IV.

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Successful mediation, with its emphasis on conciliation, depends on confidentiality perhaps more than any other form of ADR. See Foxgate Homeowners' Ass'n, Inc. v. Bramalea CaL Inc., 26 Cal.4th 1, 108 Cal.Rptr.2d 642, 25 f.3d 1117, 1126 (2001) (“[C]onfidentiality is essential to effective mediation....”). Confidentiality allows “the parties participating [to] feel that they may be open and honest among themselves.... Without such assurances, disputants may be unwilling to reveal relevant information and may be hesitant to disclose potential accommodations that might appear to compromise the positions they have taken.” Final Report of the Supreme Court Task Force on Dispute Resolution 23 (1990); see also Prigoff, supra, 12 Seton Hall Legis. J. at 2 (“Compromise negotiations often require the admission of facts which disputants would never otherwise concede.”). Indeed, mediation Stands in stark contrast to formal adjudication, and even arbitration, in which the avowed goal is to uncover and present evidence of claims and defenses in an adversarial setting. Mediation sessions, on the other hand, "are not conducted under oath, do not follow traditional rules of evidence, and are not limited to developing the facts." Rinaker v. Superior Court. 62 Cal.App.4th 155, 74 Cal.Rptr.26 464,467 (1998). Mediation Communications, which "would not [even] exist but for the settlement attempt." are made by parties "without the expectation that they will later be bound by them." Prigoff. supra, 12 Seton Hall Legis. J. at 2, 13. Ultimately, allowing participants to treat mediation as a fact-finding expedition would sabotage its effectiveness. See id. at 2 (warning that routine breaches of confidentiality would reduce mediation to “discovery device”).

Referring Principles:

XII.5 - Settlement privilege