



# Caroline Vincent



## 3 Things for the New Year

January 2019

Happy New Year!

Here are three things to keep in mind for 2019:

1. The new Mediation Disclosure Statute (SB 954) (Evidence Code (EC) Section 1129) takes effect on January 1, and contains new obligations for attorneys. One is to obtain your client's written acknowledgement of your advisement regarding the mediation confidentiality restrictions in EC 1119 (see EC 1129a). Two others are that the client's acknowledgment is timely signed (EC 1129b) and conforms with specified formatting (EC 1129c). A third part of the new statute provides that if the language of a sample disclosure (contained in EC 1129d) is signed by the client in a timely manner and per the specified formatting, then the attorney will have fulfilled the new statute's obligations.

Note that the sample language contained in EC 1129(d) is not required language that must be used - attorneys can use their own words when advising about EC 1119. In a recent speaking engagement, the panel unanimously noted that the sample language raised several concerns; one concern was the complete lack of reference to conditions that permit writings, communications and settlement agreements to be admissible (see EC 1122 and 1123). More on this later, and look for another speaking engagement on this topic early this year for the LACBA Small Firm & Solo Practitioner Section.

2. The USC Gould School of Law Advanced Mediation Clinic has worked in partnership with the DFEH as a provider of voluntary mediations for the past several years. I continue as Co-Director of the Employment Mediation Program at USC and would love to assist you and your clients with our excellent USC mediation services, fully supervised by professional employment mediators such as myself. When your client has a claim pending with the DFEH, let the DFEH know you would like to use the USC Mediation Clinic for your mediation. To learn more, read about [USC - DFEH Mediations](#) and the [USC Article about the Clinic](#).

3. Remember to include the magic words contained in EC 1123 in your mediated settlement agreements, in order for them to be admissible, and therefore enforceable. One idea is to include EC 1123 in your newly mandated mediation disclosure (see Item 1 above). Your client will appreciate knowing that written settlement agreements may easily be admissible and enforceable, when the conditions in EC 1123 are followed. To learn more, read [Are These Magic Words in your Mediated Settlement Agreements.](#)

As always, I welcome questions, comments and am available to speak on a variety of topics this year.

*Caroline C. Vincent is an attorney mediator, neutral evaluator and arbitrator with ADR Services, Inc. in Los Angeles and Orange County, who has heard over 2000 disputes in her 25 year ADR career. She specializes in employment, complex torts, probate/elder abuse, insurance, professional liability and business and real estate disputes, including class and mass actions. Caroline is a graduate of the USC Gould School of Law, where she served on Law Review, and is Co-Director of the Employment Mediation Program (Lecturer in Law). She is recognized in Super Lawyers for her expertise in ADR.*