

THE UNIFORM MEDIATION ACT

Assemblywoman Linda Greenstein of District 14, Mercer and Middlesex Counties, has sponsored assembly Bill No. 3542, seeking enactment of the Uniform Mediation Act. The bill has passed the New Jersey State Senate and is now being referred out of committee in the house, with an expectation of passage during the upcoming session. It is anticipated that the UMA will be signed into law in early 2005.

As is always the case, the Act is the product of intensive work by the Commission on Uniform Laws and involved a tremendous amount of effort, research and compromise.

The 1947 State Constitution vests exclusive authority concerning judicial administration with the State Supreme Court. Under the separation of powers doctrine, it will be interesting to see the reaction of the New Jersey State Supreme Court to the legislative action given the existence of Rule 1:40 and the propensity of our Court and the AOC to promulgate and administer mediation procedures.

Naturally, the UMA is much more comprehensive than Court Rule 1:40 and depending upon the potential separation of powers dispute described above, it is anticipated that the State Supreme Court will modify the Court Rule to comport with the statute.

Interestingly, other uniform mediation standards exist as authorized by the New Jersey Association of Professional Mediators, the American Mediation Association and other professional organizations.

The UMA is significant in that it essentially codifies the best practices from all sources. Most importantly, it clarifies concepts of privileges and confidentiality that were previously left to contractual engagements between private mediators and participants in the mediation process. It should clearly help us avoid situations as described in the recent Appellate Division decision of Lehr v. Afflito.

In Burlington County, the civil case mediation program continues with great success, as does mediation in the special civil part. Economic mediation in family law cases will continue as a pilot program until June of 2005. Unfortunately, despite the filing of 30,000 new matrimonial cases in the State of New Jersey every year, and the filing of 30,000 post-judgment motions, the use of economic mediation in the Family Part remains almost non-existent in our vicinage. Perhaps the enactment of the UMA and the continued national trend towards alternate dispute resolution will cause the Bench and Bar to embrace mediation.