



Ohio Revised Code

Section 2710.05 Exceptions to privilege - partial admission of nonprivileged communication.

Effective: October 29, 2005

Legislation: House Bill 303 - 125th General Assembly

(A) There is no privilege under section 2710.03 of the Revised Code for a mediation communication to which any of the following applies:

- (1) The mediation communication is contained in a written agreement evidenced by a record signed by all parties to the agreement.
- (2) The mediation communication is available to the public under section 149.43 of the Revised Code or made during a session of a mediation that is open, or is required by law to be open, to the public;
- (3) The mediation communication is an imminent threat or statement of a plan to inflict bodily injury or commit a crime of violence.
- (4) The mediation communication is intentionally used to plan, attempt to commit, or commit a crime or to conceal an ongoing crime or ongoing criminal activity.
- (5) The mediation communication is sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a mediator.
- (6) Except as otherwise provided in division (C) of this section, the mediation communication is 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.
- (7) Except as provided in sections 2317.02 and 3109.052 of the Revised Code, the mediation communication is sought or offered to prove or disprove abuse, neglect, abandonment, or exploitation in a proceeding in which a child or adult protective services agency is a party, unless the



case is referred by a court to mediation and a public agency participates.

(8) The mediation communication is required to be disclosed pursuant to section 2921.22 of the Revised Code.

(9) The mediation communication is sought in connection with or offered in any criminal proceeding involving a felony, a delinquent child proceeding based on what would be a felony if committed by an adult, or a proceeding initiated by the state or a child protection agency in which it is alleged that a child is an abused, neglected, or dependent child.

(B) There is no privilege under section 2710.03 of the Revised Code if a court, administrative agency, or arbitrator finds, after a hearing in camera, that the party seeking discovery or the proponent of the evidence has shown that the evidence is not otherwise available, that the disclosure is necessary in the particular case to prevent a manifest injustice, and that the mediation communication is sought or offered in either of the following:

(1) A court proceeding involving a misdemeanor;

(2) Except as otherwise provided in division (C) of this section, a proceeding to prove a claim to rescind or reform or a defense to avoid liability on a contract arising out of the mediation.

(C) A mediator may not be compelled to provide evidence of a mediation communication referred to in division (A)(6) or (B)(2) of this section.

(D) If a mediation communication is not privileged under division (A) or (B) of this section, only the portion of the communication necessary for the application of the exception from nondisclosure may be admitted. Admission of evidence under division (A) or (B) of this section does not render the evidence, or any other mediation communication, discoverable or admissible for any other purpose.