

FREQUENTLY ASKED QUESTIONS

OFFICE OF DISPUTE RESOLUTION

COLORADO SPRINGS, COLORADO

Our mediation will only last an hour. Do we have to pay for the entire two hours?

Yes! We offer a minimum time of two hours. Most mediation sessions, regardless of the issue(s), last at least two hours.

Do I have to be in the same room?

No. All of our mediations begin in separate rooms. It is your prerogative to have a separate room; notify the scheduler or the mediator of your desire to be in a separate room, or if you have any other special concerns or needs.

How does mediation work? What do I have to do?

Mediation is an informal process in which a trained, neutral third party helps people in conflict to negotiate a mutually acceptable agreement. A mediator has no authority to impose a solution. Each party will have the opportunity to express their point of view, and the mediator assists by helping the parties to communicate, to identify issues needing to be resolved, to develop options for resolving the issues, and to come to agreement on resolution if possible.

What kinds of disputes are appropriate for mediation?

Mediation has been used successfully in a wide range of civil (and occasionally criminal) disputes, whether or not a court case has been filed. It works best in cases in which the parties want to work out a solution. It is particularly helpful in disputes in which the underlying issues will not be resolved by a court order, or in which there will be a continuing relationship between the parties. ODR mediates domestic relations, juvenile, dependency and neglect, county court civil, district court civil, and probate cases, as well as disputes which have not been filed in court such as real estate earnest money and employment disputes.

The other party doesn't want to work out a solution. Why do we have to mediate?

Courts have authority to order parties to mediate. Frequently once parties are engaged in the mediation process, they find it helpful and are able to work out a mutually acceptable agreement. Even if there is no agreement as a result of the mediation, the parties can benefit from the opportunity to discuss their points of view, and can learn more about the other party's point of view. In ODR's cases, approximately 85% of parties participating in mediation either reach full or partial agreement or leave with a proposed solution and a deadline to respond to the proposal.

What do I have to bring to the mediation?

If you are participating in a District Court Civil mediation, you will be asked to send the mediator a confidential settlement statement, complaint or answer, and Rule 26 disclosures 10 days before the first session.

If your mediation concerns domestic relations or juvenile matters, a current "Affidavit with Respect to Financial Affairs" should be brought to the first session if child support, maintenance or property division is at issue. Also suggested are a complete copy of state and federal income taxes for the most recent three years, pay stubs for the most recent three months, and any available information relating to pension, retirement, or profit sharing plans. In addition to the above requirements, for post-decree cases, it's suggested that parties provide a copy of the Separation Agreement and, if there are children of the relationship, the Parenting Plan. For all mediations, it is very helpful to have met with your attorney prior to the first session, so that you know what to expect, and what the law says about your issues.

Do I have to have a lawyer to mediate?

You do not have to have a lawyer to mediate, but you do so at your own risk. An attorney can help by discussing issues with you and giving you legal advice prior to the mediation, working with you to develop proposals which meet both parties' interests during the mediation session, and reviewing any proposed agreements before you sign. Mediators are not legal advisers, and cannot provide legal advice to any party involved in mediation.

What if I don't have an attorney and my ex does? Does his/her attorney get to be in the mediation even if I don't want them to?

Yes. We find that if attorneys do not attend the mediation with their clients, the clients are less likely to make agreements, which causes frustration and delay to the other side.

What happens if we come to an agreement?

At the request of the parties, the mediator will provide a Memorandum of Agreement (MOA) which reflects the parties' agreements. Once the MOA is signed by both parties, it can then be submitted to the court, after which it can become a court order.

What happens if we can't come to an agreement?

Parties may be required to attend mediation, but are not required to reach agreement. If full agreement is not reached, the remaining issues will be decided by the court.

Is this agreement binding?

An agreement signed by both parties is usually enforceable as a contract.

What kind of safety precautions does the mediator employ where there is domestic violence?

If you have any concerns about your safety, or about the provisions of a restraining order, be sure to discuss them with the mediation scheduler or the mediator before the first session. There are many forms of safety precautions that are routinely used, including separate rooms, holding the mediation in the courthouse, and having the parties arrive and depart at different times.

Exceptions to confidentiality under the Colorado Dispute Resolution Act include that a mediation communication is not confidential if it reveals the intent to commit a felony, inflict bodily harm, or threaten the safety of a child under the age of eighteen. This provision helps to keep the mediation session safe for all involved.

Can my new spouse come with me? Can my children participate in mediation?

Generally, all parties must agree as to who will attend a mediation session. The mediator can assist in this decision. New spouses, friends and other individuals not participating in the session may come to the mediation site and wait in the waiting room.

Children are almost never a part of the mediation. Young children are not allowed to be present in the mediation session. Even if they are too young to understand the words being spoken, they can be upset by the emotions expressed during the session. Parents should make alternative arrangements for offsite child care.

Usually the mediation begins with only the parties and their attorneys, and other individuals (if it is so agreed) may be included later.

How do I get my ex to agree to attend mediation? He/She seems to be avoiding it, and I think it will really help.

Most mediation in the 4th Judicial District is mandatory. If the mediation is court-ordered, the court may enforce the mediation order. If parties are represented by attorneys, the attorneys may encourage them to participate. Often a party is more willing to attend mediation once they understand how the process works and what the benefits are. The ODR scheduler can provide this information.
