

COLORADO JUDICIAL DEPARTMENT
Office of Dispute Resolution

ODR Policies and Procedures Manual

Date: July 1, 2011

Subject: **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:
[ODR Contractor Site](#)