



Honorable Nancy E. Rice  
Chief Justice Colorado Supreme Court  
Ralph L. Carr Colorado Judicial Center  
2 East 14th Avenue  
Denver, CO 80203

Dear Chief Justice Rice:

I am writing on behalf of the Mediation Association of Colorado (the MAC). Our membership of over 200 includes those aspiring to become mediators as well as professional mediators who earn their livelihood from mediation. ODRAC recognizes that the standard for our professional mediators is substantially similar to that required of ODR contractors.<sup>1</sup>

With some alarm, we have reviewed the November 16, 2015 Draft Policy Establishing Standards for Mediators Accepting Court-Referred Domestic Relations Cases Pursuant to §13-22-311, C.R.S. (Draft Policy). At this time, we, the Board of the MAC, wish to offer our analysis of the Draft Policy to you directly. We understand that some view the policy as a “first step” towards standards, however, we believe this step will create a false sense of security for the consumer, and have adverse impacts on litigants, mediators and the entire domestic court system.

Our main concern is that creation of a “Roster” would suggest to litigants, especially *pro se* parties, that any mediator listed is qualified and competent to take their case, when in fact, no actual mediation experience is required. While they may have completed a 40-hour training, parties may be mediating with someone who has never actually conducted a mediation before. Additionally, inexperienced mediators may end up screening for domestic violence or mental health issues for which they are entirely unprepared, leading to physical endangerment in an unsecured setting.

The Draft Policy does contemplate a “courts training” and a continuing education requirement, but, neither of these are required prior to a mediator’s “day-one” on the Court’s roster.

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<sup>1</sup> Memo re “Proposal for court-referred mediation” to Chief Justice Bender from ODRAC dated 10/29/12.

“The Mediation Association of Colorado (the MAC) currently has minimum standards and guidelines in place for their professional member status, which includes minimum training, mentoring, continuing education, and a grievance process. The MAC standards and guidelines for its professional member status are substantially similar to the qualifications required of ODR contractors.”

Indeed, the Draft Policy on continuing education only states that “ODR will develop policies and procedures.”<sup>2</sup> There simply is no current or proposed policy as to content.

The Draft Policy differs from its 2013 & 2014 predecessors in that it omits to say that “parties referred to mediation services or dispute resolution programs may select said services or programs from mediators or mediation organizations or from the office of dispute resolution.”<sup>3</sup> The statute is unchanged and we see the choice of mediator as belonging to the parties.

We worry that many good mediators with years of experience may arbitrarily be excluded from the roster, jeopardizing careers that have taken years to establish. ODR the SCAO or their designee would have the ability to include or exclude mediators from the roster. Professional mediators could be removed from the Court roster without due process or recourse to appeal that decision.<sup>4</sup>

We are especially troubled by the proposed complaint process because any mediation communication that is disclosed in violation of §13-22-307 “shall not be admitted into evidence in any judicial or administrative proceeding.”<sup>5</sup> A better solution may be for the Court to recommend the public to choose among mediators who carry malpractice insurance.

We feel there are better alternatives to address the need for skilled mediators in rural areas, rather than endorsing inadequate standards for mediators statewide, perhaps through solutions such as video conferencing.

In conclusion, we fear that replacing the current system with the credentialing system as defined in the Draft Proposal could be detrimental to court referred domestic mediation in Colorado. It would lower the quality of services for the public, and perhaps reduce the quality of MOU’s in the court system. We see the risk of more litigation, with fewer domestic cases being resolved through mediation.

Our preference would be to work cooperatively with the Court and ODR, and we respectfully request a meeting with yourself before any final policy is adopted.

Sincerely,



Sara Johnson

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<sup>2</sup> Draft Policy Section III D.

<sup>3</sup> §13-22-311(1).

<sup>4</sup> See Draft Policy Section I (penultimate paragraph); Section II(H) and Section (IV)(J).

<sup>5</sup> §13-22-307(3).