

COLORADO JUDICIAL DEPARTMENT
Office of Dispute Resolution

ODR Policies and Procedures Manual
Subject: **Foundations of Mediation: Confidentiality**

Date: July 1, 2011

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.
[Children's Code, C.R.S. 19-3-304](#)

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.