

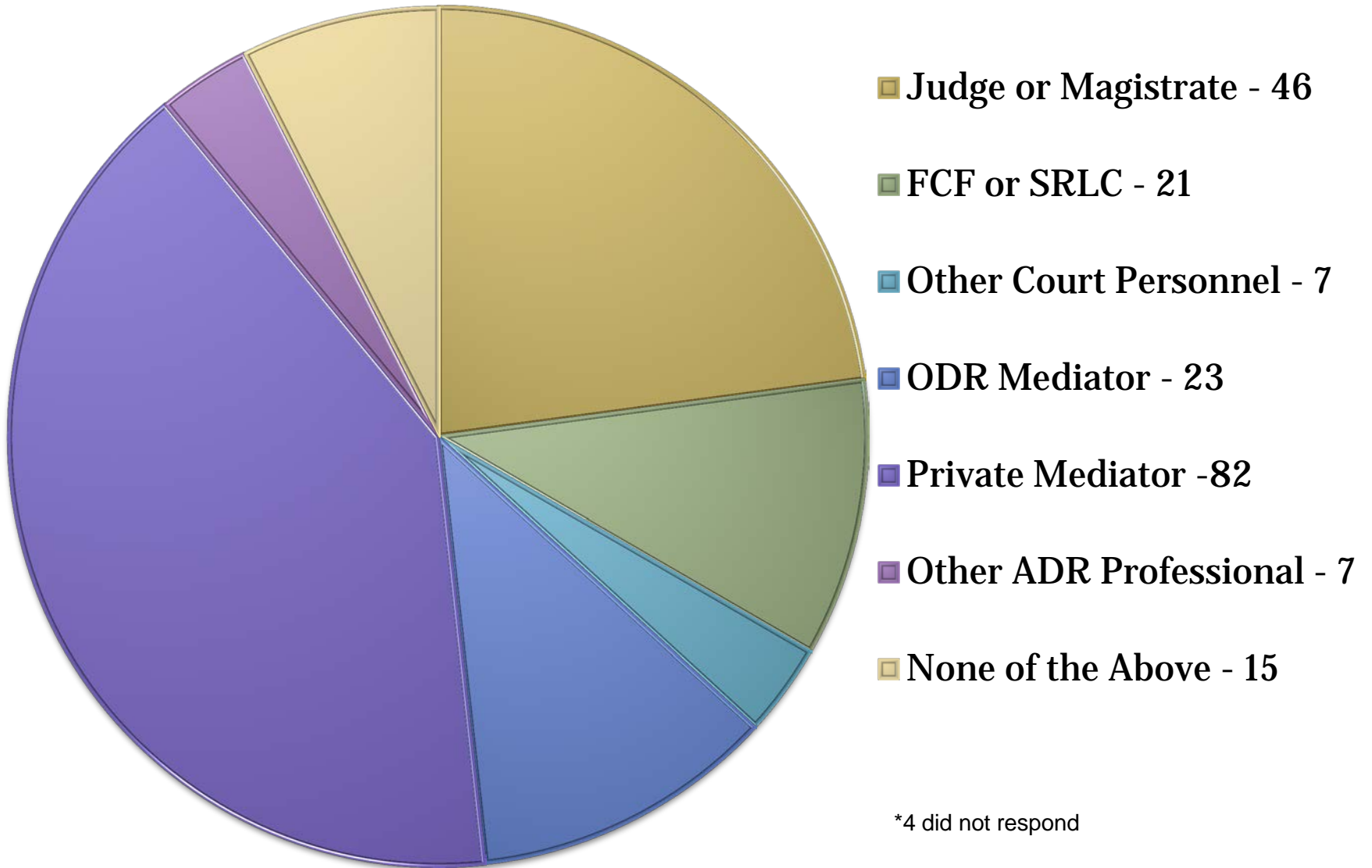
Mediation Standards:



Survey Feedback

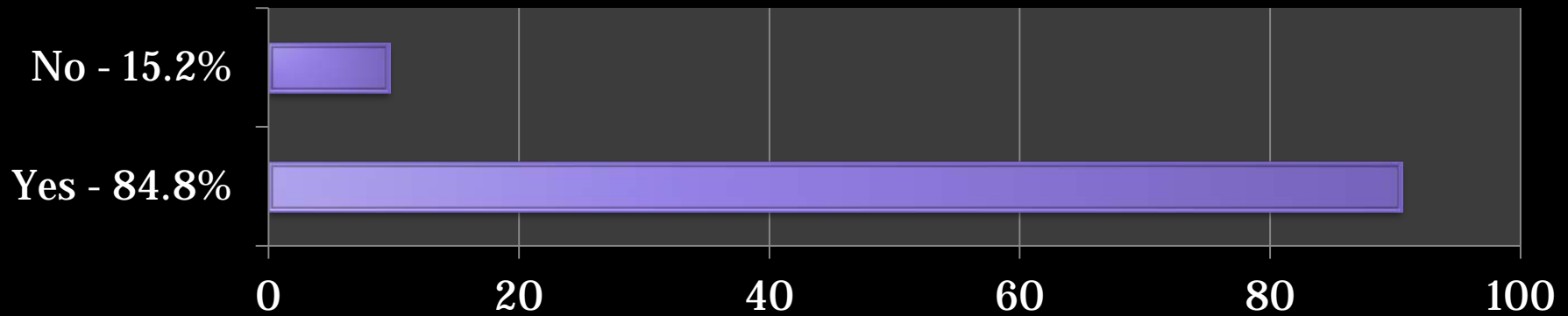
Trending Concerns

205 Survey Respondents*



*4 did not respond

Are you aware that Colorado does not require minimum standards (including a criminal background check) for mediators in court referred cases?



“Because there are no standards at this time, anyone can hang out their shingle and call themselves a mediator. Ridiculous.”

“Colorado is far behind other states”

- 28/50 states have comprehensive statewide standards for any mediator wishing to be recognized by courts
- Of the 22 states who DO NOT have comprehensive statewide standards, 9 states have standards for family/children issue mediations

Do you Support a requirement of a criminal background check for court referred mediators?

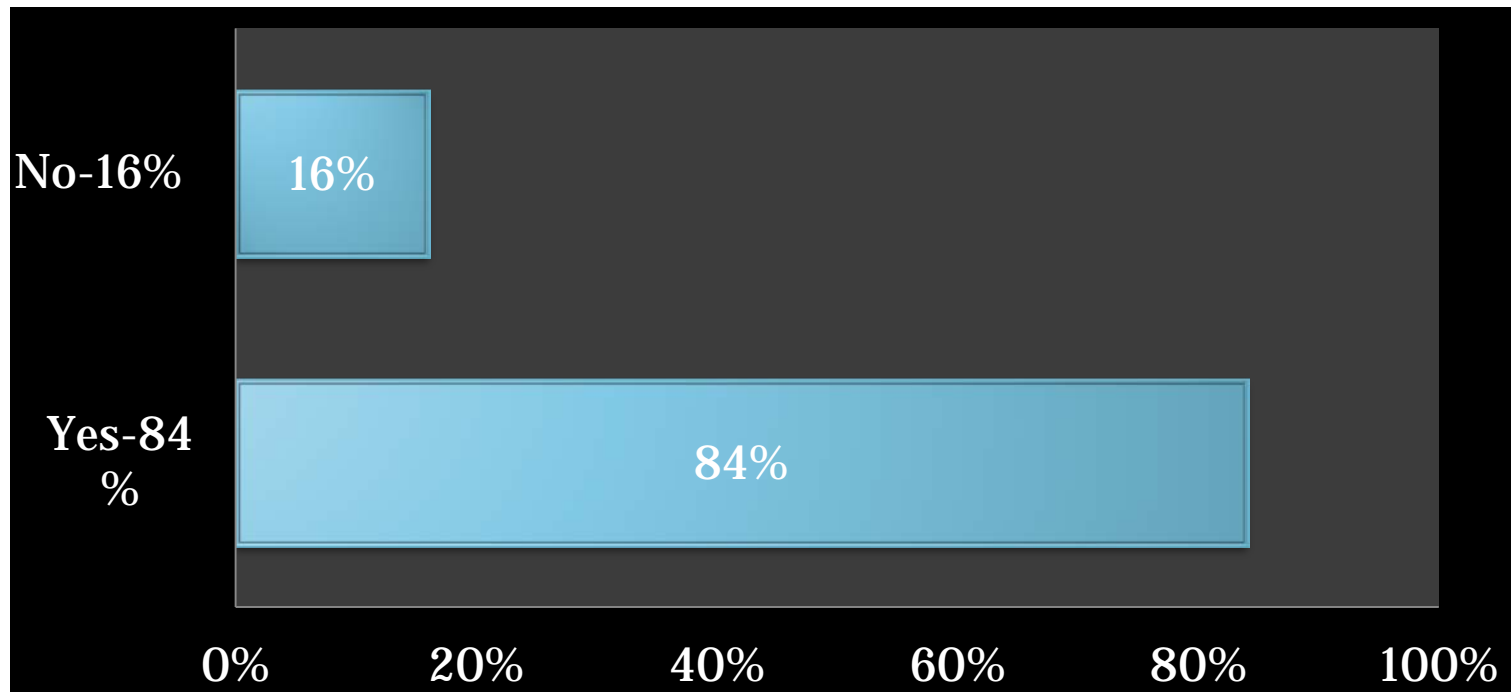
YES - 82.6%

- “To make sure that those involved in the judicial process are to the greatest extent ethical and professional”
- “I believe it will add integrity, credibility and validity to the process”
- “To ensure that mediators have not been convicted of an offense that creates concerns about that mediator’s possible misuse of information gained in mediation”
- “This is a position of trust and neutrality and referred by the court – makes sense”

NO – 17.4%

- “To date it has not presented a problem”
- “Overkill”
- “Not sure what it would prove, or rule out...”

Do you believe the state of Colorado should require minimum standards (including a criminal background check) for mediators in court referred cases?



“If mediators want the courts, attorneys and the public to consider mediation a profession rather than just something done by volunteers, minimum standards should exist. If mediators are one of the few contacts pro se litigants have with the court system, mediators need to meet minimal standards. This is a consumer protection issue and an access to justice issue.”

Do you support the two year provisional period allowing for inclusion of practitioners by proof of training OR a form signed by court?

Yes – 72.5%

- “Provisional period to grandfather current practitioners needed”
- “Without such a “grandfather” clause, some jurisdictions may not have qualified mediators. I am somewhat concerned about the provision for a judge or administrator to sign off on a mediator’s experience. How would they know?”
- “Seems like a reasonable transition step”
- “This would allow everyone who is currently practicing mediation to be included on the list. This is a fair method.”

No – 27.5%

- “There should be no exception to the 40 hour training.”
- “I don’t understand the point of this, as a judge I don’t want to vouch for a mediator.”
- “I think you are giving a hall pass to those who have never believed mediation training was of value – meaning they don’t believe the process is credible or worth learning. Therefore they will continue to engage in behavior that may or may not be mediation – it is a disregard to the process they represent to have knowledge.”

Do you support the requirement that all individuals providing court referred mediation services should complete a 40 hour mediation training?

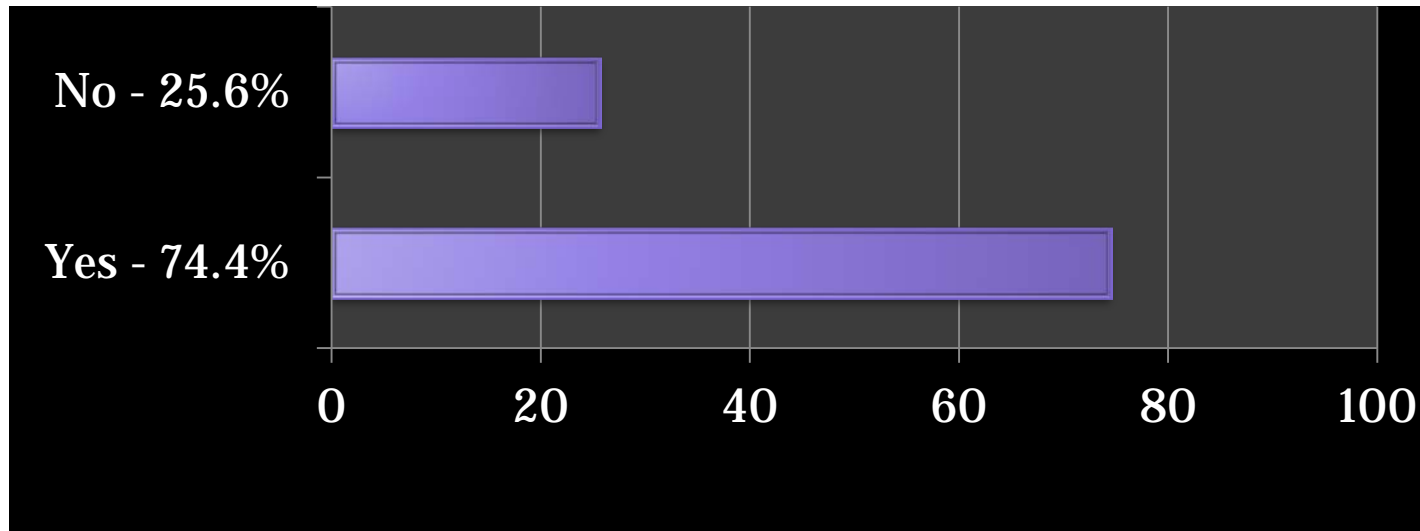
Yes – 80.6%

- “Yes, at the minimum this should be mandatory.”
- “There are a lot of people who think just because they have attended mediations in some context, they have the skills and knowledge to provide mediation services for others without further training. I know there may be some pushback from retired judges and some attorneys, but the fact remains, unless they go through mediation training, they really don’t understand what mediation is and what it can really offer. If they don’t want to apply that knowledge, so be it. But they should not be exempted from training just because they know how to run a courtroom or advocate for a client in the courtroom.”

No – 19.4%

- “Any requirement should ONLY apply to non-attorneys”
- “Training should be a best practice standard, not required”
- “This standard is too low. I have taken the 40 hour class and it is a good training however woefully inadequate to prepare someone to adequately perform a domestic relations mediation.”

Do you support the concept of a mandatory “Mediating in Colorado Courts” 8-hour training requirement for court-referred mediators?



“It is important that mediators are familiar with Colorado law and court processes”

“If required, should be of no expense to practitioner.”

“Exemption for attorneys seems logical”

“Should be exemption for experienced mediators”

“I am not sure what this training is.”

Do you support a standard continuing education requirement for court referred mediators?

Yes – 79.4%

- “If mediation is a profession, it should have CE requirements.”
- “If you don’t require it, how do those who get waived in ever get their information?”
- “Ok, if opportunities are accessible and affordable”

No – 20.6%

- “Any requirement should **ONLY** apply to non-attorneys.”
- “For those who provide mediation as an adjunct to their primary business, this obligation might create a sufficient barrier to lose many program participants.”

Do you support a standard and transparent complaint process for court referred mediators?

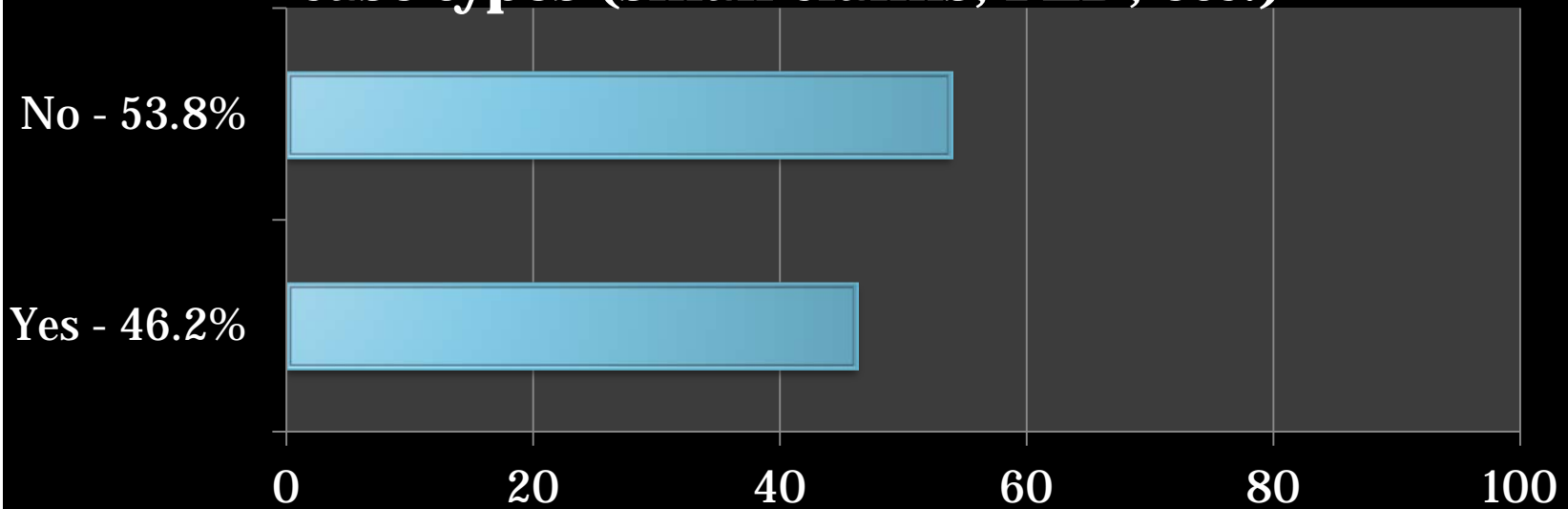
Yes – 83.8%

- “Having a complaint process will increase the public’s confidence in mediation as a profession.”
- “People, especially those filing pro se, need to have a way to file complaints in situations in which they feel dissatisfaction with the process.”

No – 16.2%

- “This would violate the confidential nature of mediation.”
- “I do not support creating a new agency of group within ODR to handle complaints. DORA can do it and provide better due process rights.”
- “Not needed for attorneys in good standing, have CLE requirements”

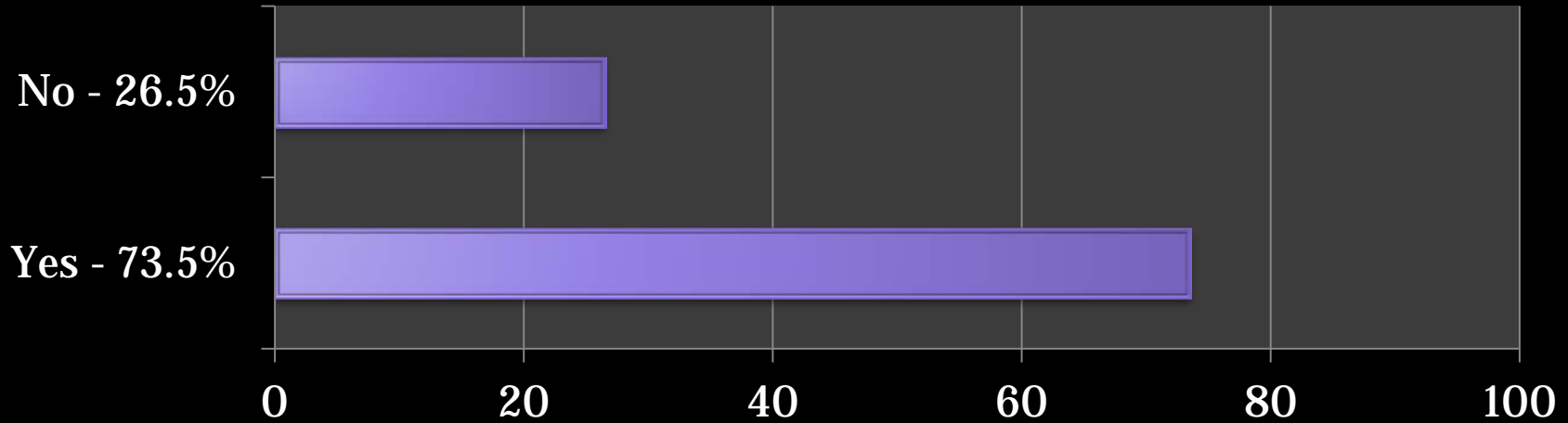
Would you support an exemption for certain case types (small claims, FED, etc.)



“Mediation in these types of cases are often provided by volunteer mediators with personal experience and a talent for assisting conflict resolution. Requiring credentials may discourage those who volunteer their time to mediate such cases.”

“I do not support a blanket exception for specific types of cases. The cases listed in this question are often pro se on at least one side and untrained mediators can cause a lot of damage. It isn't about the amount of money involved if the need for mediation is considered a consumer protection issue.”

Would you support the right of parties to waive these requirements by a judicial finding of good cause?

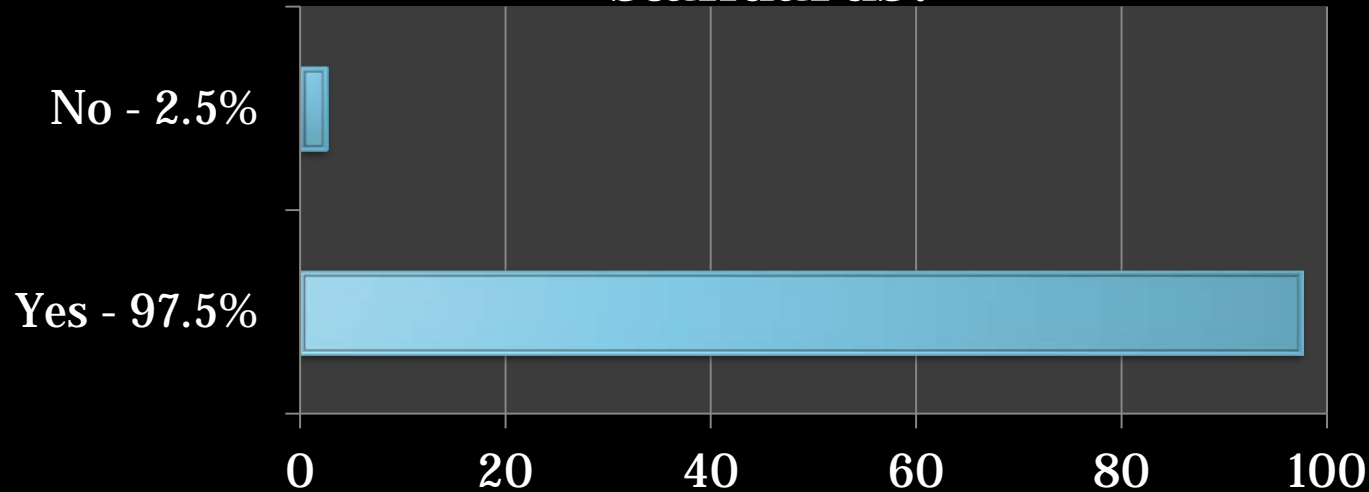


“Parties should be allowed to select who they want as long as they are aware that the person they are selecting does not meet the suggested standards.”

“Agreement of parties should be sufficient – no need to waste court time.”

“Providers should be qualified/credentialed for consistency.”

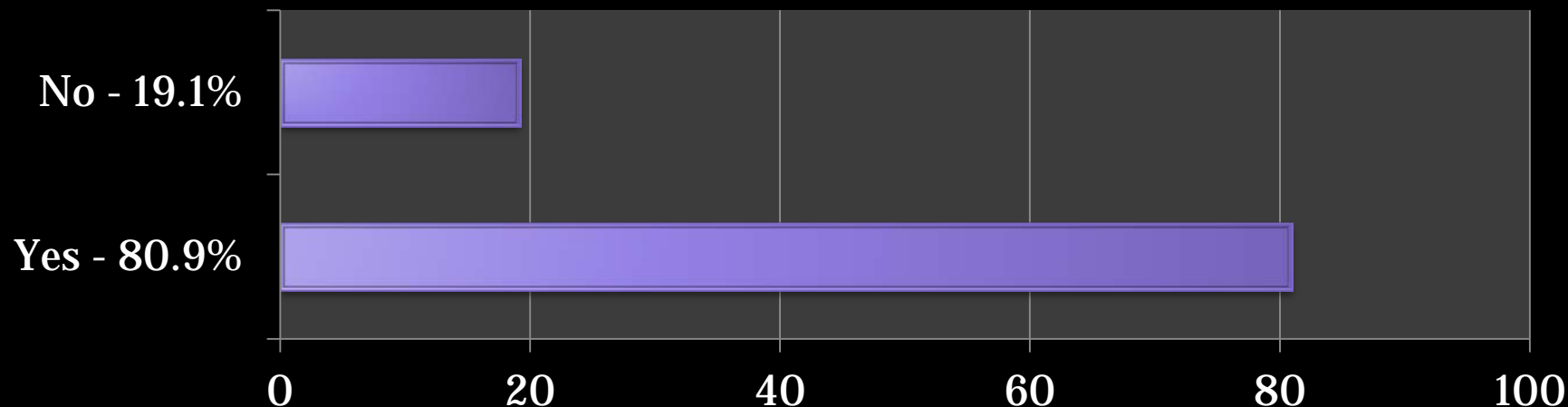
Do you believe mediators should be required to follow general ethical and professional standards?



“If mediation is a profession and serving the public, mediators should be required to follow court professional standards and ethical standards. This is most important in the court referred setting where every other professional the parties come into contact with are held to standards of practice and ethics. Mediators should not be the exception.”

“No need for additional standards for attorneys.”

Do you believe the Colorado Model Standards as set forth should apply?



“Every single practicing mediator in the State of CO should be held to the same standard; not just those who do court mandated cases.”

“Who came up with the standards, and how much discussion was involved before they were adopted?”

“These standards were developed by the ABA, the Association for Conflict Resolution, accepted nationally as the standards of practice, and adopted by the CBA and MAC.”

Trending concerns...

Q: Will attorneys and/or retired judges be exempted from background check, continuing education requirement, 40 hour training or Mediating in Colorado Courts training?

A: As currently written, there are no exemptions based on professional status outside of the 2-year provisional period that pertains to all current mediation practitioners

Trending concerns...

- **Q: The standards are too low**
- **A: As written the policy establishes minimal standards statewide. This is the floor. Nothing in the policy as drafted prohibits local programs from maintaining higher standards**

Trending concerns...

- **Q: Why is there a Mediating in Colorado Courts training suggested in addition to 40 hour mediation training?**
- **A: 40 hour training provides basic theories and skills. Additional training highlights the nuts and bolts of mediating in a court context**

Trending concerns...

- **Q: Isn't DORA better equipped to deal with licensing mediators?**
- **A: Draft policy only applies to mediation within a court context. Judicial is in position to set policies and standards for services performed by court order.**

Trending concerns...

- **Q: Why are current practitioners being required to repeat a 40 hour training during the 2 year provisional period?**
- **A: This is not the intent of the policy but enough questions raised about this that this section may not be drafted clearly. Two year provisional period intended to “capture” all current practitioners through proof of training OR acknowledgement by court**

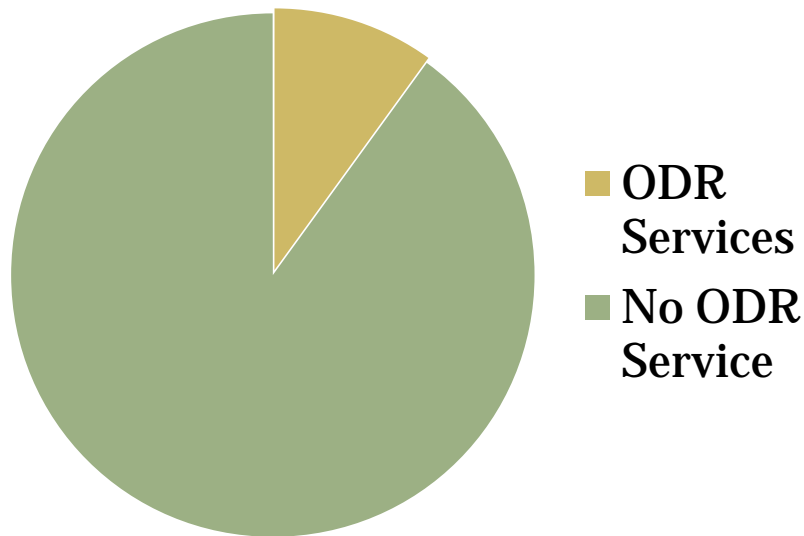
Trending concerns...

- **Q: ODR currently provides higher standards than what is proposed in this draft policy. Most court-referred cases already go to ODR. This policy will dilute the current high standards of ODR.**
- **A: ODR mediators are subjected to interview, role play and observation. The proposed policy does not require this on a statewide basis but does not prohibit local programs from requiring higher expectations/standards**

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ODR provides a portion of court referred mediation services

FY13 Initial DR Filings



- **FY13 – Initial DR Caseload**
- 34,593 DR cases filed statewide
- 11% of these cases – ODR services

ODR business model changed in response to Budget cuts

2009

- ODR Central Office
 - 7 staff (7.675 FTE)
- ODR Regional Program Managers
 - 9 staff (4.0 FTE)

2014

- ODR Central Office
 - 3 staff (1.75 FTE)
- ODR Regional Program Managers
 - 0
- District ADR Managers (managed locally, not ODR)
 - 2 staff (1 FTE)