



**State of Colorado
WELD COUNTY COMBINED COURTS
Nineteenth Judicial District**

**Randall C. Lococo
Magistrate**

19 August 2016

Justice Richard Gabriel
Colorado Supreme Court
Via e-mail

Re: Office of Dispute Resolution Advisory Committee vote on the Office of Dispute Resolution Task Force Proposal for Voluntary DR Mediation Standards

Justice Gabriel:

As you know the Office of Dispute Resolution Advisory Committee (ODRAC) met on 8/12/16. Before the minutes are prepared, I wanted to share the outcome of the ODRAC's vote regarding the Office of Dispute Resolution Task Force's revised proposal to make the process voluntary.

The final proposal was discussed by the ODRAC on 8/12/16. During the meeting a motion was put to the committee; that the ODRAC approve the work-product of the Task Force to be submitted to the Supreme Court for consideration along with the minutes of the ODRAC meeting. The purpose of including the minutes of the meeting is to inform the Supreme Court of the concerns of the ODRAC as expressed at that meeting. The motion failed by a vote of 11-4.

The concerns expressed included those expressed before (and included in various earlier letters to Justice Rice, the formal feedback from stakeholders to the Task Force's first proposal, and in other ODRAC meeting minutes). At the meeting on 8/12/16 the concerns specifically included the following (in the approximate order they were discussed):

- perhaps there should not be a prohibition on Clerks of Court giving out other lists (because Clerk's already do, the Task Force's proposal should not be considered an exclusive list, and limiting Clerks limits private mediation groups and associations);
- allowing the ODR Director to access a "designee" under the complaint process seems unnecessary;
- it is arbitrary (and thus subjecting the judicial branch to possible litigation) to deny an appeal if someone is denied a place on the Roster;
- it is unclear whether local Districts can have a "higher standards" complaint process when they are allowed to have a "higher standards" roster program;
- the Task Force proposal unnecessarily limits judges in giving direction to litigants on who to pick as a mediator;
- the Task Force proposal unnecessarily limits a judge in being able to dictate higher mediator standards when referring to mediation;

- there needs to be more clarity around who could be included in the “grandfather” exception to the 40 hour training requirement;
- the Standards of Practice (even though they are consistent with the ABA / CBA / and MAC standards) should be cleaner;
- the complaint process is insufficient in that the Task Force proposal does not specifically state that a “willful and wanton” violation is required for the initial investigation or inquiry stages of the complaint process;
- the Task Force proposal improperly assumes the Judicial Branch or SCAO has the authority to impose and enforce such a policy (i.e. that the branch does not have the authority and/or such a policy is not consistent with whatever rule-making authority the branch does have);
- the Task Force proposal has enough “process” involved to invoke a mediator’s property right and thus subject the Judicial Branch or SCAO to litigation;
- the policy and standards are not adequate – they are far too low and inadequate, especially for cases involving domestic violence (and that the Task Force proposal is as dangerous to domestic violence situations as not having any standards at all);
- it is irresponsible for the Task Force to make such a proposal (or for the Supreme Court to consider it) when there is no current way to fund it - without funding this may cause ODR to fail or be viewed negatively;
- what is supposed to be simple is too complicated;
- the Task Force complaint process essentially requires a mediator to violate the confidentially provisions of the Dispute Resolution Act; and
- a list of potentially hundreds or thousands of mediators is not helpful to the consumer and in fact may be misleading as the public may rely on the Judicial Department’s listing of a mediator in thinking the mediator is well-qualified to address complex domestic matters .

It is important to note that 11-4 is somewhat deceptive; not all of the 11 against were unified. As you parse out the points listed above, some thought that the standards are inadequate or insufficient and need more work. On this front some stakeholders may continue to reach out and suggest other options. Others believe that no changes could be made (or any changes would only make it worse), or the entire exercise is a waste of time and/or unnecessary.

I wanted to provide this information to you as soon as possible. I will make sure you get a copy of the minutes when approved. Please feel free to contact me, Ben Stough, Sharon Sturges, or any member of the ODRAC with any questions about the ODRAC meeting on 8/12/16. As expressed previously the Task Force has submitted the proposal for the Supreme Court’s consideration and considers its work done. After the Supreme Court meets and discusses the issues, please let the Task Force and the ODRAC know if the Court has any further direction.



Randall Lococo
District Court Magistrate
Co-Chair ODRAC

Cc: Sharon Sturges & Benjamin Stough