

Final passed
RESOLUTION 10-06-2011

Evidence: Disclosure of Mediation Communications for Professional Negligence or Misconduct

RESOLVED, that the Conference of California Bar Associations recommends that legislation be sponsored to amend Evidence Code section 1120 to read as follows:

- 1 §1120
2 (a) Evidence otherwise admissible or subject to discovery outside of a mediation or a
3 mediation consultation shall not be or become inadmissible or protected from disclosure solely
4 by reason of its introduction or use in a mediation or a mediation consultation.
5 (b) This chapter does not limit any of the following:
6 (1) The admissibility of an agreement to mediate a dispute.
7 (2) The effect of an agreement not to take a default or an agreement to extend the time
8 within which to act or refrain from acting in a pending civil action.
9 (3) Disclosure of the mere fact that a mediator has served, is serving, will serve, or was
10 contacted about serving as a mediator in a dispute.
11 (4) The admissibility, in a State Bar disciplinary action, an action for legal malpractice,
12 and/or an action for breach of fiduciary duty of communications directly between the client and
13 his or her attorney, only, where professional negligence or misconduct form the basis of the
14 client's allegations against the client's attorney.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Beverly Hills Bar Association