MEDIATION REFERRAL FORMS - FAMILY

OVERVIEW

Orders to Mediation, or Mediation Referral forms, 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.

In family cases, it is imperative that the issue of domestic violence be addressed, either by noting that screening has already been done or by instructing the mediator of the process to follow if their own screening points to the existence of domestic violence in the case.

GOOD EXAMPLES

Colorado Mediation / Alternative Dispute Resolution Order

This order is full of information for the parties. Particularly good are items 11 and 12, which give guidance about what the parties can expect in mediation, what their responsibilities are, and what they should bring to the mediation.

Those adapting this form for their own use may want to use simpler language. It is particularly important for forms to be written in plain English in family cases because so many parties are not represented by counsel. For an example of a form that makes clear, simple statements, see the < Superior Court of Alaska Motion for Mediation.

Illinois – 19th Judicial Circuit Order of Referral to Mediation

This is an extensive order of referral that lays out information for the parties about the expectations of the mediation and their participation. It also gives specific instructions for those cases in which an order of protection is involved. It is essential that safeguards be put in place in jurisdictions that allow cases in which domestic violence is involved to go through mediation.

This form discusses the need to participate in good faith, which is a controversial issue. (See Rules Nuts & Bolts for a discussion of this topic.) Here, the phrasing is "failure to participate in good faith." Those jurisdictions requiring good faith participation and adapting this form should ensure that the parties are provided an explanation of what they need to do to fulfill this requirement.

❑District Court ❑Denver Juvenile Court _____ County, Colorado Court Address: In re: ❑The Marriage of: ❑Parental Responsibilities concerning: _____ Petitioner: and Co-Petitioner/Respondent:	▲ **COURT USE ONLY** ▲ Case Number: Division Courtroom

MEDIATION / ALTERNATIVE DISPUTE RESOLUTION ORDER (DOMESTIC RELATIONS CASE)

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). Mediation provides an opportunity for parties to resolve differences concerning children, property, and financial issues that are addressed in separation and divorce without excessive expenditure of time, energy, and money. The basic premise of mediation is that the parties involved in the dispute are best suited to resolve their own differences, and are in the best position to arrive at solutions that may address the needs of all parties involved.

2. The Court also finds that no one has advised the court that they are unwilling to enter into mediation or ADR because they are the victim of physical or psychological abuse by the other party.

3. 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 8 of this Order, all claims in this action are hereby referred to mediation.

4. All parties are ordered to cooperate in arranging for, and participating in, mediation. Each party shall be present personally at the mediation session, unless telephone conference arrangements are made directly with the Mediator.

   The Court orders that mediation be set up in sufficient time so that it will be completed as follows:
   - ❑ _____ days before the next hearing;
   - ❑ within _____ days from the date of this Order; or
   - ❑ by the following date:_____

5. Issues to be mediated in this case should include the following:

   _____

   _____

   _____

   _____

6. 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.

7. 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 at www.ccmo.info, Mediation Organizations at 1-800-864-4317, through the Yellow Pages, or through contacting the local bar association at _____.

8. Compliance with paragraph 4 of this Order is excused if, within the time limits set forth in paragraph 4, the parties settle all issues; participate in another form of ADR, pursuant to §13-22-313, C.R.S., including but not limited to, med-arbitration, early neutral evaluation, or parenting coordination; or the Court grants a Motion re: Exemption from Mediation/ADR.

9. Except as expressly provided in this Order, applicable Colorado statutes, rules and/or case law shall govern the mediation or other ADR process.

10. The expense of mediation or other ADR process shall be the responsibility of the parties, and shall be divided equally between the parties unless otherwise agreed.

11. When using mediation, the parties are advised that:
    - The primary purpose of the 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.

12. The parties are reminded that if mediation is to address any financial issues that they are to provide to each other the disclosures required by C.R.C.P. 16.2(e)(2) at least five days prior to the mediation, and shall also bring the disclosures to the mediation session. Such disclosures include:
    a. A complete and current financial affidavit.
    b. A complete copy of personal federal and state income tax returns for the three years preceding the filing of the petition or motion.
    c. Pay stubs or statements of earnings from all employers for the three months preceding the filing of the petition or motion.
    d. A complete copy of federal income tax returns for the three years preceding the filing of the petition or motion regarding any business in which a party has any interest entitling that party to a copy of such returns.
    e. Any available information relating to pension, profit sharing, deferred compensation, and retirement plans.

13. Within five days after the completion of the mediation or other ADR process, the Petitioner or Co-Petitioner/Respondent is ordered to complete, file with the Court, and serve upon all other parties the Certificate of Compliance (JDF 1119) attached to this Order.

14. Failure to comply with this Order may result in sanctions.

Date: _____

_____
❑ Judge ❑ Magistrate

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 Petitioner or Petitioner *pro se*
❑ Attorney for Co-Petitioner/Respondent or Co-Petitioner/Respondent *pro se*
❑ Other_____

_____
Clerk

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
LAKE COUNTY, ILLINOIS

IN RE THE MARRIAGE OF:

_____	)	
Petitioner,	)	
vs.	)	Gen. No. _____
	)	
_____	)	
Respondent.	)	

ORDER OF REFERRAL TO MEDIATION

Pursuant to Local Rule 11.13, the parties are ordered to participate in mediation.

Mediator:

Name _____

Address _____

Telephone _____ Fax _____

Issue(s) to be mediated:

❒ Initial Custody
❒ Visitation schedule
❒ Removal
❒ Modification of custody
❒ Visitation abuse issues pursuant to **750 ILCS 5/607.1**
❒ Joint custody pursuant to **750 ILCS 5/602.1**
❒ Other non-economic issues relating to the children (**specify**) _____

_____

❒ Economic issues involving the parties (**specify**) _____

_____

First Status Date (*within 7 weeks)* _____

The parties are ordered to contact the mediator within **two** business days of this order.
The parties shall participate in an orientation session which shall take place no later than **21** days from the date of this order.

Party A:

Name of Party _____ Telephone _____

Address of Party _____

Attorney for Party _____ Telephone _____

Attorney's Address _____ Fax _____

Party B:

Name of Party _____ Telephone _____

Address of Party _____

Attorney for Party _____ Telephone _____

Attorney's Address _____ Fax _____

GAL/AFC/CR:

Name _____ Telephone _____

Address_____

Fee allocation: **Party A** _____% **Party B** _____%

❒ *This is a low-income case and the mediator shall provide services at a reduced fee.*

The parties represent to the court as follows: (*at least one box must be checked*)

❒ No orders of protection have ever been entered involving the parties to this case, or
❒ The parties are, or have been in the past, involved in a proceeding(s) under the Illinois Domestic Violence Act.
❒ A current order of protection prohibits one of the parties from having any contact with the other party.

County and Case Number(s) of IDVA cases involving the parties: _____

Additional Matters:

If the parties to mediation are subject to an order of protection which prohibits contact, they shall attend separate orientation and mediation sessions only.

At the initial orientation session the mediator shall inform the parties of their rights and obligations in mediation.

In addition, at the initial orientation session and from time to time as necessary during the course of the mediation, the mediator shall screen the parties for the presence of impairments to mediation. An impediment to mediation is defined as any condition, including but not limited to domestic violence or intimidation, substance abuse, child abuse, mental illness or a cognitive impairment, which hinders the ability of a party to negotiate safely, competently, or in good faith.

If a mediator determines that an impairment exists which hinders the ability of the parties to negotiate safely, competently, or in good faith, meditation shall terminate and the case shall be returned to court for further proceedings, unless the parties agree to continue to mediate **and** the mediator determines that the implementation of safeguards would remove the impediment(s) to safe and productive mediation.

The parties are expected to attempt to mediate their dispute in good faith. Failure to attend a mediation session or failure to participate in mediation in good faith may subject a party to sanctions. Sanctions may include an assessment of mediation costs and/or attorneys fees incurred by the other party.

Mediation shall terminate upon the following:

a. When all issues have been resolved, or
b. When an individual necessary to facilitate settlement of the dispute is not present, or
c. When in the opinion of the mediator no purpose would be served by continuing the mediation, or
d. When the mediator determines that an impairment exists which hinders the ability of the parties to negotiate safely, competently, or in good faith, or
e. Upon order of court for good cause shown.

The mediator shall submit a report to the court prior to the status date. The report shall contain the following information:

a. The number, duration, and attendance at mediation sessions.
b. Whether mediation has been terminated.
c. Whether the mediator recommends additional mediation sessions.
d. Whether an agreement was reached.
e. A copy of any written agreement signed by all parties to the agreement.
f. The status of payment of the fees for mediation.

Entered:

_____

Judge

Dated at Waukegan, Illinois
This _____ day of _____, 20_____

Prepared by:

Name _____ Phone _____

Address _____ ARDC # _____

City/State/Zip _____