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Written Testimony of Peter W. Benner, Chair,  
CBA Alternative Dispute Resolution Section  
**Senate Bill 598, An Act Adopting the Connecticut Uniform Mediation Act**  
Judiciary Committee  
March 14, 2006

Senator McDonald, Representative Lawlor and members of the Judiciary Committee, thank you for the opportunity to submit written comments to the committee on Senate Bill 598, An Act Adopting the Connecticut Uniform Mediation Act.

My name is Peter Benner. I am a partner at Shipman & Goodwin LLP in Hartford, where I practice in the area of commercial litigation and dispute resolution. My practice focuses on the resolution of complex business disputes including banking and financial transactions, health care, contracts, unfair competition, and bankruptcy. I am the chairman of the CBA Alternative Dispute Resolution Section, which consists of attorneys in private practice, many of whom serve as mediators and arbitrators, who work with clients to direct the litigation process toward constructive outcomes, often using alternative dispute resolution methods such as arbitration and mediation.

The CBA, on behalf of the Alternative Dispute Resolution Section, **supports** Senate Bill 598. On behalf of the CBA, I wish to thank the committee for raising the concept in the bill and I respectfully ask that the committee **approve** the bill.

Senate Bill 598 would adopt the Uniform Mediation Act (UMA), which is intended to keep communications made during mediation confidential. Mediation is a voluntary, consensual process in which a third party facilitates communication and negotiation between parties to a dispute to assist them in reaching a voluntary agreement that resolves their dispute, rather than having a ruling imposed upon them by a court. The UMA was promulgated by the National Conference of Commissioners on Uniform State Laws, with input from the American Bar Association, and has been recommended to the states for adoption.

The central purpose of the bill is to provide a privilege of confidentiality, which is owned by parties to a mediation. Under the UMA, mediation communications are not subject to disclosure in later proceedings, unless the confidentiality privilege is waived by the parties. Mediation differs from arbitration, which is a quasi-judicial process designed to reach a decision binding on the parties. The bill should present few concerns because mediation is customarily confidential by agreement and state statute.

The bill would codify confidentiality for most agreements in mediation, allowing a more open, dynamic process, produce greater creativity and increase the level of confidence because a mediator can use communications in the best way possible to facilitate an agreement between the parties. There are several exceptions where the privilege against disclosure of a communication made during mediation cannot be asserted, such as certain specified crimes. The bill *does not apply* to mediations involving collective bargaining, including matters governed by Title 31 of the

Connecticut General Statutes, or proceedings conducted by judicial officers who might rule in a dispute.

Senate Bill 598 should be approved because it would provide:

- **Improved business climate in the state.** Mediation fosters earlier, less costly resolution of disputes and lawsuits filed by individuals against business entities, reducing the cost to businesses in the state. Predictability, confidentiality and consistency, all hallmarks of the UMA, would help improve the climate for companies doing business or seeking to conduct business in the state.
- **Enhanced ethics.** The bill protects parties by requiring disclosure of known conflicts of interest by the mediator as well as disclosure of the mediator's qualifications. It promotes autonomy of the parties by leaving to them those matters that can be set by agreement.
- **Certainty and consistency.** The bill would provide uniformity of rules to govern multi-state disputes and help clarify judicial decisions that have interpreted Conn. Gen. Stat. §52-235d governing mediation and disclosure.
- **Privacy.** The bill assures confidentiality by establishing a privilege of confidentiality for mediators and participants that prohibits what is said during mediation from being used in later legal proceedings. For example, mediations often help resolve landlord-tenant disputes or minor criminal matters without the parties' statements made in the mediation later being subject to disclosure in civil litigation.

I would like to point out that members of the CBA Alternative Dispute Resolution Section, in keeping with the spirit and mission of the Section -- to build consensus with stakeholders -- reached out to representatives of a number of organizations interested in mediation. While we may not have achieved agreement on all of its provisions, we made a good-faith effort to address their concerns and made several amendments to the bill and presented a good work product that we believe will improve the practice of mediation in Connecticut.

Thank you again for the opportunity to submit written comments to the committee in support of the bill. Please feel free to contact me at (860) 251-5719 if you have any questions.