



JUDICIAL COUNCIL OF CALIFORNIA

GOVERNMENTAL AFFAIRS

520 Capitol Mall, Suite 600 • Sacramento, California 95814-3368
Telephone 916-323-3121 • Fax 916-323-4347 • TDD 415-865-4272

TANI G. CANTIL-SAKAUYE
Chief Justice of California
Chair of the Judicial Council

MARTIN HOSHINO
Administrative Director

CORY T. JASPERSON
Director, Governmental Affairs

August 17, 2018

Hon. Bob Wieckowski
Member of the Senate
State Capitol, Room 4085
Sacramento, California 95814

Subject: SB 954, as amended August 16, 2018 – Support

Dear Senator Wieckowski:

The Judicial Council supports SB 954, which requires (except in the case of a class or representative action) an attorney representing a person participating in a mediation or a mediation consultation to provide their client, as soon as reasonably possible before the client has agreed to participate in a mediation or mediation consultation, with a specified printed disclosure containing the confidentiality restrictions related to mediation, and to obtain a printed acknowledgment signed by that client stating that they have read and understand the confidentiality restrictions. The bill also requires an attorney who is retained after an individual agrees to participate in the mediation or mediation consultation, as soon as reasonably possible after being retained, to comply with the printed disclosure and acknowledgment requirements described above. In addition, SB 954 specifies language that would be deemed compliant with the above written disclosure and acknowledgment requirements. The bill also provides that the failure of an attorney to comply with these disclosure requirements does not invalidate an agreement prepared in the course of, or pursuant to, a mediation. SB 954 specifies further that a communication, document, or writing related to an attorney's compliance with the bill's disclosure requirements is not confidential and may be used in an attorney disciplinary

Hon. Bob Wieckowski

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proceeding if the communication, document, or writing does not disclose anything said or done or any admission made in the course of the mediation.

The Judicial Council and other major stakeholder groups had significant concerns that the broader proposal by the California Law Revision Commission (CLRC)¹ could have significantly undermined mediation confidentiality and the overall confidence in mediation by users. The council believes that this bill takes a more measured approach to addressing the issues presented by *Cassel*. Rather than alter the underlying mediation confidentiality scheme, SB 954 appropriately focuses on ensuring that clients are fully informed about the confidentiality of mediation communications and related documents and that this confidentiality would prevent their use of these communications or documents in a subsequent malpractice action against their attorney. The Judicial Council also supports the bill's inclusion of a "safe harbor" (a statutory form that satisfies the bill's disclosure requirements) so that attorneys will not have to guess whether their written disclosure satisfies the disclosure requirement of the measure.

For these reasons, the Judicial Council supports SB 954.

Sincerely,

Mailed August 17, 2018

Daniel Pone
Attorney

DP/jh

cc: Mr. Martin Hoshino, Administrative Director, Judicial Council of California
Mr. Christian Kurpiewski, Counsel, Senate Judiciary Committee
Ms. Alison Merrilees, Chief Counsel, Assembly Judiciary Committee
Mr. Mike Petersen, Consultant, Senate Republican Office of Policy
Mr. Paul Dress, Consultant, Assembly Republican Office of Policy
Mr. Daniel Seeman, Deputy Legislative Affairs Secretary, Office of the Governor

¹ See "Relationship Between Mediation Confidentiality and Attorney Malpractice and Other Misconduct" – CLRC Study K-402, Final Recommendation, available online at: <http://www.clrc.ca.gov/pub/Printed-Reports/RECpp-K402.pdf>



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Director, Governmental Affairs

August 22, 2018

Hon. Edmund G. Brown, Jr.
Governor of California
State Capitol, First Floor
Sacramento, California 95814

Subject: SB 954 (Wieckowski) – Request for Signature

Dear Governor Brown:

The Judicial Council respectfully requests your signature on Senate Bill 954, which requires (except in the case of a class or representative action) an attorney representing a person participating in a mediation or a mediation consultation to provide their client, as soon as reasonably possible before the client has agreed to participate in a mediation or mediation consultation, with a specified printed disclosure containing the confidentiality restrictions related to mediation, and to obtain a printed acknowledgment signed by that client stating that they have read and understand the confidentiality restrictions. The bill also requires an attorney who is retained after an individual agrees to participate in the mediation or mediation consultation, as soon as reasonably possible after being retained, to comply with the printed disclosure and acknowledgment requirements described above. In addition, SB 954 specifies language that would be deemed compliant with the above written disclosure and acknowledgment requirements. The bill also provides that the failure of an attorney to comply with these disclosure requirements does not invalidate an agreement prepared in the course of, or pursuant to, a mediation. SB 954 specifies further that a communication, document, or writing related to an attorney's compliance with the bill's disclosure requirements is not confidential and may be

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August 22, 2018

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used in an attorney disciplinary proceeding if the communication, document, or writing does not disclose anything said or done or any admission made in the course of the mediation.

The Judicial Council and other major stakeholder groups had significant concerns that the broader proposal by the California Law Revision Commission (CLRC)¹ could have significantly undermined mediation confidentiality and the overall confidence in mediation by users. The council believes that this bill takes a more measured approach to addressing the issues presented by the *Cassel* decision. Rather than alter the underlying mediation confidentiality scheme, SB 954 appropriately focuses on ensuring that clients are fully informed about the confidentiality of mediation communications and related documents and that this confidentiality would prevent their use of these communications or documents in a subsequent malpractice action against their attorney. The Judicial Council also supports the bill's inclusion of a "safe harbor" (a statutory form that satisfies the bill's disclosure requirements) so that attorneys will not have to guess whether their written disclosure satisfies the disclosure requirement of the measure.

For these reasons, the Judicial Council requests your signature on SB 954.

Should you have any questions or require additional information, please contact Daniel Pone at 916-323-3121.

Sincerely,

Mailed August 22, 2018

Cory T. Jaspersen
Director, Governmental Affairs

CTJ/DP/jh

cc: Hon. Bob Wieckowski, Member of the Senate
Mr. Daniel Seeman, Deputy Legislative Affairs Secretary, Office of the Governor
Mr. Martin Hoshino, Administrative Director, Judicial Council of California

¹ See "Relationship Between Mediation Confidentiality and Attorney Malpractice and Other Misconduct" – CLRC Study K-402, Final Recommendation, available online at: <http://www.clrc.ca.gov/pub/Printed-Reports/RECpp-K402.pdf>