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Balancing the Requirements of Confidentiality and Good Faith in Mediation After a Party has Refused to Mediate

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ABSTRACT

The aim of this essay is to explore the ways to balance the requirements of confidentiality and good faith in mediation, after a party has refused to mediate, so that the unsuccessful party can be protected from bearing an unfair cost sanction. It will do so by discussing the criteria for when it is reasonable to refuse to mediate, when determining costs. It will consider the relative importance and interpretations of the terms confidentiality and good faith with regards to costs. Then, it will consider who should decide whether the requirements of good faith have been breached and how such a determination can be made. Lastly, it will propose ways to ensure accountability of conduct as well as better practices in terms of costs.

Keywords: *Mediation, Confidentiality, Good Faith, Disclosure.*

I. INTRODUCTION

The aim of this essay is to explore the ways to balance the requirements of confidentiality and good faith in mediation, after a party has refused to mediate, so that the unsuccessful party can be protected from bearing an unfair cost sanction. It will do so by discussing the criteria for when it is reasonable to refuse to mediate, when determining costs. It will consider the relative importance and interpretations of the terms confidentiality and good faith with regards to costs. Then, it will consider who should decide whether the requirements of good faith have been breached and how such a determination can be made. Lastly, it will propose ways to ensure accountability of conduct as well as better practices in terms of costs.

(A) Refusal to mediate

The English courts have developed an objective approach for determining when it is reasonable to refuse mediation for a party. The case of *Halsey v Milton Keynes NHS Trust*[2] is the prominent authority on the issue. The general rule in English Law is that the unsuccessful party will be ordered to pay the costs of the successful party, but the court may also make a different order,

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[2] [2004] 1 W.L.R. 3002

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taking into account all the circumstances including conduct.[3] The court identified six important factors, which might be considered for justifying refusal, as follows:[4]

- ***The nature of the dispute***, as to which the Court warned "*most cases are not, by their very nature, unsuitable for mediation.*"
- ***The merits of the case***, by which a party, which reasonably believes it has a strong case, might make refusal of mediation reasonable. Where it's a borderline case, refusal is much more hazardous.
- ***Other settlement methods have been attempted***, though again the Court noted that *"mediation often succeeds where other settlement attempts have failed"*, and it regards this reason as part of whether mediation has reasonable prospects of success.
- ***Costs of mediation would be disproportionately high;*** always a proper consideration late in a modest claim, but the cost benefit may be much better and justify mediation early in its life.
- ***Delay to a trial date***
- ***Whether mediation had a reasonable prospect of success***, the burden of showing which, lies with the unsuccessful party who proposed mediation, and not with the successful party who refused. This factor is actually rather played down by the Court in *Halsey*, since it may be the attitude of a party which means that mediation has no reasonable prospect of success. The Court does not regard the burden as being unduly onerous: the unsuccessful litigant must show that there was a reasonable prospect that the mediation would have succeeded. But, What amounts to 'success' in mediation can be open to debate.

Dyson LJ also goes on to comment that, "if the integrity and confidentiality of the process is to be respected, the court should not know, and therefore should not investigate, why the process did not result in agreement."[5] The Court takes a very strong view as to protect confidentiality. But, there might be situations in future, where one party manipulates the Civil Procedure Rules (CPR) to claim cost consequences whilst hiding its unreasonable conduct under the veil of confidentiality.[6] Therefore, the judgment did not consider the fact that unreasonable conduct by

[3] CPR r 44.3
[4] n.2, 3008-3012
[5] n.2, 3008
[6] Tristan Jones '*Using Costs to Encourage Mediation: Cautionary Tales on the Limits of Good Intentions*' IBA Legal Practice Division *Mediation Committee Newsletter* September 2006, 35

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a party might deter the overall purpose of the process of mediation.

The reason why mediation is encouraged over litigation is because it is 'beneficial to parties' in every way.[7] Mediation (1) is a future oriented process unlike litigation which is past-oriented, (2) creates an atmosphere to reach a common ground (compromise) unlike litigation where only one party wins, (3) allows flexibility of procedures and alter requirements, (4) costs less than litigation, (5) takes lower time and effort, therefore, is less stressful and (6) 'prominently' upholds the confidentiality of every aspect of the process.[8] The requirement of good faith, in terms of conduct between parties, seems to runs parallel among most of these features. Therefore, the prominent features of confidentiality and good faith need to be analysed in turn.

II. WHAT IS CONFIDENTIALITY?

Confusion exists as to an appropriate meaning of the term confidentiality.[9] As per a literal meaning, the term would mean 'marked by intimacy' or 'private information'. But lawyers and attorneys on the other hand, always look at it in terms of information that qualifies as "evidentiary exclusions, discovery limitations or judicial or statutory laws of privilege".[10] On top of this the varying judicial systems across the world have established different standards or parameters for judging confidentiality of information.

These differences also reflect the differences in attitudes of the judiciaries when it comes to deciding costs.

However, though the term can be defined and interpreted in different ways, its aims are clear. Confidentiality plays an important role in (1) avoiding publicity, which increases willingness of the parties to enter into it, (2) encouraging parties to be frank an disclose real needs and interests and, (3) protect the reputation of mediators and reinforce their impartiality.[11]It can be inferred that the first and second aims deal with protection of 'parties' to provide them with an adequate environment to settle. The third aim provides limitations on the mediator's use of information.

The Australian Courts allow examination of evidence on question of costs. In *Silver Fox Co Pty Ltd (as trustee for the Baker Family Trust) v Lenard's Pty Ltd (No 3)*[12], the applicants relied on

[7] Pamela A. Kentra, "*Hear No Evil, See No Evil, Speak No Evil: The Intolerable Conflict for Attorney-Mediators Between the Duty to Maintain Mediation Confidentiality and the Duty to Report Fellow Attorney Misconduct*" (1997) Brigham Young Law Review 715, 720
[8] ibid, 720-3
[9] ibid, 724
[10] ibid
[11] F Crosbie, "*Aspects of confidentiality in mediation: a metter of balancing competing public interests"* (1995), 2 Commercial Dispute Resolution Journal 51
[12] [2004] FCA 1570

an affidavit from their solicitor, which contained the final proposals put forward by parties during the mediation. Mansfield J confirmed that public interest[13] required adherence to the principle that evidence of a communication made when attempting to negotiate a settlement of a dispute will not be used.[14] However, it was also decided that no public interest exists to prevent a communication being admitted when only cost issues are being determined, and admissibility of the affidavit would not represent improperly or illegally obtained evidence.[15]

Whereas English courts take an absolute position that they will not look inside mediation to determine parties' conduct was reasonable when determining costs. In the case of *Reed Executive plc v Reed Business Information Ltd*[16], the Court of Appeal abstained from considering 'without prejudice' communications, which would mean that the defendant unreasonably refused to mediate. The Court in *Halsey*, discussed above, also took a similar route as to respecting the confidentiality of the process.

As per the United States (US) experience, Kimberlee K. Kovach argues that confidentiality always comes down to a 'balancing test'.[17] Confidentiality is a primary purpose of mediation, but "like many other things in life, nothing is absolute".[18] But a 'balancing' position might also be a threat to mediation. It would harm the 'motivation' of parties to engage in mediation.[19] This would go against one of the aims of mediation of 'creating an atmosphere' to reach common ground. Also, mediation is advertised on the basis of confidentiality, but prospective participants are not aware that confidentiality has limits.[20] Thus, no clear line exists between marginal and full disclosure of information if a balancing test is adopted.

Therefore, a better proposition would be to interpret confidentiality in terms of a legal duty 'with few exceptions'. This would point towards a 'marginal' disclosure rather than complete or no disclosure. California courts however warn that confidentiality exceptions, however, are to be narrow ones, including "only such information as is reasonably necessary".[21]

III. WHAT IS GOOD FAITH?

Defining good faith has been problematic in a number of situations. This has been due to a

[13] Evidence Act 1995 (Cth), s 131(1),
[14] n.12, para 36
[15] Evidence Act 1995 (Cth), s 138,
[16] [2004] EWCA Civ 887
[17] Kimberlee K. Kovach, "*Good Faith in Mediation - Requested, Recommended, or Required? A New Ethic"* (1997), 38 South Texas Law Review 575, 601
[18] ibid
[19] Iur. Ulrich Boettger, "*Efficiency Versus Party Empowerment--Against a Good-Faith Requirement in Mandatory Mediation"*(2004), 23 The Review of Litigation 1, 28
[20] ibid
[21] *Foxgate Homeowners Association v Bramalea California Inc* 92 Cal. Rptr. 2d 916 (Cal. Ct. App. 2000), 929

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number of factors: courts have found it difficult to interpret; guidelines for mediation contain problematic terms; lack of case precedents for policy guidelines and the term 'mediation' itself faces a definitional dilemma.[22] The most recognized interpretation of good faith according to American Courts is reflected in the case of *Jacobellis v Ohio*[23], whereby Stewart J followed the approach- "I know it when I see it."[24]

Kovach, who agrees with the idea of having defined good faith standards, proposes that the definition should include the following characteristics:

a. Compliance with the terms and provisions of […a state statute or other rule…];
b. Compliance with any specific court order referring the matter to mediation;
c. Compliance with the terms and provisions of all standing orders of the court and any local rules of the court;
d. Personal attendance at the mediation by all parties who are fully authorized to settle the dispute, which shall not be construed to include anyone present by telephone;
e. Preparation for the mediation by the parties and their representatives, which include the exchange of any documents requested or as set forth in a rule, order, or request of the mediator;
f. Participation in meaningful discussions with the mediator and all other participants during mediation;
g. Compliance with all contractual terms regarding mediation which the parties may have previously agreed to;
h. Following the rules set out by the mediator during the introductory phase of the process;
i. Remaining at the mediation until the mediator determines that the process is at an end or excuses the parties;
j. Engaging in direct communication and discussion between the parties to the dispute, as facilitated by the mediator;
k. Making no affirmative misrepresentations or misleading statements to the other parties or the mediator during the mediation; and
l. In pending lawsuits, refraining from filing any new motions until the conclusion of the

[22] n.16, 599-600
[23] (1964) 378 U.S. 184
[24] ibid, 197

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mediation [.][25]

Roger L. Carter, on the other hand, believes that Kovach does not give an 'all-inclusive' definition but merely 'itemises behaviours included in good faith'.[26] He also argues that it is 'bad faith' that we look for in conduct; therefore good faith should be defined in terms of what is 'inappropriate' behavior.[27] He also submits his interpretation of bad faith as when a participant:

- Uses the mediation process primarily to gain strategic advantage in the litigation process;
- Uses mediation to impose hardship rather than to promote understanding and conflict resolution; or
- Neglects an affirmative material obligation owed to another participant, the mediator or the court.[28]

Carter's 'bad faith' requirements provide a subjective manner of defining good faith. But, it should be inferred that defining good faith in terms of what its not, could have detrimental effects. Carter does not state what conduct might give the participant a strategic advantage in litigation, or what conduct imposes hardship rather than promoting understanding, or what are the material obligations owed to the other participant. Therefore, it should be argued that good faith needs to be defined mostly in 'specific' terms so that courts don't interpret it broadly which would lead to a major breach of confidentiality.

A better proposition is Kovach's enumeration of rules in terms of what good faith actually is. Kovach's conduct requirements are based on the analysis of previous court rules and case law.[29] Therefore, the conduct identified is the conduct that is 'most commonly' categorised as breach of good faith. Kovach's propositions give a 'theoretical' discussion of interpretation, but as it is seen later, some of his propositions might be seen to be interfering greatly with confidentiality when in practice.

IV. BREACH OF GOOD FAITH

How to decide?

The conundrum that lies at the heart of the issue of cost sanctions is how far to look inside

[25] n.16, 622-23
[26] Roger L. Carter, '*Oh, Ye of Little Good Faith: Questions and Concerns and Commentary on Efforts to Regulate Participant Conduct in Mediations'* (2002) Journal of Dispute Resolution 367, 372
[27] ibid
[28] ibid
[29] n.16, 585-90

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mediation in order to assess a party's conduct. There is no commonly accepted definition of good faith, but rules have been proposed by academics, and it has been suggested that these rules can be divided into two categories: 'narrow' and 'broad'.[30]

Broad rules focus on party's general course of conduct, and the court is invited to look beyond superficial behaviour to determine the parties' motivation. Examples of broad rules include insisting that parties prepare adequately for the mediation that they participate in meaningful discussions, that they evaluate their case rationally, that they do not delay proceedings unnecessarily or that they generally act in good faith in all of the circumstances.[31] However, these rules accompany with them problems of breaching confidentiality in an attempt to glean evidence for the conduct.

For some time, the courts in California favoured the approach of breaking the confidence. In the case of *Foxgate Homeowners' Association v Bramalea California Inc*[32], the mediator filed a report to the court stating that the defense attorney had spent most of his time at the mediations trying to frustrate them and failed to bring his experts at a mediation session specifically designed for them, and recommended that he should be sanctioned for his conduct. The Court of Appeals[33] allowed the sanction stressing the need for good faith participation and concluded that a party that intentionally frustrated the mediation process should not subsequently be permitted to conceal their behavior behind 'the veil of confidentiality'. But, the decision was overturned by California's Supreme Court[34], which quoted with approval a report that stated that the purpose of mediation confidentiality was to promote "a candid and informal exchange regarding events in the past… This frank exchange is achieved only if the participants know that what is said in the mediation will not be used to their detriment through later court proceedings and other adjudicatory processes."[35]

Professor John Lande points out the various problems that broad rules might create for the settlement authority as well as the participants.[36] Firstly, it might induce dishonesty about settlement authority and rationale for offers. Secondly, providing honest responses might put participants in jeopardy of being sanctioned. Thirdly, tough mediation participants could use broad good-faith requirements offensively to intimidate opposing parties and interference with

[30] n.6, 36
[31] n.6, 36
[32] 92 Cal. Rptr. 2d 916 (Cal. Ct. App. 2000)
[33] ibid
[34] *Foxgate Homeowners' Association v Bramalea California Inc* 26 Cal 4th 1
[35] National Conference of Commissioners on Uniform State Laws, Uniform Mediation Act, May 2001, para 2, Reporter's working notes, quoted verbatim in the *Foxgate* judgment.
[36] John Lande, '*Why Good-Faith Requirement is a Bad Idea for Mediation*' (2005) 23 Alternatives to High Cost Litigation 1, 9

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a lawyer's ability to represent a client's legitimate interests. Therefore, broad rules might hamper participation rather than promote it.

Though Kovach's approach of having a 'positive' definition seems good, some of the rules she suggests can be seen to be too broad. The fact that the rules are more superficial in nature, there is a need to dig deep into the mediation to know what actually happened. This approach also doesn't fit into the definition of confidentiality as a 'legal duty with few exceptions'. The fact that courts would have to dig deep would count as a major exception, which would breach confidentiality entirely.

It is because of these inadequacies of broad rules that some commentators and some courts have preferred to adopt 'narrow' rules. Narrow rules concentrate on simple behaviours. Examples include the requirement that:[37]

- a party actually attends mediation;
- they remain there for a fixed period of time[38];
- they submit a position paper prior to the mediation;
- the parties make an offer of settlement; or
- they have sufficient settlement authority to reach agreement.

The advantage of such rules is that it is easy to establish non-compliance as the mediator simply hands a checklist to the court without further comment.[39] However the courts in the USA have encountered two main problems with these rules. Firstly, the required behavior might be inappropriate. In *Nick v Morgan's Foods, Inc*[40] a Missouri court ordered the parties to participate in mediation, requiring that they send a representative with settlement authority. The defendant knowingly failed to comply and insisted that any settlement above $500 would have to be confirmed by telephone. Emphasizing how important the requirement of settlement authority is, the court said for ADR to work effectively, parties must be capable of being persuaded to change their views.[41] However, the requirement of settlement authority is not always the best solution. In *Re: United States*[42], the Fifth Circuit Court of Appeals recommended that courts should always consider ordering that someone with settlement authority should be available by telephone during mediation. They effectively adopted the

[37] n.6, 36
[38] n.35, 1
[39] n.6, 36
[40] 99 F Supp.2d 1056
[41] ibid, para 10
[42] *Re: United States* 149 F 3d 332

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position that was characterised as bad faith in *Nick*.[43]

The other difficulty is that it is relatively easy to comply with the letter of the law without paying attention to its spirit. A line of Texan cases show that the requirement of attending mediation may be rendered of very limited importance. They show that parties may attend mediation but they cannot be forced to make good faith efforts at mediation.[44] In the case of *Texas Parks and Wildlife Dept v Davis*[45] the court commented that 'participation' in mediation requires attendance and the making of any offer, which of unrealistic may prove to be no more helpful to the process than making no offer at all. This is why Texas Court of Appeals subsequently refused to elaborate on the basic attendance rule.[46]

But even if the narrow approach has shortcomings, it provides a stronger sense of protection of confidentiality of the process than broad rules. The American Bar Association should be agreed with that in narrow class of situations, court sanctions could appropriately promote productive behavior in mediation and sanctions should be imposed for violations of rules specifying objectively determinable conduct.[47] The Bar Association, in a policy statement, said that broad rules were difficult to define and sanctions should only be used in order to enforce narrow rules.[48]

The narrow approach does not fit into Kovach's 'balancing' approach as the balance is solely towards protecting confidentiality than towards good faith. But it fits into the idea of 'legal duty with few exceptions'. This interpretation upholds Pamela A. Kentra's view of encouraging participation as well as creates an atmosphere to settle.[49] Therefore, it is better to use narrow rules to decide whether the term 'good faith' is breached.

Who to decide?

Jones suggests that it would be a good idea to invite a party by the court or the other side to attend but to give the court a power to excuse them if they can show beforehand that mediation would be unreasonable in the circumstances.[50]

The first part of the suggestion involves the use of a third party in mediation. But third party

[43] n.39
[44] *Decker v Lindsay* 824 SW 2d 247
[45] 988 SW 2d 370
[46] *In re Acceptance Insurance Co*, 33 SW 3d 443
[47] American Bar Association Section of Dispute Resolution, 'Resolution on Good faith Requirements for Mediators and Mediation Advocates in Court-Mandated Mediation Programs' approved by Section Council on 7 August 2004. See also Jones (n.5), 36
[48] Ibid.
[49] n.7
[50] n.6, 37

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participation also accompanies with it the problem for outsiders to determine what is the "right" amount of settlement authority.[51] One cannot do so without analyzing the merits of the case and the history of litigation.[52] Therefore, enforcing such a requirement will result in a major intrusion into the mediation process and violation of confidentiality protections.

Though the latter proposition of excusing beforehand if mediation can be shown to be unreasonable seems to be a good idea. This approach is consistent with the one taken in *Halsey*, whereby the case is looked at objectively. Such a rule would assist parties which might have a genuine reason to avoid ADR- for example, those who have a legal point decided, or who can show oppressive behaviour by the other side.[53]

After hearing a case on the merits, it seems to be a better idea to have someone from within the mediation to ensure that confidentiality is not breached to a large extent. A mediator itself could be a better option than a third party. It is argued that a mediator's neutrality is at risk by imposing a broad good faith requirement.[54] Therefore, using narrow rules as per Jones can preserve this neutrality. Also, one might argue that a mediator's role is one of facilitation and not of evaluation. But, Kovach's view should be agreed with that a mediator also has a 'professional duty to set parameters and be in control of the process'.[55] A good faith assessment would come under this role.

V. THE WAY FORWARD

So that a party does not incur 'unreasonable' cost sanctions, it may be sensible for legal advisors to cautiously advise their clients of potential risks of non-engagement in mediation prior to entering into a mediation agreement.[56] But where a party might be reluctant to engage in the process due to fear of unreasonable behavior by the party on the other side, experience from England suggests that few inherently unreasonable parties restrain their unreasonableness to circumstances where mediation confidentiality restricts judicial access to what transpired at the mediation.[57] Therefore, sufficient evidence of unreasonable conduct would be available to the court without intruding into the confidentiality of the process.

Therefore, a discussion about confidentiality concludes that confidentiality should be of the

[51] n.35, 8
[52] n.35, 8
[53] n.6, 37-8
[54] n. 18, 35-6
[55] n.16, 600-1
[56] Ronán Feehily, '*Cost Sanctions: The Critical Instrument in the Development of Commercial Mediation in South Africa'*, South African Law Journal 126(2), 291, 310
[57] Tony Allen "*Peering behind the veil of mediation confidentiality, a new judicial move in Mulmesbury v Strutt and Parker*' available at www.cedr.com/index.php?location=library/articles/20080421_234.htm

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utmost priority and breaching it would harm its overall success as a facilitative exercise. Good faith should be defined in terms of rules, and only a narrow interpretation seems to be workable in practice. The approach taken in *Halsey* of not looking inside the process of mediation is consistent with this idea. Some academics suggest that a third party might be involved to ensure adherence with the narrow rules as a mediator's role already consists of a professional duty to set the standards and control the process. This practice would adequately provide a healthy amount of protection from unreasonable cost sanctions while balancing the requirements of good faith and mediation confidentiality.

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VI. REFERENCES

Articles

- Tristan Jones '*Using Costs to Encourage Mediation: Cautionary Tales on the Limits of Good Intentions*' IBA Legal Practice Division *Mediation Committee Newsletter* September 2006, 35
- Pamela A. Kentra, "*Hear No Evil, See No Evil, Speak No Evil: The Intolerable Conflict for Attorney-Mediators Between the Duty to Maintain Mediation Confidentiality and the Duty to Report Fellow Attorney Misconduct*" (1997) Brigham Young Law Review 715
- F Crosbie, "*Aspects of confidentiality in mediation: a metter of balancing competing public interests"* (1995), 2 Commercial Dispute Resolution Journal 51
- Kimberlee K. Kovach, "*Good Faith in Mediation - Requested, Recommended, or Required? A New Ethic"* (1997), 38 South Texas Law Review 575
- Iur. Ulrich Boettger, "*Efficiency Versus Party Empowerment--Against a Good-Faith Requirement in Mandatory Mediation"*(2004), 23 The Review of Litigation 1
- Roger L. Carter, '*Oh, Ye of Little Good Faith: Questions and Concerns and Commentary on Efforts to Regulate Participant Conduct in Mediations'* (2002) Journal of Dispute Resolution 367
- John Lande, '*Why Good-Faith Requirement is a Bad Idea for Mediation*' (2005) 23 Alternatives to High Cost Litigation 1
- Ronán Feehily, '*Cost Sanctions: The Critical Instrument in the Development of Commercial Mediation in South Africa'*, South African Law Journal 126(2), 291
- James J. Alfini and Catherine G. McCabe, '*Mediating in the Shadow of the Courts: A Survey of the Emerging Case Law'* (2001), 54 Arkansas Law Review 171
- Richard D. English, '*Alternative Dispute Resolution: Sanctions for Failure to Participate in Good Faith in, or Comply With Agreement Made in, Mediation'* (2003), 43 American Law Reports 5th 545
- John Lande, *'Using Dispute System Design Methods to Promote Good-Faith Participation in Court-Connected Mediation Programs'* (2002), 50 UCLA Law Review 69

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Cases

- *Halsey v Milton Keynes NHS Trust* [2004] 1 W.L.R. 3002
- *Silver Fox Co Pty Ltd (as trustee for the Baker Family Trust) v Lenard's Pty Ltd (No 3)* [2004] FCA 1570
- *Reed Executive plc v Reed Business Information Ltd* [2004] EWCA Civ 887
- *Foxgate Homeowners Association v Bramalea California Inc* 92 Cal. Rptr. 2d 916 (Cal. Ct. App. 2000)
- *Foxgate Homeowners' Association v Bramalea California Inc* 26 Cal 4th 1
- *Jacobellis v Ohio* (1964) 378 U.S. 184
- *Nick v Morgan's Foods, Inc* 99 F Supp.2d 1056
- *Re: United States* 149 F 3d 332
- *Decker v Lindsay* 824 SW 2d 247
- *Texas Parks and Wildlife Dept v Davis* 988 SW 2d 370
- *In re Acceptance Insurance Co*, 33 SW 3d 443
- *Rojas v Superior Court of Los Angeles* 126 Cal Rptr 2d 97

Legislation

- Civil Procedure Rules (UK)
- Evidence Act 1995 (Cth) (Australia)

Internet Sources

- Tony Allen "*Peering behind the veil of mediation confidentiality, a new judicial move in Mulmesbury v Strutt and Parker*' available at www.cedr.com/index.php?location=library/articles/20080421_234.htm
- John R. Van Winkle, 'The Solution to Insuring Good Faith in Court Connected Mediation: Self Interest' available at http://www.mediate.com/articles/vanwinkleJ.cfm
- J Abrams 'Compulsory Mediaiton: The Texas Experience' located at www.internationalmediator.com/TexasExperience.shtml

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