

First Supplement to Memorandum 2014-14

Relationship Between Mediation Confidentiality and Attorney Malpractice and Other Misconduct: Law in Other Jurisdictions

As reported in Memorandum 2014-14,¹ the staff solicited input from the ULC on the UMA. Among other things, we expressed interest in information on (1) how the UMA is working in the states that have adopted it (particularly its impact on the use of mediation and the effectiveness of its treatment of attorney misconduct), and (2) whether the UMA has been adopted in any state that had a stricter mediation confidentiality rule beforehand (as opposed to a rule that accorded a lesser degree of confidentiality than the UMA).

Attached is the following communication partially responding to those points:

- Exhibit p.*
- Casey Gillece, Uniform Law Commission (4/8/14)1

Ms. Gillece consulted several individuals who were closely involved in drafting the UMA. As yet, they have not identified any state that went from a stricter mediation confidentiality standard to the UMA. Exhibit p. 1.

Ms. Gillece also looked for case law addressing attorney misconduct in a proceeding under the UMA. She was unable to find any. *Id.*

She will provide further information as it becomes available, particularly information about the research project that one of the UMA reporters and an assistant are doing on how the UMA is working in the states that have adopted it.

Respectfully submitted,

Barbara Gaal
Chief Deputy Counsel

1. Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission’s website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission’s staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

EMAIL FROM CASEY GILLECE (4/8/14)

Re: Mediation Confidentiality — UMA and CA Law

Hi Barbara,

I wanted to briefly touch base regarding your UMA inquiry. I have consulted several individuals who were closely involved with the drafting of the UMA, and have not yet identified any state that went from a stricter mediation confidentiality standard to the UMA.

In terms of the other question — how the UMA is working in the states that have adopted it, particularly with regards to addressing attorney misconduct — I haven't found any case law addressing attorney misconduct in a proceeding under the UMA. I'm hoping that the work the University of Missouri Law School research assistant is doing will shed light, though, on the UMA's general impact in enacting states.

I will continue to be in touch as I receive any other information.

Best,

Casey