



Nevada Senate Takes Up Bill to Enact Uniform Mediation Act

By Justin Kelly, ADRWorld.com

(4.4.2007) The Nevada Senate is currently considering legislation that would enact the Uniform Mediation Act's confidentiality privilege for communications made in mediation.

The bill, [S.B. 292](#), as introduced by Sen. Terry Care (D-7th), is "substantially the same as the UMA" and includes the optional provision that a mediator must be impartial in their conduct, said Care.

He introduced the legislation on March 15 in order to "provide for uniformity of privilege in Nevada mediations." There are a number of existing state statutes authorizing mediation in a variety of areas, but no single law detailing how to protect mediation communications from disclosure, he explained.

On March 29 the Senate Judiciary Committee heard testimony about the bill and received a few proposed amendments, Care reported.

He said one amendment likely be approved by the Committee would exempt the Nevada Supreme Court's existing mediation program from the act.

Another amendment being considered by the Committee would limit the ability of parties to bring someone with them to participate in the process on their behalf. This amendment was proposed out of a concern that the party who brings a representative "might have an unfair advantage in the mediation," Care explained.

Currently, the bill provides, "An attorney or other individual designated by a party may accompany the party to and participate in a mediation. A waiver of participation given before the mediation may be rescinded."

The UMA is designed to provide uniform confidentiality protections for mediation communications across the country. In states that have enacted it, the UMA establishes a privilege for mediators and mediation participants to refuse to disclose and prevent others from disclosing mediation communications in subsequent legal proceedings.

The bill says, "Except as otherwise provided in section 16 of this act, a mediation communication is privileged as provided in subsection 2 and is not subject to discovery or admissible in evidence in a proceeding unless waived or precluded as provided by section 15 of this act."

The privilege against disclosure may be waived if all parties agree in writing or orally during the course of the mediation.

S.B. 292 would apply to mediations ordered by a court or an administrative agency, to mediations where the participants agree in writing that mediation communications would be privileged, and to those where the neutral holds him- or herself out as a mediator.

Notwithstanding the confidentiality privilege, evidence otherwise admissible or subject to discovery would not become inadmissible simply because it was used in mediation, the bill says.

The bill would not apply to collective bargaining agreements, to settlement conferences with a judge who may make a ruling, and to peer mediations involving students.

Instances in which the bill says the confidentiality privilege would not apply include: if the mediation is required to be open according to law, if the communications indicate threats of violence, or if communications would be needed to prove or disprove a claim of misconduct filed against a mediator.

The bill also would establish that mediation communications are confidential to the extent agreed to by the parties or other laws of the state.

Under the bill, mediators would be required to disclose conflicts of interest prior to serving.

Because the UMA has only domestic application, the bill also includes the international supplement to the UMA, which excludes mediation statements and documents in an international commercial mediation from use in subsequent legal proceedings and incorporates the United Nations Model Law on International Commercial Conciliation. The supplement was adopted in 2003, two years after the UMA was approved by the National Conference of Commissioners on Uniform State Laws.

Parties to an international commercial mediation would be able to agree that the Model Law does not apply to their dispute. In that event, the provisions of the UMA would govern the mediation.

"This is the first time Nevada has addressed the UMA and there is a likelihood of passage this year. There have been no objections to the

merits of the bill," he said.

No other states are currently considering UMA legislation this year. States that have enacted versions of the UMA include Illinois, Iowa, Nebraska, New Jersey, Ohio, Utah, Vermont, Washington, and the District of Columbia.

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