



EXHIBIT 1
DATE 2/11/05
HB 391



Office Of Dispute Resolution

COLORADO JUDICIAL DEPARTMENT
EL PASO COUNTY JUDICIAL BUILDING
20 EAST VERMIJO • P.O. BOX 2980
COLORADO SPRINGS, COLORADO 80901
(719) 448-7777

STATISTICS FOR CRIMINAL MEDIATION PROGRAM

This data was collected from August 2003 to August 2004:

Total 62 cases mediation by Judge Toth

89% == Agreement

11% == No Agreement

It is estimated that Toth's program has saved 175 days of trial time. 55 cases agreed/settled with an average of 3 days for a felony jury trial plus several hours of motion hearings per case. This does not count the cost of DA and PD preparation time which is also substantial.



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Dear District Judges:

The Early Neutral Case Evaluation /Criminal Mediation Program is now available through the Office of Dispute Resolution. Judge Dick Toth has been assigned to the ODR by the Senior Judge program for seven (7) days this fall in this experiment.

Criminal Mediation was successful by all accounts in the cases we worked with last winter. Criminal Mediation/Early Neutral Case Evaluation is very successful in other states. Cases which seem to lend themselves to this program are those where the parties are years apart in plea negotiation; i.e. habitual criminal charges, lengthy mandatory sentencing potential. Also, cases with strong civil implication or cases with disputed restitution amounts work well in the program.

Per statute you are entitled to order any case into Alternative Dispute Resolution, C.R.S. 13-22-311. Please have the parties report to the ODR when they leave your courtroom. This is a good opportunity to evaluate this idea. Your cooperation is appreciated.

Dick Toth's dates are:

- August 7, 2003
- September 18, 2003
- September 25, 2003
- October 2, 2003
- October 10, 2003
- October 29, 2003
- November 6, 2003

Sincerely,

DEA by [Signature]

Douglas E. Anderson
ODR Coordinator



Office Of Dispute Resolution

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AGREEMENT FOR EARLY NEUTRAL CASE EVALUATION MEDIATION CRIMINAL CASES

This form is to ensure understanding of the boundaries and requirements of the dispute resolution process.
Per the Colorado Dispute Resolution Act:

1. I understand the 4th Judicial District Office of Dispute Resolution offers neither legal advice nor legal counsel. The Evaluator/mediator is a resource because of his or her experience and training.
2. I agree I will not at any point call the mediator as a witness in any legal or administrative proceeding concerning this dispute, including the subpoena or call for production of records, notes, or work product resulting from the dispute resolution process, except as otherwise expressly provided by law. The fact of plea discussions or a plea agreement is generally not admissible against or in favor of a Defendant in any criminal, civil or administrative action or proceeding.
3. I agree to keep confidential all information, including names, discussed here. This means I will not talk publicly or to anyone but the parties present at the session about those individuals present, parties, agreements, or discussions without written permission from ALL parties and the mediator (it is okay to discuss this with your attorney). I agree I will not tape record the mediation session.
4. I understand that failure to honor the foregoing agreements could result in exclusion from future dispute resolution attempts or could result in appropriate sanctions by the court.
5. I understand the mediator will keep confidential all information shared in these meetings with the exception of the intent to commit a felony, inflict bodily harm, or threat to the safety of a child less than 18 years of age. The mediator is obligated by law to immediately report such information.
6. I agree to enter this process in good faith. I will sincerely attempt to resolve the issues in dispute. ~~I agree to pay the fees associated with this service and, if applicable, to pay any costs of collection.~~
7. This is a voluntary, non-binding process. There is no requirement that any party participate or that any agreement be reached. Any agreement that is reached will be noted before the parties leave. However, the determination to accept or reject any given plea agreement is always and entirely up to the trial judge.

The trial judge must always and independently determine that any plea offered by a Defendant is voluntary and not the result of any undue influence or coercion on the part of anyone.

I have read the above and agree to abide by its requirements.

Signature _____

Date _____

Mailing Address _____

Zip Code _____

Telephone Number _____

Attorney Signature _____

OFFICE OF DISPUTE RESOLUTION-FOURTH JUDICIAL DISTRICT

CRIMINAL MEMORANDUM OF UNDERSTANDING

CASE NUMBER

The parties and attorneys noted below met with the ODR staff person on the date indicated. They have reached an agreement on the following issues:

All issues as follows: _____

Partial agreement as follows: _____

Other terms: _____

Restitution: _____

Cases to be dismissed: _____ Terms: _____

Settlement documents prepared by: _____

District Attorney: _____

Def's Attorney: _____

Defendant:

Mediator: _____

Date: _____

Source: L. 83: Entire part added, p. 625, § 1, effective July 1. L. 88: Entire section R&RE, p. 646, § 4, effective July 1. L. 91: Entire section amended, p. 370, § 3, effective July 1.

ANNOTATION

Law reviews. For article, "Selecting Cases for Mediation", see 17 Colo. Law. 2007 (1988).

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.

Source: L. 83: Entire part added, p. 625, § 1, effective July 1. L. 91: Entire section amended, p. 370, § 4, effective July 1.

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.

(2) (Deleted by amendment, L. 91, p. 371, § 5, effective July 1, 1991.)

Source: L. 83: Entire part added, p. 626, § 1, effective July 1. L. 88: Entire section amended, p. 606, § 5, effective July 1. L. 91: Entire section amended, p. 371, § 5, effective July 1.

13-22-309. Reports. (Repealed)

Source: L. 83: Entire part added, p. 626, § 1, effective July 1. L. 88: Entire section amended, p. 606, § 6, effective July 1. L. 92: Entire section amended, p. 301, § 6, effective June 2. L. 98: Entire section repealed, p. 724, § 1, effective May 18.

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 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.

Source: L. 83: Entire part added, p. 626, § 1, effective July 1. L. 88: Entire section R&RE, p. 607, § 7, effective July 1. L. 91: Entire section R&RE, p. 372, § 6, effective July 1.

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 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.

Source: L. 88: Entire section added, p. 607, § 8, effective July 1. L. 91: (1) and (2) amended, p. 372, § 7, effective July 1. L. 92: Entire section amended, p. 299, § 3, effective June 2.

Cross references: For the legislative declaration contained in the 1992 act amending this section, see section 1 of chapter 66, Session Laws of Colorado 1992.

ANNOTATION

Law reviews. For article, "Selecting Cases for Mediation", see 17 Colo. Law, 2007 (1988).

Where petitioner files a verified, uncontroverted claim of physical and psychological abuse by husband, the trial court "shall not refer" such a case to mediation; the plain and obvious language of subsection (1) forbids a court from ordering mediation where a party claims physical and psychological abuse. *Pearson v. District Court*, 18th Jud. Dist., 924 P.2d 512 (Colo. 1996).

This section does not require a party to file a declaration of abuse and an unwillingness

to participate in mediation prior to the entry of a court order to mediate. *Pearson v. District Court*, 18th Jud. Dist., 924 P.2d 512 (Colo. 1996).

Subsection (1) covers two distinct circumstances: First, it contains a mandatory command that a court "shall not refer" a case to mediation services where a party claims physical or psychological abuse, which requirement has no time limitations. Second, it contains a discretionary "compelling reasons" excusal that is subject to the five-day rule and exists independently of the mandatory excusal for physical

of psychological abuse. Pearson v. District Court, 18th Jud. Dist., 924 P2d 512 (Colo. 1996).

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.

Source: L. 91: Entire section added, p. 373, § 8, effective July 1.

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.

Source: L. 92: Entire section added, p. 300, § 5, effective June 2.

Cross references: For the legislative declaration contained in the 1992 act enacting this section, see section 1 of chapter 66, Session Laws of Colorado 1992.

PART 4

MANDATORY ARBITRATION - CIVIL ACTIONS

13-22-401 to 13-22-411. (Repealed)

Editor's note: (1) Section 13-22-411 provided for the repeal of this part 4, effective July 1, 1991. (See L. 90, p. 873.)

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ALTERNATIVE DISPUTE RESOLUTION

Felony criminal cases are the most complex litigation in our society today. Skilled attorneys focus their entire practices on these difficult matters. However, criminal cases have not had the benefit of analysis and support in the alternative dispute resolution field, like divorce, juvenile, probate, and civil cases.

Now, the Fourth Judicial District Office of Dispute Resolution is offering Early Neutral Case Evaluation and Criminal Mediation in an experimental program designed to bring the parties together and explore alternatives and settlements.

A Senior District Judge brings to ODR a wealth of real court room experience, years of familiarity with prosecution and defense strategies, and practical know-how in case settlements and plea-bargaining.

Case Conferences are now available by appointment with the Senior Judge without cost to the parties for both Early Neutral Case Evaluation and Criminal Mediation.

EARLY NEUTRAL CASE EVALUATION

Early Neutral Case Evaluation is a statutorily authorized form of dispute resolution. It is an early intervention in a law suit by a court appointed evaluator to narrow, eliminate, and simplify issues, and assist in case planning and management. Settlement of the case may also occur in this form of dispute resolution.

CRIMINAL MEDIATION

Criminal Mediation is an intervention by a trained neutral third party/Senior District Judge, with the purpose of assisting the parties in reaching their own plea bargain or solution.

Early Neutral Case Evaluation and Criminal Mediation have been used by judges and lawyers both to reduce the time involved in cases and to clarify the issues. They have also used the experience of a retired judge to help the parties assess the respective strengths and weaknesses of their case.

Early Neutral Case Evaluation is a particularly effective way to resolve felony criminal cases or simplify the issues in those cases. Many attorneys from around the country have used just such a forum to explore the strength of their case and sort out strategies.

Criminal Mediation works well in allowing the parties to reach their own solutions, such as restitution amounts and the terms and conditions of probation. With the help of a Senior District Judge, the parties can put together agreements on all varieties of felony criminal cases.

For More Information:
Contact Douglas E. Anderson
District Judge, Ref.
ODR Coordinator

OFFICE OF DISPUTE RESOLUTION
(719)648-7777