

# PROTECT MEDIATION CONFIDENTIALITY

By **Ron Kelly**

## Current Protections.

Our current state laws offer very strong protection for all mediation participants to be candid with their mediator and with each other. The California Law Revision Commission sponsored these laws (CA Evidence Code 1115-1128). They've protected hundreds of thousands of mediations since 1998.



## Attacks.

Powerful attacks on these protections have now caused the Commission to open a new study. The Commission could make minimal adjustments, or completely change our current laws.

## Please take action.

Now is the time to get involved. Our Legislature has enacted almost every law the Commission's recommended. By the time this issue goes back to the Legislature, it will likely be too late.

The good news? Barbara Gaal is the Commission staff attorney for this study. She's honest, capable, and extremely well-informed on the issues involved.

**\*\*BUT THEY NEED TO HEAR FROM YOU\*\***

Do you want your mediations to stay confidential? Do you believe it's in the public interest that people are able to speak frankly in mediation, knowing their words won't become evidence?

Please briefly communicate your perspective in writing.  
Any organization you belong to — please urge them to write in too.

**\*\*Please send your comments to [bgaal@clrc.ca.gov](mailto:bgaal@clrc.ca.gov) <bgaal@clrc.ca.gov>\*\***

*You can get detailed background, all related documents, and ongoing updates by subscribing to the Commission's study at <http://www.clrc.ca.gov/K402.html#Subscribe>*

**Background.** At its August 2013 meeting, the Law Revision Commission formally began Study K402 on how much to weaken our current mediation confidentiality protections. Speakers at this first meeting questioned whether we should even have separate protections for mediation, and urged the Commission to weaken current law so mediation communications would be admissible not only to sue lawyers, but also to sue other participants (including mediators).

To hear relevant parts of that initial meeting, go to <http://clrc.ca.gov/pub/Recordings/201308-3.mp3>, and [201308-4.mp3](http://clrc.ca.gov/pub/Recordings/201308-4.mp3)!

**\*\*Please copy and give this to anyone you believe cares about mediation confidentiality.\*\***

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Ron is one of the principal architects of California mediation law. He served as the expert advisor in the drafting and enactment of California's main chapter defining and governing mediation (Evidence Code sections 1115-1128). He's been honored with the Mediation Society's Lifetime Achievement Award and seven other ADR awards for his work in building the field. Mediating since 1970 and arbitrating since 1986, he's a founder of two of California's main ADR professional organizations.

Ron has trained thousands of lawyers, judges, government officials, and business professionals on four continents, and his training materials are licensed and used around the world in numerous languages. Judges in nearly every superior court in the Bay Area have chosen to enroll in his trainings. He regularly trains mediators and arbitrators through the Bar Association of San Francisco, other Bay Area bar associations, and through UC Berkeley's CLE program.

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