



Uniform Mediation Act

[Click Here to Print This](#)
[Close window](#)

FINAL STYLED DRAFT

WITHOUT PREFATORY NOTE AND COMMENTS

Copyright © 2001

By

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

10/3/01

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS DRAFTING COMMITTEE ON UNIFORM MEDIATION ACT

The Committee that acted for the National Conference of Commissioners on Uniform State Laws in preparing the Uniform Mediation Act was as follows:

MICHAEL B. GETTY, 1560 Sandburg Terrace, Suite 1104, Chicago, IL 60610, *Chair*

PHILLIP CARROLL, 120 E. Fourth Street, Little Rock, AR 72201

JOSE FELICIANO, 3200 National City Center, 1900 E. 9th Street, Cleveland, OH 44114-3485, *American Bar Association Member*

STANLEY M. FISHER, 1100 Huntington Building, 925 Euclid Avenue, Cleveland, OH 44115-1475, *Enactment Coordinator*

ROGER C. HENDERSON, University of Arizona, James E. Rogers College of Law, Mountain and Speedway Streets, Tucson, AZ 85721, *Committee on Style Liaison*

ELIZABETH KENT, P.O. Box 2560, Honolulu, HI, 96804

RICHARD C. REUBEN, University of Missouri-Columbia School of Law, Hulston Hall, Columbia, MO 65211, *Associate Reporter*

NANCY H. ROGERS, Ohio State University, College of Law and Office of Academic Affairs, 203 Bricker Hall, 190 N. Oval Mall, Columbus, OH 43210, *National Conference Reporter*

FRANK E.A. SANDER, Harvard University Law School, Cambridge, MA 02138, *American Bar Association Member*

BYRON D. SHER, State Capitol, Suite 2082, Sacramento, CA 95814

MARTHA LEE WALTERS, Suite 220, 975 Oak Street, Eugene, OR 97401

JOAN ZELDON, D.C. Superior Court, 500 Indiana Ave., Washington, DC 20001

AMERICAN BAR ASSOCIATION ADVISORS

ROBERTA COOPER RAMO, Sunwest Building, Suite 1000, 500 W. 4th Street, NW, Albuquerque, NM 87102

EX OFFICIO

JOHN L. McCLAUGHERTY, P.O. Box 553, Charleston, WV 25322, *President*

LEON M. MCCORKLE, JR., P.O. Box 387, Dublin, OH 43017-0387, *Division Chair*

EXECUTIVE DIRECTOR

FRED H. MILLER, University of Oklahoma, College of Law, 300 Timberdell Road, Norman, OK 73019, *Executive Director*

WILLIAM J. PIERCE, 1505 Roxbury Road, Ann Arbor, MI 48104, *Executive Director Emeritus*

ABA SECTION OF DISPUTE RESOLUTION

DRAFTING COMMITTEE ON UNIFORM MEDIATION ACT

THOMAS J. MOYER, *Co-Chair*, Supreme Court of Ohio, 30 E. Broad Street, Columbus, OH 43215

ROBERTA COOPER RAMO, *Co-Chair*, Modrall, Sperling, Roehl, Harris & Sisk, P.A.,
Sunwest Building, Suite 1000, Albuquerque, NM 87102

MICHAEL B. GETTY, 1560 Sandburg Terrace, Suite 1104, Chicago, IL 60610,

NCCUSL Representative

ANNICE M. WAGNER, Court of Appeals of the District of Columbia, 500 Indiana Ave., NW,
Washington, DC 20001

JAMES DIGGS, PPG Industries, 1 PPG Place, Pittsburgh, PA 15272

JOSE FELICIANO, Baker & Hostetler, 3200 National City Center, 1900 East 9th St.,
Cleveland, OH 44114

RICHARD C. REUBEN, University of Missouri-Columbia School of Law, Hulston Hall,
Columbia,MO 65211, *Reporter*

NANCY H. ROGERS, Ohio State University, College of Law and Office of Academic
Affairs,203 Bricker Hall, 190 N. Oval Mall, Columbus, OH 43210, *Coordinator, Faculty
Advisory Committee*

JUDITH SAUL, Community Dispute Resolution Center, 120 W. State Street., Ithaca, NY
14850

FRANK E.A. SANDER, Harvard Law School, Cambridge, MA 02138

UNIFORM MEDIATION ACT

TABLE OF CONTENTS

SECTION 1. TITLE. 1

SECTION 2. DEFINITIONS 1

- (1) "Mediation" 1
- (2) "Mediation communication" 1
- (3) "Mediator" 1
- (4) "Nonparty participant" 1
- (5) "Mediation party" 1
- (6) "Person" 1
- (7) "Proceeding" 1
- (8) "Record" 2
- (9) "Sign" 2

SECTION 3. SCOPE. 2

SECTION 4. PRIVILEGE AGAINST DISCLOSURE; ADMISSIBILITY; DISCOVERY. 3

SECTION 5. WAIVER AND PRECLUSION OF PRIVILEGE. 4

SECTION 6. EXCEPTIONS TO PRIVILEGE. 5

SECTION 7. PROHIBITED MEDIATOR REPORTS. 7

SECTION 8. CONFIDENTIALITY. 7

SECTION 9. MEDIATOR'S DISCLOSURE OF CONFLICTS OF INTEREST;
BACKGROUND. 7

SECTION 10. PARTICIPATION IN MEDIATION. 9

SECTION 11. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND
NATIONAL COMMERCE ACT. 9

SECTION 12. UNIFORMITY OF APPLICATION AND CONSTRUCTION. 9

SECTION 13. SEVERABILITY CLAUSE. 9

SECTION 14. EFFECTIVE DATE. 9

SECTION 15. REPEALS. 10

SECTION 16. APPLICATION TO EXISTING AGREEMENTS OR REFERRALS.
10

UNIFORM MEDIATION ACT

SECTION 1. TITLE. This [Act] may be cited as the Uniform Mediation Act.

SECTION 2. DEFINITIONS. In this [Act]:

(1) "Mediation" means a process in which a mediator facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute.

(2) "Mediation communication" means a statement, whether oral or in a record or verbal or nonverbal, that occurs during a mediation or is made for purposes of considering, conducting, participating in, initiating, continuing, or reconvening a mediation or retaining a mediator.

(3) "Mediator" means an individual who conducts a mediation.

(4) "Nonparty participant" means a person, other than a party or mediator, that participates in a mediation.

(5) "Mediation party" means a person that participates in a mediation and whose agreement is necessary to resolve the dispute.

(6) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited

liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation, or any other legal or commercial entity.

(7) "Proceeding" means:

(A) a judicial, administrative, arbitral, or other adjudicative process, including related pre-hearing and post-hearing motions, conferences, and discovery; or

(B) a legislative hearing or similar process.

(8) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(9) "Sign" means:

(A) to execute or adopt a tangible symbol with the present intent to authenticate a record; or

(B) to attach or logically associate an electronic symbol, sound, or process to or with a record with the present intent to authenticate a record.

SECTION 3. SCOPE.

(a) Except as otherwise provided in subsection (b) or (c), this [Act] applies to a mediation in which:

(1) the mediation parties are required to mediate by statute or court or administrative agency rule or referred to mediation by a court, administrative agency, or arbitrator;

(2) the mediation parties and the mediator agree to mediate in a record that demonstrates an expectation that mediation communications will be privileged against disclosure; or

(3) the mediation parties use as a mediator an individual who holds himself or herself out as a mediator, or the mediation is provided by a person that holds itself out as providing mediation.

(b) The [Act] does not apply to a mediation:

(1) relating to the establishment, negotiation, administration, or termination of a collective bargaining relationship;

(2) relating to a dispute that is pending under or is part of the processes established by a

collective bargaining agreement, except that the [Act] applies to a mediation arising out of a dispute that has been filed with an administrative agency or court;

(3) conducted by a judge who might make a ruling on the case; or

(4) conducted under the auspices of:

(A) a primary or secondary school if all the parties are students or

(B) a correctional institution for youths if all the parties are residents that institution.

(c) If the parties agree in advance in a signed record or a record of proceeding so reflects, that all or part of a mediation is not privileged, the privileges under Sections 4 through 6 do not apply to the mediation or part agreed upon. However, Sections 4 through 6 apply to a mediation communication made by a person that has not received actual notice of the agreement before the communication is made.

SECTION 4. PRIVILEGE AGAINST DISCLOSURE; ADMISSIBILITY; DISCOVERY.

(a) Except as otherwise provided in Section 6, a mediation communication is privileged as provided in subsection (b) and is not subject to discovery or admissible in evidence in a proceeding unless waived or precluded as provided by Section 5.

(b) In a proceeding, the following privileges apply:

(1) A mediation party may refuse to disclose, and may prevent any other person from disclosing, a mediation communication.

(2) A mediator may refuse to disclose a mediation communication, and

may prevent any other person from disclosing a mediation communication of the mediator.

(3) A nonparty participant may refuse to disclose, and may prevent any other person from disclosing, a mediation communication of the nonparty participant.

(c) Evidence or information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely by reason of its disclosure or use in a mediation.

SECTION 5. WAIVER AND PRECLUSION OF PRIVILEGE.

(a) A privilege under Section 4 may be waived in a record or orally during a proceeding if it is expressly waived by all parties to the mediation and:

(1) in the case of the privilege of a mediator, it is expressly waived by the mediator; and

(2) in the case of the privilege of a nonparty participant, it is expressly waived by the nonparty participant.

(b) A person that discloses or makes a representation about a mediation communication which prejudices another person in a proceeding is precluded from asserting a privilege under Section 4, but only to the extent necessary for the person prejudiced to respond to the representation or disclosure.

(c) A person that intentionally uses a mediation to plan, attempt to commit or commit a crime, or to conceal an ongoing crime or ongoing criminal activity is precluded from asserting a privilege under Section 4.

SECTION 6. EXCEPTIONS TO PRIVILEGE.

(a) There is no privilege under Section 4 for a mediation communication that is:

(1) in an agreement evidenced by a record signed by all parties to the agreement;

(2) available to the public under [insert statutory reference to open records act] or made during a session of a mediation which is open, or is required by law to be open, to the public;

(3) a threat or statement of a plan to inflict bodily injury or commit a crime of violence;

(4) intentionally used to plan a crime, attempt to commit a crime, or to conceal an ongoing crime or ongoing criminal activity;

(5) 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 subsection (c), 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; or

(7) 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

[Alternative A: [State to insert, for example, child or adult protection] case is referred by a court to mediation and a public agency participates.]

[Alternative B: public agency participates in the [State to insert, for example, child or adult protection] mediation].

(b) There is no privilege under Section 4 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 there is a need for the evidence that substantially outweighs the interest in protecting confidentiality, and that the mediation communication is sought or offered in:

(1) a court proceeding involving a felony [or misdemeanor]; or

(2) except as otherwise provided in subsection (c), 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 subsection (a)(6) or (b)(2).

(d) If a mediation communication is not privileged under subsection (a) or (b), only the portion of the communication necessary for the application of the exception from nondisclosure may be admitted. Admission of evidence under subsection (a) or (b) does not render the evidence, or any other mediation communication, discoverable or admissible for any other purpose.

SECTION 7. PROHIBITED MEDIATOR REPORTS.

(a) Except as required in subsection (b), a mediator may not make a report, assessment, evaluation, recommendation, finding, or other communication regarding a mediation to a court, administrative agency, or other authority that may make a ruling on the dispute that is the subject of the mediation.

(b) A mediator may disclose:

(1) whether the mediation occurred or has terminated, whether a settlement was reached, and attendance;

(2) a mediation communication as permitted under Section 6; or

(3) a mediation communication evidencing abuse, neglect, abandonment, or exploitation of an individual to a public agency responsible for protecting individuals against such mistreatment.

(c) A communication made in violation of subsection (a) may not be considered by a court, administrative agency, or arbitrator.

SECTION 8. CONFIDENTIALITY. Unless subject to the [insert statutory references to open meetings act and open records act], mediation communications are confidential to the extent agreed by the parties or provided by other law or rule of this State.

**SECTION 9. MEDIATOR'S DISCLOSURE OF CONFLICTS OF INTEREST;
BACKGROUND.**

(a) Before accepting a mediation, an individual who is requested to serve as a mediator shall:

(1) make an inquiry that is reasonable under the circumstances to determine whether there are any known facts that a reasonable individual would consider likely to affect the impartiality of the mediator, including a financial or personal interest in the outcome of the mediation and an existing or past relationship with a mediation party or foreseeable participant in the mediation; and

(2) disclose any such known fact to the mediation parties as soon as is practical before accepting a mediation.

(b) If a mediator learns any fact described in subsection (a)(1) after accepting a mediation, the mediator shall disclose it as soon as is practicable.

(c) At the request of a mediation party, an individual who is requested to serve as a mediator shall disclose the mediator's qualifications to mediate a dispute.

(d) A person that violates subsection [(a) or (b)][(a), (b), or (g)] is precluded by the violation from asserting a privilege under Section 4.

(e) Subsections (a), (b), [and] (c), [and] [(g)] do not apply to an individual acting as a judge.

(f) This [Act] does not require that a mediator have a special qualification by background or profession.

[(g) A mediator must be impartial, unless after disclosure of the facts required in subsections (a) and (b) to be disclosed, the parties agree otherwise.]

SECTION 10. PARTICIPATION IN MEDIATION. An attorney may represent, or other individual designated by a party may accompany the party to, and participate in a mediation. A waiver of representation or participation given before the mediation may be rescinded.

SECTION 11. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [Act] modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but this [Act] does not modify, limit, or supersede Section 101(c) of that Act or authorize electronic delivery of any of the notices described in Section 103(b) of that Act.

SECTION 12. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this [Act], consideration must be given to the need to promote uniformity of the law with respect to its subject matter among States that enact it.

SECTION 13. SEVERABILITY CLAUSE. If any provision of this [Act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or

applications of this [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.

SECTION 14. EFFECTIVE DATE. This [Act] takes effect

SECTION 15. REPEALS. The following acts and parts of acts are hereby repealed:

- (1)
- (2)
- (3)

SECTION 16. APPLICATION TO EXISTING AGREEMENTS OR REFERRALS.

- (a) This [Act] governs a mediation pursuant to a referral or an agreement to mediate made on or after [the effective date of this [Act]].
- (b) On or after [a delayed date], this [Act] governs an agreement to mediate whenever made.

Biography

Copies of this Act may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS
 ON UNIFORM STATE LAWS
 211 E. Ontario Street, Suite 1300

Chicago, Illinois 60611

312/915-0195

Website: www.nccusl.org

This article is provided by Mediate.com, the most visited dispute resolution site on the Web.

Mediate.com offers:

- Over 2,000 Free Articles
- Locate A Mediator
- Dynamic Web Site Systems
- MediatorDirect Area Code Placements
- Dynamic Statewide Banners See www.mediate.com

View this article at:

www.mediate.com/articles/umaoctober.cfm



Designed & Developed by
Resourceful Internet Solutions
Home of Mediate.com