

## **Rule 9019-5      CONFIDENTIALITY OF MEDIATION PROCEEDINGS**

(a) The mediator and the participants in mediation are prohibited from divulging, outside of the mediation, any oral or written information disclosed by the parties or by witnesses in the course of the mediation. No person may rely on or introduce, as evidence in any arbitral, judicial, or other proceedings, evidence pertaining to any aspect of the mediation effort, including, but not limited to:

- (1) views expressed or suggestions made by a party with respect to a possible settlement of the dispute;
- (2) the fact that another party had or had not indicated willingness to accept a proposal for settlement made by the mediator;
- (3) proposals made or views expressed by the mediator;
- (4) statements or admissions made by a party in the course of the mediation; and
- (5) documents prepared for the purpose of, in the course of, or pursuant to the mediation.

(b) Without limiting the foregoing, Rule 408 of the Federal Rules of Evidence and any applicable federal or state statute, rule, common law, or judicial precedent relating to the privileged nature of settlement discussions, mediation, or other alternative dispute resolution procedure shall apply.

(c) Information otherwise discoverable or admissible in evidence, however, does not become exempt from discovery, or inadmissible in evidence, merely by being used by a party in a mediation.

(d) The mediator shall not be compelled to disclose to the Court or to any person outside the mediation conference any of the records, reports, summaries, notes, communications, or other documents received or made by a mediator while serving in such capacity. The mediator shall not testify or be compelled to testify in regard to the mediation in connection with any arbitral, judicial, or other proceeding. The mediator shall not be a necessary party in any proceedings relating to the mediation.

(e) The parties, the mediator, and all mediation participants shall protect proprietary information and in-camera submissions. All such materials shall be kept confidential and shall not be used outside the mediation by any adverse party.

(f) The disclosure by a party of privileged information to the mediator does not waive or otherwise adversely affect the privileged nature of the information.