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February 17, 2017

Hon. Bob Wieckowski
State Capitol
Room 4085
Sacramento, CA 95814-4900

Re: SB 217

Dear Senator Wieckowski:

I write on behalf of the California Dispute Resolution Council (CDRC), of which I am president. CDRC supports SB 217. This letter sets forth the reasons for its support.

CDRC was formed in 1994 to advocate for fair, accessible, and effective alternate dispute resolution processes before the Legislature, state administrative agencies, and the courts. CDRC's membership consists of individual 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.

Evidence Code Section 1119 provides that documents that are prepared for a mediation are not admissible in a subsequent court proceeding. The purpose of this statute is to enable parties in a mediation to communicate freely when they wish to settle their dispute by mediation. Family Code Section 2105 requires that each party in a marital dispute must disclose, under oath, the valuation of any assets owned by such party or the community. The purpose of Section 2105 is to assure that settlements of these disputes are fair and equitable.

Tension between these statutes arises when the declaration required by Section 2105 is also prepared for a mediation of a dispute. There has long been a split among family law mediators whether Section 2015 declarations used in marital dissolution mediations were

CDRC Administration

2033 N. Main Street, Suite 750, Walnut Creek, California 94596
Tel: 925-937-9200 Fax: 925-937-9278 jwarnlof@aol.com www.cdrc.net

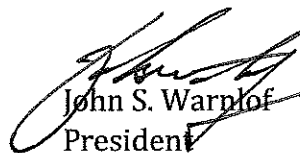
Page 2
Hon. Bob Wieckowsky
February 16, 2017

protected by mediation confidentiality. CDRC members, who conduct marital dissolution mediations, believe that Evidence Code Section 1120 (c) excludes such declaration from confidentiality. *Lappe v. Superior Court*, (2015) 232 Cal. App. 4th 774, decided in favor of this view.

In *Lappe*, a marital dissolution mediation was settled based on a purportedly false declaration submitted by one party. When the party allegedly victimized by the declaration sought to undo the settlement, citing it as the basis for an unfair settlement, the other side argued that the declaration was not admissible pursuant to Section 1119. In CDRC's view, the Court of Appeal properly determined that Section 1120 applied, not Section 1119, because declarations prepared pursuant to Section 2015 are required by law and are not prepared merely for the mediation.

SB 217 codifies the *Lappe* decision. SB 217 has worthy purpose and needs to be enacted by the California Legislature.

Sincerely,



John S. Warnlof
President

JSW/jb