

UPCOMING DATES

June 7, 2017
Jefferson County Mediation
Services Open House
2:00 p.m. — 5:00 p.m.

October 2, 2017
Mediating in Colo. Courts
Colo. Springs

November 17, 2017
ADR Conference Denver

ODR MEDIATOR REMINDERS



- **THE END IS COMING!**
Please enter your timesheets weekly, the end of the state fiscal year is June 30, 2017.
- Make sure all indigent proof is attached to the time sheet when time sheets are sent in to the ODR referral coordinator.
- Turn in all time sheets as soon as possible upon completion of mediation services, and please add vendor number to all time sheets.

Any billing questions or concerns, please contact Veronica Chacon, ODR Referral Coordinator, at:

odrmediations@judicial.state.co.us

THE MEDIATOR'S CORNER ... *with contribution from Kelley Potter*



Post-It Notes From the Western Slope

With our son in his first year at college, our family spends a lot of time talking about why people do what they do and how they find their paths in life. I am left trying to explain why I travel over two mountain passes to reach 80% of my mediations. Some days I spend more time driving than I do in the mediation room. I mediate in the seventh and twenty-second Judicial Districts on the Western Slope of Southwest Colorado.

The 7th and 22nd Judicial Districts cover eight counties and combined are about the same size as the state of Massachusetts (approximately 10,400 square miles), but with only about 2% of the population. There are no major four-lane highways and to get from courthouse to courthouse requires travel on winding mountain roads. On good days, those mountain passes are some of the most beautiful in the country, however, on the stormy winter days, they scare me. So why do I venture so far from home to mediate? I love what I do and where I live, but the primary reason rests in the positive "post-it notes".

One day I received a little pink post-it note in the mail from a client with a simple hand written note saying "thank you for making mediation not so hard." When a person in the face of difficulty and in the heart of conflict takes the time to stop and say thank you, it sends a sincere, powerful and positive message.

We all have these "post it notes". Mine include the couple who came in person to say "thank you for putting up with us when we were at our worst" and an e-mail from another client saying "thank you for having faith in me". I put all these little notes on my mental corkboard - they serve as reminders of why I do what I do. They are what get me through the scary snowstorms and to the courthouse.

The statement "thank you for putting up with us when we were at our worst" reflects the essence of what we do as mediators. No person is at their best when they are in conflict, not even the best parents, neighbors,

nor accomplished business people. As mediators, when we sit down at the mediation table, we see the loving parents, the well-meaning neighbor, and the trusting businesspeople inside our clients, despite the grumpy, emotional, or ridiculously cantankerous personalities they may be displaying. We help them navigate through their conflict and reach a solution everyone can live with so they can return to the good people they are.

Once I get over the stormy passes, I suspect most of my mediations do not differ dramatically from those in less rural areas. I may encounter a few more "hand shake" or verbal contract disputes. Parties have offered to pay me with food or barter, something that never happened when I worked in Los Angeles. And, I suspect I mediate more farm animal "visitation rights" than most metropolitan mediators. In the end, we all have our motivating "post-it note" moments.

Gratefully, most of my mediations do not leave me feeling bad, but they do not necessarily leave me feeling fantastic either. Even if we achieve a good outcome with a full agreement, if the parties are extremely angry, hurt, emotional, and disgruntled, we can drive home feeling uncomfortable at best.

Upon careful reflection, I am confident most of my mediations are reasonably successful regardless of how I feel afterward. This is why those powerful "post it notes" are so important. As mediators, most of us practice without a firm or co-mediators. We do not get the regular pat on the back or congratulatory phone call from a trusted colleague to keep us going. We do, however, get the occasional positive "post-it notes".

Having worked in a large multinational firm, I received the congratulatory call from a corporate client, the "nice job" from a senior partner and the noteworthy position on an important committee. I can honestly say, in my life, nothing means more to me than the "post it notes" from the Western Slope. No matter what your profession, cherish your own personal positive "post it notes" and let them remind you why you do what you do on those stormy days.

Kelley Potter moved to Southwest Colorado with her family 12 years ago. Kelley has nearly 20 years experience in complex litigation and project management, and is licensed to practice law in both California and Colorado. She happily chooses to mediate full time and is in her third year with ODR



Office of Dispute Resolution

The Neutral Zone is a free quarterly newsletter provided through the Colorado Judicial Branch's Office of Dispute Resolution.

As a resource for mediators, court staff, and the mediation community, The Neutral Zone focuses on best practices, training opportunities, and news from around the state. This newsletter is for informative purposes.

Any views or opinions found within this publication do not necessarily reflect the position of the Judicial Branch.

Written correspondence can be directed to the office at the following address:

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For additional information, concerns, suggestions regarding the newsletter, please contact Sharon Sturges.

Inside this issue:

Page 2 Memorandum of Understanding Checklist

Page 4 Mediators and the Courts

Page 6 Mediator's Corner

FROM THE OFFICE OF DISPUTE RESOLUTION...

"People will have appropriate access to justice when they have the resources, skills and services to address their civil and family legal issues. This is a broad definition. It is not limited to access to courts, judges and lawyers."

JUSTICE THOMAS CROMWELL, SUPREME COURT OF CANADA (2012)

We are all familiar with the term, "access to justice," however, how often do we explore its underlying definition? Court have realized that today's courts must meet parties' needs to access services in an efficient, timely, and cost-effective manner. I encourage each of you to develop a deeper definition of what "access to justice," this often used, little understood, term, really means.

Traditionally, access to justice is commonly understood as the ability of disputants to seek and obtain a remedy through formal (courts) or informal (mediation) institutions and services for resolving disputes.

Colorado's Access to Justice Commission defines access to justice in broader terms - the effort "to expand access to and enhance the **quality of justice in civil legal matters** for persons who encounter barriers in gaining access to Colorado's civil justice system." Emphasis added. I would submit, as others have, legal remedies are not enough; litigants expect procedural fairness and a "good" psychological process from our courts.

Recognizing this, courts now have the responsibility to provide access to programs and services that will lead to resolution of disputes that are related to the relationships of the parties. Given this, a definition of access to justice in the mediation context should also include:

1. A "just" outcome based on needs;



2. Positive psychological experience; and
3. If safety concerns are met, improved relationships going forward.

You are helping provide a positive psychological experience in often what often is a difficult psychological situation. It does not always seem that way, I know, but keep the faith. Enjoy pondering!

Please enjoy the wonderful article from Kelley Potter, "Post It Notes from the Western Slope" - it will resonate with many of you. Also, please read the results of the surveys of Family Court Facilitators and Sherlocks, we can learn from their wisdom! Finally, please review the MOU checklist and contact me with any additions or comments.

Kindest regards,

MEMORANDUM OF UNDERSTANDING: A CHECKLIST OF MEDIATION ISSUES

This checklist was compiled by Magistrate Randall Lococo (19th JD), Magistrate Marianne Tims (1st JD), and Judge Randall Arp (1st JD) to assist mediators with preparation of court required documents in domestic relations cases. For more information, please contact the ODR Program Director Sharon Sturges at sharon.sturges@judicial.state.co.us.

Name of Document: "Memorandum of Understanding - Property/Debt Issues" and/or "Memorandum of Understanding - Allocation of Parenting Responsibilities - Parenting Plan"
 Names (court information and party designation)
 Attorneys, if represented
 Demographic Information (date and place of marriage, separation)
 Addresses
 Children (date of birth)
 Others (affected by the agreement)
 Mediator - Rule 11(b) / statement mediator acting only as scrivener
 Suggestion each side obtain legal advice regarding agreement before signing
 Statement signed agreement may be submitted to court and approved as permanent order.

PARENTING PLAN ISSUES

Residence - Primary / address for school
 Removal from State or a move that substantially changes the geographic ties between a parent and the child(ren)
 Decision-Making
 Mutual or Sole Decision-Making? (History of DV?)
 Education/choice of schools
 Non-emergency medical care
 Religious up-bringing
 Extracurricular activities (including payment of same)
 Parenting Time
 Regular weekly Schedule (overnights)
 Exchange Details (communication, location, weather, waiting, unforeseen circumstances, who may transport, who is responsible (receiving or dropping off parent))
 Additions / Changes / Cancellation/ Unforeseen Circumstances (one-time-only / make-up or no)
 Child illness affecting parenting time
 Right of First Refusal over Third Parties to babysit?
 Phone Calls / Skype/Facetime / child's telephone

access or use (can it be taken away for punishment?)
 Holiday Parenting Time
 Start / Stop / Defining the holiday specifically
 Transportation
 Conflict / priority with vacation (holidays trump vacation, vacation trumps regular Parenting Time)
 Vacation Parenting Time
 Conflict / holiday time is priority unless otherwise agree in writing, etc.
 Communication
 Preferred method (not via children)
 Telephone, e-mail, text
 If appropriate; OurFamilyWizard.com or TalkingParents.com
 Mutual calendars / apps (Google, third party software)
 Non-parenting time communication (out of town itineraries, contact)
 Extracurricular Activities
 Who Pays/percentage
 Agreement prior to discussing with child
 Schedule Conflicts
 Parents Dating / Significant Others / Overnight Visitors Affecting Child
 Health / Well-Being of Child
 Notification (prompt / not / what)
 Keeping other updated
 Emergency Medical Care
 Notification mode / mechanism
 Can individually act without further consent
 Medical Insurance / Extraordinary Expenses / Uninsured medical Expenses
 Child Support
 Who pays who
 When (date due)
 Amount
 How / Family Support Registry or direct or direct deposit or vol. income assignment.
 Pay until (date of last payment) Modifiable only by written stip/order.
 Deviation for guidelines (if so-why)
 Attach worksheet
 Education

Life Insurance
 Dependency Exemptions

TEMPORARY MAINTENANCE?

PROPERTY ISSUES

Real Property
 Address / description / Amount of equity.
 Mortgage / Loan responsibility / Refi requirement / remedy
 Transfer documents, quit claim deed and responsibility for preparation
 Vehicles
 Transfer of title
 Refinance requirements
 Personal Property as is or specific lists. (Agreement to agree not enforceable).
 Bank Accounts (and cash)
 Other Financial Assets (stocks, bonds, investments)
 Businesses and business assets?
 Life Insurance
 Pension / Retirement / Qualified Accounts
 Owner
 Sole property or amount to be divided (and on what basis, and when)
 QDRO or if PERA DRO (Who prepares and who pays?)
 Vesting Issues *i.e.*, participant dies- life insurance?
 Survivor Benefits?
 Business Interests
 Debts
 Party #1
 Party #2
 Joint
 Responsibility / Assumption / Re-fi requirement / remedy
 No use of joint accounts going forward
 Hold harmless and indemnification
 Need to pay off credit card to remove from someone's credit?
 Any Cash Payment to Effect Equitable Division?
 Income Taxes
 Filing Status
 Joint
 Separate
 Next upcoming year
 Past years (back taxes / audits / amendments)

Refunds
 Real Property related deductions or credits
 Employer provided health insurance / health insurance responsibility

MAINTENANCE

(After divide marital property)
 Waiver (must consider guidelines amount and be knowing waiver)
 Term of Maintenance - Guidelines recommendation calculation (attach worksheet and Jeffco waiver form) or not?
 Amount
 Contractual / Modifiable
 Duration? When does it terminate early and why (e.g., death or remarriage)?
 How paid and due date(s)?
 Deductible to payer and taxable to receiver?
 Required life insurance for duration?

ATTORNEY FEES MODIFICATION & FUTURE DISPUTE RESOLUTION

Future Dispute Resolution Clause-Mediation or dispute resolution pre-requisite
 Merger Clause

AGREEMENT & BINDING

Memorandum of Agreement reached in Mediation only; parties should seek independent legal advice
 Full Agreement / Partial Agreement
 Dates / Effective Dates
 Signatures / Notarized
 Annual Exchanges
 16.2 compliance / Disclosures
 Legal Counsel
 "Important Information Box" from JDF 1115
 Time is of the essence
 Intentions / Attitude Clause
 Balance of Concessions (equity of exchanges / division; fair treatment of both)
 Binding upon signatures
 Binding only after approved by the Court
 Is it or is it not a Mediation Communication

The Office of Dispute Resolution surveyed over 40 self-represented litigant coordinators and family court facilitators about their experiences with mediation in the court system.

Overall, survey respondents described their role as part of the domestic relations process as:

A provider of case management for parties without attorneys, answerer of procedural questions regarding aspects of domestic relations cases, both pre- and post-decree. The first stop for most people in the domestic relations process for information or the paperwork to begin the process, and helping to understand that process to complete their case. Work with initial case filings, motions, separation agreements, for example, to be a case manager to help litigants understand what needs to be filed and when.

Through explanation of forms and case processes, as governed by [Chief Justice Directive 13-01](#), these case managers follow cases to ensure timely case resolution without undue delay and are the initial contact with the party or parties filing in a domestic relations case. They are often the resource or liaison for information and options about what is available in the community to match them with assistance to resolve their cases in the most efficient manner, with the least damage to family and relationships.

These professionals often create and provide resources such as simplified instructions and sample forms to assist the litigants and see litigants multiple times as they are working through their case and learn the process. They additionally assist litigants with modifications as well as other types of requests. It is a continual process of engaging in conversations with the public, from beginning to end.

As the first line in what often seems like a triage effort, family court facilitators can help expedite the process for cases that need it, can help parties come to an agreement, and can help point out the issues. In doing so, they meet with attorneys regarding assignment deadlines and setting temporary orders and also conduct initial conferences in all new domestic relations cases. This can also involve a review of a case file for completeness, informing judicial officers of specific issues to cases, and schedule necessary hearings, mediations, or reviews.

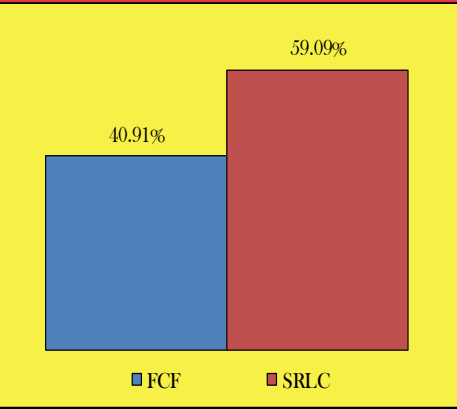
Often seen as the gatekeeper to the courts for domestic relations cases, facilitators and coordinators are able to connect litigants to resources such as parenting classes, mediators while they support litigants throughout the entire process.

By collaborating with family court facilitators, self-represented litigant coordinators, district leadership, attorneys, community representatives, jurisdictions are able to help facilitate a working relationship with a pro se party and help get them the services they need while making the domestic relations processes more efficient and expeditious for the court and parties.

WHAT CAUSES YOU TO QUESTION THE APPROPRIATENESS OF MEDIATION, PRIOR TO A LITIGANT BEING SENT?

- Protection/restraining orders
- A party is in-custody
- History of domestic violence
- Safety issues
- Prior refusal to negotiate
- Criminal activity by a party
- Willingness to attend
- Financial status & cost of mediation
- Presence of a court order
- High level of conflict
- Number and types of issues in disagreement
- Geographic location of mediation services
- Potential interference of a third party

DO YOU WORK FOR THE COURT AS A FAMILY COURT FACILITATOR (FCF) OR SELF-REPRESENTED LITIGANT COORDINATOR (SRLC)?



What are the most frequent questions that you receive?

- What are the fees for mediation services?
- What is mediation?
- How do I choose a mediator?
- How do I fill out a request for reduction in mediation fees?
- What is the ODR Referral Process?
- How do I get the other party to respond to setting a mediation?
- Does meeting with the family court facilitator mean I went to mediation?
- What is the difference between a family court facilitator and a mediator?
- Can I bring an attorney with me?
- Can the Judge can make me go to mediation?
- Why choose mediation instead of just going to hearing?
- Why so few options for mediators in our area?
- What are other options for mediation?
- When is mediation appropriate?
- Why would I have to pay for mediation?
- Do you have a list of private mediators?

HOW COULD ODR IMPROVE THE PROFESSIONAL RELATIONSHIP BETWEEN MEDIATORS AND COURT STAFF?

- Ability to access a shared calendar for scheduling mediations
- Communicating the outcome of mediation to assist the court with scheduling proceedings and case management
- Simplify the referral and scheduling process for mediators
- Minimize the duplication of efforts or redundant processes
- Continue to support relationship building between court staff and local mediators (both ODR contractors and private practitioners)
- Educating court staff and mediators about shared processes and mediation best practices to help litigants understand what to expect when they are required to mediate
- Consistency in how forms are used by mediators and information is provided to the court from case to case
- Access to resources about the mediation process for new court staff and contract mediators
- Addressing litigant complaints with the mediation process