

COLORADO JUDICIAL DEPARTMENT

Office of Dispute Resolution

ODR Policies and Procedures Manual Date: July 1, 2011

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I. PROGRAM DESCRIPTION AND MISSION

The Office of Dispute Resolution (“ODR”) was created by the Colorado Dispute Resolution Act (“CDRA”) in 1983.¹ ODR exists to establish and make available dispute resolution programs and services within the Colorado Judicial Branch. Through its 60+ contract Neutrals (mediators and other dispute resolution professionals), ODR offers mediation and other services across the state. ODR also provides information about dispute resolution in Colorado and nationally, and coordinates training for judicial officers and court staff. For example:

- ODR ensures the availability of qualified, trained dispute resolution professionals in every judicial district in Colorado.
- ODR provides affordable dispute resolution services, including mediation, throughout the state of Colorado and ensures access to services for indigent parties;
- ODR assists the courts in designing, implementing, and administering dispute resolution programs.

The Colorado Dispute Resolution Act, Section 13-22-305, C.R.S., requires the Director to establish rules, regulations and procedures for all dispute resolution programs.² The “dispute resolution services” referred to in this Manual include mediation and other ancillary forms of dispute resolution as provided in Section 13-22-313, C.R.S.³

This ODR Policies and Procedures Manual (hereinafter “Manual”) applies to all Program Administrators, Managing Mediators, mediators and other ADR professionals on contract with the Office of Dispute Resolution (hereinafter “Neutrals”). Local district programs may

¹ The Colorado Dispute Resolution Act, C.R.S. 13-22-301, *et seq.*, states:
There is hereby established in the Judicial Department the Office of Dispute Resolution, the head of which shall be the Director of the Office of Dispute Resolution, who shall be appointed by the Chief Justice of the Supreme Court.

² For all office of dispute resolution programs, the director shall establish rules, regulations, and procedures for the prompt resolution of disputes.

³ Such forms of alternative dispute resolution may include, but are not limited to: arbitration, early neutral evaluation, med-arb, mini-trial, multi-door courthouse concepts, settlement conference, special master, summary jury trial, or any other form of alternative dispute resolution which the court deems to be an effective method for resolving the dispute in question.

also develop policies and procedures different from, but not inconsistent with, the provisions of this manual.

A. RESPONSIBILITIES OF ODR CENTRAL

ODR Central is housed within the State Court Administrator's Office ("SCAO") in Denver and is responsible for the oversight of dispute resolution services throughout the Colorado Courts. General responsibilities of the central office include:

- Managing state funds to provide mediation and other dispute resolution services to indigent parties
- Managing federal grant funds to provide mediation and other dispute resolution services to parents for access & visitation issues
- Maintaining statistics about mediation and other dispute resolution services provided by ODR Neutrals statewide
- Overseeing the contracting process of ODR Neutrals to provide quality services in all judicial districts
- Communicating with judicial officers, court staff and the community at large regarding specific needs and issues related to ODR services
- Providing educational opportunities for professional development and best practices to ODR Neutrals, judicial officers, court staff, and the community at large
- Developing and implementing programs and referral processes between ODR Neutrals and agencies such as local Child Support Enforcement (CSE) offices, Child Welfare programs, etc.
- Cooperating with other departments of State Judicial to provide quality education programs
- Participating in Court Improvement and Best Practice Court Teams across the state
- Cooperating with other dispute resolution organizations in planning annual statewide ADR Conference

1. SPECIFIC DUTIES OF ODR STAFF

a) ODR Director

- Manages all ODR staff
- Responsible for recruitment, selection and termination of ODR staff and independent contractors, in consultation with Project Manager and Program Administrators
- Responsible for the initiation, design, development, and implementation of dispute resolution programs throughout the state
- Prepares reports and drafts legislation, rules and procedures

- Establishes expectations and provides employee performance feedback on an on-going and annual basis. Provides annual evaluations for district employees
- Provides for orientation and on-going training, mentoring and coaching to ODR Staff
Receives and responds to complaints about ODR staff and contractors statewide, and ensures that a record of complaints is maintained within SCAO. In districts with local ODR offices, staffed by district employees, ODR Director notifies local District Administrator of any complaints received, and consults with District Administrator concerning C.R.S. 13-22-301 *et seq.*

b) **ODR Project Manager**

- Maintains policies and procedures essential to the provision of quality dispute resolution services
- Establishes curriculum and minimum standards for ODR Neutrals
- Provides policy and support regarding ODR services to court personnel
- Makes recommendations to the Director for the initiation, design, development, and implementation of dispute resolution programs throughout the state
- Consults and collaborates with individuals and organizations regarding dispute resolution policies and programs

c) **Referral Coordinator**

- Serves as first point of contact to the public for inquiries regarding ODR services
- Refers and/or assigns cases to mediators based on the location and case type
- Communicates with Neutrals and parties regarding status of fee waivers
- Processes fee waivers
- Collects and provides data for statistical reporting
- Provides administrative support as needed

Complete Job Descriptions for Central ODR Director and Staff can be found on the Judicial Branch website, <https://www.coloradojudicial.gov/careers/job-descriptions>

B. RESPONSIBILITIES OF LOCAL PROGRAM ADMINISTRATORS

C. RESPONSIBILITIES OF ODR NEUTRALS

1. RELATIONSHIP TO JUDICIAL DEPARTMENT

ODR Neutrals are independent contractors who sign a Contract for Personal Services and are chosen according to a prescribed procedure. ODR Neutrals are contractors, not employees, and therefore must not take action that may appear that the Neutral is an employee of the State Judicial Department. However, ODR strives to maintain a level of

consistency regarding policies to ensure quality services at a reasonable cost throughout the state. To further this goal, ODR Neutrals shall make clear in all correspondence that they are contractors with Office of Dispute Resolution.

1. All contracts are in a form required by the Department and expire at the conclusion of the fiscal year.
2. Contracts are issued and renewed at the discretion of the Director and the local court, and are signed by the State Court Administrator.
3. As independent contractors, ODR Neutrals may offer their services privately and/or on behalf of other organizations, as long as there are no conflicts of interest.
4. Judicial department employees may not contract with ODR unless written approval has been provided by the Administrative Authority in compliance with Personnel Rule 22(B) and Purchasing Rule 1.1
5. ODR Neutrals shall not use letterhead, business cards or other correspondence which includes: Colorado Courts logo or the words “Colorado Judicial Branch.”
6. ODR Neutrals shall include reference to contractor status with the Office of Dispute Resolution when corresponding with courts, clients and attorneys on ODR cases. Examples of appropriate reference include:

Mary Jones, ODR Contract Mediator; OR

Mary Jones

Contract Mediator with State Office of Dispute Resolution

2. PEER REVIEW & PROFESSIONAL DEVELOPMENT

Every case within the ODR mediation program shall be mediated by a single Neutral unless otherwise approved.

ODR Neutrals shall participate in 10 hours per year of continuing education relevant to mediation or other dispute resolution concepts or processes, at least 2 hours of which shall be peer review with other ODR Neutrals. In-person peer review is preferable, but may also be conducted by telephone, e-mail, or listserv. The remaining 8 hours of continuing education may be met by additional peer review, attendance at local, state, or national conferences, listening to CLE tapes, watching CLE videos, or otherwise as approved by ODR Director. ODR Neutrals are required to provide documentation of continuing education to be submitted by ODR Neutrals annually with application for contract renewals.

ODR Neutrals shall attend such professional development and/or administrative meetings with other court mediators, ADR professionals, and ODR staff as are scheduled at mutually convenient times.

ODR Neutrals may observe mediations or other dispute resolution processes conducted by other ODR Neutrals, on such terms as agreed between them.

ODR Neutrals should consult with ODR staff as needed, regarding questions or concerns about particular cases.

3. SUBPOENAS

POLICY

Confidentiality of the mediation process is created by statute. Section 13-22-307, C.R.S. as amended provides that a mediator, mediation organization, or the parties to a mediation or dispute resolution shall not be required to disclose information regarding mediation communication, even by compulsory process. This statute also states the exceptions to confidentiality.

ODR is committed to ensuring the fullest protection to confidentiality of the mediation process, within the bounds of the law. If a mediator or staff is subpoenaed, steps can be taken to prevent having to testify. This may include having the attorney general's office file a motion to quash the subpoena and/or to appear on behalf of the person subpoenaed.

PROCEDURE

If a mediator or staff is subpoenaed, please take the following steps:

1. Immediately contact ODR Central to notify Director of the subpoena.
2. Contact the attorney for the party who subpoenaed you, or the party if pro se, and directs them to provisions of Section 13-22-307 C.R.S. and reminded of the provision in the agreement to mediate, that states they will not subpoena documents from the mediator or ask the mediator to testify as a witness in any court proceeding related to the subject matter mediated.
3. If the attorney (or party) agrees to dismiss you from the subpoena, ask that you be faxed something in writing. Provide this written document to ODR Central Office.
4. ODR Central will notify legal counsel and the attorney general's office.
5. The attorney general's office will contact you and will likely file a motion to quash on your behalf, and if necessary, appear in court with you.

6. If the attorney general is not able to appear (usually due to short notice), appear in court as directed and before testifying, make the judge aware of the statute that governs confidentiality and inform the judge that you have not received a waiver and the other exceptions are not applicable (assuming they are not).

7. If still required to testify, the ODR Neutral at least took appropriate measures to prevent a willing violation of confidentiality.

II. QUALIFICATIONS OF ODR NEUTRALS

A. APPLICATION PROCESS

- 1) ODR Central accepts new and renewal applications from Neutrals on an annual basis.
- 2) ODR Central may seek additional applicants for contract positions throughout the year as needs arise.
- 3) Applicants are interviewed and offered contracts with ODR as determined by the ODR Director in consultation with the local judicial district.

B. SELECTION CRITERIA

In determining whether a particular individual will be accepted into the program, ODR considers mediation proficiency as well as suitability for the program. Proficiency and suitability are determined through a process which may include any or all of the following: application review, screening of resumes, written questionnaires, oral interviews, hypothetical questions and role-plays.

1. Mediation Proficiency

- a) **Mediation training.** At least 40 hours of “hands-on” training in specific mediation skills is required.
- b) **Mediation experience.** ODR only hires Neutrals who are experienced mediators. Generally this requires that the applicant has mediated a minimum of 20 cases. Preference is given to individuals who have mediated additional cases and whose mediation experience is: (1) in the substantive area in which they expect to mediate at ODR; (2) conducting solo mediations (vs. co-mediation); and (3) with court-ordered (vs. voluntary) mediation.
- c) **Substantive legal knowledge.** Preference is given to individuals with extensive knowledge of Colorado law regarding the substantive area in which they expect to mediate.

d) **Familiarity with the court system.** Preference is given to individuals who have an understanding of the role of judges, lawyers, etc., and who are familiar with court procedures applicable to the cases they expect to mediate (e.g., civil vs. domestic relations procedures).

e) **Mediation skills and style.** The applicant's mediation skills are reviewed primarily during the interview through the use of hypothetical questions and role-plays. Preference is given to individuals who encourage party empowerment, and whose mediation style is best suited to the structure of the court-ordered mediation program.

2. Suitability for ODR Program

a) **Acceptability to court and local attorneys.** Applications may be reviewed by the local judges and administrative staff of the court. Preference is given to Neutrals who are acceptable to the court.

b) **Interest in promoting ADR.** Neutrals are often to donate time to work with the local court and other local groups to promote the use of ADR. Preference is also given to applicants who are willing to commit to this effort.

c) **Local Team.** In some locations, ODR Neutrals may be part of a team which spends considerable time attending local peer review and working together on ADR development. Preference is given to applicants who are willing to participate in these efforts.

d) **Availability.** Preference is given to individuals who reside in the area of the judicial district in which services will be provided.

C. NEUTRAL ORIENTATION

1) New Neutral Orientation. Upon offer of contract, ODR Neutrals shall participate in an orientation at the central office to meet the central ODR staff and to review the contract and ODR Policies and Procedures. This orientation must occur in person, by telephone or other electronic means deemed acceptable by ODR prior to accepting cases as an ODR Neutral.

2) Mentorship. As part of the orientation process, Neutrals who are offered a contract with ODR may be required, at their own expense, to work with another Neutral before they begin providing dispute resolution services. The Director, the Director's designee, and/or the local Program Administrator will establish the specific process to be completed by each new Neutral. The process generally includes observing mediation sessions, co-mediating and/or being observed in a mediation setting. The number of observation/co-mediation sessions will vary depending on the experience of the new Neutral.

D. MEDIATORS CODE OF PROFESSIONAL CONDUCT & STANDARDS OF CONDUCT

MEDIATORS CODE OF PROFESSIONAL CONDUCT

All court mediators are expected to be familiar and comply with the Model Standards of Conduct for Mediators, a joint effort of the American Arbitration Association, American Bar Association and the Association for Conflict Resolution. [Model Standards of Conduct for Mediators.](#)

MODEL STANDARDS FOR FAMILY AND DIVORCE MEDIATION (DEVELOPED BY AFCC AND ABA FAMILY LAW SECTION)

All court mediators who handle domestic relations cases are expected to be familiar and comply with the [Model Standards for Family and Divorce Mediation.](#)

COLORADO UNAUTHORIZED PRACTICE OF LAW GUIDELINES FOR MEDIATORS

All court mediators are expected to be familiar and comply with the [Recommended Guidelines Regarding Unauthorized Practice of Law Issues in Mediation.](#)

III. ODR MEDIATION PROCESS

A. OVERVIEW OF ODR PROGRAM

Unless specified otherwise, Mediation procedures apply to all dispute resolution services offered by ODR Neutrals.

Any person may request dispute resolution services through ODR providers.

Unless local rule dictates otherwise, the Neutral will contact all parties and attorneys if applicable, to explain the mediation process and to set an appointment for an initial session.

ODR Neutrals are expected to schedule sessions and collect advance deposits in accordance with the policies related to Fee Collection.

Mediation is a voluntary process. If parties wish to discontinue mediation, they may withdraw from the process. ODR Neutrals shall report the termination of mediation to the court or other referring agency if applicable, without revealing details of the negotiations.

THE MEDIATION PROCESS

Mediation may take place at the courthouse where the case is filed, as space is available, at the office of the ODR Neutral or at another public or professional location agreed upon by the Neutral and the parties.

At the outset of mediation, Neutrals will explain their role as impartial third party, the nature of mediation, and what the parties can expect from the process.

B. REFERRALS AND SCHEDULING

POLICY

ODR Neutrals may receive referrals from the court, agencies, attorneys or individual parties. Unless local rule or policy dictates otherwise, ODR Neutrals are responsible for scheduling cases assigned or referred to them.

PROCEDURE FOR REFERRALS AND SCHEDULING OF CASES

ODR Central employs a part-time Referral Coordinator. This individual assists attorneys, court and the public connect with ODR Neutrals in a specific region of the state. The Referral Coordinator may also assist Neutrals in developing a scheduling process or online scheduling calendar.

ODR Neutrals may schedule their own calendar or employ staff to do so. ODR Neutrals are independent contractors and are responsible for the employment of their own scheduling staff if not otherwise provided by the local court.

RESCHEDULES

Unless otherwise indicated by local district procedure, rescheduling of a canceled mediation session where the clients are full pay is discretionary by the individual Neutral.

For cases where one or both parties are indigent or for special A&V programs, rescheduling of a canceled mediation session is possible only in the following situations:

- All parties agree
- Ordered by the court
- Approved by the Neutral
- Case was canceled due to emergency

C. FEES

ODR's mission is to provide quality ADR services at a reasonable cost. To effectuate this goal, ODR Neutrals must adhere to standard policies regarding the charging and collection of fees for services.

1. SCHEDULE OF FEES

Case and Payment Type	PARTY PAY- District Court (domestic "DR" juvenile "JV" probate "PR" and civil "C")	PARTY PAY- County Court Civil and Criminal	PARTY PAY- Small Claims	ODR/STATE PAY- State Indigent, Special Programs (D&N, CSE, PC/DM, PPF, JV/PAT)
Hourly Rate	Each party pays Neutral \$75.00 per hour for mediation services, case preparation and MOU/Agreement Preparation	Each party pays Neutral \$50.00 per hour for mediation services and MOU/Agreement Preparation	Each party pays Neutral \$30.00 per hour for mediation services and MOU/Agreement Preparation	State/ODR pays Neutral \$40.00 per hour for each party who qualifies for reduced fee services (Parties may be required to submit co- payment)
Advance Deposit	Neutrals shall not collect retainers for ODR cases. Neutrals may collect a two hour advance deposit for DR and JV cases. Neutrals may collect a three hour non-refundable advance deposit for PR and C cases			N/A
Late Cancel/No Show	Neutral may charge up to two hours of service to the party who fails to arrive in a reasonable time or fail to provide at least 7 days' notice of cancellation for DR and JV cases; 10 days notice of cancellation. If one party shows and the other no shows, the neutral shall retain the non-appearing party's deposit and return or credit the appearing party's per agreement with the appearing party.			State/ODR pays for one hour of service for qualifying party if <u>the qualifying party</u> fails to arrive in a reasonable time or fails to provide at least 7 days notice of cancellation. If a co- pay is required, Neutral may only bill the state for a no show if co-pay was collected
MOU/ Agreement Preparation	For all case types, compensation for MOU/Agreement preparation shall not exceed two hours per case unless authorized by Director			
Interview & Role Play Fee	ODR shall compensate Neutrals \$30.00 per hour for participating on interview panels and role plays during the contracting process of other Neutrals			
Other Expenses	ODR may not pay any fees or expenses for office supplies, travel time or mileage, consultation or co- mediation unless authorized by the Director			

2. ADVANCE COLLECTION OF FEES FOR SERVICE

Unless otherwise specified by the Chief Justice or Director, ODR Neutrals shall collect fees directly from parties. For District Court Civil cases, payment is due in full from each party 10 days prior to the scheduled mediation session. For all other non District Court civil cases, payment is due in full from each party seven days prior to the mediation. If advance fees are not paid, the mediation should be cancelled.

3. REDUCED FEE SERVICES

1. Parties should submit applications for fee reductions at least 14 days prior to the scheduled mediation session.
2. ODR Neutrals shall either make the JDF 205 form available to parties or provide information on how to obtain the form and instructions as needed.
3. Neutrals shall not fill out the form or assist the parties in filling out the form.
4. Parties are not eligible for a reduced fee if they have a private attorney who has entered in the case at issue, unless the attorney is representing him or her pro bono and willing to verify the pro bono status on firm letterhead. This policy does not apply to parties represented by a legal services representative.
5. If a fee reduction is granted, the qualifying part(ies) pay the Neutral \$15.00 per party per hour.

4. REFUNDS

Neutrals shall provide a full refund to parties who cancel mediation within the appropriate time frame. Refunds must be made within 30 days after the cancellation of the mediation.

5. COLLECTION OF FEES FOR LATE CANCELLATION OR NO SHOWS

ODR Neutrals may collect fees for up to two hours when one or more parties fail to appear for a scheduled session, or when one or more parties cancel the session with less than seven days notice.

- a. If the party responsible for the late cancel or no show is a full paying party, the Neutral may charge that party for up to two hours of service time.
- b. Where the responsible party is indigent, the ODR Neutral may only bill ODR for a late cancel or no show fee if the Neutral has collected the

appropriate co-pay in advance. If the appropriate co-pay was collected, the Neutral may bill ODR for one hour of time for two parties in the event of a no show or late cancel.

c. The Neutral shall only bill ODR for a late cancel or no show when the responsible or non-appearing party is indigent or if the case is referred through an A&V Special Program. *

	Both Parties Are Indigent (Or referred for A&V Special Program*)	One Party is Indigent; Other Party is Self-Pay	Both Parties are Self-Pay
Self- Pay Client Fails to Appear or Late Cancels	N/A	Self-Pay Client is charged up to 2 hours at full pay rate	Party failing to appear charged up to 2 hours at full pay rate
Indigent Party Fails to Appear or Cancels	Neutral may bill ODR for one hour of time for two parties if appropriate co-pay collected	Neutral may bill ODR for one hour of time for two parties if appropriate co-pay collected	N/A

* A co-pay is not required for A&V Special Programs cases. If a party fails to appear or late cancels, the ODR Neutral may bill ODR for one hour of time for two parties

6. FEE CAP ON STATE-PAY CASES

ODR mediation sessions typically last two to three hours. Due to limited funds, all state and federal grant-funded cases are capped at four hours per case. Should extraordinary circumstances present the need for more than four hours of mediation time, the Neutral must have approval from the Director in advance. If approval has not been given, the Neutral will not be paid for any time billed over four hours.

D. SPECIAL CONSIDERATIONS

1. APPROPRIATENESS OF MEDIATION

Mediation is not appropriate for all cases. Neutrals have the discretion to terminate or refuse to schedule a case based on inappropriateness.

Reasons to determine a case is inappropriate may include, but are not limited to:

- a. the presence of domestic violence;
- b. incapacity of a party; or
- c. inappropriate timing of the process.

An ODR Neutral shall not advise the court as to the reason that mediation was inappropriate, unless the parties consent to the advisement.

An ODR Neutral shall discontinue the mediation if any of the disputants are intoxicated, or otherwise incapacitated. The mediation may be reconvened when the disputants can negotiate knowledgeably and capably on their own behalf.

No weapons of any kind may be permitted in the mediation room. If a party is unwilling to remove a weapon from the mediation room, a Neutral shall discontinue the mediation.

2. DOMESTIC VIOLENCE

An ODR Neutral shall conduct screening to assess for domestic violence and shall attempt to determine the nature and extent of any suspected or alleged domestic violence. A Neutral shall declare the mediation inappropriate if:

- a. the violence is ongoing;
- b. the Neutral has any concern that mediation may increase the level of violence between the parties;
- c. any party states that they are unwilling to participate due to the presence or history of physical or psychological abuse; or
- d. the Neutral believes mediation is otherwise inappropriate. See Section C.R.S. 13-22311 (1)

If an ODR Neutral determines that mediation may proceed, the Neutral shall take appropriate precautions with respect to the safety and empowerment of the parties. Such measures may include:

- e. conducting mediation sessions with each party on separate days or in separate rooms;
- f. discussing with the parties whether other individuals (attorneys, friends, relatives, or other professionals) should accompany them to the mediation session.

Whenever possible, mediations involving allegations of domestic violence should take place at the courthouse.

Sample screening questions and further information is available on the Contractor page of the ODR website.

3. Compliance with Americans with Disabilities Act (“ADA”)

The Americans with Disabilities Act of 1990 (“ADA”) was enacted to prohibit discrimination against people with disabilities. Under Title II of the Act, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs or activities of a public entity. This prohibition applies to the state courts and probation departments as providers of public services, programs and activities. People with disabilities are to be given an equal opportunity to access, use and fully participate in court and probation services, programs and activities and not be discriminated against because of their disability.

- The ADA requires that reasonable accommodations/modifications be considered when requested
- ODR Neutrals as independent contractors for the Colorado Judicial Department may be asked by a person with a disability for an accommodation to assist with a disability. The requestor may not mention the Americans with Disabilities Act (ADA) or use legal terminology such as “reasonable accommodation.” The request can be as plain or straightforward as “I have a medical condition and need some help.” The help may include a Sign Language Interpreter, materials converted to large print, assistive listening devices, questions written down, to name just a few.
- Once an individual indicates he/she is requesting assistance due to a medical condition, you should treat it as a request for an ADA accommodation/modification and notify the local ADA Coordinator immediately. You can access the following link to view a list of ADA Coordinators for the Colorado Judicial Department.

[List of ADA Coordinators](#)

- If you are unsure if a request falls under the ADA, please contact your local ADA Coordinator, Human Resources Analyst or the Statewide ADA Coordinator Janel Bravo at 720-625-5908 or ada.inquiry@judicial.state.co.us before responding.
- Our goal should be to respond as quickly as possible to an accommodation/modification request due to a medical condition. Do not be

intimidated because you feel you are not an expert in the ADA field. You must, however, be able to identify when someone is making a request that may be covered under the ADA and consult with your local ADA Coordinator as soon as possible to ensure appropriate action is taken.

E. FOUNDATIONS OF MEDIATION

1. VOLUNTARY PROCESS

Most of the mediation cases referred to ODR are court-ordered. However, mediation is always a voluntary process, in that parties are never required to reach agreement.

If a mediation client does not want to participate in mediation, the ODR Neutral should explore the party's hesitation to mediate and should assist the party to recognize the value of mediation. If these efforts are not successful, the Neutral shall not force the party to continue with the mediation, although the party will be required to pay for the scheduled mediation time.

A party ordered to mediation is only obligated to appear at the initial session. An ODR Neutral is not required to assure that a party makes a "good faith effort" to mediate and should not report to the Court whether the Neutral believes a party made such an effort.

2. NEUTRALITY, IMPARTIALITY AND COMPETENCE

If at any time during the process the Neutral's ability to mediate impartially is impaired, the Neutral should withdraw from the case and take steps to have the case assigned to another Neutral.

If a Neutral believes there are factors that might cause a conflict of interest in a particular case, the Neutral should withdraw from the case and take steps to have the case assigned to another Neutral.

If any party to a dispute questions the impartiality or competence of an ODR Neutral, the Neutral should suggest that the party should offer an opportunity to proceed with a different mediator or should be invited, where appropriate, to contact the Director or local Program Administrator, where appropriate.

If an ODR Neutral has a concern about a colleague's impartiality or competence, that Neutral should raise the concern with the Director, or the local Program Administrator, where appropriate.

3. EMPOWERMENT

ODR Neutrals should be sensitive to power imbalances and should take appropriate steps to assure that parties are aware of resources available to minimize a power imbalance.

If a Neutral determines that a power imbalance renders the mediation inappropriate, the Neutral may consider termination of the mediation session.

It is recommended that termination of a mediation session be articulated as the decision of the Neutral as opposed to attributing the request to terminate to a specific party.

4. CONFIDENTIALITY

1. Pursuant to C.R.S. § 13-22-307, mediators shall not voluntarily disclose, or through discovery or compulsory process be required to disclose any information concerning any mediation communication or any communication provided in confidence to the mediator. Exceptions to the mediator's duty of confidentiality include the following:

- a) All parties consent in writing to disclosure of information;
- b) A mediation participant reveals an intent to commit a felony, inflict bodily harm, or threaten the safety of a child under the age of eighteen years;
- c) Disclosure of the mediation communication is necessary and relevant to an action alleging willful or wanton misconduct of the mediator or mediation organization.

2. Child Abuse and Domestic Abuse. An ODR Neutral is not required to maintain confidentiality if the Neutral has reason to believe that a child is in need of protection or if either party is in danger of bodily harm.

- a) The Neutral shall encourage the parent(s) alleging child abuse to report directly to their county Social Services department (or to the appropriate agency).
- b) The Neutral may be obligated to report directly to the appropriate county Social Services department (or the appropriate agency).

ODR Neutrals shall also refer to the Colorado Children's Code; Section 19-3-304, C.R.S., which further outlines professionals' obligations in child abuse and neglect cases.

3. Peer Review. When discussing specific cases during peer review meetings, an ODR Neutral shall not disclose the names or other identifying information of participants to colleagues.
4. Attorneys. An attorney who attends mediation with a client will be asked to sign the agreement to mediate.
5. Other Mediation Participants. The Neutral has ultimate authority to determine who may be present in a mediation session and how the mediation session will occur, whether parties meet face to face or the mediation is conducted in shuttle fashion. If a party wishes to have a third person participate in the process, and the Neutral determines that the participation would not aid the process, the Neutral may restrict the mediation to the named parties of the case. All individuals present during a mediation session will be asked to sign the agreement to mediate.
6. Disclosure to Judges. Although a Neutral may be asked by a judge to discuss or make recommendations, the Neutral shall not discuss specifics of a case with the judge or magistrate but may discuss general concepts about the program or mediation process.
7. Status Reports. Unless local rule dictates otherwise, Neutrals are required by Section 13-22- 311(2), C.R.S. to submit a Certificate of Compliance following court-ordered mediation sessions. Neutrals may also be expected to report to the Court or other referring agencies on the status of ODR cases. Such reports shall be limited to information related to attendance at the mediation session and scheduling status of a case.

F. OTHER MEDIATION PARTICIPANTS

ATTORNEYS IN MEDIATION

Attorneys are welcome, but not generally required, to attend any mediation. Attorneys (in consultation with their clients) often choose not to attend mediation in domestic cases. Attorneys are almost always present in district court civil cases.

If the attorneys do not attend the mediation session, the Neutral shall encourage the parties to consult with their attorneys before and after mediation sessions and keep their attorneys advised about the progress of the mediation.

If an attorney for one party plans to attend mediation, the party/attorney must advise all other parties and their attorneys sufficiently in advance of the mediation session to permit the other parties an opportunity to decide if they want their attorneys to attend or if they want to retain counsel, if they are unrepresented.

Any attorney who attends a mediation session will be asked to sign the agreement to mediate.

It is the policy of ODR that mediation can go forward where only one party is represented by counsel.

CHILDREN IN MEDIATION

Children shall not be present in mediation sessions without advance approval from the Neutral.

Parents should make alternative arrangements for offsite child care.

The Neutral has ultimate discretion for determining who is permitted to be present in the mediation session.

The Neutral may allow older children to voluntarily participate in the mediation session if, in the judgment of the Neutral, such participation would be helpful in addressing one or more issues in dispute.

- a) If the Neutral determines a child may participate in any portion of a mediation session, the Neutral should meet first with the parties to consider the possible negative impacts, and the parties shall be required to sign an agreement acknowledging discussion of potential negative impacts.
- b) The child's participation should be limited to those issues identified by the Neutral in which the child wishes to express his or her viewpoint.
- c) The child's participation should never involve putting the child in the position of having to choose between the parents or make decisions that should be made by adults.
- d) A child's participation must always be voluntary and not coerced in any way by the Neutral or the parties.
- e) A child should never be allowed to participate in the mediation process without agreement of both parties.

G. ROLE OF OTHER PROFESSIONS

LEGAL ISSUES

1. ODR Neutrals shall encourage parties to consult with attorneys or other resources for answers to questions of law.
2. A Neutral does not represent the parties and shall not give legal advice.

3. A Neutral may inform unrepresented parties, when relevant, about available resources such as but not limited to:
4. pro se packets, available at some courthouses;
5. pro se videos, available at some local libraries; and
6. other books and forms, available for sale at local bookstores; and,
7. forms available through the Internet.
8. ODR Neutrals may consult with the Director regarding questions of law.
9. ODR Neutrals who mediate cases involving child support may complete a Child Support Worksheet with information agreed to by the parties.

PSYCHOLOGICAL ISSUES

1. The role of the mediator is not to provide psychological assistance.
2. Mediation may be discontinued and reconvened at a mutually convenient time to allow for counseling, therapy, or treatment outside of mediation.

H. CONCLUDING THE MEDIATION SESSION

Agreements may be reached during the mediation session. If the Neutral has concerns about the nature of any agreements reached in mediation, the Neutral may discuss the concerns with the parties and their attorneys, and may consult with the Director, Program Administrator, if applicable, or other ODR Neutrals, within the bounds of confidentiality.

If the Neutral believes an agreement to be inappropriate, the Neutral may discontinue the mediation process.

If requested by the parties, the Neutral may draft a Memorandum of Understanding (“MOU”) at the conclusion of mediation. The MOU shall recite that it is not binding on the parties until they and their counsel have approved it. If there is a court-approved form available to record an agreement, the mediator may complete form in place of drafting a MOU.

1. Drafting of Memoranda of Understanding

POLICY

When parties reach an agreement during the mediation process, the agreement shall be reduced to writing, unless otherwise agreed upon by the parties, as provided in section 13-

22-308, C.R.S. If attorneys attend the mediation session, the attorneys may draft the written agreement.

Otherwise if requested by the parties, the Neutral shall draft a Memorandum of Understanding (MOU) or complete a court-approved form. A Neutral should never put his/her own name in the caption, and should not sign the MOU or form.

PROCEDURE

The Neutral will take sufficient notes during, or at the end of, mediation sessions in order to draft an MOU.

The first page of an MOU should contain the following:

- a) Legal names of parties;
- b) Case number, party names and court location;
- c) Name of the mediator;
- d) Date of mediation session(s).

The body of the memorandum should include the relationship of the parties and the function of the memorandum. Statements should be clear and detailed to minimize future conflict. The memorandum should clearly state that it is not binding until it has been signed by the parties and their attorneys, if applicable. The memorandum may contain a future dispute resolution clause.

When possible, parties shall be encouraged to obtain legal advice prior to the mediation session(s) and to appear at and participate in the mediation session with sufficient knowledge and authority so as to finalize any agreements before they leave the session. Neutrals shall explain to parties that the memorandum is not a binding agreement until it is approved and signed by the parties and their attorneys (if any). Mediators may also explain that, even if the memorandum is approved by the parties and their attorneys, it must also be approved by the court.

A checklist for drafting MOUs can be found on the ODR Contractor page of the ODR website.

2. Certificate of Compliance of Mediation Requirement

POLICY

Pursuant to statute, Section 13-22-311, C.R.S., unless counsel for a party is required to do so by local rule or order of the court, mediators are required to inform courts that the

parties have met with the mediator. ODR Neutrals may not inform the court of issues discussed, the outcome of the mediation, or any other mediation communications as defined in 13-22-302 C.R.S., unless the Neutral and the parties consent in writing to the disclosure.

PROCEDURE

Unless otherwise required by court order or local rule, an ODR Neutrals shall submit to the court a Certificate of Compliance⁴ or Mediation Status Report at the conclusion of each mediation session. The court may also specify in its mediation order that a “Compliance Certificate” is to be filed by the parties or their attorneys.

The Certificate of Compliance or Mediation Status Report shall include:

- a) the title of the form;
- b) the name of the court;
- c) division or courtroom;
- d) the names of the parties; and
- e) the case number.

The Certificate of Compliance or Mediation Status Report may include the following:

- (a) the parties were unable or unwilling to schedule the mediation;
- (b) the parties did or did not attend a mediation session and, if applicable;
- (c) mediation was inappropriate.

The Certificate of Compliance or Mediation Status Report shall not reveal:

- a) whether the parties have reached an agreement (unless the parties and their attorneys have signed and fully executed a Memorandum of Understanding or court-approved form); or
- b) the nature of any issues resolved or not resolved in mediation

To the extent that the mediator and all parties consent in writing, the Certificate of Compliance or Mediator Status Report may include statements regarding:

⁴ C.R.S. 14-22-311: “Upon completion of mediation services or dispute resolution programs, the mediator shall supply to the court, unless counsel for a party is required to do so by local rule or order of the court, a written statement certifying that parties have met with the mediator.”

- a) whether the parties have resolved their dispute in mediation short of a fully executed agreement;
- b) the identity of any issue resolved or not resolved in mediation; and
- c) any other information regarding the mediation.

The completed form should be forwarded to the appropriate court upon completion of each mediation session, or when mediation is determined to be unworkable or inappropriate. This form should be submitted to the court promptly to ensure that the court receives the information before a scheduled hearing or trial.

Sample certificates and reports can be found on the Contractor page of the ODR website.

3. Surveys

ODR Neutrals are required to distribute surveys to all clients following each mediation or other Dispute Resolution session.

Periodically, Neutrals shall be responsible for distributing the survey link to all attorneys participating in mediation or other dispute resolution services.

IV. ONLINE DATA AND BILLING SYSTEM

A. DATA COLLECTION

Policy

Statistical information related to ODR will be gathered to compile annual reports and to comply with requirements of federal grants.

Procedure

ODR Neutrals shall track basic information regarding each cases referred to them through an electronic case management system developed by ODR.

Forms Provided for Data Collection

Forms that are provided to ODR Neutrals including log Sheets, time Sheets and A&V Grant questionnaires shall not be modified or amended without approval of Director.

Case Management

1. Case information shall be entered into the online database by Neutrals for every ODR case, whether party pay or state/federal pay. Case information is important for collecting statistical information as well as determining caseload for each district.
2. Except for the month of June, all case and billing information must be submitted through the electronic case management system as soon as possible but no later than the 20th day of the month following that month in which the work was performed. For

example, for mediations occurring in August, case and billing information must be submitted by September 20th.

3. All cases for the month of June must be entered prior to the end of the first week of July.

Supporting Documentation

1. If fees have been waived or reduced, “back-up” or evidence of indigent or low income status must also be attached that is dated within 6 months or less of the mediation.
2. For A&V Special Program cases, additional questions must be answered online and will appear when the AV programs are selected by neutrals.

B. BILLING FOR STATE INDIGENT & GRANT FUNDED CASES

Policy

ODR Neutrals are responsible for submitting required information for state and grant funded cases in order to generate payment. Case information for approved ODR services shall be submitted online through the electronic case management system developed by ODR Central. It is the responsibility of the Neutrals, as independent contractors, to manage their cases for accurate billing.

Procedure

- 1) ODR Neutrals are responsible for collecting proof of indigency in advance of the scheduled mediation session.
- 2) ODR Neutrals shall enter case information online through an electronic case management system developed by ODR Central.
- 3) Monthly timesheet(s) will be generated by ODR Central and emailed to the Neutral for signature and verification of accuracy.
- 4) Neutrals must include proof of indigency with all timesheets submitted for payment for state indigent cases. Indigent approval must be dated within the last six months. ODR Neutrals are responsible for notifying ODR if there is a discrepancy with their timesheet or an erroneous payment was made.
- 5) By signing a timesheet for payment, ODR Neutrals are certifying that the services for which they are requesting payment for were:
 - a. incurred for the benefit of the State;
 - b. were reasonable and necessary in the circumstances;
 - c. are in compliance with Judicial Department Fiscal rules;

- d. not previously reimbursed; and
- e. will not be reimbursed from any other source.

V. COMPLAINTS

Generally, if a complaint about an ODR Neutral is received by the Director, the Director shall contact the Neutral involved and the complaining party, or their attorney, to assess the nature of the problem and the underlying interest. The Director shall then develop a plan to resolve the situation and shall communicate the plan to the Neutral and the complaining party or their attorney. ODR-SCAO will keep a record of complaints received state-wide and will consider complaints during any contracting process. The State Court Administrator, as signatory to all ODR Neutral contracts, reserves the right to terminate a neutral's contract.

The Program Coordinator or Administrator should follow a similar process in addressing complaints about Neutrals within their respective judicial district. Having taken the steps outlined above, the Program Coordinator or Administrator shall also notify the Director of all complaints received, and action taken, to be maintained and considered during the annual contract renewal process. The State Court Administrator, as signatory to the contracts, reserves the right to terminate a neutral's contract.