

§ 5949. Confidential mediation communications and documents.

(a) General rule.—Except as provided in subsection (b), all mediation communications and mediation documents are privileged. Disclosure of mediation communications and mediation documents may not be required or compelled through discovery or any other process. Mediation communications and mediation documents shall not be admissible as evidence in any action or proceeding, including, but not limited to, a judicial, administrative or arbitration action or proceeding.

(b) Exceptions.—

1. A settlement document may be introduced in an action or proceeding to enforce the settlement agreement expressed in the document, unless the settlement document by its terms states that it is unenforceable or not intended to be legally binding.
2. To the extent that the communication or conduct is relevant evidence in a criminal matter, the privilege and limitation set forth in subsection (a) does not apply to:
 - (i) a communication of a threat that bodily injury may be inflicted on a person;
 - (ii) a communication of a threat that damage may be inflicted on real or personal property under circumstances constituting a felony; or
 - (iii) conduct during a mediation session causing direct bodily injury to a person.
3. The privilege and limitation set forth under subsection (a) does not apply to a fraudulent communication during mediation that is relevant evidence in an action to enforce or set aside a mediated agreement reached as a result of that fraudulent communication.
4. Any document which otherwise exists, or existed independent of the mediation and is not otherwise covered by this section, is not subject to this privilege.

(c) Definitions.—As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

“Mediation.”

The deliberate and knowing use of a third person by disputing parties to help them reach a resolution of their dispute. For purposes of this section, mediation commences at the time of initial contact with a mediator or mediation program.

“Mediation communication.”

A communication, verbal or nonverbal, oral or written, made by, between or among a party, mediator, mediation program or any other person present to further the mediation process

when the communication occurs during a mediation session or outside a session when made to or by the mediator or mediation program.

“Mediation document.”

Written material, including copies, prepared for the purpose of, in the course of or pursuant to mediation. The term includes, but is not limited to, memoranda, notes, files, records and work product of a mediator, mediation program or party.

“Mediation program.”

A plan or organization through which mediators or mediation may be provided.

“Mediator.”

A person who performs mediation.

“Settlement document.”

A written agreement signed by the parties to the agreement.