

Tips for Mediation Intake Process & Agreements to Mediate

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Overview

Intake Process:

Topics before and during Intake Process

Avoiding Conflicts of Interest

Safety in Mediation for Clients and Mediators



Overview

Agreements to Mediate:

Why a Signed Agreement to Mediate is needed

Protections in Using an Agreement to Mediate

Topics to Include in Agreement to Mediate

Retaining Signed Agreement to Mediate

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graph TD; A["The Statutes, Rules, Standards, and Best Practices are designed to provide structure and guidance"] --> B["Statutes:  
UADRA 78B-6-201 et seq.  
UUMA 78B-10-101 et seq."]; A --> C["Rules:  
Rules of the Court  
Rule 4-510  
Rules 101-104"]; A --> D["Model Standards of Conduct for Mediators (AAA, ABA, ACR)  
  
Utah Mediation Best Practices Revised Nov. 2018"];
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The Statutes, Rules, Standards,
and Best Practices
are designed to provide
structure and guidance

Statutes:

UADRA 78B-6-201 et seq.
UUMA 78B-10-101 et seq.

Rules:

Rules of the Court
Rule 4-510
Rules 101-104

Model Standards
of
Conduct for
Mediators
(AAA, ABA, ACR)

Utah Mediation
Best Practices
Revised Nov. 2018



References and Abbreviations

Utah Mediation Best Practice Guide - Revised Nov. 2018

MS #.# refers to the Model Standards of Conduct for Mediators.

MSPFDM # refers to the Model Standards of Practice for Family and Divorce Mediation.

UADRA § 78B-6-# refers to the Utah Alternative Dispute Resolution Act.

UMA § 78B-10-# refers to the Utah Mediation Act

UCJA R. 4-510.# refers to the Utah Code of Judicial Administration Rule 4.510.

URCADR R. #, Canon # refers to the Utah Rules of Court-Annexed Alternative Dispute Resolution and Canon of Ethics.

URPC # refers to the Utah Rules of Professional Conduct.

Always Remember the Standards
and Aspirations for Mediators
from Beginning to End.

Best Practices for Mediators # 1.

Integrity and Fairness of Mediation

A mediator should protect the integrity
and fairness of mediation.



Always Remember the Aspirations and Standards for Mediators

Standard No. 9: **Advancement of Mediation**

A mediator should act in a manner that advances the practice of mediation.



Always Remember the Aspirations and Standards for Mediators

A mediator should observe high standards of ethical conduct, including those found in the applicable statutes, rules, and case law of Utah, in order to protect the integrity and fairness of mediation.

URCADR R. 104, Canon I (a); UCJA R. 4-510.05(4)(A), (B)(ii), and (8).

A mediator's ethical duties begin prior to acceptance of the appointment to a particular case and continue throughout all stages of mediation, even after a case has been resolved.

URCADR R. 104, Canon I (g)



Intake Process

Before the phone rings or before you receive an internet intake request, a Mediator has a Duty of Competency.



Competency

III. Competence and Efficiency

A mediator should have the necessary competence to satisfy the reasonable expectations of the parties to provide a process that is evenhanded and efficient.



Best Practices:

1. A mediator should have specific appropriate mediation training before serving as a mediator. UADRA 78B-6-205(3)(h)(ii); MS IV.A.1
2. A mediator should mediate only when the mediator has the necessary subject matter competence to satisfy the reasonable expectations of the parties. MS IV.A.
3. A mediator should be aware of and disclose, if asked to do so, the mediator's qualifications to mediate a dispute, e.g., the mediator's process, style, and methodology of mediation, including whether or not the mediator uses facilitative, analytical, evaluative, and/or directive methodologies in mediation. UMA § 78B-10-109(3); URCADR R. 104, Canon I (j).



Intake Process: Background

Intake Form

What type of mediation / case

Who are the Parties

Avoiding Conflicts of Interest – Disclosures

History / Initial Information / Risks

Safety for the Parties and for you – History of violence,
Protective Order, Different arrival times, rooms, seating, etc.

Fees, Charges, and Payment



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Best Practice #5. Agreement to Mediate

A mediator should prepare and provide to the parties and other participants a written agreement to mediate, to be signed by them before mediation begins.



Agreements to Mediate

Why a Signed Agreement to Mediate is needed

Protections in Using an Agreement to Mediate

Consumer and Mediator Protections

Statutory Protections of Confidentiality and
Privileged Communications

What is the Utah Alternative Dispute Resolution Act?

When does it apply?

General Application

Utah Alternative Dispute Resolution Act 78B-6-201 et seq.

Recodified Formerly U.C.A. 78-31b-1 et seq.

- [78B-6-201](#) Title
- [78B-6-202](#) Definitions
- [78B-6-203](#) Purpose and findings
- [78B-6-204](#) Dispute Resolution Programs -Director -Duties -Report
- [78B-6-205](#) Judicial Council Rules for ADR Procedures
- [78B-6-206](#) Minimum procedures for arbitration
- [78B-6-207](#) Minimum procedures for mediation
- [78B-6-208](#) Confidentiality
- [78B-6-209](#) Dispute Resolution Fund -- Appropriation

What is the Utah Uniform Mediation Act?

When does it apply?

Specific Applications

Utah Uniform Mediation Act

78B-10-101 et seq.

Recodified Formerly U.C.A. 78-31c-101 et seq.

| | |
|-----------------------------------|--|
| <u>78B-10-101</u> | Title |
| <u>78B-10-102</u> | Definitions |
| <u>78B-10-103</u> | Scope |
| <u>78B-10-104</u> | Privilege against disclosure -Admissibility <u>Discovery</u> |
| <u>78B-10-105</u> | Waiver and preclusion of privilege |
| <u>78B-10-106</u> | Exceptions to privilege |
| <u>78B-10-107</u> | Prohibited mediator reports |
| <u>78B-10-108</u> | Confidentiality |
| <u>78B-10-109</u> | Mediator's disclosure of conflicts of interest -Background |
| <u>78B-10-110</u> | Participation in mediation |
| <u>78B-10-111</u> | International commercial mediation |
| <u>78B-10-112</u> | Relation to Electronic Signatures in Global and National Commerce Act |
| <u>78B-10-113</u> | Uniformity of application and construction |
| <u>78B-10-114</u> | Application to existing agreements or referrals |

UUMA continued

- **78B-10-103. Scope.**

(1) Except as otherwise provided in Subsection (2) or (3), this chapter applies to a mediation in which:

(a) the mediation parties are **required** to mediate by statute, court, or administrative agency rule or referred to mediation by a court, administrative agency, or arbitrator;

(b) the mediation parties and the mediator **agree to mediate in a record that demonstrates an expectation that mediation communications will be privileged against disclosure**; or

(c) the mediation parties use as a mediator an individual who holds himself or herself out as a mediator or the mediation is provided by an entity that holds itself out as providing mediation.

(2) The chapter **does not** apply to a mediation:

(a) relating to the establishment, negotiation, administration, or termination of a collective bargaining relationship;

(b) relating to a dispute that is pending under or is part of the processes established by a collective bargaining agreement, except that the chapter applies to a mediation arising out of a dispute that has been filed with an administrative agency or court;

(c) conducted by a judge who might make a ruling on the case; or

(d) conducted under the auspices of:

(i) a primary or secondary school if all the parties are students; or

(ii) a correctional institution for youths if all the parties are residents of that institution.

(3) If the parties agree in advance in a signed record, or a record of proceeding reflects agreement by the parties, that all or part of a mediation is not privileged, the privileges under Sections **78B-10-104** through **78B-10-106** do not apply to the mediation or part agreed upon. However, Sections **78B-10-104** through **78B-10-106** apply to a mediation communication made by a person that has not received actual notice of the agreement before the communication is made.

Confidentiality

- **UADRA 78B-6-208**
 - All communication is confidential
 - (3) **No party** to the case may introduce as evidence information obtained during an ADR proceeding **unless** the information was discovered from a source independent of the ADR proceeding.
 - (4) Unless all parties and the neutral agree, **no person attending** an ADR proceeding, including the ADR provider or ADR organization, **may disclose or be required to disclose** any information obtained in the course of an ADR proceeding, **including** any memoranda, notes, records, or work product.
- **UUMA 78B-10-104 and 110**
 - **All** communication is confidential **unless** specifically waived in writing or unless subject to Open Meetings Act or GRAMA



General Exceptions to Confidentiality and Privilege

UADRA 78B-6-208

Confidentiality

- Reporting of Child Abuse or Neglect

UUMA 78B-10-106, 107, 108

Privilege and Confidentiality

- A threat or statement of a plan to inflict bodily injury or commit a crime of violence; intentionally used to plan a crime, attempt to commit or commit a crime, or to conceal an ongoing crime or ongoing criminal activity
- A mediation communication evidencing abuse, neglect, abandonment, or exploitation of an individual to a public agency responsible for protecting individuals against such mistreatment

Agreements to Mediate

Topics to Include in Agreement to Mediate

Honesty / Good Faith Effort / Courtesy

Role and Neutrality of the Mediator

Right to Independent Advice: Attorney, Tax Advisor, Therapist, Other Professionals

Confidentiality/ No recording / Exceptions

Caucus / Private Meeting

Withdrawing / Terminating Mediation


Fees, Charges, Payment

Governing Statutes / Rules for Mediation

Signature Lines and Dates

A written agreement to mediate should be signed by the parties and other participants in mediation. URCADR R. 104, Canon IV (c).

Retaining Signed Agreement to Mediate



Thank you!
And
Best Wishes!