

## **Minutes of November 30, 2006 Mass. UMA Working Group**

The committee met at the Federal Mediation & Conciliation Service Offices, 99 Summer St., Suite 510, Boston, MA. Chuck Doran and David Hoffman facilitated.

We first went around the table and made introductions and indicated what committee(s) we were each serving on. The individual committees then made their reports. It was noted that each committee should have a convener or chair.

Process Committee: charged with overall coordination. No meetings have been held yet.

Confidentiality: Question—should the UMA include not only privilege language but also an affirmative legal protection against voluntary disclosure (confidentiality)? Privilege, it was noted, only applies in judicial proceedings. It was reported that the drafting committee decided it was better to leave it to the mediators and the parties to craft the confidentiality language of each situation so it was purposely left out of the Act. However, should it be included? The BBA felt there should be a tiered approach. The committee has assigned this question for their next meeting. David Hoffman asked for people to forward their confidentiality language to him or let him know if they don't discuss it at all. He raised the question of whether or not the approach would be different if a mediator was operating under the UMA or Chapter 233 §23c?

It was pointed out that this Act operates more as a confidentiality act than a mediation act.

The committee also discussed the exceptions in the Act and whether or not they are comfortable with them or if they should be changed. Members will be reviewing them for their next meeting.

We discussed the tension between keeping things “uniform” versus making too many changes? How far can we go and still be “uniform?” Can we keep the Act intact but rely on the UMA in Practice Committee to help keep it simple in application?

Laws and Records: no meetings have been held yet.

Training and Definition of a Mediator: It was noted that the act does not address qualifications of mediators because the drafters believed there was too much variance in jurisdictions and disciplines. The committee believes that a definition should be added that “shall be no less than the wording in the second paragraph of Chapter 233 §23(c), with the following part of the last sentence deleted: ‘or one who has been appointed to mediate by a judicial or government body,’ and with a provision that the word ‘training’ in Chapter 233 §23(c) shall mean no less than the training requirements of the current Neutral/Rule 8 requirements for mediator training.”

We discussed the questions of whether or not we want to get into defining “mediator” (we believe we do), do we have to do everything now or can we modify later without missing our opportunity (the more we do now the better) and what do we go to the legislature with (see below)?

Questions of certification, licensing, penalties, enforcement, standards—very complex.

Should we add language that the “failure” of the mediator to be properly credentialed does not affect the rights and obligations of other individuals under the statute?

It was suggested that adding a training requirement will detract from the Act being uniform.

Next steps—fold in §23(c)? With or without the phrase involving appointments by judicial/governmental bodies? If so, where in the statute?

Legislative: House Bill 19 was filed by Steven Chow (one of the Commissioners) as a “placeholder.” It is the Uniform Act with no modifications. His filing also makes no request for repeal of the existing statutes as to confidentiality. He believes we can offer amendments during the hearings. (This was reported via e-mail as Steven could not attend). David Hoffman passed out copies with added language not in the original bill regarding training/qualifications.

Securing passage of the UMA will be greatly increased if the new bill has the support of all interested parties, including the legislative liaisons of the BBA and the MBA as well as support from the 86 legislators who have demonstrated support for mediation in the past.

Should we file something as a placeholder before the January 10, 2007 deadline? The consensus was that we are not ready.

The timeline, if we filed, is as follows:

1. 1/10/07 date by which the legislation needs to be filed with the Labor and Workforce Development Committee.
2. Between March and July 2007 the committee will take it up
3. Fall 2007 hearings would likely commence
4. Then the committee votes on sending it to study or reporting it out favorably or unfavorably.
5. If favorably, it would go to a full vote

OR we could file amendments at a hearing or before OR we file a placeholder such as David’s modified proposal OR we file a late bill (within 2 weeks of the deadline)

If the BBA, MBA and UMA Working Group can agree on a bill then it’s probably a done deal given other priorities at the state house and the expected lack of resistance to this measure.

Can we work on getting to consensus by spring? Can we coordinate with Steven Chow? Should we invite the BBA and MBA lobbyists to our next meeting?

Look at [www.mass.gov/legis](http://www.mass.gov/legis) and type in HB 19 for report on the bill’s progress

**The next meeting will be December 21, 2006 from 2-4 p.m. at the Boston Law Collaborative, 99 Summer Street, 16<sup>th</sup> floor, Boston, MA**