

**COLORADO JUDICIAL DEPARTMENT**  
*Office of Dispute Resolution*

ODR Policies and Procedures Manual  
Subject: **Subpoenas**

Date: July 1, 2011

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**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 direct them to provisions of Section 13-22-307 C.R.S. and remind 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.