

Testimony before the Senate Judiciary Committee
In support of SB 189
On behalf of the Oregon State Bar Alternative Dispute Resolution Section
February 3, 2015

Chair Prozanski and members of the committee:

My name is Mark Friel. I'm an attorney in Portland, and I'm writing to you today in my capacity as Chair of the Alternative Dispute Resolution Section of the Oregon State Bar. The ADR Section represents over 250 attorneys from around Oregon who work in the areas of arbitration, mediation, and resolving legal conflicts through non-traditional means. I'm writing to you today to offer the ADR Section's enthusiastic support for SB 189.

Senate Bill 189 changes ORS 36.224 to fix some inconsistencies in the process for the adoption of rules related to mediation confidentiality. The changes will make more regular a process that has too often been irregular and confusing.

Currently, ORS 36.224 provides that state agency mediation communications are NOT confidential unless the agency adopts mediation confidentiality rules. Many agencies have adopted such rules. Currently, the rule adoption process is that the Attorney General develops the proposed model rules without any formal rulemaking process. Agencies then adopt these model rules through a formal rulemaking process (with notice and hearing) even though the agency cannot change the rule language. That process is essentially backwards.

SB 189 will modify ORS 36.224 to fix this backward process by placing the actual rulemaking responsibility where it belongs – with the Attorney General. The Attorney General will go through the usual process of adopting model rules, including providing a notice and comment period for the public, during which the public could comment and recommend changes to the model rules. Agencies could then choose to adopt the model rules that apply to their situation.

If enacted, SB 189 will:

1. Allow stakeholders to participate at the point in the process where their participation matters - when the AG is drafting the model rules;
2. Correct the false impression that, under the current process, agencies have authority to change the rules;

3. Relieve agencies of an administrative burden that has no purpose; and
4. Make it easier for agencies to adopt the most current version of the rules.

On behalf of the members of the Alternative Dispute Resolution Section, I encourage this committee to support SB 189. Thank you for your consideration.

Sincerely,

Mark Friel