

State Agency Mediation Confidentiality - Rulemaking Advisory Committee

2:00 PM, Monday, March 14, 2016

Agenda

On October 27th, 2015 the Department of Justice adopted temporary rules mediation confidentiality model rules in order to comply with SB 189 (2015.) A link to SB 189 and related rules can be found at <http://www.doj.state.or.us/adr/pages/rules.aspx>. The purpose of this Advisory Committee meeting is to discuss issues related to state agency mediation confidentiality that were raised during the earlier rulemaking. These discussions may, or may not, result in changes to the mediation confidentiality rules that apply to all state agencies per ORS 36.224. The public is also invited to this meeting and will have an opportunity, during the public comment portion of the agenda, to offer comments.

Location: 4th floor conference room of the DOJ Robertson Building at 1215 State Street NE Salem, Oregon 97381.

Meeting agenda (Start times are approximate)

Start Time	Minutes	Agenda item
2:00	10	Introductions and Committee task
2:10	90	Discussion of ORS 36.224 related mediation confidentiality rules and in particular: 1. The confidentiality of the pre-mediation assessment process. The concern that was raised here by some stakeholders was the lack of confidentiality of communications that are shared with/among parties during a pre-mediation assessment that occurs in some processes (primarily the assessment of complex public policy type disputes.) Current rules allow the mediator to keep these communications confidential, but not the parties, unless an agreement to mediate is subsequently executed; 2. Confidentiality of non-mediation collaborative processes per OAR 137-005-0050; and 3. Exceptions in the rules that provide for less confidentiality in mediations involving state agencies than for mediations that do not involve a state agency (e.g., exceptions to allow for disclosures to prosecute certain crimes or as required by a person's professional license.)
3:40	15	Public Comments
3:55	5	Conclusion and next Steps (<i>Next and final meeting of this committee is April 21st, 2016 from 2-4 pm at the Robertson building, 1215 state Street, Salem, Or 97301.</i>)

Invited Advisory Committee Members (as of 11-23-15)

Organization or interest	Contact	Title/Company
ADR Section of the State Bar	Thom Brown	Cosgrave Vergeer Kester LLP
Mediator Organizations	Kevin Grant	President Oregon Mediation Association
State Agencies	Bill Ryan	Assistant Director, Aquatic Resource Management Oregon Department of State Lands
ADR Programs	Turner Odell	Oregon Consensus and Oregon Solutions, National Policy Consensus Center Portland State University
Private Mediators	Sam Imperati	President, ICMResolutions, Inc.

DOJ Participants

Contact	Title/Company
Mike Niemeyer	ADR Coordinator
Amy Alpaugh	Assistant Attorney in Charge/ Opinions Coordinator
Steve Wolf	General Counsel Division, Chief Counsel