



RULES OF THE SUPERIOR COURT OF CALIFORNIA COUNTY OF VENTURA



Revised Effective July 1, 2025

www.ventura.courts.ca.gov

KATE BIEKER
Executive Officer/Clerk and Jury Commissioner
VENTURA SUPERIOR COURT
County of Ventura
800 S. Victoria Avenue, Ventura, California 93009
Telephone (805) 289-8900
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Ventura County Superior Court Rules

RULE 3.12 TRIAL SETTING CONFERENCES

(Repealed, Effective July 1, 1994)

RULE 3.13 MANDATORY SETTLEMENT CONFERENCES

A. All mandatory settlement conferences are subject to *California Rules of Court*, rule 3.1380 and are conducted in unlimited civil cases only. All mandatory settlement conferences are held either remotely via a court-hosted videoconference platform or in person at the Ventura Division of the Ventura Superior Court, unless otherwise ordered by the court.

B. In addition to the mandatory settlement conference statement provided in *California Rules of Court*, rule 3.1380, a party may elect to lodge an additional confidential settlement conference statement with the court, no later than five (5) court days before the date set for the settlement conference.

(Revised effective January 1, 2024)

RULE 3.14 IDENTIFICATION OF PARTY BEING SERVED ON PROOF OF SERVICE

(Renamed and relocated to Local Rule 4.10 effective January 1, 2024)

RULE 3.15 FILING AND SERVICE OF COMPLAINTS-IN-INTERVENTION

(Renamed and relocated to Local Rule 4.08 effective January 1, 2024)

RULE 3.16 DUTY TO NOTIFY COURT OF SETTLEMENT

(Deleted eff. January 1, 2025)

RULE 3.17 SANCTIONS FOR FAILURE TO COMPLY WITH LOCAL RULES OR COURT ORDERS

Except for good cause shown, sanctions, including but not limited to, payment of sanctions to the court, payment of the opposing party's reasonable expenses and attorneys' fees, dismissal of the action or striking an answer and entering a default may be imposed on any person who:

- A. Fails to comply with any local rule or order of the court, other than a prior order to pay sanctions; or
- B. Fails to submit any form or report required by the court; or
- C. Fails to appear at any case management conference or any other scheduled event; or
- D. Fails to participate in good faith in any conference.

(Revised effective January 1, 2024)

RULE 3.18 WAIVER OF RULES

No procedure or deadline established by these rules may be waived or extended by stipulation or agreement of the parties, except as permitted by *Government Code* §68616, unless approved by the court, upon written application and submission of proposed order and a showing of good cause.

(Revised effective, January 1, 2024)

RULE 3.19 LAW AND MOTION

(Renumbered and relocated to Local Rule 4.11 effective January 1, 2024)

RULE 3.20 EX PARTE APPLICATIONS

(Reference Local Rules - Chapter 15)

(Revised effective January 1, 2024)

RULE 3.21 GENERAL ASSIGNMENT SCHEDULE; COURT CALENDARS

Civil cases of either limited or unlimited jurisdiction are assigned to a judge for all purposes upon the filing of the first document invoking the court's jurisdiction. However, initial case management may be delegated to a case management department.

(Revised effective January 1, 2024)

RULE 3.22 DUTY TO NOTIFY PARTIES OF CASE REASSIGNMENT

It shall be the duty of any party successfully exercising a judicial challenge under *Code of Civil Procedure* §§170.1 and/or to provide formal notice to all subsequently appearing parties of the identity of the courtroom and the judge to which the case is then "assigned for all purposes."

(Revised effective January 1, 2024) ●

RULE 3.23 BINDING ARBITRATION

(Deleted effective July 1, 2005)

RULE 3.24 COURT-ORDERED CIVIL MEDIATION PROGRAM

A. ELIGIBILITY TO PARTICIPATE IN COURT-ORDERED MEDIATION

1. Mandatory: Pursuant to *Code of Civil Procedure* §1775.5 and *California Rules of Court*, rule 3.891(a)(1), civil lawsuits with amounts in controversy under \$50,000 per plaintiff may be ordered to the Court-Ordered Civil Mediation Program.
2. Voluntary: Litigants who agree to mediate their dispute, regardless of the amount in controversy, may stipulate to participate in the Court-Ordered Mediation Program.

B. PROCEDURE FOR PARTICIPATING IN COURT-ORDERED MEDIATION

1. At the case management conference, parties must be prepared to discuss whether they are eligible for mandatory court-ordered mediation under *Code of Civil Procedure* section 1775.5, or willing to stipulate to voluntary court-ordered mediation.
2. At the case management conference or at another time as determined by the court, litigants who are eligible to be

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ordered to mediation pursuant to *Code of Civil Procedure* section 1775.5 may be ordered to participate at the court's discretion.

3. All other litigants may indicate their willingness to participate in mediation on a voluntary basis by so indicating on the "Stipulation and [Proposed] Order to Use of Alternative Dispute Resolution Process" local form (VN-164), provided the stipulation is filed at least 90 days before trial, unless the court otherwise allows in accordance with *California Rules of Court*, rule 3.891, subsection (a)(2). Use of the form is optional.

4. If the court determines that the case should be submitted to the Court-Ordered Civil Mediation Program, the court will issue a minute order, a mediation completion date will be set, and the parties will be notified.

C. MEET AND CONFER RE: SELECTION OF MEDIATOR

1. All parties who have been ordered to the Court-Ordered Civil Mediation Program shall promptly review the panel of court-approved mediators available on the court's website.

2. Within fifteen (15) days of being ordered to mediation, and pursuant to *California Rules of Court*, rule 3.893, litigants shall meet and confer regarding the following:

- The discussion and selection of a mutually agreeable mediator;
- The exchange of potential dates and times for the mediation session; and
- A reasonable discovery plan and discovery completion schedule to ensure a productive mediation session.

D. SELECTION AND/OR ASSIGNMENT OF MEDIATOR

1. Litigants ordered to mediation through the Court-Ordered Civil Mediation Program may select and stipulate to a mediator from the panel of court-approved mediators but must do so within fifteen (15) days of being ordered to mediation.

2. Where litigants have agreed of the selection of a mediator, they shall comply with their obligations under these and other applicable rules to meet and confer with one another and the mediator and to file appropriate forms, including the filing of the "Stipulation to Mediator and Mediation Date", local form (VN-272), discussed in section E.

3. Where litigants do not agree on the selection of a mediator within fifteen (15) days of being ordered to mediation, or if the litigants fail to file the "Stipulation to Mediator and Mediation Date" local form (VN-272), the court will assign a mediator from the panel of court-approved mediators pursuant to *California Rules of Law*, rule 3.893.

a. Upon assignment, a "Notice of Assignment of Mediator" local form (VN-271) shall be sent to the litigants and the court-assigned mediator. The litigants shall have no right to object to the assigned mediator. If an assigned mediator recuses, the court will promptly assign another mediator. This process will continue until such time as a mediator accepts the assignment, unless ordered by the court.

b. The assigned mediator shall file and serve the "Mediator's Notice of Acceptance or Recusal" local form (VN-274) within ten (10) days of receiving the "Notice of Assignment of Mediator" local form (VN).

E. MEET AND CONFER WITH SELECTED AND/OR APPOINTED MEDIATOR

1. Where the mediator is jointly selected, the plaintiff must contact the mediator to provide party contact information, to check the mediator's availability, to exchange potential dates and times for the mediation session as agreed with other parties, and to determine the location for the mediation session. The plaintiff must also provide the mediator with a copy of the minute order setting forth the court's orders re: mediation and the mediation completion date. Within fifteen (15) days of being ordered to mediate, plaintiff shall file the "Stipulation to Mediator and Mediation Date" local form (VN-272) and shall serve a copy on all other litigants and the mediator.

2. Where parties have been assigned a mediator because they did not agree or did not timely file the "Stipulation to Mediator and Mediation Date" local form (VN-272), the plaintiff shall, within fifteen (15) days of receipt of the "Notice of Assignment of Mediator" local form (VN-271), contact the mediator to provide party contact information, to check the mediator's availability, to exchange potential dates and times for the mediation session as agreed with other parties, and to determine the location for the mediation session. Within fifteen (15) days of receipt of the "Notice of Assignment of Mediator" local form (VN-271), the plaintiff shall file the "Stipulation to Mediator and Mediation Date" local form (VN-272) that includes the assigned mediator and the selected mediation date. The plaintiff shall serve a copy on all other litigants and the mediator.

F. MEDIATION STATEMENT

No later than five (5) days before the date set for mediation, each party shall serve on the mediator and all counsel and/or self-represented litigants, a short mediation statement which shall set forth: (1) the nature of the case and causes of action, (2) the factual and legal issues to be resolved, (3) the parties' objectives at mediation, and (4) other information that may be helpful in resolving the dispute, including case valuations, if appropriate. The mediator will determine whether he/she will accept confidential mediation briefs, and if so, the timing of those submissions.

G. PARTICIPATION IN MEDIATION SESSION

The individuals who must be available and must participate in the mediation session are: (1) all parties, (2) their attorneys, and (3) claim representatives and/or persons with full authority to resolve all disputed issues. For good cause shown, the parties may seek a court order prior to the date set for mediation to exclude the appearance of any of these

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parties. Absent such an order, the failure of a party or claim representative to appear at mediation may result in sanctions.

H. REQUESTS FOR CONTINUATION

Litigants may file a joint stipulation and proposed order requesting to continue the mediation completion deadline for good cause. This stipulation and order must be submitted at least fourteen (14) days prior to the mediation completion date and the caption of the stipulation and proposed order must include the current mediation completion deadline.

I. MEDIATION COMPLETION DEADLINE

Litigants must complete mediation by the mediation completion deadline or request an extension. If mediation is not completed by the completion date, the matter will be referred to the trial court for the setting of an Order to Show Cause hearing regarding the failure to complete the mediation as ordered, and sanctions may be imposed.

J. NOTICE OF SETTLEMENT

If the case settles, the plaintiff must immediately file a "Notice of Settlement of Entire Case" form (Judicial Council CM-200).

(Revised effective July 1, 2025)

RULE 3.24.1 MEDIATOR COMPLAINT PROCEDURE

Pursuant to *California Rules of Court*, rule 3.865 et seq., the Ventura Superior Court maintains the following Mediator Complaint Procedure:

A. All grievances, complaints or issues concerning the conduct of a mediator on the Ventura Superior Court's Civil Mediation Panel must be referred initially to the Court Program Manager for Civil/Appeals/Small Claims, who has been designated by the Presiding Judge, as the Complaint Coordinator. All complaints must be in writing, addressed to:

*Civil Mediation Complaint Coordinator
800 South Victoria, Room 210
Ventura, CA 93009*

or by e-mail at <http://www.ventura.courts.ca.gov/email> and checking "Court Mediation Program".

B. After sending the complainant a written acknowledgment that the court has received the complaint, the Complaint Coordinator will conduct a preliminary review of the complaint to determine whether or not the complaint can be resolved informally and closed. If the complaint is resolved informally or closed after preliminary review, the Complaint Coordinator will send the complainant written notification of the resolution.

C. If it is determined that further investigation is warranted, the Complaint Coordinator will send the mediator written notice of the complaint, that the complaint has been referred to the Chair(s) of the Bench ADR committee and the mediator will have twenty (20) days from the mailing of said notice to provide the court with a written response. The Chair(s) of the ADR Committee will designate an individual who has experience as a mediator and who is familiar with the rules of conduct for mediators set forth in *California Rules of Court*, rule 3.850 et seq., or will establish a complaint committee that has at least one such individual as a member, to conduct the investigation and prepare a written recommendation concerning court action on the complaint. The Chair(s) of the ADR Committee and/or their designee may determine that the mediator will be removed from the active/eligible list pending the final decision on the complaint.

D. The final decision on the complaint will be made by the Presiding Judge or his or her designee, who did not conduct the investigation, and the final decision will be communicated to both the complainant and the mediator in writing. The final decision-maker may take one or more of the following action(s): direct that no action be taken on the complaint; counsel, admonish, or reprimand the mediator; impose additional training requirements as a condition of the mediator remaining on the court's panel; temporarily suspend the mediator from the court's panel or otherwise temporarily prohibit the mediator from receiving future mediation referrals from the court; and/or permanently remove the mediator from the court's panel or otherwise permanently prohibit the mediator from receiving future mediation referrals from the court.

E. The final decision is in the sole discretion of the final decision-maker and is not subject to any subsequent review or appeal. Ultimately, mediators on the court's Civil Mediation Panel may be temporarily or permanently removed from the panel at any time at the sole discretion of the court without cause.

F. All court communications and/or proceedings relative to complaints against mediators on the court's Civil Mediation Panel will occur in private and be kept confidential except as required by law and except for authorized disclosures as follows: after the decision on a complaint against a mediator has been made, the Presiding Judge or his or her designee may authorize the disclosure of information or records concerning the complaint proceeding that do not reveal any mediation communications. The disclosures that may be authorized include the name of the mediator against whom action is being taken, the action taken and the general basis on which the action was taken.

G. A person who has participated in a complaint proceeding or otherwise received information that is publicly disclosed will not subsequently hear or determine any contested issue of law, fact, or procedure concerning the dispute that was the subject of the underlying mediation or any other dispute that arises from the mediation as a judge, arbitrator, referee, or juror, or any other adjudicative capacity, in any court action or proceeding. (Effective January 1, 2011)

California Evidence Code Sections 1115-1129

§1115. Definitions

For purposes of this chapter:

- (a) "Mediation" means a process in which a neutral person or persons facilitate communication between the disputants to assist them in reaching a mutually acceptable agreement.
- (b) "Mediator" means a neutral person who conducts a mediation. "Mediator" includes any person designated by a mediator either to assist in the mediation or to communicate with the participants in preparation for a mediation.
- (c) "Mediation consultation" means a communication between a person and a mediator for the purpose of initiating, considering, or reconvening a mediation or retaining the mediator.

§1116. Effect of chapter

- (a) Nothing in this chapter expands or limits a court's authority to order participation in a dispute resolution proceeding. Nothing in this chapter authorizes or affects the enforceability of a contract clause in which parties agree to the use of mediation.
- (b) Nothing in this chapter makes admissible evidence that is inadmissible under Section 1152 or any other statute.

§1117. Application of chapter

- (a) Except as provided in subdivision (b), this chapter applies to a mediation as defined in Section 1115.
- (b) This chapter does not apply to either of the following:
 - (1) A proceeding under Part 1 (commencing with Section 1800) of Division 5 of the Family Code or Chapter 11 (commencing with Section 3160) of Part 2 of Division 8 of the Family Code.
 - (2) A settlement conference pursuant to > Rule 222 of the California Rules of Court.

§1118. Oral agreements

An oral agreement "in accordance with Section 1118" means an oral agreement that satisfies all of the following conditions:

- (a) The oral agreement is recorded by a court reporter, tape recorder, or other reliable means of sound recording.

California Evidence Code Sections 1115-1129

- (b) The terms of the oral agreement are recited on the record in the presence of the parties and the mediator, and the parties express on the record that they agree to the terms recited.
- (c) The parties to the oral agreement expressly state on the record that the agreement is enforceable or binding or words to that effect.
- (d) The recording is reduced to writing and the writing is signed by the parties within 72 hours after it is recorded.

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

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 non-criminal 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 non-criminal 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.

§1120. Evidence otherwise admissible

- (a) Evidence otherwise admissible or subject to discovery outside of a mediation or a mediation consultation shall not be or become inadmissible or protected from disclosure solely by reason of its introduction or use in a mediation or a mediation consultation.
- (b) This chapter does not limit any of the following:
 - (1) The admissibility of an agreement to mediate a dispute.
 - (2) The effect of an agreement not to take a default or an agreement to extend the time within which to act or refrain from acting in a pending civil action.
 - (3) Disclosure of the mere fact that a mediator has served, is serving, will serve, or was contacted about serving as a mediator in a dispute.

California Evidence Code Sections 1115-1129

§1121. Mediator's reports and findings

Neither a mediator nor anyone else may submit to a court or other adjudicative body, and a court or other adjudicative body may not consider, any report, assessment, evaluation, recommendation, or finding of any kind by the mediator concerning a mediation conducted by the mediator, other than a report that is mandated by court rule or other law and that states only whether an agreement was reached, unless all parties to the mediation expressly agree otherwise in writing, or orally in accordance with Section 1118.

§1122. Communications or writings; conditions to admissibility

(a) A communication or a writing, as defined in Section 250, that is made or prepared for the purpose of, or in the course of, or pursuant to, a mediation or a mediation consultation, is not made inadmissible, or protected from disclosure, by provisions of this chapter if either of the following conditions is satisfied:

- (1) All persons who conduct or otherwise participate in the mediation expressly agree in writing, or orally in accordance with Section 1118, to disclosure of the communication, document, or writing.
- (2) The communication, document, or writing was prepared by or on behalf of fewer than all the mediation participants, those participants expressly agree in writing, or orally in accordance with Section 1118, to its disclosure, and the communication, document, or writing does not disclose anything said or done or any admission made in the course of the mediation.

(b) For purposes of subdivision (a), if the neutral person who conducts a mediation expressly agrees to disclosure, that agreement also binds any other person described in subdivision (b) of Section 1115.

§1123. Written settlement agreements; conditions to admissibility

A written settlement agreement prepared in the course of, or pursuant to, a mediation, is not made inadmissible, or protected from disclosure, by provisions of this chapter if the agreement is signed by the settling parties and any of the following conditions are satisfied:

- (a) The agreement provides that it is admissible or subject to disclosure, or words to that effect.
- (b) The agreement provides that it is enforceable or binding or words to that effect.
- (c) All parties to the agreement expressly agree in writing, or orally in accordance with Section 1118, to its disclosure.
- (d) The agreement is used to show fraud, duress, or illegality that is relevant to an issue in dispute.

California Evidence Code Sections 1115-1129

§1124. Oral agreements; conditions to admissibility

An oral agreement made in the course of, or pursuant to, a mediation is not made inadmissible, or protected from disclosure, by the provisions of this chapter if any of the following conditions are satisfied:

- (a) The agreement is in accordance with Section 1118.
- (b) The agreement is in accordance with subdivisions (a), (b), and (d) of Section 1118, and all parties to the agreement expressly agree, in writing or orally in accordance with Section 1118, to disclosure of the agreement.
- (c) The agreement is in accordance with subdivisions (a), (b), and (d) of Section 1118, and the agreement is used to show fraud, duress, or illegality that is relevant to an issue in dispute.

§1125. End of mediation; satisfaction of conditions

(a) For purposes of confidentiality under this chapter, a mediation ends when any one of the following conditions is satisfied:

- (1) The parties execute a written settlement agreement that fully resolves the dispute.
- (2) An oral agreement that fully resolves the dispute is reached in accordance with Section 1118.
- (3) The mediator provides the mediation participants with a writing signed by the mediator that states that the mediation is terminated, or words to that effect, which shall be consistent with Section 1121.
- (4) A party provides the mediator and the other mediation participants with a writing stating that the mediation is terminated, or words to that effect, which shall be consistent with Section 1121. In a mediation involving more than two parties, the mediation may continue as to the remaining parties or be terminated in accordance with this section.
- (5) For 10 calendar days, there is no communication between the mediator and any of the parties to the mediation relating to the dispute. The mediator and the parties may shorten or extend this time by agreement.

California Evidence Code Sections 1115-1129

(b) For purposes of confidentiality under this chapter, if a mediation partially resolves a dispute, mediation ends when either of the following conditions is satisfied:

- (1) The parties execute a written settlement agreement that partially resolves the dispute.
- (2) An oral agreement that partially resolves the dispute is reached in accordance with Section 1118.

(c) This section does not preclude a party from ending a mediation without reaching an agreement. This section does not otherwise affect the extent to which a party may terminate a mediation.

§1126. Protections before and after mediation ends

Anything said, any admission made, or any writing that is inadmissible, protected from disclosure, and confidential under this chapter before a mediation ends, shall remain inadmissible, protected from disclosure, and confidential to the same extent after the mediation ends.

§1127. Attorney's fees and costs

If a person subpoenas or otherwise seeks to compel a mediator to testify or produce a writing, as defined in Section 250, and the court or other adjudicative body determines that the testimony or writing is inadmissible under this chapter, or protected from disclosure under this chapter, the court or adjudicative body making the determination shall award reasonable attorney's fees and costs to the mediator against the person seeking the testimony or writing.

§1128. Subsequent trials; references to mediation

Any reference to a mediation during any subsequent trial is an irregularity in the proceedings of the trial for the purposes of > Section 657 of the Code of Civil Procedure. Any reference to a mediation during any other subsequent non-criminal proceeding is grounds for vacating or modifying the decision in that proceeding, in whole or in part, and granting a new or further hearing on all or part of the issues, if the reference materially affected the substantial rights of the party requesting relief.

§1129. Mediation disclosure notification

(a) Except in the case of a class or representative action, an attorney representing a client participating in a mediation or a mediation consultation shall, as soon as reasonably possible before the client agrees to participate in the mediation or mediation consultation, provide that client with a printed disclosure containing the confidentiality restrictions described in Section 1119 and obtain a printed acknowledgment signed by that client stating that he or she has read and understands the confidentiality restrictions.

- (b) An attorney who is retained after an individual agrees to participate in the mediation or mediation consultation shall, as soon as reasonably possible after being retained, comply with the printed disclosure and acknowledgment requirements described in subdivision (a).
- (c) The printed disclosure required by subdivision (a) shall:
- (1) Be printed in the preferred language of the client in at least 12 point font.
 - (2) Be printed on a single page that is not attached to any other document provided to the client.
 - (3) Include the names of the attorney and the client and be signed and dated by the attorney and the client.
- (d) If the requirements in subdivision (c) are met, the following disclosure shall be deemed to comply with the requirements of subdivision (a):

Mediation Disclosure Notification and Acknowledgment

To promote communication in mediation, California law generally makes mediation a confidential process. California's mediation confidentiality laws are laid out in Sections 703.5 and 1115 to 1129, inclusive, of the Evidence Code. Those laws establish the confidentiality of mediation and limit the disclosure, admissibility, and a court's consideration of communications, writings, and conduct in connection with a mediation. In general, those laws mean the following:

- All communications, negotiations, or settlement offers in the course of a mediation must remain confidential.
- Statements made and writings prepared in connection with a mediation are not admissible or subject to discovery or compelled disclosure in noncriminal proceedings.
- A mediator's report, opinion, recommendation, or finding about what occurred in a mediation may not be submitted to or considered by a court or another adjudicative body.
- A mediator cannot testify in any subsequent civil proceeding about any communication or conduct occurring at, or in connection with, a mediation.
- This means that all communications between you and your attorney made in preparation for a mediation, or during a mediation, are confidential and cannot be disclosed or used (except in extremely limited circumstances), even if you later decide to sue your attorney for malpractice because of something that happens during the mediation.



Caroline C. Vincent

Enforcing mediation caucus agreements after *Cassel*

A primer on the admissibility and enforceability of agreements made in caucus-only sessions, especially agreements you make with your own clients

In *Cassel v. Superior Court* (2011) 51 Cal.4th 113, the California Supreme Court ruled that, absent meeting specified exceptions set forth in the Evidence Code, statements made in and during the course of a mediation that occur solely between an attorney and client are not admissible in a civil action. After several appellate cases that had differently construed the Evidence Code's mediation provisions regarding the admissibility of statements, agreements and conduct between only lawyer and client, *Cassel* is now the definitive ruling on the admissibility of statements made, documents created and conduct occurring between parties on the same side of a dispute, as well as between disputants themselves.

This article addresses the need to consider whether certain agreements made throughout a mediation that are solely between an attorney and a client, or between multiple plaintiffs, lienholders or other stakeholders on one side of a dispute, ought to be made admissible, and if so, how.

(Editor's note: All unlabeled statutory references are to the Evidence Code.)

In *Cassel*, a client brought a legal-malpractice action against his attorney, alleging that the attorney pressured the client into accepting a settlement for an amount far less than what was agreed or anticipated prior to the mediation. The court ruled that all of the statements and conduct preceding and during the mediation were inadmissible, even though all of the alleged conduct and statements occurred in private communications solely between the client and his attorney. The court held that "[a]bsent an express statutory exception, all discussions

conducted in preparation for a mediation, as well as all mediation-related communications that take place during the mediation itself, are protected from disclosure." (*Cassel, supra*, at 128.) This holding was based upon an analysis of the language of Evidence Code section 1119, which broadly provides that (except as otherwise provided in the chapter), no evidence of anything said, nor any writing made for the purpose of, in the course of, or pursuant to a mediation or mediation consultation is admissible in any arbitration, civil action or administrative adjudication.

Common agreements

Consider the following situations where agreements are frequently made in plaintiff-side caucuses:

- Agreements to amend the written retainer agreement, including reducing the percentage of attorney fees, guaranteeing the client a base amount of recovery, guaranteeing or reducing the costs or liens;
- Agreements made on the telephone with a medical lienholder to reduce the amount of a lien;
- Agreements between multiple plaintiffs represented by the same lawyer (or by co-counsel) to take less than an equal percentage of the proceeds, for a variety of reasons (one plaintiff has greater medical specials or loss of earnings component; one plaintiff owes another money and agrees to offset it through an amended settlement proceeds distribution, one plaintiff has advanced costs and will receive a reimbursement of costs);
- Pro forma distribution statements made at the mediation.

In other words, if you make a side deal, or prepare a diagram or a set of figures that is useful for your clients, is that admissible? *Cassel* suggests that lawyers put on their confidentiality "antennae" upon contemplating, preparing for and engaging in mediations. Over a decade has passed since the legislation which clearly specifies the general presumption that communications in California mediations are inadmissible, with several specific exemptions provided for in the legislation allowing admissibility of evidence. Meeting the technical hurdles requires forethought and precision.

It has become commonplace for lawyers and mediators to either sign standard confidentiality agreements acknowledging the inadmissibility of statements made in mediation, or if they do not sign such agreements, to understand that everything discussed in mediation is inadmissible. It is also widely understood that written settlement agreements are admissible, provided they meet one of the requirements set forth in Evidence Code section 1123 (i.e., that the agreement states that it is enforceable or binding or words to that effect; that it is admissible or subject to disclosure or words to that effect; or that all parties to the agreement expressly agree in writing to its disclosure). What is not widely held in the consciousness of mediators and lawyers alike is that these and other special technical requirements in the Evidence Code, are necessary to admit into evidence agreements made with less than all of the usual settling parties.

This article suggests that lawyers and mediators ought to turn on their

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admissibility antennae and notice situations where side agreements or caucus agreements are made, and consider whether any special steps should be taken to ensure that they are admissible and consequently enforceable in the event of a subsequent dispute.

Agreements made with plaintiff

A common conversation between mediator, plaintiff and plaintiff's counsel occurs toward the end of the negotiations, when the client is being asked to consider accepting a particular offer. The conversation focuses on the net proceeds the client can expect to receive based upon accepting that offer. This net number is not always easy to determine because liens have not been negotiated and the exact costs advanced on the matter may not be readily available.

Counsel sometimes will advise the client that he can expect to receive a minimum of a certain dollar figure or "something in that range." Some attorneys offer to reduce their fees and/or costs so that the client can expect to receive a certain sum. When the liens cannot be negotiated as expected and misunderstandings between lawyer and client ensue, *Cassel* dictates that to the extent that such agreements are made during or in the course of the mediation, they must meet technical statutory exceptions in order to be admissible (only the written exceptions under Evidence Code sections 1122 and 1123 are covered in this article; *see also* exceptions in sections 1118 and 1124 for admissibility of oral agreements made in mediation, which are generally impracticable and rarely used).

In the examples given, this would mean that the client would be unable to enforce an agreement more favorable to the client than the retainer agreement unless it met the technical admissibility provisions of the Evidence Code, but it would not prevent a client from initiating a complaint with the State Bar (the admissibility of such evidence in a disciplinary setting is unclear). If an oral agreement made at the mediation was more favorable to the attorney than what the client understood was agreed, the

lawyer will be unable to enforce the more favorable agreement. It is always good business practice to make certain that any agreements made between lawyer and client are clear and in writing. But is a scribbled note with you and your client's signature enough? The answers are probably not, and maybe.

Agreements with lienholders

During mediation, you, the plaintiff counsel, phone the primary doctor and negotiate the doctor's lien. Later, the doctor reneges on the agreement. Unless the attorney takes the time to create a writing that meets the technical statutory requirements of the mediation provisions of the Evidence Code, the agreement is not enforceable because it is not admissible. The same would hold true for a lien negotiation made on the way to mediation. How can you make sure this is binding on the medical provider?

Agreements with multiple plaintiffs

When you, or you and your co-counsel, represent more than one plaintiff, there are sometimes different amounts of money that each plaintiff will be offered and/or will accept. Usually these separate amounts will be set forth next to each plaintiff's name in a global settlement agreement presented at the end of the mediation. But consider these not uncommon occurrences:

- A mediator's proposal is needed to settle the case, and the plaintiffs will agree among themselves to their proportionate shares if the proposal is accepted.
- Your clients, on their own, determine to shift the allocations.
- The clients wish to adjust the allocations through a reallocation of the respective charge of attorney fees or costs set forth in the retainer agreement (thereby amending the retainer agreement).
- One of the clients, Client A, does not want to settle the case unless he receives \$20,000, but only \$17,000 is offered to him. The other three of your four clients is each willing to give \$1,000 of their monies to Client A, but the defendant is unwilling to change its allocation as offered in the negotiations or in any final settlement agreement.

In these situations, the attorney should be focusing on making sure that the agreements between the clients are enforceable, as buyer's remorse and next day jitters are common occurrences for plaintiffs. Does an agreement they sign at the mediation among themselves work? Yes, but only if the technical requirements allowing its admissibility pursuant to sections 1122 and/or 1123 are met.

Agreements in the above circumstances that are made in advance of the mediation session will likewise necessitate satisfaction of the statutory requirements to be admissible if they are made or prepared "for the purpose of, in the course of, or pursuant to" a mediation. (Evid. Code, § 1119(a) & (b); *Cassel, supra*, at 128.)

Admissible settlement agreements

Pursuant to section 1123 a written settlement agreement meeting certain technical requirements is one of the statutory exceptions to the rule prohibiting admissions of statements and conduct in mediations. Attorneys participating in mediations should be well versed in these requirements, as these clearly apply to the primary disputants in any mediation, plaintiff(s) and defendant(s).

A written settlement agreement is admissible pursuant to section 1123 if signed by the settling parties and if one of these three conditions is met:

- The agreement provides that it is admissible or subject to disclosure, or words to that effect (Evid. Code, § 1123(a);
- The agreement provides that it is binding or enforceable, or words to that effect (Evid. Code, § 1123(b); or
- The parties to the agreement expressly agree in writing, or orally in accordance with section 1118, to its disclosure (Evid. Code, § 1123(c)).

A typical Stipulation for Settlement form that is customarily provided by the mediator or an ADR provider, for signature by plaintiff(s), defendant(s) and their respective counsel, is likely to contain something like the following:

The parties agree that they have reached a full and final settlement of all claims arising from the events described in the complaint. This

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agreement is binding and it contains the material terms of the agreement between the parties. Pursuant to Section 1123 the parties agree that this agreement is exempt from the confidentiality provisions of Evidence Code Sections 1119, *et seq.*, and is admissible in evidence to enforce the settlement.

This settlement language meets all three of the enumerated requirements of section 1123, only one of which must be met, in order for a written settlement agreement to be admissible (Evid. Code, § 1123(a), (b) and (c). Note, however, that the settling parties must sign the agreement. (Evid. Code, § 1123).

The author is a proponent of including admissibility language in a standard confidentiality agreement, signed by all participants and the mediator at the commencement of a mediation. The provision in the author's confidentiality agreement is as follows:

The undersigned agree that this confidentiality agreement and any written settlement agreement resulting from this mediation are binding, enforceable and admissible in any subsequent proceeding to enforce those agreements.

The purpose of this "umbrella" provision is to safeguard against the failure to specifically state in the settlement agreement itself (usually drafted after everyone is exhausted) that it is either "admissible or subject to disclosure" or that it is "binding or enforceable" or words to that effect. Thus, by agreeing that a settlement agreement to be created in the future is admissible, the parties are protected in the event a deal memo is written and signed without the magic words contained in section 1123 (a) or (b). This would permit a barebones initialed deal point memo between the primary disputants in a mediation to be admitted. Note that this provision meets the exceptions of either section 1123(c) or 1122(a)(1), depending upon who signs it.

Admissible agreements signed only by participants in the plaintiff caucus

There are four suggestions for the admission of agreements signed only by participants in the plaintiff caucus:

- **Written settlement agreements signed by the caucus participants**

As discussed above, Evidence Code section 1123 provides an exception to the inadmissibility of agreements that are signed by the settling parties and that meet one of three technical requirements. It is probable that a side agreement between attorney and client, or attorney and lienholder would be considered a settlement agreement and therefore admissible if one of the requirements in section 1123 (a), (b) or (c) is met. After all, the participants in a caucus are resolving (settling) an issue between them by coming to an agreement about the issue (part of the *Cassel* holding is that attorney and client are distinct participants for purposes of the mediation confidentiality statute). It is suggested that somewhere the document they sign be referred to as a "settlement agreement."

There are a couple of caveats to the success of using a settlement agreement under section 1123 for caucus-only settlements. Section 1122(a)(2) provides that an admissible writing prepared by or on behalf of less than all the mediation participants may not disclose anything said or done or any admission made in the course of the mediation (Evid. Code, § 1122(a)(2); emphasis added). The California Law Revision Comments to section 1122(a)(2) state that the subsection facilitates the admission of unilaterally prepared materials if they reveal nothing about the mediation discussion. (Cal. Law Revision Com. com., 29B pt. 3B West's Ann. Evid. Code, § 1122(a)(2).) The comments to section 1122 further note that section 1123 (written settlement agreements) is an exception to section 1122. And the Law Revision comments to section 1123 refer to section 1122. What this means exactly is unclear, although taken together, the likely conclusion is that a settlement agreement signed by any of the participants in a mediation is admissible, including plaintiff caucus participants, if it meets one of the enumerated exceptions of section 1123.

A strong suggestion is to make sure that the settlement agreement between

attorney and client, or attorney and lienholder, or between multiple clients keeps the recitals and agreements to a minimum and avoids discussing issues that pertain to communications, documents and writings with other participants at the mediation. About one thing we can be certain — this issue will be litigated, eventually.

An attorney might get into the practice of having a confidentiality agreement signed at the beginning of the mediation (by all participants per Evidence Code section 1122(a)(1)), that provides that any settlement or other agreements, including those between other than the primary disputants, are admissible settlement agreements pursuant to section 1123(c). That way, the legal pad scribbles evidencing the allocations of settlement dollars would be admitted.

- **Written agreements to disclose communications that are not settlement agreements**

Evidence Code section 1122 (a) provides for two other ways for written agreements in mediations to be admissible, if either of the following conditions is satisfied:

1122(a)(1) All persons who conduct or otherwise participate in the mediation expressly agree in writing, or orally in accordance with Section 1118, to disclosure of the communication, document, or writing; or

1122(a)(2) The communication, document, or writing was prepared by or on behalf of fewer than all the mediation participants, those participants expressly agree in writing, or orally in accordance with Section 1118, to its disclosure, and the communication, document, or writing does not disclose anything said or done or any admission made in the course of the mediation. (Evid. Code, § 1122(a)(1) and (a)(2).)

- **Written agreements to disclose communications signed by the mediator and all participants**

Section 1122(a)(1) allows the mediator and all participants to expressly agree in writing to a disclosure of the communication or document. Providing a

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provision in the primary settlement agreement that any writings by and between an attorney and a client are admissible between them is one possible approach, provided the mediator and all participants are signatories. Another option is to sign a pre-mediation confidentiality agreement providing for admissibility of caucus-only agreements, where the mediator and all participants are normally present and signing.

• **Written agreements to disclose communications signed by fewer than all participants.**

Section 1122(a)(2) is the more likely provision to be used. A writing prepared on the attorney's legal pad that is signed by the client and the attorney and says that it is subject to disclosure, and has nothing more than the percentage or monetary allocations agreed to be distributed from settlement monies ought to be admissible under this section. While you are at it, however, make it a settlement agreement by calling it a settlement agreement, and state that it is binding or enforceable, as well as admissible and subject to disclosure. And make sure that all parties to the settlement agreement sign it. As discussed above, it is highly suggested that you include the magic language "provided that this agreement does not disclose anything said or done or any admission made in the course of the mediation." This avoids the potential conflict between sections 1123 and 1122(a)(2) discussed above.

For lienholders, ask them to sign such an agreement that can be faxed, or ask if you may obtain their email signature in order to bind them to their commitments. This provision is also clearly intended to allow the admission of documents you and your client create in preparation for litigation, that just happen to be created while you are sitting around for hours at the mediation. Care should be taken that no mediation discussions regarding the larger mediation dispute are included in the writing.

• **Retainer agreements**

The lawyer's initial retainer agreement with a client is the best place to fashion agreements with clients about

disclosure of any communications or agreements made in preparation of and during the course of the mediation. By agreeing to disclose documents you and your client create, reciting the statutory exception language of Evidence Code section 1122(a)(2), your legal pad scratch notes of the final allocations are admissible into evidence and expectations that clients and attorneys can air their disputes without the shield of mediation confidentiality will be honored.

• **Final thoughts**

As a mediation proceeds, lawyers ought to have heightened antennae regarding whether or not it is wise to take certain affirmative steps to make sure agreements between their clients and themselves and/or lienholders, spouses, and others are admissible and enforceable. Remember Evidence Code sections 1122 and 1123, and carry their provisions with you. Be mindful that there are technical requirements and take the time to study and implement them.

Also consider whether there are there other things besides an agreement you wish to have admissible and subject to disclosure. Is your client relying on a representation by the other side that ought to be a recital in a settlement agreement? Or might a particular document or set of communications be useful for enforcement or interpretation of an agreement? Sections 1122 and 1123 cover these situations.

Plaintiffs' lawyers will clearly sail through settlement to closed files with happy, referring clients, when they learn and implement the exceptions to the mediation confidentiality rules so that the agreements they make with mediation participants are kept — by being admissible and enforceable.

Suggested clauses

All suggested clauses are for discussion purposes only, are not to be considered legal advice and may not be suitable or legally enforceable for any particular mediation situation. Anyone using a suggested clause is advised to review the Evidence Code and applicable case law and/or obtain the advice of legal counsel.

• **Pre-mediation or confidentiality agreement clauses (signed by the mediator and all participants)**

The undersigned agree that this confidentiality agreement and any written settlement agreement resulting from this mediation are binding, enforceable and admissible in any subsequent proceeding to enforce those agreements (Evid. Code, § 1122(a)(1)).

[Optional addition to the above]: A written settlement agreement for purposes of this paragraph includes any written agreement signed by less than all of the mediation participants to resolve, clarify or establish the outcome of any issue that arises solely between them during the course of the mediation (Evid. Code, § 1122(a)(1)).

[Optional addition to the above]: In addition, other writings, statements or admissions made during the course of the mediation are admissible solely for the purpose of interpreting and enforcing the terms and provisions of any resultant written settlement agreement. (Evid. Code, § 1122(a)(1)).

[Optional addition to the above]: In addition, any communications, documents or writings transmitted or prepared solely between a party and its respective counsel, is admissible and may be disclosed in any proceeding between the party and its respective counsel. (Evid. Code, § 1122(a)(1)).

• **Agreement that side agreement or other statements in the mediation may be admissible (signed by the mediator and all participants)**

The parties agree, pursuant to Evidence Code section 1122(a)(1), that all statements, writings, communications, documents and conversations created and exchanged among and between them during, and as a result of the facilitated meetings with the mediator may be disclosed in any subsequent legal proceeding and are admissible as evidence.

All participants to the mediation agree that any side agreement, writings, or communications by and between one set of parties and/or their respective counsel is admissible in any subsequent proceeding, provided that the only

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parties competent to testify regarding the side agreement, writings or communications, are the parties who signed the side agreement or created the writings or made the communications, and that the other participants to the mediation, including the mediator, cannot be compelled to testify (Evid. Code, §§ 1122(a)(1), (a)(2).

• **Caucus or side agreement clause to disclose written agreements (signed by less than all mediation participants)**

The undersigned agree that this agreement shall constitute a settlement agreement between them regarding the issues therein, and that this agreement is binding, enforceable and admissible in any subsequent proceeding to enforce this agreement (Evid. Code, § 1122(a)(2); probably admissible under Evid. Code, § 1123, if signed by all of the settling parties).

The parties agree, pursuant to Evidence Code Section 1122(a)(2), that this settlement agreement, prepared solely between the signing parties, is binding and enforceable between them, and is admissible and may be disclosed in any subsequent proceeding between them, provided that, the communications, documents or writings do not and may not disclose anything said or done or any admission made in the course of the mediation between the main mediation disputants (Evid. Code, § 1122(a)(2); probably admissible under Evid. Code, § 1123, if signed by all of the settling parties).

• **Retainer Agreement Clause (signed by the lawyer and client prior to the mediation)**

Attorney and client agree that, pursuant to California Evidence Code

section 1122(a)(2), any communications, documents or writings that are prepared, transmitted and communicated between them are subject to disclosure in any subsequent proceeding between them, provided that the communications, documents or writing do not disclose anything said or done or any admission made in the course of the mediation (Evid. Code, § 1122(a)(2).

Caroline C. Vincent is an attorney mediator, neutral evaluator and arbitrator with ADR Services, Inc., in Los Angeles and Orange County. She specializes in employment, personal injury, probate/elder abuse, insurance, professional liability and complex business and real estate disputes, including class and mass actions. She is a 1978 graduate of the USC Gould School of Law where she served on Law Review.



Michael S. Fields

MICHAEL S. FIELDS, ESQ.,
ARBITRATOR AND MEDIATOR SERVICES

Journal of the American Mediators Association for Southern California
ADVOCATE
September 2025

Enforceable, written mediation-settlement agreements

AN EXCEPTION TO MEDIATION CONFIDENTIALITY

To understand the requirements for an enforceable mediation settlement agreement, becoming familiar with California's mediation law in Evidence Code sections 1115-1129 is important. Section 1115, subdivision (a) defines mediation as "a process in which a neutral person or persons facilitate communication between the disputants to assist them in reaching a mutually acceptable agreement. Communication during the mediation process is *confidential* until the parties reach an enforceable mediation settlement agreement."

Although this article aims to set out the requirements for a *written* mediation settlement agreement, note that an *oral* mediation settlement agreement can be recorded in open court so long as the requirements of Evidence Code section 1118 are followed.

Confidentiality

The goal of the Evidence Code's confidentiality requirement is to encourage candid and open communications without fear of disclosure if the parties fail to enter into a settlement agreement. "Section 1119 prohibits any person, mediator and participants alike, from revealing any written or oral communication made during mediation." (*Foxgate Homeowners' Assn. v. Bramalea Calif.* (2001) 26 Cal.4th 1, 14.)

Confidentiality includes all phases of the mediation, including communications with one's party, conferences with the mediator, the time during the mediation session, and post-mediation sessions while the parties continue negotiations.

While the confidentiality requirements of section 1119 are the dominating protectors for mediation confidentiality, written mediation settlement agreements that follow the requirements of section 1123 are admissible and enforceable. An agreement signed by *all* parties waives the confidentiality of a mediation session. (See *Rael v. Davis* (2008) 83 Cal.App.3d 745 [negotiated agreement was not enforced and remained confidential because a mediation session party failed to sign the agreement].)

The parties can jointly waive the confidentiality guarantee under the Evidence Code mediation sections, including a waiver statement in the mediation settlement agreement. For example, in *Stewart v. Preston Pipeline* (2003) 134 Cal.App.4th 1565, the parties in a personal-injury mediation memorialized and executed a settlement agreement that "waived" statutes ensuring the confidentiality of communications made during mediation. The agreement was signed by the plaintiff, the plaintiff's counsel, and the defendant's counsel. The defendant was not a signatory to the mediation settlement agreement, although the defendant wanted the agreement upheld. Subsequently, the plaintiff refused to accept the settlement check and refused to proceed with the settlement because the defendant failed to sign the mediation settlement agreement.

The court upheld the confidentiality of the agreement because it was *not* the nonsigning party who claimed confidentiality, and section 1123 "does not require that an effective mediation confidentiality waiver be signed by each of the parties, so long as



the written waiver is signed by each of the settling parties or their respective counsel." (*Id.* at p.1583.)

The California Supreme Court has decided the following cases concerning mediation confidentiality:

- The agreement needs to affirmatively provide it is admissible [1123(a)], or enforceable or binding [1123(b)]. (*Fair v. Bakhtiari* (2006) 40 Cal.4th 189,199.);
- The statutory scheme "unqualifiedly bars disclosure of communications made during mediation absent an express statutory exception" to encourage mediation by ensuring confidentiality. (*Foxgate Homeowners' Assn. v. Bramalea Calif.* (2001) 26 Cal.4th 4, 15.);
- There are no exceptions to mediation confidentiality other than those provided by statute. (*Rojas v. Superior Court* (2004) 33 Cal.4th 407, 416.);
- There can be no judicially created exceptions or implied waivers to mediation confidentiality. (*Simmons v. Ghaderi* (2008) 44 Cal.4th 570, 582-583.); and
- Mediation confidentiality [privilege] may be waived only by express agreement under mediation confidentiality statutes. (*Simmons v. Ghaderi* (2008) 44 Cal.4th 570, 586.).

Written settlement agreement requirements of Evidence Code § 1123

As mentioned above, confidentiality of a mediation session is primary to the Evidence Code, but a written settlement agreement ironed out during a mediation session is enforceable

if the requirements of section 1123 are met. "A settlement agreement is a contract, and the legal principles which apply to contracts generally apply to settlement contracts." (*Waddington Productions, Inc. v. Flick* (1998) 60 Cal.App.4th 793, 810.)

Three requirements in a mediation settlement agreement that overcome confidentiality

To be a binding settlement agreement under section 1123, the (1) *settling parties* need to sign the agreement, (2) the agreement satisfies *any one* of the three section 1123 *quoted* conditions below, and (3) *any one* of the three quoted conditions is *set out* within the agreement. The three alternate conditions of section 1123 are:

"(a) The agreement provides that it is admissible or subject to disclosure, or *words to that effect*. [or]

"(b) The agreement provides that it is enforceable or binding or *words to that effect*. [or]

"(c) All parties to the agreement expressly agree in writing, or orally in accordance with Section 1118, to its disclosure."

Note that sections (a) and (b) *do not* require an exact code quotation. The code only requires "words to the effect" that the agreement is either (1) admissible, (2) subject to disclosure, (3) enforceable, or (4) binding. The "*words to that effect*" in sections (a) and (b) allow for various expressions of the agreement. (*Fair v. Bakhtiari* (2006) 40 Cal.4th 189, 200.) [i.e., make the settlement agreement abundantly clear that the parties have come to a consensus and it is enforceable in court.]

The goal of the Legislature in enacting Evidence Code section 1123 (a) and (b) is to allow parties to express their intent to be bound by words they commonly use rather than requiring a legalistic formulation. (See *Marriage of Daly and Oyster* (2014) 228 Cal.App.4th 505, 510-511 [holding the parties can demonstrate that the agreement should not remain confidential using their own words, not statutory words].)

Fourth requirement that overcomes confidentiality

Section 1123 has a fourth requirement. It allows *disclosure* of confidential mediation information to dispute an otherwise valid mediation settlement agreement. The fourth requirement states: "(d) The agreement is used to show fraud, duress, or illegality that is relevant to an issue of dispute."

Mediation settlement agreement signatures

Section 1123 requires the mediation settlement agreement to be signed by the "settling parties." Note that the definition of "settling parties" is *not* set out in the Evidence Code.

Logically, a named party in a dispute should sign the agreement. Further note the signature of an attorney representing a party is *not* a party, and, consequently, the attorney's signature alone, with some exceptions, does not have a binding effect on a mediation settlement agreement.

The requirement that a litigant party must sign the settlement agreement "tends to ensure that the settlement is the result of their mature reflection and deliberate assent." (*Williams v. Saunders* (1997) 55 Cal.App.4th 1158; *Rael v. Davis* (2008) 83 Cal.App.3d 745 [negotiated agreement was not enforced and remained confidential because a mediation session party failed to sign the agreement].)

Defining the settlement parties

The California Supreme Court in *Levy v. Superior Court (Golant)* (1995) 10 Cal.4th 578, defined a "party" signature on a Code of Civil Procedure section 664.6 settlement stipulation. It held "the party" to the action must sign the agreement, not the attorney representing the party. The *Levy* holding is no longer enforced because section 664.6 was amended in 2021 to allow attorney signatures and further amended in 2025. Section (b) of the 2025 amended code states: "For purposes of this section [664.6], a writing is signed by a party if it is signed by any of the following: (1) The

party. (2) An attorney who represents the party. (3) If an insurer is defending and indemnifying a party to the action, an agent who is authorized in writing by the insurer to sign on the party's behalf. ..."

Importantly, the recent amendments to section 664.6 have *no* application to Evidence Code section 1123's mediation settlement agreements. Section 1123 requires the agreement to be "signed by the settling parties." (It is likely legislation will amend section 1123 to comport with the recent signature amendments to Code of Civil Procedure section 664.6.)

Attorney signature

Although section 1123 requires the "settling parties" to sign the mediation settlement agreement, cases have recognized an attorney's signature to be valid. In *Stewart v. Preston Pipeline, Inc.*, (2005) 134 Cal.App.4th 1565, 1587, the court found the *defendant's attorney's* signature on the mediation settlement agreement did not violate the confidentiality provisions of Evidence Code section 1119 and enforced the agreement.

Agent signature

A corporate representative or qualified employee can be designated and authorized to sign a settlement agreement on behalf of the principal. (*Provost v. Regents of the University of California* (2011) 201 Cal.App.4th 1289.)

Insurance company representative

A written settlement agreement signed by an authorized representative of a defendant insurance company is valid, and the defendant party does not need to sign the agreement so long as the settlement amount is within the policy limits. (Code Civ. Proc., § 664.6, subd. (3); also see *Stewart v. Preston Pipeline Inc.* (2005) 134 Cal.App.4th 1565, 1586 [holding the settlement agreement was enforceable even though the defendant was not a signatory in that "execution of the agreement was authorized by defendants' insurance carrier"].)

Class actions

In class-action matters, unnamed class members are not required to consent to an agreement negotiated by the class

representative. (*Reed v. United Teachers of Los Angeles* (2012) 208 Cal.App.4th 322.)

Signing electronically

An "electronic signature" needs to comport with Code of Civil Procedure section 17(b)(3). Also, emails may be evidence of the settlement terms. (*J.B.B. Inv. Partners, Ltd. v. Fair* (2019) 37 Cal.App.5th 1.)

Zoom

The Zoom platform and other platforms have provisions where documents can be emailed to all parties for signature during the Zoom meeting.

Mediator proposal

To be an enforceable mediation settlement agreement, the proposal should have words that indicate it is a binding agreement, enforceable, subject to disclosure, or words to that effect. Acceptance of the proposal must be signed by the parties or designated representative. (See above.)

The mediation session

The parties must execute the mediation settlement agreement *during* the mediation session. The definition of a "mediation session" is unclear, but Evidence Code section 1125 provides that the mediation session remains open for 10 days or a shorter or longer period as agreed upon by the parties. Consequently, the parties can execute the settlement agreement at any time the mediation session remains open and the agreement remains viable. Section 1126 states:

Anything said, any admission made, or any writing that is inadmissible, protected from disclosure, and confidential under this chapter before a mediation ends, shall remain inadmissible, protected from disclosure, and confidential to the same extent after the mediation ends.

All written or oral communications remain confidential after the mediation session ends, regardless of whether a mediation settlement agreement is entered into. (Evid. Code, § 1126.)

Section 1125 has several subsections that explain when a mediation session

ends. For a discussion of mediation session time limits, see this author's September 2021 Advocate magazine article entitled "*When does the mediation process begin and end.*"

Terms included in a written mediation settlement agreement

The complexity of the potential terms to be decided during the mediation session is the foundation for any mediation settlement agreement. For example, a mediation to determine the value of an injured personal-injury plaintiff should have a mediation settlement agreement that settles the case value. The agreement should detail the various items of the settlement such as medical bills, earnings, future medical care, lien claims, and other items.

Complex cases: The parties must resolve terms not required to be discussed during the mediation session but designed to be included in the parties' final agreement.

Multiple-party mediations: Not all parties need to execute a settlement agreement, especially where a non-signatory requires further negotiations before agreeing to a settlement.

Insurance companies: Where an insurance carrier requires certain terms to be included in the settlement agreement, the carrier should produce those terms before the mediation session commences to allow the parties to resolve any conflict.

Liens: Liens should be negotiated before the parties enter into a mediation settlement agreement.

Attorney fees: The mediation settlement agreement should acknowledge a claim for contractual or statutory attorney fees. Otherwise, an obligatory party will likely claim a waiver. (*Rael v. Davis* (2008) 166 Cal.App.4th 1608.)

Provider association mediation settlement agreement forms: It is most likely that a mediation service provider such as JAMS will have a form for the parties to use to prepare the mediation settlement agreement.

Post-agreement terms: Before finalizing a settlement, it is wise to discuss and negotiate the terms of a potential "release" agreement, sure to be requested by an insurance company or others after the basic terms of the mediation settlement agreement have been finalized.

Mediation settlement agreement basic terms: A recently published AI-generated article provides the following non-exhaustive checklist requirements for a mediation settlement agreement [plus a few more from the author]:

- Explicit party and attorney representation identifications
 - Purpose of the agreement
 - Terms of the agreement that are specific and detailed
 - Multiparty settlement amounts and allocations
 - Liens
 - Conditional terms
 - Time requirements
 - Future obligations of the parties
 - Necessity for confidentiality
 - Costs and fees
 - Enforceability
 - Structured settlements
 - Future execution of release terms
 - Tax consequences
 - Mediator's future role
 - Necessity for future court action, such as judgment and future enforcement
- Code of Civil Procedure section 664.6
- Signatures and date of signatures

Enforcement of a written mediation settlement agreement

Generally, a mediation settlement agreement is enforceable by summary judgment, separate suit in equity, or a motion to enter judgment under Code of Civil Procedure section 664.6. (*Levy v. Superior Court* (1995) 10 Cal.4th 578, fn. 5.) A nonbreaching party can also seek an action for breach of contract, estoppel to deny enforceability, or an opposition motion for summary judgment if all submitted papers show no triable issue of fact.

Summary judgment: Summary judgment can be granted if all submitted

papers show no triable issue of fact. (*J.B.B. Inv. Partners, Ltd. v. Fair* (2019) 37 Cal.App.5th 1; also see *Stewart v. Preston Pipeline* (2005) 134 Cal.App.4th 1565, 1585, where summary judgment was a defense to prove an enforceable agreement.)

Estoppel: Available to enforce a previously agreed settlement after a denial of the agreement. (*Blix Street Records, Inc. v. Cassidy* (2010) 191 Cal.App.4th 39.)

Breach of contract: A properly executed mediation settlement agreement is a valid and enforceable contract. An agreement objected to by one party can be enforced by a breach of contract action. (*J.B.B. Inv. Partners, Ltd. v. Fair* (2019) 37 Cal.App.5th 1, 8; Code Civ. Proc., § 437c, subd. (f)(1).)

Motion for entry of judgment under Code of Civil Procedure section 664.6:

This code provides an expeditious proceeding to enforce a mediation settlement agreement, so long as the agreement meets the requirements of Evidence Code section 1123. (*Levy* at p. 585.)

Section 664.6 has been revised several times in the past five years to include the signature procedures mentioned above for attorneys and insurance company representatives.

In essence, section 664.6 provides a summary procedure allowing a judge to enforce the mediation settlement agreement by entering a judgment according to the terms of the settlement agreement. (*Hines v. Lukes* (2008) 167 Cal.App.4th 1174.) Only a single motion

is required. (*Machado v. Myers* (2019) 39 Cal.App.5th 779, 790.) The requirements for enforcement of an Evidence Code section 1123 settlement agreement are discussed in above sections.

The 2025 amendment to section 664.6 states the court may "... retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement." At the behest of the Legislature in the 2025 amendment, the Judicial Council amended the "Request for Dismissal" form, CIV-110. The amended form provides a box. When the box is checked, the court is to retain jurisdiction for future enforcement of settlement matters.

The box states:

(3) I Without prejudice and with the court retaining jurisdiction (Code Civ. Proc., § 664.6)

The box *must* be checked before the judge signs the dismissal. **CAUTION:** Inconsistent past case decisions make the issue of court advisement confusing. It appears that the law requires the court to be explicitly advised in open court and/or in the moving papers that it is to retain jurisdiction to enforce settlement terms. *Wackeen v. Malis* (2002) 97 Cal.App.4th 429, sets out three requirements for a court to retain jurisdiction: (1) the request is made during the pendency of the case, (2) the parties make the request to the court, and (3) the request is made orally to the court or in a memorandum signed by the parties. Further reading should include *Greisman v. FCA US, LLC* (2024) 103 Cal.App.4th 1310; *Madrigal v. Hyundai Motor America* (2025) 17 Cal.5th

592, fn.3.); *Mesa RHF Partners, L.P. v. City of Los Angeles* (2019) 33 Cal.App.5th 913; and *Saya v. Chu* (2017) 17 Cal.App.5th 960.

Conclusion

This article is non-exhaustive of the issues. Recommended reading of other sources, such as those written by ADR Services, Inc., mediator Caroline C. Vincent, Esq., for the September 2012 and December 2014 Advocate issues, should be explored. As for tax consequences of a mediation settlement agreement, see the 2017 Advocate article by Joseph M. Lovretovich, Esq., and Jennifer A. Lipsinski, Esq., entitled "Tax Considerations in settling the case at mediation."

Attorney Michael S. Fields has over three decades of experience as a mediator and arbitrator. He has been an active author and contributor to numerous publications on ADR issues. His first Advocate article was written in 1992, explaining party arbitrations. He was the primary contributor and editor for the California Contract arbitration section of Matthew Bender's book entitled "California Alternative Resolution Practice." He has served in many bar association leadership positions. In 2003, Mr. Fields served as CAALA's president. Before his retirement in 2015, he had a 47-year active personal injury practice. Mr. Fields can be retained as a mediator, arbitrator, or discovery referee by contacting him at msflf@aol.com or 562-597-5399. For additional information concerning Mr. Fields' experience, see his website at www.michaelsfieldslaw.net.

MEDIATOR (Name and Address): TELEPHONE NO.: _____ FAX NO.: _____ EMAIL ADDRESS: _____	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____ STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	
CASE NAME: _____	
STATEMENT OF AGREEMENT OR NONAGREEMENT ☐ First ☐ Supplemental	CASE NUMBER: _____
The mediator must complete, serve, and file this form • within 10 days after conclusion of the mediation, or by another date set by the court, in all cases assigned to mediation under the Civil Action Mediation Program. (Code Civ. Proc., § 1775 et seq.) • as required by the court in other mediation programs. In completing this form, the mediator must not • provide any information beyond what is specifically requested, or • disclose any settlement terms, confidential communications, mediation conduct, or mediator conclusions or impressions. (Evid. Code, § 1115 et seq.)	

1. I was appointed, assigned, or retained as the mediator in this case on *(date)*:
2. The mediation *(check one)*
 - a. ☐ was not scheduled.
 - b. ☐ was scheduled but not held.
 - c. ☐ was held as follows:
 - (1) Session dates *(specify all)*:
 - (2) Number of sessions:
 - (3) Total length of sessions *(hours)*:
3. ☐ The mediation ended on *(date)*:
 - a. ☐ in a full agreement.
 - b. ☐ in a partial agreement.
 - c. ☐ in nonagreement.
4. ☐ The mediation has not yet ended. I submit this form to comply with the court's requirement to do so by a specified date.
(Complete the items below. In Civil Action Mediation Programs and where otherwise required by the court, file a supplemental Statement of Agreement or Nonagreement within 10 days after the mediation ends or by such other date as the court may set.)
 - a. The mediator anticipates that the mediation will be completed by *(date)*:
NOTICE TO PARTIES: This form does not extend any mediation completion deadline that the court has set. You must request any necessary extension from the court.
 - b. The next mediation session is scheduled for *(date)*:

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF MEDIATOR)

PROOF OF SERVICE OF STATEMENT OF AGREEMENT OR NONAGREEMENT

1. At the time of service, I was over 18 years of age and **not a party to this action**.
2. My residence or business address is:
3. ☐ The fax number or electronic service address from which I served the document is *(complete if service was by fax or electronic service)*:
4. I served the *Statement of Agreement or Nonagreement* (form ADR-100) on the person or persons below, as follows:

a. Name of person served	b. Manner of service (specify personal, mail, fax, or electronic)	c. Physical or mailing address, fax number, or electronic service address where person was served	d. Date of service	e. Time of service

5. The form ADR-100 was served by the following means *(check and complete all that apply)*:
 - a. ☐ **Where personal service is indicated in item 4.b.**, I personally delivered the form ADR-100 to the persons for whom personal service is indicated, at the addresses listed in item 4.c. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the document in an envelope or package clearly labeled to identify the attorney being served with a receptionist or an individual in charge of the office, or in a visible location in the office between the hours of 9 a.m. and 5 p.m. (2) For a party, delivery was made to the party or by leaving the document at the party's residence with some person not younger than 18 years of age between the hours of 8 a.m. and 6 p.m.
 - b. ☐ **Where service by mail is indicated in item 4.b.**, I enclosed the form ADR-100 in a sealed envelope or package addressed to the persons at the addresses in item 4.c. and *(specify one)*:
 - (1) ☐ deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
 - (2) ☐ placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.I am a resident of or employed in the county where the mailing occurred. The envelope or package was placed in the mail at *(city and state)*:
 - c. ☐ **Where fax transmission is indicated in item 4.b.**, based on an agreement of the parties to accept service by fax transmission, I faxed the form ADR-100 to the persons at the fax numbers listed in item 4.c. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed, is attached.
 - d. ☐ **Where electronic service is indicated in item 4.b.**, I caused the form ADR-100 to be served on the persons at the electronic service addresses listed in item 4.c., in accordance with a court order or an agreement of the parties allowing electronic service.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF DECLARANT)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address)	Telephone Number	FOR COURT USE ONLY
ATTORNEY FOR (Name): SUPERIOR COURT OF CALIFORNIA, COUNTY OF VENTURA ☐ 800 SOUTH VICTORIA AVE. VENTURA, CA 93009		
PLAINTIFF/PETITIONER DEFENDANT/RESPONDENT		
STIPULATION AND [PROPOSED] ORDER TO USE OF ALTERNATIVE DISPUTE RESOLUTION PROCESS		CASE NUMBER:

The parties and/or their attorneys stipulate that the claims in this action shall be subject to the following Alternative Dispute Resolution (ADR) process:

- | | |
|--|--|
| ☐ Court-Ordered Civil Mediation Program | ☐ Private Mediation |
| ☐ Mandatory Settlement Conference | ☐ Assignment to Private Judge |
| ☐ Binding Arbitration | ☐ Non-Binding Arbitration |
| ☐ Other (specify): _____ | |

NOTE: This form must be signed by all parties or their counsel.

(Printed Name of Plaintiff or Plaintiff's Attorney)

(Printed Name of Defendant or Defendant's Attorney)

(Signature of Plaintiff or Plaintiff's Attorney)

(Signature of Defendant or Defendant's Attorney)

Dated: _____

Dated: _____

☐ Names and signatures of additional parties are attached.

PURSUANT TO THE STIPULATION OF THE PARTIES, IT IS SO ORDERED.

IT IS FURTHER ORDERED THAT:

Dated: _____

Judicial Officer

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address)	Telephone Number	FOR COURT USE ONLY
ATTORNEY FOR (Name):		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF VENTURA 800 SOUTH VICTORIA AVE. VENTURA, CA 93009		
PLAINTIFF/PETITIONER DEFENDANT/RESPONDENT		CASE NUMBER:

The litigants in this case have been ordered to participate in Court-Ordered Civil Mediation. The plaintiff has failed to file the Stipulation to Mediator and Mediation Date form within 15 days of being ordered to mediation as required by Local Rule 3.24.

ACCORDINGLY, THE LITIGANTS HAVE BEEN ASSIGNED THE FOLLOWING MEDIATOR:

Name of Mediator: _____ Email: _____ Telephone No.: _____

Within fifteen (15) days:

1. The parties must meet and confer to discuss possible mediation dates and a schedule for completing any discovery needed for mediation.
2. The plaintiff shall contact the assigned mediator to: (1) provide party contact information; (2) exchange several possible dates/times for the mediation session as agreed by the parties; (3) determine the location for mediation session; and (4) provide the mediator with a copy of the minute order pursuant to which the parties were ordered to mediation, including the mediation completion deadline.
3. The plaintiff must file and serve the "Stipulation to Mediator and Mediation Date" form.

The litigants are participants in the Court-Ordered Civil Mediation Program. The litigants have met and conferred and by their signatures below, stipulate to the following mediator and mediation date:

Name of Mediator: _____	
Mediation Date: _____	Mediation Time: _____ AM/PM
Location: _____	
Court-Ordered Mediation Completion Date: _____	

(Printed Name of Defendant or Defendant's Attorney)

(Signature of Defendant or Defendant's Attorney)

Dated:

☐ Names and signatures of additional parties are attached.

MEDIATOR (Name and Address) _____ Telephone Number _____	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF VENTURA ☐ 800 SOUTH VICTORIA AVE. VENTURA, CA 93009	
PLAINTIFF/PETITIONER _____ DEFENDANT/RESPONDENT _____	CASE NUMBER: _____
MEDIATOR'S NOTICE OF ACCEPTANCE OR RECUSAL	MEDIATION COMPLETION DATE: _____

This Notice must be served on the Court and all parties within ten (10) days of the "Notice of Assignment of Mediator" form.

TO THE COURT AND TO ALL PARTIES IN THIS MATTER:

☐ **A. ACCEPTANCE**

I agree to serve as the mediator in this case and:

☐ The mediation has not yet been scheduled.

☐ The mediation has been set for:

Date: _____.

Time: _____.

Place: _____.

☐ **B. RECUSAL**

☐ I decline to serve as a mediator in this case.

☐ **C. MEDIATION WILL NOT BE SCHEDULED**

☐ The parties advise that the case has settled.

☐ Other: _____

Dated: _____

(Mediator's Signature)