



# The UCCR News

Volume 5

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## Update on Legislative Action on Arbitration Matters

During the current session, several bills have come before the legislature dealing with ADR subjects. The purpose of this article is to inform the Newsletter's readers of the content of those bills, and of the positions taken on them in the name of UCCR. UCCR invites input from readers on these bills, and on the positions taken by UCCR on them.

The first of the two bills that have come to the attention of UCCR is Senate Bill 120, entitled Motor Vehicle Insurance Coverage—Arbitration Requirements. This bill is sponsored by Senator Michael Waddoups. It provides for voluntary binding arbitra-

tion of claims that arise when one family member asserts a claim against another family member arising out of an automobile accident. The proposed bill specifies a number of limiting conditions on the arbitration, including limitations on the awards that can be made and the grounds for appeal. The proposed bill also provides that the arbitration is to be conducted under the "Utah Rules of Civil Procedure".

The second bill is Senate Bill 171, entitled Uniform Arbitration Act. It is sponsored by Senator Lyle Hillyard. It provides for the repeal of the Utah Arbitration Act, first passed in 1955, and enactment of the

Revised Uniform Arbitration Act proposed by the Commissioners on Uniform State Laws in 2000. This act is a complete and detailed rewrite of the Uniform Arbitration Act. The proposed statute is much more detailed than the old act and is designed to embody in statute what has become "best practice" across the country in arbitration proceedings, particularly complex commercial arbitrations.

The Chair of the UCCR Board of Trustee, Michael Zimmerman, was asked to respond to these bills: in the case of SB 120, by Rick Schwermer of the Court Administra-

tor's Office; and in the case of SB 171, by Senator Lyle Hillyard, the sponsor of the bill. In the case of SB 120, the time for responding to the bill was only one day, so there was no time to gather a consensus of views from the UCCR Board. In the case of SB 171, comments were solicited from all members of the UCCR Board well in advance of the bill's hearing.

In responding to SB 120, Zimmerman took the position that UCCR did not wish to address the wisdom of the specific limitations on remedies and appeals of **(Cont. on Page 2)**

## Governor's Office Receives Hewlett Foundation Grant

Rich McKeown, Chief of Staff to Governor Leavitt, applied for and received a \$75,000 grant from the Hewlett Foundation for the establishment of a statewide mediation effort for all of Utah's government agencies.

The objective of the grant is to assess, evaluate and implement the use of mediation and alternative

dispute resolution throughout the executive branch of state government.

The Utah Judiciary has made considerable gains in implementing mediation programs into the court system. Several executive branch agencies already use alternative dispute resolution, including the Utah

State Tax Commission.

Rich McKeown initiated the tax commission's mediation program when he was a commissioner, and he has been a steadfast advocate of the use of ADR within state government agencies and in disputes between the public and the government.

This grant will

provide for the formation of a statewide Mediation Council which will include a representative from each state agency.

Mr. McKeown will supervise the work of the Mediation Council and serve as the liaison to the Governor in keeping him apprised of the progress of the Council's initiative.

## Upcoming Conferences

- *Restorative Justice Conference. U. of U. Law School, March 21-22, 2002.*
- *ABA Dispute Resolution Section Conference. April 4-6, 2002, Seattle, WA.*
- *UCCR Symposium. Utah Law & Justice Center, May 3-4 2002.*
- *Association for Conflict Resolution Annual Conference. August 21-24, 2002. San Diego, CA.*
- *Regional ABA Dispute Resolution Section Conference, Phoenix, AZ. November 8 & 9, 2002.*

## Membership Reminder

This is just a reminder to all to renew your UCCR memberships as they come due throughout the year. You will receive a notice during the month that your membership is due. The majority of our members have joined UCCR during the registration period for the annual symposium. If this is the case for you, we want to remind you to renew your membership as you register for the 2002 UCCR Symposium. Registration materials and programs for the symposium will be mailed out to all members in mid-March. If you have questions regarding your membership, please call Russ Osguthorpe at 532-4841.

## Legislative Action Update (Continued)

arbitration awards that had been negotiated between the insurance industry and representatives of the Utah Trial Lawyers. However, he did take the position that to the extent possible, statutes should not be enacted that set up unique and untried ADR procedures. Rather, all arbitration proceedings should be governed by the Utah Arbitration Act, except to the extent that specific differences were made for sound policy reasons. There was no indication that SB 120 diverged from the Utah Arbitration Act's general provisions for any sound reason. Moreover, its reference to arbitrations conducted under the Utah Rules of Civil Procedure made no sense, since those rules have no bearing on arbitrations. The various interests supporting the legislation agreed to Zimmerman's proposed changes and they were embodied in a revised draft of the bill. As a result, it provides that the Utah Arbitration Act shall govern the proceedings, except to the extent modified by the specific limitations in the bill. The fate of the revised bill is not known as of the date of the publication of the Newsletter.

In responding to SB 171, Zimmerman took the position that UCCR was in support of the enactment of the Revised Uniform Arbitration Act as drafted. Its greater specificity answers many questions left open by the existing statute, and it makes arbitration a much more well defined forum for parties. In addition, it clarifies the duties and powers of the arbitrator. The new act has been endorsed by the American Arbitration Association and the American Bar Association.

The one item of controversy that arose in the Judiciary Committee hearing related to the provision in the bill that makes it explicit that an arbitrator has the

power to award punitive damages if the underlying law in the state governing the claims being arbitrated permits their award by a court. Representatives of auto insurers wanted to delete that provision, arguing that it would deter people (and insurers) from going to arbitration. Zimmerman took the position that the Uniform Act should not be modified. He stated that if, in specific situations, parties to a contract do not want the arbitrator to have the power to award punitive damages, that fact can be easily provided for by inserting an explicit waiver in the relevant contract. The new act provides for such waivers. Zimmerman was of the view that it made little sense to statutorily disable the forum in all cases from awarding punitive damages when the concerns appear to be limited to specific parties (insurers) in specific situations. Moreover, he suggested that absent an explicit notice in the agreement to arbitrate informing the parties that they are giving up any right to punitive damages, the agreement to arbitrate might be found unconscionable under the Utah Supreme Court decision in Sosa v. Paulos 924 P.2d 357 (Utah 1996). If deleting the power of the arbitrator to award punitive damages in the act had the same effect, agreements under it might be similarly unconscionable.

The bill was approved by the Senate Judiciary Committee without deleting the punitive damage authority of the arbitrator. As of the date of this Newsletter, the final fate of the bill is unknown.

*Any reader with interest in these bills is invited to submit their comments to Michael Zimmerman by emailing him at:*

*mzimmerman@swlaw.com.*

## 2002 Symposium—An Invitation to Dialogue

Planning is underway for the Fourth Annual Utah ADR Symposium for Spring of 2002. This year's symposium is chaired by Michelle Roybal, and the theme of the 2002 Symposium is "An Invitation to Dialogue." It will be held on Friday, May 3 and Saturday, May 4, 2002 at the Utah Law and Justice Center. The 2002 symposium will feature Barbara Ashley Phillips as the keynote speaker.

Barbara Ashley Phillips is an ardent supporter of conflict resolution education and practice. Ms. Phillips is a former Assistant United States Attorney, and she has practiced federal civil trial law in Oregon and California. She also has served on the Deep Foundation Construction Industry Round-Table and as an ADR consultant for the Aviation Defense Managers Council. Ms. Phillips has taught at Golden Gate Law School, the University of San Francisco and the University of Santa Clara Law

School. She is the author of *Finding Common Ground, A Field Guide to Mediation* and is a trainer for the American West Institute for Conflict Resolution.

The 2002 Symposium will feature breakout sessions on skills-based topics such as agreement writing, the unauthorized practice of therapy, and dealing with mental illness in mediation. The Symposium will also include discussions of UCCR's progress throughout the year, work on certification of mediators in Utah, and the impact the recently ratified Uniform Mediation Act.

Remember to mark **May 3 and 4, 2002** on your calendars for this event. We look forward to welcoming you and Ms. Phillips to our dialogue! For more information about the Symposium, please contact Michelle Roybal at the (801) 524-6128.

## UCCR Mediators Honored

Michelle Roybal, a mediator and ADR administrator for the federal court, was recently named the Employee of the Year 2001 for the United States District Court for the District of Utah. Nominations for this award are generated by colleagues and employees of the court. The nominations are then sent to a committee which selects the winner. Michelle's nomination highlighted her work in community outreach and public education for the federal court, her duties as the ADR administrator and diversity training she provided for court staff. Congratulations!

Carl Steffen is an active member of the Utah Association of CPAs and was recently honored as Outstanding Member of the National Association of Certified Valuation Analysts (NACVA). NACVA is an association of 5,000 professionals based in Salt Lake City, and its membership includes CPAs, attorneys, government employees, and others. Because of its growth, NACVA has been recognized in the top 100 fastest growing companies in Utah for the past four years. Carl is also a mediator serving as the Treasurer on the Board of Trustees of the UCCR. We congratulate him on his award, and extend our appreciation to UCCR.

## Archbishop Desmond Tutu in Salt Lake City for Olympics

**UCCR members who attended the Reebok Human Rights Awards in conjunction with Olympics had the honor of listening to one of the world's greatest mediators and advocates for peace.**

A winner of the Nobel Peace Prize in 1984, Archbishop Desmond Tutu, began his human rights advocacy work as a vigorous and determined voice against apartheid in South Africa. He condemned laws that oppressed millions of South Africans. Like Mahatma Gandhi, he denounced the use of violence in confronting the repressive, unjust, and inhumane system. He sought instead a peaceful negotiated reconciliation between the black and white communities.

After the defeat of apartheid, he became a principal mediator and conciliator in the transition of South Africa to democracy. He was appointed by

**President Nelson Mandela to Chair the Truth and Reconciliation Commission. The commission's role was to examine human rights violations and through reparation, rather than retaliation, to help his country recover from decades of violence. In his book, *No Future Without Forgiveness*, he relates the struggle of the commission to help the people of South Africa recover from their history without using retribution and punishment.**



**He gave a short and simple message at the award's ceremony, praising the four award recipients for their courage and arduous work in securing human rights throughout the world, and reminding the audience with immense confidence and charm that each of us is a V.S.P, a very special person. He was also honored in the Olympic Opening Ceremonies and at the Episcopal Church.**

## The Utah Council on Conflict Resolution

P.O. Box 521656  
Salt Lake City, UT 84152  
(801) 320-0963

If you would like to join UCCR, please  
contact Michelle Roybal  
at (801) 524-6128

Visit [www.mediate.com](http://www.mediate.com) for a variety of  
substantive articles on dispute resolution.

Visit our webpage at:  
[www.mediate.com/utah](http://www.mediate.com/utah)

### Restorative Justice Conference Coming Up

The events of Sept. 11 caused the cancellation of the Utah Law Review's annual symposium. The University of Utah College of Law and the Utah Administrative Office of the Courts have rescheduled the interdisciplinary conference on restorative justice **March 21-22, 2002.**

Restorative justice is an approach to crime that includes all stakeholders in a particular offense in a process of group decision making on how to handle the effects of the crime and its consequences for the future. Through paper presentations, panel dialogues, and audience discussion, leading scholars and officials will present their views on restorative justice and engage co-participants and audience members in an open conversation on the subject. In addition to inspiring intellectual dialogue on restorative justice during the two-day period, the participants will produce both written scholarship and a best practices scheme to spark a broad discussion on restorative justice that extends beyond the conference.

For more info., contact Kathy Elton, at (801) 578-3982 or [kathye@email.utcourts.gov](mailto:kathye@email.utcourts.gov)

### UCCR Board of Trustees

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### Comments Needed re: Proposed ADR Rule Change

The Judicial Council's ADR Committee has been working on proposed changes to the ADR Rule and Ethical Code. These proposals are now entering the rule making process. The proposed changes will be posted in the mediation section of the court web site. The court web site address is

<http://courtlink.utcourts.gov>.

Please email any feedback you may have on the proposed changes to Kathy Elton, Director of the Courts ADR Office, at [kathye@email.utcourts.gov](mailto:kathye@email.utcourts.gov).

### Peacekeeper Award Nominations Due

UCCR will honor one of its members at the 2002 symposium for making a significant contribution to the ADR community in Utah. Vivia Baldwin is the chair of the selection committee, and the nomination form enclosed in this newsletter should be returned to her by *March 15, 2002.*

*Please send your ideas or articles for the UCCR newsletter to Diane Hamilton via email:  
[dianehamilton@sisna.com](mailto:dianehamilton@sisna.com)*