RULE 408. COMPROMISE AND OFFERS TO COMPROMISE

(a) Settlement Discussions. Evidence of furnishing or offering or promising to furnish, or accepting or offering or promising to accept, a valuable consideration in compromise or attempting to compromise a claim is not admissible to prove liability for, invalidity of, or amount of the claim or any other claim. Evidence of conduct or statements made in compromise negotiations or in mediation is also not admissible on any substantive issue in dispute between the parties or to impeach a witness through a prior inconsistent statement or contradiction.

(b) Mediation. Evidence of conduct or statements by any party or mediator at a mediation session undertaken to comply with any statute, court rule, or administrative agency rule or in which the parties have been referred to mediation by a court, administrative agency, or arbitrator or in which the parties and mediator have agreed in writing or electronically to mediate with an expectation of confidentiality, is not admissible for any purpose other than to prove fraud, duress, or other cause to invalidate the mediation result in the proceeding with respect to which the mediation was held or in any other proceeding between the parties to the mediation that involves the subject matter of the mediation.

RULE 514. MEDIATOR’S PRIVILEGE

(a) Definitions. As used in this rule:

(1) A “mediating party” is a person who is participating in a mediation proceeding as a party or as a representative of a party, regardless of whether the subject matter of that proceeding is in litigation.

(2) A “mediation” is any process in which a mediator facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute, whether or not the dispute is the subject of litigation.

(3) A “mediator” is a neutral person conducting the mediation proceeding in the capacity of mediator. This Rule shall be subject to provisions of state and federal statutes and regulations issued thereunder for mediations taking place pursuant to such statutory authority.

(b) Mediator Privilege. All memoranda and other work product, including files, reports, interviews, case summaries, and notes, prepared by a mediator shall be confidential and not subject to disclosure in any subsequent judicial or
administrative proceeding involving any of the parties to any mediation in which the materials are generated; nor shall a mediator be compelled to testify in any subsequent judicial or administrative proceeding concerning a mediation or to any communication made between him or her and any participant in the mediation process in the course of, or relating to the subject matter of, any mediation.

(c) Exceptions. There is no privilege under this rule:

(1) Mediated agreement. For a communication that is in an agreement evidenced by a record signed by all parties to the agreement.

(2) Furtherance of crime or fraud. If the services of the mediator were sought or obtained to enable or aid anyone to commit or plan to commit or to what the mediating party knew or reasonably should have known to be a crime or fraud, or to conceal an ongoing crime or ongoing criminal activity.

(3) Plan to inflict harm. For threats or statements of an intention to inflict bodily injury or commit a crime.

(4) Mediator misconduct. For communications sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a mediator.

(5) Party or counsel misconduct. For communications sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a mediation party, nonparty participant, or representative of a party based on conduct occurring during a mediation.

(6) Welfare of child or adult. For communications sought or offered to prove or disprove abuse, neglect, abandonment or exploitation in a criminal proceeding or a child or adult protective action.

(7) Manifest injustice. For communications that a court, administrative agency, or arbitrator finds, after a hearing in camera, that the disclosure of which is necessary in the particular case to prevent a manifest injustice, and that the necessity for disclosure is of a sufficient magnitude to outweigh the importance of protecting the general requirement of confidentiality in mediation proceedings.

[...]

Referring Principles:

XII.5 - Settlement privilege