

MCLE SELF-STUDY

STRICT NEW MEDIATION RULE NOW EFFECTIVE

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MCLE SELF-STUDY TEST

- 1 What language must be used in the §1129 disclosure?
 - a. The client's native language
 - b. The client's primary language
 - c. The client's preferred language
 - d. Latin
- 2 What size font must be used in the §1129 disclosure?
 - a. 10 point
 - b. 11 point
 - c. 12 point
 - d. 12 point (but 10 point is can be used if the text is printed in contrasting red type)
- 3 How must the §1129 disclosure be prepared?
 - a. Section 1129 requires the disclosure to be "printed," which means it can be handwritten as long as the lettering is hand printed instead of being written in longhand.
 - b. Section 1129 requires the disclosure to be "printed," which means that it must be printed by a commercial printer.
 - c. Section 1129 requires the disclosure to be "printed," which means that in can be printed from a desktop printer.
 - d. Nobody knows for sure. The statute isn't clear.
- 4 What must the §1129 disclosure be attached to?
 - a. The attorney client engagement letter
 - b. The mediation confidentiality agreement
 - c. The fully executed mediation settlement agreement
 - d. Nothing.
- 5 What's the *maximum* font size that can be used in the §1129 disclosure?
 - a. 10 point
 - b. 12 point
 - c. Any size you want, as long as it's at least 12 point. The statute doesn't prescribe a maximum font size.
 - d. Any size you want, as long as it's at least 12 point (and as long as it all fits on a single page)
- 6 The §1129 disclosure and acknowledgment must be
 - a. Printed on only one side of a single sheet of paper
 - b. Printed on both sides of a single sheet of paper
 - c. Printed on a single page
 - d. Sent by email

Continued on next page ►

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Page 1 of 3

7 Hypothetical: A lawyer writes their own §1129 disclosure and leaves out the safe harbor language that says “NOTE: This disclosure and signed acknowledgment does not limit your attorney’s potential liability to you for professional malpractice, or prevent you from (1) reporting any professional misconduct by your attorney to the State Bar of California or (2) cooperating with any disciplinary investigation or criminal prosecution of your attorney.” Does this omission cause the customized disclosure to not comply with the requirements of §1129?

- a. Yes. The safe harbor form included with §1129 provides the definitive interpretation of the disclosures required by §1129, and anything less is both inadequate and deficient.
- b. Yes. While use of the safe harbor disclosure form is optional, as a practical matter the safe harbor form contains the minimum elements that the Legislature intended to be included in any disclosure form. As a result, attorneys can safely add language to the disclosure form, but any redactions from the Safe Harbor form will make a customized form inadequate.
- c. No. Section 1129 requires that an attorney disclose the contents of Evidence code §1119 but it doesn’t require attorneys to affirmatively advise clients that they can discuss mediation communications in any subsequent malpractice action or disciplinary proceeding.
- d. Flip a coin.

8 When must the §1129 disclosure be given?

- a. At the time the client engages the attorney
- b. When the attorney first discusses mediation with the client
- c. When the client agrees to participate in mediation
- d. As soon as “reasonably possible” before a client agrees to participate in mediation or a mediation consultation

9 When must an attorney provide the §1129 disclosure to the client if before engaging the attorney the client has already agreed to participate in mediation?

- a. At the time the attorney is retained
- b. As soon as “reasonably possible” after the attorney is retained
- c. Prior to the mediation
- d. An exception applies: The disclosure need not be given if the client agreed on their own to mediate before retaining legal counsel.

10 Hypothetical. At mediation a client becomes completely intransigent in settlement negotiations and makes demands outside the bounds of all reason. After 12 hours of mediation, the other side makes a final settlement offer that is “most reasonable.” The client unequivocally rejects the settlement offer, refuses to make a counteroffer, insults the attorney’s intelligence, blames the attorney for not getting a better settlement offer from the other side and tells the attorney that the client won’t pay the attorney’s bill unless the attorney gets a materially better settlement offer. The attorney snaps, loses all self-control, gets red in the face, approaches the client in a threatening manner and shouts that unless the client gets in touch with reality the attorney is going to drag him outside by his necktie and “teach him a lesson.” The client reasonably fears for his immediate personal safety. According to the “Safe Harbor” disclosure form included with §1129:

- a. Evidence of communications or actions at mediation which constitute an intentional tort by the attorney against the client are inadmissible in any subsequent suit brought by the client against the attorney.
- b. Evidence of communications or actions at mediation which constitute an unintentional tort by the attorney against the client are inadmissible in any subsequent suit brought by the client against the attorney
- c. Evidence of communications or actions at mediation which constitute an intentional breach of ethical responsibilities by the attorney or which constitute “gross, willful or reckless” malpractice by the attorney are inadmissible in any subsequent suit brought by the client against the attorney
- d. Nothing in §1129 makes inadmissible any mediation communications or actions in a subsequent criminal proceeding.

11 Which of the following behaviors constituted egregious attorney behaviors at the mediation described in the Cassel decision?

- a. Insisting that the client who felt “tired, hungry and ill” remain at the mediation until it was finished
- b. Falsely representing that the attorneys would facilitate a “side deal” that would recoup “deficits” in the settlement
- c. Threatening to abandon the client at the imminent, upcoming trial unless the client accept the other side’s settlement offer
- d. All of above

12 Which of the following best states an attorney’s duties under §1129?

- a. Advise the client that they have the right to sue the attorney for malpractice following the mediation
- b. Provide a client with a printed disclosure of the confidentiality restrictions of §1119
- c. Obtain a printed acknowledgment signed and dated by the client stating that the client has read and understands the confidentiality restrictions of §1119
- d. Both B and C

13 Hypothetical. Parties to a lawsuit agree on mediation but haven’t agreed on a date. One of the attorneys promptly provides a customized §1129 disclosure and acknowledgment to their client for review and execution. The customized form includes a date for the mediation and also a date next to the signature lines for both the client and attorney. The client signs and dates the form and returns it to the attorney who also signs and dates the form. However, the date line for the date of the mediation is never completed. Does the customized form satisfy the date and signature requirements of §1129?

- a. Yes, because §1129 only requires that the form be signed and dated by client and attorney. Section 1129 doesn’t require that the form specify the date the mediation is actually conducted
- b. Yes, because the form was signed and dated by attorney and client; the mediation date need not be included because the mediation date had not been determined at the time of signature
- c. No. The form doesn’t comply with §1129 until the mediation date is included
- d. None of the above

14 An attorney’s failure to provide the disclosure and obtain the acknowledgment required by §1129

- a. Constitutes a sufficient basis for a client to set aside a settlement agreement signed at mediation due to lack of sufficient client-informed consent
- b. Does not by itself constitute a basis for setting aside a settlement agreement signed at mediation
- c. Relieves a client of any obligation to pay for the attorney’s services at mediation
- d. None of the above

15 An attorney is not obligated to provide their client with a §1129 disclosure in which of the following situations?

- a. Where the attorney’s compensation is based on a contingency fee agreement
- b. Where the attorney is employed by a non-profit entity
- c. Where the attorney serves the client as in-house legal counsel
- d. In a class action lawsuit

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