



May 4, 2023

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Assembly Member Jesse Gabriel
P. O. Box 942849
Sacramento, CA 94249

Re: AB 924 – Oppose Unless Amended

Dear Assembly Member Gabriel:

The California Dispute Resolution Council (CDRC) appreciates the time that your staff has taken to understand our perspective and concerns about AB 924.

CDRC was organized in 1994 to advocate for fair, accessible, and effective alternate dispute resolution processes before the legislature, state, and administrative agencies, and the courts. CDRC's membership consists of several hundred ADR neutrals, together with community dispute resolution organizations and providers of ADR services which, taken together, represent more than 15,000 mediators and arbitrators in California. CDRC positions do not represent the views of any individual member.

We recognize your desire to achieve more transparency in arbitration and mediation. Although we believe that current disclosure requirements imposed on arbitrators and mediators are adequate, we have no objection to any bill that is designed to maintain or increase transparency.

However, we are very concerned about the inroads that the bill will make on mediation confidentiality. The bill erodes mediation confidentiality because it requires mediators to send complaints against them to the State Bar. Almost everything that occurs in a mediation is confidential. Elimination or erosion of mediation confidentiality is a serious matter because confidentiality is the core element of mediation, and it is the reason why most parties are willing to mediate. The possibility that what is said in a mediation will become public because of a State Bar disciplinary proceeding may deter many litigants from mediating and will enlarge the court docket.

Further, a mediator who is defending himself or herself in the State Bar proceeding will be forced to breach mediation confidentiality or, if the mediator declines to testify with respect to events that occur during the mediation, citing

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mediation confidentiality, the mediator will not be able to adequately defend against the complaint.

Because State Bar trials are public proceedings, any member of the public can learn what transpired in the mediation, including comments by a party who believed that he or she was making those statements in confidence. Further, once the information becomes public, the complainant may be able to use those statements in litigation of the dispute if the mediation has failed or in a lawsuit where the complainant may be attempting to renege from a settlement.

There is also a conflict between AB 924 and Evidence Code Section 1129. The latter requires an attorney who recommends mediation to a client to provide the client with a notice that states that "all communications, negotiations, or settlement offers in the course of a mediation must remain confidential." Yet the same attorney may breach mediation confidentiality if he or she is interviewed by the State Bar following a complaint against the mediator by the client's adversary.

Our fears can be assuaged if the State Bar proceeding either was not available to the public or evidence from it could not be used in any other litigation proceeding. We suggest the following amendment to AB 924 to address this issue:

"(e) In the event that the complaint results in a hearing conducted by the office of the State Bar Trial Counsel, all evidence emanating from such hearing including, but not limited to, hearing transcripts, depositions, interrogatories, and documents, shall not be admissible in any other trial or administrative proceeding or in discovery proceedings that occur in conjunction with such trial or administrative proceeding."

We look forward to continuing to work with you and appreciate your consideration.

Very truly yours,

Paul Dubow

Legislation Co-Chair

John Warnlof

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