

MEDIATION:
AN ETHICAL “NO MAN’S LAND”

Presented by

PUPILAGE GROUP SIX

Cameron Astiazaran, Jeff Bolender, Rod Burkley, Gary Efron, Tom Fay, Barry Gore, Evan Koch, Robert Lauson, Pete Pettler, Cynthia Pollock, Mark Miller, David Simon, Mark Sarni, Rebecca Schroff, Hon. Ramona See, and Liz Turner

OVERVIEW

- 1. Mediation on California's Frontier**
- 2. Why Mediate a Dispute?**
- 3. Which Style of Mediation is Best?**
- 4. What Rules Govern Mediation?**
- 5. *Eggstrordinary* Events**

Hombre Bueno System

Circa 1850 (pre-statehood)

Oral complaint initiated civil action

Summons to appear with trusted, respected man

Conduit of community's collective wisdom

Option to renounce benefits of reconciliation

Assembly of parties, hombres buenos, and judge

No charge for services

Langum, David J., *Law and Community on the Mexican California Frontier*,

University of Oklahoma Press (1940)

WHY MEDIATE?

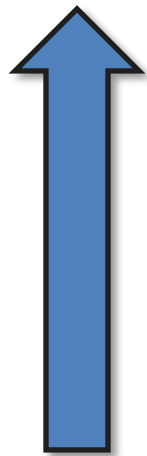
➤ *State budget cuts*

- 67 percent loss of funds
- 61 court closures
- Trial and hearing delays
- Longer wait times
- Unprocessed court records
- Fee increases

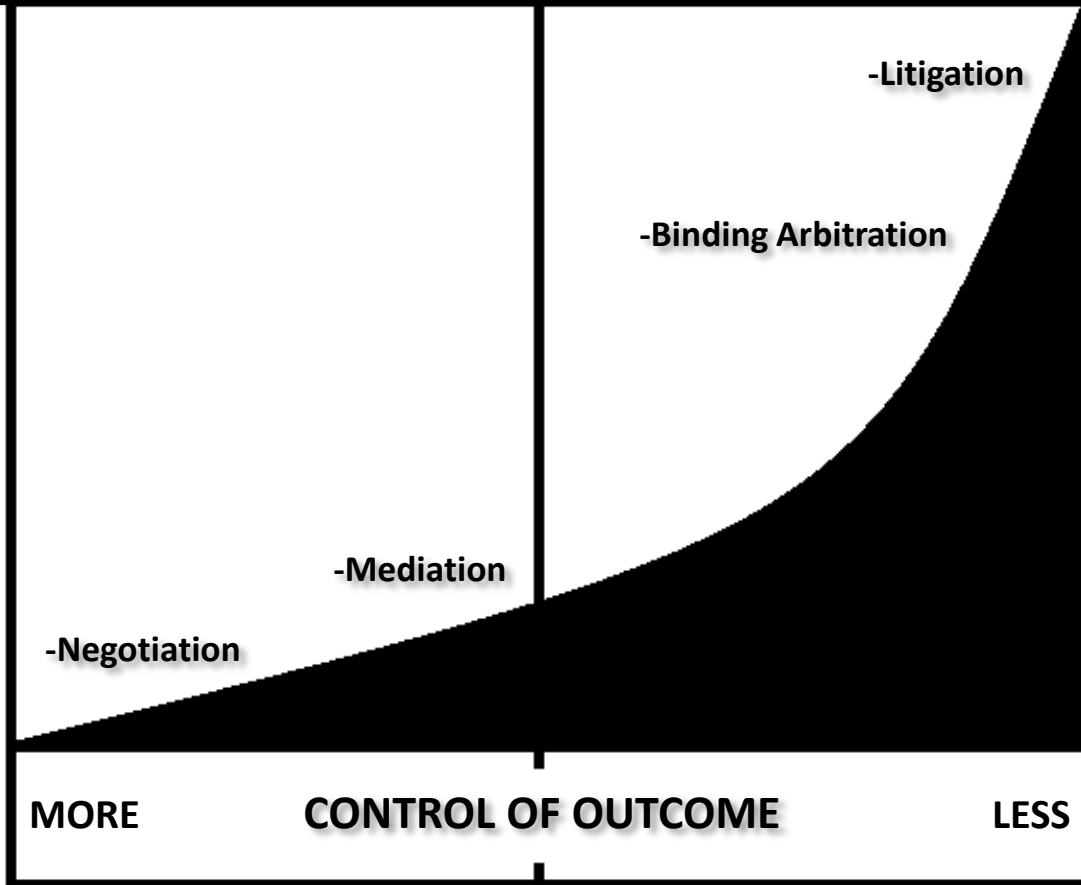
“Justice won’t be denied. But for many, it certainly will be delayed.”

Judge David S. Wesley

Dispute Resolution Continuum



COST OF RESOLUTION



DEGREE OF HOSTILITY



WHY MEDIATE?

➤ ***ADR Ethics***

- **Duty to confer and select ADR option in federal court (Gen. Ord. 11-10 (Aug. 15, 2011))**
- **Duty to check ADR box on CMC statement (Cal. Rules of Ct. 3.720-3.730)**
- **No specific ethics rules or opinions require ADR discussion with client**
- **No express requirement to discuss or minimize fees**

WHY MEDIATE?

➤ *Implicit Obligations to Discuss ADR*

- Fiduciary duty to act in client's best interests (170 CA3 1125; 210 CA3 336)
- Failure to inform as malpractice (258 CA2 136)
- **BEST PRACTICE**: discuss ADR with client, early and often, and document it!

MEDIATION STYLES

1. *Facilitative*

- No recommendations or advice as to outcome
- Joint sessions to hear opponent's point of view
- Parties encouraged to actively participate
- Attorneys play advisory role
- Mediator controls process, parties control outcome
- Allows parties to “vent” and have their “day in court”

2. *Evaluative*

- Akin to settlement conference with judges
- Points to weaknesses in each side's claims, defenses
- Focus upon legal positions, not underlying interests
- Mediator and attorneys play primary roles
- Mediator gives opinion as to likely outcome
- Individual caucuses rather than joint sessions
- Mediator controls process, influences outcome

3. *Transformative*

- Empowerment of the parties
- Ideal for parties with longstanding, ongoing relationship
- Goal is to transform the parties' relationship
- Avoid future conflicts by mending relationship
- Joint sessions to achieve mutual recognition
- Parties control process, outcome
- Attorneys play little or no role

Zena Zumeta, "Styles of Mediation: Facilitative, Evaluative and Transformative," Mediate.com (September, 2000)

THE RULES

➤ *Getting Into Mediation*

- California Code of Civil Procedure Section 1775, et seq.
- Available only in certain counties (including LA)
- Amount in controversy < \$50,000
- Paid for by Judicial Council

THE RULES

➤ *Evidence Code, §§ 1115-1128*

- Unification of mediation related statutes (1998)
- Extensive statutory scheme (40 Cal.4th 189)
- Does not expand, limit court's authority (§§ 1115, 1116)
- Settlement conference is not a "mediation" (§ 1117)

THE RULES

➤ *Evidence Code, §§ 1115-1128*

- No mediator's reports (§ 1121)
- Admissibility of a written settlement agreement (§ 1123)
- Enforceability of recorded oral agreements (§ 1118)
- Confidentiality of mediation communications (§ 1119)

West's Annotated California Codes

Evidence Code (Refs & Annos)

Division 9. Evidence Affected or Excluded by Extrinsic Policies (Refs & Annos)

Chapter 2. Mediation (Refs & Annos)

West's Ann.Cal.Evid.Code § 1119

§ 1119. Written or oral communications during mediation process; admissibility

Currentness

Except as otherwise provided in this chapter:

(a) No evidence of anything said or any admission made for the purpose of, in the course of, or pursuant to, a mediation or a mediation consultation is admissible or subject to discovery, and disclosure of the evidence shall not be compelled, in any arbitration, administrative adjudication, civil action, or other noncriminal proceeding in which, pursuant to law, testimony can be compelled to be given.

(b) No writing, as defined in [Section 250](#), that is prepared for the purpose of, in the course of, or pursuant to, a mediation or a mediation consultation, is admissible or subject to discovery, and disclosure of the writing shall not be compelled, in any arbitration, administrative adjudication, civil action, or other noncriminal proceeding in which, pursuant to law, testimony can be compelled to be given.

(c) All communications, negotiations, or settlement discussions by and between participants in the course of a mediation or a mediation consultation shall remain confidential.

Credits

(Added by [Stats.1997, c. 772 \(A.B.939\)](#), § 3.)

§ 1119. Written or oral communications during mediation process;..., CA EVID § 1119

West's Annotated California Codes

Evidence Code (Refs & Annos)

Division 9. Evidence Affected or Excluded by Extrinsic Policies (Refs & Annos)

Chapter 2. Mediation (Refs & Annos)

West's Ann.Cal.Evid.Code § 1119

“(c) All communications, negotiations, or settlement discussions by and between participants in the course of a mediation or a mediation consultation shall remain confidential.”

arbitration, administrative adjudication, civil action, or other noncriminal proceeding in which, pursuant to law, testimony can be compelled to be given.

(c) All communications, negotiations, or settlement discussions by and between participants in the course of a mediation or a mediation consultation shall remain confidential.

Credits

(Added by [Stats.1997, c. 772 \(A.B.939\), § 3.](#))

§ 1119. Written or oral communications during mediation process;..., CA EVID § 1119

West's Annotated California Codes

Evidence Code (Refs & Annos)

Division 9. Evidence Affected or Excluded by Extrinsic Policies (Refs & Annos)

Chapter 2. Mediation (Refs & Annos)

West's Ann.Cal.Evid.Code § 1119

“(a) No evidence of anything said or any admission made ... in the course of ... a mediation or a mediation consultation is admissible or subject to discovery...”

(b) No writing, as defined in [Section 250](#), that is prepared for the purpose of, in the course of, or pursuant to, a mediation or a mediation consultation, is admissible or subject to discovery, and disclosure of the writing shall not be compelled, in any arbitration, administrative adjudication, civil action, or other noncriminal proceeding in which, pursuant to law, testimony can be compelled to be given.

(c) All communications, negotiations, or settlement discussions by and between participants in the course of a mediation or a mediation consultation shall remain confidential.

Credits

(Added by [Stats.1997, c. 772 \(A.B.939\)](#), § 3.)

§ 1119. Written or oral communications during mediation process;..., CA EVID § 1119

West's Annotated California Codes

Evidence Code (Refs & Annos)

Division 9. Evidence Affected or Excluded by Extrinsic Policies (Refs & Annos)

Chapter 2. Mediation (Refs & Annos)

West's Ann.Cal.Evid.Code § 1119

“... and disclosure of the evidence shall not be compelled, in any arbitration, administrative adjudication, civil action, or other noncriminal proceeding in which, pursuant to law, testimony can be compelled to be given.”

arbitration, administrative adjudication, civil action, or other noncriminal proceeding in which, pursuant to law, testimony can be compelled to be given.

(c) All communications, negotiations, or settlement discussions by and between participants in the course of a mediation or a mediation consultation shall remain confidential.

Credits

(Added by Stats.1997, c. 772 (A.B.939), § 3.)

26 Cal.4th 1
Supreme Court of California

FOXGATE HOMEOWNERS' ASSOCIATION,
INC., Plaintiff and Respondent,

v.

BRAMALEA CALIFORNIA, INC.,
et al., Defendants and Appellants:

Ivan K. Stevenson, Objector and Appellant.

No. S087319. | July 9, 2001.

Homeowners' association sued developer and general contractor for alleged construction defects. The Superior Court, Los Angeles County, No. SC024139, [Daniel A. Curry, J.](#), imposed sanctions of more than \$30,000 against defendants and their attorney for failing to bring their expert witnesses as required during court-ordered mediation, and they appealed. The Court of Appeal reversed. The Supreme Court granted review, superseding the opinion of the Court of Appeal. The Supreme Court, [Baxter, J.](#), held that: (1) association's motion for sanctions and trial court's consideration of motion and supporting documents, which recited statements made during the mediation session, violated statutes mandating confidentiality of mediation; (2) court would not craft exception to statutes; and (3) remedy for violating statutes was to vacate order imposing sanctions.

Affirmed.

Opinion, [92 Cal.Rptr.2d 916](#), superseded.

mandating confidentiality of mediation. [West's Ann.Cal.Evid.Code §§ 1119\(a, c\), 1121.](#)

14 Cases that cite this headnote

Privileged Communications and Confidentiality

👉 Settlement negotiation privilege; mediation and arbitration

Date on which mediator submitted his report to the superior court was not relevant to determination of whether report was admissible to support request for sanctions against parties and their attorney for violating mediation order; when motion for sanctions and supporting report were filed, statute barring mediator and anyone else from submitting a document that revealed communications during mediation and barring the court from considering them were in effect. [West's Ann.Cal.Evid.Code § 1121.](#)

15 Cases that cite this headnote

[3] Privileged Communications and Confidentiality

👉 Settlement negotiation privilege; mediation and arbitration

Parties' agreement to court-ordered mediation giving mediator the power to report to the court did not authorize mediator to send report to trial court regarding parties' conduct during mediation; parties expressly reserved all

26 Cal.4th 1
Supreme Court of California

FOXGATE HOMEOWNERS' ASSOCIATION,

mandating confidentiality of mediation. West's
Ann.Cal.Evid.Code §§ 1119(a, c), 1121.

14 Cases that cite this headnote

“We do not agree ... there is any need for judicial construction of sections 1119 and 1121 or that a judicially crafted exception to the confidentiality of mediation they mandate is necessary ...”

Supreme Court granted review, superseding the opinion of the Court of Appeal. The Supreme Court, [Baxter, J.](#), held that: (1) association's motion for sanctions and trial court's consideration of motion and supporting documents, which recited statements made during the mediation session, violated statutes mandating confidentiality of mediation; (2) court would not craft exception to statutes; and (3) remedy for violating statutes was to vacate order imposing sanctions.

Affirmed.

Opinion, [92 Cal.Rptr.2d 916](#), superseded.

15 Cases that cite this headnote

[3] **Privileged Communications and Confidentiality**

➔ Settlement negotiation privilege; mediation and arbitration

Parties' agreement to court-ordered mediation giving mediator the power to report to the court did not authorize mediator to send report to trial court regarding parties' conduct during mediation; parties expressly reserved all

26 Cal.4th 1
Supreme Court of California

FOXGATE HOMEOWNERS' ASSOCIATION,

mandating confidentiality of mediation. [West's Ann.Cal.Evid.Code §§ 1119\(a, c\), 1121.](#)

14 Cases that cite this headnote

“The statutes are clear. Section 1119 prohibits any person, mediator and participants alike, from revealing any written or oral communication made during mediation.”

defendants and their attorney for failing to bring their expert witnesses as required during court-ordered mediation, and they appealed. The Court of Appeal reversed. The Supreme Court granted review, superseding the opinion of the Court of Appeal. The Supreme Court, [Baxter, J.](#), held that: (1) association's motion for sanctions and trial court's consideration of motion and supporting documents, which recited statements made during the mediation session, violated statutes mandating confidentiality of mediation; (2) court would not craft exception to statutes; and (3) remedy for violating statutes was to vacate order imposing sanctions.

Affirmed.

Opinion, [92 Cal.Rptr.2d 916](#), superseded.

communications during mediation and barring the court from considering them were in effect. [West's Ann.Cal.Evid.Code § 1121.](#)

15 Cases that cite this headnote

[3] **Privileged Communications and Confidentiality**

➡ [Settlement negotiation privilege; mediation and arbitration](#)

Parties' agreement to court-ordered mediation giving mediator the power to report to the court did not authorize mediator to send report to trial court regarding parties' conduct during mediation; parties expressly reserved all

26 Cal.4th 1
Supreme Court of California

FOXGATE HOMEOWNERS' ASSOCIATION,

mandating confidentiality of mediation. [West's Ann.Cal.Evid.Code §§ 1119\(a, c\), 1121.](#)

14 Cases that cite this headnote

“Section 1121 also prohibits the mediator, but not a party, from advising the court about conduct during mediation that might warrant sanctions.”

defendants and their attorney for failing to bring their expert witnesses as required during court-ordered mediation, and they appealed. The Court of Appeal reversed. The Supreme Court granted review, superseding the opinion of the Court of Appeal. The Supreme Court, [Baxter, J.](#), held that: (1) association's motion for sanctions and trial court's consideration of motion and supporting documents, which recited statements made during the mediation session, violated statutes mandating confidentiality of mediation; (2) court would not craft exception to statutes; and (3) remedy for violating statutes was to vacate order imposing sanctions.

Affirmed.

Opinion, [92 Cal.Rptr.2d 916](#), superseded.

communications during mediation and barring the court from considering them were in effect. [West's Ann.Cal.Evid.Code § 1121.](#)

15 Cases that cite this headnote

[3] **Privileged Communications and Confidentiality**

➡ [Settlement negotiation privilege; mediation and arbitration](#)

Parties' agreement to court-ordered mediation giving mediator the power to report to the court did not authorize mediator to send report to trial court regarding parties' conduct during mediation; parties expressly reserved all

33 Cal.4th 407

West Headnotes (6)

Editor's Note: Additions are indicated by **Text** and deletions by ~~Text~~ .

Supreme Court of California

Genoveva ROJAS et al., Petitioners,

v.

~~The SUPERIOR COURT of Los~~

Angeles County, Respondent;

Julie Coffin et al., Real Parties in Interest.

No. S111585. | July 12, 2004.

Synopsis

Background: Tenants of apartment complex brought action against owners and builders of complex, contending that owners and builders conspired to conceal from tenants the building's defects and microbe infestation, which had caused tenants to suffer health problems. The Superior Court, Los Angeles County, Nos. BC214521 and BC224568, [Anthony J. Mohr, J.](#), denied tenants' motions to compel production of material produced by owners and builders in connection with mediation held in prior litigation. Tenants filed petition for writ of mandate. The Court of Appeal granted petition. The Supreme Court granted petition for review filed by owners and builders, superseding the opinion of the Court of Appeal.

Holdings: The Supreme Court, [Chin, J.](#), held that:

[1] **Privileged Communications and Confidentiality**

➔ Settlement negotiation privilege; mediation and arbitration

To carry out the legislative purpose of encouraging mediation by ensuring confidentiality, the statutory scheme unqualifiedly bars disclosure of specified communications and writings associated with a mediation absent an express statutory exception. [West's Ann Cal Evid Code § 1115 et seq.](#)

28 Cases that cite this headnote

[2] **Privileged Communications and Confidentiality**

➔ Settlement negotiation privilege; mediation and arbitration

Statutory privilege for any "writing" prepared during mediation process applied to witnesses' statements, analyses of raw test data, and photographs prepared during mediation of construction and microbe infestation dispute between owners and builders of apartment complex, and thus, any such statements, analyses, and photographs were not discoverable in tenants' subsequent litigation against owners and builders. [West's Ann Cal Evid Code §§ 250](#)

33 Cal.4th 407

West Headnotes (6)

Editor's Note: Additions are indicated by Text and deletions by Text .

Supreme Court of California

Genoveva ROJAS et al., Petitioners,

[1]

Privileged Communications and Confidentiality

🔑 Settlement negotiation privilege; mediation and arbitration

“ ... the Court of Appeal erred in holding that so-called derivative material that is prepared for the purpose of, in the course of, or pursuant to, a mediation ... is discoverable upon a showing of good cause.”

material produced by owners and builders in connection with mediation held in prior litigation. Tenants filed petition for writ of mandate. The Court of Appeal granted petition. The Supreme Court granted petition for review filed by owners and builders, superseding the opinion of the Court of Appeal.

Holdings: The Supreme Court, [Chin, J.](#), held that:

Statutory privilege for any “writing” prepared during mediation process applied to witnesses’ statements, analyses of raw test data, and photographs prepared during mediation of construction and microbe infestation dispute between owners and builders of apartment complex, and thus, any such statements, analyses, and photographs were not discoverable in tenants’ subsequent litigation against owners and builders. [West’s Ann Cal Evid Code §§ 250](#)

Rojas v. Superior Court, 33 Cal.4th 407 (2004)

93 P.3d 260, 15 Cal.Rptr.3d 643, 04 Cal. Daily Op. Serv. 6189...

33 Cal.4th 407

West Headnotes (6)

Editor's Note: Additions are indicated by Text and deletions by Text .

Supreme Court of California

Genoveva ROJAS et al., Petitioners,

[1]

Privileged Communications and Confidentiality

➔ Settlement negotiation privilege; mediation and arbitration

“ ... the mediation privilege is an important one, and if courts start dispensing with it by using the ... test governing the work-product privilege, ... you may have people less willing to mediate.”

tenants to suffer health problems. The Superior Court, Los Angeles County, Nos. BC214521 and BC224568, [Anthony J. Mohr, J.](#), denied tenants' motions to compel production of material produced by owners and builders in connection with mediation held in prior litigation. Tenants filed petition for writ of mandate. The Court of Appeal granted petition. The Supreme Court granted petition for review filed by owners and builders, superseding the opinion of the Court of Appeal.

Holdings: The Supreme Court, [Chin, J.](#), held that:

Confidentiality

➔ Settlement negotiation privilege; mediation and arbitration

Statutory privilege for any “writing” prepared during mediation process applied to witnesses' statements, analyses of raw test data, and photographs prepared during mediation of construction and microbe infestation dispute between owners and builders of apartment complex, and thus, any such statements, analyses, and photographs were not discoverable in tenants' subsequent litigation against owners and builders. [West's Ann Cal Evid Code §§ 250](#)

40 Cal.4th 189
Supreme Court of California

R. Thomas FAIR, Plaintiff,
Cross–Defendant and Appellant,
v.

Karl E. BAKHTIARI et al.,
Defendants and Respondents;
Stonesfair Financial Corporation, Defendant,
Cross–Complainant and Respondent.

No. S129220. | Dec. 14, 2006.
| As Modified Dec. 14, 2006.

Synopsis

Background: Civil litigants negotiated written “settlement terms” during mediation, including arbitration clause. When dispute arose over terms of agreement, and defendants indicated intent to pursue action in superior court, the plaintiff moved the trial court to compel arbitration. The Superior Court, San Mateo County, No. 417058, [George A. Miram, J.](#), denied motion to compel arbitration, finding that settlement agreement, containing arbitration clause, was inadmissible. Plaintiff appealed. The Court of Appeal reversed and remanded, but granted rehearing, superseding its opinion. On rehearing, the Court of Appeal again reversed and remanded. The Supreme Court granted review, superseding the opinion of the Court of Appeal.

Holdings: The Supreme Court. [Corrigan, J.](#) held that:

Opinions, [18 Cal.Rptr.3d 208](#), [19 Cal.Rptr.3d 591](#),
superseded.

West Headnotes (12)

[1] **Privileged Communications and Confidentiality**

🔑 Settlement negotiation privilege; mediation and arbitration

The mediation confidentiality provisions of the Evidence Code were enacted to encourage mediation by permitting the parties to frankly exchange views, without fear that disclosures might be used against them in later proceedings. [West's Ann.Cal.Evid.Code § 1115 et seq.](#)

[7 Cases that cite this headnote](#)

[2] **Privileged Communications and Confidentiality**

🔑 Settlement negotiation privilege; mediation and arbitration

The statutory scheme governing mediation unqualifiedly bars disclosure of communications made during mediation absent an express statutory exception. [West's Ann.Cal.Evid.Code § 1115 et seq.](#)

[9 Cases that cite this headnote](#)

40 Cal.4th 189
Supreme Court of California

R. Thomas FAIR, Plaintiff,

Opinions, 18 Cal.Rptr.3d 208, 19 Cal.Rptr.3d 591,
superseded.

“[T]o satisfy section 1123(b), a settlement agreement must include a statement that it is ‘enforceable’ or ‘binding,’ or a declaration in other terms with the same meaning. The statute leaves room for various formulations.”

plaintiff moved the trial court to compel arbitration. The Superior Court, San Mateo County, No. 417058, [George A. Miram, J.](#), denied motion to compel arbitration, finding that settlement agreement, containing arbitration clause, was inadmissible. Plaintiff appealed. The Court of Appeal reversed and remanded, but granted rehearing, superseding its opinion. On rehearing, the Court of Appeal again reversed and remanded. The Supreme Court granted review, superseding the opinion of the Court of Appeal.

Holdings: The Supreme Court, [Corrigan, J.](#) held that:

[2] **Privileged Communications and Confidentiality**

🔑 Settlement negotiation privilege; mediation and arbitration

The statutory scheme governing mediation unqualifiedly bars disclosure of communications made during mediation absent an express statutory exception. [West's Ann. Cal. Evid. Code § 1115 et seq.](#)

9 Cases that cite this headnote

44 Cal.4th 570
Supreme Court of California

Michelle SIMMONS, as Personal Representative,
etc., et al., Plaintiffs and Respondents,

v.

Lida GHADERI, Defendant and Appellant.

No. S147848. | July 21, 2008.

Synopsis

Background: In malpractice-based wrongful death action brought against physician by patient's son and mother, physician initially gave written consent to her malpractice insurer to settle case as part of mediation, but subsequently sought to revoke consent after plaintiffs' oral acceptance of offer. Plaintiffs amended their complaint to include cause of action for breach of contract with regard to settlement agreement. The Superior Court, Los Angeles County, No. BC270780, [Richard L. Fruin, J.](#), entered judgment for plaintiffs on breach of contract. Physician appealed. The Court of Appeal affirmed. The Supreme Court granted review, superseding the opinion of the Court of Appeal.

Holdings: The Supreme Court, [Chin, J.](#), held that:

[1] evidence of alleged oral settlement agreement made in mediation was inadmissible;

[2] physician was not estopped from invoking mediation

Opinion, [49 Cal.Rptr.3d 342](#), superseded.

West Headnotes (15)

[1] **Privileged Communications and Confidentiality**

➔ Settlement negotiation privilege; mediation and arbitration

Purpose of mediation confidentiality statutes is to promote a candid and informal exchange regarding events in the past. [West's Ann.Cal.Evid.Code § 1115 et seq.](#)

[4 Cases that cite this headnote](#)

[2] **Privileged Communications and Confidentiality**

➔ Settlement negotiation privilege; mediation and arbitration

Mediation confidentiality applies to prohibit admissibility of evidence of settlement terms made for the purpose of, in the course of, or pursuant to a mediation unless the agreement falls within express statutory exceptions. [West's Ann.Cal.Evid.Code § 1119\(a\).](#)

[15 Cases that cite this headnote](#)

[3] **Constitutional Law**

Simmons v. Ghaderi, 44 Cal.4th 570 (2008)

187 P.3d 934, 80 Cal.Rptr.3d 83, 08 Cal. Daily Op. Serv. 9254...

44 Cal.4th 570
Supreme Court of California

Opinion, 49 Cal.Rptr.3d 342, superseded.

Michelle SIMMONS, as Personal Representative,

West Headnotes (15)

“Section 1119 ... extends to oral communications made for the purpose of or pursuant to a mediation, not just to oral communications made in the course of the mediation.”

BC270780, [Richard L. Fruin, J.](#), entered judgment for plaintiffs on breach of contract. Physician appealed. The Court of Appeal affirmed. The Supreme Court granted review, superseding the opinion of the Court of Appeal.

Holdings: The Supreme Court, [Chin, J.](#), held that:

[1] evidence of alleged oral settlement agreement made in mediation was inadmissible;

[2] physician was not estopped from invoking mediation

🔑 [Settlement negotiation privilege; mediation and arbitration](#)

Mediation confidentiality applies to prohibit admissibility of evidence of settlement terms made for the purpose of, in the course of, or pursuant to a mediation unless the agreement falls within express statutory exceptions. [West's Ann.Cal.Evid.Code § 1119\(a\)](#).

[15 Cases that cite this headnote](#)

[3] [Constitutional Law](#)

Simmons v. Ghaderi, 44 Cal.4th 570 (2008)

187 P.3d 934, 80 Cal.Rptr.3d 83, 08 Cal. Daily Op. Serv. 9254...

44 Cal.4th 570
Supreme Court of California

Opinion, 49 Cal.Rptr.3d 342, superseded.

Michelle SIMMONS, as Personal Representative,

West Headnotes (15)

“Recognizing both the breadth and clarity of the mediation confidentiality statutes, we have concluded that the legislative scheme is clear and unambiguous, and that the Legislature intended for mediation confidentiality to apply according to the statutory rules.”

review, superseding the opinion of the Court of Appeal.

Holdings: The Supreme Court, [Chin, J.](#), held that:

[1] evidence of alleged oral settlement agreement made in mediation was inadmissible;

[2] physician was not estopped from invoking mediation

Mediation confidentiality applies to prohibit admissibility of evidence of settlement terms made for the purpose of, in the course of, or pursuant to a mediation unless the agreement falls within express statutory exceptions. [West's Ann.Cal.Evid.Code § 1119\(a\)](#).

[15 Cases that cite this headnote](#)

[3] [Constitutional Law](#)