



# THE NEUTRAL ZONE

## A PUBLICATION OF THE OFFICE OF DISPUTE RESOLUTION

September 1, 2016

State Fiscal Year 17, Fall Issue

[www.coloradoodr.org](http://www.coloradoodr.org)

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*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 reflect the position of the Judicial Branch.*

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## FROM THE OFFICE OF DISPUTE RESOLUTION...

ODR is pleased to resurrect "The Neutral Zone," ODR's newsletter that has been dormant for the last few years. The newsletter will be quarterly and we welcome submissions from you regarding practice tips, thoughts, and suggestions for newsletter topics.

With that in mind, I'd like to let you know about some training opportunities coming up such as the annual Alternative Dispute Resolution Conference! The conference will be on Friday, November 11, 2016 at the Renaissance Denver Hotel. This year, we will have a fabulous keynote speaker, Mark Gerzon, the author of *The Reunited States of America: How We Can Bridge the Partisan Divide*, and *Leading Through Conflict: How Successful Leaders Transform Differences into Opportunities*. Please be sure to register early.

The annual ODR contractor meeting will be held on November 10, 2016, the day prior to the conference from 8:30 a.m. to 11:00 a.m. here at the Ralph Carr Judicial Complex in Rooms 1A and 1B. We will be having a brief training on Domestic Violence as well as some enrichment activities from Peggy Evans and Hugh Young. Looking forward to seeing all of you, and finally meeting some of you in person.

Some housekeeping reminders regarding billing and data - Please make sure you are entering case data for all ODR cases, even if the parties pay you privately. We will report on the FY16 data in the next newsletter after it is finalized. Due to their importance, I again would like to highlight the specific data entry and timing requirements from the ODR Policy and Procedures to ensure timely payments to contractors:

### CASE MANAGEMENT

1. Case information shall be entered into the online database by Neutrals for every ODR case, whether party pay or state/federal pay. ...

2. Except for the month of June, all case and billing information must be submitted through the electronic case management system as soon as possible but no later than the 20<sup>th</sup> day of the month following that month in which the work was performed. For example, for mediations occurring in August, case and billing information must be submitted by September 20th.

3. All cases for the month of June must be entered prior to the end of the first week of July.

### SUPPORTING DOCUMENTATION

1. If fees have been waived or reduced, "back-up" or evidence of indigent or low income status must also be attached that is dated within 6 months or less of the mediation.

2. For A&V Special Program cases, additional questions must be answered online and will appear when the AV programs are selected by neutrals.

Because ODR relies on you for data integrity, we greatly appreciate your keeping current on your billing. If you have questions about what program to bill, please contact Veronica and/or me as we are more than happy to get your questions!. Thank you for all the great work you do, enjoy your fall and we'll see you in November!

*- Sharon Sturges, ODR Program Coordinator*

# AN OVERVIEW OF DOMESTIC

## 2016 MEDIATING IN COLORADO COURTS

On April 7th, the Office of Dispute Resolution held its first statewide training for new and experienced mediation professionals working in the Colorado court system.

Over the course of this training session, mediators learned how to work more effectively within the Colorado courts in domestic relations cases and to deliver mediation services with procedural fairness.

The day began with opening remarks from Colorado Supreme Court Justice Richard Gabriel and then proceeded with an overview of domestic relations cases and a discussion of court roles in these case types.

During a lunch provided by the ADR section of the Colorado Bar, participants were given an opportunity to ask a panel of judicial experts questions about their experiences with mediation in the courts.

In the afternoon, mediation-specific topics ranging from property and maintenance to parenting issues were discussed, as well as ethical and domestic violence concerns for mediators.

Mediating in Colorado Courts is next scheduled for September 23., 2016

As outlined by Magistrate Karen Hubler (2nd JD) and Magistrate Stephanie Rubinstein (21st JD), Domestic Relations cases can be tricky to navigate without the right guide. This section includes a few tidbits and helpful reminders for new and experienced mediators as compiled from Magistrate Hubler and Rubinstein's presentation at 2016 Mediating in Colorado Courts.

### Who's Who in a Domestic Relations Case?

**Judge:** can hear any issues related to family law cases. Appointed by governor, serves for retention.

**Magistrate:** hired by the judicial district. Works at the pleasure of Chief Judge in jurisdiction. Can hear family law matters except if the parties do not consent to a magistrate hearing final orders.

**Petitioner:** a person who initiates the case

**Co-Petitioner:** when the parties file the case together, this is the other party.

**Respondent:** when the parties do not file the case together, this is the other party.

**Intervenor:** a party who has an interest in the case and the ability to be a party in the case (e.g. grandparents for the purpose of grandparent visitation).

**Child and Family Investigator:** paid by state or parties to provide evaluation and recommendation as to what is in the best interest of the child.

**Parental Responsibilities Evaluator:** same as CFI, except more in depth. Usually includes psychological testing.

**Parenting Time Coordinator:** paid for by parties, helps parties outside of court to come to an agreement.

**Decision-maker:** if parties agree, a decision-maker can listen to the issue and make binding decisions regarding parenting time and decisions for the children.

### Temporary v. Permanent Orders

Temporary orders are interim orders issued pending a final orders hearing or written agreement of the parties. They are not binding on final orders. Any issues related to Allocation of Parental Responsibilities or Dissolution of Marriage can be considered at final orders.

Issues which may be considered at temporary orders (and thus a mediator should address) are:

- ◆ parenting time
- ◆ decision-making
- ◆ child support
- ◆ temporary maintenance
- ◆ temporary possession of personal and real property

At a final orders hearing, a judge will decide:

- ◆ decision-making
- ◆ parenting time
- ◆ child support
- ◆ extra curricular activity expenses
- ◆ non-covered medical expenses
- ◆ dependency deduction

Asset and/or debt division and maintenance may also be considered at this time, if needed.

### Protection Orders

Can be civil (allegations of imminent harm) or criminal (protect witness, victim of crime). Permanent protection orders (PPOs) are in full force and effect until modified by court. Protection orders can include no contact or limited contact provisions, mediators should get a copy of orders involving the participants to understand limitations in providing mediation. Safety of all involved parties is a priority.

# RELATIONS CASES IN COLORADO

## Domestic Violence and Domestic Relations

Mediation can be waived at any time due to domestic violence. If there is credible evidence of DV, the court shall not allocate joint decision making when one party objects, and the court can enter orders to protect the safety of the child or abused party, for example: transitions in public places or supervision; supervised parenting time; limitation of parties at transition; or limitation of contact between parties.

## Domestic Relations Mathematics 101: Factors Considered in Dividing Property, Debt, Child Support and Maintenance for All Cases Types

Property is considered separate when it is: received before marriage; inheritance or gift received during marriage; separate property exchanged for other separate property; property excluded by a valid pre-nuptial agreement. Marital property is: acquired during the marriage; how it is titled may not matter; increase in value of separate property.

The division of debt is intended to be “fair,” “equitable,” and “not unconscionable.” This does not necessarily mean “equal.” Property must be divided at the time of the divorce. Factors to consider in dividing property and debt: contribution to acquisition of the property—including contribution as a homemaker; value of the property each party is going to get—separate or marital; economic circumstances of the parties—are they working, or have other income; increase or decrease of property received (separate or marital).

Child support guidelines create a presumption for child support and are calculated by: parties’ income; whether there are other children, not of this relationship; number of overnights for each parent; cost of health insurance; cost of child care; cost of extraordinary medical or other costs; maintenance, if paid.

Maintenance can be ordered on a temporary or permanent basis. “Permanent” means after final orders, but may still be for a specific term. First, the court makes initial findings regarding: income of the parties; marital property awarded to each party; financial resources of each party; and reasonable financial need. After initial findings, the court finds initial amount and term of award after consideration of the amount under the guidelines and the following 12 factors: financial resources of both parties, including income from property and income from any other source; lifestyle during the marriage; distribution of marital property and whether that property could reduce need for maintenance; income and employment history, including whether schooling is available, and reasons a party is not employed; whether a party has earned higher or lower income during the marriage; duration of marriage; amount of temporary maintenance and number of months paid; age and health of the parties; significant economic or noneconomic contribution to the marriage; whether there are circumstances that would justify nominal maintenance; and any other factors.

Maintenance is awarded only if there is insufficient property or income to provide for reasonable needs. The Court has discretion to not use the guidelines.



## Identifying the Best Interest of a Child and Decision-Making Roles:

In determining the best interests of a child, the court considers: credible evidence of child abuse/neglect or domestic violence; parent’s wishes; child’s wishes (if the child is sufficiently mature to express reasoned and independent reasons for parenting time.); people who are important to the child: parents, siblings, stepparents, grandparents, etc.; child’s adjustment to home, school and community; mental and physical health of all parties involved; the ability of the parents to encourage a relationship with the other party; past pattern of involvement of the parties with the child which reflects a system of values, commitment and mutual support; physical proximity of the parents with each other; and whether the parent has the ability to place the needs of the child ahead of their own needs.

Decision-making is typically “joint” or “sole” regarding major decision such as education, health (medical and dental), religion, and extra-curricular activities. The court reviews: credible evidence of child abuse or neglect and of the ability of the parties to make decisions together; past pattern of involvement which reflects a system of values, time commitment, mutual support indicating an ability as mutual decision makers to provide a positive and nurturing relationship with the child; and will allocation of joint decision making promote a relationship between the parent and child.

### **MEDIATOR PRO TIP: “Working with Pro Se Litigants”**

- ◆ Agreements are not orders until signed by the court
- ◆ Judicial officers can reject agreements if it is not conscionable or not in the child’s best interest.
- ◆ If it is not in writing, it is not part of the agreement.
- ◆ Make sure the parties know what to do next.

## UPCOMING DATES

**September 11–14, 2016**

*Judicial Conference and  
Colorado Court Employees  
Conference*

**September 23, 2016**

*Mediating in CO Courts  
Mesa County Courthouse  
Grand Junction, CO*

**December 2, 2016**

*Domestic Violence Training for  
Mediators by Family Tree  
Denver, CO*

## MEDIATION RESOURCES

*Colorado Judicial Branch  
Office of Dispute Resolution*

<http://coloradoodr.org>

*The Mediation Association of  
Colorado*

[http://coloradomediation.org/  
index.cfm](http://coloradomediation.org/index.cfm)

*Colorado Conflict  
Resolution Month*

[http://  
conflictresolutionmonth.org](http://conflictresolutionmonth.org)

*American Bar Association—  
Dispute Resolution Group*

[http://www.americanbar.org/  
groups/dispute\\_resolution.html](http://www.americanbar.org/groups/dispute_resolution.html)

*Colorado Bar Association -  
ADR section*

[http://www.cobar.org/For-  
Members/CBA-Sections/  
Alternative-Dispute-Resolution](http://www.cobar.org/For-Members/CBA-Sections/Alternative-Dispute-Resolution)

## THE MEDIATOR'S CORNER ... featuring: Peggy Evans and Hugh Young

### *The Practice of GREAT Mediation*

Each year we each attend a number of mediation conferences and trainings. The most contentious subject that surfaces is the importance of substantive knowledge for mediators. On one side is the opinion that substantive knowledge is secondary and that a trained mediator can help people resolve differences with little substantive expertise. On the other side is the opinion that a mediator must have substantive expertise in the issues being mediated. The next most contentious debate is procedural expertise.

In our extensive combined experience, more substantive and procedural expertise is almost always better than less. However, if this knowledge was all that is necessary, then every retired judge and knowledgeable lawyer, with no mediation training or experience, would be a skilled mediator. We know that is not the case.

Our goal is to explore a third side of mediation expertise. We want to begin by establishing our firm belief that a solid grounding in substance and procedure is a given. Every mediator should strive diligently for substantive and procedural expertise.

What we'd like to explore in this and future articles is what are the factors, beyond substance and procedure, that make a great mediator? The question is not a trivial one. Our clients are counting on us to help them. Get it right and we can do tremendous good. However, when things go wrong, we can cause great harm.

A great mediator will help clients produce fair and wise settlements while improving the relationships. To get there, great mediators know how to connect and build trust with their clients through effective listening and empathy. Building on the foundation of trust and understanding, great mediators help clients reframe the conflict and gain insight into the needs, instincts, and interests that are the driving forces in all human actions. Finally, a great mediator has the ability to help the parties craft a settlement that best serves their needs.

Our founding premise is that the factor that most distinguishes a great mediator is a practical understanding of people. We've all known and worked with untrained people who were very good at getting others to talk and effectively negotiate differences. The relevant question here is whether expertise in the human side of mediation can be learned, or is it the exclusive domain of those born with the right mix of nature and nurture? We don't underestimate the value of being a natural mediator. However, we do believe that everyone can improve his or her abilities in the human side of mediation. Which is where ODR comes in.

ODR is a leading advocate for mediation in Colorado. Along with other mediation organizations we jointly have an essential role in furthering mediation in our state, but ODR's position in Colorado's courts is uniquely powerful. What we do as ODR mediators has a profound impact on the future of mediation in Colorado. It is in our self-interest to do everything we can to see that every mediator in the state does a superb job in the practice of mediation.

We hope that ODR will continue to support programs like the annual ADR conference and other meetings where mediation professionals have the opportunity to develop and stay current on the substantive and procedural issues they are mediating. Additionally, the Mediating in Colorado Courts program presented in April 2016 is a good example of how ODR can continue to support procedural excellence.

With this in mind, the authors are grateful that ODR is giving them the opportunity to share their thoughts on how to help mediators improve their skills in the human side of mediation at the annual ODR meeting in November. Please join us!

*Peggy Evans has been mediating since 1992. She was an ODR Mediator 1998-2001 and beginning again in 2011. From 1994 until 2008, she managed FACE-to-FACE Mediation Services, a community mediation and restorative justice program, serving Colorado's 18<sup>th</sup> Judicial District.*

*Hugh Young is under contract with ODR to provide mediation services to the four courts of the 11th Judicial District (Fremont, Chaffee, Park and Custer Counties).*