

AN ACT

RELATING TO MEDIATION; ENACTING THE MEDIATION PROCEDURES ACT;  
ESTABLISHING CONFIDENTIALITY FOR MEDIATION COMMUNICATIONS;  
PROVIDING EXCEPTIONS FOR DISCLOSURE OF MEDIATION  
COMMUNICATIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the  
"Mediation Procedures Act".

Section 2. DEFINITIONS.--As used in the Mediation  
Procedures Act:

A. "mediation" means a process in which a  
mediator:

(1) facilitates communication and  
negotiation between mediation parties to assist them in  
reaching an agreement regarding their dispute; or

(2) promotes reconciliation, settlement or  
understanding between and among parties;

B. "mediation communication" means a statement,  
whether oral or in a record or verbal or nonverbal, that  
occurs during a mediation or is made for purposes of  
considering, conducting, participating in, initiating,  
continuing or reconvening a mediation or retaining a mediator;

C. "mediation party" means a person who  
participates in a mediation and whose agreement is necessary

to resolve the dispute;

D. "mediation program" means a program that provides mediation services and is created or administered by a court or court agency, a government or governmental subdivision, agency or instrumentality of this state or a tribal court, government or agency;

E. "mediator" means an individual who:

(1) holds the individual's self out as a mediator and who conducts a mediation;

(2) the mediation parties agree to use as a mediator and who conducts a mediation;

(3) is designated by a mediation program as a mediator and who conducts a mediation; or

(4) is an observer who is permitted by the mediation parties to watch and listen to the mediation for educational or other administrative purposes;

F. "nonparty participant" means a person, other than a mediation party or mediator, who participates in, is present during the mediation or is a mediation program administrator, including a person consulted by a mediation party to assist the mediation party with evaluating, considering or generating offers of settlement;

G. "person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government or

governmental subdivision, agency or instrumentality, public corporation or any other legal or commercial entity;

H. "proceeding" means:

(1) arbitration or a judicial, administrative or other adjudicative process, including related pre-hearing and post-hearing motions, conferences and discovery; or

(2) a legislative hearing or similar process;

I. "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form; and

J. "sign" means:

(1) to execute or adopt a tangible symbol with the present intent to authenticate a record or to ratify the agreement set forth in the record; or

(2) to attach or logically associate an electronic symbol, sound or process to or with a record with the present intent to authenticate a record or to ratify the agreement set forth in the record.

Section 3. SCOPE.--

A. Except as otherwise provided in Subsection B of this section, the Mediation Procedures Act applies to all mediators, nonparty participants, mediation parties and a mediation in which:

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

(2) the mediation parties and the mediator agree to mediate and the agreement to mediate is evidenced by a record that is signed by the mediation parties.

B. The Mediation Procedures Act does not apply to a mediation:

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

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

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

(4) agreed to in writing by the mediation parties and the mediator prior to the mediation not to be covered by the Mediation Procedures Act, declared in writing by a mediation program prior to the mediation or declared in writing by a court or court agency, a government or governmental subdivision, agency or instrumentality of this

state or a tribal court, government or agency prior to the mediation not to be covered by the Mediation Procedures Act.

Section 4. CONFIDENTIALITY.--Except as otherwise provided in the Mediation Procedures Act or by applicable judicial court rules, all mediation communications are confidential, and not subject to disclosure and shall not be used as evidence in any proceeding.

Section 5. EXCEPTIONS--ADMISSIBILITY--DISCOVERY.--

A. Mediation communications are not confidential pursuant to the Mediation Procedures Act if they:

(1) are contained in an agreement reached by the mediation parties during a mediation, including an agreement to mediate, and the agreement is evidenced by a record signed by the mediation parties, except when parts of the agreement are designated by the mediation parties to be confidential or are confidential as otherwise provided by law;

(2) are communications that all mediation parties agree may be disclosed, as evidenced by a record signed by all mediation parties prior to or at the mediation;

(3) threaten or lead to actual violence in the mediation;

(4) reveal the intent of a mediation party to commit a felony or inflict bodily harm to the mediation party's self or another person;

(5) disprove a felony charge;

(6) are required by law to be made public or otherwise disclosed;

(7) relate to abuse, neglect or criminal activity that is not the subject of the mediation;

(8) are sought or offered to disprove a claim or complaint of professional misconduct or malpractice based on conduct during a mediation and filed against a mediation party or nonparty participant;

(9) relate to the administrative facts of the mediation, including:

(a) whether the mediation parties were referred to mediation;

(b) whether a mediation occurred or has terminated;

(c) the date, time and place of a mediation;

(d) the persons in attendance at a mediation; and

(e) whether a mediator received payment for the mediation; or

(10) relate to whether the parties reached a binding and enforceable settlement in the mediation.

B. Mediation communications may be disclosed if a court, after hearing in camera and for good cause shown,

orders disclosure of evidence that is sought to be offered and

is not otherwise available in an action on an agreement arising out of a mediation evidenced by a record. Nothing in this subsection shall require disclosure by a mediator of any matter related to mediation communications.

C. Mediators shall not be required to make disclosure, either through discovery or testimony at trial or otherwise, of any matter related to mediation communications, except:

(1) pursuant to Paragraphs (3) through (10) of Subsection A and Paragraph (3) of Subsection D of this section; and

(2) to prove or disprove a claim of mediator misconduct or malpractice filed against a mediator.

D. Nothing in the Mediation Procedures Act shall prevent:

(1) the discovery or admissibility of any evidence that is otherwise discoverable or admissible, merely because the evidence was presented during a mediation;

(2) the gathering of information for research or educational purposes or for the purpose of evaluating or monitoring the performance of a mediator; provided that the mediation parties or the specific circumstances of the dispute of the mediation parties are not identified or identifiable;

(3) a court or court agency, a government or

governmental subdivision, agency or instrumentality of this state or a tribal court, government or agency, when conducting a mediation program under its auspices, from ordering prior to the mediation that different or additional rules of confidentiality shall apply to the mediation; or

(4) mediation parties from agreeing in writing to additional or different confidentiality protections prior to the mediation, subject to Paragraphs (3) through (10) of Subsection A and Subsection C of this section.

Section 6. EFFECT OF AGREEMENT.--

A. If the mediation parties reach a settlement agreement evidenced by a record signed by the mediation parties, the agreement is enforceable in the same manner as any other written contract. The agreement shall not affect any outstanding court order unless the terms of the agreement are incorporated into a subsequent order.

B. A court, administrative agency or arbitrator, in its discretion, may incorporate the terms of the agreement in the order or other document disposing of the matter.

Section 7. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2007. \_\_\_\_\_