

TO: Office of Dispute Resolution Advisory Committee
FROM: Office of Dispute Resolution Task Force
DATE: August 7, 2014
RE: Update Report

The Office of Dispute Resolution Task Force was appointed on August 22, 2013. The Order of Appointment charged the Task Force “to consider and propose draft standards for court-referred mediators in Colorado.” The creation of this Task Force followed the Chief Justice and Chief Judges Council review of the ODR Advisory Committee’s 2012 recommendation to establish standards for mediators in all court-referred cases.

On October 29, 2013, the Task Force submitted a DRAFT POLICY ESTABLISHING STANDARDS FOR MEDIATORS ACCEPTING COURT-REFERRED CASES PURSUANT TO §13-22-311, C.R.S. The Task Force members were encouraged to continue work on this project with no assurances of implementation and the Task Force was directed to circulate the policy and to gather feedback.

The DRAFT POLICY was distributed widely to the public, the courts, the mediation community, and the private bar. The DRAFT POLICY generated spirited discussion and comment. The DRAFT POLICY is posted for public access on the Colorado Judicial Branch website. Members of the Task Force have met with interested parties in and out of the judicial department. The Task Force has received a large volume of feedback, comment, encouragement and criticism. Members of the Task Force will continue to reach out for comment and feedback. Comments and information requests should be directed to the Task Force through Holly Panetta at holly.panetta@judicial.state.co.us.

Members of the Task Force are willing to speak to groups in person and over the telephone. The Task Force has listened to the feedback presented and will continue to listen.

On August 7, 2014, the Task Force submitted a detailed INTERIM REPORT to Chief Justice Nancy Rice.

Highlights of the INTERIM REPORT include:

A. Credentialing of Mediators in Domestic and Juvenile Cases: The original Task Force members continue to support the credentialing effort in court-referred cases. They view this effort as an access to justice issue and a means to improve the system as opposed to a means to solve a problem. After considering feedback and comment to date, the Task Force is of the view that the original suggestion of across-the-board credentialing should be modified to initially require mediator “credentialing” in “court referred” domestic relations cases (DR and JV case types) only.

Anecdotally, the main complaints and concerns related to mediation in court-referred cases arise in DR cases. DR is a high conflict arena and a highly specialized area of the law, with complex issues and a majority of pro se parties. Mediators in DR cases are frequently working

with unsophisticated parties, and are sometimes themselves under-trained in the nuances of complex DR orders.

B. Development of Complaint Process for Court Referred Mediators: The Task Force recognizes that the complaint system set forth in the DRAFT POLICY needs to be reworked. Several meaningful alternatives have been suggested and are under consideration. This will include consideration of any due process issues.

C. Permit Judicial Districts to Set Local Standards: So long as the minimum statewide standards are met, the Task Force is sensitive to the desire of individual judicial districts to maintain their own mediation / ADR programs with higher standards than those proposed by the Task Force. Individual judicial districts should also be permitted to maintain or create an in-house mediation program under the direction of each Chief Judge.

D. Mediating in Colorado Courts. The Task Force believes that the Mediating in Colorado Courts course should be developed and offered in the near future – regardless of whether or not credentialing is implemented.