

FROM THE CHAIR

by Michael R. Diliberto

“ How did it get so late so soon? It’s night before it’s afternoon. December is here before it’s June. My goodness how the time has flown. How did it get so late so soon?”—Dr. Seuss.

As 2025 approaches, the new year creates opportunity for change in our lives as we contemplate both the passing year and the one to come. Change is also anticipated for California mediators who will soon decide whether they will become state bar-certified providers of mediation services. My Bay Area colleague Ron Kelly, who has been involved in shaping alternative dispute resolution law for decades, has spearheaded efforts to revise proposed legislation that would have gutted confidentiality in mediations. As chair of the Los Angeles County Bar Association’s ADR Section, I wrote a letter to the sponsoring senator to support Ron’s efforts, which were successful.

Recently, Ron analyzed California Senate Bill 940 by Senator Tom Umberg, which empowers the State Bar to offer certification to all individual mediators and mediation provider organizations, regardless of status as lawyers. I refer to portions of Ron’s analysis in this article, with his approval.¹

In September, Governor Newsom signed SB 940 into law. It adds a new Section 6173 to the Business and Professions Code: “Article 10.1. Alternative Dispute Resolution Certification Program.” The certification is not limited to active members of the Bar, as the new law provides that the Bar “shall not require a firm, provider, or practitioner to be a licensee of the State Bar in order to be certified under the program.” Thus, mediators who are not members of the State Bar will be allowed to state that they are State Bar certified.

Mediators and provider organizations are not required to obtain this certification to offer mediation services in California. Certification will be voluntary. However, Senator Umberg’s publicly stated intent is that the market will eventually push most providers into obtaining and maintaining this new State Bar certification. Ron believes this is consis-

tent with the experience of other states with similar programs. It is expected that parties will be reluctant to choose uncertified providers or providers who have had their certification revoked once certified mediators in good standing are available.

The new law specifies that in order to be certified “[t]he firm, provider, or practitioner requires, at a minimum, its mediators to comply with ethical standards...equivalent to the Rules of Conduct for Mediators...as provided in Rules 3.850 to 3.860.”² To obtain and maintain certification, the new law specifies that providers must have 1) “procedures in place for persons to make complaints” about alleged failures to comply with the required standards, and 2) “procedures to remedy failures of...mediators to comply with the standards described.” The new law specifically requires that “For mediators, those complaint procedures shall be substantially similar to the complaint procedures specified in Article 3 (commencing with Rule 3.865)...” The State Bar will likely charge a significant fee for certification, but SB 940 specifically prohibits using attorneys’ annual license fees to fund development of the new program.

Ron notes that challenging questions remain, including remedies for breach of standards, establishing the proposed revocation process, and determining what evidence will be allowed to prosecute or defend denial or revocation of certification. ■

¹ Ron Kelly, *Will You Become a California State Bar Certified Provider of Mediation Services?*, *MEDIATE* (Oct. 14, 2024), <https://mediate.com>.

² CAL. R. CT. 3.850, available at <https://www.courts.ca.gov/cms/rules/index.cfm?title=three>.

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