

TOWN HALL MEETING:
DRAFT POLICY ESTABLISHING MEDIATOR STANDARDS
FEB 7, 2014 (DENVER)

Members of the Task Force in attendance:

Judge Todd Plewe, District Court Judge (22nd JD) and co-Chair of ODR Advisory Committee;

Holly Panetta, Court Programs Manager and ODR Director, State Court Administrator's Office; and

Bill Delisio, Family Law Programs Manager, State Court Administrator's Office

Absent member:

Magistrate Randall Lococo, District Court Magistrate (19th JD)

The goal of the Task Force is to create a recommendation that will "elevate standards of court-referred mediation in the state of Colorado." The draft policy in circulation is a tool for discussion. Nothing has been approved or accepted and Task Force is spending next couple of months gathering feedback and engaging in conversations with key stakeholders. A final report will be prepared based upon feedback and data gathered. The recommendations are minimum standards establishing a "floor" not the "ceiling."

Review of survey data to date (presentation attached).

COMMENTS FROM AUDIENCE:

Comment: Mediators should be observed. Is there a place to put a performance panel?

~Task Force: Task Force and ODRAC discussed this. May be unmanageable. Good point.

Comment: After 2 years what happens? Instead of "grandfathering" have all potential mediators do a role play and be observed.

~ Task Force: Standards will be higher after 2 years for those wanting to be on the list. Current policy is an attempt to include all current practitioners.

Comment: Will the courts accept acknowledgement from other sources like the Postal Service for people who are regular mediators for them?

~Task Force: The policy addresses court referred mediation and experience in the courts but this is a good point to discuss.

Comment: How are you addressing the lower socio-economic class and the cost to become a trained mediator?

~Task Force: This policy does not address this issue.

Comment: Mediator Association of Colorado already has principles in place. Don't need to duplicate.

Comment: Concern expressed about what the role of a judge is in settlement. A judge in the room commented that judges don't hear feedback pertaining to mediations.

~Judge Plewe agreed that he didn't hear feedback unless there was something seriously wrong but this is a problem for him that he doesn't know how the mediations he orders are being handled and by whom.

Comment: "Court-referred" mediation should be well defined. Judge

~Task Force: ODRAC did address this in section 4 of the draft proposal.

Comment: A family law attorney voiced concerns that no one reached out to the Family Law section. He asked, "How do you avoid the unauthorized practice of law?"

~Judge Plewe offered to meet with the Family Law section to discuss this directly with the section.

Comment: Mediator indicated she is in favor of these standards. However, she suggested that the requirements should be tailored to each group (attorneys, judges, etc). She had a real concern with the complaint process. She stated that someone who just didn't like you or the outcome could present a problem.

~Task Force: The complaint process is the most troubling of all of the standards but there is a need for some type of complaint process. It protects the people doing a good job but does allow provisions to eliminate someone off the roster if there really is a very good reason.

Comment: These minimum standards are way too minimal. The current system is a "buyer beware" system. However, if there is a list, the public may be deceived into thinking everyone on the list is equally qualified. There was a concern with mediators who have no domestic violence training would still be able to mediate domestic cases without training. There is a concern about the complaint process for people are just unhappy with the mediation outcome.

~Task Force: The committee actually talked about domestic mediation training. We know the complaint process is one of the hardest parts of this process.

Comment: The draft policy over-simplifies what is going on. To suggest that someone who has just a 40 hour training has the same qualifications to mediate a case as a family attorney is ridiculous.

~Task Force: The ODRAC and the Task Force had lengthy discussions about further requirements for domestic cases. Compared minimum standards to passing the bar – attorneys who have passed the bar can practice law but that doesn't make them good attorneys.

Comment: Expression of frustration with attorneys who don't get trained to become mediators. The speaker is both a mediator and an attorney and mediators have

different skill sets than attorneys. She stated that some of the worst mediators are judges, because they make decisions for the parties. Mediators need to determine what is best for mediation. She did agree that domestic mediators need domestic mediation training. She also suggested that the recommendations need to consider low income litigants.

Comment: Speaker was supportive of the concept of additional training for domestic cases. He supports the concept wholeheartedly. He warned that you cannot regulate the quality of people – attorneys or mediators. He voiced his support of this “floor.” He was concerned about what the 8 hours of “Mediating in Colorado Courts” training looks like and stated a belief that attorneys should be waived from this.

~Task Force: There needs to be a level of consistency in the requirements. There was no intention for waiving this requirement.

Comment: A person asked how this would apply to other ADR processes - settlement conferences, special masters, etc. He suggested that further clarification about other forms of ADR need to be addressed.

~Task Force: The policy as drafted will impose a requirement on judges. The order will specify the portion of Colorado Dispute Resolution Act pursuant to section 311 or 313. The intent of this policy is to apply to mediation pursuant to 311 only. The committee had to work within the CDRA statute. If a policy is to be implemented, there may need to be a conversation that will address revising CDRA legislatively.

Comment: Concern raised that pursuant to CDRA, ODR has no authority to regulate non-ODR mediators. Further concern that the draft made it appear that ODR would no longer provide services. ODR has always provided indigent services and affordable fees for low income parties and how would this be affected by the requirements? A problem statement should be provided to the mediation community.

~Task Force: The regulation would be coming in the form of a directive or a rule from the Chief Justice. This policy has been reviewed by legal department and any further drafts would also be reviewed. How this policy would impact ODR’s current operations remains to be seen but the Task Force recognized that ODR’s function could change if tasked with overseeing a mediator roster. ODR business model is different than it was 5 years ago. Budget cuts impacted the staffing and resources of this program tremendously.

Comment: There was a statement that problem definitions should be provided to the mediation community and a suggestion that the mediation community identifies and work to resolve each issue separately. Who is going to credential the training programs?

Comment: It seems like there is a rural issue and a separate issue for the metro area.

Comment: There was a concern regarding access to justice in all cases. There shouldn't be lower requirements for small claims and FED cases. All mediators should have to abide by the same standards no matter the type of case.

Meeting adjourned at 3:05pm