediation and Swamp Our Overburdened Courts

- **Predictability Destroyed - Candor Dangerous.** Our current predictable protections will disappear with a mere allegation of misconduct. Few will risk being candid knowing every mediation statement and document can be discovered and become admissible evidence.
- **Follow-On Subpoenas and Depositions for All Participants.** Under this law, anyone suing a lawyer and also the accused lawyer can depose all mediation participants and subpoena their mediation documents searching for relevant evidence.
- **Access to Justice Threatened.** Our budget-starved courts rely on confidential mediation to resolve a large part of their pending civil cases. The added court workload of unresolved cases and the new load of follow-on mediation lawsuits and discovery fights will further clog many struggling civil divisions.

## What Can You Do?

**PLEASE** email the Law Revision Commission now at

<bgaal@clrc.ca.gov> while there is still time to reverse the decision. Tell them they're going the wrong direction. Please cc me, and please forward this alert to anyone who uses or conducts mediation. They should know about this vote before it's too late.

Please copy and send the following - or better, write your own. Please also urge any group you're in to adopt and convey a similar opposition statement as soon as possible.

Thank you,  
Ron Kelly

\*\* \*\*

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

Re Study K-402

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted - "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

**EMAIL FROM CHOICE MEDIATION (8/9/15)**

**Re: Confidentiality**

Confidentiality must maintained in the mediation process! Taking that out of the process undermines the whole field.

## **EMAIL FROM COMMUNITY BOARDS PROGRAM (8/14/15)**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

### **Re: Study K-402**

We at Community Boards, the oldest neighborhood mediation center in the country, oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. We will oppose this legislation if it goes to the Legislature and will urge other organizations of which we're affiliated to oppose it as well.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. We request that you pursue these instead.

We urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted — "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

If you have any questions, or wish further input, please either contact myself or Darlene Weide, our Executive Director, who is CC'd to this message.

Kind regards,

On behalf of Community Boards

Cordell Wesselink, M.A.  
ADR Programs Director  
Tel: (415) 920-3820 x109  
Fax: (415) 920-3821

**EMAIL FROM SF RESIDENT, COMMUNITY BOARDS STAFF (8/10/15)**

**Re: Mediation Confidentiality Protection**

Dear Law Revision Commission:

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted — "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

Truly,

SF Resident  
Community Boards Staff

**EMAIL FROM MAE ADKINS (8/9/15)**

**Re: Mediation Confidentiality**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

Re Study K-402

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

~Mae Adkins

**EMAIL FROM ALI ALEMOZAFAR (8/9/15)**

**Re: Study K-402**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

Best,  
Ali Alemozafar, Ph.D., Esq.

**EMAIL FROM MARTINE ALGIER (8/9/15)**

**Re: Study K-402**

To Ms. Barbara Gaal:

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

Thank you,  
Martine  
415 868 9036

Martine Algier, NLP, CNVC Certified International Nonviolent Communication  
Trainer/Mediator - <http://cnvc.org>  
Founder Dr. Marshall Rosenberg has been named as one of Oprah's 7 Most Influential  
Men in the World !  
[martinealgier@gmail.com](mailto:martinealgier@gmail.com)

**EMAIL FROM MARGARET ANDERSON (8/11/15)**

**Re: Study K-402 – mediation confidentiality**

Dear Ms. Gaal,

I am an attorney who has been in practice for thirty-eight years. Virtually all of that time has been spent practicing family law, and for the last fifteen years, my practice has been limited to consensual dispute resolution. I made this shift because of my experiences of the negative effects of litigation on families.

I strongly oppose the Commission's August 7th decision to draft legislation removing the current confidentiality protections when a mediation or collaborative law participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years, the right of disputing parties to choose processes which include confidentiality has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need for the change. Dozens of alternative solutions have been suggestion to the Commission to address the alleged problem without removing our clients' confidentiality protections. I request you pursue these alternative solutions instead.

I urge you to not turn your back on the Commission's own 1996 statement recommending our current statutory protection be enacted: "all persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them".

Margaret L. Anderson  
Mediator and Collaborative Attorney  
Certified Family Law Specialist, State Bar of California  
Fellow, American Academy of Matrimonial Lawyers

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**EMAIL FROM BARBARA ANSCHER (8/10/15)**

**Re: Study K-402**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

--

Barbara M. Anscher  
Arbitration and Mediation Services  
Phone: (510) 387-4490  
Fax: (510) 540-5937

**EMAIL FROM MICHAEL ARNOLD (8/9/15)**

**Re: Study K-402**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change, threatening the effectiveness of mediation as an alternative dispute resolution method, entirely separate from legal options, in which parties can speak frankly in a non-adversarial environment.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted — "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

Sincerely,  
Michael Arnold.

**EMAIL FROM MARK BARIL (8/11/15)**

**Re: CA mediation note from Mark Baril – please read**

Dear Ms. Gaal:

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel  
Re Study K-402

I am a local to CA mediator and part of a three person team. From what I understand of what is happening in the commission, our business model is about to be impacted dramatically by the potential change in confidentiality law.

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

With my best regards,

Mark

Mark Batson Baril, Senior Practitioner  
resologics I Fostering Growth  
Conflict Awareness • Utilization • Resolution  
[www.resologics.com](http://www.resologics.com) I 510.314.8314

The Resologics Ombudsman is an independent, neutral, confidential and informal resource for conflict engagement and management. I will make every effort, in accordance with the International Ombudsman Association's Code of Ethics and Standards of Practice, to ensure privacy. However, please be advised that e-mail should NOT be relied upon as a source for confidential communication.

**EMAIL FROM EILEEN BARKER (8/11/15)**

**Re: Please preserve Full Mediation Confidentiality**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

Re Study K-402

I am shocked by the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

Confidentiality is the bedrock of mediation. For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

Eileen Barker

\*\*\*\*\*

Eileen Barker  
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Fax: (415) 461-7492  
[www.Barker-Mediation.com](http://www.Barker-Mediation.com)  
[ebarker@Barker-Mediation.com](mailto:ebarker@Barker-Mediation.com)

**EMAIL FROM LARRY BASKIN (8/17/15)**

**Re: Proposed Mediation rules revisions**

Please do not adopt the proposed revisions that remove much of the confidentiality protections of the mediation process. I believe the proposed revisions will damage the mediation process, reduce its efficacy and undermine its use as an ADR mechanism. Mediations are successful in large respect due to the confidence litigants have in the confidentiality of the process which encourages openness and willingness to frankly discuss ones case and the issues presented.

Thank you,

larry baskin

Lawrence A. Baskin, Esq.  
*Attorney & Mediator at Law*  
999 5th Avenue, #200  
San Rafael, CA 94901  
larry@baskinlaw.com  
(415) 456-2500  
Fax: (415) 454-6951

**EMAIL FROM GARRY BENTON (8/10/15)**

**Re: Study K-402**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

Dear Ms. Gaal,

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them.

Thank you for your attention to this matter. Best regards,

Gary Benton

**Gary L. Benton, FCI Arb, FCCA  
US and International Arbitrator & Mediator**

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e: [gary@garybentonarbitration.com](mailto:gary@garybentonarbitration.com)  
[www.garybentonarbitration.com](http://www.garybentonarbitration.com)

**EMAIL FROM BARRY BEN-ZION (8/10/15)**

**Re: Study K-402**

I was very disappointed to hear of the Commission's August 7th decision to draft recommended legislation removing the confidentiality protections when a mediation participant alleges lawyer misconduct. I am really hoping that this recommendation to the legislature is withdrawn as soon as possible.

As a forensic economist who has practiced for the past 40 years, I have come to believe of the efficiency of mediation to resolve disputes and relieve the heavy court burden to handle the many cases that are filed. I have also chosen to assist to resolve disputes by offering my services as a mediator, especially on economically complex matters. I believe that it has been shown that the mediation process is quite an efficient method of resolving disputes and I further believe that removing the confidentiality protection will dramatically reduce the use of mediation in California, which will increase the traditional use of the less efficient court proceedings.

It is my understanding that numerous proposals have been made to the commission to handle attorney misconduct, and that removing the confidentiality is too radical a change which has to potential of substantially reducing the mediation process. I highly recommend to the commission to try to pursue alternate methods of dealing with attorney misconduct without removing confidentiality.

Sincerely,

***Barry Ben-Zion, Ph.D.***

*Consulting Economist*

*3588 Kelsey Knolls*

*Santa Rosa, CA 95403*

*Ph: 707-526-2236*

*Fx: 707-526-2258*

## **EMAIL FROM ANNE BERS (8/12/15)**

### **Re: Study K-402 – Urging Reconsideration**

Dear Chief Deputy Counsel Gaal and Members of the California Law Revision Commission,

As a mediator for nearly 20 years, I've seen first-hand how mediation has helped promote collaboration, support acceptance of diversity and reduce violence in our communities. In partnership with San Mateo County Superior Court ADR program, we have provided an effective, affordable and accessible dispute resolution process for people of all income levels, since 1986. Statistically, 80% of our mediation cases reach resolution, and 90% of agreements are upheld.

I believe that the confidentiality protections are key to the acceptance and use of this process. Few will risk being candid, thinking outside the box and exploring possible options for resolution knowing every mediation statement and document can be discovered and become admissible evidence. If parties don't get it right the first time, they know they can revisit the problem without being held to prior suggestions taken out of context. The confidentiality protections create the safety to be imperfect and to work iteratively toward lasting agreements.

Thus, I do not support the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. For thirty years, the current right to choose confidential mediation, and also to opt out of it, has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these alternative options, instead.

I'm deeply concerned that removing mediation confidentiality protections could destroy mediation as a valid ADR option. Under this law, anyone suing a lawyer and also the accused lawyer can depose all mediation participants and subpoena their mediation documents searching for relevant evidence. Our current predictable protections would disappear with a mere allegation of misconduct.

Our budget-starved and overburdened courts rely on confidential mediation to resolve a large part of their pending civil cases. The added court workload of unresolved cases and the new load of follow-on mediation lawsuits and discovery disputes could further clog many struggling civil divisions.

I urge the Commission not to turn its back on its own 1996 statement recommending that our current statutory protections be enacted. "All persons attending a mediation, parties

as well as nonparties, should be able to speak frankly, without fear of having their words turned against them.”

Thank you for your consideration.

Regards,

Anne Bers

**Anne Bers**, Collaborative Processes Coach

Peninsula Conflict Resolution Center

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abers@pcrcweb.org



Empowering People. Building  
Relationships. Reducing Violence.

## **EMAIL FROM ML BISHOW (8/9/15)**

### **Re: Reverse Decision ON MEDIATION confidentiality**

Many cases can be settled with neutrals before court time is required.

Neutrals and parties need protection from disclosure of settlement terms.

Parties may be financially, physically and emotionally at risk without confidential mediation. Candid negotiation will be dangerous.

Mediators will not be protected: especially in family disputes where passion is a factor.

Please reconsider this action. ML Bishow. San Francisco

## EMAIL FROM LEE BLACKMAN (9/1/15)

### Re: Mediation Confidentiality

Ms. Gaal-

I'd appreciate it if you would pass these thoughts on to the Commission considering changes to the code sections dealing with mediation confidentiality:

It is hard to conceive of a rule more likely to discourage lawyers from entering into the field of mediation than one making the neutral facilitator subject to the cost of defending a claim of mediator malpractice based on nothing more than a participant's conviction that he or she was wrongfully or improperly induced to accept a settlement that later seems inadequate (or excessive).

And if it is the case (as surely it is) that mediation should be encouraged because it diverts cases from our overburdened courts, it is hard to conceive of a more effective way to eviscerate this benefits of mediation than adopting a rule that discourages frankness and full disclosure in mediation (by diluting the strength of mediation confidentiality) and diminishes the finality of mediation (by permitting relitigation of the case in the context of a suit against the the mediator after the client decides that his agreement to a resolution of the matter was improper or coerced).

Certainly there will be little sympathy for protecting well paid lawyers from responsibility for wrongdoing in the course of a mediation. And my focus is not on that aspect of the rule under consideration. But please recognize that it is an entirely different matter to put the mediator at risk of liability, not to mention defense costs, when a matter is settled for a sum the client later decides was misguided. The cost of insuring against the potential costs associated with this sort of mediator liability simply cannot be borne if a decision to spend a few hours helping parties in a million dollar case can result in a million dollars in liability. It different for lawyers, whose compensation in such cases make the cost of error and omissions insurance a reasonable cost of doing business.

There is also a collection of problems unique to mediation malpractice that counsels against making it so easy to bring such a case where the facts are embedded in the private and fast-paced negotiations that are the heart of the mediation process. First, the general confidentiality rules mean that the proceedings are not recorded and produce very little from the mediator that is recorded on paper. So the contemplated mediator malpractice case become a dispute over who said what to whom, all without the benefit of documents to test recollection or truthfulness. In addition, there is the remarkable dearth of standards by which to judge the propriety of mediator conduct. There simply is no standard of care in assessing whether a mediator might have erred in helping the parties evaluate a case or in expressing evaluative judgments about it.

In addition, there is a question whether a rule stripping mediation of its confidentiality in order to allow suits against mediators is a solution without a problem. Is there any evidence that mediation participants are being abused by mediators; railroaded into settlements; coerced into waiving important rights? Not any that can be found through available research methods. Is there evidence of lawyer malpractice in mediation? Yes, of course. But does the evidence of the latter suggest the need for an over-broad rule that deals with a possible problem in one aspect of mediation by imposing unnecessary burdens and unanticipated consequences in another area? Of course not.

Finally, one can only marvel at the remarkable discrimination in the treatment of lawyer and non-lawyer mediators. Is there some reason why non-lawyer mediators may rely on the mediation confidentiality rules as an inhibitor against ill-conceived efforts to blame the mediator for a participant's decisions to settle improvidently while lawyer mediators cannot? Is there reason to conclude that non-lawyer mediators are less likely to commit "mediation malpractice" than lawyer mediators? None that is obvious or apparent. So why make the distinction? The only reason is a desire to limit the adverse effects of diluting mediation confidentiality. But by arbitrarily limiting the scope of the dilution to lawyers? That makes no sense. Perhaps the committee should consider limiting the scope of the exception to the confidentiality rules to right handed mediators or mediators over 35. That revision of the rule would be no more or less reasonable -- would not make the rule either more or less tailored to the reason for creating it -- than limiting the exception to lawyers. So simply recognize that the exception to the confidentiality rules for suits for mediation malpractice is against lawyer mediators, unless properly and sensibly limited to particular situations where demonstrable injustice is regularly being done, just a bad idea.

As a lawyer who wants to devote his time to mediations without giving up his membership in the Bar, I encourage you to think carefully before eliminating mediation confidential for lawyer-mediators simply because there may be participants who believe that their decisions to settle their matter were unduly influenced by the mediator or were somehow causally connected to something the mediator did or said that hindsight suggests was improper or unjust.

And please don't undercut the important role that mediation confidentiality plays in achieving successful settlements -- or undercut the role that mediations play in resolving cases than would otherwise occupy our overstretched courts -- without a good basis for concluding that a change in the confidentiality rules as to mediators will solve a significant problem and won't cause more harm than good.

Thanks for your consideration of these views.

Lee Blackman

Lee L. Blackman -- Blackman ADR Services  
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(o) 310-265-0512 · (c) 310-346-6926  
[www.blackmanadr.com](http://www.blackmanadr.com)

**EMAIL FROM LEE BLACKMAN (9/2/15)**

**Re: Mediation Confidentiality**

Ms. Gaal-

Thank you. Since writing my comments, I have looked at some of the Commission staff's memoranda and related submissions. I note that it seems that those submitting comments give some personal background and that counsel to the Commission summarizes the background of the commenters in its memoranda to the Commission.

So, on the chance you want it, here is a bit of my background. I am an active member of the State Bar, but currently devote my time to mediations (which I started doing in 2012). I am a member of the Mediator Panel of the U.S. District Court for the Central District of California, a member of the Executive Committee of the Los Angeles County Bar Association's Attorney-Client Mediation and Arbitration Service, a volunteer mediator for the Los Angeles Superior Court, have mediated more than 350 litigated and community matters, and recently received the Honorable Benjamin Aranda Public Service Award from the Los Angeles County Bar Association for public service to the Center for Civic Mediation.

Thanks.

Lee

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## **EMAIL FROM DUDLEY BRAUN (8/9/15)**

### **Re: Preserve Mediation Confidentiality**

Dear Ms. Gaal, California Law Revision Commission,

As a long-time practicing mediator, I understand how much confidential mediated settlements help the parties and help the courts. All this under the confidentiality provision existing today which lets parties freely disclose important information.

Parties frequently say: “The only reason I'm agreeing to this process is because of it's assured confidentiality.”

Please do not wreck the whole mediation field by removing confidentiality under prospects of simple unproven charges of ‘misconduct’.

Even a flimsy ‘threat’ of misconduct by change-of-heart-after-the-fact participants, parties who already came to committed agreements, would put a big damper on the proceedings and would undermine mediation entirely.

Would we have to get parties to sign a disclosure document up front telling them confidentiality evaporates if the other party simply claims misconduct? That their carefully worked out and mutually agreed upon solution would instead subject them to becoming a defendant in court? Bad policy.

It would discourage mediators from doing their job and the result would be lots of extra load on the courts as mediators leave the field. Removing confidentiality doesn't solve problems; it creates problems with more unwarranted litigation.

There must be other ways to address whatever concerns the Commission has. Please help find these other ways and leave confidentiality alone. It's working fine. It's essential.

Dudley Braun  
Lafayette, CA

**EMAIL FROM HANK BURGOYNE (8/9/15)**

**Re: Opposition to Decision to Draft Recommended Legislation Affecting Mediation Confidentiality**

Barbara Gaal, Chief Deputy Counsel

Ms. Gal,

I write to voice my strong opposition to the Commission's August 7th decision to draft recommended legislation affecting mediation confidentiality in cases of alleged lawyer misconduct.

As a lawyer and mediator, I strongly believe confidentiality to be an important aspect of mediation. Openness and frankness breeds two things often, if not generally, necessary to settlement: 1) trust; and 2) truth, in particular as relates to the weaknesses of each party's case. Any incentive toward reduced openness in mediation can only result in inefficiency and, in some number of cases, ineffectiveness.

Currently, parties can opt out of mediation confidentiality. If you want to take steps to remind parties of that option and the risks of not doing so, feel free. But don't deprive everyone else of the ability to avail themselves of a mediation system that, with very few exceptions, has performed admirably since instituted.

Best regards,

Hank Burgoyne



870 Market Street, Suite 985 | San Francisco, CA 94102 | T:(415) 795-4070 IC: (415) 531-8125 IF: (415) 680-2335 | E:Hank@BurgoyneLawGroup.com | www.BurgoyneLawGroup.com

**EMAIL FROM PATRICK BYRNE (8/11/15)**

**Re: Study K-402 – Mediation – Need to Maintain Confidentiality**

To: The California Law Revision Commission.

I am a practicing Mediator in California. I have worked as a private mediator, and I have worked with various Courts to help them use Mediation as a means to help reduce overburdened court caseloads.

In my experience, the agreement of the parties to participate voluntarily in confidential mediation sessions are important factors leading to successful voluntary case resolution.

I am writing to your Commission to express my objection to the Commission's August 7th decision to draft recommended legislation removing the current confidentiality protections when a mediation participant alleges attorney misconduct.

I will oppose this legislation if it goes to the Legislature. In addition, I will urge organizations of which I'm a member to oppose it.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – “All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them.”

Mediation is a voluntary process that is successful in resolving thousands of civil actions within the state every year. The parties who mediate all agree to confidentiality. This is how mediation has always worked. Without confidentiality, cases will be very difficult, if not impossible, to resolve. The result will mean a HUGE burden of unresolved cases for the over worked Courts to resolve.

For over 30 years litigants have had the right to choose confidential mediation if they so choose. They also have the option to opt out of mediation.

Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing the mediation confidentiality protections. I request you pursue these instead.

Thank you.

Patrick J. Byrne  
Patrick J. Byrne, Esq.  
**Mediator - Attorney at Law**  
**(650) 922-2295**  
**Email: [pjbesq@gmail.com](mailto:pjbesq@gmail.com)**

**EMAIL FROM RALPH CAMPBELL (8/9/15)**

**Re: Please do not remove confidentiality from mediation**

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to The Legislature and will urge organizations of which I'm a member to oppose it.

Being married to a retired judge and a mediator, I know that removing any of the confidentiality from mediation will make settlements much more difficult to obtain. Neither side wants to provide evidence which can be used against them in court. With complete confidentiality the parties can work together to successfully resolve their disputes. Confidential mediation provides parties the ability to offer benefits to each other that neither would be able to obtain at trial. Almost all cases in Santa Clara County go to mediation before trial. Mediation drastically reduces the number of cases that go to trial. If confidentiality protections are removed, this will not be possible. The legislature has dramatically reduced funding to the courts over the last few years. The courts cannot take on the burden of a massive increase in the number of trials without increasing the time a case gets to trial by many years.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

## EMAIL FROM CHUK CAMPOS (8/9/15)

Hello Barbara,

Confidentiality is a key part of mediation and mediation is a very practical and effective way to resolve disputes.

I've observed a number of practices called mediation that really are not mediation. They resemble process hybrids of litigation and mediation. Perhaps some of these so-called "mediation" practices need to be reexamined and controlled better. Let's do this reexamination of those practices rather than taking confidentiality out of the practice of mediation. Let's not destroy mediation itself. Mediation works very well.

Why do we have these periodic attempts to break the back of mediation? What are we trying to accomplish by taking away confidentiality in these cases? Isn't there a better way that doesn't break a cornerstone of one of the most cost effective and dispute resolving practices there is? We know there is. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need.

In 1996 this same Commission recommended our current statutory protections be enacted including: "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

Thank you for your consideration.

Sincerely,

Chuk Campos  
Mediator, Arbitrator, Trusted Advisor

925.606.6185

**EMAIL FROM FRED CARR (8/11/15)**

**Re: Proposed Changes to Mediation Confidentiality**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

Re Study K-402

As a California attorney with 25 years of litigation experience, both a domestic and an international practice, and two years as a full time mediator having resolved hundreds of cases, I strongly oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them." In my experience, confidentiality is a cornerstone to effective mediation and should be retained until such time significant evidence to the contrary is presented.

Best Regards,

Fred Carr  
Carr & Venner ADR\*

4460 Redwood Hwy. Suite 16341

San Rafael, CA 94903

[www.carrvenneradr.com](http://www.carrvenneradr.com)

Phone: (415) 388-0905

Fax: (415) 388-1036

\*Note: Fred Carr and Charlotte M. Venner are individual, sole mediation practitioners and are not partners or other form of legal association.

\*\*\*\*\*

**EMAIL FROM PAUL CARTER (8/10/15)**

**Re: Save Confidentiality!!!**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

Re Study K-402

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

**EMAIL FROM SHAWNA CASEBIER (8/10/15)**

**Re: Study K-402**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

Dear California Law Revision Commission:

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them." Confidentiality in mediation should be protected at all costs.

Sincerely,  
Shawna Casebier  
Attorney at Law

**EMAIL FROM SUSAN CHAMBERLAIN (8/12/15)**

**Re: Confidentiality Protections**

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. As someone who does mediation for a wonderful nonprofit, SEEDS, that provides affordable mediation services for the whole East Bay, I have a first-hand view of how critical confidentiality is to the mediation process. To lose this protection will lead to fewer people seeking mediation and an escalation of unnecessary conflict. The ability to speak openly and frankly, knowing that what is said is confidential, is at the heart of every successful mediation. Please re-consider this decision.

Thank you,  
Susan Chamberlain

--

Susan Chamberlain  
332 Scenic Avenue  
Piedmont, CA 94611  
510-655-1617

**EMAIL FROM JOSEPH CHIANESE (8/9/15)**

**Re: Study K-402**

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

Sincerely,

Joseph Chianese  
SBN: 257377  
3875 Coolidge Ave  
Oakland, CA 94602  
510.336.7074

**EMAIL FROM KEN CLOKE (8/10/15)**

**Re: Mediation Confidentiality**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

Re Study K-402

I have been a mediator and arbitrator for 35 years and require confidentiality to help litigating parties resolve their issues without costly legal proceedings. I have mediated thousands of cases and seen the benefits of confidentiality personally and professionally.

For these reasons, I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. Nearly every mediation I have done in litigated cases involves lawyers who allege that the other side has behaved reprehensibly, and what we will lose vastly outweighs any gains that might be achieved. Therefore, I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

--

Kenneth Cloke  
Mediator/Arbitrator  
2411 18th Street  
Santa Monica, CA 90405  
310-399-4426  
[www.kennethcloke.com](http://www.kennethcloke.com)

**EMAIL FROM DANA COFFIN (8/9/15)**

**Re: Proposed changes to mediation proceedings**

My name is Dana Coffin and I am against your recommendation to change the confidential nature of mediation proceedings. Recently I completed training in mediation from Mr. Ron Kelly in Berkeley, California and fully understand the benefits of confidential sessions involved with mediation. I liken it to a out-of-court settlement case from the county court houses.

Two problems will arise- 1)You will overburden the court houses with additional cases. You open up the potential for undoing the main reason to have mediation which was to unburden the court houses. The california court rooms are already understaffed and over booked with court cases. And (2) You tighten up an interaction dynamic that can't proceed if both parties now worry about materials either verbal or physical in nature being used against them in another court proceeding.

Thank you for your time

Sincerely

Dana Coffin

**EMAIL FROM KEVIN C. COLEMAN (8/12/15)**

**Re: Mediation Confidentiality**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

Re Study K-402

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

Thanks,

Kevin

Kevin C. Coleman  
Mediator/Attorney-At-Law

Mediation Office of Kevin C. Coleman  
[Kevin@KColemanMediation.com](mailto:Kevin@KColemanMediation.com)  
369-B Third St. #127  
San Rafael, CA 94901  
415-488-7609  
[www.kcolemanmediation.com](http://www.kcolemanmediation.com)

**EMAIL FROM RICHARD COLEMAN (8/31/15)**

**Re: mediation legislation**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

Re Study K-402

**This proposal will destroy mediation. There is no situation where a party, after agreeing to a resolution and later becoming dissatisfied with it, will not be able to allege misconduct.**

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

Richard M. Coleman

**EMAIL FROM LYNN COOPER (8/9/15)**

**Re: Commission Decisions**

Your proposal to change the confidentiality protections for mediation are misguided and will destroy mediation. I urge you to protect the very essence of mediation—honesty and discussion. Confidentiality helps to protect the process.

Lynn Cooper, D. Criminology  
Mediator

**EMAIL FROM MARY CULBERT (8/10/15)**

**Re: Opposition to Recommendations of the California Law Revision Commission to Mediation Confidentiality**

To: California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

Re Study K-402

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

--

Mary B. Culbert  
Clinical Professor, Director  
The Loyola Law School Center For Conflict Resolution  
919 Albany Street  
Los Angeles, CA 90015  
Telephone: 213-736-8334

**EMAIL FROM AMALIA DARLING (8/10/15)**

**Re: URGENT Re Study K-402**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

I oppose the Commission's August 7th decision to draft recommended legislation removing current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years, the right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

Sincerely,  
Amalia Darling

## **EMAIL FROM PHILIP DIAMOND (8/9/15)**

### **Re: Mediation Confidentiality**

To Whom It May Concern:

I have just learned that the California Law Revision Commission has voted to draft a recommendation removing mediation confidentiality. I'm writing to register my deepest protest for this action. I have been a practicing litigation attorney for over 40 years, and a mediator for 11 years. I have participated in, and conducted, hundreds of mediations over my career. I can tell you from first-hand experience that there is nothing so important in the mediation process as the parties' willingness to speak openly and candidly, without fear that something that is said will come back to hurt them if the matter doesn't settle and proceeds to trial. If you remove that confidentiality, you will be removing the protection that fosters open and honest discussion – without which the mediation process cannot work. You will also cause the likely departure of a significant number of mediators from the profession, because of the time, effort, and expense they will incur as a result of being subpoenaed to testify as witnesses to the mediation process. Removing mediation confidentiality is wholly inconsistent with the strong state policy in favor of mediation as a way of resolving disputes that would otherwise require judicial resources that are already being stretched to the limit with statewide budget cuts.

I urge you in the strongest terms possible: **DO NOT REMOVE MEDIATION CONFIDENTIALITY.**

If you have any questions or require any further information, I would be happy to speak with you.

Sincerely,  
Phil Diamond

Philip R. Diamond, Esq.  
**DIAMOND DISPUTE RESOLUTION**  
4040 Civic Center Drive, Suite 200  
San Rafael, CA 94903  
Telephone: (415) 492-4500  
Direct Telephone: (415) 492-3341  
Fax: (415) 492-3385  
Email: [phil@diamonddisputeresolution.com](mailto:phil@diamonddisputeresolution.com)  
Website: [www.diamonddisputeresolution.com](http://www.diamonddisputeresolution.com)

**EMAIL FROM SUSAN DIXON (8/16/15)**

**Re: Devastating Law**

It is extremely important that you reverse the law recently enacted that destroys the confidentiality of mediation.

The impact on the whole field and idea of mediation will be devastating. The impact on the courts will be unthinkable horrific. No longer will mediation be able to settle multitudes of cases outside of court, further glutting court calendars and crippling the justice system.

Please reverse this new law so the whole field of mediation is not destroyed and so the U.S. civil justice system is not crushed.

Susan W. Dixon, Ph.D.

**EMAIL FROM DWIGHT DONOVAN (8/10/15)**

**Re: Mediation Confidentiality Legislation**

Re Study K-402

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

**Dwight Donovan**

Partner

**Fox Rothschild LLP**

345 California Street, Suite 2200

San Francisco, CA 94104

(415) 364-5540 (phone)

(415) 391-4436 (fax)

[ddonovan@foxrothschild.com](mailto:ddonovan@foxrothschild.com)

[www.foxrothschild.com](http://www.foxrothschild.com)

**EMAIL FROM JENNIFER DOWDELL (8/10/15)**

**Re: Continue Confidentiality Protections Under Mediation**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

Re Study K-402

Dear Commissioners:

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature, and will urge organizations of which I'm a member to oppose it. In my case, this includes organizations outside the legal profession such as California Society of CPAs, the institute of Chartered Financial Analysts (ICFA), and the institute of Certified Divorce Financial Analysts (IDCFA) among others.

For thirty years, our current right to choose confidential mediation (and also to opt out of it) has served the people and courts of California extremely well. Removing this right is a very radical change that will negatively affect the cost of such things as divorce and business dissolution by limiting the protections around mediated settlement discussions, and discourage contentious parties from attempting settlement prior to litigation.

At a time when the court system is already overflowing and the cost to the state surrounding the judicial system is ever-increasing, a change of this magnitude should require solid evidence establishing that the benefits will indeed outweigh the substantial costs. Dozens of alternative solutions have been suggested to the Commission to address this problem without removing our confidentiality protections. Surely, there are other options to effectively manage the risk of attorney misconduct without reducing the options of innocent parties.

Confidentiality is a foundational tenant of mediation and other alternative dispute resolution practice nationally. Confidentiality is defined as Standard V, among the model standards of conduct for mediators prepared in 1994 and revised in 2005 by the American Arbitration Association (AAA), the American Bar Association (ABA), and the Association for Conflict Resolution (ACR). This important element has been key to the academic and practice literature for over 30 years. It is referenced in the primary documents defining ethical practice by both the leading legal professional organization, ABA, and by ACR, one of the largest professional organizations in the alternative dispute resolution field.

The Commission's own 1996 statement recommending our current statutory protections

again underscores the value of confidentiality in mediation: “All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them.” California businesses and ordinary people have relied on this wise statement and ruling to support cost-effective dispute resolution for decades and should not be penalized.

Best regards,

Jennifer Dowdell

Jennifer Dowdell CPA CFA  
Principal Consultant

415.999.6724 | 415.309.1865 cell  
jdowdell@eclipseconsultinggroup.com

[eclipseconsultinggroup.com](http://eclipseconsultinggroup.com)



## EMAIL FROM BILL EDDY (8/11/15)

### Re: Mediation Confidentiality

Dear Commission,

I have been providing Family Mediation for over 30 years as a lawyer and a therapist. (I am a Certified Family Law Specialist and a Licensed Clinical Social Worker). I have learned how to manage most “high-conflict” mediation cases and I now give training around the world on this topic. Two things are clear: 1. Mediation is far better for high-conflict individuals than litigation; and 2. High-conflict clients need *strong boundaries* to help them focus on solutions rather than blaming and fighting. Without strong boundaries protecting the confidentiality of mediation, it will become just the next battleground for high-conflict people – approximately 15% of the general population.

The *Diagnostic and Statistical Manual of Mental Disorders* published by the American Psychiatric Association provides research suggesting that 15% of the general population has a personality disorder. These disorders are marked by interpersonal conflicts, all-or-nothing thinking and a preoccupation with blaming others – and easily get stuck litigating everything that can possibly be litigated. Over 40,000 people have bought my book *Splitting: Protecting Yourself While Divorcing Someone with Borderline or Narcissistic Personality Disorder*, which suggests to me that personality disorders are a real problem in today’s family law practice. Since approximately 80% of people don’t litigate their divorces, those who do nowadays include a significant percentage with these disorders or traits of these disorders. Ask any Family Law Judge or Commissioner.

The California Law Revision Commission is considering legislation that will remove current protections whenever a mediation party alleges misconduct by their lawyer advocate or lawyer mediator. This is the exact opposite direction to go in. Strong confidentiality is a central tenet of mediation, including family mediation. To weaken this principle, as suggested, provides a huge loophole for any party to undo the confidentiality of a mediation by simply *alleging* fraud and/or deceit.

In family law disputes, allegations of fraud and deceit are rampant and would easily become the focus of actions days or months following mediated agreements. It is important to keep mediation strongly confidential to allow a space for the parties to negotiate and consider alternatives without the constant fear of being brought to court for something that was said and later distorted into an allegation of fraud or deceit. Family law and family mediation are constantly vulnerable to doubts and misinterpretations. These issues should be handled through mediation and consultation with lawyers *before* a mediated settlement agreement is signed, rather than litigated afterwards. Confidential mediation should remain a totally separate process from litigation, and should not become merely a step in the endless litigation process of family law.

Thank you for re-considering this ill-advised revision.

Bill Eddy

**William A. Eddy, LCSW, Esq., Professional Family Mediator**  
**President |High Conflict Institute|***Changing the culture of conflict*  
**Phone: 619.221.9108 | Fax: 201.644.3594 | Address: 530 B Street, Suite 1700, San Diego, CA 92101**  
**Email: [BillEddy@HighConflictInstitute.com](mailto:BillEddy@HighConflictInstitute.com) | Blog: [www.HighConflictInstitute.com/blog](http://www.HighConflictInstitute.com/blog)**

**EMAIL FROM MICHAEL ELLER (8/10/15)**

**Re: Concerned attorney**

California Law Revision Commission

c/o Ms. Barbara Gaal, Chief Deputy Counsel

Dear Chief Deputy Counsel:

I have been practicing Family law for the last 26 years. I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct.

There is no doubt in my mind that undoing the protections of confidentiality will undermine the effectiveness of mediation and the collaborative process to the point that thousand of cases that might otherwise benefit from such a process will end up in our court system. Consequently, an otherwise stressed institution will be stretch even farther. Moreover, the financial costs of protracted litigation will be borne by our clients and our State and local governments.

The need to protect our citizens from unscrupulous attorneys and former partners, I believe, is not compromised by upholding the protections of confidentiality, as any evidence of such misdeeds will certainly be found outside mediation or settlement discussions.

Thank you for listening.

**MICHAEL E. ELLER**  
**LAW OFFICE OF MICHAEL E. ELLER**  
**Family Law / Litigation/ Collaboration / Mediation**  
**3828 W. Carson Street, Suite 100**  
**Torrance, CA 90503**  
**tele: (310) 543-2636**  
**fax: (310) 792-1206**

**EMAIL FROM JANE EULER (8/9/15)**

**Re: Study K-402**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

I have been a family law attorney for over 20 years now and a mediator for almost all of that time. I have been and continue to be an active member of the South Bay, Beverly Hills and Los Angeles County Bar Associations. I have been an active member of A Better Divorce, a successful collaborative practice group, since 2002 and served as it's President for 3 years. I am an active member of CPCal, IACP and LACFLA, of which I am also currently a Board Member, all significant organizations in the practice of collaborative divorce.

I strongly oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it as well.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need to do so. A multitude of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these alternative solutions instead.

I cannot imagine the damage, collateral and direct, that your proposed legislation would instill upon the countless number of mediation cases that I alone am able to successfully settle each year, much less within the thousands of mediation cases settled by so many other very skilled mediators and cooperative consulting attorneys who work diligently together to help couples consciously uncouple. I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – “All persons attending a mediation, parties as well as non-parties, should be

able to speak frankly, without fear of having their words turned against them.” Please reconsider this drastic direction.

Sincerely, Jane K. Euler, Family Law Attorney, Collaborator and Mediator

--

Jane K. Euler  
Family Law Attorney, Collaborator and Mediator  
LAUZON & EULER, LLP  
2447 Pacific Coast Highway  
Suite 100  
Hermosa Beach, CA 90254  
(310) 376-1318 (w)  
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email: [jane@lauzoneuler.com](mailto:jane@lauzoneuler.com)  
website: [www.lauzoneuler.com](http://www.lauzoneuler.com)

**EMAIL FROM JUDITH EVIND (8/10/15)**

**Re: Study K-402**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

Judith Evind  
400 Locust Street #6  
San Francisco, CA 94118  
415-346-3803

**EMAIL FROM THERESE FEY (8/26/15)**

**Re: Maintenance of Mediation Confidentiality**

Dear Commission Members:

I have been a family law attorney for 29 years and do a lot of mediation work. It is surprising and disconcerting that mediation confidentiality is at risk.

In all my years of practice, I have never experienced a request to breach that confidentiality. The mediation process offers an alternative that enables couples to make their own agreements in a non-public way. The threat that confidentiality can be lost in the way that is being contemplated will undoubtedly be used destructively, either implicitly or explicitly. This destroys the foundation of mediation, which is intended to reduce or eliminate power imbalances and protect the privacy of the individuals involved.

Without confidentiality, mediation will be reduced in a large sense to a settlement conference. Destroying confidentiality threatens the existence of this effective and fair process.

Also, it is no secret that the courts are overburdened with family law and other litigation. Many family law courts hand out letters to all new litigants informing them that they should consider alternative dispute resolution. This includes mediation and collaborative practice. Without confidentiality, these long respected vehicles to end disputes are at serious risk.

Many couples with children successfully transition from married to divorced through mediation. Without confidentiality, these cases will become litigation matters, with the children in the crossfire. Please stop any efforts to sabotage the mediation process, and instead support the peaceful and confidential resolution of family matters.

Thank you.

THERESE M. FEY  
(714) 547-7700

**EMAIL FROM BERTON FRASIER (8/11/15)**

**Re: Mediation Confidentiality**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

Re Study K-402

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

Berton S. Frasier, Mediator  
Director, Ventura Center for Dispute Settlement

**EMAIL FROM GARY FRIEDMAN (8/9/15)**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

Re Study K-402

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

To turn the mediation process into another step of the litigation process removes mediation as any kind of real alternative to litigation. Surely you can't mean to do that, as mediation has proved to be such an important alternative for so many people who would otherwise be forced to spend enormous amounts of time and money to litigate when an alternative in which they can speak openly enough to be able to provide a real solution to their problems is critical to the success of mediation.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

--

Gary Friedman

Mediation Law Offices  
Center for Understanding in Conflict/Center for Mediation in Law  
34 Forrest Street  
Mill Valley, CA 94941

tel: (415) 383-1300  
fax: (415) 383-4946  
e-mail: [garyfriedman@gmail.com](mailto:garyfriedman@gmail.com)  
website: [www.understandinginconflict.org](http://www.understandinginconflict.org)

## EMAIL FROM KATHERINE GALLO (8/9/15)

### Re: Against Removing Mediating Protections

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

Re Study K-402

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."



**KATHERINE GALLO, ESQ.** Discovery Referee, Special Master, Mediator  
969G Edgewater Blvd., Suite 345, Foster City, CA 94404  
phone: (650)571-1011 fax: (650)571-0793  
[klgallo@discoveryreferee.com](mailto:klgallo@discoveryreferee.com)  
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 Please consider the environment before printing this e-mail.

**EMAIL FROM PAUL GARRISON (8/9/15)**

**Re: Mediation confidentiality**

Dear Law Revision Commission:

Please reserve confidentiality in mediation. As an experienced Mediator, I have learned first-hand how important it is to the parties to be able to candidly share their thoughts with the Mediator who will in turn preserve this information confidentially. Without confidentiality, it will be difficult to break the impasse and settle cases. Consequently, the courts will be burdened unnecessarily with more lawsuits. Please strongly consider this information and preserve confidentiality in mediation. Thank you.

Paul Garrison, Mediator  
Law Offices of Paul Garrison  
1300 Clay Street, Suite 600  
Oakland, CA 94612  
(510) 384-6469

**EMAIL FROM E.J. GIBBONS (8/10/15)**

**Re: Making the Wrong Decision**

Hello,

I understand that you have recently voted to remove confidentiality from mediation. WHAT A HUGE MISTAKE THAT WOULD BE. DON'T DO IT! Reverse you poor choice.

The court's dockets are packed now. If you proceed that will be much worse. Confidential mediation provides relief for Thousands. Changing that is unwise. I understand you are trying to improve things, but realize there will be huge consequences that have not been fully considered. This will be worse than the mistake we made voting in Prop 47 last year. We didn't understand those unexpected consequences, like you. Ask the SF police how many more car break ins there are now as a result of the Prop 47 choice.

Please call me if you want to learn about my 13 years of experience volunteer mediating with hundreds of community members in San Francisco.

E J Gibbons  
[ed@ejgibbons.com](mailto:ed@ejgibbons.com)

**EMAIL FROM GAIL GLICK (8/12/15)**

**Re: Mediation Confidentiality in Jeopardy**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

Re Study K-402

Dear Ms. Gaal:

I am writing to voice my opposition to the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

Our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

Gail A. Glick. **Partner.**

gglick@akgllp.com

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<https://www.hightail.com/u/AKG>

<https://www.facebook.com/akgllp>

**ALEXANDER**

**KRAKOW +**

**GLICK LLP**

Employee Justice.

## **EMAIL FROM PAUL GLUSMAN (8/9/15)**

**Re: Study K-402**

Removal of mediation confidentiality

Wow! I'm so happy to hear you've somehow solved the problem of overcrowded and underfunded courts. Now with the prospect of any dissatisfied litigant suing a lawyer for malpractice over what happened in mediation, it's going to be very hard to get any lawyers to bring cases to mediators if they can no longer be candid. Apparently lawyers are going to have to record or document everything they say in mediation to deal with a potential adverse relationship in the same room. Candor is the touchstone of mediation. Your rule will destroy that. This, of course, means a lot more cases will go to trial. With backups now lasting over 3 years to get a case to trial, access to justice will now take even longer. But I guess you've done studies showing that so many new judges are being appointed and so many more courtrooms being constructed that this will no longer be a problem.

By the way, I did try to testify about this before your commission back in October 2013 at Davis. I waited outside your meeting room for many hours, travelled an hour and a half each way, and despite the fact you knew I was there and why, you did not get to this and I had to travel home without having been heard. I do have nearly 40 years experience in litigation I do have thoughts on this matter.

Maybe you ought to seek input from attorneys like myself, instead of, literally, shutting us outside of the room. Maybe you should ask experienced mediators what they think. Most important, perhaps you should speak to the sitting trial judges and their organizations about what this will mean for their courts and the administration of the justice system before recommending that the legislature implement this ill-advised and poorly thought out new law.

Paul Glusman  
Attorney at Law  
2041 Bancroft Way, Suite 207  
Berkeley, CA 95704  
510-841-4900

## EMAIL FROM SCOTT GOERING (8/9/15)

Dear California Law Revision Commission:

I am a San Francisco mediator, mediating largely around family and contract disputes, and a ten-year member of the California Bar.

As a mediator, a key element I bring to disputants is the assurance they can be candid. Rather than digging in their heels and bracing themselves with the guardedness that litigation necessarily causes, disputants in a confidential mediation are able to enjoy the legal protection that comes from knowing that “what happens in mediation, stays in mediation” (one of my professional maxims). I have always been glad to provide such assurance, knowing that it will allow people to resolve conflicts far more amicably, and keep the dispute out of court.

As an attorney who still occasionally tries cases, I also know that courts welcome cases being resolved in mediation, or else it makes already congested court calendars even worse. Further, I know that when cases don’t settle, disputants and their attorneys tend to make exaggerated arguments (e.g. attorney misconduct).

I oppose the Commission’s August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I’m a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission’s own 1996 statement recommending our current statutory protections be enacted – “All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them.”

Please contact my office if you have any questions or concerns about what I’ve stated here. Thanks for your consideration.

Scott Goering  
**Law & Mediation Offices of Scott Goering**  
**459 Fulton Street, Suite 300**  
**San Francisco, CA 94102**  
**(o) 415.285.7738**  
**(F) 415-285-7739**

**EMAIL FROM R. STEPHEN GOLDSTEIN (8/10/15)**

**Re: Study K-402**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

I am a long-time mediator and the founding president of The Mediation Society in San Francisco, an organization dedicated to the advancement of mediation whose membership includes many prominent mediators. I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge others to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

Yours very truly.

A handwritten signature in blue ink that reads "R. Stephen Goldstein". The signature is written in a cursive, flowing style.

R. Stephen Goldstein

**EMAIL FROM RACHEL GRAINGER (8/12/15)**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

Re Study K-402

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

--

Rachel Grainger  
Cooperative Resolution Options, P.C.  
[www.graingerlawmediation.com](http://www.graingerlawmediation.com)  
6491 Heather Ridge Way  
Oakland, CA 94611 (mailing address)  
(650) 771-0791  
[attyrgrainger@gmail.com](mailto:attyrgrainger@gmail.com)

**EMAIL FROM SADJA GREENWOOD (8/9/15)**

**Re: confidentiality in mediation**

to California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

I have been a mediator for 20 years and I think confidentiality of our records is vitally important.

Sadja Greenwood, 440 Birch Rd, Bolinas, CA, 94924

## **EMAIL FROM RICHARD GROSS (8/9/15)**

### **Re: Confidentiality in mediation**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

Re Study K-402

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. As a volunteer community mediator serving the residents of Palo Alto, Los Altos, Mountain View, Cupertino, Hayward and Sunnyvale and as a volunteer mediator in Small Claims Court I regularly see the importance of confidentiality in the mediation process. Without this vital protection, landlords and tenants, disputing neighbors and plaintiffs and defendants, as the case may be, are much less likely to take advantage of our alternate dispute resolution service in order to resolve their differences and avoid future litigation or their appearance in court. The fact that they are bound by the rules of confidentiality helps to create a safe environment that encourages them to open up and freely address their differences knowing other remedies are not being cut off should their efforts fail in mediation. Words alone are insufficient to express what I see and experience. However, I can tell you that the Courts is thrilled to have our services which allows them to give more time to cases that do not avail themselves of our service. Removing or for that matter making any changes to the current law as it affects confidentiality in mediation is simply a mistake of major proportions. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a

mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them.”

*Richard A. "Rick" Gross*

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Email: rickgross35@gmail.com

CA License No. 0746193

**EMAIL FROM ADELE GRUNBERG (8/9/15)**

**Re: Study K-402**

I have been a mediator for sixteen years. I mediate for the State Mediation and Conciliation Service, SEEDS Community Resolution Center, and for the Alameda County ADR program. I believe it would be a terrible mistake to terminate the long-standing confidentiality protection provided in mediation.

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

Sincerely,

Adele Grunberg

**EMAIL FROM MARY HALBERT (8/12/15)**

**Re: Confidentiality Opposition**

Dear the Law Revision Commission,

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

Also, I would like a copy of the recommendation of this proposal.

Regards,

Mary V. Halbert

*Law & Mediation Offices of  
Mary V. Halbert  
1120 Nye Street, Suite 200  
San Rafael, CA 94901  
Telephone: 415.454.8980  
Fax: 415.457.6439*

**EMAIL FROM JAMES HALLETT (8/9/15)**

**Re: Mediation/Lawyer Misconduct**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

Re Study K-402

I have been a lawyer in California for almost 42 years. I am a double-certified specialist in Family Law and Criminal Law. I have been the president of six bar associations and lawyer groups and have held multiple leadership roles in the collaborative practice movement.

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

I understand the policy to sanction lawyer misconduct. But I submit that the policy in support of mediation overrides it. Mediation only works when it's confidential. It is the confidentiality of mediation that creates the space of safety and transparency that allows real conversations to take place. Lawyer misconduct is not the only potential issue with confidentiality—to state the obvious, misconduct by the parties also goes unsanctioned. I suppose lawyer misconduct is arguably worse than client misconduct in some cases, but the reverse may also be true in other cases. Such distinctions are insignificant compared to the damage done to the entire mediation process by this proposed breach of the privilege of confidentiality.

Please re-think this. Thank you for listening.....Jim Hallett

---

James M. Hallett, CFLS, CCLS  
Law Office of James M. Hallett  
1001 6<sup>th</sup> St., Ste. 120  
Manhattan Beach, CA 90266  
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Fax 310-318-0709  
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**EMAIL FROM ROBERT P. HAMILTON (8/10/15)**

**Re: Mediation Confidentiality k-402**

Ms. Gaal:

I am a mediator and practicing attorney with over 30 years' experience. I have successfully mediated over 500 cases as mediator and countless others a counsel for various parties. I am writing to urge the Law Revision Commission reconsider its recent position recommending a mediation confidentiality exception based upon attorney misconduct allegations. I believe it is essential that that all mediation proceedings remain confidential. Settling cases is often difficult and parties and counsel must be assured their words and actions will not later be used against them in another forum if we are to continue to resolve cases through mediation. Confidentiality in the mediation process is critical to achieving settlement and should be preserved.

Thank you for your attention to this matter.

Regards,

Bob

**Robert P. Hamilton**

DIRECT PHONE 415.705.0407

**Goodman Neuman Hamilton LLP** 417 Montgomery Street, 10th Floor San Francisco, CA 94104 TEL415.705.0400 FAX415.705.0411 EMAIL

rhamilton@gnhllp.com

WEBSITE [www.gnhllp.com](http://www.gnhllp.com)

**EMAIL FROM LORRAINE HARRIS (8/9/15)**

Mediations need to stay confidential matters. When you lose the ability to keep information confidential, people tend to lose their ability to be candid. We need to keep some things quiet and confidential. In this age where social media is king...we need to have some place to go to keep things confidential and to ourselves. It makes no sense to allow so much information out. Some things needs to stay confidential. We keep forgetting that in this age where technology is king. We need to protect peoples' privacy. Use your voice by keeping mediations confidential.

Thank you for your time and consideration.

Lorraine Harris

Email: [raineharris@gmail.com](mailto:raineharris@gmail.com)

**EMAIL FROM LESLIE HART (8/9/15)**

**Re: Confidentiality in Mediation**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

Re Study K-402

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

Thank you for your consideration in this important matter.

Leslie K. Hart Esq.  
LAW OFFICES OF LESLIE HART  
2200 Pacific Coast Highway  
Suite 312  
Hermosa Beach, CA. 90254  
Tel. 310.819.7928  
Fax 310.544.3426  
[lhart@lesliehartlaw.com](mailto:lhart@lesliehartlaw.com)  
[lesliehartlaw@aol.com](mailto:lesliehartlaw@aol.com)

**EMAIL FROM KEN HARVEY (8/10/15)**

**Re: Mediation/Lawyer Misconduct**

California Law Revision Commission  
c/o Ms Barbara Gaal  
Chief Deputy Counsel

Re: Study K-402

I have been an attorney in California since 1973, and I have practiced Family Law exclusively since 1997. I am opposed to any change in the current mediation privilege. I am fully in favor of ADR, having seen what trials can do to a family going through a dissolution of marriage. I am a firm believer that it is in my client's best interest to settle their case since it allows the client to control their own destiny. It is my experience that lawyers are the driving force behind any mediation, i.e., if the lawyer does not recommend it, it will not be done. The mediation privilege as presently constituted provides all participants with the knowledge that whatever happens in mediation will stay there.

I fear that if an exception is made where a claim of lawyer misconduct is made, regardless of how frivolous, this version of ADR will vanish. No lawyer will recommend to his/her client to enter into the mediation process. There is a reason why the mediation privilege has been around for such a long time. It works. If it is not broken, do not fix it.

Ken Harvey  
SBN 57245

**EMAIL FROM CHRISTOPHER J. HAYES (8/10/15)**

**Re: Study K-402 – Do not remove mediation confidentiality**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

Like thousands of other experienced California lawyers, I vigorously oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

This recommendation is counterproductive and its only result will be to chill case-resolving candor in mediation, fewer successful mediations, and more work for our already overwhelmed trial courts.

Sincerely,

Christopher J. Hayes  
Attorney & Counselor at Law

THE HAYES LAW FIRM  
Representing Plaintiffs Exclusively in Employment & Civil Rights Litigation  
4660 La Jolla Village Drive, Suite 500  
San Diego, California 92122  
T (619) 846-0183  
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[cjhayeslaw@gmail.com](mailto:cjhayeslaw@gmail.com)  
[cjh@thehayeslawfirm.com](mailto:cjh@thehayeslawfirm.com)  
[www.thehayeslawfirm.com](http://www.thehayeslawfirm.com)

## EMAIL FROM PAUL HEBERT (8/12/15)

### Re: Study K-402

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

Paul Hebert  
Project Sentinel Case Manager  
1490 El Camino Real, Santa Clara, CA 95050  
Phone: (650) 856-4062, (408)946-6582  
Fax: (408) 648-2957



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**EMAIL FROM JOAN HERRINGTON (8/9/15)**

**Re: Please maintain confidentiality of mediation**

Re Study K-402

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them." It is hard enough to settle a case as it is without erecting another hurdle.

Joan Herrington  
*Bay Area Employment Law Office*  
5032 Woodminster Lane  
Oakland, CA 94602-2614  
(510) 530-4303 Phone  
(510) 530-4725 Fax  
www.baelo.com  
jh@baelo.com

**EMAIL FROM EVA HERZER (8/11/15)**

Dear Law Review Commissioners;

I am very concerned about the recommendations you recently passed limiting confidentiality in mediation settings. As an attorney who has mediated for over 20 plus I know that absolute confidentiality is the cornerstone of the trust necessary for mediation to work. Knowing that statements can not be used in court allows for an openness in mediation that otherwise would not exist. That unguarded frankness that is so essential to a successful mediation would, I believe, disappear if I had to advise my clients that a mere allegation of misconduct would open my and their mediation files and statements for discovery. I therefore urge you to reconsider your recommendations.

respectfully,

Eva Herzer

Eva Herzer  
Mediator & Attorney  
901 Peralta Ave.  
Albany, CA 94706  
510-526-5146  
[www.ehmediation.com](http://www.ehmediation.com)

**EMAIL FROM EDUARDO HIDAL (8/9/15)**

**Re: Study K-402**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

Sincerely,

Eduardo T. Hidal  
Rua Luisiania 784/13 - Brooklin Paulista  
04560-021 Sao Paulo, SP  
BRAZIL

## **EMAIL FROM TRACI HINDEN (8/11/15)**

### **Re: Objection to removal of confidentiality in Mediation**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

Re Study K-402

A mediation will not work if the parties believe what is being said there will be admissible later. The reason mediations have such a high success rate is the parties and counsel can put their guards down and get to the issues and the emotions behind them. When folks know their words will not be confidential, they are less likely to open up and be willing to move. Your recommendations will cause countless more lawsuits to proceed or ensue because the parties will have no safe haven to resolve their conflicts without burdening our already clogged courtrooms. In the last couple of years, almost a 100 courtrooms closed and self help programs have been abolished in many, and even worse, staff at the courts have been slashed and hours reduced. Your move will only make access to justice worse.

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it and already have, as you've probably seen by the slew of emails coming your way.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a

mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them.”

--

Respectfully,  
Traci M. Hinden, Esq.  
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**EMAIL FROM MAUREEN HOCHLER (8/10/15)**

**Re: Study K-402**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

Sincerely,  
Maureen J. Hochler

Maureen Hochler  
Alliance for Resolution  
415-927-9409  
[www.AllianceResolution.com](http://www.AllianceResolution.com)

## **EMAIL FROM VIVIAN HOLLY (8/11/15)**

### **Re: Mediation Confidentiality**

To Ms. Barbara Gaal, Chief Deputy Counsel of the Law Review Commission and to the Law Review Commission,

I have been a Family Law Mediator since 1977, first as a Licensed Marriage Family Therapist and then in 1978 as an attorney and then as a Certified Family Law Specialist. I have mediated well over 1500 disputes with hundreds of participants, many of whom are highly emotional in the throes of divorce. More than 95% of my cases reach a settlement, and very few return to the courts. I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges misconduct.

There is a magic involved in how mediated disputes resolve – and the resolutions can only occur when the participants believe their discussions are confidential and positions will be handled with respect and thoughtfulness, with fairness and with ultimate finality. It is extremely important to the process that participants understand that when they make suggestions and proposals that their ideas will not come back to bite them should they settle for a different outcome. If the confidentiality of the mediation process is destroyed, mediation will be destroyed as an effective dispute resolution tool. Anyone with bitter feelings in a divorce (this applies to many participants) can undo the settlement by merely claiming a bias and an unjust result. That would open up the door to discovery, depositions, and positioning the mediator to take a stance against one of her/his clients. It would undue all the protections the courts have seen fit to give mediation as a preferred dispute resolution tool. The person with the better financial resources could just use those resources to continue litigating in order to wear the other party down – no matter how truthful the charges of bias are. And, what they learned in the course of the mediation will just be turned and used against the other participant(s).

If the current recommendations against mediation confidentiality go forward and become law, it will destroy mediation as an effective dispute resolution tool. There are other methods, less drastic, to correct any ills to ensure no participant takes advantage of another, such as through mandatory truthful disclosure of assets and debts and income and expenses in family law. Case law already allows these documents to be disclosed and shared beyond the mediation process.

Please tread carefully and please do not advocate legislation that would throw out a process that works so well for almost all participants. Losing confidentiality protections will turn into the death knell for mediation.

I am asking you to reconsider the impact of your recent decision and recommendation. I sincerely hope you can find another way to protect participants without destroying confidentiality which is the pillar of mediation.

Thank you.

Vivian L. Holley

Vivian L. Holley  
Mediation and Law Offices of Vivian L. Holley  
2135 Lombard Street  
San Francisco, CA 94123  
Ph 415 474-1011  
Email [viivan@vivianholley.com](mailto:viivan@vivianholley.com)  
[www.vivianholley.com](http://www.vivianholley.com)

**EMAIL FROM VALERIE HOUGHTON (8/9/15)**

**Re: PLEASE KEEP MEDIATION CONFIDENTIAL**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

Re Study K-402

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

As a lawyer/therapist mediator for many years, the cornerstone of mediation being confidential has been essential to the process.

The use of team mediation may be an alternative to any concerns about allegations of wrongdoing by an attorney. There are cases where I insist on it.

Kind regards,  
Valerie R. Houghton, RN, MFT, Esq.

**EMAIL FROM KAREN JANDORF (8/10/15)**

**Re: Study K-402**

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

Thank you for your consideration,  
~Karen Jandorf

---

Karen Jandorf  
coaching. consulting. facilitation . mediation  
[karenjandorf@gmail.com](mailto:karenjandorf@gmail.com) . 650.224.0844

No amount of noise will wake someone pretending to be asleep. ~ Jonathan Safran Foer

## **EMAIL FROM BETSY JOHNSEN (8/20/15)**

### **Re: Removal of Confidentiality Protections**

To Ms. Barbara Gaal, Chief Deputy Counsel of the Law Review Commission and to the Law Review Commission,

I have been a lawyer since 1992, and am a State Bar Certified Specialist in Family Law. I work exclusively in the area of Family Law. I am also the Secretary of the Family Law Section of the Bar Association of San Francisco, although I am not speaking for that body in this letter.

Although I bring cases to court when necessary, I try very hard to mediate cases beforehand. Since I work as both a litigator and mediator, I would like to comment.

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges misconduct. Removing confidentiality from mediation effectively destroys it.

Mediation performs a function found nowhere else in our legal system: it de-escalates conflict. It does this with the promise of freedom of expression for the parties and for the mediator.

By allowing people to express their innermost thoughts in a confidential setting - the same setting preserved for attorneys, therapists and priests — people can have another person reflect back at them, and MODERATE their positions. Without that ABSOLUTE confidentiality, and security that what they say will not be used against them, people will not speak freely. You will simply have another brand of litigation.

Litigation, as you know, breeds more litigation, as parties are forced to their most extreme positions.

Moreover, litigation favors those with greater resources who will litigate and overuse the courts more. Keeping these - and all - people in the most appropriate setting is important.

Please do not remove confidentiality protections in mediation.

Regards,  
Betsy Johnsen

--

Law Offices of Betsy Johnsen  
Family Law & Mediation  
Certified Family Law Specialist\*  
44 Montgomery St., #3780  
San Francisco, CA 94104  
Tel: (415) 362-9549  
Fax: (415) 362-9543  
Email: [BetsyJohnsen@gmail.com](mailto:BetsyJohnsen@gmail.com)

\*Certified by the State Bar of California, Board of Legal Specialization

**EMAIL FROM RODNEY JOHNSON (8/17/15)**

**Re: Study K-402**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

Re Study K-402

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

I have been a full-time mediator for over 35 years; and in my experience, this draft recommendation will have a negative effect on the mediation process and will encourage litigation.

Regards,

Rodney

-----  
*Law & Mediation Offices of  
Rodney N. Johnson  
1120 Nye Street, Ste. 200  
San Rafael, CA 94901  
Telephone: 415.457.9870  
Fax: 415.457-6439  
Please reply to Rodney@johnsonmediation.com and  
Jackie@johnsonmediation.com*

**EMAIL FROM WENDY S. JONES (8/10/15)**

**Re: Study K-402**

Law Review Commission:

I strongly oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it. The organizations in which I am involved include the Los Angeles County Bar Association, the South Bay Bar Association, of which I am the current president, Collaborative Professionals California ("CP-Cal"), the Los Angeles Collaborative Family Law Association, and A Better Divorce, a long-standing collaborative practice group. Approximately half of my practice is Consensual Dispute Resolution and approximately half is litigation. I am a Certified Family Law Specialist.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them." It is entirely contrary to the Commission's long-time stated goals to proceed in the direction suggested by the August 7 decision.

Thank you for your time.

Sincerely,

Wendy S. Jones

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(800) 257-6666 toll free  
(310) 316-0324 fax  
[www.CalDisso.com](http://www.CalDisso.com)

**EMAIL FROM DANIEL KELLY (8/19/15)**

**Re: Study K-402**

Conservatively I have mediated over 1500 cases in my career. I am disheartened to learn of efforts to remove confidentiality from the process. My own authenticating experience is this is akin to throwing out the baby with the bath water. I will oppose any such efforts and would like to testify on the basis of my opposition. Thank you, Dan Kelly

**EMAIL FROM MISS-ASHLEY KENDRICK (8/9/15)**

**Re: Keep Current Confidentiality! I Oppose the Commission's August 7<sup>th</sup> decision!**

I oppose the Commission's August 7<sup>th</sup> decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them.

Respectfully yours,

Miss-Ashley Kendrick, JD candidate

**EMAIL FROM SHELLEY KENNEDY (8/9/15)**

**Re: Study K-402**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

Sincerely,  
Shelley M. Kennedy  
Attorney and Mediator  
Lawhon Law & Mediation, P.C.  
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Website [www.lawhonlaw.com](http://www.lawhonlaw.com)  
Visit our Mediation Blog: [www.sfmediation.com](http://www.sfmediation.com)

**EMAIL FROM MICHAEL L. KENT (8/10/15)**

**Re: Mediation Confidentiality – Study K-402**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

I strongly oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years the current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. While questions of lawyers' competence rarely arisen in my three years and over one hundred mediations, the mere mention that confidentiality might be breached would have a profound inhibiting effect on free mediation dialogue. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

Sincerely yours,  
Michael L. Kent  
Mediator,

- California Superior Court
- San Francisco Police Dept. Office of Citizen Complaints
- Bar Association of Oakland
- Private Practice

**MAIER PFEFFER KIM GEARY & COHEN LLP**

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Oakland, CA 94612

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September 1, 2015

Sent via email: [bgaal@clrc.ca.gov](mailto:bgaal@clrc.ca.gov)

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

**Re: Study K-402**

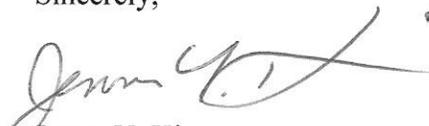
Dear Commissioners and Ms. Gaal:

I am an attorney and a mediator, mediating for local court mediation programs for which I help mediate cases involving litigants both with and without attorneys. While I do not speak for anyone else or for any particular group or firm, I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. If it goes to the Legislature, I will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted - "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them." This ability of mediators to "hold the space" for persons in conflict and to honor this space by allowing that space to be safe for everyone involved is both integral to effective mediation and its ability to help resolve conflict. With its confidentiality protections, in my experience, mediation can be an invaluable and effective process, allowing for a much greater possibility of healing and even redemption, compared to other common forms of dispute resolution. There are other solutions that can effectively address the valid concerns that the Commission has about potential abuse during the mediation process without compromising mediation confidentiality. Please reconsider your decision.

Sincerely,



Jenny Y. Kim

**EMAIL FROM JOANNE KNIGHT (8/10/15)**

**Re: Study K-402**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

Joanne Knight  
Sunnyvale Mediator

## **EMAIL FROM GUY KORNBLUM (8/10/15)**

### **Re: Confidentiality in Mediation**

I understand the California Law Revision Commission has proposed legislation to overrule the broad confidentiality protections currently in place as a result of statutory and case law (Cassel). As a nearly 60 year practitioner in the civil litigation area, and an author of *Negotiating and Settling Tort Cases: Reaching the Settlement* (Thomson West/AAJ, rev. 2015), I am well familiar with the mediation process and the need to have the broad protections in place.

The current rules and laws are in place for several reasons, including encouraging full disclosure in mediation, as well as bringing closure to a matter. To allow the process to be opened up after a case is resolved, is very much like what occurred when Royal Globe encourage the “settle and sue” syndrome in insurance bad faith cases.

Clients who have “settlers remorse” will be encouraged to bring second suits against lawyers, mediators, and adverse parties, alleging all sorts of claims trying to unwind the agreed upon settlement. That just cannot happen. Talk about opening the floodgates of litigation. This would make the post Royal Globe era look like moot court.

The basic principle of a “deal is a deal” cannot be placed by a system that allows second guessing.

While there may be injustices done in the mediation process, the result of wiping out the rules regarding confidentiality on the mere allegation of misconduct does not justify changing the status quo. Please!

Yours,

Guy O. Kornblum

**EMAIL FROM R. KAMELA LAIRD (8/11/15)**

**Re: Do not remove mediation protections**

Dear Sir/Madame,

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

Thank you.

Best Regards,

**R. Kamela Laird, Esq.**  
Estate Planning Transformed

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LinkedIn: [RKamelaLairdEsq](#)  
Twitter: [@IntegrateLegacy](#)

**EMAIL FROM THOMAS LATHAM (8/14/15)**

**Re: Study K-402**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct.

I agree with Ron Kelly's thoughts on this topic. As he notes, for thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

My focus is probate and trust disputes. It has become standard practice for these disputes to be resolved through mediation. The factor of confidentiality allows participants to be more relaxed and less guarded at mediation, which promotes meaningful negotiation styles. That is what I observe as a mediator and as a lawyer for litigating parties.

Thomas W. Latham  
Evans, Latham & Campisi  
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415 421-0464(f)  
[tlatham@elc-law.com](mailto:tlatham@elc-law.com)

**EMAIL FROM PAULA LAWHON (8/9/15)**

**Re: Study K-402**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

Thank you.

Sincerely,

**Paula M. Lawhon\***

Lawhon Law & Mediation, P.C.

\*Certified Specialist, Family Law, State Bar of California Board of Legal Specialization

**Appointments in San Francisco - San Rafael - Oakland**

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Website [www.lawhonlaw.com](http://www.lawhonlaw.com)

Visit our Mediation Blog: [www.sfmediation.com](http://www.sfmediation.com)

**EMAIL FROM MICHAEL LEB (8/31/15)**

**Re: Study K-402**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

Ms. Gaal - I have practiced law in California since 1985 and have mediated cases since approximately 2008. The Commission's August 7th decision to draft recommended legislation removing current confidentiality protections when a mediation participant alleges lawyer misconduct is a recipe for disaster. As your own Commission recognized in 1996 - "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them." For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the perceived problem without removing our confidentiality protections. I request you pursue these instead.. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

Sincerely,

*Michael H. Leb*

Michael H. Leb (SBN 123042)  
LEB Dispute Resolutions

Pasadena, California 91101

E: [Michael@lebdr.com](mailto:Michael@lebdr.com)  
[Lebdisputeresolutions.com](http://Lebdisputeresolutions.com)

**EMAIL FROM GREGORY LEVENTIS (8/10/15)**

**Re: Mediation Confidentiality**

To Whom It May Concern:

I have been a mediator for nearly ten years. In that time, I have recognized how important the confidentiality agreement is for disputants.

Please reconsider the decision to weaken mediation in this way.

Thank you,  
Greg Leventis

--

Gregory P. Leventis  
m: 415.420.0227  
e: [greg.leventis@gmail.com](mailto:greg.leventis@gmail.com)

**EMAIL FROM GREGORY LEVENTIS (8/10/15)**

**Re: Study K-402**

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

Thank you,  
Greg Leventis

--

Gregory P. Leventis  
m: 415.420.0227  
e: [greg.leventis@gmail.com](mailto:greg.leventis@gmail.com)

## EMAIL FROM JOHN LEVY (8/9/15)

### Re: Study K-402

As a practicing mediator in my community, I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

--John

-----

John Levy, Ph.D.

**Consultant, teacher, expert -- computers, software, storage**

415 663-1818

<http://johnlevyexpert.com>

**EMAIL FROM JIM LINGL (8/11/15)**

**Re: Study K-402**

Dear Ms. Gaal.

I am a long time attorney, mediator and Alternative Dispute Resolution educator. I have a JD from the University of Wisconsin and an MA in Conflict Resolution from CSU Dominguez Hills. I have conducted more than 700 mediations and have participated in some 300 others as an advocate for a party. I serve on the Board of Directors of a community mediation center and the Board of Directors of the National Association for Community Mediation.

I feel it imperative that the CLRC note my very strong objection to proceeding with any proposal that would reflect the vote taken at the Commission's August 7th meeting. You, and they, must understand that confidentiality is at the very core of mediation's success.

Mediators are, by their very nature, a collaborative bunch who avoid creating conflict whenever possible. But any Commission, or Legislative, effort to destroy the essence of mediation confidentiality will be met with fierce resistance in order to save it as essential part of the mediation process.

Thank you in advance for your attention to this communication.

Regards,

Jim Lingl  
Lingl ADRS  
3075 East Thousand Oaks Boulevard  
Thousand Oaks, California 91362  
Ofc: 805-230-3132, Cell: 805-231-7765  
<http://www.californianeutrals.org/profile.php?id=572082625>

## EMAIL FROM KAREN LIPNEY (8/11/15)

### Re: Study K-402 - Confidentiality

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as non-parties, should be able to speak frankly, without fear of having their words turned against them."

Karen H. Lipney - (415) 347-7598

[Advocacy with Integrity](#)

*bridging gaps*

## EMAIL FROM BARBARA LIPSON (8/11/15)

### Re: Study K-402

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

I have been a mediator for 10 years and have taught mediation and overseen our agency's mediation program for 5. I am greatly alarmed at this proposition as I think it will completely undermine our much needed service.

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

Barbara Lipson  
Senior Programs Manager

---

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[www.seedscrc.org](http://www.seedscrc.org) | [Find us on Facebook](#) | [Find us on Twitter](#)

## EMAIL FROM AARON LODGE (8/9/15)

### Re: Mediation protection

Hello,

My name is Aaron Lodge, and of the many emails you may receive, mine is one of the few from someone who truly knows mediation AND law. I can confidently say that because I taught mediation conferences beginning in the 1980s, went to law school exclusively for the purpose of becoming a professional mediator, and have since published an often cited article on mediation confidentiality. (See "Legislation Protecting Confidentiality in Mediation: Armor of Steel or Eggshells?")

I now am an attorney and about 70% of my practice involves mediation. The other 30% is litigation. I have personally found the mediation protections to be highly invaluable to encourage parties to speak the truth, to make offers they would never make in the litigation model, and feel totally safe in mediation style settings.

Please do not pass any law that would undermine the current protections of mediations in California.

Aaron

Aaron J. Lodge, J.D., LL.M.  
Attorney at Law and Professional Mediator

The Law Offices of Aaron J. Lodge  
1414 Soquel Avenue, Suite 222  
Santa Cruz, CA 95062

PHONE:(831) 426-3030  
FAX: (831) 350-6030  
EMAIL:[alodge@teachjustice.com](mailto:alodge@teachjustice.com)  
WEBSITE:[www.hellojustice.com](http://www.hellojustice.com)

**EMAIL FROM MICHAL LONGFELDER (8/10/15)**

**Re: Please reverse decision to remove protections from mediations**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

Re Study K-402

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

Michal Longfelder, Esq.  
Principal  
Employment Matters  
**[WWW.EMPLOYMENTMATTERS-ML.COM](http://WWW.EMPLOYMENTMATTERS-ML.COM)**  
[michal@employmentmatters-ml.com](mailto:michal@employmentmatters-ml.com)  
415-297-3285

## EMAIL FROM TIMOTHY D. MARTIN (8/11/15)

### Re: Proposed Revisions to Mediation Rules

8-11-12

Hello Ms. Gaal - -

I write to oppose the Commission's decision to draft legislation removing confidentiality protections in the situation where one participant alleges lawyer misconduct during mediation.

I have been mediating family law cases since the late 1980's; in addition to family law, I've been mediating probate cases since the early 2000's. I routinely point out to those considering participating in mediation that one of the prime hallmarks of mediation is that the process is **confidential**. I inform them that confidentiality is what opens the door to frank and open discussions. As stated in the Commission's own 1996 statement recommending our current statutory protections of confidentiality: "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them." Confidentiality is the key to persuading each participant to put all of his or her cards on the table and turn them face up. It is what distinguishes the mediation process from settlement discussions aimed at resolving a litigated matter. In mediation, where everyone has committed to the precept of confidentiality, all viewpoints and arguments and factual views can be aired fully without fear that statements will later be turned against the declarant. Confidentiality is what permits this open and frank discussion. It is what distinguishes mediation from its adversarial cousin, litigation.

The proposed rule change not only takes away confidentiality, it removes that protection only in the case where one party to the mediation alleges misconduct by a lawyer involved in the mediation. Settlor's (Buyer's) remorse is a common reaction to settling a case. All skilled mediators point this out to both/all participants before anyone commits to a settlement in writing. We caution those who are settling a matter that there is no going back, no mulligan. The proposed rule change, however, would create that "do over" opportunity, but only if someone accuses a lawyer of misconduct. The accusation need not be true, complete or accurate; a false accusation might be seen by the accuser as a "bargaining chip" encouraging everyone to return to the table. The problem is that this chip comes at the expense of the lawyer who is accused, perhaps falsely, of misconduct. And there is no clear definition of misconduct; it's in the eye of the accuser.

There is a very workable solution to any perceived problem of misbehavior. The other key hallmark of mediation is that it is **voluntary**. If an attendee feels, sees, or believes that someone — including the mediator — is misbehaving, then the solution is for that person to withdraw from that mediation. Given that a person can walk away from

mediation at any time, the solution to a perception of misconduct should not be to accuse someone else, perhaps falsely, of misbehaving. The solution should be to withdraw.

I oppose the contemplated rule change, and I will work with my professional mediator groups to oppose any and all legislation that in any way scales back the confidentiality of mediation.

Thank you for considering my viewpoint.

TDM

---

MARTIN FAMILY LAW FIRM

TIMOTHY D. MARTIN\*\*

Telephone:           The Borel Estate Building  
(650) 340-1166       1700 So. El Camino Real  
Facsimile:                               Suite 502  
(650) 638-9460       San Mateo, CA 94402  
Visit our website: [www.martinfamilylawfirm.com](http://www.martinfamilylawfirm.com)

\*\*CERTIFIED SPECIALIST IN FAMILY LAW, STATE BAR  
OF CALIFORNIA, BOARD OF LEGAL SPECIALIZATION

**EMAIL FROM CHARLES T. “TED” MATHEWS (8/10/15)**

**Re: Study K-402**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

Re Study K-402

I am strongly opposed to the Commission’s August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. This completely defeats the effectiveness of a method that routinely disposes of thousands of cases each year saving well in excess of \$100,000,000.00 in court resources. Moreover, this legislation is totally unnecessary. Current laws allow displeased litigants to sue their attorneys for claimed misconduct. The only thing shielded by the current law is what takes place in a mediation(or arbitration) where there is usually no transcribed or recorded record of what is said – for very sound public policy reasons. IF it were allowed that persons could dream up claims to sue their lawyers in mediation on the strength of their recollection, imagination or worse evil motives, no thinking lawyer would ever go into a mediation. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I’m a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission’s own 1996 statement recommending our current statutory protections be enacted – “All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them.”

Charles T. “Ted” Mathews  
Mathews Law Firm  
8522 National Blvd, Suite 107  
Culver City, California 90232

**EMAIL FROM JUDY MCCANN (8/9/15)**

**Re: Study K-402**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

Re Study K-402

As a plaintiff's attorney practicing employment law I use mediation in my cases. It is very important to have confidentiality in this process. It is hard enough to settle a lawsuit. We need the promise of confidentiality to speak frankly and the mediators need to be true neutrals. Your proposal makes no sense to me as it will allow for the introduction of an adversarial aspect to the mediation that should not be there.

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

Please consider my views,

Judy McCann

Law Office of Judy McCann  
719 Orchard Street  
Santa Rosa, CA 95404  
707-481-7938

## **EMAIL FROM DOUGLAS MCCLURE (8/9/15)**

### **Re: Mediation Confidentiality**

I have been a full time provider of ADR services (AAA and then private 19 years), primarily acting as mediator. My prior legal experience was as a deputy District Attorney (Co.Co.Cty 4 years) and as a civil litigator primarily in insurance defense (McNamara, Houston, Dodge McClure & Ney 22 years). I have presided over most types of cases including personal injury, construction defect, real estate, employment and business disputes. These have been small to multi-million value, calm to highly emotional, and several hour to multi-day. It is my considered opinion that diminishing mediation confidentiality will result in fewer cases proceeding into mediation and a lower rate of resolutions in those convened. Participants, attorneys, mediators, and clients/principals will be reluctant if not unwilling to be candid and no one will want to risk being involved in litigation pertaining to a concluded mediation. The essence of mediation is communication, either openly discussed with all participants, or selectively screened through a mediator, and any limitation in the process confidentiality will severely restrict the viability of mediations.

Douglas C. McClure Cal.Bar. 45556



McGAUGHEY & SPIRITO

TERENCE C. McGAUGHEY  
JOSEPH P. SPIRITO JR.  
ERIN McGAUGHEY\*

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\*CERTIFIED FAMILY LAW SPECIALIST  
BY THE STATE BAR OF CALIFORNIA  
BOARD OF LEGAL SPECIALIZATION

August 12, 2015

**Via Email & U.S. Mail**

[bgaal@clrc.ca.gov](mailto:bgaal@clrc.ca.gov)

Barbara Gaal, Chief Deputy Counsel  
California Law Revision Commission  
4000 Middlefield Rd Suite D2  
Palo Alto, CA 94303

Re: Study K-402

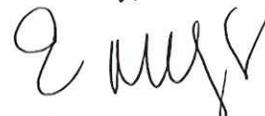
Dear Ms. Gaal:

I am currently Present Elect of the South Bay Bar Association. I have been practicing Family Law for over 12 years and am a Certified Family Law Specialist

I oppose the Commission's August 7<sup>th</sup>, 2015 decision to draft recommended legislation on removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation, if it goes to the legislature or urge organizations of which I am a member to oppose it.

I ask that you respect your Commission's 1996 statement recommending our current statutory protections be enacted that "All persons attending a mediation, parties as well as non-parties, should be able to speak frankly, without fear of having their words turned against them." The gravamen of our ability to successfully mediate is the confidentiality protections we currently enjoy. Please reconsider your August 7<sup>th</sup> decision.

Sincerely,



Erin McGaughey

EM/rr  
1400/B GAAL LTR 2

**EMAIL FROM YASMINE MEHMET (8/9/15)**

**Re: Proposed Legislation**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

Re Study K-402

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant merely alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

Our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need and a very careful review of the alternatives that don't sacrifice confidentiality and the successes that it engenders.

"All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them." 1996 Commission quote. What was true then remains true now.

Regards,

Yasmine S Mehmet

**EMAIL FROM LAURIE MIKKELSEN (8/13/15)**

**Re: Study K-402**

Dear Ms. Gaal,

I was extremely disheartened to learn of the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protection when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to also oppose it.

As a mediator in private practice, and a volunteer mediator for court and community mediation programs, I believe that removing the sanctity of confidentiality in mediations will greatly harm the mediation process. In almost every mediation there is information provided to me that the party would never disclose if they were not confident that the information would remain confidential. Often, this information has been crucial to resolving the dispute. By reducing the certainty of confidentiality, the proposed rule will diminish the ability of mediation participants to create their own satisfactory resolutions, and force more to resort to seeking relief in our already overburdened court.

I strongly urge you not to turn your back on the Commission's own 1996 statement, recommending our current statutory protections, that all persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them.

Sincerely,

Laurie Mikkelsen

**EMAIL FROM NITA MILLSTEIN (8/14/15)**

**Re: Study K-402**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

Thank you for your consideration,

Nita Millstein  
Community Mediator

**EMAIL FROM AARON MINNIS (8/9/15)**

**Re: Mediation Confidentiality**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

Re Study K-402

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

Aaron Minnis  
Minnis & Smallets LLP

**EMAIL FROM JOHN MORRISON (8/10/15)**

**Re: Mediation Confidentiality – Study K-402**

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

Allegations of mediator misconduct are very rare in contrast to the great number of cases successfully handled by mediators.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

Thanks for your consideration,  
John Morrison  
Divorce and Family Mediator

**EMAIL FROM ROGER MOSS (/8/10/15)**

**Re: Mediation Confidentiality**

I urge you to reverse the Commission's draft recommendation of August 7, 2015, which would fundamentally jeopardize mediation practice in California.

Roger A. Moss, Esq.  
Mediator/Counselor  
707.392.8655  
[www.rogeramoss.com](http://www.rogeramoss.com)

*servicing the real estate, family business, & recovery communities*

**EMAIL FROM ROGER MOSS (8/10/15)**

**Re: Study K-402**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

Roger A. Moss, Esq.  
Mediator | Counselor  
Serving Northern California  
707.392.8655  
[www.napamediationcenter.com](http://www.napamediationcenter.com)

**EMAIL FROM RONALD MULLIN (9/2/15)**

**Re: Study K-402**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it. I feel very strongly that removal of the confidentiality provisions related to mediation will simply make disputants reluctant to say anything of real truth and will destroy an extremely valuable process.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted: "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

Warm regards,



**EMAIL FROM LISA R. MURRAY (8/10/15)**

**Re: Objection to removing confidentiality protections from Mediation**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

Re Study K-402

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

Thank you,

Lisa R. Murray, Esq.  
Chase, Berenstein and Murray  
Counselors at Law  
1220 Howard Avenue, Ste 250  
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650/548-1171  
650/548-0565 (fax)  
lisa@cbmfl.com  
www.lisarmurray.com  
www.chaseberensteinandmurray.com



**Please note that I have a new email address: [lisa@cbmfl.com](mailto:lisa@cbmfl.com). Please update your records and files.**

**EMAIL FROM JUDY NAKADEGAWA (8/12/15)**

**Re: Confidentiality**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

Re Study K-402

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

Sincerely,

Judy Nakadegawa  
Seeds volunteer

**EMAIL FROM MARYAM NAZEMI (8/20/15)**

**Re: Study K-402**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

Sincerely,

Maryam Nazemi

**EMAIL FROM LESLEE NEWMAN (8/10/15)**

**Re: Stop Destruction of Mediation Confidentiality**

Dear Commission Members:

I have been mediating family law cases in my practice for 31 years, and have never had a request to breach confidentiality. Couples in family law come to mediation for many reasons, but importantly not to have to air “their dirty laundry” in public. In my experience, mediation is the most prevalent player in amicable divorce and family transitions. The destruction of confidentiality threatens the existence of this protocol if either spouse knows that they can attempt to undo their court orders or agreements by threatening a problem with the mediation process. It also potentially creates a balance of power between the spouses.

The family law courtrooms are already too crowded and desperately looking for relief. Destroying confidentiality threatens to ruin this highly effective and essentially fair process.

Please don't interfere with this opportunity for so many California families to make their own agreements, and transition their families peacefully. The chance that you are creating for either spouse to easily threaten the mediation will only continue the fight and create more havoc for the children of divorcing parents who will suffer the most!

**PLEASE RECONSIDER!!! TOO MANY CHILDREN AND FAMILIES IN CALIFORNIA ARE AT STAKE HERE!**

Leslee J. Newman  
[divorcepeacemaker.com](http://divorcepeacemaker.com)  
1016 W. Town & Country Road  
Orange, CA 92868  
Phone (714) 667-1515  
Fax (714) 667-1551

**EMAIL FROM TRISH NUGENT (8/9/15)**

**Re: Keep Mediation confidentiality**

I have been a divorce mediation attorney since 1983. I have been a Certified Family Law Specialist since 1985. I have no question that telling clients that their mediation negotiations may not in fact be confidential will have a chilling effect. They come to see me at one of the most stressful times in their lives and they need to have trust in the mediation process. Why would they be trusting and willing to talk openly of their goals and needs if their words may come back to haunt them in a legal proceeding. This will further erode their trust in the legal system.

Sincerely,

Trish Nugent SBN 77604

**EMAIL FROM SCOTT O'BRIEN (8/13/15)**

**Re: Mediation Confidentiality and Opposition to LRC recommendations of August 7, 2015**

Dear Ms. Gaal:

I agree with Ron Kelly's analysis and strongly oppose the LRC's recent recommendations to limit confidentiality in mediation in cases of alleged attorney misconduct. I have been an attorney for 39 years and a mediator for 23 of those years. As the ADR Program Coordinator for Sonoma County Superior Court from January 2008 through June 2014 (and helped to implement and administer its civil mediation program), I become keenly attuned to how important the California Supreme Court's interpretation of strong confidentiality in mediation matters to counsel and to parties when considering whether and how to use mediation to resolve case.

Mediation is a key tool for resolving disputes and for avoiding court congestion, which already is a growing issue with ADR program budget cutbacks.

Adopting LRC recommendations made on August 7, 2015 will open certain mediation proceedings to discovery and will adversely affect access to justice to further limit this important affordable tool for efficiently resolving disputes pre-trial and even pre-litigation. Attorneys will not want to risk using mediation with candor, which is key to its effectiveness, if the recommendations are adopted.

Alternative protections can be made available to protect against alleged attorney misconduct by requiring mandatory disclosures regarding confidentiality in mediation, as well as by requiring cooling off periods before agreements reached become final and enforceable.

Please urge the LRC to reconsider these recommendations, at the very least before further notice can be provided to counsel and to the public and additional input can be gathered.

Thank you,

Scott O'Brien  
Attorney & Mediator  
2453 Burnside Road  
Sebastopol, CA 95472

(707) 829-0522

**EMAIL FROM PHYLLIS OLIN (8/10/15)**

**Re: Mediation Confidentiality**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

Re Study K-402

It has come to my attention that your commission has recommended removing current confidentiality protections when a mediation participant alleges lawyer misconduct. I strongly oppose this legislation and will urge other mediators to do so as well.

Mediation is a choice as an alternative to seeking the intervention of the courts in disputes. Confidentiality is important to encourage candor. If this protection is removed, people will no longer feel safe, discouraging this form of settling disputes. Under this law, all parties can be deposed and all documents subpoenaed, thus removing the protections of the mediation process if a lawyer is sued or accused. The discouragement of mediation as a choice will only add to the burden of an already swamped court system.

Please protect our current statutory protections and change your recommendation.

Phyllis Olin  
Attorney at Law and mediator  
August 10, 2015

**EMAIL FROM HERMAN PAPA (8/10/15)**

**Re: Study K-402**

Ms. Barbara Gaal, Chief Deputy Counsel California Law Revision Commission

Dear Ms. Gaal:

I wish to register my opposition to the Commission's August 7<sup>th</sup> decision to draft legislation removing the current mediation confidentiality protections in cases alleging attorney misconduct. I will oppose any such legislation proposed and urge my fellow mediators to do the same.

Confidentiality in the mediation is the cornerstone upon which the process is built. It serves the Court and all participants extremely well. Confidence in the process is built upon the element of confidentiality. Removing that privilege would undermine the very nature and benefits that participants seek in open, frank and very personal communications.

The Commission has always supported the statutory protections of confidentiality with the foresight to uphold the benefits of open, frank and forthright communications for the parties as well as the non-parties without fear of subsequent retribution against them.

I urge you not to break down a system that has proven itself as so beneficial to litigants and the Courts for so long.

Herman Papa

**Herman D. Papa**  
**Attorney at Law/Mediator/Arbitrator**  
**354 Pine Street, 3rd Floor**  
**San Francisco, CA 94104**  
**Phone: 415.399.9922**  
**eFax: 415.723.7494**

Please note that my new email address is:  
*hpapa@papamediation.net*



**Results Beyond Dispute™**

**EMAIL FROM JUDY PIPKIN (8/10/15)**

**Re: oppose reducing confidentiality for mediation**

I am writing to oppose the proposed change in the law which would eliminate confidentiality in mediations whenever a mediation party alleges misconduct by their lawyer advocate or lawyer mediator. Removing any of the confidentiality from mediation will make settlements much more difficult to obtain. Neither side will be willing to provide evidence which can be used against them in court. With complete confidentiality the parties can work together to successfully resolve their disputes. Almost all cases in Santa Clara County go to mediation before trial. Mediation drastically reduces the number of cases that go to trial. If any part of the confidentiality for mediation is removed, then this will no longer be possible. The legislature has dramatically reduced funding to the courts over the last few years. The courts cannot take on the burden of a massive increase in the number of trials without increasing the time a case gets to trial by many years.

Judy Pipkin

**EMAIL FROM NANCY POWELL (8/9/15)**

**Re: do not pursue these draft recommendations!**

I am an attorney with a strong belief in the value of mediation.

I strongly urge you to not pursue the draft recommendations. Mediators assist the already overburdened courts and society at large.

Our current predictable protections will disappear with a mere allegation of misconduct. Few will risk being candid knowing every mediation statement and document can be discovered and become admissible evidence.

Under this law, anyone suing a lawyer and also the accused lawyer can depose all mediation participants and subpoena their mediation documents searching for relevant evidence.

Our budget-starved courts rely on confidential mediation to resolve a large part of their pending civil cases. The added court workload of unresolved cases and the new load of follow-on mediation lawsuits and discovery fights will further clog many struggling civil divisions.

## EMAIL FROM NANCY POWERS (8/18/15)

### Re: Study K-402

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

I am a member of the Board of the Contra Costa County Bar Association ADR Section. I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant *alleges* lawyer misconduct or lawyer mediator misconduct. I will oppose this legislation if it goes to the Legislature and I will urge all organizations of which I'm a member to oppose it.

My law practice spans 36 years, mainly in the trust and estate arena serving the full range of families up to the ultra-wealthy, as, *inter alia*, an equity partner in a large Pacific Rim law firm and as owner of my own law firm. For the last thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Most of my mediation experience has been with self-represented disputants who may or may not have filed an action in court. Confidentiality is an important aspect for these families who are trying to resolve disputes out of court and under the cloak of confidentiality. Without the assurance of confidential communications, it is doubtful that many of these families would have been able to resolve their disputes, keep their family relationships intact, and preserve the family assets needed for the care of aging parents. In my experience, family members need just this sort of opportunity to air their grievances, be heard, and work together to resolve disputes. Without assurance that what they say cannot come back to bite them, it is doubtful that the successful resolution of such disputes as I have witnessed could have occurred. Removing this right is a radical change which should require solid evidence establishing a need.

Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead. I find it discriminatory to say the least, that an attorney who is wearing their mediator hat is subject to the proposal, while a non-attorney mediator is not subject to the proposal.

Accordingly, I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a

mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them.”

Nancy L. Powers

*Trust Mediator & Trust/Estate Attorney*

**POWERS LAW**

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*[www.PowersLawAndMediation.com](http://www.PowersLawAndMediation.com)*

**Martindale-Hubbell**  
**AV Peer Reviewed Preeminent Attorney**

**EMAIL FROM ELIZABETH PROUTY (8/19/15)**

**Re: Mediation Confidentiality**

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

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That's the boiler plate, but the basic point is that mediation is such a valuable tool precisely because of its confidentiality. If you remove that, then mediation loses its teeth and effectiveness, becoming just another intimidating legal procedure that will dissuade those who need it most from using it. Please rethink this decision.

Best,

Elizabeth Prouty

**EMAIL FROM ISRAEL RAMIREZ (8/12/15)**

**Re: Don't destroy mediation Confidentiality**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

Re Study K-402

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

Sincerely,

Israel Ramirez, Esq.

**EMAIL FROM TOM REESE (8/9/15)**

**Re: Mediation Confidentiality**

I oppose removal of confidentiality so that a party who wakes up Monday morning and wishes s/he had not made the deal can throw it all out withy an unsupported assertion. I mediate estate distribution disputes that, as in family law, often have relatives fighting with lots of emotion. Keeping the lid on in these is hard enough now.

Tom Reese Palo Alto

**EMAIL FROM MERLENE DAGUERRE REZK (8/10/15)**

**Re: Reverse K-402**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

--

*Merlene Daguerre. R.-*

## EMAIL FROM CYNTHIA REMMERS (8/11/15)

**Re: Law Revision Commission's Aug. 7 decision re Evidence Code: Please reconsider**

To Whom It May Concern:

As a mediator for over 17 years (and user of mediation services for even longer), I strongly urge the Law Revision Commission to reconsider its August 7th decision to recommend removal of the confidentiality protections memorialized in the Evidence Code. I have been following the debate, but had no idea you were going to make a decision before October.

In my experience, the fairest and most successful mediations start with the parties considering accurate data in their reasoned risk assessments. Mediators encourage the frequently wary parties to share their data with the other side, data that includes their fears, concerns, desires, and positive/ negative facts. The *main*, and arguably only, reason the parties feel confident enough to offer real data in mediation (*i.e.* opening their hearts, minds and document files) is the promise of confidentiality the Evidence Code currently provides. To be blunt, it is inconceivable that parties will share critical but confidential data if mediators must start their sessions with the following statement, "Everything you say or show in this mediation may be used against you in a court of law." I find that specter inconceivable *and* incomprehensible *if* we are looking for well-reasoned resolutions where the parties leave mediations feeling fully heard and confident in their decision-making.

I understand the need to guard against undue pressure and poor legal advice in mediations, and the urge to consider change. I believe, as you do, that parties should be protected, and that we should consider some change toward that end. But chipping away at, or entirely chucking the Evidence Code protections, would only be throwing the baby out with the bath water.

Instead of creating a landslide by beginning the descent down this radical and slippery slope, I urge you to consider a more elegant solution: simply amend the Evidence Code to provide a three to seven day waiting period before any settlement can become effective. In this way, any party that feels concerned about anything that occurred in the mediation will have time to reflect, seek a second legal opinion and/or renege before the deal is final. That is precisely what Congress included in the Older Workers Benefit Protection Act to guard against a pressured waiver of rights, and it works well. The same could be done for mediations of all claims, and still protect the all-important promise of confidential communications.

I would be happy to elaborate, if it would be helpful.

Yours respectfully,

Cynthia L. Remmers  
Mediator . Arbitrator . Fact-finder  
***Remmers Global***  
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One Kaiser Plaza, Suite 350  
Oakland, CA 94612  
510 379-5298 (office) 510 407-7576 (cell)  
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**EMAIL FROM ELIZABETH RILES (8/9/15)**

**Re: Study K-402**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

A change of this nature will definitely change the practice and the willingness of practitioners, like myself, and my clients to participate in mediation to resolve their matters, causing further backlog of the Courts.

Sincerely,

Elizabeth L. Riles, Esq.  
Bohbot & Riles, PC  
1814 Franklin Street, Suite 800  
Oakland, CA 94612  
(510) 273-3111 ext. 302  
(510) 273-8911 Fax

**EMAIL FROM DAVID RITCHIE (8/10/15)**

**Re: Please do not remove confidentiality from mediation**

I am writing to oppose proposed change in the law eliminating confidentiality in mediations when a mediation party alleges misconduct by their lawyer advocate or lawyer mediator. Removing any confidentiality from mediation will make settlements much more difficult. Neither side will be willing to provide evidence which can be used against them in court. Complete confidentiality allows and encourage the parties to work together to successfully resolve disputes. Almost all cases in Santa Clara County go to mediation before trial. Mediation drastically reduces the number of cases which go to trial. If any part of the confidentiality for mediation is removed, then this will no longer be possible. The legislature has dramatically reduced funding to the courts over the last few years. The courts cannot take on the burden of a massive increase in the number of trials without increasing the time a case gets to trial by many years.

**EMAIL FROM DIANE RITCHIE (9/4/15)**

**Re: Please do not remove confidentiality from mediation - Final**

From my work as a mediator and in the court, I know that removing any of the confidentiality from mediation will make settlements much more difficult to obtain. Neither side wants to provide evidence which can be used against them in court. With complete confidentiality the parties can work together to successfully resolve their disputes. Confidential mediation provides parties the ability to offer benefits to each other that neither would be able to obtain at trial. Almost all cases in Santa Clara County go to mediation before trial. Mediation drastically reduces the number of cases that go to trial. If part of the part of the confidentiality for mediation is removed, this will not be possible. The legislature has dramatically reduced funding to the courts over the last few years. The courts cannot take on the burden of a massive increase in the number of trials without increasing the time a case gets to trial by many years.

Hon. Diane Ritchie  
Retired Judge

## **EMAIL FROM MATTIE ROBERTSON (8/13/15)**

### **Re: Mediation Confidentiality Should be Protected**

Ms. Barbara Gaal,

As the Court Mediation Program Manager for SEEDS Community Resolution Center, I oppose AB1123, and now, the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protection when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose.

I have been mediating in the local superior courts, and the community for 6 years, and currently mediate cases almost daily in my work at the Alameda County Superior Courts. The Courts are a strong supporter of SEEDS mediation services, and we work together to create options for litigants when resolving their legal disputes through the Courts.

I choose the world of Alternative Dispute Resolution over Law because of the transformative mediation outcomes I witness daily. One of the key factors in ensuring mediation parties dialogue in good faith is the confidentiality protection. This principle is the foundation of the safe space that mediation seeks to create, and that safety allows parties to be open to creative options that will serve their underlying interests. Without confidentiality protections, mediators will lose one of the strongest tools in rebuilding trust in a dispute between parties, we will lose what is at the core of agreements that truly resolve disputes in a way that can meet everyone's needs.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections - "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

Best,  
Mattie Robertson  
Court Mediation Program Manager

SEEDS Community Resolution Center  
2530 San Pablo Avenue, Suite A  
Berkeley, CA 94702  
Office: (510) 548-2377  
Fax: (510) 548-4051

Website: [www.seedsrc.org](http://www.seedsrc.org) | [Find us on Facebook](#) | [Find us on Twitter](#)  
MEDIATION\*FACILITATION\*TRAINING\*RESTORATIVE JUSTICE  
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Cultivating Common Ground in Alameda County for Over 30 Years!

## **EMAIL FROM GABE ROSE (8/9/15)**

### **Re: In opposition to eliminating confidentiality in mediation**

To Whom it May Concern:

I strongly oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it. I believe our current approach is the right one, and it would be a mistake to deviate from it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

Best,

Gabe

--

Gabe Rose  
[@gaberose](mailto:gaberose18@gmail.com)  
[gaberose18@gmail.com](mailto:gaberose18@gmail.com)

**EMAIL FROM LORRAINE ROSE-LERMAN (8/9/15)**

**Re: Revision to mediation law**

Please do not revise the current regulations that keep mediations confidential.

Mediation is an incredibly powerful, non-combative tool to help diffuse and equitably deal with potentially volatile situations. It is also a much more cost effective way for parties to resolve conflict.

The privacy of the process should be ensured.

I have worked as a volunteer mediator and seen how it can help in the legal process, by servicing on a panel that was mediating legal conduct, as well as in a small claims court where it was helping the court to run more smoothly and process claims more effectively.

Sincerely

Lorraine Rose-Lerman

## **EMAIL FROM LARRY ROSEN (8/13/15)**

### **Re: Study K-402**

Dear Ms. Barbara Gaal, Chief Deputy Counsel of the Law Review Commission and to the Law Review Commission,

I have been a full-time Mediator since 2003. I have mediated well over 500 disputes with hundreds of participants, many of whom are highly emotional in the throes of divorce. More than 95% of my cases reach a settlement, and very few return to the courts.

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges misconduct.

There is a magic involved in how mediated disputes resolve - and the resolutions can only occur when the participants believe their discussions are confidential and positions will be handled with respect and thoughtfulness, with fairness and with ultimate finality. It is extremely important to the process that participants understand that when they make suggestions and proposals that their ideas will not come back to bite them should they settle for a different outcome. If the confidentiality of the mediation process is destroyed, mediation will be destroyed as an effective dispute resolution tool. Anyone with bitter feelings in a divorce (this applies to many participants) can undo the settlement by merely claiming a bias and an unjust result. That would open up the door to discovery, depositions, and positioning the mediator to take a stance against one of her/his clients. It would undo all the protections the courts have seen fit to give mediation as a preferred dispute resolution tool. The person with the better financial resources could just use those resources to continue litigating in order to wear the other party down - no matter how truthful the charges of bias are. And, what they learned in the course of the mediation will just be turned and used against the other participant(s).

If the current recommendations against mediation confidentiality go forward and become law, it will destroy mediation as an effective dispute resolution tool. There are other methods, less drastic, to correct any ills to ensure no participant takes advantage of another, such as through mandatory truthful disclosure of assets and debts and income and expenses in family law. Case law already allows these documents to be disclosed and shared beyond the mediation process.

Please tread carefully and please do not advocate legislation that would throw out a process that works so well for almost all participants. Losing confidentiality protections will turn into the death knell for mediation.

I am asking you to reconsider the impact of your recent decision and recommendation. I sincerely hope you can find another way to protect participants without destroying confidentiality which is the pillar of mediation.

Thank you.

Larry Rosen

—  
[www.throughUnderstanding.com](http://www.throughUnderstanding.com) // 415.356.9834

**EMAIL FROM CAROLYN ROSENBLATT (8/9/15)**

**Re: Removing confidentiality from mediation**

To the Commission:

I am sorry to hear that the commission is considering and planning to remove the protection of confidentiality from all mediation proceedings. As an experienced mediator, I believe that this will be disastrous and will have an extreme chilling effect on any mediation. Parties now feel confident that they can be open and honest and that is what settles cases. Lawyer advocates need that protection to do their jobs as well. The imagined benefits will be heavily outweighed by the overwhelming burdens. Mediation stripped of confidentiality is not worth doing.

As a mediator, I am deeply concerned that your vote to destroy confidentiality of mediation will only lead to more litigation and more trials. If I were an advocate, which I spent many years doing, I would never go to mediation with any client who could not speak freely at a mediation for fear of being subpoenaed or having my statement subpoenaed later. Please don't vote to remove mediation. Our mediators will not be able to do their jobs under the circumstances you are in the process of creating.

--

Carolyn L. Rosenblatt, RN, Attorney

Mediator

AgingParents.com

930 Irwin St., Suite 215

San Rafael, CA 94901

(415) 459-0413

<http://agingparents.com/>

**EMAIL FROM BRENT ROSENBAUM (8/11/15)**

**Re: Mediation Confidentiality and Law Revision**

Dear Chief Deputy Counsel Gaal,

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

Thank you.

Brent J. Rosenbaum

Rosenbaum Mediation  
1746.F. South Victoria Avenue  
Suite 190  
Ventura, CA 93003

(805) 746-5870 - phone  
(805) 830-1701 – fax  
[www.rosenbaummediation.com](http://www.rosenbaummediation.com)

**EMAIL FROM DAVE ROSS (8/9/15)**

**Re: Study K-402**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

Dear Ms. Gaal,

A huge portion of California's legal disputes is settled in mediation. The willingness of parties to mediate disputes is largely dependent on the knowledge that the proceedings are kept confidential, with no chance that frank discussion of positions, beliefs, and settlement concessions will expose them to harm outside the mediation process. The legislation recommended by CLRC on Friday, August 7, 2015 will remove current protections whenever a mediation party alleges misconduct by their counsel or lawyer mediator.

Nancy Neal Yeend's knowledge of and insight into the mediation process is peerless. However, responding to the valid concern about protection of attorney misconduct within the confidential process needs a scalpel, not dynamite. Allowing an allegation of misconduct to strip confidentiality protection from all participants, counsel and mediators is a game-changer that may well deter meaningful participation.

If the Courts were well-funded, the burden added to them by parties choosing to litigate instead of mediate would only delay their disputes' resolution. In the current budget climate, where many civil cases are already delayed for years, the additional burden on the Courts will be untenable. K-402 could damage two systems in one blow - the one parties use to settle disputes outside court, and the already over-burdened Courts themselves.

Please reconsider this damaging change, which essentially reverses the 1996 Commission's enthusiastic endorsement of confidential mediation, when it wrote:

“All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them.”

**EMAIL FROM JEFFREY A. ROSS (8/10/15)**

**Re: Study K-402**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

As a former litigation attorney, and now full-time mediator, I strongly oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

Jeffrey A. Ross  
Employment Mediation  
1970 Broadway, Ste. 1045  
Oakland, CA 94612  
Tel: (510) 268-1999  
Fax: (510) 268-3627  
E-Mail: [jeff@jeffrossmediation.com](mailto:jeff@jeffrossmediation.com)

Surely some other means can be crafted to address the potential of attorney misconduct during confidential proceedings.

Regards,  
Dave Ross

Dave Ross  
Principal Consultant  
David Ross Associates LLC  
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900 Industrial Road, Suite E  
San Carlos, CA 94070  
650-593-2001 (office)  
650-458-0408 (direct)  
650-444-0255 (cell)

**EMAIL FROM SAMUEL RUDOLPH (7/24/15)**

**Re: Study K-402**

Dear Ms. Gaal:

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – “All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them.”

Sincerely,

Samuel Rudolph

Samuel Rudolph & Associates  
22762 Main Street  
Hayward, California 94541  
[510] 886-4876  
[www.samuelrudolphlaw.com](http://www.samuelrudolphlaw.com)

**EMAIL FROM CLAUDIA MAR RUIZ (8/12/15)**

**Re: Study K-402**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

Sincerely,

Claudia Mar Ruiz

**EMAIL FROM PETER SANDMANN (8/9/15)**

**Re: Mediation confidentiality**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel ([bgaal@clrc.ca.gov](mailto:bgaal@clrc.ca.gov))

Re Study K-402

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

Peter Sandmann

Peter B. Sandmann  
Tesler & Sandmann  
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555 California Street, Suite 4925  
San Francisco, CA 94104

**EMAIL FROM UNMANI SARASVATI (8/10/15)**

**Re: Reverse August 7<sup>th</sup> Decision**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

Re Study K-402

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

Regards, Unmani Sarasvati

---

Unmani Sarasvati, JD, LLM (tax)  
**Mediation Offices of California, PC**  
San Francisco/Oakland  
1-800-486-0220  
[www.mediationoffices.net](http://www.mediationoffices.net)

**EMAIL FROM VICKI SARGENT (8/10/15)**

**Re: Study K-402**

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

Thank you,

Vickie Sargent

## **EMAIL FROM KIM SAVAGE (8/10/15)**

### **Re: Study K-402 – California Law Review Commission**

Ms. Gaal - I oppose the California Law Review Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. My office represents many nonprofit organizations that view mediation as a viable option to resolving disputes through a process that is more cost effective and efficient than litigation. However, removing confidentiality protections dramatically reduces the value of mediation for those entities least able to access the judicial system. Removing this right is a very radical change which should require solid evidence establishing a need. It is my understanding that dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request the Commission pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

Kim Savage

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[www.kimsavagelaw.com](http://www.kimsavagelaw.com)

**EMAIL FROM JAN FRANKEL SCHAU (8/10/15)**

**Re: Law revision committee**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

Re Study K-402

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

Jan Frankel Schau | Neutral | ADR SERVICES, INC. | Daily Journal Top 50 Neutral | Super Lawyer Five Year Distinction | Distinguished Fellow, International Academy of Mediators

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[www.schaummediation.com](http://www.schaummediation.com)

Author, "View from the Middle of the Road: A Mediator's perspective on Life, Conflict and Human Interaction", AuthorHouse, 2013

SIX OFFICES STATEWIDE: Century City | Downtown Los Angeles | Orange County | San Diego | San Francisco | Silicon Valley

**EMAIL FROM MARVIN L. SCHWARTZ (8/10/15)**

**Re: Study K-402**

TO: CALIFORNIA LAW RECISION COMMISSION

I have been a mediator in California for over 30 years. I understand the importance of providing a protected environment wherein participants feel secure in broaching delicate subjects due to the confidentiality promised by the mediation process. Destroying the mediation confidentiality that California's legal system has carefully crafted will damage the viability of mediation in California. Pursuing this change in course will also do damage to the judicial system by adding cases to an already clogged system.

Please reconsider your decision to recommend subjecting confidential mediation sessions to discovery, and look for other ways to protect clients that won't undercut the essence of the mediation process.

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

Marvin L. Schwartz, JD  
Mediator and Trainer  
18 Ascot Lane  
Oakland, CA 94611  
510-530-1283  
<http://www.mediationteams.com>

**EMAIL FROM BERNADINE SCOLES (8/13/15)**

**Re: Study K-402**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

The soul of mediations is the lack of fear and sense of trust among all the parties involved. There have been times when the mediators were able to quell unpleasant scenes and reach satisfying resolutions instead of going to court. This is the heart of mediation - to have win-win outcomes and its protection is its confidentiality.

I strongly urge you to keep the confidentiality protections in place. Keep mediation a viable, trustworthy method of resolving conflict. I oppose the legislation of Study K-402.

Sincerely,

Bernadine Scoles, mediator for 22 years

**EMAIL FROM ELISABETH SEAMAN (8/10/15)**

**Re: Study K-402**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

Dear Commissioners,

As an active mediator for over thirty years, I oppose the Commission's August 7 decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

Thank you for considering this viewpoint, which is that of many of my colleagues and me.

Elisabeth Seaman  
Learn2Resolve.com  
650-852-0492

**EMAIL FROM JOANNE SFERRATI (8/9/15)**

**Re: Study K-402**

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

**EMAIL FROM PHILIP SHECTER (8/9/15)**

**Re: confidentiality in mediation**

Please do not destroy the protection for parties in mediation to retain confidentiality and privacy. While you are trying to do the right thing; what you are proposing to do will be just the opposite.

Sincerely,  
Phil Shecter

**EMAIL FROM MALCOLM SHER (8/9/15)**

**Re: Mediation Must Remain Confidential**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

Dear Members of the Commission:

Re Study K-402

I have learned of the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. As a full-time mediator, I oppose and will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. The issue has been debated for a long time and the positions on both sides of the issue are well-known and need not be reiterated here, yet again. Simply stated, the incidents of lawyer "misconduct" in mediation are so few and far between as to not warrant the proposed legislation and the mischief it will do to the meditative process as a whole. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

Malcolm Sher

**EMAIL FROM PHYLLIS SIMON (9/2/15)**

**Re: Study K-402**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

Ms. Barbara Gaal,

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For 30 years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted: "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

Best Regards,

Phyllis E. Simon  
Senior Partner

*Helping you take your business to the next level.*

[phyllis@nextlevellawgroup.com](mailto:phyllis@nextlevellawgroup.com)

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866.563.3365 (Fax)

Next Level Law Group, LLP  
4695 Chabot Dr, Suite 200  
Pleasanton, CA 94588

## **EMAIL FROM SHAWN SKILLIN (8/9/15)**

### **Re: Mediation Confidentiality**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

Re Study K-402

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it. With the current status of California Family courts, which is under staffed and underfunded, with long wait times for litigants, it would seem the state would be encouraging ADR choices. It has long been settled that mediation and settlement negotiations should be protected in order to invite resolution and end litigation. This should be the case even more strongly in Family Law when the futures of our children are at stake.

Many of my mediation clients participate in mediation because it is confidential. They don't want their finances made public, they don't want to air their dirty laundry in public. They appreciate, as do their attorneys, being able to discuss important issues in privacy and with openness and honesty. Whether it's a sticky financial issue, a mental health issue with a party or child, a substance abuse problem with a party or child, the opportunity to handle it privately and sensitively is their goal. They also appreciate being able to put all of their cards on the table without having to be worried that the hand they reveal could later be used against them should mediation be unsuccessful..

To open all participants to testimony regarding mediations, based on a mere allegation of misconduct will put a serious chill on the lawyer mediator and the lawyer advocate. Will non-lawyers then be the only "protected" mediators? Will attorneys continue to recommend their clients mediate?

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a

mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them.”

Shawn D. Skillin, Esq.  
Law and Mediation Offices of Shawn D. Skillin  
591 Camino De La Reina, Suite 802  
San Diego, CA 92108

Please send correspondence to:  
P.O. Box 22751  
San Diego, CA 92192-2751

Phone (619) 299-4880  
Fax (619) 923-4888  
<http://www.shawnskillinlaw.com/>

## **EMAIL FROM TERI SKLAR (8/9/15)**

### **Re: Mediation Confidentiality—It is essential for Effective Mediation**

Re Study K-402

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

I understand and support the need to protect clients from lawyer misconduct but I do not believe this is an effective way to solve the problem. As a mediator, I often help clients communicate well with their attorneys and help them make well-thought out decisions. I believe the candor offered through mediation confidentiality and the confidence that I will not be part of any possible litigation because I can not be questioned or subpoenaed for any purpose is essential to the effectiveness of mediation.

Thank you for your attention to this matter.

Teri Sklar

Teri Sklar  
Mediator/Attorney At Law  
415 929-7355  
[terisklar@sbcglobal.net](mailto:terisklar@sbcglobal.net)  
[sklarmediation.com](http://sklarmediation.com)

**EMAIL FROM DENISE SMITH-HAMS (8/10/15)**

**Re: Please don't give up confidentiality for mediators—K-402**

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – “All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them.”

Thank you very much  
Denise Smith-Hams  
Mediator, Community Boards, San Francisco and Richmond Small Claims Court

## EMAIL FROM SUSAN SPAR (8/12/15)

### Re: Study K-402

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

Sometimes bad cases can make bad laws and this may be such a situation. The confidentiality protections were written and interpreted broadly for a very good reason: to allow the free flow of communication in a mediation. Surely, if needed, a more narrowly tailored remedy can be crafted that would not undermine the crucial confidentiality of the mediation process.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

Thank you for your consideration.  
Susan E. Spar, Esq.

Spar Mediation Services  
Mediation, Mediation Consultation  
Susan E. Spar, Esq.  
3922 Alta Vista Avenue  
Santa Rosa, CA 95409  
Phone: [707.544.7279](tel:707.544.7279)  
e-mail: [spar.mediation@gmail.com](mailto:spar.mediation@gmail.com)

"The First Rule of Holes: when you realize you're in one, stop digging." Stanley Weintraub

**EMAIL FROM ERICA SPARTOS (8/10/15)**

**Re: Opposition to Losing Confidentiality in Mediation**

Dear Ms. Gaal,

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against the."

Sincerely,

Erica Spartos, MA, LMFT

**EMAIL FROM CHARLIE SPIEGEL (8/9/15)**

**Re: Study K-402**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

Dear Ms. Gaal:

I am writing as a volunteer mediator with Community Board in SF, and a professional mediator in which I dedicate my practice to keeping divorcing couples out of court and getting them to put their children first always.

Because of this, I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. While I understand the appeals of this decision, I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as non-parties, should be able to speak frankly, without fear of having their words turned against them."

For ID purposes only, I am a current board member of Collaborative Practice-SF, a current advisory board member of Community Boards- SF, past board co-chair of Lambda Legal, one of the founding Executive Directors of Our Family Coalition, the Bay

Area LGBT parents group, and past board member of Kidsturn.org and CPCal  
(Collaborative Practice California).

Sincerely, Charlie Spiegel, Esq.

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Divorce & Custody Mediation  
Collaborative Practitioner  
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BY THE STATE BAR OF CALIFORNIA  
BOARD OF LEGAL SPECIALIZATION

August 10, 2015

**SENT VIA E-MAIL ONLY**

**bgaal@circ.ca.gov**

Ms. Barbara Gaal, Chief Deputy Counsel  
California Law Revision Commission

Re: Study K-402

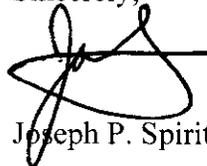
Dear Ms. Gaal:

I am currently the Secretary and soon to be Chair of the Los Angeles County Bar's Family Law Section. I have been practicing Family Law for over 34 years. I served as President of the South Bay Bar Association, A Better Divorce Family Law Practice Group in the South Bay, and the Los Angeles Collaborative Family Law Association.

I oppose the Commission's August 7<sup>th</sup>, 2015 decision to draft recommended legislation on removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation, if it goes to the legislature or urge organizations of which I am a member to oppose it.

I ask that you respect your Commission's 1996 statement recommending our current statutory protections be enacted that "All persons attending a mediation, parties as well as non-parties, should be able to speak frankly, without fear of having their words turned against them." The gravamen of our ability to successfully mediate is the confidentiality protections we currently enjoy. Please reconsider your August 7<sup>th</sup> decision.

Sincerely,



Joseph P. Spirito, Jr.

JPS/bl

SPIRITO B-GAAL LTR 1

**EMAIL FROM YAROSLAV SOCHYNSKY (8/9/15)**

**Re: Study K-402**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

Yaroslav Sochynsky  
Arbitrator-Mediator  
[www.wqsadr.com](http://www.wqsadr.com)

## **EMAIL FROM STEPHEN SULMEYER (8/10/15)**

**Re: Study K-402**

Dear Barbara,

Steve Sulmeyer here (yes, your old classmate at Stanford). Hello! I hope this finds you well. I'm writing because I would love for you to know and to pass on to the Law Revision Commission as a whole my strong opposition to the Commission's August 7 decision to propose legislation that would remove mediation confidentiality whenever lawyer misconduct is alleged by a party. My mediator colleagues and I have discussed this at great length, and virtually every mediator I know thinks this would be a bad idea. The clear, black-letter line that the current statutory regime provides is necessary to encourage the kind of forthrightness, openness and, yes, vulnerability that is required for mediation to work at its best. If participants in mediation feel they have to hedge their bets because of the mere possibility of such an allegation, mediation will devolve in to the kind of gamesmanship typical of litigation, and lose the core of its effectiveness and beneficence.

On the other hand, it seems to me that the risk of lawyer misconduct in mediations is quite rare. Except for one published decision I'm unaware of any claims of this kind. While it may be true that some disgruntled litigants might be without a remedy against their lawyer in such rare cases, this pales in comparison to the harm that will be done in every single mediation by the rescission of the absolute confidentiality that is the current rule. Based on a simple cost-benefit analysis, I cannot see that the proposed change makes any sense.

If the Commission will not rescind its decision immediately, I wonder if the Commission would be willing to hold public hearings to hear from both mediators and litigators who frequently mediate, so that they can hear directly from those most likely to be affected by the proposed legislation? Perhaps there might be less draconian alternatives for remedying the perceived harm---and those involved might be helpful sources of such alternatives. I don't know if the Commission typically holds such public hearings, but I do believe the Commission has always welcomed scholarly input---and many of us are adjunct professors at Bay Area and Southern California law schools and would be happy to share our views on this question.

I would greatly appreciate hearing from you.

Warm regards,

Steve

Stephen H. Sulmeyer, J.D., Ph.D.  
21 Tamal Vista Blvd., Suite 215  
Corte Madera, CA 94925  
tel (415) 927-4334  
fax (415) 927-7571  
[www.stevesulmeyer.com](http://www.stevesulmeyer.com)

**EMAIL FROM RONALD SUPANCIC (8/26/15)**

**Re: Study K-402**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

Ms. Gaal,

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

Ronald Supancic, CFLS  
The Law Collaborative, APC  
21051 Warner Center Lane, Suite 100  
Woodland Hills, CA 91367  
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www.thelawcollaborative.com  
Read our blog at www.tlclearningcenter.info

**EMAIL FROM B. ELAINE THOMPSON (8/10/15)**

**Re: Mediation/Lawyer Misconduct**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

Re Study K-402

I have been practicing law in California for 38 years. Over 90% of my practice is in family law.

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

I understand the policy to sanction lawyer misconduct. But I submit that the policy in support of mediation overrides it. Mediation only works when it's confidential. It is the confidentiality of mediation that creates the space of safety and transparency that allows real conversations to take place. Lawyer misconduct is not the only potential issue with confidentiality—to state the obvious, misconduct by the parties also goes unsanctioned. I suppose lawyer misconduct is arguably worse than client misconduct in some cases, but the reverse may also be true in other cases. Such distinctions are insignificant compared to the damage done to the entire mediation process by this proposed breach of the privilege of confidentiality.

Please reconsider this issue.

Very truly yours,

B. Elaine Thompson

**EMAIL FROM PETER TIERNAN (8/12/15)**

**Re: confidentiality in mediation**

Ms. Gaal,

I understand that the Revision Commission is taking action to remove confidentiality protections from the mediation process. That is a mistake and will harm a beneficial resolution tool. Mediation works because parties can be frank and get to the root issue. I urge the Commission to pursue the alternative solutions to address alleged problems and **DO NOT** remove confidentiality protections.

Sincerely,

Peter Tiernan  
[petertiernan250@aol.com](mailto:petertiernan250@aol.com)

## **EMAIL FROM MARGARET TILLINGHAST (8/11/15)**

### **Re: Confidential Mediation**

As a Certified Family Law Specialist, with 25 years experience, I have come to realized what a valuable tool CONFIDENTIAL MEDIATION is for a majority of my clients.

It affords the clients an opportunity to work out the plan for dissolution of their marriage and care of their children in a private setting, without the worry that what is said will become part of a public record. The folks who choose the CONFIDENTIAL MEDIATION route are folks who value their privacy, who are thoughtful about their children, choosing NOT TO USE THEIR PRECIOUS CHILDREN as pawns, as so often is the case in the litigation setting.

It will greatly infringe of the rights of those who choose CONFIDENTIAL MEDIATION as the path toward dissolving their marriage and sharing their children.

Please keep in mind that neither party to a CONFIDENTIAL MEDIATION is forced to be present and participate. Each party has the right to say no to this process, as opposed to the litigation path.

Do not destroy this valuable tool that is used in helping wise families find a peaceful means to resolve their issues.

Sincerely,

Margaret S. Tillinghast

Margaret S. Tillinghast, Esq., CFLS\*

Mediation Law Office

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\*Certified Specialist - Family Law The State Bar of CA Board of Legal Specialization

Visit us at: [maggietillinghastlawmediation.com](http://maggietillinghastlawmediation.com)

**EMAIL FROM MONIKA TIPPIE (8/10/15)**

**Re: Study K-402**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

Dear Commission,

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them

I am a trained mediator and I can guarantee that the proposed change eliminating confidentiality will mean that the number of people who choose mediation will plummet. It will make mediation basically useless, clog up the court system, and cost taxpayers a great deal in extra burden to the court system.

Thank you,

Monika Tippie  
Berkeley, CA

**EMAIL FROM MARGARET TOBIAS (8/9/15)**

**Re: Study K-402**

Dear Ms. Gaal,

I understand that California Law Revision Commission recently voted on a recommendation that would remove current protections for mediators.

I oppose the Commission's decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct.

Mediation has become a valuable tool for people in disputes and it's so important that this option remains a real option – for numerous options, such as empowering people to resolve their own disputes and encouraging a conflict resolution framework that does not involve resource-intensive court litigation.

Rules that threaten the success of mediation and the expansion of mediation as an option for consumers are not in the public interest and should not be pursued. Rather than altering the current rules allowing for confidential mediation, I strongly urge the Commission to seek other alternatives. Confidentiality in mediation (and any type of settlement process) is what makes that process work. Based on my experience, without confidentiality provisions, parties simply will not be willing to engage in difficult and complex discussions that are necessary to resolve disputes.

Thank you for your consideration.

Margaret L. Tobias

T: 415.641.7833

M: 415.309.7873

**EMAIL FROM VIC & BARBY ULMER (8/9/15)**

**Re: Please do not remove confidentiality from mediation**

California Law Revision Commission c/o Ms. Barbara Gaal, Chief Deputy Counsel

Please do not remove confidentiality from mediation

We're hoping you'll oppose the proposed change in the law which would eliminate confidentiality in mediations whenever a mediation party alleges misconduct by their lawyer advocate or lawyer mediator. Removing any of the confidentiality from mediation will make settlements much more difficult to obtain. Neither side will be willing to provide evidence which can be used against them in court. With complete confidentiality the parties can work together to successfully resolve their disputes. Almost all cases in Santa Clara County go to mediation before trial. Mediation drastically reduces the number of cases that go to trial. If any part of the confidentiality for mediation is removed, then this will no longer be possible. This not only is easier on the people and more satisfying but considerably less expensive.

The legislature has dramatically reduced funding to the courts over the last few years. The courts cannot take on the burden of a massive increase in the number of trials without increasing the time a case gets to trial by many years.

Sincerely,  
Vic and Barby Ulmer

408-379-4431

13004 Paseo Presada  
Saratoga, CA 95070

**EMAIL FROM JAMES UPP (8/10/15)**

**Re: The Future of Mediation**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

Re Study K-402

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as non-parties, should be able to speak frankly, without fear of having their words turned against them."

Sincerely,

James Upp

--

James B. Upp, J.D.  
510-410-1919  
[jbvupp@gmail.com](mailto:jbvupp@gmail.com)

**EMAIL FROM ALEXANDER VAN BROEK (8/11/15)**

**Re: COMMENT REGARDING LOSS OF MEDIATION CONFIDENTIALITY**

To the Commission:

I encourage you to avoid weakening mediation confidentiality.

I understand your concern over the ability of lawyers to avoid claims for malpractice, abuse of process, malicious prosecution, and other malfeasance by hiding behind the cloak of mediation confidentiality. I share your concern, but I do not agree that weakening the privilege is a good idea.

Number 1: All such concerns are overrated. See why below.

Number 2: The possible harm from the mediation privilege is vastly outweighed by the benefit of mediation. See why below.

I write to you as an attorney of 33 years, engaged in the practice of civil litigation in the employment and labor areas of law. I usually, but not always, represent employees and workers. I have settled cases since day one as a lawyer. Mediation makes settlement easier. Why? Because some clients have a very difficult time accepting the possibility of the merit of the their opponents point of view. Mediation permits distance and the greater ability to maintain the client's posture.

Mediation also permits attorneys to learn important facts about a case that they otherwise might not know until trial.

I have served as a judge pro tem, arbitrator and mediator. I have seen the value of the various conflict resolution options. I have an M.A. in psychology. My thesis research was on conflict resolution and personality correlates of success in resolution. These ideas have been actively studied and clarified since the early days of the Cold War. Mediation has proven itself again and again in law and international relations.

Number 1: Why are your concerns about the mediation privilege overrated? If an attorney violates professional rules or standards by misleading a client, or the other side, or makes an admission that shows such misconduct, he or she can be prosecuted regardless of the mediation privilege because in every case I have seen attorney's wrongdoing also shows up outside of mediation. In my experience, the actual risk of harm is very low.

Number 2: Why does the value of mediation outweigh the risk of abuse of the mediation privilege? Mediation practice has gone through many phases in the last twenty-five years. It is practiced in almost every case. The success rate of mediation is very high. It is of value to clients and to attorneys and to the courts.

The risk of mediation, forced arbitration, and confidentiality of settlements is not insignificant: There is a risk that legal standards will become vague and diffuse. Without actual trial by jury, open to the press, the democratic force of the legal system will continue to diminish. It would be better for all of us if there were no “confidential settlements” and no “confidential arbitration awards.” It would be better if the risk and the value of a claim were known to all.

However, in the current framework of confidential settlements and forced mandatory arbitration, confidential mediation is absolutely necessary, just as Evidence Code 1152, et seq. are necessary. I am not saying that I could not do my job if mediation confidentiality were limited. I am saying that fewer of my clients would have success, and justice, in their claims.

Sincerely,

Alexander G. van Broek

Law Office of Alexander G. van Broek, 1999 Harrison Street, Suite 1350, Oakland, CA  
94612-3582

Tel: (510) 446-1922, Fax:(510) 446-1911, website: [vanbroeklaw.com](http://vanbroeklaw.com), email:  
[alex@vanbroeklaw.com](mailto:alex@vanbroeklaw.com)

**EMAIL FROM VIRGINIA VILLEGAS (8/10/15)**

**Re: Study K-402**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

Regards,

Virginia Villegas  
**Villegas/Carrera, LLP**  
170 Columbus Avenue Suite 300  
San Francisco CA 94133  
(415) 989-8000 (phone)  
(415) 989-8028 (fax)  
virginia@e-licenciados.com

**EMAIL FROM DOUGLAS VOORSANGER (8/10/15)**

**Re: Please preserve confidentiality in mediation proceedings**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

Re Study K-402

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

I am on the mediation panel of the San Francisco Superior Court for probate and trust litigation cases. I also mediate attorney-client fee disputes for the San Francisco Bar Association. I find the confidentiality protections currently in place a valuable part of the mediations I have participated in. I think mediations will be less effective without those protections.

Thank you for your consideration.

Sincerely,

**Douglas A. Voorsanger, Esq.**  
**Borel Estate Building**  
**1700 S. El Camino Real, Suite 215**  
**San Mateo, CA 94402**

**Telephone number: (650) 389-6492**  
**FAX number: (650) 389-6957**

**EMAIL FROM GRETCHEN WALLACKER (8/11/15)**

**Re: [CPofSMC] Proposed Revisions to Mediation Rules**

Dear Ms. Gaal:

I am a colleague of Tim Martin's and am a fellow mediator/collaborative practitioner. I also litigate family law cases.

I wanted to voice my opposition to the proposed revisions for the reasons Tim so eloquently states.

Best,

Gretchen

**Gretchen M. Wallacker**  
**Berra Stross & Wallacker**  
**155 Bovet Road Suite 202**  
**San Mateo, CA 94402**  
**(650) 349-9920**  
**(650) 349-9907 fax**  
**gwallacker@bswfamlaw.com**  
**www.bswfamlaw.com**

☞ **Staff Note.** The comment from Timothy D. Martin is reproduced earlier in this Exhibit, in alphabetical order.

## **EMAIL FROM KERRY WALLIS (8/10/15)**

### **Re: Please reverse the study k-402 decision**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

I, along with every mediator and consensual dispute resolution practitioner I know, oppose the Commission's August 7th decision to draft recommended legislation removing the current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

The right to choose confidential mediation allows people to have self-determination during one of the most important and difficult times of their lives, and it has served the people and courts of California well. Removing this right is a very radical change, and I do not believe that the need is there— particularly because dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue all of the alternatives before you institute such a seismic change in mediation core principles.

As the Commission's itself noted "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them." Please continue to protect mediation confidentiality. Thank you for your reconsideration.

Kerry Wallis, CFLS\* | Gray Law Corporation  
2629 Manhattan Ave., #186 | Hermosa Beach, CA 90254  
T. 310.850.9765  
F. 424.218.1100  
E. [kwallis@graylawcorp.com](mailto:kwallis@graylawcorp.com)  
W. <http://graylawcorp.com>

\*Certified Family Law Specialist by the State Bar of California

**EMAIL FROM KAYLA KRUPNICK WALSH (8/11/15)**

**Re: Please do not remove confidentiality protections**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

Re Study K-402

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

**EMAIL FROM WILLIAM VAN WAY (8/10/15)**

**Re: Study K-402**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

Yours sincerely,

William Van Way

## **EMAIL FROM HARRIS WEINBERG (8/11/15)**

**Re: Study K-402**

Dear Ms. Gaal,

I have been made aware of the modifications to the confidentiality provisions governing the conduct of mediations in California presently being considered by the Law Revision Commission. Begging your attention and that of the Commissioners I would like to address what I believe to be very critical concerns.

I am a full time mediator, and have been so for some twenty-five years. I have seen the development of mediations from its earliest days, and the changes that have occurred in the decades since. I consider myself a knowledgeable student and committed practitioner of the process. It is a complicated process and its practice a mix of skill and instinct and art and experience. And that said there is nothing more central or critical to its effectiveness than strict confidentiality. Should those protections of strict confidentiality be weakened I expect that mediation will cease to be the widely practiced dispute resolution process it has become.

Mediation is an invitation to disputants and their representatives to engage in a process designed to explore their interests and options in that dispute, and having identified all of those to accept the responsibility for the outcome of that dispute. The doing of that is not easy, either for the mediator leading the participants into that exploration, or for the representatives advocating for and advising their clients and principals, or for the parties on whom the responsibility for that decision making ultimately rests. Nor is it without fear and danger. The promise of confidentiality is an essential tool to the management of all of that.

Parties find themselves in mediation because their perfect option has not been offered. That is the essence of dispute. The unfortunate reality is that the perfect option does not always, or necessarily often, exist. Parties get trapped in dispute holding out for options that don't exist and can't be brought into existence. It is first and foremost the purpose of the mediation, and the job of the mediator, and of the disputants' counselors, to discover and create whatever options are possible. Thereafter it is their job to guide the disputants to an acceptance of that real universe of options, and to encourage and empower them to make the difficult choices that best accommodate their interests. It's hard and it's fearful and dangerous. Hard because they're almost always hard choices. Dangerous because it often requires the telling of truths that people don't want to hear. And fearful because of what all of that portends.

In my opening statement in mediations I observe that decision making is best achieved when the decision makers feel comfortable and secure and so I offer three assurances in the service of comfort and security. One of those is that it is a voluntary process; there is no one to impose a decision upon them. The second is that it is an informal proceeding

with very few rules, so few in fact as to make it nearly impossible for them to break one. Finally the third is that it is a confidential proceeding protected by laws that prohibit the use of anything said there against them in subsequent legal proceedings. And truth be told that third assurance is directed as well to the attorneys and representatives whose job it is to encourage and truth tell, and to me whose job it is to place myself in the midst of dispute and to help parties to make what are very often reluctant and unhappy choices.

Mediation is part psychology. Courage is not necessarily constant; a courageous decision taken today may fail of courage when reconsidered tomorrow, or when commented upon by others without a stake in the decision, or knowledge of the understandings reached in the making of that decision. A willingness to embrace reality today may be lost in a return to fantasy tomorrow. Inescapable logic once accepted may again be rejected in favor of the desire to ignore those realities we dislike. And when any of those happen human nature will likely cause us to look for someone to blame for our having acknowledged what we now wish to deny. And who more likely than the counselor who assumed the job of truth teller, or the mediator who confronted the inconsistencies inherent in the incomplete deliberations? As much as I would like to think otherwise, I expect that without the assurance of confidentiality I would be more reluctant in my role, and expect that I would not be alone in that reluctance.

And what of the disputants themselves, and the promise of confidentiality given to them? They arrived on the day of mediation as adversaries in litigation, and are now invited to become partners in negotiation. Those are very different roles. In the former that role is made easier by demonizing our enemy; in the latter by humanizing her. And so a party might find himself reaching an understanding of some sincerity in the adversary, or some responsibility in self, the admission of which may well be the event that allows for resolution, and the safety promised by confidentiality the assurance allowing for that.

And what of the opportunity to be intellectually honest in evaluating options? How much less likely might a party or attorney be to engage in an honest evaluation for the benefit of a reluctant decision maker without the assurance that what is conceded in private caucus will not later be used against them.

Finally, the Courts. If I am right and a suspension of absolute confidentiality does inexorably erode the process so that it is no longer the widely accepted tool for resolution of pending cases it has become, what then becomes of those cases? Will we suddenly expand the judiciary to provide for judges and courtrooms and juries to try those cases that might otherwise have settled in mediation? I doubt it. But then, I am not a Court administrator and do not mean to speak of those matters of which I do not emphatically know.

Mediation, and the centrality of confidentiality to its effectiveness, is something of which I do know. I urge that the Commission recommend against any weakening of the protections of confidentiality in the practice of mediation.

Thank you for your attention.

Harris E. Weinberg  
Mediator  
1388 Sutter Street  
Suite 1000  
San Francisco, CA 94109  
415.674.8884 office  
415.602.8884 cell  
[harris@harrisweinberg.com](mailto:harris@harrisweinberg.com)

**EMAIL FROM ALBERT WENZELL (8/10/15)**

**Re: Mediation/Mediator Confidentiality**

Dear Sir or Madam:

I have been a mediator in the Bay Area and Southern California for 10 years. I strongly believe and know that confidentiality is extremely important and the cornerstone of effective mediation. If a mediator can be brought into litigation between a party and his/her attorney then candor will suffer. A mediator is a neutral. A mediator is not part of the attorney-client relationship and should not be included in a dispute between a party and the party's attorney. At times a neutral must be candid with the parties about their dispute. If a neutral is concerned about being involved in subsequent litigation that will adversely affect the ability of the neutral to be candid and his or her effectiveness as a mediator.

Sincerely, Albert Wenzell

***Albert B. Wenzell, Jr.***  
**The Wenzell Law Group Inc.**  
**44664 Duckhorn Street**  
**Temecula, CA 92592-5599**  
**Tel: 951 595 7550**  
**Fax: 951 240 3865**

**EMAIL FROM KIM WERNER (8/11/15)**

**Re: Protect mediation**

Re Study K-402

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

Sincerely,

Kim Werner

**EMAIL FROM MARISSA WERTHEIMER (8/14/15)**

**Re: Mediator Confidentiality**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

Re Study K-402

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it. I belong to The Mediation Society and SEEDS Conflict Resolution Center and ACR and The Marin Bar Association.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

Respectfully,

Marissa

Marissa Wertheimer  
Mediator/Trainer  
Restorative Justice/Mediation  
415.302.9383  
[marissa@mwmediation.com](mailto:marissa@mwmediation.com)

**EMAIL FROM MICHAEL H. WHITE (8/10/15)**

**Re: California Law Review Commission, Study K-402, Mediation Confidentiality**

Dear Ms. Gaal:

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

Michael H. White  
Law Offices of Michael H. White  
11024 Balboa Blvd., #615  
Granada Hills, CA 91344  
(818) 368-0444  
Cell: (818) 268-9275

**EMAIL FROM VIVIEN WILLIAMSON (8/10/15)**

**Re: Study K-402**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

Dear Ms. Gaal:

I am writing as someone who has been conducting mediations for more than two decades. I have just become aware of the Commission's August 7<sup>th</sup> decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and have urged organizations of which I am a member to oppose it, as well.

For thirty years our current right to choose a confidential mediation process has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. I am mindful of the occasional problem caused by attorneys misconducting themselves during the mediation process, but I have seen very few instances of that sort of behavior in thousands of mediations. Many alternative solutions have been suggested to the Commission to address the problem without removing our confidentiality protections. I request that you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."<sup>2</sup>

Thank you very much for your attention.

Sincerely,

Vivien B. Williamson

**EMAIL FROM AMY WINTERS (8/12/15)**

**Re: Study K-402**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

Thank you,

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**Kornblum, Cochran,  
Erickson & Harbison, LLP**  
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**Amy Winters**  
Attorney at Law

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50 Old Courthouse Sq., Suite 601  
Santa Rosa, CA 95404  
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Facsimile: (707) 544-7213

**EMAIL FROM RANDALL WULFF (8/10/15)**

**Re: proposed legislation**

Ms. Gaal: I just learned of the recommendation that the confidentiality of what transpires in a mediation can be abrogated if someone alleges misconduct by an attorney or neutral. I cannot more strongly urge that this be reconsidered.

After 20 years as a trial lawyer, I became a full time mediator for the next 20 years. I have settled thousands of cases through mediation and believe I have a spotless reputation for service. The process simply does not work unless the parties know they can speak candidly, without concern that a simple belated accusation will destroy the confidentiality they rely upon. I've seen this process dramatically help so many people stuck in litigation without knowing exactly how to get out, not to mention the enormous load off the courts because of its effectiveness. Great care should be taken before changing the rules.

On a more personal note, I was sued once by a participant to mediation who basically fabricated allegations to try to undo a settlement and extract money. It took me years of litigation, two trips through the federal district court and Ninth Circuit, and hundreds of thousands of dollars in legal fees to fend off this scurrilous attack. I know how easy it is for someone to make an allegation and then claim that all protections of the process should be disregarded.

Please reconsider. The system is not broken and doesn't need such a radical "fix."

Randall Wulff  
Wulff, Quinby & Sochynsky

**EMAIL FROM DAVID YAMAMOTO (8/10/15)**

**Re: Mediation/Lawyer Misconduct**

California Law Revision Commission  
C/O Ms. Barbara Gaal, Chief Deputy Counsel

Re: Study K-402

I am a Certified Family Law Specialist and have been practicing law for over 29 years.

I oppose the Commission's August 7<sup>th</sup> decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct, and I wholeheartedly endorse James Hallett's email opposition below.

Compromising the mediation privilege in any manner will greatly diminish the effectiveness of the mediator and the benefit mediation provides to our clients that need and deserve consensual dispute resolution.

David Yamamoto, Esq.



David K. Yamamoto, Esq. \*CFLS  
Law Offices of David K. Yamamoto, APC  
23326 Hawthorne Blvd. Bldg. 10, Ste. 370  
Torrance, California 90505-3725  
Telephone: (310) 373-4838 | Fax: (310) 373-2538 | [www.dkylaw.com](http://www.dkylaw.com)  
**FAMILY LAW LITIGATION, COLLABORATION & MEDIATION**

\*Certified Family Law Specialist, Board of Legal Specialization, State Bar of California

**☞ Staff Note.** The comment from James Hallett is reproduced earlier in this Exhibit, in alphabetical order.

**EMAIL FROM DANIEL YAMSHON (8/12/15)**

**Re: Study K-402**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

Re: Study K-402

Dear Ms. Gaal:

I am very concerned about the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. This legislation would put California in the unique position of going from the strongest protection of mediation confidentiality to the weakest among all the states in the US.

Mediation confidentiality originally grew out of the Common Law principal that evidence of or from settlement negotiations is inadmissible. There is a public policy to encourage candor and honesty in settling disputes, and allowing evidence from those discussions destroys the incentive to honestly deal with the problem and searching for solutions.

California is not the only state with strong confidentiality protections. Although the Uniform Mediation Act speaks in terms of confidentiality privilege, it also allows people in those states to agree to stronger protections. In discussing this issue with attorneys in some of those states, I have been informed that it is standard practice to observe total confidentiality in every case. It is almost universally recognized that confidentiality is an essential component that allows mediation to work so well: it provides a safe place where difficult matters, weak points in cases and true underlying interests can be discussed in a productive context.

There is a great risk that the proposed legislation will actually lead to more litigation and the benefits of mediation in alleviating court congestion will be lost. I can imagine a disputant, a few days after settlement, getting sage advice from their next-door neighbor, great uncle or astrologer about how they settled too low, immediately creating buyer's remorse and immediately seeking representation to sue the original lawyer for misconduct, malpractice or worse. The public reads headlines; not every slip and fall is a multi-million dollar case. Confidentiality allows experienced counsel to give sound advice that clients may not want to hear.

Furthermore, the proposed legislation may have a chilling effect as experienced mediators may be reluctant to continue their practices if they know they can be subpoenaed to testify regarding what took place in mediation. Many mediators, including

myself, destroy their notes after every mediation to insure confidentiality. Will there be a burden placed on mediators to preserve their notes until the statute of limitations runs out on every case they hear? Will shredding notes become mediator misconduct? Placing such a burden on mediators who often mediate many cases annually would be untenable.

I urge you to reconsider and to maintain the current level of mediation confidentiality in California.

Very truly yours,

Daniel Yamshon

--

“When people can amicably resolve their differences, economic, social and individual peace is achieved.”

--Daniel Yamshon

Daniel Yamshon  
Arbitration and Mediation  
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(916) 446-4817  
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[WWW.ADRServicesInternational.com](http://WWW.ADRServicesInternational.com)

**EMAIL FROM DENNIS YNIGUEZ (8/10/15)**

**Re: Loss of confidentiality in mediation – Study K-402**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

Re Study K-402

I oppose the Law Revision Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

I have been involved in alternative dispute resolution in California for decades as a mediator and subject matter expert. Mediation has proven itself to be a very effective and reasonable means of resolving disputes with very little risk to participants. The most attractive feature of mediation is its confidentiality. Without confidentiality, parties will be less likely to be forthcoming and cases are more likely to end up in the courts.

Anything that threatens the confidentiality of mediation threatens to overburden our struggling court system with even greater caseloads.

Please do not take these shortsighted steps that chip away at the confidentiality of mediation. Those least able to afford litigation will be disproportionately affected by weakening mediation as a confidential and cost-effective alternative.

I urge you not to turn your back on the Commission's own 1996 statement recommending that our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

Thank you.

Dennis Yniguez

1428 Spruce Street, Berkeley, California 94709  
TEL 510.649.9291; CELL 510.682.6411  
dennis@treedecisions.com

**EMAIL FROM BARBARA YOUNGMAN (8/10/15)**

**Re: Opposition to Recommendations of the California Law Revision Commission**

To: California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

Re Study K-402

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them.:

PLEASE NOTE MY NEW EMAIL ADDRESS: [BJY@YRplc.com](mailto:BJY@YRplc.com)

-----  
Barbara J. Youngman, Esq.  
**Youngman Reitshtein, PLC**  
8888 Olympic Boulevard  
Beverly Hills, CA 90211  
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E-mail: <mailto:bjy@yrplc.com>

**EMAIL FROM SERGIO ZEGARRA (8/9/15)**

**Re: Opposition to legislation removing confidentiality**

California Law Revision Commission  
c/o Ms. Barbara Gaal, Chief Deputy Counsel

Re Study K-402

I oppose the Commission's August 7th decision to draft recommended legislation removing our current confidentiality protections when a mediation participant alleges lawyer misconduct. I will oppose this legislation if it goes to the Legislature and will urge organizations of which I'm a member to oppose it.

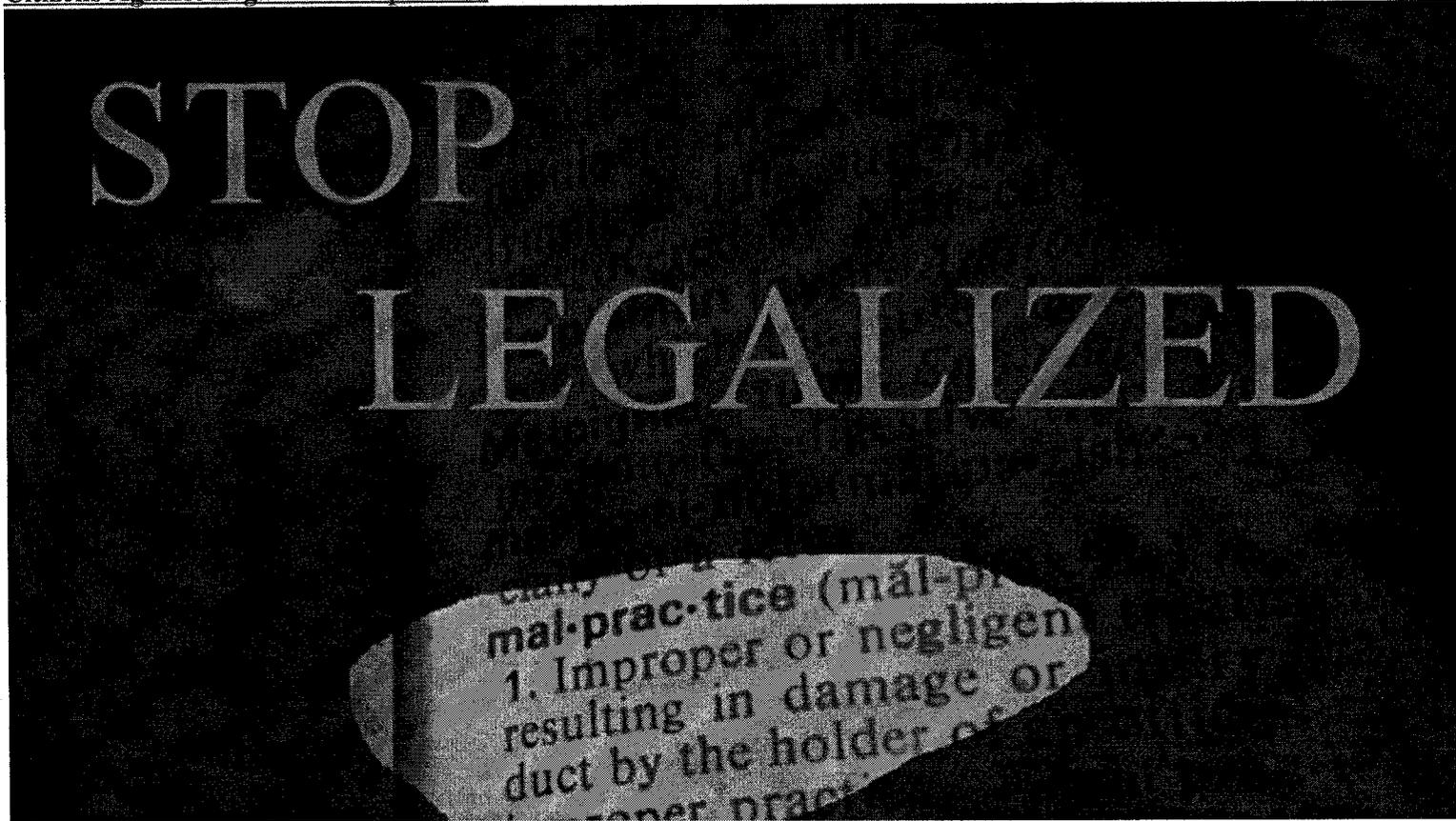
For thirty years our current right to choose confidential mediation and also to opt out of it has served the people and courts of California extremely well. Removing this right is a very radical change which should require solid evidence establishing a need. Dozens of alternative solutions have been suggested to the Commission to address the alleged problem without removing our confidentiality protections. I request you pursue these instead.

I urge you not to turn your back on the Commission's own 1996 statement recommending our current statutory protections be enacted – "All persons attending a mediation, parties as well as nonparties, should be able to speak frankly, without fear of having their words turned against them."

Sergio Zegarra  
Mediator

# Stop Legalized Malpractice

## Citizens Against Legalized Malpractice



## Citizens Against Legalized Malpractice

27

Supporters

On January 13, 2011, California legalized attorney malpractice. This was not an act of the California Legislature, but instead resulted from the California Supreme Court decision in *Cassel v. Superior Court*, which concluded that California's mediation confidentiality statutes, enacted by the Legislature in 1997 legalizes attorney malpractice. This ruling has altered the traditional fiduciary role attorneys have with their clients, allows California attorneys to betray their clients, act in their own interests or those of others without oversight or accountability and with impunity all at client expense. **Parties to disputes in California who choose to mediate their disputes are given no notice of this significant change in the law.**

Professor Richard Zitrin of UC Hastings has written,

*"the Cassel case leads to an absurd result — one that allows lawyers to be sloppy, negligent and incompetent without cost to them, and even worse, to cheat their clients with impunity."*

These are examples of what attorneys have allegedly done to clients and gotten away with it,

- fabricated a settlement agreement without their clients knowledge. ( Hadley v. Cochran )
- made their client personally liable for a \$2.4 million debt owed by another party. The client was forced into bankruptcy as a consequence. ( Amis v. Greenberg Traurig )
- threatened to abandon their client just before trial to force the client to give in to their demands. ( Cassel v. Superior Court )

The appellate court in *Wimsatt v. Superior Court* wrote,

*"We believe that the purpose of mediation is not enhanced by such a result because wrongs will go unpunished and the administration of justice is not served."*

*"The situations include cases where a party was lied to by her own attorney, the mediator, and a third party; a scrivener's error in a mediated settlement lead to a \$600,000 windfall to one party; parties claimed their own attorney coerced them into signing a settlement agreement; a mother waived parental rights; and the parties agreed to perform an illegal act in the mediated agreement."*

Justice Chin wrote in his concurring opinion in *Cassel v. Superior Court*,

*"Attorneys participating in mediation will not be held accountable for any incompetent or fraudulent actions during that mediation unless the actions are so extreme as to engender a criminal prosecution against the attorney."*

*"I doubt greatly that one of the Legislature's purposes in mandating confidentiality was to permit attorneys to commit malpractice without accountability."*

Yet when the California Legislature proposed reforming the statutes with Assembly Bill 2025, introduced February 23, 2012, it was immediately challenged and blocked by numerous organizations representing the interests of attorneys intent on keeping the lack of accountability and oversight for what amounts to legalized malpractice. No other state allows attorneys to commit such acts against their clients.

The Legislature has asked the California Law Revision Commission to study these statutes and recommend changes, if any. The CLRC welcomes public input but there is a problem. Many attorneys know about this study and have come out in force to recommend no change. Only five clients and one potential client have responded to the CLRC's request for public input. All six oppose legalized malpractice.

Please sign this petition if you oppose legalized malpractice.

The following is a note from the California Law Revision Commission should you wish to write them and are involved in a mediation that went wrong.

*"Although the Commission is interested in input from any knowledgeable source, it cautions such persons to be mindful of existing constraints on disclosure of mediation communications and materials. That is particularly important with respect to a mediated dispute that remains pending. In sharing information and views with the Commission, it is not necessary, and may be improper, to describe what happened at a particular mediation. Instead, comments that describe a situation in hypothetical terms, without revealing details that may disclose the identities of actual mediation participants, are preferable."*

This is a link to the to the California Law Revision Commission web site where the study of these statutes is being conducted.

Letter to  
**California Law Revision Commission** Barbara Gaal  
Dear Ms. Gaal,

As a member of the public, I do not support allowing attorneys to legally commit malpractice against clients. Attorneys need to be held accountable for their misdeeds just like everyone else whether in mediation or any other context. No other state allows this and I do not believe California should allow it either.

I would not make use of mediation if it allows my attorney to use the state statutes to commit acts against me more severe than what led to the mediation. That is the conclusion from Justice Chin's comment that an attorney can get away with anything unless they can be criminally charged. The *Hadley v. Cochran* case sure suggests that I have surrendered all my rights if the attorney can legally fabricate an agreement that could be very damaging to me without my knowing about it.

I do not believe it was the CLRC or the California Legislatures intent to create this windfall for attorneys when it updated the mediation statutes in 1997. I urge you to correct the mistake. The attorneys who have written to support keeping the statutes the same which also keeps malpractice legal, do not represent my point of view only their own.

**PERSONS SIGNING THE ONLINE PETITION (AS OF 9/3/15)**

- (1) John Amis, Culver City, CA
- (2) Barbara Bates, Port Saint Lucie, FL
- (3) Jay Bear
- (4) Debra Berman
- (5) Lauren Corna, Keller, TX
- (6) Bret Crain, Malibu, CA
- (7) Jason Halle, Fort Lauderdale, FL
- (8) Jo-Anne Kennedy
- (9) Karen Kline
- (10) Eunice Kramer
- (11) Allene Laney
- (12) Jon Laney
- (13) Trish Many
- (14) Evelyn Moore
- (15) Janelle Moore
- (16) Jullie Moseley-Doyle, Lomita, CA
- (17) Shanna Moyer
- (18) R. Andrew Murray
- (19) Laura Murray, Sacramento, CA
- (20) S. Nixon
- (21) Anthony Portelli
- (22) Deborah Blair Porter, Manhattan Beach, CA
- (23) Chip Reuben, Redondo, CA
- (24) Cecilia Sparks, Seymour, IN
- (25) Suzannah B. Troy
- (26) Леонид Дергалев

**SUPPLEMENTAL COMMENTS OF PETITIONER BRET CRAIN**

I personally experienced lawyers commuting malpractice against me and soon discovered that many others had experienced the same.

**SUPPLEMENTAL COMMENTS OF PETITIONER JULLIE MOSELEY-DOYLE**

I am signing this petition because it is wrong for attorneys not to be held accountable when they have lied, stolen, cheated, and or are involved in fraudulent acts against the

persons that hired them. To hinder evidence of such acts from being used to bring justice is unamerican is fascist.

**SUPPLEMENTAL COMMENTS OF PETITIONER CECILIA SPARKS**

Need full disclosure to guarantee due process of law.

**EMAIL FROM PETER ROBINSON (8/11/15)**

**Re: Mediation Confidentiality**

I just received an email asking me to express that I disagree with your proposed modification of the mediation confidentiality law. I FAVOR the revision you suggested. I imagine you will be inundated with complaints. Please accept my congratulations!!!!  
Thanks, Peter Robinson

## EMAIL FROM IRA SPIRO (8/13/15)

### Re: Study K-402, Mediation Confidentiality

Dear Ms. Gaal

I am a former chair of the Committee on Alternative Dispute Resolution of the State Bar of California, but I am not writing on behalf of that committee or the State Bar or anyone besides myself. I am an attorney practicing primarily employment class action litigation, representing employees only. I have been a member of the California Bar for more than 40 years. I have been a mediator in only one mediation, but I have been an attorney for the plaintiffs probably in more than 50 mediations, nearly all of them in the past 15 years.

In my opinion the mediation confidentiality statute should be amended so that in a malpractice or similar case by a client against the client's own attorney for something the client alleges the attorney did or said in the mediation, there should be no confidentiality. And there should be no confidentiality if, for some reason, an attorney sues a client for something that allegedly happened in the mediation. It's difficult to think of what that could be, aside from, say, a punch in the nose, but it is possible. For example, the attorney and the client might have agreed during the mediation to increase the attorney's fees, and the attorney might later sue to enforce the agreement.

If the statute were changed as I suggest, probably there should be another provision requiring a protective order, or calling attention to the availability of a protective order. The protective order would be in the lawsuit between attorney and client, and would provide that the mediation statements and events disclosed in the lawsuit cannot be disclosed to people other than the parties to the suit, the court, experts, and others usually specified in such protective orders. Still, it must be recognized that the mediation information probably would become public if there were a trial.

**Also, I'd like to alert you to something else and ask a question.** There has been dialogue about Study K-402 on the listserv of California Employment Lawyers Association, CELA. I am a member of CELA. The dialogue started with a post that stated the following: "On August 7, 2015 the California Law Revision Commission voted 4-1 to draft a recommendation removing our current protections. . . . The legislation will remove current protections whenever a mediation party alleges misconduct by their lawyer advocate or lawyer mediator."

At first that alarmed me, but then I read the materials on the Commission's website concerning Study K-402, and I could find no decision to draft that or any other recommendation for changing the mediation confidentiality laws, only proposals to study many different approaches for possible change in the law.

Still, the website does not have the minutes of the August 7, 2015 meeting, and it is possible that there was such a vote, something similar, and that it is not on the website. Would you let me know whether the quoted statement above is true in some respect, even if erroneous in others, and the details of what did occur at the August 7 meeting concerning Study K-402.

Thank you,

*Ira Spiro, Attorney at Law*  
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*Los Angeles, Cal. 90064*  
[\*ira@spirolawcorp.com\*](mailto:ira@spirolawcorp.com)  
*website: spirolawcorp.com*

**EMAIL FROM NANCY NEAL YEEND (8/18/15)**

**Re: letter being circulated**

Barbara,

I very much appreciated learning that the CLRC has made a preliminary recommendation to eliminate the umbrella of confidentiality from protecting attorney malpractice.

I was greatly saddened to read the letter that Ron Kelly is circulating to bar associations and others urging people to write to the CLRC and to reverse their decision.

The following are my thoughts to those who continue to support protecting malpractice:

There is no evidence to support the “sky is falling” predictions that people will not use mediation if there is an exception to confidentiality regarding malpractice. More importantly, if the statute is not changed, will attorneys and mediators place a specific statement in their confidentiality agreements alerting all mediation participants that both attorney and mediator misconduct and/or malpractice is protected? If not, and the parties do not realize that malpractice is protected, does this raise an even bigger legal question: **informed consent?**

There is no evidence that people will stop using mediation. It is far more likely that once the public wakes up and learns that attorney and mediator malpractice is protected, they will not want to participate. The Barbara Porter letter is a stunning example of how the process can be abused with the existing malpractice protection.

Good luck and keep up the good work. I think the CLRC carefully examined the evidence.

Nancy

## EMAIL FROM DAVID ZEFF (8/11/15)

☞ **Staff Note.** Mr. Zeff's email message (shown below) was a response to a comment from Guy Kornblum (8/10/15), which is reproduced earlier in this Exhibit, in alphabetical order with the other comments opposing the Commission's preliminary approach.

### **Re: Confidentiality in Mediation**

I respectfully do not agree. The blanket confidentiality has been abused in many forms. There is the issue of legal malpractice and unethical conduct by attorneys that has been immunized by mediation confidentiality. I had a case where the mediated settlement between a winery and its distributor included a provision that the winery terminate its existing 20 year written distribution contract with my client, a competing distributor. It was only the courageous decision by Richard Best, sitting as Discovery Commissioner in SF Superior Court, who applied the "crime/fraud" exception to the mediation privilege (I don't think the statute in current form had been enacted) to permit me to pierce the privilege and prove that there had been tortious interference with my distributor's contract in the context of the mediated settlement. A balance must be found. The blanket protection is much too broad. Respectfully, DMZ

David M. Zeff  
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[dmz@zefflaw.com](mailto:dmz@zefflaw.com)

## REPLY BY GUY KORNBLUM (8/11/15)

☞ **Staff Note.** Guy Kornblum replied to Mr. Zeff's comment and copied the staff when he did so. To facilitate consideration of Mr. Kornblum's reply, it is shown below rather than with the other comments opposing the Commission's preliminary approach.

### **Re: Confidentiality in Mediation**

Understand; it invites abuse BUT a) allows any litigant to sue his lawyer because of settlers remorse — instead of just backing out of the settlement, the client sues the lawyer, and b) litigation explosion just like in Royal Globe days. There has to be closure.

**EMAIL FROM RICHARD ZITRIN (8/14/15)**

**Re: Mediation Confidentiality**

Dear Mr. Hebert:

A month ago I received a call from a woman who said she had left the mediation when her lawyer, wanting the settlement done, signed or had someone else's name signed to the settlement agreement. I wonder whether under the current law and *Cassel*, this would still be privileged. I suspect this case would have come out the same way as *Cassel*.

I'm reminded of it because Wednesday, just after your email, I received a call from her husband to follow up. (I had told them that I could try to find them a lawyer – not I – but she didn't call back.)

I thought you might be interested. Should you or anyone there want to speak with them, I can give you contact info after getting their permission.

This speaks loudly to the problem with the extreme nature of the current statutes.

Regards,

RZ

***RICHARD ZITRIN***  
***Lecturer in Law***  
***University of California, Hastings College of the Law***  
c/o 535 Pacific Avenue, Suite 100  
SAN FRANCISCO, CA 94133  
Direct Phone: 415.354.2701  
E-mail: [zitrinr@uchastings.edu](mailto:zitrinr@uchastings.edu)  
[richard@zitrinlawoffice.com](mailto:richard@zitrinlawoffice.com)

**REPLY BY BARBARA GAAL TO RICHARD ZITRIN (8/14/15)**

Dear Mr. Zitrin:

Thank you for informing the Commission about the calls you received from a couple alleging that the woman's lawyer signed a settlement document at a mediation.

The Commission has already considered similar scenarios in the course of its study, including one that you discussed in an article for The Recorder. See Memorandum 2014-6, p. 3 & Exhibit pp. 16, 17-20 (available at <http://www.clrc.ca.gov/pub/2014/MM14-06.pdf>); Memorandum 2014-43, pp. 14-17 (available at <http://www.clrc.ca.gov/pub/MM14-43.pdf>).

The Commission is trying hard not to interfere with any pending or prospective litigation in conducting its study. The Commission is also mindful of the need to comply with the

current mediation confidentiality statutes. It is being careful not to encourage any violations of existing law.

At public meetings on this topic, the Commission Chair has repeatedly made those points. The Chair has also suggested that interested persons describe situations in hypothetical terms, rather than providing names and details (particularly if a matter is still pending).

Thus, I do not see a need for direct contact with the couple that you mention in your email. For the Commission's purposes, it would seem to be sufficient — and preferable — just to present the email message that you sent to Brian Hebert at 3:31 p.m. on August 14.

Would it be OK with you if I include that email message in a staff memorandum for consideration at the next Commission meeting?

Best regards,

Barbara Gaal

Barbara Gaal, Chief Deputy Counsel  
California Law Revision Commission  
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Palo Alto, CA 94303  
Voice: 650-494-1335  
Fax: 650-494-1827  
Website: [www.clrc.ca.gov](http://www.clrc.ca.gov)

### **RESPONSE OF RICHARD ZITRIN TO BARBARA GAAL (8/14/15)**

I completely understand your position, which makes a great deal of sense during this process. You may of course include my email.

Best,

Richard

PS: Are your commission meetings open to the public?

***RICHARD ZITRIN***

***Lecturer in Law***

***University of California, Hastings College of the Law***

c/o 535 Pacific Avenue, Suite 100

SAN FRANCISCO, CA 94133

Direct Phone: 415.354.2701

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[richard@zitrinlawoffice.com](mailto:richard@zitrinlawoffice.com)



Office of  
**Administrative Hearings**

SE Home (<http://www.dgs.ca.gov/oah/SpecialEducation.aspx>) > Resources (<http://www.dgs.ca.gov/oah/SpecialEducation/Resources.aspx>) > Special Education Report Archive (<http://www.dgs.ca.gov/oah/SpecialEducation/Resources/SEReportArchive.aspx>)

### Special Education Reports Archive

All reports are PDFs and open in a new window.

#### 2014/2015 Fiscal Year (#Agg11538\_1)

- 2014-15 Third Quarter Report (<http://www.documents.dgs.ca.gov/oah/forms/2008/SE%20Quarterly%20Report%20Q3%20FY%2014-15%20Final.pdf>) (pdf, new window)
- 2014-15 Second Quarter Report (<http://www.documents.dgs.ca.gov/oah/forms/2008/SE%20Quarterly%20Report%20Q2%20FY%2014-15%20Final.pdf>) (pdf, new window)
- 2014-15 First Quarter Report (<http://www.documents.dgs.ca.gov/oah/forms/2008/SE%20Quarterly%20Report%20Q1%20FY%2014-15%20Final.pdf>) (pdf, new window)

#### 2013/2014 Fiscal Year (#Agg11538\_2)

- 2013-14 Fourth Quarter Report (<http://www.documents.dgs.ca.gov/oah/forms/2008/SE%20Quarterly%20Report%20Q4%20FY%2013-14%20Final.pdf>) (pdf, new window)
- 2013-14 Third Quarter Report (<http://www.documents.dgs.ca.gov/oah/forms/2008/SE%20Quarterly%20Report%20Q3%20FY%2013-14%20Final.pdf>) (pdf, new window)
- 2013-14 Second Quarter Report (<http://www.documents.dgs.ca.gov/oah/forms/2008/SE%20Quarterly%20Report%20Q2%20FY%2013-14%20Final.pdf>) (pdf, new window)
- 2013-14 First Quarter Report (<http://www.documents.dgs.ca.gov/oah/forms/2008/SE%20Quarterly%20Report%20Q1%20FY%2013-14%20Final.pdf>) (pdf, new window)

#### 2012/2013 Fiscal Year (#Agg11538\_3)

- 2012-13 Fourth Quarter Report (<http://www.documents.dgs.ca.gov/oah/forms/2008/SE%20Quarterly%20Report%20Q4%20FY%2012-13%20Final.pdf>) (pdf, new window)
- 2012-13 Third Quarter Report (<http://www.documents.dgs.ca.gov/oah/forms/2008/SE%20Quarterly%20Report%20Q3%20FY%2012-13%20Final.pdf>) (pdf, new window)
- 2012-13 Second Quarter Report (<http://www.documents.dgs.ca.gov/oah/forms/2008/SE%20Quarterly%20Report%20Q2%20FY%2012-13%20Final.pdf>) (pdf, new window)
- 2012-13 First Quarter Report (<http://www.documents.dgs.ca.gov/oah/forms/2008/SE%20Quarterly%20Report%20Q1%20FY%2012-13%20Final.pdf>) (pdf, new window)

#### 2011/2012 Fiscal Year (#Agg11538\_4)

- 2011/12 Fourth Quarter Report (Second Amended) (<http://www.documents.dgs.ca.gov/oah/forms/2008/SE%20Quarterly%20Report%20Q4%20FY%2011-%2012%20Final%20SECOND%20AMENDED.pdf>)
- 2011-12 Fourth Quarter Report (<http://www.documents.dgs.ca.gov/oah/forms/2008/SE%20Quarterly%20Report%20Q4%20FY%2011-%2012%20Final%20AMENDED.pdf>)
- 2011/12 Third Quarter Report (<http://www.documents.dgs.ca.gov/oah/forms/2008/SE%20Quarterly%20Report%20Q3%20FY%2011-%2012%20Final.pdf>)
- 2011/12 Second Quarter Report (<http://www.documents.dgs.ca.gov/oah/forms/2008/SE%20Quarterly%20Report%20Q2%20FY%2011-%2012%20Final.pdf>)
- 2011/12 First Quarter Report (<http://www.documents.dgs.ca.gov/oah/forms/2008/SE%20Quarterly%20Report%20Q1%20FY%2011-12%20Final.pdf>)

#### 2010/2011 Fiscal Year (#Agg11538\_5)

- 2010/11 Fourth Quarter Report (<http://www.documents.dgs.ca.gov/oah/forms/2008/SE%20Quarterly%20Report%20Q4%20FY%2010-11%20Final.pdf>)
- 2010/11 Third Quarter Report (<http://www.documents.dgs.ca.gov/oah/forms>)

- /2008/SE%20Quarterly%20Report%20Q3%20FY%2010-11%20Final.pdf)
- 2010/11 Second Quarter Report (<http://www.documents.dgs.ca.gov/oah/forms/2008/SE%20Quarterly%20Report%20Q2%20FY%2010-11%20Final.pdf>)
- 2010/11 First Quarter Report (<http://www.documents.dgs.ca.gov/oah/forms/2008/SE%20Quarterly%20Report%20Q1%20FY%2010-11%20Final.pdf>)

#### 2009/2010 Fiscal Year (#Agg11538\_6)

- 2009/10 Fourth Quarter Report (<http://www.documents.dgs.ca.gov/oah/forms/2008/SE%20Quarterly%20Report%20Q4%20FY%2009-10%20Final.pdf>)
- 2009/10 Third Quarter Report (<http://www.documents.dgs.ca.gov/oah/forms/2008/SE%20Quarterly%20Report%20Q3%20FY%2009-10%20Final.pdf>)
- 2009/10 Second Quarter Report (<http://www.documents.dgs.ca.gov/oah/forms/2008/SE%20Quarterly%20Report%20Q2%20FY%2009-10%20Final.pdf>)
- 2009/10 First Quarter Report (<http://www.documents.dgs.ca.gov/oah/forms/2008/SE%20Quarterly%20Report%20Q1%20FY%2009-10%20Final.pdf>)

#### 2008/2009 Fiscal Year (#Agg11538\_7)

- 2 (<http://www.documents.dgs.ca.gov/oah/forms/2008/SE%20Quarterly%20Report%20Q4%20FY%2008-09%20Final.pdf>)008/09 Fourth Quarter Report (<http://www.documents.dgs.ca.gov/oah/forms/2008/SE%20Quarterly%20Report%20Q4%20FY%2008-09%20Final.pdf>)
- 2008/09 Third Quarter Report (<http://www.documents.dgs.ca.gov/oah/forms/2008/SE%20Quarterly%20Report%20Q3%20FY%2008-09%20Final.pdf>)
- 2008/09 Second Quarter Report (<http://www.documents.dgs.ca.gov/oah/forms/2008/SE%20Quarterly%20Report%20Q2%20FY%2008-09%20Final.pdf>)
- 2008/09 First Quarter Report (<http://www.documents.dgs.ca.gov/oah/forms/2008/2008-09%20First%20Quarter%20Report.pdf>)

#### 2007/2008 Fiscal Year (#Agg11538\_8)

- 2007/08 Fourth Quarter Report (<http://www.documents.dgs.ca.gov/oah/forms/2008/2007-08%20Fourth%20Quarter%20Report.pdf>)
- 2007/08 Third Quarter Report (<http://www.documents.dgs.ca.gov/oah/forms/2008/2007-08%20Third%20Quarter%20Report.pdf>)
- 2007/08 Second Quarter Report (<http://www.documents.dgs.ca.gov/oah/forms/2008/2007-08%20Second%20Quarter%20Report.pdf>)

Note: this report also amends portions of the 2007-08 First Quarter Report.

- 2007/08 First Quarter Report (<http://www.documents.dgs.ca.gov/oah/forms/2007/2007-08%20First%20Quarter%20Report.pdf>)

Note: See also 2007-08 Second Quarter Report.

#### 2006/2007 Fiscal Year (#Agg11538\_9)

- 2006/07 Fourth Quarter Report (<http://www.documents.dgs.ca.gov/oah/forms/2007/2006-07%20Fourth%20Quarter%20Report.pdf>)
- 2006/07 Third Quarter Report (<http://www.documents.dgs.ca.gov/oah/forms/2007/2006-07%20Third%20Quarter%20Report.pdf>)
- 2006/07 Second Quarter Report ([http://www.documents.dgs.ca.gov/oah/forms/2007/qr\\_2nd\\_07.pdf](http://www.documents.dgs.ca.gov/oah/forms/2007/qr_2nd_07.pdf))
- 2006/07 First Quarter Report (<http://www.documents.dgs.ca.gov/oah/forms/2006/2006-07%20First%20Quarter%20Report.pdf>)

#### 2005/2006 Fiscal Year (#Agg11538\_10)

- 2005/06 Fourth Quarter Report ([http://www.documents.dgs.ca.gov/oah/forms/2006/2005-06\\_SE\\_Fourth\\_Quarter.pdf](http://www.documents.dgs.ca.gov/oah/forms/2006/2005-06_SE_Fourth_Quarter.pdf))
- 2005/06 Third Quarter Report ([http://www.documents.dgs.ca.gov/oah/forms/2006/2005-06\\_SE\\_Third\\_Quarter.pdf](http://www.documents.dgs.ca.gov/oah/forms/2006/2005-06_SE_Third_Quarter.pdf))
- July through December 2005 (<http://www.documents.dgs.ca.gov/oah/forms/2006/special.ed.report2.pdf>)

(<http://www.documents.dgs.ca.gov/oah/forms/2006/special.ed.report2.pdf>)

## ALTERNATIVE FORMATS

All of the publications on this website can be made available in alternative formats as a disability-related reasonable accommodation for an individual with a disability. To discuss how to receive a copy of this publication in an alternative format, please contact:

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Office of Administrative Hearings  
2349 Gateway Oaks Drive, Suite 200  
Sacramento, CA 95833  
916.263.0880 phone  
916.376.6319 fax  
[jennifer.haley@dgs.ca.gov](mailto:jennifer.haley@dgs.ca.gov) (<mailto:jennifer.haley@dgs.ca.gov>)

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- [About Special Education Division \(/oah/SpecialEducation/AboutUs.aspx\)](/oah/SpecialEducation/AboutUs.aspx)
- [Accessibility \(/oah/Home/Accessibility.aspx\)](/oah/Home/Accessibility.aspx)
- [Advisory Committee \(/oah/SpecialEducation/Programs/SEAdvisoryCommittee.aspx\)](/oah/SpecialEducation/Programs/SEAdvisoryCommittee.aspx)
- [Calendar \(/oah/SpecialEducation/Resources/SECalendar.aspx\)](/oah/SpecialEducation/Resources/SECalendar.aspx)
- [Community Outreach \(/oah/SpecialEducation/Programs/SECommunityOutreach.aspx\)](/oah/SpecialEducation/Programs/SECommunityOutreach.aspx)
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- [Reports \(/oah/SpecialEducation/Resources/SEReportArchive.aspx\)](/oah/SpecialEducation/Resources/SEReportArchive.aspx)
- [Resources \(/oah/SpecialEducation/Resources.aspx\)](/oah/SpecialEducation/Resources.aspx)
- [Search Decisions/Orders \(/oah/SpecialEducation/searchDO.aspx\)](/oah/SpecialEducation/searchDO.aspx)

## What's New

- [New Forms for Teacher Dismissal Cases at OAH ... \(/oah/NewsRoom.aspx#1268\)](/oah/NewsRoom.aspx#1268)
- [Now Accepting Applications for SE Advisory Committ ... \(/oah/NewsRoom.aspx#1112\)](/oah/NewsRoom.aspx#1112)
- [Bob Varma is Special Education Division Presiding ... \(/oah/NewsRoom.aspx#1104\)](/oah/NewsRoom.aspx#1104)
- [Zackery Morazzini Appointed Director and Chief Adm ... \(/oah/NewsRoom.aspx#1086\)](/oah/NewsRoom.aspx#1086)
- [Linda Cabatic Retires as the Director of OAH ... \(/oah/NewsRoom.aspx#1078\)](/oah/NewsRoom.aspx#1078)
- [Orders Sealing Confidential Personal Information ... \(/oah/NewsRoom.aspx#851\)](/oah/NewsRoom.aspx#851)

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OFFICE OF ADMINISTRATIVE HEARINGS

State of California

SPECIAL EDUCATION DIVISION

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[www.dgs.ca.gov/oah/home.aspx](http://www.dgs.ca.gov/oah/home.aspx)

Department of General Services

**Special Education Division  
Quarterly Data Report  
Fourth Quarter 2013 - 2014 Fiscal Year  
April 1, 2014 – June 30, 2014**

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**EX 224**

The Interagency Agreement (IA) between the California Department of Education (CDE) and the Office of Administrative Hearings (OAH) requires OAH to report on a quarterly basis certain information related to mediations and due process and expedited hearings, as well as information required to be maintained according to state and federal law.<sup>1</sup> The following report addresses those IA reporting requirements.

### CASE FILINGS<sup>2</sup>

During the third quarter of fiscal year 2013-2014, OAH received 1,099 new case filings. For a comprehensive chart of the number of filings since 2005, please see Attachment A at page 21.

<b>Fiscal Year 2013-2014</b>	<b>Filings</b>	<b>Fiscal Year 2012-2013</b>	<b>Filings</b>
July 2013	369	July 2012	267
August 2013	274	August 2012	257
September 2013	268	September 2012	214
October 2013	317	October 2012	243
November 2013	254	November 2012	245
December 2013	239	December 2012	220
January 2014	282	January 2013	226
February 2014	266	February 2013	221
March 2014	289	March 2013	307
April 2014	360	April 2013	305
May 2014	391	May 2013	320
June 2014	348	June 2013	369
<b>Total Filings</b>	<b>3,657</b>	<b>Total Filings</b>	<b>3,194</b>

### CASES BY FILING PARTY

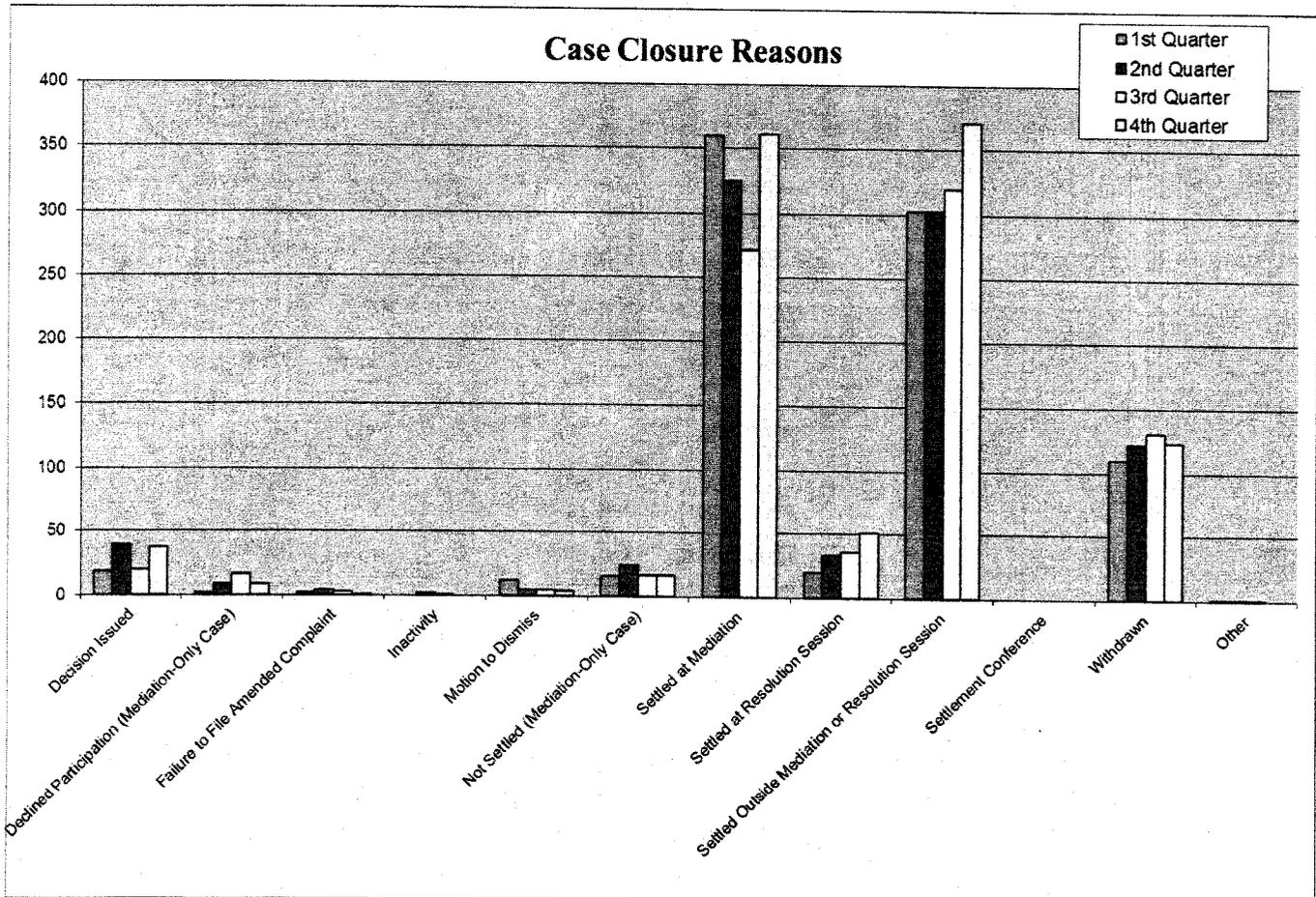
Overall, there were 1,099 total cases filed this quarter, which consisted of 964 student-filed cases and 135 district-filed cases.<sup>3</sup> Of the student-filed cases, 16 cases involved both expedited and non-expedited issues (dual hearings), and four cases that were exclusively

<sup>1</sup> See IA, exhibit A, section G. All citations are to exhibit A of the IA.

<sup>2</sup> The information contained in this report reflects data for the fourth quarter of fiscal year 2013-2014, based upon OAH reports generated in July 2014.

<sup>3</sup> G.3.d.(12), (13); all citations are to the section, paragraph and subdivision of the IA.

Reason for Closure	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Year to Date
Decision Issued	19	39	20	37	115
Declined Participation (Mediation-Only Case)	2	9	17	9	37
Failure to File Amended Complaint	2	4	3	1	10
Inactivity	0	2	1	0	3
Motion to Dismiss	12	5	5	4	26
Not Settled (Mediation-Only Case)	16	25	17	17	75
Settled at Mediation	360	325	272	361	1,318
Settled at Resolution Session	20	33	36	51	140
Settled Outside Mediation or Resolution Session	303	303	320	371	1,297
Settlement Conference	0	0	0	0	0
Withdrawn	110	123	131	124	488
Other	1	1	1	0	3
<b>Total</b>	<b>845</b>	<b>869</b>	<b>823</b>	<b>975</b>	<b>3,512</b>



## MEDIATIONS

This quarter, 543 mediations were held. The mediations were held in cases opened this quarter and in cases that were pending from prior quarters. Of the 543 mediations held this quarter, in 27 cases an additional mediation session was scheduled. Of the 543 mediations held, 493 were related to due process hearing requests and 50 were related to mediation-only requests. Of the 493 mediations held related to due process hearing requests, six cases involved only expedited issues and six cases were related to dual hearing requests.

Of the mediation requests related to due process hearings, 316 cases reached an agreement at mediation,<sup>18</sup> and 30 mediation-only cases reached an agreement,<sup>19</sup> for a total of 346 cases resulting in an agreement.<sup>20</sup> Four cases involving only expedited issues requested mediation, and two reached an agreement at mediation. Of the six dual cases, which involved both expedited and non-expedited issues that went to mediation, four reached an agreement.<sup>21</sup>

Out of the 543 mediations held this quarter, mediation was successful in 346 cases (64 percent), with 197 mediations resulting in impasse. At the end of this quarter, 425 cases have mediations pending,<sup>22</sup> and 803 cases have hearings pending.<sup>23</sup>

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<sup>18</sup> G.3.a.(4).

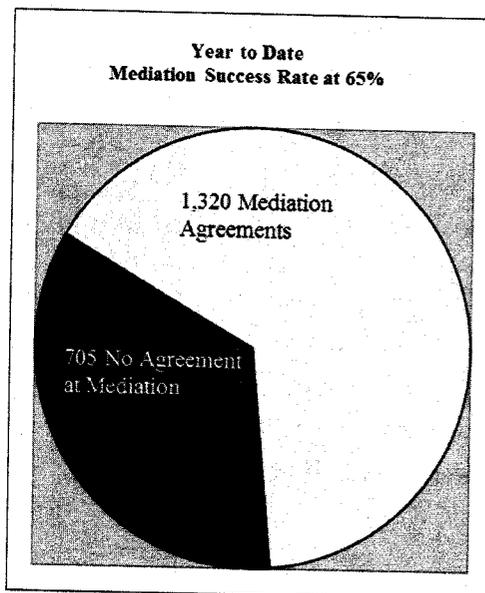
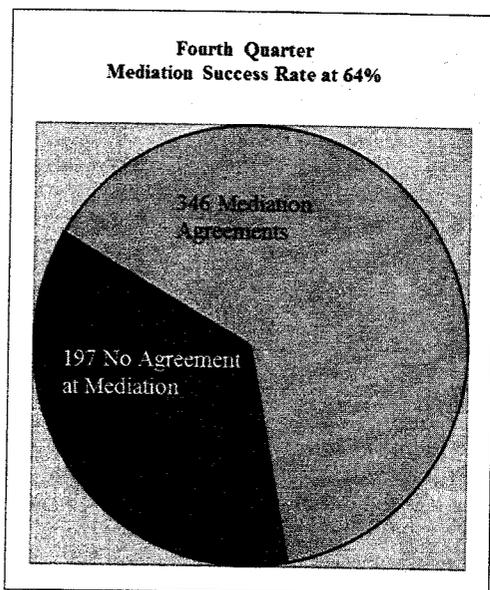
<sup>19</sup> G.3.a.(5).

<sup>20</sup> G.3.b.(3), d.(21). The number of cases resulting in an agreement at mediation (346) is sometimes different than the number of cases closed as a result of settlement at mediation (361) because the number of cases resulting in an agreement at mediation includes both open and closed cases. Some cases that resulted in an agreement at mediation one quarter remain open pending approval of the agreement by the school district board.

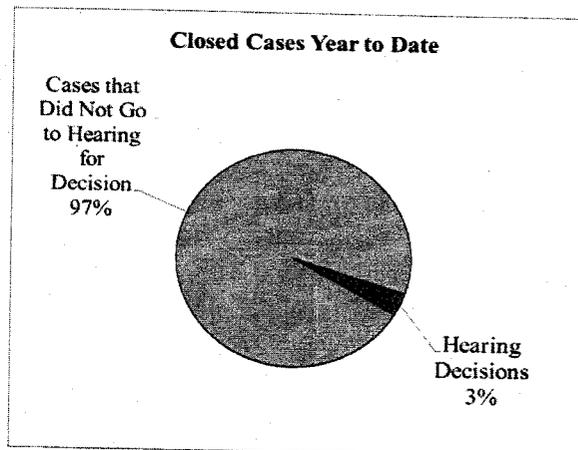
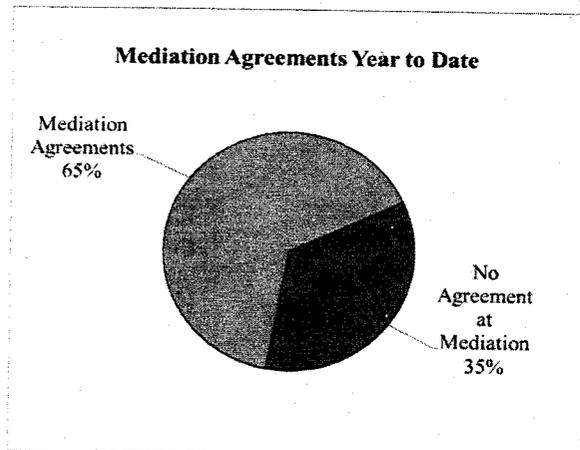
<sup>21</sup> G.3.c.(3).

<sup>22</sup> G.3.a.(6).

<sup>23</sup> G.3.b.(8).



For the 2013-2014 fiscal year, OAH has conducted 2,025 mediations, with 1,320 resulting in an agreement and 705 resulting in impasse. The overall mediation resolution rate for fiscal year 2013-2014 was 65 percent.



### DUE PROCESS HEARINGS

During this quarter, 37 final decisions were issued. Of the 37 decisions issued, 31 were issued within the 45-day timeline plus extensions, four were issued within the 45-day timeline, two were issued within the expedited timeline, and no decision was issued late.<sup>24</sup> There were two decisions issued in a case with expedited issues and one change of placement was ordered for this quarter.<sup>25</sup> Overall, this quarter, 100 percent of decisions were issued within the requisite

<sup>24</sup> G.3.b.(4), (5), (6), (7).

<sup>25</sup> G.3.c.(4), (5).

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June 4, 2015

California Law Revision Commission  
c/o UC Davis School of Law  
400 Mrak Hall Drive  
Davis, CA 95616

Letter by email; Delivered w/encls.  
at June 4, 2015 Commission Meeting

Re: **California Law Revision Commission Study K-402;**  
***“Relationship Between Mediation Confidentiality and Attorney Malpractice  
and Other Misconduct”***

**SUBMISSION OF MATERIALS FOR CONSIDERATION:**

[REDACTED]  
**Orange County Superior Court Case No. [REDACTED]**  
**Court of Appeal, Fourth District, Div. 3 Appeal Case No. [REDACTED]**  
**Our Clients: [REDACTED]**

[REDACTED]; LETTER TO COMMISSION, PUBLIC  
CASE DOCUMENTS AND [REDACTED] DEPOSITION

Dear Commissioners:

My clients, Plaintiffs in the above referenced case, submit for review and consideration in Study K-402 the publicly filed court documents in their “mediator misconduct” case. Enclosed are pleadings, transcripts, and the deposition testimony of plaintiff [REDACTED]. An index of documents is attached.

The documents and this letter and its attachments are provided as hard copies in a 3 inch 3 ring binder. The materials are also provided on a flash drive and disc that accompany this letter.

Plaintiffs’ allegations and the defendants’ responses are set forth in the documents, including extensive legal argument and analysis of *Cassel v. Superior Court* (2011) 51 Cal.4th 113 and other authority and law which the Commission is reviewing as part of Study K-402.

The Commission has “discussed how to obtain more input from mediation parties and the difficulties involved.” (Minutes, 9/5/14 p. 4) Inquiry into a private mediation can be hampered and limited, especially where the information is not public. Plaintiffs’ case is public record.

██████████ is a “mediator misconduct” case filed and fully briefed and decided through the trial court level, with all pleadings and documents already public record. All parties and persons are identified and disclosed, as are facts and events at the “mediation”.

The case is on appeal. However, the case must also be placed before the legislature starting with the Commission, since issues and solutions are largely legislative.

The complaint alleges dual mediator misconduct: (i) threat to have *ex parte* communication with trial judge falsely maligning plaintiffs as the reason for no settlement and (ii) failure to disclose that the mediator and the mediation company have hired or were trying to hire the litigating parties’ trial judge.

[www.indisputably.org](http://www.indisputably.org) is a website for law professors specializing in the fields of mediation and alternative dispute resolution. Writing on the website, Professor Art Hinshaw of the Arizona State University Sandra Day O’Connor College of Law noted a “horror story” where the mediator went to state prison. Prof. Hinshaw said he was writing an article about “mediator horror stories”. He requested from colleagues examples of “mediator horror stories.”

Prof. Michael Moffitt, Dean of the University of Oregon School of Law, is an expert in dispute resolution and mediation. Responding on the website, Dean Moffitt stated that the ██████████ case, while not involving a state prison sentence, is the prototypical “mediator horror” story. Dean Moffitt wrote:

Is the ██████████ case a horror story, even if all of the plaintiff’s allegations are true? Nothing that rises to the level of conduct in the case Art explores in detail. But I suspect this while it does not arise to the level of the case where the mediator was sent to the state penitentiary, that still the ██████████ case has a set of facts more typical of the (and this is important I think to emphasize) STILL ATYPICAL mediator misconduct one might see more commonly if one were omniscient. . . .

[See attached copy of website / full text of exchange; see also website screen snapshot attached (3 pages)]

June 4, 2015

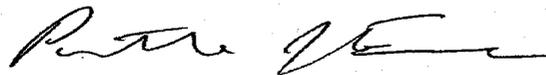
Page 3

The academic community has recognized [REDACTED] [REDACTED], an example of the proto-typical "mediation horror story." Dean Moffitt also points out the need for "quality assurance" in mediation.

Plaintiffs' complaint presents a set of alleged mediator misconduct facts along with trial court briefing and rulings. Plaintiffs are pleased to provide these public record pleadings and case information. Plaintiffs can provide additional information and are willing to comment, answer questions or testify before the Commission and Legislature.

My clients appreciate the Commission's attention.

Very truly yours,



PATRICK J. EVANS

Attachments:

- Complaint, caption page [REDACTED] (filed May 12, 2014)
- Text of Website exchange, Prof. Hinshaw and Dean Moffitt (Jan. 15 & 19, 2015)
- Screen Snapshot – website- [www.indisputably.org](http://www.indisputably.org)
- Pleading and Document Index for [REDACTED]

Enclosures:

- Three (3) ring Binder with this letter, its attachments, and index documents 1-26;
- Flash Drive with this letter, its attachments, index documents 1-26, and additional: (27) deposition full text (28) deposition exhibits, and (29) deposition video.

Downloaded: May 11, 2015, by Patrick J. Evans, Attorney at Law,  
Huntington Beach, CA (714) 594-5724, [pevans@pevanslawoffice.com](mailto:pevans@pevanslawoffice.com)

<http://www.indisputably.org/> [REDACTED]

[Text]

## MEDIATOR HORROR STORIES

JANUARY 15, 2015 ART HINSHAW 1 COMMENT

I'm in the process of finishing up an article inspired by a horrific local mediator who, as a result of his "mediation" actions, now resides in the state penitentiary. I'll be posting more about the article and the mediator's actions after the piece is finished and submitted for publication. That said, presumably there are numerous other mediator horror stories that are also not well-known, some of which already are documented in some way and others of which need to be documented. As a result, I'm trying to create a collection of such stories to share with a broader audience. So, here's my request. If you know a mediator horror story and it can be documented in some way, I'd like to add it to my collection. You can post the relevant information in the comments or contact me at [art.hinshaw@asu.edu](mailto:art.hinshaw@asu.edu).

Thanks for your help with this.

---

Reply / Post: [1]:

ONE THOUGHT ON "MEDIATOR HORROR STORIES"

Michael Moffitt

JANUARY 19, 2015 AT 11:34 AM

The case you describe in your article is unarguably a "horror story." And I can't wait to read the final version of your article.

I expect one would have a greater challenge with the vast bulk of cases discerning horror story from gross negligence from simple negligence from routine practice variation.

One case that I know to be pending right now is a claim against [REDACTED] and a [REDACTED] mediator in California. The mediator, a former judge, and [REDACTED] itself are accused of breach of contract, fraudulent concealment, negligence, IIED, NEID, intentional misrepresentation, negligent misrepresentation, and unfair business practices. The crux of the complaint involves allegations of bias, of improper mediator threats of ex parte communication with the presiding judge, mediator communicating the terms of a settlement inaccurately, coercion, judicial bias resulting from an offer for the judge to join [REDACTED] following retirement, etc. The plaintiff characterized it as a “mediation mugging,” in which [REDACTED] and its mediator “knew and expected and planned that these senior citizens would fall prey to Justice [REDACTED]’S abuse of his position and that he would be able to make credible and intimidating threats to terrorize and coerce these Plaintiffs with the purpose to procure a settlement unfair to Plaintiffs but highly favorable for the corporate, insurance and big law firm customers.”

The case is [REDACTED], filed in Orange County Superior Court [REDACTED]. (I have a copy of the complaint but it’s too large to attach. Send me an email if you want me to forward it to you.) I just learned that the court has released a tentative ruling granting the defendants’ Anti-SLAAP motion. (<http://www.occourts.org/tentativerulings/mschulterulings.htm>) Confidentiality. Quasi-judicial immunity. Etc. The standard litany of defenses that effectively prevent virtually all actions for civil recovery against mediators for alleged misconduct.

Is the [REDACTED] case a horror story, even if all of the plaintiff’s allegations are true? Nothing that rises to the level of conduct in the case Art explores in detail.

But I suspect this set of facts is more typical of the (and this is important I think to emphasize) STILL ATYPICAL mediator misconduct one might see more commonly if one were omniscient. By that I mean that I continue to believe in the importance, the integrity, and the utility of mediation, and I believe that most mediation practitioners, most of the time, attend to their offices with skill and good faith. The prominence of mediation makes it important to explore deeply questions of quality assurance. Mediation is a human institution and no less vulnerable to human foibles than any other practice or profession – even if it continues to be one in which its practitioners are not easily exposed to consequences for conduct demonstrating those human flaws.

CALIFORNIA LAW REVISION COMMISSION

August 7, 2015

## Mediation Confidentiality and Other Misconduct - Study K-402

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RE: "Supposed 'mediation' re: [REDACTED]"

I would like to make a statement in regards to California's mediation privilege statues. I am a plaintiff in the law suit of [REDACTED] and therefore I have, first hand, knowledge of the misconduct in mediation.

I personally have been part of the mediation process at least 5 times. Only at the very first mediation was there mention as to confidentially and the process that would take place. I entered mediation thinking that open and fair dialogue would take place among all parties. I believed there would be a sense of fairness and integrity in the mediators conduct. All of my mediation sessions were conducted by a retired Judge who, I believed would be honest, respectful, unbiased and trustworthy.

It did not register in my mind that the mediator would have a vested interest in the outcome of the party that was paying the bill for that day. Thus rich litigants have the advantage of the mediation results ending in their favor. This is the very first wrong of this process – The mediator in going to be biased.

Secondly, I did not think about the fact that the mediator was there for one purpose and that was settlement. Not a fair settlement but, a settlement and a profit for his own company.

My mediator was not interested in the merits of my case but only interested in how much we would settle for. I expected to come to a settlement agreement that would be based on the facts and circumstances of my case but, I was wrong. It was all about how little the mediator would get us to take.

I was blown away when the mediator, our retired judge, made his sales pitch, much like a timeshare salesperson, creating unnecessary pressure and tension by telling you that your cases is weak and that you're lucky to be there.

At one particular mediation session, our retired judge brought us a settlement offer that we agreed upon. In a face to face conversation I asked him if this settlement was for real and his comment to me was "Trust me, this is a done deal". I believed him and trusted him, only to find out later that the offering side did not have the money or the authority to make any deal and thus there was no settlement. Where is the law and the ethics of the mediator or his company to protect clients from this

type of manipulation and lies? This is not a settlors remorse but an insult to my time and my intelligence. What does one do? Nothing, because it is protected by mediation privilege.

On a second mediation session, the mediator, retired judge, suggested that 3 representative from each side of the fence get together and see if they could work out a solution without their attorneys present. When a solution was not forthcoming, the mediator, retired judge, was called into the meeting room. Upon hearing that there was a problem the mediator, retired judge became upset and proceeded to tell us that we were lucky to get the offer we were given and that our case was not worth it and that he was going to tell our trial judge, who he called out by name, that we were the reason this case had not settled. He told us that we should trust him that this settlement was a gift. I then looked him in the eye and told him I meant no disrespect however, he had told me to trust him once before and ended up as a big farce. Upon, my saying this to him, he became enraged, stood up and walked out of the room. He was so upset that it made me start shaking. His threat to tell my trial judge caused me to break out in a sweat. I worried for days and nights after this and sure enough the next court hearing was a negative one.

This retired judge would not be allowed to conduct himself like this in a courtroom so why is he allowed to abuse people in mediation? The Commission on Judicial Performance outlines types of Misconduct for the courtroom, so why not mediation? Why is it that a mediator can scream, threaten, mentally abuse, harass, and discriminate under the cover of Mediation immunity? There is not a police force or officer within the United States that would be allowed to treat a prisoner or detainee in the same manner that a Mediator can. Mediation immunity strips every single civil right from people. It is like being in solitary confinement and being beaten by a thug. Why should anyone have this right/privilege? Mediation immunity only fuels the bad cop demeanor.

Certainly we are more civilized to be able to find a way to come to agreements without allowing anyone a free hand to abuse unknowing. If a mediator cannot be held accountable for his actions than he should not be mediating in the first place.

I suggest that this commission recommend taking away the mediation immunity, provide more transparency, limit the length of time for mediation and put a monetary cap on the amount a mediation company charges allowing for fair access by those with less means. I believe that once mediation immunity is removed that the companies along with the mediators would find their own ways to provide ethical and fair treatment of clients.

Submitted by: Bonnie P. Harris  
San Clemente, CA

Footnote: [REDACTED]