

# The UCCR News

Volume 17

Summer 2006

## *UCCR News and Happenings*

Hello UCCR Members:

We hope this message finds you enjoying your summer!

Well, another UCCR Symposium has transpired. Based on the feedback, it was a great success. This year the Symposium was held at the Gail Miller Conference Center at the Salt Lake Community College in Sandy and the venue was wonderful. The speakers were inspiring and everyone seemed energized and renewed by the end of the conference. This year, for the first time, we were able to offer some subsidized registrations for students and community symposium volunteers, thanks to the generous donations that were made.

Other big news for UCCR is our ability to take money through the internet! We now have a PayPal account and members can pay their dues and fees for training events on-line. PayPal takes all credit cards and you do not need a PayPal account to use it. Some of you may have heard negative things about PayPal in the past, but they have worked hard to correct the early problems and it has been smooth sailing so far.

Since the last newsletter we have also developed and printed an informational brochure about UCCR. If you would like some of these to hand out just contact the administrator. Soon it will be posted on the website.

Our website continues to expand and improve to better serve our members, so if you have any suggestions please send them along.

## *Thank You to our 2006 Symposium Sponsors:*

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## Chapter and Section Updates

The **Workplace Mediation Section** continues to meet on the second Tuesday of the month at the Department of Workforce Services at 1345 South State Street. Meetings begin at 3:45 p.m. and are always completed by 5:00 p.m.

The primary emphasis of the section is education and each month offers a very interesting and informative training session. Recent sessions have included book reviews on topics of interest to workplace mediators and two sessions on mediation in the context of an organized labor environment. The presentations always include lively dialogue among section members, many of whom have extensive experience in the workplace mediation field.

The **Family Section** has been meeting at 5:30 p.m. on the first Thursday of each month at the law offices of Durham, Jones and Pinegar (111 Broadway, Suite 900) Parking is validated for those who park in the lot next door.

The Family Section has provided the opportunity in the past several months for domestic mediators to discuss and offer input in the following topics: Agenda Setting, Deviations from Child Support Guidelines, How Constitutional Law Relates to Mandatory Mediation, The Role of Attorneys and Mediators in Mediation, Difficult Mediations- Offering Alternative Interventions and Ones That Worked Well.

The Family Section plans to gather information from its members to determine discussion topics that would be desirable in the future. We invite all mediators to join us for future discussions!

The **Utah County Chapter** reports that Commu-

nity Dispute Resolution Services (previously Community Mediation Services) in Provo has a new director, Donlu Thayer. Donlu replaces Tamara Fackrell who directed the services for more than two years.

Donlu will be seeking to continue to broaden the vision of CDRS with greater involvement in domestic and neighborhood mediation in the future. At present, CDRS offers services in domestic, parent-teen, truancy, victim-offender, landlord-tenant, "pre"-small-claims, employer-employee, and neighborhood dispute mediation and holds Saturday classes in Family Conflict Resolution, Life Skills, and Anger Management.

Also, the Utah County Chapter will have a luncheon in September, tentatively scheduled September 20 (Wed.) at noon. Information about the speaker and location will be emailed to members.

John Pace is the current contact for the Utah County Chapter and can be reached at [john\\_pace@byu.edu](mailto:john_pace@byu.edu).

Down South in our **Southern Utah Chapter** it's been quiet. If you are in the southern part of the state and would like to participate in or host an activity, contact John Klodnicki at [johnklod@aol.com](mailto:johnklod@aol.com) or UCCR at [info@uccr.net](mailto:info@uccr.net).

Anyone wishing to join either a Chapter or a Section must also be a member of UCCR.

Please contact Barbara O'Brien at (801) 685-UCCR (8227) or [info@uccr.net](mailto:info@uccr.net) and she will help you to sign up. Or, visit the website at [www.uccr.net](http://www.uccr.net) and register online.



### UCCR Brown Bag Lunch Meetings!

Brown Bags continue to be held the last Wednesday of each month  
12:00 noon to 1:00p.m.  
Utah Law and Justice Center  
645 South 200 East

*There will be no Brown Bag in July 2006, but they will resume in August.*

*There will no longer be a charge for Non-UCCR Members to attend.*

*If you or someone you know would like to present at a Brown Bag, please let us know. Also, if you have a topic you would like us to address and want us to find a speaker, let us know that too. You can email [info@uccr.net](mailto:info@uccr.net) or call 801-685-8227 (UCCR).*

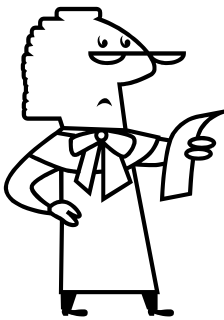
## *UCCR 2006 Peacekeeper Award*

At the May Symposium, UCCR continued one of its most valued traditions - we bestowed the annual Peacekeeper Award. Kathy Elton, the ADR Director for the State Courts, received the 2006 Award for her work in dispute resolution and her tireless commitment to UCCR's endeavors.

Kathy has been a force in the local ADR community for years. In fact, one would be hard-pressed to find a practitioner who has not been influenced or informed by her efforts, teaching, and leadership. Kathy has also served UCCR faithfully as its former Board Chair and former Symposium Chair. She is known nationally for her work in restorative justice, but locally she is most prized for living out the tenets of our work - fostering candid dialogue, including others' points of view, and welcoming the challenge of opposing perspectives in an effort to collaborate.

Kathy is a true credit to the practice of dispute resolution and bestowing this Award has made the circle of past Peacekeepers more complete for including her contributions within it.

Congratulations, and thank you, Kathy!



## Legislative Updates - Uniform Mediation Act

During the 2006 legislative session, Senate Bill 61, The Uniform Mediation Act (UMA), was passed. This Act provides definitions; applies to most

mediation sessions conducted in Utah; sets waiver provisions for privileges and communications within the mediation process; states mediation information is confidential and not admissible in court, and specifies exceptions; and provides for mediator's disclosure of conflicts of interest. The Act governs mediation pursuant to a referral or an agreement to mediate made on or after May 1, 2006 as well as governs all agreements to mediate whenever made on or after May 1, 2007. There have been several training sessions on the UMA in the mediation community and if you have not had the

opportunity to attend one of these trainings you are encouraged to familiarize yourself with this new Act.

There is a great document which includes the comments of the drafting committee which can help to shed light on what the UMA hopes to achieve in any specific section. This document is available on-line at

<http://www.law.upenn.edu/bll/ulc/mediat/2003/finaldraft.htm> and is worth reading to more fully understand the meaning of the UMA. As each individual state adopts the UMA, some changes to the national text are made and this is true in Utah as well. A copy of the Utah UMA is available on-line at <http://se12.utahsenate.org/PTEXT/enrolled.pdf/sb0061.pdf>

***PREPARING THE CLIENT FOR MEDIATION:  
QUESTIONS CLIENTS ASK THEIR LAWYERS***

By Kent B. Scott; Babcock Scott & Babcock

**INTRODUCTION**

If you are involved in a legal dispute, you may be able to settle it without going to court. One way to do this is to work out a solution with the help of a mediator - a neutral third person. This article addresses some of the many basics in preparing the client for mediation.

**WHAT IS MEDIATION?**

Mediation is an alternative to the traditional litigation process. Mediation is an informal process in which a trained neutral third party, the mediator, assists the parties in reaching a negotiated resolution to a dispute. Mediation is forward-looking. The goal is for the parties to work out a solution they can live with. Mediation focuses on solving problems, not uncovering the truth and applying facts to legal principles.

**WHAT ARE THE ADVANTAGES OF MEDIATION?**

- Parties control the process.
- It is confidential.
- It is flexible.
- Parties are usually more comfortable.
- Parties are responsible for the outcome.
- Disputes are commonly resolved in a fraction of the time.
- Agreements reached through mediation leave open the possibility for future relationships.
- It costs less than traditional litigation!

**HOW SUCCESSFUL IS MEDIATION?**

There is no authoritative study on the success rate of mediation. The American Arbitration Association reports an eighty five percent success rate. This percentage is consistent with the success rate reported by other institutional and individual alternate dispute resolution providers.

**WHAT ARE THE ELEMENTS OF A SUCCESSFUL MEDIATION?**

The success of a particular mediation is mainly controlled by the parties. Some of the critical components of a successful mediation involve:

- The background and capabilities of the mediator.
- Attendance of the right people with the knowledge

and authority to settle.

- Appropriate level of information exchanged.
- Needs and interests of the parties.
- Whether a trial or arbitration has been scheduled.
- The commitment of the parties and their attorneys to prepare for and participate in the mediation.

**WHEN AND WHERE DO I MEDIATE?**

Most mediations occur after a claim has been filed and some exchange of information has taken place.

Mediation is most successful when the dispute is in its early stages before the parties have expended their resources.

The mediation should take place at a neutral site. The location is often arranged by the mediator.

**IS THE MEDIATOR LIKE A JUDGE?**

No. The mediator does not decide who is right or wrong, neither does the mediator make findings of fact, or rules on issues of law. The mediator has no authority to impose a settlement on the parties. Instead, the mediator helps the parties to jointly explore and reconcile their differences. If mediation does not generate an agreement, the parties do not lose their right to trial, and either side is free to sue or propose binding arbitration.

**HOW LONG DOES THE MEDIATION PROCESS TAKE?**

Mediation is a very efficient process that saves time and money. While the length of mediation will vary in each case, the majority of mediations are completed in eight hours or less. More complex cases, however, will often times require more than one day to mediate. Also, since the mediation process is voluntary, either party may leave at any time if they wish, and the mediator can terminate the meeting if it does not appear to be working, although this is very rare.

**HOW SHOULD PARTIES DRESS FOR MEDIATION?**

Dress comfortable, but respectable. Mediation is informal and the parties should feel comfortable.

**WHO AND WHAT DO I BRING TO THE MEDIATION?**

- Legal counsel: Yes, if represented.
- Client: The person with authority to settle -

others with knowledge of the facts.

- **Experts:** Avoid having experts involved. They are hired to support your position and often complicate the process where settlement options are being discussed. Experts, however, may be helpful to describe technical information.
- **Documents:** Less is better. Summaries, graphs and charts are useful.
- **Others:** Associates, secretaries or assistants are discouraged. If there is a need, make advanced arrangements so all parties approve and understand their respective roles.
- Other information requested by the Mediator.

**WHAT HAPPENS IN MEDIATION?**

Every mediation is different and unique. Experienced mediators will use a format that is best suited for the particular dispute. Generally, the process of mediation falls into six stages:

- *Mediator’s Opening Statement.* After the parties are seated, the mediator will introduce the parties, explain the goals and rules of the mediation and likely encourage each party to work jointly toward a settlement.
- *Parties’ Opening Statements.* Both parties are allowed time to explain, in his or her own words, what the dispute is about and how they have been affected by it, and to present a few ideas for resolving it.
- *Joint Deliberation.* The mediator may attempt to get the parties talking directly regarding what was said in the opening statements. This allows the mediator and parties time to determine what issues need to be addressed.
- *Private Caucuses.* This is the guts of every mediation. The private caucus is a chance for both parties to meet privately with the mediator to discuss the strengths and weaknesses of his or her position, and brainstorm ideas for settlement. The mediator may “caucus” with each party once or several times if needed.
- *Joint Negotiation.* After private caucuses with each party, the mediator may bring the parties together again for direct negotiation.
- *Wrapping it Up.* This is the end of the mediation. If the parties have reached an agreement, the mediator will

likely put the main provisions in writing while the parties listen. If the parties wish, they may write up and sign a legally binding contract. If no agreement is reached, the mediator will review the progress made by the parties in the mediation and advise each party of their options, such as meeting again later for further mediation, going to arbitration or going to court.

**IS THE MEDIATION PROCESS CONFIDENTIAL?**

Yes. All mediation proceedings are confidential. Documents created for the mediation are also confidential and may not be introduced during a subsequent trial if the dispute is not settled. Likewise, the mediator should not testify or be compelled to testify at a subsequent trial. If the dispute subsequently goes to trial, the judge who is assigned to the case is not told the identity of the mediator or given any information about what took place during the mediation process.

**WHAT HAPPENS IF A PARTY FAILS TO COMPLY WITH THE AGREEMENT REACHED AT MEDIATION?**

No party shall be bound by anything said or done at the mediation unless a written settlement is reached and signed by all necessary parties. If a settlement is reached, the agreement must be in writing, and, when signed and approved by the appropriate authorities for all parties, it will be binding upon all parties. An agreement reached during mediation is enforceable in court just like any other settlement agreement.

**CONCLUSION**

Mediation is one technique to settle disputes. Mediation is not appropriate for every dispute, but it has the advantage of allowing the parties to choose the process and outcome rather than have it determined for them by a judge, jury or arbitrator. Mediation is designed to give the parties a great deal of control over the outcome. To be successful in mediating the parties must understand the mediation process, the merits of their case, and strategies to obtain a good result.

***Kent B. Scott is a shareholder in the law firm of Babcock Scott and Babcock, and serves on the Board of Trustees of the Utah Council on Conflict Resolution.***



*We are always looking for a good book review and interesting content for the newsletter! If you’ve read something lately or have something to share, please contact UCCR at [info@uccr.net](mailto:info@uccr.net) or 801-685-8227.*

## HB 4 / Section 39 Update

The Mandatory Divorce Mediation for all contested divorces in the State of Utah has been required for a full year! The law went into effect in May of 2005. The cases formerly known as "HB4 Cases" are now referred to as "Section 39 Cases" since that is the section of the law where the 2005 House Bill 4 was designated into the code-(Utah Code Annotated 30-3-39).

A Divorce Mediation Website was created to assist the public, attorneys, and mediators to locate a qualified court approved mediator. Anyone can access the website at <http://www.utcourts.gov/mediation/divmed/>. The website also offers an "Income Survey" which enables low income patrons to request and potentially qualify for up to four hours of FREE contested divorce mediation. Of the 91 applications received last year, 25 cases were denied because the household income was too high to qualify, the case was not a Section 39 case because the answer to the petition was filed before the law went into effect, or it was not a contested divorce. Of the 91 applications, 66 were approved which is a 73% approval rate! Each of these cases qualified for up to 4 hours of mediation which extrapolates to 264 hours of contested divorce mediation. At an average rate of \$100 an hour, this means that the domestic mediators provided \$26,400 worth of free services to the low income population in the state.

The website also offers an "Application to be Excused from Mandatory Mediation" if a party feels that their case might not be appropriate for mediation. The most common reasons for a request to be excused are domestic violence or incarceration of one or both parties in a local, state, or federal facility. The requests that involve domestic violence are respected but options to conduct the mediation in a safe environment are

explained and offered to the applicant before being approved. When a party to a contested divorce is incarcerated, it is not an automatic reason to be excused since the Administrative Office of the Courts can make arrangements with the correctional facilities to conduct the mediation by telephone. Last year 42 applications were received and 30 were approved which is a 71% approval rate! Only the court, a court rostered mediator, or the Director of ADR for the courts (and the Divorce Mediation Program Coordinator) can excuse a party from the mandatory requirement to mediate. An "Excused from Divorce Mediation Notice" must be filed with the court and a copy provided to both parties and to the Program Coordinator.

Historically, there are on average 12,000 divorces in Utah each year of which 4,000 are contested. Public awareness of the requirement to mediate these divorces is improving. From May of 2005 to May of 2006, 598 disposition notices were filed with the courts throughout the state designating that the contested divorce case had been mediated by a court approved mediator. Of the 598 cases reported, 66% were fully settled, 11% were partially settled, and 23% were not settled. This would translate into a combined (either fully or partially) settlement rate of 77%!

When HB4 was passed in 2005, there were 62 mediators on the court roster qualified to conduct divorce mediations. There are now 125! Most provide divorce mediation services on a part time basis.

A helpline was established to answer general questions that might arise regarding the mandatory divorce mediation process. If the caller cannot get an answer to the question that they have, the helpline automatically defaults to the Program Coordinator's desk so the caller has access to a live

person. The helpline number is available statewide at 1-800-620-6318.

If there is a Protective Order or No Contact Order in place on a case that needs to be mediated, it is the best practice recommended by the Domestic Violence Subcommittee to request that the parties get the order modified to allow for the mediation. There are new forms being developed by the courts that include an option that the judge can designate to allow for mediation. The forms should be available for general use by late summer.

Another option that has been made available to the public is the ability to create and file post-mediation divorce paperwork without the need for the services of an attorney. The paperwork can be completed using the Utah Court's website found at <http://www.utcourts.gov/ocap/> under the heading of "Divorce Stipulation."

There are timelines in which the divorce mediations are to be completed. Court Rules suggest that the mediator should be selected and contacted within 15 after the answer to the divorce complaint has been filed with the court and that the mediation should be scheduled within 45 days of the answer having been filed.

Natalie Threlkeld  
Domestic Mediation Program  
Coordinator  
Administrative Office of the Courts  
450 South State  
P.O. Box 140241  
Salt Lake City, Utah 84114-0241  
Phone: (801) 578-3976  
Fax (801) 578-3843  
Pager (801) 242-5895  
Helpline 1-800-620-6318  
E-mail: nataliet@email.utcourts.gov  
Website:  
[www.utcourts.gov/mediation/divmed/](http://www.utcourts.gov/mediation/divmed/)

**UTAH STATE COURT  
MEDIATION PROGRAMS:  
VOLUNTEER MEDIATOR  
OPPORTUNITIES**

**RESTORATIVE DIALOGUE PROGRAM:**

- Juvenile Court Program is available in areas throughout the state.
- Volunteer mediators provide mediation sessions between perpetrators of crime and their victims.
- The purpose of the program is to give victims of crime the opportunity to meet their offenders, express the impact the crime had on their life, and ask questions related to the crime. The program also provides victims of crime the opportunity to become more actively involved in the justice process, they become involved in determining restitution for the offenders and the community service the offender should complete to restore the community.
- **To become involved in this program contact Bart MacKay (435 986-5754) bartm@email.utcourts.gov at the Administrative Office of the Courts.**

**LANDLORD-TENANT MEDIATION PROGRAM:**

- This program is available in Third District (Salt Lake County).
- Provides mediation services to landlords and tenants involved in eviction proceedings on Monday, Wednesday and Friday at 1:30 p.m.
- This program is a collaboration between the Community Action Program and the Administrative Office of the Courts.
- **To become involved in this program contact Josie Turner at the Community Action Program (359-2444 ext. 225).**

**LAW AND MOTION PROGRAM:**

- Volunteers mediate landlord tenant and debt collection issues.
- Program located at the West Jordan Courthouse (8880 South Redwood Road) on Monday mornings, the Matheson Courthouse on Monday afternoons

and soon in Davis County.

- **To become involved in this program contact Kathy Elton (801 578-3982) kathye@email.utcourts.gov at the Administrative Office of the Courts.**

**TRUANCY MEDIATION PROGRAM:**

- Implemented in school districts across the state.
- The purpose of the program is to divert truancy cases from entering the juvenile court system.
- The program utilizes trained volunteer mediators from the community to complete the mediation sessions at the school.
- The program is a collaboration with the Juvenile Court and the participating school districts.
- **To become involved in this program contact Bart MacKay (435 986-5754) bartm@email.utcourts.gov or Sherri Hannon (801 578-3974) at the Administrative Office of the Courts.**

**SMALL CLAIMS MEDIATION PROGRAM:**

- This program is available in the Third (Salt Lake County) and Fourth (Utah County) Judicial Districts.
- Disputants in small claims cases are given the opportunity to mediate the case prior to a court hearing.
- The program utilizes volunteer mediators who are available at the time of the court hearings.
- This program is a collaboration between the Administrative Office and Utah Dispute Resolution (3rd District, Salt Lake County) and The BYU Law School (4th District).
- **To become involved in this program contact: Russ Osguthorpe at Utah Dispute Resolution (532-4841) for Third District (Salt Lake County); Susan Bradshaw at BYU Law School ((801) 378-2159) for Fourth District.**

*A good listener is not only popular everywhere, but after a while he gets to know something.*  
Wilson Mizner

**"Courage is what it takes to stand up and speak; courage is also what it takes to sit down and listen."**

**- Winston Churchill**

**The Utah Council on Conflict Resolution**

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