

hee2 - Kathleen

LATE TESTIMONY

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 07, 2013 2:01 PM
To: JDLTestimony
Cc: lopekana@hawaii.rr.com
Subject: Submitted testimony for SB966 on Feb 8, 2013 10:00AM

SB966

Submitted on: 2/7/2013

Testimony for JDL on Feb 8, 2013 10:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
George Robertson	West Hi Mediation Center	Support	No

Comments: Please support this legislation!

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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West Hawaii Mediation Center

LATE TESTIMONY

Staff

Janie Chandler-Edmondson
Executive Director

February 7, 2013

Danielle Yamamoto
*Case Manager/
Foreclosure Specialist*

To: Senate Committee of Judiciary and Labor

Gigi McIvor
Case Manager

Re: Testimony SB966

Lani Olsen Chong
*Administrative
Assistant*

West Hawaii Mediation Center supports SB966 the adoption of the Uniform Mediation Act except for section 6(a)4. The Center feels this section is vague and needs clarification in order to adequately protect mediators from subpoena and enable mediators to provide accurate expectations of confidentiality to the parties.

Board of Directors

Sherman Warner
President

Sincerely,

Margarita Scheffel
Treasurer

Janie Chandler-Edmondson
Executive Director
West Hawaii Mediation Center

William Chillingworth
Secretary

Holly Algood

Steve Bess

Nancy Carr Smith

Diana Nui

Kim Giffin Pickard

George Robertson

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WHMC is a
non-profit,
501(c)(3)
organization.

We are a HIUW
participating agency.



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Chief Executive Officer
Rochelle Lee Gregson

February 7, 2013

Senator Clayton Hee
Chair, Committee on Judiciary and Labor
Hawaii State Capitol, Room 407
415 South Beretania Street
Honolulu, HI 96813

Senator Maile S.L. Shimabukuro
Vice Chair, Committee on Judiciary and Labor
Hawaii State Capitol, Room 222
415 South Beretania Street
Honolulu, HI 96813

RE: S.B. 966, Relating to the Uniform Mediation Act

HEARING: Friday, February 8, 2013, 10:00 a.m., Conference Room 016

Dear Chair Hee, Vice Chair Shimabukuro and Members of the Committee:

Thank you for the opportunity to speak in support of Senate Bill 966, which if passed, would adopt the Uniform Mediation Act.

My name is Rochelle Lee Gregson, Chief Executive Officer, Honolulu Board of REALTORS®, an O'ahu trade Association representing over 5,000 licensed real estate agents who have voluntarily agreed to abide by a strict Code of Ethics of the National Association of REALTORS®. Only members of the National Association of REALTORS® carry the trademark REALTOR® designation. This year marks the 100th year that REALTORS® across the country have voluntarily subscribed to the Code of Ethics.

Real estate transactions represent one of the largest financial transactions most consumers will make in their lifetime. With over 7,000 transactions occurring each year, disputes are bound to arise.

One of the core services that the Honolulu Board of REALTORS® offers for consumers, be they buyers, sellers, or tenants, is the ability to resolve their dispute through mediation. We offer this mediation service at no charge to the consumer. Last year 67% of all mediations ended in successful agreement between the parties.



REALTOR® is a registered collective membership mark which may be used only by real estate professionals who are members of the NATIONAL ASSOCIATION OF REALTORS® and subscribe to its strict Code of Ethics.

S.B. 966, Relating to the Uniform Mediation Act
February 7, 2013
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The success of mediation is due in large part to the confidential nature of the proceedings. The parties feel comfortable to share information with the mediator that will help to resolve the dispute because they know it will be kept confidential. Through the information that is shared, the mediators are able to identify the underlying issues and help the parties come to a resolution that they can all agree upon.

We believe that Senate Bill 966 which adopts the Uniform Mediation Act, strengthens the confidentiality protections of the parties and the mediators who participate in mediation. This will help to encourage more people to utilize mediation as a valuable tool in resolving disputes amicably and cost effectively. For these reasons, the Honolulu Board of REALTORS® supports passage of SB 966.

Sincerely,

A handwritten signature in black ink, appearing to read "Rochelle Lee Gregson". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Rochelle Lee Gregson
Chief Executive Officer
Honolulu Board of REALTORS®

February 8, 2013

LATE TESTIMONY

The Honorable Clayton Hee, Chair
Senate Committee on Judiciary and Labor
State Capitol, Room 016
Honolulu, Hawaii 96813

RE: S.B. 966, Relating to the Uniform Mediation Act

HEARING: Friday, February 8, 2013, at 10:00 a.m.

Aloha Chair Hee, Vice Chair Shimabukuro, and Members of the Committee:

I am Myoung Oh, Government Affairs Director, here to testify on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its 8,000 members. HAR **supports** S.B. 966 which adopts the Uniform Mediation Act of the National Conference of Commissioners on Uniform State Laws.

REALTOR® Boards throughout the State, offer consumers, buyers, sellers, or tenants, the ability to resolve their dispute through mediation. As an example, the Honolulu Board of REALTORS® provides its mediation services at no cost to the consumer and 67% of its mediations have ended in successful agreements between the parties.

The success of mediation is due in large part to the confidential nature of the proceedings. The parties feel comfortable to share information with the mediator that will help to resolve the dispute because they know it will be kept confidential. Through the information that is shared, the mediators are able to identify the underlying issues and help the parties come to a resolution that they can all agree upon.

HAR believes that S.B. 966 strengthens the confidentiality protections of the parties and the mediators who participate in mediation. This may help to encourage more people to utilize mediation as a valuable tool in resolving disputes amicably and cost effectively.

Mahalo for the opportunity to testify.

LATE TESTIMONY

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February 7, 2013

Senate Judiciary & Labor Committee

Attn.: Chair, Hon. Sen. Clayton Hee, and Committee Members

Re. SB 966 (Uniform Mediation Act); Hearing on February 8, 2013, 10:00 a.m.

Dear Senator Hee and Senate Judiciary & Labor Committee Members:

As an attorney practicing civil litigation in Hawai'i's State and Federal Courts for over 34 years, a mediator and arbitrator in civil litigation cases here for over 27 years, former Chair of the Hawai'i State Bar Association Alternative Dispute Resolution section, and a teacher and trainer of mediation and alternative dispute resolution to international undergraduate and graduate students of the University of Hawai'i Business School and Hawai'i Pacific University here and overseas, and familiar with the Uniform Mediation Act ("UMA") and the practice and law of mediation here, nationally and internationally, for over 17 years, it is my privilege to write to support SB 966.

I have read and concur with the written testimony of Charles H. Hurd in support of SB 966. The Uniform Laws Committee, in which Hawai'i's own Judiciary Center for ADR Director, Elizabeth Kent, serves an important role in Uniform ADR Acts, has done extensive research and work on providing laws and standards for mediation that provide clarity and practical criteria that Hawai'i's statutory and judicial precedent have not had the occasion to address. In doing so, the UMA provides clear and consistent guidance for parties, attorneys, mediators and courts in mediation processes, rules and standards that are quite timely and appropriate for Hawai'i. Extensive, continuing participation in national and international ADR organizations, conferences and programs and strong working relationships and friendships with top national and international mediation practitioners, trainers and experts, confirms that Hawai'i is and has for decades been one of the leaders in out of court ADR, and is well suited to be among the leaders in adoption and implementation of the UMA. Ten states plus the District of Columbia have enacted the UMA since 2005.

The substantial majority of Hawai'i's leading and most experienced mediators support the mediation laws, rules, principles and standards that the UMA provides, which is further confirmation that legislative enactment of the UMA is appropriate at this time. Four mediation organizations' boards

of directors recently resolved to support legislative enactment of the Uniform Mediation Act this term. (Mediation Center of the Pacific; Kuikahi Mediation Ctr., Hilo; Mediation Services of Maui; and the Association for Conflict Resolution – Hawaii Chapter)

UMA key provisions establish a balanced, fair approach to the complex of issues, policies and legitimate interests of all concerned:

1. The UMA is a balanced and harmonious set of policy judgments made by the foremost thinkers in the field of dispute resolution (including practicing mediators and mediation services (American Arbitration Assn., JAMS and CPR)- both lawyers and non-lawyers, such as psychologists, family dispute practitioners – including lawyers and judges, litigators, transactional lawyers and legal scholars participated in two years of drafting).
 - a. Participation in this solid example of “private legislation” was open and quite impressive, with a process that took all points of view into consideration.
 - b. The judgments of the Commissioners of the National Conference for Uniform State Laws are fair, balanced and nuanced, resulting in near unanimous approval by participants in the process.

Source: Many articles in law reviews, especially: Reuben, R., “The Sound of Dust Settling: A Response to Criticisms of the UMA,” 2003 Journal of Dispute Resolution 99. (The author, Richard Reuben, who served as Associate Reporter to the Drafting Committees, NCUSL, is a leading professor, commentator and proponent of ADR nationally, and a highly respected colleague and friend.)

2. The passage of the UMA in 11 jurisdictions has significantly reduced litigation about confidentiality in courts of those jurisdictions. Source: MEDIATION: Law Policy & Practice, by Professors Sarah R. Cole, Craig A. McEwen, Nancy Rogers, James R. Coben and Peter N. Thompson (West 2011), Sec. 8:15, “UMA in the Courts”, pp. 295-301 (“One remarkable success of the UMA to date is the relative lack of litigation about its terms. . . . fewer than 30 federal and state cases published on Westlaw [in all 11 jurisdictions, since passage].”)
3. Some states in which the UMA was proposed have used its principles to craft a statute, which fits specific conditions in that state (e.g. Florida).

ONE AMENDMENT NEEDED

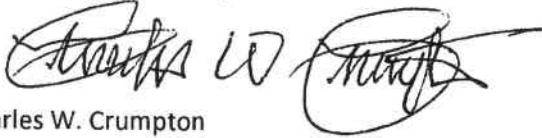
In recognition of and respect for other traditional conflict resolution processes, traditions and values of Hawai'i, including ho'oponopono, it would appear appropriate to explicitly add language to the scope and definition of mediation to make it clear that the UMA is not intended to govern dispute

resolution practices under traditional, customary practices of Hawaiians (ho'oponopono) or other such ethnic communities, e.g., ifoga in the Samoan community.

The UMA drafters included such a caveat in their official commentary. In light of the value accorded to such traditional cultural practices and values under Hawai'i law, it would appear appropriate to clearly exclude those practices from the application of the UMA.

Unfortunately, while I am unable to attend the hearing because of a schedule conflict that cannot be changed, I would be glad to provide any further information the Senate Committee may wish in connection with its consideration of SB 966.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Charles W. Crumpton", with a stylized flourish extending to the right.

Charles W. Crumpton

CWC:lah

LATE TESTIMONY

**TESTIMONY OF KENNETH R. KUPCHAK IN SUPPORT OF
A MEDIATION PRIVILEGE- SB 966(UNIFORM MEDIATION ACT)**

Hearing: February 8, 2013, 10:00 a.m.

Having been involved in mediations for four decades and having served as Chair of the American Bar Association Forum on the Construction Industry's Dispute Avoidance and Resolution Steering Committee and the Forum's Governing Committee, the need for a mediation privilege has repeatedly manifested to me.

While others may wax more eloquent on the details of the act, allow me to cut to the chase on a few important areas to make sure that they receive attention:

1. In order for mediations to work, the parties must be candid with each other and the mediator without fear of anything that they say being used against them should the matter not be resolved.
2. HRE 408 and its Federal equivalent give essentially no real protection in this area as I recounted in some detail in a 1996 article that I wrote and presented at the Forum's annual meeting entitled "Do You Practice Safe Mediation?" (A copy will be provided if you wish.)

Mahalo for your consideration.

Aloha, Ken Kupchak