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*The Center for Alternative Dispute Resolution Newsletter
State of Hawaii, Judiciary*



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Legislative Update; The Uniform Mediation Act and Rule 408



Summary for those who missed the forum: *The Uniform Mediation Act & Rule 408 – Two Approaches to Protect Mediation Communications, with David Fairbanks, Kale Feldman, Chuck Hurd, and Elizabeth Kent (moderator)*

The Uniform Mediation Act (UMA) was introduced in both houses of the Legislature this session ([SB 966](#) and [HB 418](#)). At the forum, panel members and the audience had an enthusiastic discussion of the merits of protecting the confidentiality of mediation communications under two different structures.

Proponents of maintaining the current structure ([Rule 408, Hawaii Rules of Evidence](#)) suggested that “nothing is broken so there is no need for a fix.” They raised concerns that enactment of the UMA would encourage litigation, especially in the area of mediator malpractice. Additionally, they expressed concern that some of the terms in the UMA are unclear and would require clarification.

Proponents of the UMA believe that it provides more certainty about the kind of communications that would and would not be protected from use. They also identified the broader application of a privilege, as contrasted with a rule of admissibility, which provides more protection to mediation participants. Proponents also identified the balance between confidentiality and other societal values as a strength of the UMA.