ANALYSIS

2. The Mediation Privilege Would Serve the Public Ends of Encouraging Settlement and Reducing Court Dockets

As noted above, mediation is intended to facilitate and promote the voluntary conciliation, compromise an resolution of civil actions. See discussion supra at 513; see also Folb, 16 F.Supp.2d at 1176. Absent the mediation privilege, parties and their counsel would be reluctant to lay their cards on the table so that a neutral assessment of the relative strengths and weaknesses of their opposing positions could be made. See generally W. Dist. Local R. 16.3.5(A). Assuming they would even agree to participate in the mediation process absent confidentially participants would necessarily “feel constrained to conduct themselves in a cautious, tight-lipped, non-committal manner more suitable to poker players in a high-stakes game than to adversaries attempting to arrive at a just resolution of a civil dispute.” Lake Utopia, 608 F.2d at 930. The effectiveness of mediation would be destroyed, thereby threatening the well established public needs of encouraging settlement and reducing court dockets. See id.; see also generally Bank of Amer. Nat. Trust & Sav. Ass’n v. Hotel Rittenhouse Assoc., 800 F.2d 339, 344 (3rd Cir. 1986) (acknowledging "the strong public interest in encouraging settlement of private litigation"); University of Tenn. v. Elliott, 478 U.S. 788, 798, 106 S.Ct. 3220, 92 L.Ed.2d 635 (1986) (noting "the public's interest in conserving judicial resources").

3 Parties who fear that the results of an unsuccessful mediation attempt will come back to haunt them in a court of law will have little incentive to cooperate and compromise…” See Willis, 1998 WL 812110 at *2

Referring Principles:

XII.5 - Settlement privilege