

Mediation: Law, Policy & Practice,
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Preface 2025-2026

Connecticut enacted the Uniform Mediation Act in 2025, making it the fourteenth U.S. jurisdiction to do so. (§ 8:14). This most recent adoption, 22 years after the first, may represent a recognition of at least one aspect of the Act's track record – the relatively low volume of litigation over its provisions compared to other mediation privileges. (§ 8:15). Enactment is also a step toward achievement of two additional Uniform Mediation Act goals – greater uniformity across mediation applications within the enacting state and clarity about what law governs mediation in cross-jurisdictional mediation. (§ 8:12).

Information exchanged in mediation continues to create complex subject matter jurisdiction issues for federal courts. (§ 5:16). For example in *Sapphire v. Fred Meyer Stores Inc.*, 2024 WL 4315177 (W.D. Wash. 2024), the court held that the monetary figures in the plaintiff's mediation brief were an unreasonable estimate of her claims and therefore insufficient to establish the amount in controversy, making remand appropriate. Similarly, in *Castaneda v. State Farm Mut. Auto. Ins. Co.*, 2025 WL 1201751 (D. Colo. 2025), the court declined to treat a mediator's oral statements about the status of settlements dismissing non-diverse defendants as notice of removability, concluding that 28 U.S.C. § 1446(b)(3) requires such information to be provided in writing.

Mediation participation has also been deemed relevant to forum non conveniens analysis. In *Cong v. Zhao*, 2025 WL 474249 (W.D. Wash. 2025), the court dismissed copyright claims on forum non conveniens grounds after the plaintiffs conceded they had already received “some” remedy in China by agreeing to a mediated settlement there. The court rejected plaintiffs' assertion – disputed by defendant – that the Chinese mediation was limited to infringements within the Chinese market and could not address infringing activities abroad. Even if that limitation existed, the court reasoned, it would not defeat dismissal because a “lesser or circumscribed remedy” for defendant's alleged infringements is still “some” remedy. (§ 5:16).

Retaliation claims based on mediation participation were common in the past year. (§ 5:19). Not surprisingly, courts typically require more than temporal proximity to establish a causal connection between mediation and adverse employment actions. For example, in *Khlaifa v. Oregon Health & Sci. Univ.*, 2024 WL 4652169 (D. Or. 2024), the court found a genuine dispute of material fact regarding whether the plaintiff was constructively discharged for purposes of his disparate-treatment claim, where the defendant – through the mediator allegedly conveyed a threat that plaintiff did not resign, he would be kept in an entry level position and ultimately forced to resign. More often, however, such claims fail. *Rosado v. Sec'y, Dep't of the Navy*, 127 F.4th 858 (11th Cir. 2025) is illustrative: the court rejected a mediation-based retaliation claim where the record showed that, after mediation, the employee refused to complete work assignments and challenged her supervisor's lawful authority to require her to perform tasks within the scope of her position.

Appellate courts in Missouri and West Virginia agree that the mediator's opinion about whether an agreement was reached is relevant but not dispositive on the issue

whether there was a meeting of the minds. *Puga v. Nephrite Fund I, LLC*, 697 S.W.3d 783, 793 (Mo. Ct. App. 2024); *McDowell v. Allstate Vehicle & Prop. Ins. Co.*, 2024 WL 4591051, *5 (W. Va. Ct. App. 2024). (§ 7:2).

The different rules governing the enforcement of mediated settlements, as opposed to settlements reached outside of mediation, continue to create uncertainty. In *Leciejewski Revokable Living Tr. Dated Jan. 6, 2016 v. T& C Custom Homes, Inc.*, 109 and *Feinberg v. Feinberg*, 2024 WL 5231296, *4 (N.J. Super. Ct. App. Div. 2024) courts enforced oral settlement agreements and found the rule requiring written mediation agreements was not applicable. (§§ 7:3-7:4).

Duress remains difficult to establish as a defense to enforcing a mediated agreement in light of a party's "reasonable" option of proceeding to trial. *McClain v. Warren*, 2025 WL 1449952, *10 (N.D. Ala. 2025), report and recommendation adopted, 2025 WL 1450549 (N.D. Ala. 2025) (citing this treatise). (§ 7:8).

Various ethics issues arose in the courts this year. A California Appellate Court decision addressed a unique aspect of California state bar rule, Rule 2.30(B), which prohibits an attorney with an inactive license from serving as a private arbitrator or mediator in California. *Getzels v. State Bar of California*, No. B338089, 2025 WL 1766258 (Cal. Ct. App. June 26, 2025) (§ 11:3). In that case, the court rejected Getzels' constitutional challenge to the state bar requirement, finding that the Bar's justification for the rule, that inactive licensees could otherwise impose a financial burden on the State Bar, was rational. For mediators and arbitrators with inactive licenses, however, this rule creates a financial barrier to entry.

Courts dealt with some significant attorney misconduct during mediation this year. In § 11:14, we discuss *Musselman v. Keele*, 2024 UT App 143, 559 P.3d 64. In that case, a Utah lawyer represented a husband in a divorce while the lawyer applied for bar admission in Illinois. The wife couldn't afford representation in the divorce, so she requested mediation, which the husband resisted. The husband's lawyer harassed the wife, prompting the wife to beg the mediator for help. The mediator recommended she file a complaint against the husband's attorney with the Utah bar. Doing so delayed the attorney's bar license application in Illinois for six months pending resolution of the complaint, so he couldn't find work. The attorney then filed tortious interference and fraudulent misrepresentation claims against the mediator, and won partial summary judgment because the mediator's counsel didn't oppose the motion. The attorney won \$163k in damages after a bench trial. The appellate court reversed on the tortious interference claim, finding the attorney failed to prove each element of the claim based on the mediator's recommendation to file a bar complaint. The appellate court also reversed on the fraudulent misrepresentation claim, reasoning that the attorney could not prove he relied on any fraudulent representation that injured him, because the alleged fraudulent representations targeted the wife. Although it is unclear whether an ethics complaint was filed against the mediator, who was not a licensed attorney, one could imagine that a challenge under an unauthorized practice of law theory could be successful.

In § 12.4, we see additional lawyer misconduct, complicated by a statute of limitations issue. In *Sheldon-Lee v. Birch Horton Bittner, Inc.*, No. S-18214, 2025 WL 879780 (Alaska Mar. 21, 2025), a plaintiff sought damages against the defendant-attorneys who allegedly "pressured, bullied and coerced" her into a disadvantageous settlement agreement resulting from mediation over the trust issue. In the related trust litigation, the plaintiff, through new representation, challenged the enforceability of the settlement agreement. The court in the trust litigation ruled against her, finding the settlement agreement enforceable. Applying the discovery rule, the lower court in the legal mal-