PUBLICATIONS

Case report: Confidentiality in mediation

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In the case *BAC Home Loan Servicing, L.P., v. Testa*, (2012-Ohio-5330), the Eleventh District Court of Appeals reaffirmed the duty of confidentiality in mediation. As the court noted, Ohio has adopted the Uniform Mediation Act, which is codified as R.C. 2710. The statute allows a mediator to disclose only that the mediation has occurred, terminated, status of settlement and attendance. Disclosing more can be a violation of the law.

In *BAC,* the trial court dismissed the plaintiff's complaint for failure to negotiate in good faith, in accorance with the court's mediation policy. This decision was predicated upon a mediation report which discussed the facts of the case and the procedural history of the matter. Relying upon the report, the court dismissed the case, finding that the plaintiff had not properly provided information and documentation to the defendants.

The Eleventh District determined that the trial court abused this discretion when it dismissed the case. As pertains to this specific assignment of error pertaining to the communications by the mediator, the Eleventh District noted that the mediator "went beyond his permitted authority in disclosing more than just whether the mediation occurred or was terminated; whether a settlement was reached; and the attendance of the parties." (*BAC Home Loan Servicing* at ¶24) The Eleventh District ruled that the court improperly relied upon the report when it dismissed the case.

Knowing a mediator may be well intentioned in writing a more expansive report, anything beyond what is provided for in R.C.2710 should only be disclosed with the written consent of the parties. Had all the parties agreed to the mediator reporting back to the court as to the status of the case, then this matter would be entirely different. However, without such consent, the mediator clearly overstepped his bounds.