

The Status of the Uniform Mediation Act in New York

By Charles J. Moxley, Jr.

The Uniform Mediation Act (UMA) is a uniform act that establishes a privilege for mediation communications, requires mediators to disclose conflicts of interest, and accords parties the right to be accompanied at a mediation by an attorney or other support person.

The UMA was drafted, with the input of interested parties and experts from around the country, by the National Conference of Commissioners on Uniform State Laws (NCCUSL) and the American Bar Association, acting through its Section on Dispute Resolution. The UMA was approved by NCCUSL in August 2001 and in August 2003 was supplemented to expand the UMA's coverage to international commercial cases by incorporating by reference the United Nations Model Law on International Commercial Conciliation, giving mediation parties a choice of the confidentiality provisions of either statute.

The UMA has been approved by leading professional organizations, including the American Bar Association, the NYSBA, and the New York City Bar, and endorsed by leading mediation providers, including the American Arbitration Association, the Federal Mediation and Conciliation Service, the Judicial Arbitration and Mediation Services, Inc. (JAMS), and the International Institute for Conflict Prevention and Resolution ("CPR"), as well as by the National Arbitration Forum. As of July 2008, the UMA has been adopted by 10 states—Idaho, Illinois, Iowa, Nebraska, New Jersey, Ohio, South Dakota, Utah, Vermont, Washington—and by the District of Columbia.

A detailed description of the provisions, background, and drafting history of the UMA is set forth in an article in this journal by Professor Richard C. Reuben, a reporter for the NCCUSL Drafting Committee on the UMA. The purpose of this article is to describe the status of the UMA in New York.

In February 2002, the Alternate Dispute Resolution Committee of the New York City Bar issued a report sup-

porting passage of the UMA in New York. The New York City Bar thereafter took the lead in seeking enactment of the UMA in the New York State Legislature. Support for the UMA was initially contested in the NYSBA. Enactment in New York was supported by NYSBA's Commercial and Federal Litigation Section and opposed by the NYSBA Committees on Alternative Dispute Resolution and on the CPLR. These different views were resolved by the Executive Committee of the NYSBA, which voted to support the UMA.

Following the NYSBA's decision to support enactment of the UMA in New York, the UMA was introduced in the New York State Legislature and referred to the Codes Committee in the Senate and the Judiciary Committee in the Assembly. The practice in the New York Legislature is that bills that have not been enacted expire after two years, with the result that the presently pending bill to enact the UMA (S01967) will expire in January 2009. The Legislation Committee of the Dispute Resolution Section will be reviewing the status of the UMA and our Section's fall CLE program, scheduled for November 13, 2008, will focus, in part, on the UMA.

The Legislation Committee looks forward to whatever input members of the Dispute Resolution Section and the committees of the Section can give us on this matter.

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