

Mass UMA Working Group (the Group)

June 18, 2007

Boston Law Collaborative, 99 Summer St. Boston

Meeting Notes

Agenda:

- Review of agenda and goals
- Committee reports, discussion and decision-making:
 - Process – outreach planning approach, organization forms (reminder)
 - Confidentiality/Privilege– progress update
 - Legislative – legislative hearing update
 - Mediator Definition – decision-making re recommendations
 - Public Sector – decision-making re recommendations
- Next steps for Working Group – outreach planning and assignments

Attendees:

Susan Jeghelian (facilitator), Vicky Bennet, Melissa Brodrick (by telephone), Robin DiGiammarino, Kurt Dettman, Sean Denniston, Susan Ostberg, Doug Sweet, Chuck Doran, Diane Levin, Ericka Gray, Lynda Robbins, John Fiske

Discussion:

Legislative Committee

The Legislative Committee representatives reported that the Letter discussed at the May 23 meeting was sent to the Chairs of the Joint Committee on Labor and Workforce Development. The Legislative Committee also reported that the Joint Committee may hold off on scheduling a hearing on the UMA bill until the Fall and that in the Fall it might be put off until some time in 2008. The Legislative Committee will develop and recommend to the Group a plan for Legislative outreach in the meantime so that the Group can build legislative support for the recommendations as they evolve over the next several months.

Process Committee

The Process Committee presented a draft Stakeholder/Public Outreach Plan. The Outreach Plan is intended to ensure as wide a distribution as possible for the Group's recommendations and provide a variety of feedback loops to permit stakeholders to provide comments and suggestions for the Group to consider. The Process Committee would like feedback on the proposed Outreach Plan, which will be discussed at the next Group meeting. The proposed Outreach Plan will be emailed to the Group prior to the next meeting.

Mediator Definition Committee

The Mediator Definition Committee distributed its 4/17/07 draft report. The Committee recommended the preservation of MGL c. 233, § 23C concepts. Two options were presented,

the first involving 30 hours of training consistent with Rule 8(b)(i) of the Uniform Rules of Dispute Resolution for the Supreme Judicial Court, the second involving 30 hours of (unspecified) training. Both options would preserve the 23C requirements of four years of professional experience or accountability to a dispute resolution organizations and entering into a confidentiality agreement.

The Group expressed concerns about the Rule 8 standard, including how to address training that had been completed under current standards or outside of Massachusetts; whether the type of training under Rule 8 might be too narrow to encompass different mediation approaches; and whether and to what extent there would have to be grandparenting of currently trained mediators. There was some discussion whether the UMA was the appropriate tool to set and/or raise mediator qualification standards, and if that was a desired outcome, whether other means such as certification should be pursued outside the UMA Working Group process. After discussion, the consensus was that the current 23C mediator training standard (not amended by Rule 8) was the preferred approach, and that those standards should be preserved in the UMA, if it is enacted.

The Group also discussed other issues raised by the Mediator Definition Committee, including whether the 30 hours of training should be raised (noting that most other states with training requirements have 40-hour training); what does “accountable to a dispute resolution organization” mean; the number of years of professional experience that should be required; the issue of grandparenting those who have practiced without taking the training; and whether an agreement must/should be in place to trigger the attaching of the privilege. [Note: these and other questions will be part of a Mediation Definition Committee survey that will be sent to the Group in the near future]

Other Issues

The Group then turned to Erika Gray’s June 17, 2007, memorandum outlining her concerns whether the Group’s current process and discussions are consistent with the goals the Group set for itself in September 2006. Among other things, Ericka raised four main issues: 1. Whether the Group had identified its interests adequately. 2. Whether there had been adequate opportunities for participation by other stakeholders, especially those outside of the Boston area. 3. Whether participants had enough information to make informed decisions. 4. Whether the current process map permitted enough time for meaningful consideration of all options. Ericka expressed concern, for example, about whether the Group should be looking at just the UMA (and variations thereof) as the operative option, rather than other options such as no UMA, a re-look at § 23C, etc.

This led to a spirited discussion. The Process Committee pointed out that the Collaboration guidelines reviewed at the May 23 meeting included the Group’s goals to provide a collaborative forum for all stakeholders and to collaboratively determine whether the UMA should be adopted and if so what revisions were recommended. The Process Committee also noted that with the legislative process being slowed down there should be more time to address Ericka’s timing concerns, and the proposed Outreach Plan is designed to make contact with and ensure meaningful input from all stakeholders.

The Group then discussed whether a designated facilitator instead of rolling facilitators would help the Group address these issues. It was agreed that the concept was good because it would provide a single point of contact on procedural and substantive issues. Questions were

raised about the time and effort that that role would take, but the Group agreed to explore the issue further by defining the role and then trying to find someone to serve in that capacity. Josh Flax was mentioned as a potential candidate.

The Process Committee discussed two options: 1. Re-visit the timing in the Process Map given that there is more time before the Legislature will consider the UMA bill. 2. Re-visit the scope of the Group's options (e.g., no UMA vs. UMA with amendments, etc.). In general on the first option the Group agreed that the Process Map should be lengthened to give more time for Committees to complete their work and for there to be dissemination of and feedback on the Committee recommendations. On the second option there was less consensus, with some feeling that the Committees already were free to look at all options, while others felt that the process at this point focused on the UMA with amendments option.

There was further discussion about whether the current information dissemination and feedback loops were adequate. The Group agreed to look at options for setting up e-mail addresses to receive feedback on Committee recommendations, which the Committees could then synthesize and report on in their reports/recommendations. The Group also discussed that the go-forward process should include feedback loops from interested parties in the Working Group to the Committees as they consider options, feedback loops from the Group to the Committees on their recommendations, and feedback loops from other Stakeholders to the Group.

The Group discussed next steps in light of the concerns raised at this meeting. The consensus was as follows:

1. The Mediator Definition Committee report and related open issues should be disseminated for feedback from interested parties and stakeholders (with enhanced feedback loops as noted above) and that its recommendations will be taken up again at the September meeting.
2. The July meeting agenda will be:
 - Legislative update
 - Discussion of the Process Committee's proposed Outreach Plan
 - Further discussion of the Facilitator role
 - Progress report from the Confidentiality/Privilege Committee
 - Recommendation from the Public Sector Committee
3. The Group agreed that the August meeting should be cancelled because of Summer vacation conflicts for many participants.

Next Steps

Future Meeting Schedule:

Tuesday, July 17, 2007, 2:00 pm – 5:00 pm

Federal Mediation & Conciliation Service, 99 Summer St. 5th Floor, Boston

No August Meeting

Thursday, September 20, 2007, 2:00 pm – 5:00 pm
Federal Mediation & Conciliation Service, 99 Summer St. 5th Floor, Boston