

EMAIL FROM JACK GOETZ & JENNIFER KALFSBEEK-GOETZ (6/10/14)

Re: Mediator Confidentiality and Misconduct

We largely agree with the previously published comments attributed to Ms. Yeend that urge the Commission to follow the lead of jurisdictions and statutes such as the UMA that recognize a professional misconduct exception to protection of mediation communications. Research consistently demonstrates that there is no reason to believe mediators are less prone to engage in misconduct than practitioners in other fields. (See the attached article which references many of the appropriate sources). Sadly, mediators as a field have done very little to justify the umbrella confidentiality currently granted in most states, failing to monitor their own practitioners or requiring them to adhere to an ethics code or fulfill educational or training requirements demanded by other formalized professions...some of which have earned confidentiality privileges under state and federal evidentiary codes.

The argument that the public interest in settling legal disputes is enough to bar any evidence of mediator misconduct and ultimately, ignore it, seems incredibly self-serving to mediators (who have not earned their practitioner qualifications through any recognized criterion) and incredibly insensitive to members of the public who may have been injured by mediation practitioners. Allowing a professional misconduct exception would not seriously reduce the supply of mediators in a crowded field for which the barriers to entry are extremely low, but would likely raise the quality of the practice and encourage the more serious practitioners to get better.

Regards,

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