

First Supplement to Memorandum 2016-60

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

The Commission¹ has received the following new communications relating to its study of the relationship between mediation confidentiality and attorney malpractice and other misconduct:

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| | <i>Exhibit p.</i> |
| • Larry Doyle, Conference of California Bar Associations (11/28/16) | 1 |
| • Ron Kelly, Berkeley (11/29/16) | 4 |
| • Jeff Kichaven, Los Angeles (11/28/16) | 5 |
| • John Warnlof, Walnut Creek (11/29/16) | 10 |
| • Supplemental comments from individuals signing the online petition by Citizens Against Legalized Malpractice | 12 |

These new communications are discussed briefly below.

SUPPLEMENTAL COMMENTS FROM ONLINE PETITIONERS

As explained in Memorandum 2016-60, Change.org recently revised its website, making it possible to access many previously unavailable comments by individuals who signed the online petition by Citizens Against Legalized Malpractice in the past year.² Some of those supplemental comments are reproduced here (with a few names redacted).³ Additional comments can be

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.

2. The online petition is available at 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=one_thousand. The text of the petition is also reproduced in Memorandum 2015-46, Exhibit pp. 210-11.

3. See Exhibit pp. 12-29. The redacted names are unnecessary for the Commission’s purposes and it is possible that someone might consider the unredacted statements defamatory.

accessed online.⁴ The staff will include those additional comments in a memorandum when time permits; it was not possible to do the necessary review, formatting, and related tasks in time for the upcoming meeting.

Of the supplemental comments reproduced here, one of them (from a woman in Australia) quotes Prof. Richard Zitrin’s statement that “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.”⁵ None of the other comments mentions *Cassel v. Superior Court*,⁶ or uses the term “mediator,” “mediation,” “mediating,” or the like.

It is clear from most of the comments, however, that the petitioner has had some kind of a negative experience with a court system in California or elsewhere, or at least has serious concerns about the judicial process. Many of the petitioners express frustrations with family court. The comments come from all over the United States and a few foreign countries. They range from angry accusations to more tempered statements, including the following:

Justice is important.
For everyone.
And should be a given.
Not a hope.⁷

OTHER NEW INPUT

The remaining new input specifically addresses matters raised in Memorandum 2016-58 (Draft Legislation to Implement the Commission’s Preliminary Decisions) or Memorandum 2016-59 (Possible Additional Reforms to Include in the Tentative Recommendation). Rather than discussing each new comment separately, we (1) examine all of the input pertaining to Memorandum 2016-58, discussing the issues in the order raised in that memorandum, and then (2) do the same for Memorandum 2016-59.

4. See <https://www.change.org/p/the-california-law-revision-commission-change-the-statutes-that-legalize-malpractice/c>.

5. Exhibit p. 29 (comments of Cathy Zovadelli).

6. 51 Cal. 4th 113, 244 P.3d 1080, 119 Cal. Rptr. 3d 437 (2011).

7. Exhibit p. 14 (comments of Christopher Brown).

Memorandum 2016-58: Draft Legislation to Implement the Commission's Preliminary Decisions

The following input relates to Memorandum 2016-58, which presents draft legislation to implement the Commission's preliminary decisions and discusses a number of drafting issues.

General Input

Larry Doyle reports that the Conference of California Bar Associations ("CCBA") "strongly supports" the draft legislation to implement the Commission's preliminary decisions.⁸ He says the draft legislation "provides necessary recourse" to mediation consumers who were "victimized by incompetent or unethical attorneys," yet it also provides "essential protection to the secrets of other mediation parties."⁹

Jeff Kichaven says that the draft legislation "largely gets the job done."¹⁰ He urges the Commission to recommend creation of the new exception "so that consumers can effectively seek redress and vindicate the Rule of Law if they believe that they are the victims of legal malpractice in mediation."¹¹

Mr. Kichaven believes, however, that "Evidence Code section 703.5 needs amendment as well, to allow mediators to testify" in legal malpractice cases arising out of mediations.¹² He voices concern about the possibility of unjust results due to the lack of mediator testimony.¹³

The Commission has already thought hard about whether to amend Section 703.5. It heard from many sources about problems that mediator testimony would entail,¹⁴ and then decided to leave Section 703.5 alone.¹⁵

Unfortunately, the situation is a classic conundrum:

- If mediation evidence cannot be used to prove attorney misconduct in the mediation context (i.e., existing law), injustice may result due to the bar on presenting such evidence.
- If some mediation evidence can be used to prove attorney misconduct in the mediation context, but mediators are not required or permitted to testify (i.e., the Commission's proposed approach), the decision-maker might receive a distorted view of

8. Exhibit p. 1.

9. *Id.*

10. Exhibit p. 5.

11. *Id.*

12. *Id.*

13. See Exhibit p. 6.

14. See Memorandum 2015-45, pp. 9-17, 41-43 & sources cited therein.

15. See Minutes (Oct. 2015), pp. 4, 6.

the situation and injustice might still occasionally result. It is also possible (but difficult to prove or disprove) that mediation communications might be chilled to some extent due to the existence of the new exception.

- If all mediation evidence can be used to prove attorney misconduct in the mediation context, including mediator testimony (i.e., Mr. Kichaven's proposed approach), the decision-maker receives full information and thus has the best opportunity to reach a just result. But mediator testimony could create many problems; the situation is similar to having judges testify about cases they try. There is also the possibility (perhaps enhanced by the potential admissibility of mediator testimony) that mediation communications might be chilled to some extent due to the existence of the new exception.

John Warnlof views the Commission's proposed new exception differently than CCBA and Mr. Kichaven. He warns:

In my mediations, I have asked dozens of attorneys and parties if their use of mediation would be affected if they were subject to discovery and testimony at trial. The universal reaction ... is that they would probably decline to use mediation if their files could be subpoenaed, if attorneys and parties could be deposed and if they could be compelled to appear as witnesses at trial.¹⁶

Resolution of the Underlying Mediated Dispute

Two comments address whether the Commission's proposed new exception should apply while the underlying mediated dispute is still pending. In particular:

- CCBA "believe[s] the underlying action must be fully resolved before the malpractice action or disciplinary charges are filed.¹⁷ CCBA "further believe[s] this restriction will be self-effectuating and no specific language need be added to the statute."¹⁸
- John Warnlof says: "If a client concludes that his or her attorney has committed malpractice in the course of a mediation, whether by wrongful actions resulting in a binding settlement or preventing a settlement, the attorney/client relationship will have been terminated and a complaint filed. Accordingly, it is unlikely that under such circumstances a mediation would still be pending."¹⁹

16. Exhibit p. 10.

17. Exhibit p. 1.

18. *Id.*

19. Exhibit p. 10.

- Mr. Warnlof also points out that an “essential element of a legal malpractice claim is that the former client has sustained damages.”²⁰ He states that “[s]uch damages would arise only if there was a binding settlement or upon discovery by the former client that his or her attorney had prevented an otherwise favorable settlement.”²¹ He is “not aware of any instance where attorney has been sued for preventing a settlement.”²² He concludes that “[b]ecause a cause of action does not arise until a former client has been damaged, I do not foresee the need for a tolling provision.”²³

In response to these comments, the staff notes that simultaneous litigation of a legal malpractice case and an underlying dispute is *not* a hypothetical problem. In fact, the Commission closely examined that problem in a study on the statute of limitations for legal malpractice (Study J-111).²⁴ In the event of simultaneous litigation, the problem can be minimized by staying the malpractice case. The Commission explored the possibility of enacting a statute expressly permitting such a stay,²⁵ but ultimately decided to discontinue its study without recommending any legislation.²⁶

Standard for Admissibility of Mediation Evidence

With regard to the proper standard for admissibility of mediation evidence in a State Bar disciplinary proceeding or legal malpractice case, CCBA says that it “is not enough to show that the mediation communication is relevant to such a case; the proponent must also show that ‘the evidence is not otherwise available.’”²⁷ CCBA further says that “the proposed legislation should adopt the standard of the UMA.”²⁸

The staff presumes that CCBA means to refer to UMA Section 6(b), but we are not sure of this. Under that section, it is not enough to show that proffered mediation evidence is relevant and “not otherwise available.” The proponent must also show that “there is a need for the evidence that substantially outweighs the interest in protecting confidentiality.”

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.*

24. Materials relating to this study are available at <http://www.clrc.ca.gov/J111.html>.

25. See *Revised Tentative Recommendation on Statute of Limitations for Legal Malpractice* (Sept. 2005).

26. See Minutes (June 2006).

27. Exhibit p. 2.

28. *Id.*

John Warnlof also made some comments about the admissibility standard,²⁹ but the staff is not sure what he means. We are sorry we do not grasp his point and invite him to restate it in another manner.

Standard for Discovery of Mediation Evidence

Another drafting issue is whether the Commission's proposed new exception should use the same standard for (1) admissibility of mediation evidence and (2) disclosure of mediation evidence.³⁰ CCBA says that "there should not be a different standard for disclosure."³¹ It predicts that "[h]aving the same standard apply during discovery and admissibility at trial will promote settlements of malpractice claims prior to trial."³²

John Warnlof also made some comments about the disclosure standard,³³ but the staff is not sure what he means. We are sorry we do not grasp his point and invite him to restate it in another manner.

Types of Disputes in Which the New Exception Would Apply

In Memorandum 2016-58, the staff raised some questions about the types of disputes in which the Commission's proposed new exception would apply. In response, CCBA says that there "is no ambiguity in the concept of State Bar disciplinary proceedings."³⁴ As for "potential ambiguity in the concept of 'legal malpractice claims,'" CCBA suggests "consider[ing] the language of Evidence Code §958, which provides the attorney-client privilege does not apply to a 'communication relevant to an issue of breach, by the lawyer or by the client, of a duty arising out of the lawyer-client relationship.'"³⁵

Possible Limitations on the Scope of the Exception

Memorandum 2016-58 discusses whether the Commission's proposed new exception should be made inapplicable to (1) community-based mediation programs funded under the Dispute Resolution Programs Act ("DRPA") and/or (2) family law mediations. CCBA says "[t]here should be no exceptions to the exception."³⁶ Similarly, Mr. Kichaven says that there "should be no exceptions

29. See Exhibit pp. 10-11.

30. See Memorandum 2016-58, pp. 15-17.

31. Exhibit p. 2.

32. *Id.*

33. See Exhibit pp. 10-11.

34. Exhibit p. 2.

35. *Id.*

36. Exhibit p. 2.

for family mediations, DRPA mediations, or other ‘special’ cases.”³⁷ John Warnlof takes the same position.³⁸

Instructions to Litigants or Other Special Rules

Memorandum 2016-58 raises the possibility of taking some steps to prevent improper disclosure of mediation evidence in adjudicating a cause of action for damages against a lawyer based on alleged malpractice in a mediation context. The memorandum notes that the “danger of an improper disclosure may be especially acute in the early stages of a case, before a judge becomes involved and has an opportunity to educate the parties.”³⁹

CCBA does not see a need for any special steps to prevent improper disclosures. It says that enforcement of the mediation confidentiality law should “remain with the trial judge, as it is currently.”⁴⁰

Data Collection and Evaluation

Memorandum 2016-58 discusses the possibility of requiring the State Bar and/or court system to collect some data if the Commission’s proposed new mediation confidentiality exception were enacted. CCBA “do[es] not believe a data collection component is necessary.”⁴¹

Memorandum 2016-59: Possible Additional Reforms to Include in the Tentative Recommendation

The following input relates to Memorandum 2016-59, which discusses the possibility of including additional reforms in the Commission’s tentative recommendation, either as complements to the proposed new mediation confidentiality exception or as possible alternatives.

General Input

CCBA “has no official position” on the ideas discussed in Memorandum 2016-59, but it “certainly does not recommend any of the recommendations in lieu of the Draft Legislation.”⁴² CCBA further states that the Commission’s tentative recommendation “should include the Draft Legislation, and only such further suggestions as might supplement its effectiveness.”⁴³

37. Exhibit p. 7 (boldface omitted).

38. Exhibit p. 11.

39. Memorandum 2016-58, p. 34.

40. Exhibit p. 2.

41. *Id.*

42. *Id.*

43. Exhibit p. 3.

Mr. Kichaven views the ideas discussed in Memorandum 2016-59 as “distractions.”⁴⁴ He says that in that memorandum, “the staff notes that few of these distractions have generated much interest.”⁴⁵ Actually, what the staff said was:

[S]ome of the options in the *Compilation of Possible Approaches* have generated considerable interest, such as the concept of requiring a pre-mediation disclosure regarding mediation confidentiality and its potential impact on a legal malpractice claim (or similar information)....

In contrast, some of the other options have generated little to no interest. This memorandum concentrates on suggestions that have garnered at least some degree of interest.⁴⁶

Disclosure Requirements

Although CCBA has no official position on the possible disclosure requirements discussed in Memorandum 2016-59, it says that “a plain and clear warning to consumers that they well may be signing away their right to recourse against an unscrupulous or incompetent attorney if they enter into [a mediation] agreement would be far better than the current law, where the consumer only finds out when thwarted in his or her efforts to obtain justice.”⁴⁷ CCBA does not consider any of the disclosure examples in Memorandum 2016-59 “sufficiently clear and direct.”⁴⁸ The group suggests that any disclosure should be (1) mandated by statute before an agreement to mediate is enforceable, (2) in “absolutely plain terms regarding rights being signed away,” and (3) to be initialed by the consumer.⁴⁹

Mr. Kichaven says that there “should be no one-size-fits-all mandatory disclosure requirements, or any such mandated requirements.”⁵⁰ He gives a number of reasons for taking that position.⁵¹

With regard to the “Information and Caution on Mediation Confidentiality” shown on page 11 of Memorandum 2016-59, Ron Kelly provides an important clarification. He explains that only Section 1 of that form is taken from the form circulated for public comment by the Civil and Small Claims Advisory

44. Exhibit p. 5.

45. *Id.*

46. Memorandum 2016-59, p. 4.

47. Exhibit p. 2.

48. *Id.*

49. *Id.*

50. Exhibit p. 7.

51. See *id.*

Committee of the Judicial Council in 2005. Sections 2 and 3 of the “Information and Caution on Mediation Confidentiality” are Mr. Kelly’s “own first attempts at a draft [that] the Commission might find to be a useful starting point.”⁵² The staff appreciates the clarification and apologizes for its mistake in describing the source of the “Information and Caution on Mediation Confidentiality” in Memorandum 2016-59.

John Warnlof “believe[s] that there is universal agreement that before parties agree to mediation, they should be fully informed as to its consequences including the inadmissibility of attorney/client communications occurring during the course of such mediation.”⁵³ He provides the following specific advice:

I urge the Commission to adopt a recommendation that the disclosures should be on a judicial council form and include the “Information and Caution on Mediation Confidentiality” ... and should also incorporate portions of the 2005 form proposed by the Civil and Small Claims Advisory Committee of the Judicial Council.... The required disclosure should be made by a party’s attorney when mediation is first suggested. In providing “a general explanation” of confidentiality, a mediator should confirm that a participant has been provided with, and has reviewed, the judicial council form.⁵⁴

Revise the Law on Waiving Mediation Confidentiality or Modifying It By Agreement

Memorandum 2016-59 discusses some suggestions to revise the law on waiving mediation confidentiality or modifying it by agreement. Without taking an official position, CCBA says that those ideas “should be rejected for the reasons set forth by staff.”⁵⁵

Safeguards Against Attorney Misconduct in the Mediation Process

Memorandum 2016-59 discusses some suggested safeguards against attorney misconduct in the mediation process. Without taking an official position, CCBA says that “[s]ome of these proposals may have merit on their own, but not as an alternative to the necessary reforms reflected in the Draft Legislation.”⁵⁶

52. Exhibit p. 4.
53. Exhibit p. 11.
54. *Id.*
55. Exhibit p. 2.
56. *Id.*

Ron Kelly's "Alternative Compromise Package"

With regard to Ron Kelly's "Alternative Compromise Package," CCBA says that the "problems with limiting the exclusion to conversations only between lawyers and clients ... are well articulated by staff and should be rejected for those reasons."⁵⁷ Similarly, Jeff Kichaven states that the "Alternative Compromise Package" is "not a compromise at all, and should be rejected."⁵⁸ He offers several arguments in support of that position.⁵⁹

Other Matters

One more point may be worth mentioning:

- Some of the new comments refer to "California's Absolute Confidentiality rules"⁶⁰ or dangers posed by "absolute confidentiality" in California.⁶¹ As previously noted in this study, California's mediation confidentiality statute does not provide absolute confidentiality. Rather, it is subject to a number of limitations and exceptions. Of particular note, it does not apply in a criminal case.⁶²

Respectfully submitted,

Barbara Gaal
Chief Deputy Counsel

57. Exhibit p. 2.

58. Exhibit p. 8 (boldface omitted).

59. See Exhibit pp. 8-9.

60. Exhibit p. 5.

61. Exhibit p. 1.

62. See, e.g., Memorandum 2014-14, pp. 8-9 & sources cited therein.



Justice Through Laws

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November 28, 2016

The Hon. Chair and Members
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**Study K-402 – Relationship Between Mediation Confidentiality and
Attorney Malpractice and Other Misconduct
Support for Initial Draft of Legislation (Memo 2016-58)**

Dear Chairman Lee and CLRC Members and Staff:

The Conference of California Bar Associations (CCBA), a statewide organization of attorneys representing more than 30 metropolitan, regional and specialty bar associations, strongly supports the Draft Legislation to Implement the Commission's Preliminary Decisions (11/2/2016) embodied in [Memo 2016-58](#) of Study K-402 ("Relationship Between Mediation Confidentiality and Attorney Malpractice and Other Misconduct").

The draft legislation is fully consistent in effect with [CCBA Resolution 10-06-2011](#) and the original [AB 2025 of 2012](#), which were the inspiration for the provision of ACA 98 of 2012, which directed the CLRC to study the dangers absolute confidentiality posed to consumers of mediation who were victimized by incompetent or unethical attorneys. The draft legislation provides necessary recourse to those victims, while also providing essential protection to the secrets of other mediation parties.

Regarding the issues raised by staff, we offer the following:

- We believe the underlying action must be fully resolved before the malpractice action or disciplinary charges are filed. However, we further believe this restriction will be self-effectuating, and no specific language need be added to the statute.

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- We believe the proposed legislation should adopt the standard of the UMA. It is not enough to show that the mediation communication is relevant to such a case; the proponent must also show that “the evidence is not otherwise available.”
- There should not be a different standard for disclosure. The intent of drafting the initial resolution was to create an exception to protect clients, not to lessen the discovery standard. Having the same standard apply during discovery and admissibility at trial will promote settlements of malpractice claims prior to trial.
- Regarding potential ambiguity in the concept of “legal malpractice claims,” we suggest CLRC consider the language of Evidence Code §958, which provides the attorney-client privilege does not apply to a “communication relevant to an issue of breach, by the lawyer or by the client, of a duty arising out of the lawyer-client relationship.” There is no ambiguity in the concept of State Bar disciplinary proceedings.
- There should be no exceptions to the exception. If lawyers are not involved in the types of mediations listed, the statutory exception will not be relevant. If lawyers are involved, their clients should have the protections the exception provides.
- Enforcement of the amended law will remain with the trial judge, as it is currently.
- We do not believe a data collection component is necessary.

Similarly, the CCBA has no official position on the recommendations made in the [Supplemental Memo 2016-59](#) relating to “Possible Additional Reforms to Include in the Tentative Recommendation.” Given that the Draft Legislation is similar in both intent and direction to the resolution adopted by the CCBA and the original version of AB 2025, and addresses quite effectively the issues raised in *Cassel v. Superior Court* (2011) 51 Cal.4th 113 and other cases highlighting how the current statutory scheme shields attorney malfeasance and incompetence, the CCBA certainly does not recommend any of the recommendations in lieu of the Draft Legislation.

We note, however, that the inclusion of these alternative approaches suggests either staff concerns with the courageous approach the commission has chosen to follow, the fact that any legislation to change to the current statute will be bitterly opposed by the well-organized and politically influential professional mediation industry and thus may not be enacted, or some combination of the two. We therefore offer these observations:

- Disclosure Requirement – Certainly, a plain and clear warning to consumers that they well may be signing away their right to recourse against an unscrupulous or incompetent attorney if they enter an arbitration agreement would be far better than the current law, where the consumer only finds out when thwarted in his or her efforts to obtain justice. However, none of the examples provided are sufficiently clear and direct, in our view; they are too much like the “informed consent” waivers given to patients prior to medical procedures which are so convoluted and complex that the baffled patient signs automatically, without really being informed of anything. If this recommendation moves forward as a supplement to (not substitution for) the Draft Legislation, any disclosure should be:
 - Mandated by statute before an agreement to mediate is enforceable.

- In absolutely plain terms regarding rights being signed away
- To be initialed by the consumer.

- Revising the Law on Waiving Mediation Confidentiality or Modifying it by Agreement – The proposals listed all should be rejected for the reasons set forth by staff. If the law regarding waiver were to be revised, it should call for the converse of existing law – i.e., the ability of the consumer to protect him/herself must be the default. If absolute confidentiality is to be available at all, it should be only with the complete and actual informed consent of all parties.

- Safeguards Against Attorney Misconduct in Mediation Process – Some of these proposals may have merit on their own, but not as an alternative to the necessary reforms reflected in the Draft Legislation.

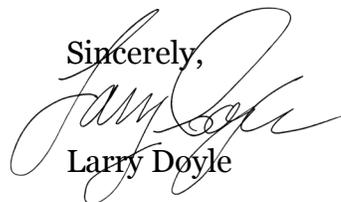
- Limit Exclusion to Conversations Between Lawyer and Client Only – The problems with limiting the exclusion to conversations only between lawyers and clients (i.e., codifying the appellate court’s holding in *Cassel*) are well articulated by staff and should be rejected for those reasons.

At bottom, the Draft Legislation represents an excellent effort to provide necessary protections for mediation participants with minimal risk to the process, and the CCBA strongly urges the Commission to hold true to the course it decided upon over a year ago. The Tentative Recommendation ultimately issued should include the Draft Legislation, and only such further suggestions as might supplement its effectiveness.

Although the opposition to California joining with nearly all other jurisdictions to provide these protections has been vociferous, it has been wholly lacking in substance. No evidence has been provided to the Commission that the absence of absolute confidentiality has had a negative effect on mediation as a process in any other state or in the Federal courts. Not a single mediation consumer has come forward to state that he or she would not participate in mediation absent absolute confidentiality, in contrast to at least dozens of consumers who support the Commission’s efforts to provide protection in those rare cases involving unscrupulous or incompetent lawyers. There is tremendous fear of change among the opponents of the Draft Legislation, but no hard evidence upon which to base that fear. For that reason, the Draft Legislation should go forward as the Commission’s Tentative Recommendation.

Thank you again for your valuable efforts on this important issue. Please contact me at (916) 761-8959 or Larry@LarryDoyleLaw.com if I can be of assistance.

Sincerely,



Larry Doyle

EMAIL FROM RON KELLY (11/29/16)

Re: Misunderstanding on Source of Proposed Informed Consent Warning in MM16-59?

Dear Ms. Gaal,

I know you seek to be fully accurate in the memoranda you prepare for the Commission.

The wording on page 11 of your recent Memorandum 2016 - 59 might be read to indicate that the entire informed consent form on that page, which I suggested, was taken from the form circulated for public comment by the Civil and Small Claims Advisory Committee of the Judicial Council in 2005. I want to be sure you know that only section 1 is taken (word for word) from that form. Sections 2 and 3 are my own first attempts at a draft I believed you and the Commission might find to be a useful starting point.

My letter of October 11, 2013 attempted to accurately describe the derivation as follows:

The summary of current law in paragraph 1 of the proposed notice was drafted and circulated for public comment in 2005 by the Administrative Office of the Courts. The AOC originally proposed that this summary be provided to all mediation participants prior to mediation, but eventually withdrew this proposed requirement. Although withdrawn, it's an excellent summary of current law.

The specific examples of risks and possible remedies in paragraphs 2 and 3 track points raised at yesterday's Commission meeting, and prior extensive negotiations and compromises reached in the drafting of the earlier Evidence Code section 1152.5 (a)(5) in 1993 (enacted through SB 401 by Lockyer) and discussions in drafting the current section 1123 in 1996 by the Commission. Reference to these discussions is noted in the recent Commission Memorandum 2013-39, pages 5-8, and in the 1996 Commission Memorandum 96-86, Staff Draft Recommendations, Staff Notes, pages 21-22, regarding current section 1123 (at that time numbered 1128), "...if a representation made in a mediation induces assent to an agreement, the participant relying on the representation should have it incorporated into the written agreement."

I apologize for the confusion on this point. I would not want anyone to be misled on the source of sections 2 and 3.

Yours,

Ron Kelly



November 28, 2016



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In Re: Mediation Confidentiality; Memoranda 2016-58 and 2016-59

Dear Ms. Gaal:

There is no evidence that confidentiality, beyond that provided in Federal Rule of Evidence 408, California Evidence Code sections 1152 and 1154, and New York Civil Practice Law and Rule 4547, is necessary for effective mediation.

Accordingly, the Commission seems to be on the verge of recommending that the legislature create an exception to California's "Absolute Confidentiality" rules so that consumers can effectively seek redress and vindicate the Rule of Law if they believe that they are the victims of legal malpractice in mediation. The Commission can take this small step in favor of consumer protection and the Rule of Law without in any way hampering the effectiveness of mediation.

Yet the mediation establishment continues to pellet the Commission with a variety of suggestions – distractions, really -- which they say make California's Absolute Confidentiality rules OK. In its current memoranda, the staff notes that few of these distractions have generated much interest. Those which have generated interest are without merit, as explained below.

The Commission has the opportunity to recommend the beginnings of a more valid perspective to the Legislature, one more consistent with actual evidence, one which protects consumers and promotes the Rule of Law without damaging the effectiveness of mediation one whit. The draft legislation proposed in memorandum MM16-58 largely gets the job done. As explained below, Evidence Code section 703.5 needs amendment as well, to allow mediators to testify. A few of the more popular distractions are also discussed below. I respectfully request that the Commission end the distractions and recommend this beneficial legislation to the Legislature.



Evidence Code Section 703.5 should be amended to permit mediators to testify in legal malpractice cases arising out of mediations.



In order for malpractice plaintiffs to have fair trials – and to allow mediators to protect their good names – Section 703.5 should be amended to allow mediators to testify in malpractice cases arising out of mediations.

In a paradigm case, a plaintiff might sue her former lawyer for malpractice, claiming that, at a mediation, the lawyer advised the client to settle too cheaply. The lawyer's defense might be that the mediator told him of new evidence against his former client, in light of which he thought that the settlement was reasonable. Even though the lawyer's testimony of what the mediator said to him is hearsay, many courts would likely admit that testimony because it is not being offered to prove the truth of the matter asserted, but rather to prove the reasonableness of the lawyer's advice, or for other collateral purposes.

In order for the plaintiff to have a fair trial, the mediator must be allowed to testify. To rebut the lawyer's hearsay testimony, the plaintiff would likely need to call the mediator to testify. Particularly if the lawyer testifies that the mediator's hearsay statements came in a private conversation between the mediator and the lawyer, there would be no other means of rebuttal. If the plaintiff is denied the mediator's testimony, it is hard to see where the plaintiff gets a fair trial. The lawyer would be at liberty to fabricate.

As unfair as this would be to the plaintiff, it is also unfair to the mediator. If the mediator is unable to testify, the lawyer (now defendant in the malpractice case) could opportunistically put any words he wants into the mediator's mouth to get himself off the hook. These might include all manner of false or foolish statements unfair to the mediator. If a lawyer ever tried to throw me under the bus this way, I would want the opportunity to set the record straight, on the record. I suspect that other mediators, if similarly demeaned, would want the same. Anything other than the ability to testify in the same proceeding or at the same trial would be too little, too late.

The mediation establishment will probably respond by arguing that this would result in mediators being endlessly drawn away from their invaluable work and into depositions and trials to testify as to long-ago mediations of which they remember little. The answer, again, is to ask whether this has become a reality in New York, in cases governed by Federal Rule of Evidence 408, or in Uniform Mediation Act states, where mediator testimony is permitted in such cases. Is there any actual evidence of this being a problem in any of those jurisdictions? If not, why believe that it would be a problem in California?



There should be no exceptions for family mediations, DRPA mediations, or other “special” cases.



Family mediators, community mediators, and other self-proclaimed special cases assert that their mediations would be devastated if lawyers who participate in those mediations could be sued for malpractice.

Initially, there is a low risk of legal malpractice claims arising out of those special-case mediations because, as those mediators tout as a benefit of what they do, so many of their cases involve self-represented parties.

And, if a party to a special-case mediation brings a lawyer to represent him or her, why is that party any less entitled to have their lawyer live up to the standard of care?

Finally, let it be said again, let’s look at actual experience. Basic social science methodology would have us look for situations where legal malpractice cases arising out of these special-case mediations are a possibility, and see whether disaster has ensued as a result. The answer of course, is that in New York and the UMA states, such legal malpractice cases are a possibility, and no evidence has been presented that family mediation, community mediation, or any other special class of mediations has suffered disaster.

There should be no one-size-fits-all mandatory disclosure requirements, or any such mandated requirements.

The more the subject of “mandatory disclosure requirements” regarding mediation confidentiality is studied, the more certain it is that the proposal will collapse of its own weight.

To be accurate and comprehensive, any disclosure cannot be short and concise. The more accurate and comprehensive it gets, the harder it will be to draft, much less for a consumer to understand.

If the disclosure discusses the limitations on a client’s rights against his or her own lawyer, it may be construed as a prospective waiver of liability, which Rule 3-400, Rules of Professional Conduct, forbids. At a minimum, the client should have the opportunity to receive independent advice before agreeing to that limitation on their lawyer’s liability. Compare, Rule 3-300, Rules of Professional Conduct.

Otherwise, the only advice the client receives regarding consent is from his or her own lawyer – whose interests at least potentially conflict with those of the client. If this cumbersome, time-consuming and expensive step is necessary, how will we ever get consent and actually convene a mediation?



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The proposed “Alternative Compromise Package” is not a compromise at all, and should be rejected.



A Page 31 of MM16-59, the Staff raised an “Alternative Compromise Package.” Actually, it is not a compromise at all. It does not adequately protect consumers or promote the rule of law, and should be rejected.

Initially, the predicate for this supposed compromise is the familiar urban legend that absolute confidentiality is necessary for effective mediation, etc.

Of course, if that were true, then in jurisdictions which do not provide absolute confidentiality, we should be able to find evidence that mediation, or at least effective mediation, couldn’t take place. To remind the Commission of what it well knows, but which cannot be repeated often enough, there are jurisdictions which do not provide absolute confidentiality, and the mediation establishment has failed to provide evidence that, in those jurisdictions, effective mediation is hampered.

Indeed, in New York, where confidentiality protection is minimal, there is evidence that much mediation takes place. JAMS lists 81 neutrals active in its New York City office. <https://www.jamsadr.com/jams-new-york>. There are about 90 in JAMS’ Los Angeles office, <https://www.jamsadr.com/jams-los-angeles>, and about 100 in San Francisco, JAMS’ biggest office. <https://www.jamsadr.com/jams-san-francisco>. (Although these lists do not distinguish between mediators and arbitrators, most neutrals do both. And, there is much overlap between the three lists. Still, the number of active neutrals in New York City is substantial.) So, at the high end of the market, there is evidence of much mediation activity in New York.

Additionally, there are over 300 mediators on the roster of the mediation panel for the United States District Court for the Southern District of New York (Manhattan). http://www.nysd.uscourts.gov/docs/mediation/mediators_list/List%20of%20mediators.2.3.2016.pdf. (There are another 207 listed on the comparable panel for the Eastern District of New York [Brooklyn]. <https://www.nyed.uscourts.gov/adr/Mediation/displayAll.cfm>.) By contrast, there are 290 on the comparable panel in the Northern District of California, http://12.130.78.145/cand_ver2010/ADR/Neutral2_Search2a.aspx, and only 233 on the comparable panel in the Central District of California, <http://court.cacd.uscourts.gov/cacd/AttySetPan.nsf/Profiles?OpenView>. So, in other parts of the marketplace, New York again seems to have a lot of mediation activity.

The Commission may characterize this as quasi-evidence. But even if that is so, it’s more than the mediation establishment has on its pan of the scale. There is no evidence of any kind to prove that



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absolute confidentiality is necessary for effective mediation. Thus, there is no reason for any so-called grand compromise to preserve that absolute confidentiality.



Moreover, this supposed “compromise” fails the essential test of acceptability. It does not provide for the admissibility of all relevant evidence in the legal malpractice cases it would permit. The fundamental rule of evidence, essential to the administration of justice and public confidence that the court system is getting cases right, is that all relevant evidence is admissible. Evidence Code section 351. Any proposal which does not permit the admissibility of all relevant evidence will not provide for fair trials, and should simply be discarded as a sideshow.

The mediation establishment is correct that, in a previous generation, California made certain policy choices regarding mediation confidentiality, which resulted in our current statute. That statute is an embarrassment. It goes farther than any logic or experience requires. It frustrates the rule of law and stands in the way of consumer protection. It has hardly proved itself a lamp unto the nation. In the decades since its enactment, not one other state has chosen to pattern its own law after our poor example. It’s no wonder why. The Commission has the opportunity to recommend that the Legislature start to roll this law back. Now is the time.

Respectfully submitted,

Jeff Kichaven

JK:abm

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November 29, 2016

Barbara Gaal
Chief Deputy Counsel
California Law Revision Commission
Via email: bgaal@clrc.ca.gov

Re: CLRC Staff Memorandum 2016-58

Dear Ms. Gaal:

This letter responds to the concluding statement in Memorandum 2016-58 that Staff welcomes and encourages suggestion or comments concerning the draft legislation (Proposed Evidence Code §1120.5) and certain drafting issues identified therein.

The following comments should not be construed as a departure from my personal opinion the creation of an exception to mediation confidentiality for attorney-client communications occurring during mediation is unwarranted and will adversely impact the use of mediation in dispute resolution.

Scope of Mediation Evidence. The proposed exception applies to all types of mediation evidence, not just communications between an attorney and a client but would extend to all mediation participants with the exception of the mediator (See, Evidence Code §703.5).

In my mediations, I have asked dozens of attorneys and parties if their use of mediation would be affected if they were subject to discovery and testimony at trial. The universal reaction that I have received is that they would probably decline to use mediation if their files could be subpoenaed, if attorneys and parties could be deposed and if they could be compelled to appear as witnesses at trial. Conversely, having defended attorneys in malpractice actions, I would strongly contend that due process would be denied to the attorney accused of malpractice if he or she was unable to call mediation participants to refute a former client's allegations.

Pending Mediations. If a client concludes that his or her attorney has committed malpractice in the course of a mediation, whether by wrongful actions resulting in a binding settlement or preventing a settlement, the attorney/client relationship will have been terminated and a complaint filed. Accordingly, it is unlikely that under such circumstances a mediation would still be pending.

Tolling Provision. An essential element of a legal malpractice claim is that the former client has sustained damages. Such damages would arise only if there was a binding settlement or upon discovery by the former client that his or her attorney had prevented an otherwise favorable settlement. I am not aware of any instance where attorney has been sued for preventing a settlement. Because a cause of action does not arise until a former client has been damaged, I do not foresee the need for a tolling provision.

Evidentiary Standard. As noted by Staff, to be admissible at trial, evidence must be relevant but to be discoverable the evidence need only be reasonably calculated to lead to the

discovery of admissible evidence. If the proposed exception is limited to communications only between an attorney and a client, then, the discovery standard of admissibility would be appropriate, but if the exception applies to all mediation participants, then, in the interest of protecting such participants from unfettered discovery, the standard should be one of relevance.

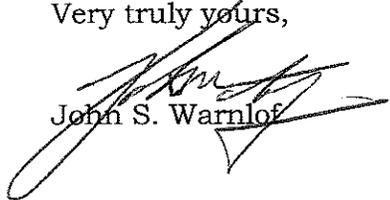
DRPA and Family Law Mediations. Professor Mary Culbert and representatives of the family law bar have made strong arguments that the proposed exception should not apply to DRPA and family law mediations. I am not convinced by the arguments advanced. If participants in DRPA community mediations are self-represented, then the proposed exception does not come into play. Likewise, in a family law mediation where the parties are self-represented, the proposed exception would not apply. If the Commission concludes that an exception to mediation confidentiality is warranted to make attorneys accountable for alleged malpractice occurring in the course of a mediation, then the exception should apply across the board.

Disclosure Requirements. California Rules of Court 3.854(b) requires that, in all court-connected mediations, "At or before the onset of the first mediation session, a mediator must provide the participants with a general explanation of the confidentiality of mediation proceedings." I believe that there is universal agreement that before parties agree to mediation, they should be fully informed as to its consequences including the inadmissibility of attorney/client communications occurring during the course of such mediation.

In answer to Staff's questions concerning what disclosures should be made, when the disclosures should be made and by whom they should be made, I urge the Commission to adopt a recommendation that the disclosures should be on a judicial council form and include the "Information and Caution on Mediation Confidentiality" set forth on Page 11 of Memorandum 2016-59 and also should incorporate portions of the 2005 form proposed by the Civil and Small Claims Advisory Committee of the Judicial Council. The disclosures should be made prior to a client's agreement to mediate. Waiting until the joint session at the commencement of the mediation is too late. The pressure to proceed with the mediation is too great. In over 500 mediations, after discussing mediation confidentiality with the participants, I have never had a participant state that confidentiality is unacceptable and decline to participate in the mediation. The required disclosure should be made by a party's attorney when mediation is first suggested. In providing "a general explanation" of confidentiality, a mediator should confirm that a participant has been provided with, and has reviewed, the judicial council form.

I hope that the foregoing comments will be of some benefit to the Committee.

Very truly yours,


John S. Warnlof

**SUPPLEMENTAL COMMENTS OF PETITIONER NANCY AHRENS
(LAKE GENEVA, WI)**

New York is doing the same thing. My daughter's high priced attorney took all her assets to defend her case, then decided, behind closed doors, when judge called a recess to meet with attorneys alone, got my daughter's attorney to agree to an unlawful divorce in another state, which had no jurisdiction, and admitted same, to decide custody of their child, and didn't bother to tell her client, who found out when her name changed in the case. States are doing as they please, and being reimbursed by federal govt. at 66%.

**SUPPLEMENTAL COMMENTS OF PETITIONER RENEE ANDREWS
(KANSAS CITY, KS)**

I'm signing because I love my community and country. My family has experienced everything communicated above and we continue to fight injustice in our lives. This corruption of govt. can ton continue. We must continue this fight , the future of the families in this nation depends on it.

**SUPPLEMENTAL COMMENTS OF PETITIONER DEBRA ASHBY
(QUEEN CREEK, AZ)**

I am right now experiencing California court corruption. This needs to stop immediately.

**SUPPLEMENTAL COMMENTS OF PETITIONER JIMMY AYALA
(CIRCLEVILLE, NY)**

I was bamboozled in court by attorneys and money taken for no work provided!

**SUPPLEMENTAL COMMENTS OF PETITIONER MARY BANASCHI
(TORRINGTON, CA)**

The entire judicial injustice system administers nothing but lawlessness and it must be reformed before it is to late.

**SUPPLEMENTAL COMMENTS OF PETITIONER VANESSA BARRIENTOS
(KISSIMMEE, FL)**

I am in the best interest of the people.

**SUPPLEMENTAL COMMENTS OF PETITIONER ANNELISE BARRON
(PALO ALTO, CA)**

I have had at least two of these abuses happen to me personally!!

**SUPPLEMENTAL COMMENTS OF PETITIONER KELLY L. BAURLE
(GLOVERSVILLE, NY)**

The local Governing Agencies are connected and contracted to each other this is a conflicting situation when parental interference can draw from Social Security and other resources off children and taking the time spent with natural parents from children so the custodian of the children can spoon feed allegations of abuse to the child to alienate and stop the healthy relationships between the parent and child ... Nothing good comes out of the greed introduced by the The “kids for cash” scandal which unfolded in 2008 over judicial kickbacks at the Luzerne County (eg. every county of the US) Court convicted of accepting money from [XXX], builder of two private, for-profit youth centers for the detention of juveniles, in return for contracting with the facilities and imposing harsh adjudications on juveniles brought before their courts to increase the number of residents in the centers.

This has created a poverty level for the non-custodial parents with hardships that have devastating effects ! In hind sight of the creation of 1997 Adoption and Safe Family Act that fueled the corruption it makes it seem as I said many times the Career Politicians had a money making scheme and continued with it even after it was found to be creating State corruption and many that had took actions against unsuspecting families have the Governing title to hide behind and trying to claim amenity but all have violated the U.S. Constitutional Rights to gain personally at the Citizens expense on their lives and liberties ! We have been victimized and mocked by States to long without remedy !

For example, [YYY] adjudicated children to extended stays in youth centers for offenses as minimal as mocking a principal on Myspace, trespassing in a vacant building, or pursuant to a plea agreement, to federal charges of honest services fraud and conspiracy to defraud the United States (failing to report income to the Internal Revenue Service, known as tax evasion) in connection with receiving \$2.6 million in payments from managers at [Company 1] in [Pennsylvania Location A] and its sister company [Company 2] in [Pennsylvania Location B]. The plea agreement was later voided by a federal judge, who was dissatisfied with the post-plea conduct of the defendants, and the two judges charged subsequently withdrew their guilty pleas, raising the possibility of a criminal trial.

A federal grand jury in [Pennsylvania Location C] returned a 48-count indictment against [YYY] and [ZZZ] including racketeering, fraud, money laundering, extortion, bribery, and federal tax violations on [date in 2009]. [ZZZ] entered a revised guilty plea to one count of racketeering conspiracy in [date in 2010]. In a verdict reached at the conclusion of a jury trial, [YYY] was convicted [date in 2011] on 12 of the 39 counts he faced.

Following the original plea agreement, the Pennsylvania Supreme Court ordered an investigation of the cases handled by the judges and following its outcome overturned

several hundred adjudications of delinquency in Luzerne County. The Juvenile Law Center filed a class action lawsuit against the judges and numerous other parties, and the state legislature created a commission to investigate the wide-ranging juvenile justice problems in the county. The Center has maintained a list of related court documents.

*** Footnote signals deleted; footnote text was not accessible online.

**SUPPLEMENTAL COMMENTS OF PETITIONER DENISE BEDIO
(BERWICK, PA)**

Corruption and lack of accountability is running rampant in every branch of government. This is unacceptable and needs to be addressed. The people are no longer remaining silent!

**SUPPLEMENTAL COMMENTS OF PETITIONER BRANDY BONNER
(EMERSON, GA)**

The legal & judicial systems are corrupted & tend to proceed according to prejudice.

**SUPPLEMENTAL COMMENTS OF PETITIONER MARINA BOYD
(LOS ANGELES, CA)**

Lack of transparency is the precursor to corruption

**SUPPLEMENTAL COMMENTS #1 OF PETITIONER CHRISTOPHER
BROWN (ROANOKE, VA)**

Justice is important.
For everyone.
And should be a given.
Not a hope.

**SUPPLEMENTAL COMMENTS #2 OF PETITIONER CHRISTOPHER
BROWN (ROANOKE, VA)**

The legal system needs to become the justice system, also.

**SUPPLEMENTAL COMMENTS OF PETITIONER K BUTLER
(TACOMA, WA)**

Both my attorney's, opposing counsel, and Commissioner she handpicked to steal not only my court fees, but committed fraud against the court by planning an elaborate scheme to deprive me of due process, resulting in the obstructing of justice, while holding secret meetings minutes prior to our court hearing (appearance of impropriety), blocking every effort I make to get my discovery by instructing every attorney I get to involve

themselves in his plot to deprive me of my right to discovery. He did this by having both my attorneys lie and place false information on the record lies my ex husband and them made up against me in order to deny my credibility, manipulate and falsify my statements and documents. Ignore the facts of the case, but include and incorporate lies, and manufactured documents and false statements of ex were allowed. No sanctions for opposing attorney for not submitting documents, and when she finally did, they were not the answers to questions that my attorney submitted to her, in fact they had nothing to do with what had been asked of them, so they were of non effect. Commissioner denied me the judgment that had been previously awarded to me by another judge by ignoring the facts, ignored my request for court cost, stating that I had no need when it was quite obvious. Refused to issue the fraction of the arrears he granted that ex owed, by placing it on what he calls "reserves". Refuses to recuse himself while self dealing. Stealing all of my attorney fees by having my attorney's set my case up for failure through lying, coercion, manipulating, deception, putting false info into my documents, changing my statements in order to discredit me and my case, threatening and bullying me. The bar association and the CJC are all in bed with the corrupt Commissioner and the Lawyers I paid to handle my case. Together they have stolen over 8K from me and I cannot afford a new lawyer, and if I did that lawyer would do the same thing. The state of WA judicial system is so corrupt that there is no where to go for relief. The state agencies are also in with the court and the dishonest, thieving judges and lawyers. It is a very sad thing especially when you cannot find even one lawyer, or one judge who is honest.

**SUPPLEMENTAL COMMENTS OF PETITIONER KADEE CALLISTER
(IDAHO FALLS, ID)**

i'm signing because what the hell happened to my country

**SUPPLEMENTAL COMMENTS OF PETITIONER CANDACE CAMPER
(WPB, FL)**

7 victims caught in the middle of Internal Subsidy/GR/W9 Federal Fraud illegally evicted and left homeless due to DPSS Transitional housing Pilot Program, County Public Health Dept, County of Investigations, County Auditors Office, City Attorney Office, Inner City Law, DHS, Board of Supervisors in 1,2,3,4, 5th districts! Also reported to FBI, U.S. Dept. Of Justice, California Senate nominee Kamala Harris, HHS, U.S. HUD Housing and many more! All of whom are covering up due to No Attorney who would touch the case although the County courts evicted tenants into homelessness! These agency's and facts prove they all committed Federal corruption so why are 7 victims homeless when these Public Agency's caused the corruption! The corruption against the 7 culprits is being covered up due to the Leaders involved in the corruption housing scam. This is Unconstitutional, Unethical and down right criminal. Of course not one agency Employees homeowner ilegal sub tenant is being held accountable

**SUPPLEMENTAL COMMENTS OF PETITIONER LAURIE CHMIEL
(SAN FRANCISCO, CA)**

i've seen a child permanently damaged by CPS. that child has no chance at any happiness at life. they treated him like a slave.

he shouldn't have been removed from the home, i know because i live next door. i hear through the walls.

**SUPPLEMENTAL COMMENTS OF PETITIONER BRENDA COBIAN
(RENO, NV)**

Its not OK what's right is right and what's wrong is wrong and unfair its not OK to but people throw court cases that they're paying and end up paying for their own loss's not right!!!!

**SUPPLEMENTAL COMMENTS OF PETITIONER ROCHELLE COLEMAN
(SYRACUSE, NY)**

I AM A VICTIM OF FAMILY COURT INJUSTICE & I WANT ALL INJUSTICE TO BE STOPPED FOR CHILDREN AND FAMILIES TO LIVE IN PEACE.

**SUPPLEMENTAL COMMENTS OF PETITIONER CAMERON COUEY
(PETALUMA, CA)**

The system is corrupt. Federal rights are violated. Court orders are not enforced on women. There is still a significant bias toward 50/50 in all cases. Even when a parent has a drinking and drug problem. On psych evaluation. Parent is shown to be narcissistic, manic and delusions of grandeur. This is no home for a child but oh the studies say this the studies say that. All studies are always biased to the financier!!!

**SUPPLEMENTAL COMMENTS OF PETITIONER ANITA CROOKSHANK
(RALEIGH, NC)**

No one is exempt from the law-so why is it they look the other way! This method brings our Justice/Legal system to an equal of just another gang running the show!

**SUPPLEMENTAL COMMENTS OF PETITIONER FRANCIS DEAN
(KITCHENER, ON)**

Because I like so many others are disgusted with the antics of greedy attorney\$ that have turned the political landscape and the Justice system into a self-serving Just- us system of elitism and cronyism where law and order only apply to people depending on the amount of money in their bank account .When did lady Justice decide it was kosher to sell herself like so much a whore?!! Justice was meant to be for all , a level playing field

in life , it was not meant to be used for a selected few to distort to fatten up thier wallets .Especially ones that lie , cheat , and deliberately set out to destroy lives in their need for greed. If being “elite” entails being a liar and a thief without any consequence , heaven help us all that don't have the money or resources to fight back.

**SUPPLEMENTAL COMMENTS OF PETITIONER PAM DIZ
(DENVER, NC)**

This was done to me, the lawyers here in North Carolina are breaking laws and code of ethics violations in open court, they have paid my own lawyers to work against me and then had all lawyers in all of north Carolina threatened not to take my case so the lawyer who works for the judges company which I’m sending complaints of corruption about could work together to hurt me and my chikdren, they murdered my daughter to shut me up through a DSS medical kidnapping against Court order and now are going to send my son with a pedophile all just to hurt me because I spoke up about their human rights violations here and the fact that they are getting paid for pro bono work while suing the small business owner for free! [XXX] legal services is a mafia here and people are terrified of them yet anything posted negative about them gets erased and they have a 4 out 4 out of 4 rating when no one is happy with them and we all fear them because they are straight gangsters!!!

**SUPPLEMENTAL COMMENTS OF PETITIONER YURI DUBROVSKY
(AUSTRALIA)**

Australia just follow you lot in the USA.

My children were kidnapped from me by the NSW family law court on Bolton Street, Newcastle, New South Wales, they accept PURGURY in Australia. Indapendent Childrens Lawyers are not for the children they fabricate storries based of the moghters decieptfull approach to get her own way. They did not investigate a one thing that was in the best for the wellbeing of my three children. What are we men that are good fathers to do when so many fabricated storries to deal with. No JUSTICE hear in Australia absalute joke of the law and the family court.

**SUPPLEMENTAL COMMENTS OF PETITIONER JOSHUA ENSOR
(OMAHA, NE)**

to stop the false leading of the witness

And their protection by the law too poke and prod their victims too cast them, the taring and feathering of them before the unknowingly public by standards.

And too stop their lying butts.

**SUPPLEMENTAL COMMENTS OF PETITIONER CARLAW FARRELL
(FORT WORTH, TX)**

This is very important! And needs to be addressed...

**SUPPLEMENTAL COMMENTS OF PETITIONER HEYAM FARRELL
(SOUTHGATE, MI)**

I am watching my friend being bullied by a corrupt family court system they don't care about the child's welfare a bunch of bloodhound out to get \$\$\$\$\$\$ not just a few thousand nearly 80,000 she has lost everything she worked for over blood hound corrupt attorneys & judges within the same court system shame on them!!!!

**SUPPLEMENTAL COMMENTS OF PETITIONER LAURA FLEMING
(AURORA, CO)**

Stop Legalized Malpractice now!!

**SUPPLEMENTAL COMMENTS OF PETITIONER DENISE FUTHEY
(OSSEO, MN)**

Legalized malpractice is an abomination to our society — unAmerican & death penalty to families but worst of all it is not at all for or in the best interest of children - Enables & Perpetuates Callous, Malicious, Evil & Corrupt GOVT.CHILD PIRATING SYSTEM FOR PROFIT.

**SUPPLEMENTAL COMMENTS OF PETITIONER JANE GALLAGHER
(BROOKFIELD, CT)**

Malpractice is a CRIME and crooked attorneys should be stopped from practicing.

**SUPPLEMENTAL COMMENTS OF PETITIONER JESSICA GEVEDON
(CLINTON TOWNSHIP, MI)**

Unconstitutional kidnappings by the states need to stop!! There needs to be accountability!!

**SUPPLEMENTAL COMMENTS OF PETITIONER THERESA P. GIFFEN
(SARASOTA, FL)**

Maybe people should not vacation in California.

**SUPPLEMENTAL COMMENTS OF PETITIONER NORMA GILBERT
(DAWSON, AL)**

This law is hideous making it legal for malpractice. Actually it's insane!! I'm signing to help get that crime deemed unlawful.

**SUPPLEMENTAL COMMENTS OF PETITIONER BERNADETTE GLENN
(OXNARD, CA)**

Because even after abuse the Judge not only gave the car to my ex but I have to pay spousal support while he is out of the country.

Living it up on my hard work paying tases,paying his debts .until he remarries ,change of financial status on my part but even then have to prove if he is remarried or until he dies. The explanation I was given was California FairAct.Really even with torn cloths as proof photos ,police reports all was in favor for him.Oh but it is in the eyes of the judge that he had an affair.Now I have no insurance , no retirement , or pention .Where is the justice?

**SUPPLEMENTAL COMMENTS OF PETITIONER DIANE GUEST
(CARMICHAEL, CA)**

My family was destroyed due to Collusion, & Racketeering, among other crimes committed by the Sacramento County Family Court. Although it has been brought to the public's attention through the documentary "Divorce Corp", ... now adult children are in Therapy over being denied to grow up with their parent, Grandparents, etc.. Judge [XXX], Attorney [YYY], among other judges and Pro Tems, made millions off the backs of innocent children's terror. They should be in prison.

**SUPPLEMENTAL COMMENTS OF PETITIONER RANDY HAMILTON
(PLEASANTON, CA)**

This is just wrong. Attorneys need to be regulated.

**SUPPLEMENTAL COMMENTS OF PETITIONER RENEE HARRINGTON
(SAN LEON, TX)**

I am also a victim of unethical attorneys and fraud within the legal system

**SUPPLEMENTAL COMMENTS OF PETITIONER MARK HEXUM
(DUNLAP, IL)**

Attorney malpractice is a disease across the US and there is no recourse.

**SUPPLEMENTAL COMMENTS OF PETITIONER TRISHA HOLMEIDE
(OLYMPIA, WA)**

Trying to make right that which another corrupt court has made both stupid and wrong!

**SUPPLEMENTAL COMMENTS OF PETITIONER LYDIA HUBBELL
(ANTIOCH, TN)**

We, the people, must work to restore and maintain the integrity of the legal system. The lawyers and judges aren't following the rules and laws and our country is suffering because of it.

**SUPPLEMENTAL COMMENTS OF PETITIONER JOYCE JEFFRIES
(BEDFORD, IN)**

We, The People, As Americans deserve to have a government that ACTUALLY represents US and allows OUR votes to be counted, not Corporate prostitutes. We deserve leaders with honest, integrity, fairness and justice

**SUPPLEMENTAL COMMENTS OF PETITIONER CANDIDA JIMENEZ
(DINUBA, CA)**

Because my children we're wrongfully removed from me placed in adoption after I did above and beyond to Bring them home courts granted cps adoption based on lies with nothing to back it up

**SUPPLEMENTAL COMMENTS OF PETITIONER TOBY JOHNSON
(AUSTRALIA)**

Elements of the legal profession are abusing the system for their own financial gain.

**SUPPLEMENTAL COMMENTS OF PETITIONER HEATHER JORDAN
(LAGUNA NIGUEL, CA)**

I am a victim of Legalized Malpractice, and it also harmed my minor child.

**SUPPLEMENTAL COMMENTS OF PETITIONER RYSZARD
KACZMARCZYK (TORONTO, CANADA)**

It would be absolutely unjustified, not to support eliminating a self-serving and profiteering judicial industry.

**SUPPLEMENTAL COMMENTS OF PETITIONER CHRIS KELLY
(BRANDON, MS)**

IT IS A DISGRACE. AMERICA TURNING INTO NORTH KOREA!!!

**SUPPLEMENTAL COMMENTS OF PETITIONER TRICIA KELSEY
(NORTH HIGHLANDS, CA)**

I dont think its ok for any attorny to betray a clint that way

**SUPPLEMENTAL COMMENTS OF PETITIONER TANYA KENNEDY
(ORANGE, CA)**

Justice for our kids.

**SUPPLEMENTAL COMMENTS OF PETITIONER RICHARD KNISELY
(MONETA, VA)**

I am signing because the court system is crooked

**SUPPLEMENTAL COMMENTS OF PETITIONER NICOLE LALONDE
(CORNWALL, CANADA)**

no justice comes from legalized malpractice

**SUPPLEMENTAL COMMENTS OF PETITIONER ANNA LAMBERT
(DONIPHAN, MO)**

All parents need to file complaint on state workers the supervisors for misappropriation of state funds. The workers involved in malicious prosecution on case where the state seeks to terminate parental rights on false allegations, proceeding case without merit. The state can fraudulently obtain federal funds for these children placed in state custody, or obtain funds through administrative child support orders from working families. Actions of malicious prosecution , denial of due process parents provide the name of the state office, provide the name of the case worker , provide the name of the workers supervisor.Include the details of the case the court case the location ,the allegations , provide the detail that the child and or children were removed before allegations were ruled substantiated or unsubstantiated. Civil right violations of due process, Obstruction of justice by state official.Misuse of state official authority, court and state records, state official intent to defraud the federal government.

I _____ am writing this letter to request a former investigation for criminal activity by the following state agency being_____. The state worker name involved in said criminal activity is _____. That individuals supervisor through said agency of _____, located at the address off _____ in the state of _____, in the county of _____, supervisor name being _____ . The laws and criminal activity involved is of the following starting with Misappropriation of state funds of the state of _____. Funds being misappropriated by this worker are fund applied to court cost in the following court case / cases being _____, held at the following court _____, at the address of _____, in the state of _____.

_____. I the parent of _____, have / have not been accused of neglect, abuse , child endangerment. There has / hasn't been any rulings on said allegations so by proceeding with said case this is Misappropriation of state and county resources being the local justice system. and courts. This also is clear violation of civil rights in the area of Malicious prosecution occurring in the court of _____ with the case being _____. The following is the name of the judge or judges involved in the case _____. The attorneys involved in the case are _____ for the defendant being the parents of _____ and the parents name are _____ and _____. The attorneys for the plaintiffs being _____ and the plaintiffs in the case are _____. Again the criminal activity is Misappropriation of state funds by state workers accused, Misappropriation of state resources being the courts , Civil right violation by case workers being Malicious prosecution, False pretense in court case, Misappropriation of Federal funds obtained for child involved in said allegations , intent to defraud the federal government by illegal placement of child in state custody and other civil right violation of Denial of due process in court case involving said state worker

For complants on civil right violations this same form may be used but sent it to this address for civil right violations, request of investigation

Assistant Attorney General
Civil Rights Division
Criminal Section
950 Pennsylvania Avenue, Northwest
Washington, DC 20530

HHS Chief Financial Officers and Services Contacts
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OFFICE OF SPECIAL COUNSEL FILES COMPLAINT FOR
DISCIPLINARY ACTION AGAINST STATE EMPLOYEE The U.S. Department of
Health & Human Services
Hubert H. Humphrey Building
200 Independence Avenue, S.W.
Washington, D.C. 20201
Toll Free Call Center: 1-877-696-6775

**SUPPLEMENTAL COMMENTS OF PETITIONERS JON AND ALLENE
LANEY (NEW PORT RICHEY, FL)**

The hole government system is out of control over board. They have gone crazy with corruption and it has to stop. We the people have to fight these monsters together to stop them just like family court stealing children for federal money its all bad there money hungry.

**SUPPLEMENTAL COMMENTS OF PETITIONER JULIE LAW
(ISLE OF PALMS, SC)**

As my lawyer I hired for my divorce turned around and married my ex husband, then proceeded to keep me in court destroying my life. How dare you let lawyers get away with this?

**SUPPLEMENTAL COMMENTS OF PETITIONER RITA LAWRENCE
(OVERLAND PARK, KS)**

Laws are going against the people.

**SUPPLEMENTAL COMMENTS OF PETITIONER MARY LE COMPTE
(DAVIS, CA)**

Sign and fight□□□□

**SUPPLEMENTAL COMMENTS OF PETITIONER KATHRINE LESTER
(SALINAS, CA)**

My infant Grandson was appointed a public defender that DID NOT ACT IN HIS BEST INTEREST

**SUPPLEMENTAL COMMENTS OF PETITIONER MARK LORD
(ASHBURTON, UNITED KINGDOM)**

Because there is alot of corruption here there all for lies of the social services when they surpose to be representing you

**SUPPLEMENTAL COMMENTS OF PETITIONER CAROL LOTT
(RAVENNA, OH)**

The illegal removal of children, fraud, falsifying on legal documents to gain custody and incentives must end and the best interest of children must be restored !!!

**SUPPLEMENTAL COMMENTS OF PETITIONER MARNEY MACDONALD
(BUDGEWOI, AUSTRALIA)**

Family courts are criminal cartels. Lock them all up!

**SUPPLEMENTAL COMMENTS OF PETITIONER JOE MANZO
(PEABODY, MA)**

I'm sick of all the corruption in our illegal system!

**SUPPLEMENTAL COMMENTS OF PETITIONER DEBORAH MARTINEZ
(SAN ANTONIO, TX)**

I was threatened by [XXX] called me saying all because you went to higher management were taken Safety Plan away taken you court to lose your kids their on their way served you Emergency Removal filed had false allegations against me by cps Investigators III [YYY] gotten away fraud perjury most abused to my children still foster care

**SUPPLEMENTAL COMMENTS OF PETITIONER GILBERT MARTINEZ
(READING, PA)**

I am disgusted with these Criminals hiding behind law.

**SUPPLEMENTAL COMMENTS OF PETITIONER DEB METCALF
(AUSTRALIA)**

After being alerted to this petition from someone who has seen comments on a petition I've signed about about own Family Court Judges her in Australia (specifically over-riding our Paedophile Laws regarding contact with children, which resulted in the sad case of the child, now a teenager, having committed suicide), I've now read up on this Petition.

Admittedly I did find this confusing as I'm not familiar with your Laws in the US so I read up on the Video "Divorce Corp" on a couple of reliable media sources, which explained in a "nutshell" what is happening in the U.S. Family Law Court system

All I can say is it appears an utter abomination of the meaning of the word and action for Justice!

I'm gladly signing & sharing this Petition!

**SUPPLEMENTAL COMMENTS OF PETITIONER DOUGLS MILLS
(CHAMPAIGN, IL)**

There must be justice for noncustodial parents and any party requiring representation. We need better, more simplified laws protecting individuals, children and the family in

our country. Lawyers fleecing clients instead of honestly representing them is an abomination second only to raping widows. I legal system is destroying the family through broken laws. You destroy the family, you destroy our country.

**SUPPLEMENTAL COMMENTS OF PETITIONER KATHY MOORE
(RENO, NV)**

I agree wholly with this petition in its entirety. If you are reading this message, then please consider viewing, signing and sharing my precious little children's petition:http://www.thepetitionsite.com/109/068/219/2-years-without-mommy-help-little-children-be-returned-to-loving-mother/?taf_id=29214456&cid=fb_na#bbfb=205374870

This above is their original petition that has over 1,100 signatures at Care2.org, but still we are in need of thousands more signatures to present to the Governor and Sneators. A 2nd petition of the same nature is now on change.org. Please type "placated" in the earch option here at change.org and my sweet babies petition will be listed there easily to click on. Thank you for your consideration. GOD Bless the little children. Kathryn Moore, Loving Mother and Concerned U.S. Citizen

**SUPPLEMENTAL COMMENTS OF PETITIONER ANDREA OLIVIER
(ROCHESTER, NY)**

I sold my house to pay attorneys to keep me out of jail, and it almost worked. I had done NOTHING WRONG!

A year later, I find out my own attorney DIVORCED ME behind my back and let my ex remove my daughter from the state!

**SUPPLEMENTAL COMMENTS OF PETITIONER CHARLES OVERY
(MISSOULA, MT)**

It is important....

**SUPPLEMENTAL COMMENTS OF PETITIONER THEODORE PALMER
(DERWOOD, MD)**

No one should be above the law, and criminal fraud is illegal even if connected with a family law court case. Amoral to plunder family estate monies through these 'bad' laws.

**SUPPLEMENTAL COMMENTS OF PETITIONER SID PAWAR
(ARLINGTON, VA)**

I am survivor of the Corrupt Alameda County Superior Court - Family Law Division.

**SUPPLEMENTAL COMMENTS OF PETITIONER MARY JANE PEDERSON
(COSTA MESA, CA)**

The malpractice, threats, fraud, perjury, extortion and severe legal abuses I endured in family law court in Riverside County destroyed my life and others and almost got me murdered. I live in hiding now.

**SUPPLEMENTAL COMMENTS OF PETITIONER YVONNE PERKINS
(PROVIDENCE VILLAGE, TX)**

I need a movement like this in Texas

**SUPPLEMENTAL COMMENTS OF PETITIONER SARAH PETERSEN
(MOUND, MN)**

This is wrong.

**SUPPLEMENTAL COMMENTS OF PETITIONER JENNIFER REDWINE
(RICHMOND, CA)**

Lawyers should not be allowed to have mastery over their clients

**SUPPLEMENTAL COMMENTS OF PETITIONER HEATHER ROWE
(LIMINGTON, ME)**

I agree corruption is everywhere, but as someone outside and looking into California it seems the most screwed up, corrupt state in a corrupt county. The judiciary is most of why.

**SUPPLEMENTAL COMMENTS OF PETITIONER STEPHAN SCHURMANN
(DOUGLASSVILLE, PA)**

to stop court and lawyer corruption. None of you criminals is “above the law”

**SUPPLEMENTAL COMMENTS OF PETITIONER CRYSTAL LYNN KAUR
SINGH (NEW MEXICO)**

This is wrong everywhere and corruption needs to be addressed!

**SUPPLEMENTAL COMMENTS OF PETITIONER JENNIFER SKROCKI
(NEVADA CITY, CA)**

I feel I have been mislead and misrepresented by my lawyer

**SUPPLEMENTAL COMMENTS #1 OF PETITIONER JARRETT SMITH
(FARMINGTON, MI)**

We also need a law that protects citizens should we have to forcefully remove a judge from the bench. Checks and Balances Provided by the constitution relied too much on the belief that man was good and among us uncorruptable men. #MAGA

**SUPPLEMENTAL COMMENTS #2 OF PETITIONER JARRETT SMITH
(FARMINGTON, MI)**

The system only works when everyone plays their part appropriately

**SUPPLEMENTAL COMMENTS OF PETITIONER ROBIN SPENCE
(KOKOMO, IN)**

We the People, the majority, will end the murdering, murdering us from rightful and humane rights, and or of proper law and ORDER

**SUPPLEMENTAL COMMENTS OF PETITIONER ANDREW STASZAK
(AUSTRALIA)**

Im signing this petition as it is a international and manufactured institution of pure corruption. I only obey one law and that is Common Law. I AM A LIVING SOUL AND ONLY ANSWER TO MY CREATOR. These laws were once simple and any man or woman could defend themselves. Now check out the difference between simple words like person or even non -person in the Oxford dictionary and then look it up in the Blacks Law Dictionary. All I can really say is research and research that shit and it will open your eyes beyond imagination. Our birth certificates have us registered as corporate slaves, -like we were old enough to consent. There are ways out there to still challenge a totally corrupt New World Order. Their main objective is to create chaos and division and disarm the world so that only the bad guys have the firepower. The bad guys are the ones in charge and above the law. Well they can keep their inherited status and I'll keep mine, -outside the law. I mean their law not Common or gods law. Think about it, is any man qualified to judge another man? They hate to even grant trial by jury these days. Many sources like YouTube out there that can help. My favorite atm is the Deprogrammed Eniighter.To all the brothers who are feeling the pain for being a good father. Never ever give up. It is your and not a state responsibility to be a real man and father. Peace be opon you.

**SUPPLEMENTAL COMMENTS OF PETITIONER ARTUR TERABELIAN
(LAS VEGAS, NV)**

Because it should be equal rights for both parents to be in their child's life

**SUPPLEMENTAL COMMENTS OF PETITIONER TRENA THOMPSON
(SARNIA, CANADA)**

I'm signing in honour of my father who was bullied and abused in family Court. My mother used me as a weapon to ruin his life and the courts encouraged and enabled her abuse. And I have the documents to prove this fact! This needs to STOP now, 30 plus years is long enough. This malpractice is hurting children and families, for some beyond repair.

**SUPPLEMENTAL COMMENTS OF PETITIONER RENEE TULLIANI
(SCOTTSDALE, AZ)**

Not only is the legal system not able to provide justice, but it is truly corrupt. Family court is the worst, it is a legal avenue for extortion.

**SUPPLEMENTAL COMMENTS OF PETITIONER JUDY WALLS
(RIO VISTA, TX)**

CPS is kidnapping our children and grandchildren and selling them to the highest bidder this must stop now, your fixing to see the biggest war on this earth The Mother's and Grandparents are coming after our Taken Children and we will have no mercy!

**SUPPLEMENTAL COMMENTS OF PETITIONER P WALSH
(AUSTRALIA)**

Its time you crooks got yours

**SUPPLEMENTAL COMMENTS OF PETITIONER PEGGY WEATHERS
(DYERSBURG, TN)**

I have gone through many times and been put through hell by attorneys and judges, and even told by state law, there is no justice anymore in AMERICA, caused by those that put into law to make sure truth is not told and questions not asked in court to prove , NOT GUILTY , CORRUPTION, ORGANIZED MURDERS!

**SUPPLEMENTAL COMMENTS OF PETITIONER RYAN WEEKS
(TEMPE, AZ)**

Without ever being charged with a crime my son was kidnapped by the state, money extorted from me, and my 1st, 2nd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th and 14th ammendment rights were all revoked by the state because of criminal behavior on the part of lawyers and judges.

**SUPPLEMENTAL COMMENTS OF PETITIONER JENNAH WHEELER
(CERES, CA)**

California rural legal assistance violated by civil rights called me a liar and misrepresented me for 3 months before they had a hearing

Also dependency court lawyers make you guilty before and belittle your questions and self

**SUPPLEMENTAL COMMENTS OF PETITIONER JULES WILLIAMS
(MISSOURI CITY, TX)**

Of the onslaught of oppression from family courts especially against minority vulnerable males. The lack of due process and disregard for the 1st and 14th amendment.

**SUPPLEMENTAL COMMENTS OF PETITIONER JIM WILSON
(CAMERON, MO)**

No one should be above the law or decide which laws to obey. Even attorney's this is a total disgrace and travesty to the clients in which they represent!

**SUPPLEMENTAL COMMENTS OF PETITIONER TRACY WORDEN
(WASILLA, AK)**

My Alaskan Daughters Were Fraudulently Adopted in Hawaii in 2011.

**SUPPLEMENTAL COMMENTS OF PETITIONER CATHY ZOVADELLI
(AUSTRALIA)**

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.”