

TITLE 9
EVIDENCE

CHAPTER 8
UNIFORM MEDIATION ACT

9-801. SHORT TITLE. This chapter may be cited as the "Uniform Mediation Act."

[9-801, added 2008, ch. 35, sec. 1, p. 67.]

9-802. DEFINITIONS. In this chapter:

(1) "Mediation" means a process in which a mediator facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute.

(2) "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.

(3) "Mediation party" means a person that participates in a mediation and whose agreement is necessary to resolve the dispute.

(4) "Mediator" means an individual who conducts a mediation.

(5) "Nonparty participant" means a person, other than a party or mediator, that participates in a mediation.

(6) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

(7) "Proceeding" means:

(a) A judicial, administrative, arbitral or other adjudicative process, including related prehearing and posthearing motions, conferences and discovery; or

(b) A legislative hearing or similar process.

(8) "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.

(9) "Sign" means:

(a) To execute or adopt a tangible symbol with the present intent to authenticate a record;

(b) 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

(c) To assent on a stenographic record with the present intent to authenticate a record.

[9-802, added 2008, ch. 35, sec. 1, p. 67.]

9-803. SCOPE. (1) Except as otherwise provided in subsection (2) or (3) of this section, this chapter applies to a mediation in which:

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

(b) The mediation parties and the mediator agree to mediate in a record that demonstrates an expectation that mediation communications will be privileged against disclosure; or

(c) The mediation parties use as a mediator an individual who holds himself or herself out as a mediator or the mediation is provided by a person that holds itself out as providing mediation.

(2) This chapter does not apply to a mediation:

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

(b) Relating to a dispute that is pending under or is part of the processes established by a collective bargaining agreement, except that the chapter applies to a mediation arising out of a dispute that has been filed with an administrative agency or court;

(c) Conducted by a judge who might make a ruling on the case; or

(d) Conducted under the auspices of:

(i) A primary or secondary school if all the parties are students, or

(ii) A correctional institution for youth if all the parties are residents of that institution.

(3) If the parties agree in advance in a signed record, or a record of proceeding reflects agreement by the parties, that all or part of a mediation is not privileged, the privileges under sections [9-804](#) through [9-806](#), Idaho Code, do not apply to the mediation or part agreed upon. However, sections [9-804](#) through [9-806](#), Idaho Code, apply to a mediation communication made by a person that has not received actual notice of the agreement before the communication is made.

[9-803, added 2008, ch. 35, sec. 1, p. 68.]

9-804. PRIVILEGE AGAINST DISCLOSURE -- ADMISSIBILITY -- DISCOVERY. (1) Except as otherwise provided in section [9-806](#), Idaho Code, a mediation communication is privileged as provided in subsection (2) of this section and is not subject to discovery or admissible in evidence in a proceeding unless waived or precluded as provided by section [9-805](#), Idaho Code.

(2) In a proceeding, the following privileges apply:

(a) A mediation party may refuse to disclose, and may prevent any other person from disclosing, a mediation communication.

(b) A mediator may refuse to disclose a mediation communication, and may prevent any other person from disclosing a mediation communication of the mediator.

(c) A nonparty participant may refuse to disclose, and may prevent any other person from disclosing, a mediation communication of the nonparty participant.

(3) Evidence or information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely by reason of its disclosure or use in a mediation.

[9-804, added 2008, ch. 35, sec. 1, p. 68.]

9-805. WAIVER AND PRECLUSION OF PRIVILEGE. (1) A privilege under section [9-804](#), Idaho Code, may be waived in a record or orally during a proceeding if it is expressly waived by all parties to the mediation and:

(a) In the case of the privilege of a mediator, it is expressly waived by the mediator; and

(b) In the case of the privilege of a nonparty participant, it is expressly waived by the nonparty participant.

(2) A person that discloses or makes a representation about a mediation communication which prejudices another person in a proceeding is precluded from asserting a privilege under section [9-804](#), Idaho Code, but only to the extent necessary for the person prejudiced to respond to the representation or disclosure.

(3) A person that intentionally uses a mediation to plan, attempt to commit or commit a crime or to conceal an ongoing crime or ongoing criminal activity is precluded from asserting a privilege under section [9-804](#), Idaho Code.

[9-805, added 2008, ch. 35, sec. 1, p. 69.]

9-806. EXCEPTIONS TO PRIVILEGE. (1) There is no privilege under section [9-804](#), Idaho Code, for a mediation communication that is:

- (a) In an agreement evidenced by a record signed by all parties to the agreement;
- (b) Available to the public under [chapter 1, title 74](#), Idaho Code, or made during a session of a mediation which is open, or is required by law to be open, to the public;
- (c) A threat or statement of a plan to inflict bodily injury or commit a crime of violence;
- (d) Intentionally used to plan a crime, attempt to commit or commit a crime or to conceal an ongoing crime or ongoing criminal activity;
- (e) Sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a mediator;
- (f) Except as otherwise provided in subsection (3) of this section, sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a mediation party, nonparty participant or representative of a party based on conduct occurring during a mediation; or
- (g) Sought or offered to prove or disprove abuse, neglect, abandonment or exploitation in a proceeding in which a child or adult protective services agency is a party, unless the public agency participates in the mediation.

(2) There is no privilege under section [9-804](#), Idaho Code, if a court, administrative agency or arbitrator finds, after a hearing in camera, that the party seeking discovery or the proponent of the evidence has shown that the evidence is not otherwise available, that there is a need for the evidence that substantially outweighs the interest in protecting confidentiality, and that the mediation communication is sought or offered in:

- (a) A court proceeding involving a felony or misdemeanor; or
- (b) Except as otherwise provided in subsection (3) of this section, a proceeding to prove a claim to rescind or reform or a defense to avoid liability on a contract arising out of the mediation.

(3) A mediator may not be compelled to provide evidence of a mediation communication referred to in subsection (1) (f) or (2) (b) of this section.

(4) If a mediation communication is not privileged under subsection (1) or (2) of this section, only the portion of the communication necessary for the application of the exception from nondisclosure may be admitted. Admission of evidence under subsection (1) or (2) of this section does not render the evidence, or any other mediation communication, discoverable or admissible for any other purpose.

[9-806, added 2008, ch. 35, sec. 1, p. 69; am. 2015, ch. 141, sec. 9, p. 381.]

9-807. PROHIBITED MEDIATOR REPORTS. (1) Except as otherwise provided in subsection (2) of this section, a mediator may not make a report, assessment, evaluation, recommendation, finding or other communication regarding a mediation to a court, administrative agency or other authority that may make a ruling on the dispute that is the subject of the mediation.

(2) A mediator may disclose:

(a) Whether the mediation occurred or has terminated, whether a settlement was reached, and attendance;

(b) A mediation communication as permitted under section [9-806](#), Idaho Code;

(c) A mediation communication evidencing abuse, neglect, abandonment or exploitation of an individual to a public agency responsible for protecting individuals against such mistreatment; or

(d) In mediation governed by Idaho rule of civil procedure 16(j), information permitted under Idaho rule of civil procedure 16(j).

(3) A communication made in violation of subsection (1) of this section may not be considered by a court, administrative agency or arbitrator.

[9-807, added 2008, ch. 35, sec. 1, p. 70.]

9-808. CONFIDENTIALITY. Unless subject to chapter 1 or 2, [title 74](#), Idaho Code, mediation communications are confidential to the extent agreed by the parties or provided by other law or rule of this state.

[9-808, added 2008, ch. 35, sec. 1, p. 70; am. 2015, ch. 141, sec. 10, p. 382.]

9-809. MEDIATOR'S DISCLOSURE OF CONFLICTS OF INTEREST -- BACKGROUND. (1) Before accepting a mediation, an individual who is requested to serve as a mediator shall:

(a) Make an inquiry that is reasonable under the circumstances to determine whether there are any known facts that a reasonable individual would consider likely to affect or create the appearance of affecting the impartiality of the mediator, including a financial or personal interest in the outcome of the mediation and an existing or past relationship with a mediation party or foreseeable participant in the mediation; and

(b) Disclose any such known fact to the mediation parties as soon as is practical before accepting a mediation.

(2) If a mediator learns any fact described in subsection (1) (a) of this section after accepting a mediation, the mediator shall disclose it as soon as is practicable.

(3) At the request of a mediation party, an individual who is requested to serve as a mediator shall disclose the mediator's qualifications to mediate a dispute.

(4) A person that violates subsection (1) or (2) of this section is precluded by the violation from asserting a privilege under section [9-804](#), Idaho Code.

(5) Subsections (1), (2) and (3) of this section do not apply to an individual acting as a judge.

(6) This chapter does not require that a mediator have a special qualification by background or profession.

(7) A mediator must be impartial unless, after disclosure of the facts required in subsections (1) and (2) of this section to be disclosed, the parties agree otherwise.

[9-809, added 2008, ch. 35, sec. 1, p. 70.]

9-810. PARTICIPATION IN MEDIATION. Unless otherwise provided by court rule or order, an attorney or other individual designated by a party may accompany the party to and participate in a mediation. A waiver of participation given before the mediation may be rescinded.

[9-810, added 2008, ch. 35, sec. 1, p. 71.]

9-811. INTERNATIONAL COMMERCIAL MEDIATION. (1) In this section, "model law" means the model law on international commercial conciliation adopted by the United Nations commission on international trade law on June 28, 2002, and recommended by the United Nations general assembly in a resolution (A/RES/57/18) dated November 19, 2002, and "international commercial mediation" means an international commercial conciliation as defined in article 1 of the model law.

(2) Except as otherwise provided in subsections (3) and (4) of this section, if a mediation is an international commercial mediation, the mediation is governed by the model law.

(3) Unless the parties agree in accordance with section [9-803](#)(3), Idaho Code, that all or part of an international commercial mediation is not privileged, sections [9-804](#), [9-805](#) and [9-806](#), Idaho Code, and any applicable definitions in section [9-802](#), Idaho Code, also apply to the mediation and nothing in article 10 of the model law derogates from sections [9-804](#), [9-805](#) and [9-806](#), Idaho Code.

(4) If the parties to an international commercial mediation agree under article 1, subsection 7., of the model law that the model law does not apply, this chapter applies.

[9-811, added 2008, ch. 35, sec. 1, p. 71.]

9-812. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This chapter modifies, limits or supersedes the federal electronic signatures in global and national commerce act, 15 U.S.C. section 7001 et seq., but this chapter does not modify, limit or supersede section 101(c) of that act or authorize electronic delivery of any of the notices described in section 103(b) of that act.

[9-812, added 2008, ch. 35, sec. 1, p. 71.]

9-813. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this chapter, consideration should be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

[9-813, added 2008, ch. 35, sec. 1, p. 71.]

9-814. APPLICATION TO EXISTING AGREEMENTS OR REFERRALS. This chapter governs a mediation occurring after the effective date of this chapter pursuant to a referral or an agreement to mediate, whenever made.

[9-814, added 2008, ch. 35, sec. 1, p. 71.]

CHAPTER 9
DEPOSITIONS -- [REPEALED]