

UMA Working Group Meeting  
March 22, 2007

MBA Representation: Warren Fitzgerald reported that the ADR committee of the MBA is reviewing the UMA and intends to take a position, although they have not yet and do not have a timetable. The Committee has to report to the House of Delegates to have their suggestions approved as an MBA Legislative Proposal and they have to work with the House of Delegates schedule.

The committee will review the UMA, the UMA Working Group product and that of any other groups as well as anything the MBA itself might create. He or Brownie Swartwood will be their representative with the Working Group. Kurt Dettman will be the liaison from the Working Group to the ADR committee. The liaisons will coordinate but there is no single voice that can speak for the MBA. It is likely but, not guaranteed, that the House of Delegates will support the committee recommendation. The question was raised as to whether or not Warren will let us know, in advance, what proposal they will bring to the House of Delegates. He responded that it is not their policy to release positions in advance but he will try and keep communication open. Question of whether or not the House of Delegates will allow "guest" speakers from the Working Group and Warren responded that there is some precedent for guest speakers and it is sometimes permitted. Any MBA member can attend a House of Delegates meeting

BBA Representation: Kurt will also be the liaison for the BBA and will try to speak with Bette Roth and Jeff Stern and report back to the Process Committee. He will pose the same questions to them as were posed to Warren and the MBA.

Committee Updates:

1. Process Committee: the committee prepared the agenda and has liaisons with each of the other committees for coordination. The committee is also working on outreach to stakeholders. Susan Jeghelian circulated a list of possible groups for outreach and people who were willing to either present as representatives of those groups and/or willing to facilitate communication between the group and the Working Group identified themselves. The list will be circulated via e-mail to the full mailing list for additional input. Kurt Dettman reported that he will participate in a conference call with Ben Clements, Governor's legal counsel, on March 27 and will report back.
2. Mediation Definition Committee: the committee believes the Working Group consensus is to preserve Chapter 233, Section 23 (c). One question is the hours of training. The 30 hour requirement was apparently somewhat arbitrary. They are gathering data on the hours of training presently being offered by local groups (between 30 and 40) and the impact of increasing the requirement from 30 hours including cost to both trainers and trainees. The other question is the language "dispute resolution organization" and further defining that. There is a

difference between a membership organization and an organization that has standards, mentors and monitors its members as well as what makes the member “accountable.” The question was also raised about whether or not there should be grandfathering of those who may have been practicing before taking training and accumulating their 4 years of practice. Another question was whether the language pertaining to those appointed by a government or judicial body should be omitted from the UMA. The next committee conference call is April 10 at 8 a.m. for any who want to participate.

3. Confidentiality/privilege Committee: the committee has been reviewing the exceptions listed in the Act and they are not finished. A question has been raised as to whether or not an affirmative duty of confidentiality applies only to the mediator or to everyone involved. If it is broad, what are the exceptions? And what are the penalties for violation? It is a complex question. Can we be held liable for malpractice if we don't thoroughly explain confidentiality? They are surveying mediators in states that have adopted the UMA—so far no one has said they've changed their practice because of the UMA. David Hoffman suggested reading Michael Moffat's article, “Suing Mediators” in the B.U. Law Review.
4. Public Sector Committee: the committee has made “steady progress.” They will have a recommendation for the April meeting. They are surveying the state of current law in MA regarding public records and open meetings and looking for conflicts with the UMA. Their preliminary sense is that by including specific references to MA laws in the UMA, it creates a less protective situation for mediation in the public sector than under present law. They are also surveying other states and looking to the federal statute for policy.
5. Legislative Committee: the hearing could be as early as April, probably May. They will try and keep us up to date. They are preparing for a presentation including steps for a streamlined advocacy campaign, e.g. effective e-mail for legislators, talking points, etc. They pointed out that some things that come up in their committee could be useful to other committees and we should try not to duplicate work. Be should also share our contacts, etc. They will be looking for anyone with connections to the House committee members and will bring a list to the April meeting. They prefer that we not contact our legislators without a consistent message and as part of a coordinated approach. To get a postponement of the hearing until the fall, we have to appear at the scheduled hearing and request the continuance. In advance of the hearing, we would meet with the staff of the committee members and pursue the postponement. So far, the feedback has been positive. The MBA and BBA probably won't join in the request but, probably, will not oppose it. The committee will bring us recommendations as to how/who to approach the hearing. They will assist in building a support consensus with MBA/BBA/other groups for the bill then build

support for the bill with the legislators. A question was raised as to the role of the non-lawyer mediators in the consensus process and we believe they have representation in the working group. If anyone has contacts in other states that have adopted the UMA, please share with the legislative committee.

Next steps:

1. Kurt will liaison with the MBA/BBA
2. We need to confirm organizational contacts for the purpose of outreach/communication and give members the opportunity to contribute other ideas or contact names for us to consider (Susan's list).
3. Create a record/commentary explaining the background for our proposals and recommendations including a discussion history and additional references as well as suggestions for future actions beyond the UMA.
4. At the next meeting:
  - The mediation definition committee will have a recommendation
  - The confidentiality/privilege committee will have recommendations
  - The public sector committee will have a proposal
  - The legislative committee will have a list of committee members and, maybe, talking points and an approach to the hearings.
5. We will share our contacts for the committees surveying other states.

Next meeting: April 26, 2007, 3-5 p.m. Federal Mediation and Conciliation Services, 99 Summer Street, Suite 510.