

Third Supplement to Memorandum 2016-39

Relationship Between Mediation Confidentiality and Attorney Malpractice and Other Misconduct: Public Comment (Material Received at Meeting)

The Commission¹ received the following material at the meeting on July 22, 2016, in connection with its study on the relationship between mediation confidentiality and attorney malpractice and other misconduct:

- Exhibit p.*
- *The Loyola Law School Center for Conflict Resolution* (two-page description received from Mary B. Culbert) 1
- Fern Topas Salka (7/22/16) 3

Prof. Culbert also submitted the following news article:

- Mary B. Culbert, *Community Mediation Bill Is an Ill-Advised Response*, L.A. Daily J. (May 21, 2015).

Due to copyright considerations, the article is not reproduced here.

Respectfully submitted,

Barbara Gaal
Chief Deputy Counsel

1. 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). 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.

received from Mary Culbert

The Loyola Law School Center For Conflict Resolution

The Loyola Law School Center For Conflict Resolution (The CCR) is a bilingual (English/Spanish) community mediation program that seeks to help people to resolve their conflicts. We serve all Los Angeles County residents, especially those in under-served communities and those involved in conflicts with them. Bilingual services are provided by supervising professional mediators alongside highly trained Loyola Law School students and community volunteers. Our office hours are 9 a.m. to 6 p.m. Monday through Thursday, on evenings and weekends by appointment, and on Friday from 8 a.m. to 5 p.m.

WE MEDIATE AND HELP YOU RESOLVE YOUR CONFLICTS

Landlord-Tenant Evictions, Fees, Conditions	Neighbor-Neighbor Fences, Property Lines, Noise	Family-Domestic-Dependency Divorce, Partners, Children, Parent Care
Consumer-Debt Credit Cards, Student Loans, Health Care, Mortgages	Business/Organizations/Agencies Board Members, Staff, Volunteers, Consumers, Clients	Workplace/Employment Wages, Hours, Benefits, Discrimination, Work Environment

■ MEDIATION

In mediation, a neutral person (the mediator) helps the parties discuss ways to resolve their conflicts either in person in a face-to-face mediation or over the telephone (conciliation). Your mediators will not take sides, give legal advice or represent you. The mediators are there to make sure that each of you understands the other person's viewpoint and concerns, and to help you work out a solution to each issue that is acceptable to all parties. Your participation is voluntary and you may withdraw at any time. If you allow us to assist you by choosing mediation, statistics indicate that we will be able to help you resolve your dispute more than 80% of the time.

■ CLASSIC & COLLABORATIVE DIVORCE MEDIATION: The CCR offers two types of divorce mediation.

Classic mediation is described above where you and your spouse meet in person with the mediator(s) who will help you and your spouse decide if you want to end your marriage and on what basis. Collaborative mediation offers a team approach and is provided in conjunction with volunteer professionals from the Los Angeles Collaborative Family Law Association. In this type of mediation, you and your spouse work with a mediator and with a Collaborative Team of Professionals, who provide limited scope counseling and information that you may need to make decisions about what to do in your divorce.

■ RESTORATIVE JUSTICE (RJ) FAMILY CONFERENCING

RJ family conferencing is offered to youth and their families when the youth has problems at home, at school, or with law enforcement, and the family needs help communicating.

CONCILIATION

Conciliation is mediation that takes place over the telephone. A neutral person (the conciliator) speaks with each disputing party separately when assisting the parties to reach an agreement or a new understanding.

DEPENDENCY COURT MEDIATION: Provided at the Edmund D Edelman Children's Court on Tuesday

Parents in Dependency Court, who would prefer to decide their own custody arrangement, and visitation schedule, rather than have a Judge decide for them, are free to reserve mediation appointments, in conjunction with their attorneys, at ccadr.org. When confirmed by the Court, the parents' mediation agreement may serve as the Exit Order from Dependency Court.

■ FACILITATION

Facilitation is used to assist larger groups of people to communicate, to understand each other, and to find agreed-upon solutions to their issues. It can be used before a conflict fully develops.

REFERRAL

The CCR provides referrals to attorneys, legal service providers and government agencies because we do not provide legal advice.

TRAINING

The CCR is a training facility for Loyola Law School students and community mediators. We also provide training to the general public on mediation, conciliation, and communication skills that are offered at your location or at our offices.

■ CONSUMER-DEBT OPTIONS COUNSELING

When consumer-debtors contact us for dispute resolution services, debtors are offered the opportunity to speak with a counselor to learn about options for resolving their consumer debts.

MEDIATOR IN RESIDENCE PROGRAM

The CCR brings services directly to your community by providing a mediator at your legal, social or community service agency.

Mary B. Culbert, Director
Sara Campos, Associate Director
Bill Hobbs, Founding Director
Marta S. Gallegos, Founding Associate Director

For Help: www.lls.edu/CCR/HelpRequest
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These Services Are Made Possible Through Major Support From County of Los Angeles Department of Community and Senior Services Through the California Dispute Resolution Programs Act

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El Centro Para Resolver Conflictos De Loyola Law School

El Centro Para Resolver Conflictos de Loyola Law School (El CCR) es un programa bilingüe (inglés/español) que ayuda personas resolver sus conflictos. Proporcionamos nuestros servicios a todo residente del Condado de Los Angeles, especialmente esos de comunidades marginadas además de esos en conflictos con ellos. Los servicios bilingües se proporcionan por mediadores profesionales junto con estudiantes de Loyola Law School y voluntarios de la comunidad. Nuestras horas hábiles son de las 9 a.m. a 6 p.m. lunes a jueves, en las noches, y fines de semana con cita previa, y los viernes de las 8 a.m. a 5 p.m.

MEDIAMOS Y LOS AYUDAMOS RESOLVER SUS CONFLICTOS

Inquilino-Arrendador Desalojos, Tarifas, Condiciones	Vecinos Bardas, Límites de Propiedad, Ruido	Familiar-Doméstico-Dependencia Divorcio, Parejas, Hijos, Cuidado de Padres
Consumidor-Negociante Tarjetas de Crédito, Préstamos Estudiantiles, Servicios Médicos, Hipotecas	Negocio/Organizaciones/Agencias Junta Directiva, Personal, Voluntarios, Consumidores, Clientes	Relacionado al Trabajo Salarios, Horarios, Beneficios, Discriminación, Ambiente Laboral

■ MEDIACIÓN

En mediación, una persona neutral (el mediador), asiste los partidos discutir maneras para resolver sus conflictos ya sea en persona en una mediación cara-a-cara o por teléfono (conciliación). Sus mediadores no tomarán partido, no darán asesoría legal ni los representarán. Los mediadores están allí para asegurarse que cada uno de ustedes entienda la perspectiva e inquietudes de la otra persona, y ayudarlos llegar a una solución para cada asunto cual es aceptable a todo partidos. Su participación es voluntaria y puede retirarse a cualquier momento. Si nos permite asistirlo con una mediación, las estadísticas indican que los podremos asistir resolver su disputa más que 80% del tiempo.

■ MEDIACIÓN DE DIVORCIO CLÁSICA Y COLABORATIVA: El CCR ofrece dos tipos de mediación para el divorcio.

Mediación clásica de divorcio esta explicado arriba, donde usted y su cónyuge se reúnen con mediadores quienes les ayudan a usted y a su cónyuge decidir si quieren terminar su matrimonio y bajo cuales provisiones. Mediación colaborativa usa un equipo lo cual se proporciona junto con profesionales voluntarios del Los Angeles Collaborative Family Law Association. En este tipo de mediación, usted y su cónyuge trabaja con un mediador y con un Equipo Colaborativo de Profesionales, quienes provienen consejería de margen limitada e información que les ayuda hacer decisiones acerca qué hacer con su divorcio.

■ JUSTICIA RESTAURATIVO (JR) Y CONFERENCIAS FAMILIARES

Proporcionamos conferencias familiares de JR para los jóvenes y sus familias cuando un joven tiene problemas en casa, la escuela o con la policía y la familia necesita ayuda comunicándose.

CONCILIACIÓN

Conciliación es mediación que ocurre por teléfono. Una persona neutral (el conciliador) habla con cada partido separadamente para asistir los partidos llegar a un acuerdo o nuevo entendimiento.

MEDIACIÓN DE CORTE DE DEPENDENCIA: Proporcionado en la Corte de Niños de Edmund D Edelman cada martes
Padres en Corte de Dependencia, los quienes preferirían decidir su propio arreglo de custodia, y programa de visitación, en vez de tener un Juez decidir por ellos, están libres a reservar citas de mediación, junto con sus abogados, a ccadr.org. Tras confirmación por la Corte, el acuerdo de mediación de los padres puede servir como el Orden de Salida de Corte de Dependencia.

■ FACILITACIÓN

Facilitación se usa para asistir grupos grandes de personas comunicarse, entenderse, y encontrar soluciones a sus asuntos. Se puede usar antes de que un conflicto se desarrolle completamente.

REFERENCIA

El CCR proporciona referencias a abogados, servicios legales y agencias gubernamentales porque no propiciamos asesoría legal.

ENTRENAMIENTO

El CCR es una facultad de capacitación para estudiantes de Loyola Law School y mediadores comunitarios. También proporcionamos capacitación a público general sobre mediación, conciliación, y capacitación de comunicación.

■ CONSEJO DE OPCIONES DE DEUDA CONSUMIDORA

Cuando deudores del consumidor se comunican con nosotros para obtener servicios de resolución de disputas, les ofrecemos la oportunidad de hablar con un consejero para aprender cuales opciones existen para resolver sus deudas del consumidor.

PROGRAMA DE MEDIADOR EN RESIDENCIA NES DE DEUDA CONSUMIDORA

El CCR está trayendo sus servicios directamente a su comunidad por medio de un mediador en su agencia legal, social o de la comunidad.

Mary B. Culbert, Directora
Sara Campos, Directora Asociada
Bill Hobbs, Director Fundador
Marta S. Gallegos, Fundador Directora Asociada

Ayuda: www.lls.edu/CCR/SolicitudDeAsistencia

Estos Servicios Se Proporcionan Con El Apoyo Principal del Condado de Los Angeles Departamento para los Servicios Comunitarios a Personas Mayores, por Medio de un Acuerdo con Programas de Resolución de Disputas en California

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Fern Topas Salka Remarks to CLRC meeting July 22, 2016

As most of you know, I spoke before this Committee in December and opposed any changes to mediation confidentiality. Thank you for your continuing work on this issue and your willingness to include some protections for mediation and its practitioners in your subsequent tentative proposals. On behalf of the dozens of attorneys and judges who appeared with me at that time, let me say that we are still hopeful that your subsequent willingness to “tweak” your initial proposal to provide a malpractice exception to mediation confidentiality will be expanded and that, before you leap to finalize your proposal, you heed the plea of Ron Kelly and others to take a bigger step back to explore other less draconian options. Certainly those provided in section c, ^{of Memo 2016-33} would be proposals I believe most mediators could support. These options address your concerns about mediator malpractice at the very start of mediation and give clients the opportunity to make informed decisions about entering into this voluntary process (as they do in an arbitration, for example), while leaving in place mediation confidentiality, which the California Supreme Court correctly has said is the heart of mediation.

And finally, although you are years deep into a particular path to provide this exception, we urge you to specifically address and heed the request of many mediators, lawyers and judges, including the California Judges Association, who have asked to no response that before any changes are made, this commission establish a clear need for that change. Certainly, if you are correct about the need, you will, by getting real figures from the State Bar, provide additional legitimacy for your changes in the face of the significant opposition. And if you are not correct, and mediation malpractice is not a widespread problem, then you must be courageous enough to acknowledge that and stop the train. I trust you all are people of capable of such moral fortitude.

Thank you again for your time and attention .