

## **ORDERS TO MEDIATION – CIVIL CASE**

### **Overview**

Orders to Mediation are used to define the parameters a court has set for a particular case that is going to be mediated and to inform parties about the process and their responsibilities in it.

The best orders to mediation include all deadlines for the mediation, such as selection of the mediator, first mediation session, and final report. They should also include any other logistical issues pertinent to the court's program, such as whether or not discovery is stayed, or where the mediation is to be held.

Other information for the parties would include who is required to attend, what information the parties should prepare for the mediator, confidentiality provisions, as well as any other information about the process that the court would like to convey. In very complex cases, the parties may negotiate terms in the order to mediation.

### **Colorado Alternative Dispute Resolution/Mediation Order**

This order is full of information for the parties. Particularly good is item #9, which gives guidance about what the parties can expect in mediation, what their responsibilities are, and what they should bring to the mediation. Another good item is the flexibility in item #3 as to how the deadline should be set.

If this form were to be used by pro se parties, the language would need to be adapted for a broader audience.

### **Michigan Order for Mediation**

Although this form does not inform the parties about the process nor their responsibilities in it, it is a good sample of an order that can be accompanied by written guidelines for the mediation. It does a lot in a short form, and provides a good example of how to deal with different options for mediator selection and mediation deadlines.

District Court, _____ County, Colorado Court Address:  <hr/> Plaintiff(s):  v.  Defendant(s):	<b>▲ COURT USE ONLY ▲</b>  <hr/> Case Number:  Division:                      Courtroom:
<b>ALTERNATIVE DISPUTE RESOLUTION/MEDIATION ORDER (CIVIL CASE)</b>	

1. The Court finds that the interests of a just, speedy and economic resolution of the disputes herein would be served by referral of this action to mediation, or to some other form of Alternative Dispute Resolution (ADR).
  
2. Accordingly, pursuant to the Colorado Dispute Resolution Act, §13-22-301, C.R.S. *et seq.* and specifically §13-22-311, C.R.S. the Court orders that, except as provided in paragraph 6, all claims in this action are hereby referred to mediation.
  
3. All parties are ordered to cooperate in arranging for, and participating in mediation. Each party shall be present personally at the mediation session, or shall have a representative present (other than the attorney), with full settlement authority.
  - The Plaintiff's attorney is ordered to set up mediation in sufficient time so that it will be completed:
    - \_\_\_\_\_ days before the next hearing;
    - \_\_\_\_\_ days before trial;
    - within \_\_\_\_\_ days after the case is at issue; or
    - by the following date: \_\_\_\_\_
  
4. Pursuant to §13-22-311(1), C.R.S., the parties may select their mediator from private mediators, mediation organizations, or from the Colorado Judicial Branch Office of Dispute Resolution. The Office of Dispute Resolution for the \_\_\_\_\_ Judicial District may be contacted at \_\_\_\_\_ (telephone number). If you need a referral for the Office of Dispute Resolution in the Denver Metro area, please call (303) 837-3672.
  
5. A list of other mediators who provide services in the \_\_\_\_\_ Judicial District
  - is attached  is available in the clerk's office. The information contained on this list is as supplied by the providers themselves and does not mean that the provider is recommended, approved, or verified by the Judicial District.
  
  - is not available through this courthouse.  
 Mediators may be identified through contacting the Colorado Council of Mediators and Mediation Organizations at 1-800-864-4317, through the Yellow Pages, or through contacting the local bar association at \_\_\_\_\_.
  
6. Compliance with paragraph 3 of this Order is excused if, within the time limits set forth in paragraph 3, the parties settle all claims, participate in another form of ADR, including but not limited to, arbitration, early neutral evaluation or mini-trial, pursuant to §13-22-313, C.R.S., or the Court grants a Motion re: Exemption from Mediation/ADR.

7. Except as expressly provided in this Order, applicable Colorado statutes, rules and/or case law shall govern the mediation or other ADR process.
8. The expense of the mediation or other ADR process shall be the responsibility of the parties, and shall be divided equally between the parties unless otherwise agreed.
9. When using mediation, the parties are advised that:
  - ◆ The primary purpose of a mediator's service is to assist them to reach a mutually acceptable resolution of their dispute.
  - ◆ The mediator chosen is or is not a lawyer and the mediator cannot and will not provide legal advice to either or both parties.
  - ◆ Any documents used and prepared by the mediator are to be ancillary to the mediation process and are not intended to constitute legal advice,
  - ◆ The mediator is not obligated to identify or resolve legal issues.
  - ◆ The parties' settlement may be waiving or compromising legal rights.
  - ◆ It is the responsibility of the parties to obtain legal advice if they so choose. Any mediator chosen by the parties who operates under a written Agreement to Mediate, which includes these advisements, shall be authorized by this court to act as the parties' mediator. In so doing, the mediator may develop and draft a Memorandum of Understanding that reduces the agreement of the parties to writing, if requested by the parties.
9. Within five days after the completion of the mediation or other ADR process, the attorney for the Plaintiff is ordered to complete, file with the Court, and serve upon all other parties the Certificate of Compliance (JDF 1119) attached to this Order.
10. Failure to comply with this order may result in sanctions.

Date: \_\_\_\_\_

\_\_\_\_\_  
District Judge

### CERTIFICATE OF SERVICE

I certify that on \_\_\_\_\_ (date), I mailed, faxed, e-filed, or hand-delivered a copy of this Order to the following:

- Attorney for Plaintiff(s) or Plaintiff(s) *pro se*
- Attorney for Defendant(s) or Defendant(s) *pro se*
- Other: \_\_\_\_\_

\_\_\_\_\_  
Clerk

