



**PLANNING AND DEVELOPMENT DEPARTMENT
MEMORANDUM 13-09**

DATE: April 15, 2013
TO: Honorable Mayor Joyce Downing and City Council Members
FROM: David H. Willett, Acting City Manager 
Brook Svoboda, Director of Planning and Development 
SUBJECT: Draft Mediation Program

BACKGROUND

Attached is a draft Mediation Program for Council's consideration. The proposed program intends to formalize the process of addressing complaints driven by ongoing disputes between residents in the community.

The primary goals of this program are:

- Reduce repeat complaints where the intent is to harass and/or retaliate against another party
- Provide a means to resolve differences in a meaningful and collaborative way, when possible.

EFFORTS TO DATE

- Drafted policy and procedure manual – formalizing process and supporting documents
- City Attorney review of:
 - Policy and procedure manual
 - Supporting documents
 - Colorado Revised Statutes, Dispute Resolution Act
- Four Staff have received training and certification for mediation/conflict resolution
- Informal test cases

CRITERIA FOR PROGRAM ELIGIBLE CASES

The Conflict Resolution Program accepts cases involving Northglenn residents only.

Cases originating from outside Northglenn are not eligible for services; however, alternative resources are offered whenever appropriate.

The following represents the proposed situations/circumstances that would be appropriate for mediation:

Neighborhood disputes

- Animal/pet problems
- Noise and nuisance behaviors
- Property maintenance issues
- Traffic and parking disputes
- Children/youth conflicts (neighborhood bullying, harassment, vandalism)
- Lifestyle clashes (i.e. student/non-student conflicts)
- Property line and fence disputes
- Trees and vegetation
- Drainage/irrigation disputes
- Homeowner association conflicts that are not legal in nature (i.e. by-law or covenant amendments, builder/homeowner disputes)

Cases that would **not be appropriate** for Conflict Resolution/Mediation:

- Divorce/child custody disputes
- Criminal cases (adult or juvenile)
- Contractual disputes (i.e. building, zoning, homeowner's association) conflicts
- Employment disputes
- Discrimination complaints
- HOA covenant enforcement issues

BUDGET IMPLICATIONS

Re-certification training would have an annual cost of approximately \$4000/yr = \$1000.00 per person.

STAFF REFERENCE

Brook Svoboda, Director of Planning and Development bsvoboda@northglenn.org or 303.450.8937

ATTACHMENTS

- Attachment 1 Draft Mediation Program
- Criteria for Selection
 - Forms
 - Policy & Procedures w/ appendixes

Criteria for referring a case to Conflict Resolution

- All parties involved are of sound mind and able to make reasonable decisions
- There is not a criminal case and the referring employee feels that Conflict Resolution/Mediation can solve the conflict
- An email needs to be sent to **Stephanie Pelster, Program Coordinator(spelster@northglenn.org)** requesting Conflict Resolution/Mediation Services. Once the email is received, the program coordinator will review the case and determine if it is appropriate for Conflict Resolution/Mediation Services. The email needs to include the following information:
 - **Name and department of the employee referring the case**
 - **Name, address, and phone number of all parties involved**
 - **Date, time and location of the contact made with the parties involved**
 - **A brief description of the conflict**

Cases appropriate for Conflict Resolution/Mediation:

Neighborhood disputes

- Animal/pet problems
- Noise and nuisance behaviors
- Property maintenance issues
- Traffic and parking disputes
- Culture/diversity issues
- Property line and fence disputes
- Trees and vegetation
- Drainage/irrigation disputes
- Homeowner association conflicts that are not legal in nature (i.e. by-law or covenant amendments, builder/homeowner disputes)

Cases not appropriate for Conflict Resolution/Mediation:

- Divorce/child custody disputes
- Criminal cases (adult or juvenile)
- Contractual disputes (i.e. building, zoning, homeowner's association) conflicts
- Employment disputes
- Discrimination complaints
- HOA covenant enforcement issues

Cases Received for Mediation

- The program coordinator will complete an intake form and assign the case a case number
- Pre-mediation interviews will be done with all parties involved to determine if the case is appropriate for mediation.
- If the case is appropriate for mediation, mediators will be contacted and the mediation will be scheduled
- A confirmation letter will be sent (if time allows) to all parties involved.
- If the case is not appropriate for mediation, other avenues will be looked at to address the conflict (phone calls, referrals ect.). A separate form (unable to mediate) will be completed describing the situation and outcome of these cases.
- An email will be sent to the referring employee describing the outcome of the case. Due to confidentiality issues the referring employee will only be told if the case went to mediation or if the case was handled another way.
- The program coordinator will keep records of all cases and track the statistics of all cases referred.

Parties involved in the conflict

Name _____
Address _____
Phone Number _____
Email _____

Name _____
Address _____
Phone Number _____
Email _____

Describe any law enforcement/code enforcement action taken

Mediation Scheduled (date, time and location)

Confirmation letters sent Yes__ No__ If no, describe why

Mediation Completed Yes__ No__

Why mediation was not completed

Case summary

Follow up date _____

Follow up notes _____



Sample

Date

**Bob Smith
1234 Main Street
Northglenn CO, 80233**

This letter is to confirm our meeting on **Tuesday September 18th at 10:00 AM**. The meeting will take place at **Northglenn City Hall located at 11701 Community Center Drive**.

The purpose of this meeting is to resolve an ongoing conflict through mediation. Mediation allows the participants to communicate and resolve their issues in a neutral and safe environment while a third party (mediator) facilitates the process.

We will help identify issues and clarify perceptions of the problem. During mediation, we will establish ground rules that will provide a secure environment. We will work with all parties involved to define topics or areas of concern, defuse antagonism, and to find common ground. Together we will brainstorm options for resolving the issue. We can then reach a mutually acceptable agreement that will meet both your needs.

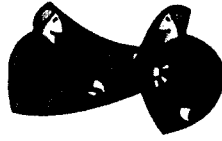
I am Confident that we will be successful and be able to come up with solutions to this conflict.

Thank you for your cooperation and your willingness to attend this meeting. If you have any questions please contact Stephanie Pelster at 303-280-7840.

Sincerely,

Stephanie Pelster, Neighborhood Services Supervisor

Ground Rules / Guidelines for Mediation Sessions



- Parties have agreed to participate in good faith and work toward the peaceful resolution of their case.
- Session will take the time it needs for everyone to be heard. We have set aside _____ (time) for this mediation session.
- Keep discussion focused and relevant. Parties will follow the set mediation process and will present information in a timely manner.
- Focus on the issue that has brought you together, not the individual.
- Be honest and keep an open mind.
- Disagreements will not result in personal attacks or physical aggression. Participants will refrain from name calling, profanity and put downs or threats.
- Every person will have the opportunity to speak openly, one at a time without interruption or disrespect.
- Parties will listen respectfully to one another, even if in disagreement.
- Write down thoughts on paper when others are speaking.
- Mediators and/or parties may call a break if negotiation is being stalled for any reason.
- Logistics - restrooms, breaks as needed
- PLEASE turn cell phones off, or on vibrate if necessary. We need your full attention!

Agreement to Mediate

In consideration of the mediation services provided by the City of Northglenn (the "City"), I hereby state, and agree to, the following:

Initial

_____ I agree to make a sincere attempt to resolve the dispute in a peaceful and rational manner with a willingness to engage in open-minded compromise negotiations.

_____ I understand that mediators cannot and do not offer legal advice or legal counsel.
If I desire legal advice or assistance, I will obtain my own legal counsel. If I have any questions about my legal rights, the legality of this agreement, or the legality of any agreement I reach during the course of the mediation, I have been encouraged to consult with my own attorney.

_____ I understand that to the extent permitted by law, all information shall be kept confidential by the mediation program unless all parties agree to the release of a specific statement.

_____ I understand that mediators are required by law to report any suspected incidents of child or elder abuse or intent to commit a serious crime.

_____ I hereby release the City, its mediators and other officers, employees and volunteers from any and all claims and causes of action for any losses, injury or other damages arising from or in any way relating to the mediation or the underlying dispute.

_____ I understand that by not signing this document I cannot actively participate in a mediation session.

Signature

Date

Signature

Date

Signature (Mediator as witness)

Date

Unable to Mediate

Case Number _____

Date _____

Mediators Name _____

Why the case was not mediated ?

How the case was handled (phone calls, referrals)



Conflict Resolution/Mediation

Policies and Procedures

Mission statement

The mission of the City of Northglenn's Conflict Resolution Program is to provide free, confidential dispute resolution services to Northglenn residents. This service emphasizes a safe, efficient, and neutral environment and is guided by professional mediators from the City of Northglenn.

Program Information

The Conflict Resolution Program utilizes the skills of professionally trained City employees to facilitate mediation sessions and to provide input about program administration. 40 hours of accredited basic mediation training is required. Mediators must be willing to adhere to the Mediation Association of Colorado Professional Code of Conduct (Appendix A).

The City of Northglenn mediations are typically facilitated using a co-mediation model, in which each mediator (lead and co-) has certain responsibilities. Appendix D outlines these responsibilities.

Criteria for cases

The Conflict Resolution Program accepts cases involving Northglenn residents only. Cases originating from outside Northglenn are not eligible for services; however, alternative resources are offered whenever appropriate. Cases appropriate for mediation include:

Neighborhood disputes

- Animal/pet problems
- Noise and nuisance behaviors
- Property maintenance issues
- Traffic and parking disputes
- Cultural/diversity issues
- Property line and fence disputes
- Trees and vegetation
- Drainage/irrigation disputes
- Homeowner association conflicts that are not legal in nature (i.e. by-law or covenant amendments, builder/homeowner disputes)

Cases not appropriate for Conflict Resolution/Mediation:

- Divorce/child custody disputes
- Criminal cases (adult or juvenile)
- Contractual disputes (i.e. building, zoning, homeowner's association) conflicts
- Employment disputes
- Discrimination complaints
- HOA covenant enforcement issues

The provision of Conflict Resolution services is at the discretion of the Conflict Resolution Program Coordinator. Participants of the program must be over the age of 18 and of sound mind to voluntarily agree to participate. For cases in which special needs are expressed (i.e. disability), and/or when a professional advocate is requested, staff will work with mediation participants to make proper accommodations.

Advocates are only permitted when the mediation participant is incapable of presenting their own opinions and needs; in those cases, the advocate's role is explicitly defined prior to mediation.

Conflict resolution referral process

Cases are referred to the Conflict Resolution/Mediation Program by private citizens, neighborhood leaders, City departments, law enforcement officers, City Council members, community agencies, landlords and other property managers, homeowner associations, legal professionals, or from the City website (Cases are tracked in a number of ways, including referring agents).

Intake procedure for mediation

Once a case is referred, the Program Coordinator will determine the case's appropriateness for mediation. If mediation is a viable option, the following steps are carried out by program staff:

1. All participants are contacted in person or by phone, letter, or email, requesting their consideration of the mediation process.
2. Program staff investigates the situation with parties and gathers preliminary facts.
3. If parties are agreeable to mediation, the program coordinator will obtain scheduling information from all parties. If one or more parties are not interested in mediation, other resources may be offered and the referring agent is notified of the refusal to participate.
4. Confirmation letters are mailed to all participants.
5. Program coordinator reserves and prepares conference room for mediation session.

Contacting potential mediation participants

Program staff will make reasonable efforts to contact and invite interested parties to participate in the mediation session. This includes property owners, managers, homeowner's association boards and related city staff. When a party cannot be reached and/or does not respond to the invitation to mediate, the other willing party is notified and, if possible, alternative resolutions are suggested.

Time considerations and scheduling

Mediation sessions are generally scheduled for two hour blocks of time. Large group/ multi-party mediations often require more than one scheduled session, and are arranged by mediators and/or program staff. Mediation sessions are conducted at the City of Northglenn's City Hall. It is typical for a case referred to the program to take up to three weeks to complete; this is usually due to scheduling restrictions with mediation participants.

Parties who choose NOT to mediate

When any or all possible participants choose not to mediate their dispute, the case file is deemed inactive and no further action is warranted by program staff.

Parties who do not show up for scheduled mediation sessions

When one or more parties fail to appear for their confirmed mediation session, it is up to the attending participant(s) to decide whether or not to try and reschedule the session. If parties and mediators are agreeable to rescheduling, a request will be made to the program coordinator to secure another date. New confirmation letters will be mailed out.

The mediation process

The Community Mediation Program utilizes a dispute resolution process adopted by the Mediation Association of Colorado. The official process of mediation is as follows:

Mediator opening remarks (Appendix C)

This phase begins with an introduction of participants and mediators, a review of the purpose and process of mediation, and a discussion about ground rules (Appendix D). Mediators address topics such as honesty, confidentiality, and the limitations of mediation by distributing and explaining the Agreement to Mediate form (Appendix E).

Historical Perspective

Participants are asked to speak one at a time during this initial phase of the mediation session. Either the mediators or the parties can decide who will begin the story-telling phase. During this stage, mediators are listening for underlying issues and interests as the parties tell their side of the story. Once each party has had the opportunity to present their side of the problem, mediators summarize the issues and point out any areas of commonality. This list of individual and shared issues becomes the agenda for the next phase of the mediation session. Parties may add any additional concerns to the list prior to moving into the problem-solving phase. Parties are encouraged to be open and honest during the presentation of their perspectives, and to listen carefully while others are sharing their views.

Option Building/Problem Solving

Mediators and/or parties can determine which of the listed issues is an appropriate place to start the problem solving phase of the mediation session. Parties are asked to brainstorm ideas for resolving a particular issue, and mediators record their thoughts and ideas. Once a list of possible solutions has been generated by the parties, the group will discuss the viability of each option and utilize negotiation techniques to form mutually-acceptable solutions through a process of compromise and open dialogue. When an agreement is reached regarding a particular issue, mediators make note of it as part of the Memorandum of Understanding (MOU). Mediators check in with parties to assure each person understands and has contributed to that given solution. Each identified problem area is addressed in a similar fashion, with all possible solutions named, evaluated, and decided upon by mediation participants. Once all issues have been met with satisfactory resolution, mediators guide parties through the final stage of the mediation process, the MOU.

Agreement writing phase

Mediation agreements (memorandums of understanding) reflect the meaning and language of the parties who contributed to creating the points of the agreement. Parties sign the original M.O.U. and are given copies to take home. Original signed agreements remain with program staff, along with Agreement to Mediate forms, evaluations, the case synopsis, and any other pertinent information. All other notes from the case may be destroyed. They are not subject to the open Records Act of 1983, as part of the Dispute Resolution Act of 1983.

Conclusion of mediation session

Mediators thank parties for their participation and make sure everyone knows what is expected of them regarding the mediation agreement.

Follow-up

The program coordinator will discuss the outcome of the case with one or both mediators no more than 48 hours after a mediation session, and will record any relevant information in the case file. If necessary, the coordinator will follow up with participants if specified in the mediation agreement. When an agreement is being followed to everyone's satisfaction six months following the mediation session, the case is officially closed and all subsequent case file information can be destroyed.

Agreement can not be reached through mediation

If an agreement cannot be reached during mediation, and mediators have helped parties explore all possible options of not resolving the dispute, mediators will make note of this on the supplied case summary information sheet and the case will be closed.

Alternatives to mediation

When mediation is not agreed upon by all interested parties, or if a case cannot be settled via formal mediation session, alternative resources will be recommended by program staff when appropriate.

Legal considerations

Mediation is not a legal service and staff is not permitted to offer legal information, interpretation, or advice to mediation participants. Agreements reached through mediation are not enforced by mediators or program staff, but usually contain a clause regarding self-enforcement by the signing parties.

Attorneys are not allowed to sit in on mediation sessions as representatives for a particular party. If parties desire, mediation agreements can be shared with attorneys or other interested parties prior to signing the agreement, such as a homeowner association board. If this delay is necessary, all parties will agree on a date in which the agreement will be reviewed and formalized. Attorneys and other interested parties who are not directly-affected disputants are permitted to sit outside of the mediation room, if desired.

Confidentiality

Mediators address the issue of confidentiality with parties during the opening remarks phase of the mediation process. Mediators and program staff are required to report any suspected or admitted incidents of abuse against self or others to the proper law enforcement officials.

Under the Dispute Resolution Act of 1983 (CRS 13-22-301, revised July 2000), neither mediators nor information obtained through the confidential mediation procedure can be subpoenaed in a court of law or subject to the Open Records Act. The Open Records Act pertaining to municipal record keeping entitles any citizen to obtain supplemental case file information in addition to the agreement forms; however, all extraneous case file information is regularly purged from the case files.

Program administration

It is the responsibility of program staff to maintain updated case files, monthly and annual reports, and necessary follow-up procedures. Case information is confidential. Program staff will administer services and make changes to the program when appropriate. Marketing of services is an on-going process, and conflict Resolution/mediation is provided free of charge to city residents.

Appendices

- A - Code of professional mediator conduct
- B - Co-mediating considerations
- C - Mediator opening remarks
- D - Ground rules (these may be updated on a regular basis)
- E - Agreement to mediate form
- F - Dispute Resolution Act

Code of Professional Mediator Conduct

*As adopted by Colorado Council of Mediators and Mediation Organizations, 1995
(Now known as the Mediation Association of Colorado)*

The Community Mediation Program is a community-based program assisted by professional mediators for purposes of assisting citizens in the voluntary and peaceful resolution of shared disputes. A specific Code of Conduct applicable to all Program staff helps to ensure clients will receive a consistent and satisfactory level of competency as a matter of high quality control and service delivery.

- I. Self Determination:** A mediator should recognize that mediation is based on the principle of self-determination by the parties.

Self-determination is the fundamental principle of mediation. The mediator should rely upon and encourage the ability of the parties to reach a voluntary, un-coerced agreement. The parties decide whether and under what conditions they will reach an agreement or terminate mediation.

COMMENTS: The mediator's primary role is to facilitate the voluntary resolution of disputes. The mediator should provide information about the process, define issues, and help parties explore options. A mediator should ensure that the parties have the opportunity to consider all proposed options and to accept or reject them. A mediator cannot personally guarantee that a party has made a fully informed choice in reaching an agreement, but the mediator should ensure that the parties are aware of the importance of making informed decisions and, where appropriate, the value of consulting other professionals.

- II. Impartiality:** A mediator should conduct the mediation in an impartial manner.

The concept of mediator impartiality is central to the mediation process. A mediator should mediate only those matters in which the mediator can remain impartial and evenhanded. If the mediator is unable to conduct the process in an impartial manner, the mediator should withdraw.

COMMENTS: A mediator should avoid conduct that gives the appearance of partiality toward one of the parties. The quality of the mediation process is enhanced when the parties have confidence in the impartiality of the mediator. The primary purpose of a mediation is to facilitate a voluntary agreement. A mediator should therefore refrain from providing professional advice, and should recommend, where appropriate, that parties seek outside professional advice, including legal advice.

- III. Conflict of Interest:** A mediator should avoid involvement where it may be inferred that the private interests of the mediator could conflict with those of a party.

A mediator should avoid conflicts and the appearance of conflicts of interest that could reasonably be seen as raising a question about the mediator's neutrality. A mediator should disclose all actual and potential conflicts of interest reasonably known to the mediator. If all parties agree to mediate after being informed of actual or potential conflicts, the mediator may proceed with the mediation. If, however, the conflict of interest appears to be so severe that it casts serious doubt on the integrity of the process, the mediator should decline to proceed.

COMMENTS: There may be strong pressures on the mediator to settle a particular case or cases. The mediator's commitment should be to the parties and the process. Pressures from outside of the mediation process should never influence the mediator to coerce parties to settle. A mediator should disclose any potential conflicts of interest in recommending the services of individual professionals. Alternatively, a mediator may make reference to professional referral services or associations that maintain rosters of qualified professionals. A mediator should continue to avoid the appearance of a conflict of interest during and after the mediation. Without the consent of all parties, a mediator

should not subsequently become the representative for one of the parties in a related matter, or in an unrelated matter under circumstances which would raise legitimate questions about the integrity of the mediation process.

IV. Competence: A mediator should mediate only when the mediator has the necessary qualifications.

Any person who offers to serve as a mediator gives the parties and the public the expectation that the mediator has the competency to mediate effectively. Training and education in mediation are necessary for effective mediation. The mediator should also have familiarity with the general principles and law governing any area in which the mediator is willing to serve.

COMMENTS: When a mediator does not possess the required skills, the mediator should seek a co-mediator trained in the necessary discipline, seek the assistance of a substantive expert in the field, or refer cases to other mediators who are trained in the required field of expertise. A mediator should have information available for the parties regarding the mediator's relevant training, education and experience.

V. Confidentiality: A mediator should maintain the confidentiality of mediation communications.

Confidentiality in Colorado is defined initially by the Colorado Dispute Resolution Act, CRS § 13-22-301, et seq. The general rule is that a mediator may not voluntarily disclose and may not be required to disclose any information regarding either a mediation communication or a communication provided in confidence to the mediator. Exceptions to this "non-disclosure requirement" include a) written consent of all of the parties and the mediator, b) a mediation communication which reveals the intent to commit a felony, inflict bodily harm or threaten the safety of a child under the age of eighteen years, c) the communication is required by statute to be made public, and d) in an action alleging willful or wanton misconduct of the mediator.

COMMENTS: The mediator should be aware of the legal limits to the non-disclosure of mediation communications and of any settlement agreement reached. The mediator should conduct the mediation so as to provide the parties the greatest protection confidentiality afforded by law and mutually agreed to by the parties. Confidentiality is primarily governed by the Colorado Dispute Resolution Act, CRS § 13-22-301, et seq. Examples of other statutes that may limit non-disclosure include the federal Administrative Dispute Resolution Act and the Freedom of Information Act, disclosure laws from other states that may have legal jurisdiction, and other Colorado statutes such as the Child Protection Act of 1987 and those that allow access to settlement information by third parties whose interests are affected. Most of the Colorado Dispute Resolution Act exceptions to non-disclosure are permissive. If faced with a situation where disclosure is permitted but not required, the mediator must look to his or her own conscience and reference other sources to decide whether disclosure is appropriate. A critical part of a mediator's role is to ensure the parties are familiar with their own and the mediators' bounds of confidentiality and non-disclosure. The mediator should address the limitations and exceptions to disclosure prior to the mediation or in the opening statement and address confidentiality in the Agreement to Mediate. A mediator should assume any communication in private session is meant to be kept in confidence unless the mediator is certain or has confirmed that part or all of this communication may be shared with another party in the mediation.. Other individuals attending the mediation (observers, experts, etc.) may not be limited by the Colorado Dispute Resolution Act in their disclosure of mediation communications. The mediator should ask observers or other attendees to sign a confidentiality agreement. Such an agreement may be incorporated into the Agreement to Mediate.

VI. Quality of the Process: A mediator should conduct the mediation fairly and diligently.

A mediator should work to ensure a quality process in order for mediation to be effective. A quality process requires a commitment by the mediator to diligence and procedural fairness. There should be adequate opportunity for each party in the mediation to participate in the discussions. The parties decide when and under what conditions they will reach an agreement or terminate a mediation session.

COMMENTS: A mediator should agree to mediate only when the mediator is prepared to commit the attention essential to an effective mediation. The mediator has a duty to assess the dispute and make a determination that the case is appropriate and suitable for mediation. Mediators should only accept cases where they can satisfy the reasonable expectations of the parties concerning the timing of the process. The parties and mediator [and Program

staff] will decide who will attend the mediation. The parties and mediator may agree that others may be excluded from particular sessions or from the entire mediation process. In the event that the parties cannot reach an agreement even with the assistance of a mediator, it is the responsibility of the mediator to make the parties aware of the deadlock and suggest that negotiations be terminated. The mediator may encourage the parties to explore other dispute resolution options. A mediator should not agree to mediate a dispute or should terminate a mediation under the following circumstances: (a) incapacity of a party; (b) a lack of commitment by the parties to the mediation; (c) the mediation is being used to further illegal conduct; (d) an inability of the mediator to remain impartial; ex (e) a lack of competence by the mediator to handle the mediation effectively. A mediator should postpone a mediation session if any party is unable to participate due to drugs, alcohol, or other temporary physical or mental incapacity. If the parties reach an agreement which the mediator feels is illegal, the result of false information or the result of bad faith bargaining, the mediator should withdraw or terminate the mediation. If no confidential mediation communications are disclosed, the mediator may also inform one or more of the parties of the difficulties which the mediator sees in the agreement.

VII. Advertising and Solicitation: A mediator should be truthful in advertising and solicitation for mediation.

Advertising or any other communication with the public concerning services offered or regarding the education, training, and expertise of the mediator should be truthful. Mediators should refrain from promises and guarantees of results.

COMMENTS: Communication with the public should be kept to a high standard in order to educate and instill confidence in the mediation process. In an advertisement or other communication to the public, a mediator may make reference to meeting state, national or private organization qualifications if the entity referred to has a procedure for certification and the mediator has been duly granted the requisite status.

VIII. Fees: A mediator should fully disclose and explain the basis of compensation, fees, and charges to the parties. There is no charge for mediation services for Program participants.

IX. Obligations to the Mediation Process: Mediators should strive to improve the practice of mediation.

Mediators have an obligation: to use their knowledge to help educate the public about mediation; to make mediation accessible to those who want to use it; to correct abuses; and to improve their professional skills and abilities.

COMMENTS: A mediator should cooperate in establishing and maintaining the quality, qualifications, and standards of the profession.

Co-Mediating Considerations

Not all cases have or need a “lead” and a “co” mediator. It is up to mediators and their level of experience that will determine which mediator will work in what capacity.

Mediators should connect with one another prior to the mediation to map out a facilitation strategy. This can be done by phone, e-mail, or in person.

Questions to ask one another:

- 1) What is your mediation style (facilitative, directive, eclectic?)
- 2) How will we co-mediate the session?
 - a) Will one of us take the lead?
 - b) How would you like to divide up the opening statement?
 - c) Will one of us be responsible for tracking agreement items?
 - d) Who will draft the written agreement, if there is one, and read it back to the parties?
 - e) Who will hand out evaluations?
 - f) Who will close the mediation?
- 3) Which party should we start with?
- 4) Ideas about seating at the mediation session?
- 5) Are there any special circumstances to be aware of for this case?
- 6) Does one of us want to listen for substantive, tangible issues, the other for more the emotional/personal interests?
- 7) What time should we get to the mediation session?
- 8) Is there anything mediators should know about one another prior to working together?
- 9) Who will greet the participants upon their arrival at the door downstairs?

The role of the “lead” mediator is to contact all parties, if wanted/needed, prior to the mediation and introduce themselves, confirm time and location of the meeting, and to answer any final questions parties may have.

“Co” mediators typically take care of the administrative aspects of case management, such as note taking, agreement writing, laptop, etc. The mediator not writing the agreement can explain the evaluation form and collect them after completion. Mediation summary forms should be completed by either/both mediators.

The role of the “observer” is to help get the room set up and parties greeted comfortably prior to the session. The observer will sit apart from the main group and will make no comments during the mediation. The observer will follow along with the mediation process and may take notes if helpful.

Mediators should fill out the Mediation Session Analysis form together, at the conclusion of the session. If an observer is present, the mediator(s) should include observer in the debriefing. You should evaluate your own as well as the team performance, to assess which aspects of the mediation process were best utilized. This information is for you to use to grow professionally, hone your skills, and to strengthen and improve for future mediations.

Mediator Opening Remarks

[adapted from CDR Associates 1997]

- **Introductions**

Of mediators and parties

Goals – The goal of mediation is for you both to gain a full understanding of the situation and reach a solution that will meet both your needs

Congratulate/acknowledge parties for taking this positive step

- **Goal and explanation of mediation**

To bring about a practical, peaceful, and permanent resolution to a shared dispute

- **What mediation is (and is not)**

A voluntary process that is dependent on the willingness of the parties involved to be creative and cooperative. This is not a court of law!

- **Role of the mediator(s)**

Experienced, impartial facilitators of the process. No decision-making authority.

- **Responsibilities of the parties**

To work together on identifying and implementing mutually-agreeable solutions.

- **Mediation process explained**

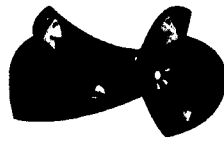
- 1) Opening remarks
- 2) Historical perspective
- 3) Option building/ Problem-solving by both parties
- 4) Written agreement (MOU) developed

- **Ground rules established**

Include “duty to report,” if applicable

Discuss confidentiality

Ground Rules / Guidelines for Mediation Sessions



- Parties have agreed to participate in good faith and work toward the peaceful resolution of their case.
- Session will take the time it needs for everyone to be heard. We have set aside _____ (time) for this mediation session.
- Keep discussion focused and relevant. Parties will follow the set mediation process and will present information in a timely manner.
- Focus on the issue that has brought you together, not the individual.
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- Write down thoughts on paper when others are speaking.
- As much as possible, leave the past in the past; don't get "stuck" there.
- Mediators and/or parties may call a break if negotiation is being stalled for any reason.
- Logistics - restrooms, breaks as needed
- PLEASE turn cell phones off, or on vibrate if necessary. We need your full attention!

Agreement to Mediate

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I hereby state, and agree to, the following:

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_____ I understand that mediators cannot and do not offer legal advice or legal counsel. If I desire legal advice or assistance, I will obtain my own legal counsel. If I have any questions about my legal rights, the legality of this agreement, or the legality of any agreement I reach during the course of the mediation, I have been encouraged to consult with my own attorney.

_____ I understand that to the extent permitted by law, all information shall be kept confidential by the mediation program unless all parties agree to the release of a specific statement.

_____ I understand that mediators are required by law to report any suspected incidents of child or elder abuse or intent to commit a serious crime.

_____ I hereby release the City, its mediators and other officers, employees and volunteers from any and all claims and causes of action for any losses, injury or other damages arising from or in any way relating to the mediation or the underlying dispute.

_____ I understand that by not signing this document I cannot actively participate in a mediation session.

Signature

Date

Signature

Date

Signature (Mediator as witness)

Date

Colorado Revised Statutes

Section 13: Court Procedures

PART 3: DISPUTE RESOLUTION ACT

13-22-301 et seq., July 1983; amended in 2009

13-22-301. Short title. This part 3 shall be known and may be cited as the "Dispute Resolution Act".

13-22-302. Definitions. As used in this part 3, unless the context otherwise requires:

(1) "Arbitration" means the referral of a dispute to one or more neutral third parties for a decision based on evidence and testimony provided by the disputants.

(1.3) "Chief justice" means the chief justice of the Colorado supreme court.

(1.7) "Director" means the director of the office of dispute resolution.

(2) "Early neutral evaluation" means an early intervention in a lawsuit by a court-appointed evaluator, to narrow, eliminate, and simplify issues and assist in case planning and management. Settlement of the case may occur under early neutral evaluation.

(2.1) "Fact finding" means an investigation of a dispute by a public or private body that examines the issues and facts in a case and may or may not recommend settlement procedures.

(2.3) "Med-arb" means a process in which parties begin by mediation, and failing settlement, the same neutral third party acts as arbitrator of the remaining issues.

(2.4) "Mediation" means an intervention in dispute negotiations by a trained neutral third party with the purpose of assisting the parties to reach their own solution.

(2.5) "Mediation communication" means any oral or written communication prepared or expressed for the purposes of, in the course of, or pursuant to, any mediation service proceeding or dispute resolution program proceeding, including, but not limited to, any memoranda, notes, records, or work product of a mediator, mediation organization, or party; except that a written agreement to enter into a mediation service proceeding or dispute resolution proceeding, or a final written agreement reached as a result of a mediation service proceeding or dispute resolution proceeding, which has been fully executed, is not a mediation communication unless otherwise agreed upon by the parties.

(2.7) "Mediation organization" means any public or private corporation, partnership, or association which provides mediation services or dispute resolution programs through a mediator or mediators.

(3) "Mediation services" or "dispute resolution programs" means a process by which parties involved in a dispute, whether or not an action has been filed in court, agree to enter into one or more settlement discussions with a mediator in order to resolve their dispute.

(4) "Mediator" means a trained individual who assists disputants to reach a mutually acceptable resolution of their disputes by identifying and evaluating alternatives.

(4.3) "Mini-trial" means a structured settlement process in which the principals involved meet at a hearing before a neutral advisor to present the merits of each side of the dispute and attempt to formulate a voluntary settlement.

(4.5) "Multi-door courthouse concepts" means that form of alternative dispute resolution in which the parties select any combination of problem solving methods designed to achieve effective resolution, including, but not limited to, arbitration, early neutral evaluation, med-arb, mini-trials, settlement conference, special masters, and summary jury trials.

(5) "Office" means the office of dispute resolution.

(6) "Party" means a mediation participant other than the mediator and may be a person, public officer, corporation, partnership, association, or other organization or entity, either public or private.

(7) "Settlement conference" means an informal assessment and negotiation session conducted by a legal professional who hears both sides of the case and may advise the parties on the law and precedent relating to the dispute and suggest a settlement.

(8) "Special master" means a court-appointed magistrate, auditor, or examiner who, subject to specifications and limitations stated in the court order, shall exercise the power to regulate all proceedings in every hearing before such special master, and to do all acts and take all measures necessary or proper for compliance with the court's order.

(9) "Summary jury trial" means summary presentations in complex cases before a jury empaneled to make findings which may or may not be binding.

13-22-303. Office of dispute resolution - establishment. There is hereby established in the judicial department the office of dispute resolution, the head of which shall be the director of the office of dispute resolution, who shall be appointed by the chief justice of the supreme court and who shall receive such compensation as determined by the chief justice.

13-22-304. Director - assistants. The director shall be an employee of the judicial department and shall be responsible to the chief justice for the administration of the office. The director may be but need not be an attorney and shall be hired on the basis of training and experience in management and mediation. The director, subject to the approval of the chief justice, may appoint such additional employees as deemed necessary for the administration of the office of dispute resolution.

13-22-305. Mediation services.

(1) In order to resolve disputes between persons or organizations, dispute resolution programs shall be established or made available in such judicial districts or combinations of such districts as shall be designated by the chief justice of the supreme court, subject to moneys available for such purpose. For all office of dispute resolution programs, the director shall establish rules, regulations, and procedures for the prompt resolution of disputes. Such rules, regulations, and procedures shall be designed to establish a simple nonadversary format for the resolution of disputes by neutral mediators in an informal setting for the purpose of allowing each participant, on a voluntary basis, to define and articulate the participant's particular problem for the possible resolution of such dispute.

(2) Persons involved in a dispute shall be eligible for the mediation services set forth in this section before or after the filing of an action in either the county or the district court.

(3) Each party who uses the mediation services or ancillary forms of alternative dispute resolution in section 13-22-313 of the office of dispute resolution shall pay a fee as prescribed by order of the supreme court. Fees shall be set at a level necessary to cover the reasonable and necessary expenses of operating the program. Any fee may be waived at the discretion of the director. The fees established in this part 3 shall be transmitted to the state treasurer, who shall credit the same to the dispute resolution fund created in section 13-22-310.

(4) All rules, regulations, and procedures established pursuant to this section shall be subject to the approval of the chief justice.

(5) No adjudication, sanction, or penalty may be made or imposed by any mediator or the director.

(6) The liability of mediators shall be limited to willful or wanton misconduct.

13-22-306. Office of dispute resolution programs - mediators. In order to implement the dispute resolution programs described in section 13-22-305, the director may contract with mediators or mediation organizations on a case-by-case or service or program basis. Such mediators or mediation organizations shall be subject to the rules, regulations, procedures, and fees set by the director. The tasks of the mediators or mediation organizations shall be defined by the director. The director may also use qualified volunteers to assist in mediation service or dispute resolution program efforts.

13-22-307. Confidentiality.

(1) Dispute resolution meetings may be closed at the discretion of the mediator.

(2) Any party or the mediator or mediation organization in a mediation service proceeding or a dispute resolution proceeding shall not voluntarily disclose or through discovery or compulsory process be required to disclose any information concerning any mediation communication or any communication provided in confidence to the mediator or a mediation organization, unless and to the extent that:

(a) All parties to the dispute resolution proceeding and the mediator consent in writing; or

(b) The mediation communication reveals the intent to commit a felony, inflict bodily harm, or threaten the safety of a child under the age of eighteen years; or

(c) The mediation communication is required by statute to be made public; or

(d) Disclosure of the mediation communication is necessary and relevant to an action alleging willful or wanton misconduct of the mediator or mediation organization.

(3) Any mediation communication that is disclosed in violation of this section shall not be admitted into evidence in any judicial or administrative proceeding.

(4) Nothing in this section shall prevent the discovery or admissibility of any evidence that is otherwise discoverable, merely because the evidence was presented in the course of a mediation service proceeding or dispute resolution proceeding.

(5) Nothing in this section shall prevent the gathering of information for research or educational purposes, or for the purpose of evaluating or monitoring the performance of a mediator, mediation organization, mediation service, or dispute resolution program, so long as the parties or the specific circumstances of the parties' controversy are not identified or identifiable.

13-22-308. Settlement of disputes. (1) If the parties involved in a dispute reach a full or partial agreement, the agreement upon request of the parties shall be reduced to writing and approved by the parties and their attorneys, if any. If reduced to writing and signed by the parties, the agreement may be presented to the court by any party or their attorneys, if any, as a stipulation and, if approved by the court, shall be enforceable as an order of the court.

13-22-309. Reports. (repealed)

13-22-310. Dispute resolution fund - creation - source of funds. (1) There is hereby created in the state treasury a fund to be known as the dispute resolution fund, which fund shall consist of:

(a) All moneys collected pursuant to section 13-22-305(3);

(b) Any moneys appropriated by the general assembly for credit to the fund; and

(c) Any moneys collected by the office from federal grants and other contributions, grants, gifts, bequests, and donations.

(2) All moneys in the fund shall be subject to annual appropriation by the general assembly. Any moneys not appropriated shall remain in the fund at the end of any fiscal year and shall not revert to the general fund.

13-22-311. Court referral to mediation - duties of mediator. (1) Any court of record may, in its discretion, refer any case for mediation services or dispute resolution programs, subject to the availability of mediation services or dispute resolution programs; except that the court shall not refer the case to mediation services or dispute resolution programs where one of the parties claims that it has been the victim of physical or psychological abuse by the other party and states that it is thereby unwilling to enter into mediation services or dispute resolution programs. In any civil case involving the protection of a party from domestic abuse as defined in section 14-4-101(2), C.R.S., or domestic violence as defined in section 18-6-800.3(1), C.R.S., the court shall

not order the parties to formal or informal mediation services or dispute resolution programs. In addition, the court may exempt from referral any case in which a party files with the court, within five days of a referral order, a motion objecting to mediation and demonstrating compelling reasons why mediation should not be ordered. Compelling reasons may include, but are not limited to, that the costs of mediation would be higher than the requested relief and previous attempts to resolve the issues were not successful. 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. This section shall not apply in any civil action where injunctive or similar equitable relief is the only remedy sought.

(2) Upon completion of mediation services or dispute resolution programs, the mediator shall supply to the court, unless counsel for a party is required to do so by local rule or order of the court, a written statement certifying that parties have met with the mediator.

(3) In the event the mediator and the parties agree and inform the court that the parties are engaging in good faith mediation, any pending hearing in the action filed by the parties shall be continued to a date certain.

(4) In no event shall a party be denied the right to proceed in court in the action filed because of failure to pay the mediator.

13-22-312. Applicability. This part 3 shall apply to all mediation services or dispute resolution programs conducted in this state, whether conducted through the office of dispute resolution or through a mediator or mediation organization.

13-22-313. Judicial referral to ancillary forms of alternative dispute resolution.

(1) Any court of record, in its discretion, may refer a case to any ancillary form of alternative dispute resolution; except that the court shall not refer the case to any ancillary form of alternative dispute resolution where one of the parties claims that it has been the victim of physical or psychological abuse by the other party and states that it is thereby unwilling to enter into ancillary forms of alternative dispute resolution. In addition, the court may exempt from referral any case in which a party files with the court, within five days of a referral order, a motion objecting to ancillary forms of alternative dispute resolution and demonstrating compelling reasons why ancillary forms of alternative dispute resolution should not be ordered. Compelling reasons may include, but are not limited to, that the costs of ancillary forms of alternative dispute resolution would be higher than the requested relief and previous attempts to resolve the issues were not successful. Such forms of alternative dispute resolution may include, but are not limited to: arbitration, early neutral evaluation, med-arb, mini-trial, multi-door courthouse concepts, settlement conference, special master, summary jury trial, or any other form of alternative dispute resolution which the court deems to be an effective method for resolving the dispute in question. Parties and counsel are encouraged to seek the most appropriate forum for the resolution of their dispute. Judges may provide guidance or suggest an appropriate forum. However, nothing in this section shall impinge upon the right of parties to have their dispute tried in a court of law, including trial by jury.

(2) Ancillary programs may be established, made available, and promoted in any judicial district or combination of districts as designated by the chief judge of the affected district. Rules and regulations for ancillary forms of alternative dispute resolution shall be promulgated by the director of the office of dispute resolution.

(3) All rules, regulations, and procedures established pursuant to this section shall be subject to the approval of the chief justice.

(4) Nothing in this section shall preclude any court from making a referral to mediation services provided for in this article.

(5) All referrals under this section shall be made subject to the availability of alternative dispute resolution programs. Parties referred to ancillary forms of alternative dispute resolution may select services offered by the office of dispute resolution or by other individuals or organizations.

(6) This section shall not apply in any civil action where injunctive or similar equitable relief is the only remedy sought.