Justin Ross – Materials for 3/19/21 CLE

For the Domestic Relations Mediator:

- Different styles, but shuttle mediation usually works best
- Settlement conference
- Understand the power balance – where to start, etc.
- Balancing rapport vs. moving on
- What issues do we address, and in what order?

For the Lawyer:

Before, and at the beginning of, mediation:

- Sow the seeds of settlement early
- Educate your client on rules and expectations
- Remedy prohibitors before mediation
- Mitigate inhibitors before mediation, and address them with the mediator (and client)
- Provide materials to provide to your mediator.
- Set the tone for your client from the beginning. The lawyer establishes the culture.

During the mediation:

- Maintain a culture and environment that supports compromise.
- Listen to the offer and find positives.
- Track compromise from the other side.
- Understanding what is <u>not</u> impasse.

At the conclusion:

- The "handshake" agreement. Can you count on it?
- The settlement agreement – who should draft it? What content does it need?
- Arbitration clauses: Use for partial agreements? Boilerplate? Complete the deal?

Frequently observed criticisms (a/k/a pet peeves):

- Listen to the entire offer.
- Complaining about the division of time between the parties.
- "They haven't moved at all."
- The "walk out."

C.R.S. 14-10-128.1

Current through all laws passed during the 2020 Regular and First Extraordinary Legislative Sessions and Measures approved at the November 2020 General Election

CO - Colorado Revised Statutes Annotated > TITLE 14. DOMESTIC MATTERS > DISSOLUTION OF MARRIAGE - PARENTAL RESPONSIBILITIES > ARTICLE 10. UNIFORM DISSOLUTION OF MARRIAGE ACT

14-10-128.1. Appointment of parenting coordinator - disclosure

(1) Pursuant to the provisions of this section, at any time after the entry of an order concerning parental responsibilities and upon notice to the parties, the court may, on its own motion, a motion by either party, or an agreement of the parties, appoint a parenting coordinator as a neutral third party to assist in the resolution of disputes between the parties concerning parental responsibilities, including but not limited to implementation of the court-ordered parenting plan. The parenting coordinator shall be a neutral person with appropriate training and qualifications and an independent perspective acceptable to the court. Within seven days after the appointment, the appointed person shall comply with the disclosure provisions of subsection (2.5) of this section.

(2)(a) Absent agreement of the parties, a court shall not appoint a parenting coordinator unless the court makes the following findings:

(I) That the parties have failed to adequately implement the parenting plan;

(II) That mediation has been determined by the court to be inappropriate, or, if not inappropriate, that mediation has been attempted and was unsuccessful; and

(III) That the appointment of a parenting coordinator is in the best interests of the child or children involved in the parenting plan.

(b) In addition to making the findings required pursuant to paragraph (a) of this subsection (2), prior to appointing a parenting coordinator, the court may consider the effect of any claim or documented evidence of domestic violence, as defined in *section 14-10-124 (1.3)(a)*, by the other party on the parties' ability to engage in parent coordination.

(2.5)(a) Within seven days after his or her appointment, the appointed person shall disclose to each party, attorneys of record, and the court any familial, financial, or social relationship that the appointed person has or has had with the child, either party, the attorneys of record, or the judicial officer and, if a relationship exists, the nature of the relationship.

(b) Based on the disclosure required pursuant to paragraph (a) of this subsection (2.5), the court may, in its discretion, terminate the appointment and appoint a different person in the proceedings. A party has seven days from the date of the disclosure to object to the appointment based upon information contained in the disclosure. If a party objects to the appointment, the court shall appoint a different person or confirm the appointment within seven days after the date of the party's objection. If no party timely objects to the appointment, then the appointment is deemed confirmed.

(3)A parenting coordinator shall assist the parties in implementing the terms of the parenting plan. Duties of a parenting coordinator include, but are not limited to, the following:

(a) Assisting the parties in creating an agreed-upon, structured guideline for implementation of the parenting plan;

(b) Developing guidelines for communication between the parties and suggesting appropriate resources to assist the parties in learning appropriate communication skills;

(c) Informing the parties about appropriate resources to assist them in developing improved parenting skills;

(d) Assisting the parties in realistically identifying the sources and causes of conflict between them, including but not limited to identifying each party's contribution to the conflict, when appropriate; and

(e) Assisting the parties in developing parenting strategies to minimize conflict.

(4)(a) The court may not appoint a person pursuant to this section to serve in a case as a parenting coordinator if the person has served or is serving in the same case as an evaluator pursuant to *section 14-10-127* or a representative of the child pursuant to *section 14-10-116*. After appointing a person pursuant to this section to serve as a parenting coordinator in a case, the court may not subsequently appoint the person to serve in the same case as an evaluator pursuant to *section 14-10-127* or a representative of the child pursuant to *section 14-10-116*.

(b) The court may appoint a person who has served or is serving in a case as a child and family investigator pursuant to *section 14-10-116.5* to serve in the same case as the parenting coordinator, upon the agreement of the parties. After appointing a person pursuant to this section to serve as a parenting coordinator in a case, the court may not subsequently appoint the person to serve as a child and family investigator in the same case pursuant to *section 14-10-116.5*.

(5)A court order appointing a parenting coordinator shall be for a specified term; except that the court order shall not appoint a parenting coordinator for a period of longer than two years. If an order fails to specify the length of the court-ordered appointment, it shall be construed to be two years from the date of appointment. Upon agreement of the parties, the court may extend, modify, or terminate the appointment, including extending the appointment beyond two years from the date of the original appointment. The court may terminate the appointment of the parenting coordinator at any time for good cause. The court shall allow the parenting coordinator to withdraw at any time.

(6)A court order appointing a parenting coordinator shall include apportionment of the responsibility for payment of all of the parenting coordinator's fees between the parties. The state shall not be responsible for payment of fees to a parenting coordinator appointed pursuant to this section.

(7)(a) A parenting coordinator appointed by the court pursuant to this section shall be immune from civil liability in any claim for injury that arises out of an act or omission of the parenting coordinator occurring on or after April 16, 2009, during the performance of his or her duties or during the performance of any act that a reasonable parenting coordinator would believe was within the scope of his or her duties unless the act or omission causing the injury was willful and wanton.

(b) Nothing in this subsection (7) shall be construed to bar a party from asserting a claim:

(I) Based upon a parenting coordinator's failure to comply with the provision set forth in subsection (8) of this section;

(II) Related to the reasonableness or accuracy of any fee charged or time billed by a parenting coordinator; or

(III) Based upon a negligent act or omission involving the operation of a motor vehicle by a parenting coordinator.

(c)

(I) In a judicial proceeding, administrative proceeding, or other similar proceeding between the parties to the action, a parenting coordinator shall not be competent to testify and may not be required to produce records as to any statement, conduct, or decision that occurred during the parenting coordinator's appointment to the same extent as a judge of a court of this state acting in a judicial capacity.

(II) This paragraph (c) shall not apply:

(A) To the extent testimony or production of records by the parenting coordinator is necessary to determine a claim of the parenting coordinator against a party; or

(B) To the extent testimony or production of records by the parenting coordinator is necessary to determine a claim of a party against a parenting coordinator; or

(C) When both parties have agreed, in writing, to authorize the parenting coordinator to testify.

(d) If a person commences a civil action against a parenting coordinator arising from the services of the parenting coordinator, or if a person seeks to compel a parenting coordinator to testify or produce records in violation of paragraph (c) of this subsection (7), and the court determines that the parenting coordinator is immune from civil liability or that the parenting coordinator is not competent to testify, the court shall award to the parenting coordinator reasonable attorney fees and reasonable expenses of litigation.

(8) The parenting coordinator shall comply with any applicable provisions set forth in chief justice directives and any other practice or ethical standards established by rule, statute, guideline, or licensing board that regulates the parenting coordinator.

History

Source: L. 2005: Entire section added, p. 952, § 1, effective June 2; (4)(b) amended, p. 963, § 11, effective July 1. **L. 2009:** (7) and (8) amended, *(SB 09-069), ch. 121, p. 502,* § 1, effective April 16. **L. 2012:** (1) and (2)(b) amended and (2.5) added, *(SB 12-056), ch. 108, p. 369,* § 4, effective July 1.

Annotations

Notes

Cross references: For the legislative declarations contained in the 2005 act amending subsection (4)(b), see sections 1 and 3 of chapter 244, Session Laws of Colorado 2005.

Case Notes

ANNOTATION

Law reviews. For article, "Privatizing Family Law Adjudications: Issues and Procedures", see 34 Colo. Law. 95 (Aug. 2005). For article, "Parenting Coordinator: Understanding This New Role", see 35 Colo. Law. 31 (Feb. 2006). For article, "A Brief Overview of Parenting Coordination", see 38 Colo. Law. 61 (July 2009).

This section does not permit the parenting coordinator to make decisions or resolve disputes that the parents are unable to resolve. A grant of decision-making authority to the parenting coordinator is contrary to subsection (3). *In re Dauwe, 148 P.3d 282 (Colo. App. 2006)*.

This section and § 13-22-313 are in conflict and cannot be harmonized with respect to the standards for the appointment of a parenting coordinator if abuse is alleged by one parent by the other. Although § 13-22-313 bars the court from referring a case to any ancillary form of alternative dispute resolution if one of the parties claims abuse by the other party, under this section, a mere claim of abuse by one parent is insufficient to bar the appointment of a parenting coordinator.

Even documented evidence of domestic violence does not automatically bar such an appointment. Rather, the court is required only to consider the effect of the evidence on the parties' ability to engage in parenting coordination. *In re Rozzi, 190 P.3d 815 (Colo. App. 2008)*.

Court erred in directing that the parenting coordinator should assume the duties of a special master and follow the procedures set forth in *C.R.C.P. 53*. However, the court was proper in providing that the parenting coordinator may make nonbinding recommendations to the parties in the event that they are unable to resolve a dispute themselves. *In re Rozzi, 190 P.3d 815 (Colo. App. 2008)*.

COLORADO REVISED STATUTES

End of Document

C.R.S. 14-10-128.3

Current through all laws passed during the 2020 Regular and First Extraordinary Legislative Sessions and Measures approved at the November 2020 General Election

CO - Colorado Revised Statutes Annotated > TITLE 14. DOMESTIC MATTERS > DISSOLUTION OF MARRIAGE - PARENTAL RESPONSIBILITIES > ARTICLE 10. UNIFORM DISSOLUTION OF MARRIAGE ACT

14-10-128.3. Appointment of decision-maker - disclosure

(1) In addition to the appointment of a parenting coordinator pursuant to *section 14-10-128.1* or an arbitrator pursuant to *section 14-10-128.5*, at any time after the entry of an order concerning parental responsibilities and upon written consent of both parties, the court may appoint a qualified domestic relations decision-maker and grant to the decision-maker binding authority to resolve disputes between the parties as to implementation or clarification of existing orders concerning the parties' minor or dependent children, including but not limited to disputes concerning parenting time, specific disputed parental decisions, and child support. A decision-maker shall have the authority to make binding determinations to implement or clarify the provisions of a pre-existing court order in a manner that is consistent with the substantive intent of the court order. The decision-maker appointed pursuant to the provisions of this section may be the same person as the parenting coordinator appointed pursuant to *section 14-10-128.1*. At the time of the appointment, the appointed person shall comply with the disclosure provisions of subsection (4.5) of this section.

(2) The decision-maker's procedures for making determinations shall be in writing and shall be approved by the parties prior to the time the decision-maker begins to resolve a dispute of the parties. If a party is unable or unwilling to agree to the decision-maker's procedures, the decision-maker shall be allowed to withdraw from the matter.

(3) All decisions made by the decision-maker pursuant to this section shall be in writing, dated, and signed by the decision-maker. Decisions of the decision-maker shall be filed with the court and mailed to the parties or to counsel for the parties, if any, no later than twenty days after the date the decision is issued. All decisions shall be effective immediately upon issuance and shall continue in effect until vacated, corrected, or modified by the decision-maker or until an order is entered by a court pursuant to a de novo hearing under subsection (4) of this section.

(4)(a) A party may file a motion with the court requesting that a decision of the decision-maker be modified by the court pursuant to a de novo hearing. A motion for a de novo hearing shall be filed no later than thirty-five days after the date the decision is issued pursuant to subsection (3) of this section.

(b) If a court, in its discretion based on the pleadings filed, grants a party's request for a de novo hearing to modify the decision of the decision-maker and the court substantially upholds the decision of the decision-maker, the party that requested the de novo hearing shall pay the fees and costs of the other party and shall pay the fees and costs incurred by the decision-maker in connection with the request for de novo hearing, unless the court finds that it would be manifestly unjust.

(4.5)(a) Within seven days after his or her appointment, the appointed person shall disclose to each party, attorneys of record, and the court any familial, financial, or social relationship that the appointed person has or has had with the child, either party, the attorneys of record, or the judicial officer and, if a relationship exists, the nature of the relationship.

(b) Based on the disclosure required pursuant to paragraph (a) of this subsection (4.5), the court may, in its discretion, terminate the appointment and appoint a different person in the proceedings. A party has seven

days from the date of the disclosure to object to the appointment based upon information contained in the disclosure. If a party objects to the appointment, the court shall appoint a different person or confirm the appointment within seven days after the date of the party's objection. If no party timely objects to the appointment, then the appointment is deemed confirmed.

(5)A court order appointing a decision-maker shall be for a specified term; except that the court order shall not appoint a decision-maker for a period of longer than two years. If an order fails to specify the length of the court-ordered appointment, it shall be construed to be two years from the date of appointment. Upon agreement of the parties, the court may extend, modify, or terminate the appointment, including extending the appointment beyond two years from the date of the original appointment. The court may terminate the appointment of the decision-maker at any time for good cause. The court shall allow the decision-maker to withdraw at any time.

(6)A court order appointing a decision-maker shall include apportionment of the responsibility for payment of all of the decision-maker's fees between the parties. The state shall not be responsible for payment of fees to a decision-maker appointed pursuant to this section.

(7)(a) A decision-maker shall be immune from liability in any claim for injury that arises out of an act or omission of the decision-maker occurring during the performance of his or her duties or during the performance of an act that the decision-maker reasonably believed was within the scope of his or her duties unless the act or omission causing such injury was willful and wanton.

(b) Nothing in this subsection (7) shall be construed to bar a party from asserting a claim related to the reasonableness or accuracy of any fee charged or time billed by a decision-maker.

(c)

(I) In a judicial proceeding, administrative proceeding, or other similar proceeding, a decision-maker shall not be competent to testify and may not be required to produce records as to any statement, conduct, or decision, that occurred during the decision-maker's appointment, to the same extent as a judge of a court of this state acting in a judicial capacity.

(II) This paragraph (c) shall not apply:

(A) To the extent testimony or production of records by the decision-maker is necessary to determine the claim of the decision-maker against a party; or

(B) To the extent testimony or production of records by the decision-maker is necessary to determine a claim of a party against a decision-maker; or

(C) When both parties have agreed, in writing, to authorize the decision-maker to testify.

(d) If a person commences a civil action against a decision-maker arising from the services of the decision-maker, or if a person seeks to compel a decision-maker to testify or produce records in violation of paragraph (c) of this subsection (7), and the court decides that the decision-maker is immune from civil liability or that the decision-maker is not competent to testify, the court shall award to the decision-maker reasonable attorney fees and reasonable expenses of litigation.

(8) The decision-maker shall comply with any applicable provisions set forth in chief justice directives and any other practice or ethical standards established by rule, statute, or licensing board that regulates the decision-maker.

History

Source: L. 2005: Entire section added, p. 954, § 1, effective June 2. **L. 2012:** (1) amended and (4.5) added, *(SB 12-056), ch. 108, p. 370,* § 5, effective July 1; (4)(a) amended, *(SB 12-175), ch. 208, p. 832,* § 31, effective July 1.

Annotations

Case Notes

ANNOTATION

Law reviews. For article, "Privatizing Family Law Adjudications: Issues and Procedures", see 34 Colo. Law. 95 (Aug. 2005). For article, "Parenting Coordinator: Understanding This New Role", see 35 Colo. Law. 31 (Feb. 2006).

SUPREME COURT OF COLORADO
Office of the Chief Justice
DIRECTIVE CONCERNING COURT APPOINTMENTS OF DECISION-MAKERS PURSUANT TO §14-10-128.3, C.R.S.

I. INTRODUCTION

This directive is adopted to assist the administration of justice by providing explanation and commentary on the statutory duties set forth by §14-10-128.3, C.R.S. (2005) for the appointment, qualifications and training of decision-makers.

House Bill 05-1171 passed by the General Assembly during the 2005 session created statutory authority for parenting coordinators and decision-makers, and clarified the existing statutory provision concerning arbitrators set forth at §14-10-128.5, C.R.S..

The purpose of these guidelines is to provide a guide to interpretation on the statutory duties set forth by §14-10-128.3, C.R.S. (2005) to those serving as DMs, to the courts who are approving the agreement of the parties for the appointment of a DM, and to the parties/parents who are agreeing to the appointment of a DM as to the responsibilities of each when such an appointment is made in order to better serve the families of Colorado. The comments set forth with each guideline explain and illustrate the meaning and purpose of the guideline, and are intended as a guide to that interpretation.

These guidelines have been drafted with the knowledge that these roles may be filled by people from different professions and backgrounds.

II. APPLICABLE STATUTES

A. These guidelines provide commentary on the statutory responsibilities of DMs, the courts appointing DMs, and the parties contracting with DMs pursuant to §14-10-128.3, C.R.S.

B. The standards and responsibilities for arbitrators appointed pursuant to §14-10-128.5, C.R.S. are set forth in detail in the Uniform Arbitration Act in part 2 of article 22 of title 13, C.R.S. The standards and responsibilities for parenting coordinators ("PCs") are set forth in §14-10-128.1, C.R.S.

III. DECISION-MAKER (DM) GUIDELINES

A. DM AUTHORITY

§14-10-128.3(1) [At]any time after the entry of an order concerning parental responsibilities and upon written consent of both parties, the court may appoint a qualified domestic relations decision-maker and grant to the decision-maker binding authority to resolve disputes between the parties as

to implementation or clarification of existing orders concerning the parties' minor or dependent children, including but not limited to disputes concerning parenting time, specific disputed parental decisions, and child support. A decision-maker shall have the authority to make binding determinations to implement or clarify the provisions of a pre-existing court order in a manner that is consistent with the substantive intent of the court order. The decision-maker appointed pursuant to the provisions of this section may be the same person as the parenting coordinator appointed pursuant to section 14-10-128.1.

COMMENT

When the conditions of §14-10-128.3, C.R.S. are met, the court should appoint a qualified DM to assist parties with the implementation or clarification of existing court orders. An original decision as to parental responsibilities cannot come from a decision maker. In addition, the role of the decision maker has no applicability with respect to the establishment of temporary orders or other preliminary matters. The court should monitor any complaints concerning that person's services. Parties and children deserve to have decision-making services conducted in the manner least harmful to them and most likely to provide assistance to the family to implement existing orders. If issues are raised concerning competency or any other concerns, the court should inquire and provide an opportunity to remedy any act or omission that was not willful and wanton.

The DM can clarify an existing order, but cannot otherwise modify, change or abridge existing court orders. A DM must be careful to assure both fairness and the appearance of fairness, allowing the parties relatively equal and comparable opportunities to present their perspectives. The DM should inform parties that Decision-Making is distinct and separate from other forms of alternative dispute resolution, from forensic services such as parental responsibility evaluations or child and family investigations and from the practice of law. A DM should avoid multiple relationships which could reasonably be expected to impair objectivity, impartiality, competence or effectiveness. Prior therapeutic relationships, for example, will be compromised, and pre-existing alliances and loyalties that a therapist or attorney or other professional have established will impair neutrality and impartiality. The DM may have served as the child and family investigator, mediator or med-arbiter. In some cases a CFI (formerly known as special advocate), a mediator or a med-arbiter may agree to move to the separate role of DM after all of his or her duties as CFI, mediator or med-arbiter are completed and the appointment has been terminated by the court. This move should only occur with the informed consent of both of the parties and the CFI, mediator or med-arbiter. The CFI, mediator or med-arbiter who accepts an appointment as a DM should not afterwards be appointed as a CFI or a child's legal representative. A DM may subsequently move to the separate role of mediator or med-arbiter by signed agreement of the parties.

The parties/parents must consent in writing to the appointment of a DM. Once a DM is appointed, the parties/parents should cooperate in providing necessary information to the DM. Depending on the case, the DM may need information from collateral sources such as

teachers or therapists; may need to review school, medical, or other records; may need to check criminal histories or obtain drug testing; or may require other case-specific information or evaluations.

B. DM COMMUNICATIONS

> ***§14-10-128.3(2) The decision-maker's procedures for making determinations should be in writing and should be approved by the parties prior to the time the decision-maker begins to resolve a dispute of the parties. If a party is unable or unwilling to agree to the decision-maker's procedures, the decision-maker should be allowed to withdraw from the matter.***
> ***(3) All decisions made by the decision-maker pursuant to this section shall be in writing, dated, and signed by the decision-maker. Decisions of the decision-maker shall be filed with the court and mailed to the parties or to counsel for the parties, if any, no later than twenty days after the date the decision is issued. All decisions shall be effective immediately upon issuance and shall continue in effect until vacated, corrected, or modified by the decision-maker or until an order is entered by a court pursuant to a de novo hearing under subsection (4) of this section.***

COMMENT

When first appointed, a DM should provide the parties with written information that sets forth his or her procedures, including the nature and scope of the services to be provided to the parties. The initial information should describe the DM's policies, procedures, qualifications, and reporting obligations, as well as how a party can contact the court should a concern or complaint about the DM arise. The information should include the nature of the services provided, the DM's qualifications, where complaints should be directed, fees and billing procedures, how communication will be handled, how sensitive information will be handled, and the DM's reporting obligations. For example, the DM should detail the DM's policies regarding phone calls and e-mail communication, *ex parte* communication with parties and/or counsel, interviewing children, contacting collaterals or other professionals in the case, setting appointments, time-frame for entry of decisions, etc. Before beginning a case, the DM and the parties should execute the written agreement of the DM, acknowledging the acceptance by the parties of the DM's procedures. In the event a party is unable or unwilling to agree to the DM's procedures and does not execute the written agreement, the DM should request permission of the Court to withdraw. It is also the responsibility of a DM to provide specific information to the parties regarding fees, billing policies, and procedures used if there is non-payment of fees. A DM should provide periodic billing statements to the parties, listing all services performed and detailing the time spent and the charges incurred.

A DM should have no contact with the court during the course of his or her appointment except for the following reasons: to obtain information from the court concerning the order of appointment or applicable legal standards, to inform the court of the refusal of a party to participate or to pay, or to file agreements of the parties with the Court or written decisions of

the DM, or for confirmation of decisions as Court Orders. DMs should have no private or *ex parte* communications with the court. An *ex parte* communication is any communication in which at least one party does not have notice and an opportunity to participate in the communication.

The DM should file all decisions in writing with the Court and should include findings of fact and rationale for the decision, if appropriate. In doing so, the DM will refrain from quoting information learned from various professionals involved with the family, such as a child's or parent's therapist, school teacher, etc., to the extent necessary to protect the integrity of the professional relationship.

The parties/parents should carefully review the DM's written procedures and decisions and notify the DM immediately if there are questions or concerns.

The judge should avoid ex parte communications with the DM. In accordance with Canon 3 of the Colorado Code of Judicial Conduct, a "judge should accord to every person who is legally interested in a proceeding, or his or her lawyer, full right to be heard according to law, and, except as authorized by law, neither initiate nor consider *ex parte* or other communications concerning a pending or impending proceeding."

C. DE NOVO REVIEW

§14-10-128.3(4)(a) A party may file a motion with the court requesting that a decision of the decision-maker be modified by the court pursuant to a de novo hearing. A motion for a de novo hearing shall be filed no later than thirty days after the date the decision is issued pursuant to subsection (3) of this section.
(b) If a court, in its discretion based on the pleadings filed, grants a party's request for a de novo hearing to modify the decision of the decision-maker and the court substantially upholds the decision of the decision-maker, the party that requested the de novo hearing shall pay the fees and costs of the other party and shall pay the fees and costs incurred by the decision-maker in connection with the request for de novo hearing, unless the court finds that it would be manifestly unjust.

COMMENT

For guidelines on enforcement of orders concerning payment of the DM, see Court Oversight, below.

D. ORDER OF APPOINTMENT

§14-10-128.3(5) A court order appointing a decision-maker shall be for a specified term; except that the court order shall not appoint a decision-maker for a period of longer than two years. If an order fails to specify the length of the court-ordered appointment, it shall be construed to be two

years from the date of appointment. Upon agreement of the parties, the court may extend, modify, or terminate the appointment, including extending the appointment beyond two years from the date of the original appointment. The court may terminate the appointment of the decision-maker at any time for good cause. The court shall allow the decision-maker to withdraw at any time.

(6) A court order appointing a decision-maker shall include apportionment of the responsibility for payment of all of the decision-maker's fees between the parties. The state shall not be responsible for payment of fees to a decision-maker appointed pursuant to this section.

COMMENT

A DM must ensure that there is a properly executed court order of appointment prior to providing services that sets forth the scope of his or her role. It should include with specificity the decisions that fall within the DM's scope of authority. If the DM is unable to assist the parties by implementing or clarifying the provisions of the existing court order, the DM should notify the court and counsel or parties and await further direction from the court.

If there is a conflict between the requirements of the order and the DM's professional ethical constraints or obligations, then s/he should take steps to ensure that the conflict is resolved. If, for example, the order requires the DM to act beyond the scope of his or her competence or statutory authority, or to perform contradictory multiple roles, then the court and counsel should be informed. If the conflict cannot be resolved then the DM should request removal from the case. If the order sets fees and retainer amounts that conflict with the DM's business practices, s/he should inform the court and request modification of the order or withdrawal from the case. These issues should be addressed immediately upon notice of appointment and before beginning any work on the case.

The court should appoint DMs for specified terms not to exceed two years, and the court should terminate the DM appointment at the end of the term, unless all parties and the DM agree to continue the term and notify the court accordingly. The court order should set forth the scope of service and term of the DM's appointment. If required by circumstances unforeseen at the time of appointment, the DM and/or parties can return to the court to request expansion on the order of appointment. The court order appointing a DM should include apportionment between the parties of the responsibility for payment of all fees. The state should not be responsible for the payment of any DM fees. The court should enforce its orders for payment by all available means. DMs are entitled to receive adequate and predictable compensation. It is the responsibility of the court to enforce its orders concerning payment of DMs through its contempt power. When non-payment or partial payment issues arise, the DM may notify the court regarding the non-payment issue and ask for guidance. The court, at its discretion, should determine what course of action is appropriate, including finding parties in contempt, or reallocating the parties' division of fees.

The parties/parents should review and understand the court order and should make timely payment for the DM's services.

E. COURT OVERSIGHT

§14-10-128.3(7)(a) A decision-maker shall be immune from liability in any claim for injury that arises out of an act or omission of the decision-maker occurring during the performance of his or her duties or during the performance of an act that the decision-maker reasonably believed was within the scope of his or her duties unless the act or omission causing such injury was willful and wanton.
(b) Nothing in this subsection (7) shall be construed to bar a party from asserting a claim related to the reasonableness or accuracy of any fee charged or time billed by a decision-maker.
(c)(I) In a judicial proceeding, administrative proceeding, or other similar proceeding, a decision-maker shall not be competent to testify and may not be required to produce records as to any statement, conduct, or decision, that occurred during the decision-maker's appointment, to the same extent as a judge of a court of this state acting in a judicial capacity.
(II) This paragraph (c) shall not apply:
(A) To the extent testimony or production of records by the decision- maker is necessary to determine the claim of the decision-maker against a party; or
(B) To the extent testimony or production of records by the decision- maker is necessary to determine a claim of a party against a decision-maker; or
(C) When both parties have agreed, in writing, to authorize the decision-maker to testify.
(d) If a person commences a civil action against a decision-maker arising from the services of the decision-maker, or if a person seeks to compel a decision-maker to testify or produce records in violation of paragraph (c) of this subsection (7), and the court decides that the decision-maker is immune from civil liability or that the decision-maker is not competent to testify, the court shall award to the decision-maker reasonable attorney fees and reasonable expenses of litigation.

COMMENT

In a judicial proceeding, administrative proceeding or other similar proceeding between the parties, a DM shall not be required to produce records or to testify as to any statement, conduct, or decision that occurred during the DM's appointment. The following exceptions to confidentiality are recognized:

1. A DM may produce records if such production is necessary to determine a claim of the DM against a party or the claim of a party against the DM.
2. A DM may testify if all parties agree in writing to authorize testimony.
3. In cases in which the DM suspects or knows that the child/ren are being neglected or abused, the DM should take the steps required to ensure that law enforcement and/or the department of social services is informed, and should take whatever additional steps are believed necessary to protect the children.

4. All decisions made by the DM should be in writing and filed with the Court as required by statute. Findings of fact based upon information disclosed in the decision-making process may be included in such written decisions.

The DM should inform the parties of the confidentiality and limitations on confidentiality in the decision-making processes. The underlying notes, records and other materials of a DM should not be disclosed in any proceeding except as required by statute.

The DM should not share information outside of the decision-making processes except for legitimate and allowed professional purposes. A DM should maintain confidentiality regarding the sharing of information outside of the scope of the parenting coordination and decision-making process which is obtained by the DM except as provided by court order or by written agreement of the parties.

The confidentiality requirements and exceptions for the DM are somewhat different from parenting coordinators and interested persons are advised to take note of these distinctions within §14-10-128.1 and 14-10-128.3, C.R.S..

F. PROFESSIONALISM AND QUALIFICATIONS

§14-10-128.3(8) The decision-maker should comply with any applicable provisions set forth in chief justice directives and any other practice or ethical standards established by rule, statute, or licensing board that regulates the decision-makers.

COMMENT

The DM's primary responsibility is to assist parties to resolve disputes concerning parental responsibilities. In meeting this responsibility, The DM should understand that they are working with high conflict families and should attempt to establish a positive and constructive professional working relationship with family members. The DM should be mindful of the diverse nature of families and respect cultural, individual, and role differences, including those based on age, gender, gender identity, race, ethnicity, culture, national origin, religion, sexual orientation, disability, language, and socioeconomic status and consider these factors when working with a family. The DM should be sensitive to the separate interests, rights, wishes and concerns of the parents and other parties in a case.

The DM must remember that s/he is in – and is viewed as being in – a position of great influence over a family's future. A DM's decisions are to be based on his or her independent evaluation and assessment of a case. The DM should guard against being unduly influenced by the conclusions of other professionals who are working on or have worked on the case. The DM should strive to maintain neutrality and independence. If the DM becomes aware of an insurmountable bias or prejudice or the appearance of bias or prejudice in dealing with a case s/he should request the court to terminate the appointment with proper notice to the parties.

A DM should not serve in a matter that presents a clear conflict of interest. The DM should disclose potential conflicts of interest as soon as practical. This includes, but is not limited to, disclosure of any financial or personal interest in the outcome and any current or previous relationship with any party, counsel, witness, etc. After appropriate disclosure the DM may continue to serve if the parties agree. However, if a conflict of interest clearly impairs a DM's impartiality, the DM should withdraw regardless of the express agreement of the parties. There are times when neutrality is difficult to maintain and the DM, through no fault of his or her own, simply cannot set aside a bias or feelings that occasionally develop when working with challenging parties or high conflict families. When this occurs, the DM should request removal from the case.

Given the importance of the work to be performed, all DMs, irrespective of professional backgrounds, should accept appointments only after attaining a level of competence that includes an understanding of both the legal and psychological/social issues that are typically present in dissolution or parenting cases and should maintain and regularly update his or her training in relevant areas.

The DM should have substantial training in relevant areas prior to accepting appointments. New DMs should complete 60 hours of training in relevant areas and specifically family mediation and arbitration prior to accepting appointments. Attorneys and mental health professionals and other members of the community who are working as DMs should complete no less than 15 hours of continuing education in relevant areas every three years.

DMs achieve competence through some combination of education, specialized training, supervision, consultation, and professional experience. They have a responsibility to develop and maintain a working familiarity with the applicable law and the professional standards that govern their duties and participation in legal proceedings. Areas in which DMs should demonstrate experience, education or skills may include the following:

Dynamics of high conflict divorce;
The effects of divorce, single parenting, and remarriage in children, adults, and families;
Family dynamics and dysfunction;
Domestic violence;
Substance abuse;
Child development, including cognitive, personality, emotional and psychological development;
Child and adult psychopathology;
Child abuse;
Interviewing techniques;
Available services for the child/ren and parties including medical, mental health, educational, and special needs;
Diversity issues; and
The legal standards applicable in each case in which the DM is appointed.
Colorado Child Support Guidelines if child support determination or modification is an issue.

When a DM recognizes that an issue falls outside of his or her area of expertise, the parties should be informed and a referral should be made to an appropriate professional. The DM should inform the court and request that the order of appointment be amended.

Courts and judicial districts maintaining records of DMs and the courts appointing DMs should take the DM's training into account, and may require that current, accurate records of training and on-going education be provided to the court or judicial district upon request.

Made effective this 2nd day of January, 2008 in Denver, Colorado.

/s/
Mary J. Mullarkey, Chief

C.R.S. 14-10-128.5

Current through all laws passed during the 2020 Regular and First Extraordinary Legislative Sessions and Measures approved at the November 2020 General Election

CO - Colorado Revised Statutes Annotated > TITLE 14. DOMESTIC MATTERS > DISSOLUTION OF MARRIAGE - PARENTAL RESPONSIBILITIES > ARTICLE 10. UNIFORM DISSOLUTION OF MARRIAGE ACT

14-10-128.5. Appointment of arbitrator - de novo hearing of award

(1) With the consent of all parties, the court may appoint an arbitrator to resolve disputes between the parties concerning the parties' minor or dependent children, including but not limited to parenting time, nonrecurring adjustments to child support, and disputed parental decisions. Notwithstanding any other provision of law to the contrary, all awards entered by an arbitrator appointed pursuant to this section shall be in writing. The arbitrator's award shall be effective immediately upon entry and shall continue in effect until vacated by the arbitrator pursuant to part 2 of article 22 of title 13, C.R.S., modified or corrected by the arbitrator pursuant to part 2 of article 22 of title 13, C.R.S., or modified by the court pursuant to a de novo hearing under subsection (2) of this section.

(2) Any party may apply to have the arbitrator's award vacated, modified, or corrected pursuant to part 2 of article 22 of title 13, C.R.S., or may move the court to modify the arbitrator's award pursuant to a de novo hearing concerning such award by filing a motion for hearing no later than thirty-five days after the date of the award. In circumstances in which a party moves for a de novo hearing by the court, if the court, in its discretion based on the pleadings filed, grants the motion and the court substantially upholds the decision of the arbitrator, the party that requested the de novo hearing shall be ordered to pay the fees and costs of the other party and the fees of the arbitrator incurred in responding to the application or motion unless the court finds that it would be manifestly unjust.

History

Source: L. 97: Entire section added, p. 33, § 2, effective July 1. **L. 2004:** Entire section amended, p. 1731, § 3, effective August 4. **L. 2005:** Entire section amended, p. 956, § 2, effective June 2. **L. 2012:** (2) amended, *(SB 12-175), ch. 208, p. 833,* § 32, effective July 1.

Annotations

Case Notes

ANNOTATION

Law reviews. For article, "Child Custody: The Right Choice at the Right Price", see 26 Colo. Law. 67 (Aug. 1997). For article, "Use of a Parenting Coordinator in Domestic Cases", see 27 Colo. Law. 53 (May 1998). For article, "Privatizing Family Law Adjudications: Issues and Procedures", see 34 Colo. Law. 95 (Aug. 2005). For article, "Parenting Coordinator: Understanding This New Role", see 35 Colo. Law. 31 (Feb. 2006).

While issues of child custody, visitation, child support, and other matters relating to the children are arbitrable, the trial court retains jurisdiction to decide all issues relating to the children de novo upon the request of either party. *In re Popack, 998 P.2d 464 (Colo. App. 2000)*.

Because there was no arbitration award issued pursuant to this section, mother was not entitled to a trial de novo. Although the order of appointment clothed the parenting coordinator with arbitration power, the court found no arbitration occurred. *In re Kniskern, 80 P.3d 939 (Colo. App. 2003)*.

Trial court is not required to conduct an evidentiary hearing on an arbitrator's request for payment of fees. Although the necessity or reasonableness of an arbitrator's fees may be subject to dispute, the parties' due process rights to litigate the scope of the services and the amounts requested are well protected by written motion practice. *In re Eggert, 53 P.3d 794 (Colo. App. 2002)*.

Requests for de novo review must be filed within 30 days after the arbitrator's ruling. This conclusion is consistent with the plain meaning of the statute since it specifically refers to the Uniform Arbitration Act of 1975 that creates the 30-day time frame. *In re Schmitt, 89 P.3d 510 (Colo. App. 2004)*.

Request for de novo review of parenting time order must be timely filed. While the Uniform Dissolution of Marriage Act takes precedence over other laws, including those applicable to alternative dispute resolution, this section requires a party to request a de novo hearing on an arbitration award no later than 35 days after the date of the arbitration award. Court erred in setting permanent orders hearing on parenting issues. *In re Rivera, 2013 COA 21, 300 P.3d 994*.

Statute does not grant an absolute right to a de novo hearing. Plain language of statute gives the court discretion to grant or deny a party's motion for such a hearing. *In re Vanderborgh, 2016 COA 27, 370 P.3d 661*.

Arbitration award must be confirmed by the court in order for the award to be enforced as a court order through contempt proceedings. Although the arbitration order was effective immediately, neither spouse petitioned the district court to confirm the award. An arbitrator's award is not a "court order" for purposes of the contempt statute. *In re Leverett, 2012 COA 69, 318 P.3d 31*.

End of Document

THE ARBITRATION PROCESS IN DOMESTIC RELATIONS CASES UNDER TITLE 13

1. **Arbiters powers and discretion**

   a. An arbiter may conduct an arbitration in the manner that he/she considers appropriate for a fair and expeditious disposition. C.R.S. § 13-22-215
   b. Powers include, but are not limited to, the power to hold conferences before the hearing and the power to determine the admissibility relevance, materiality and weight of any evidence. C.R.S. § 13-22-215
   c. Other powers: subpoena witnesses and documents; permit depositions and discovery; compel attendance of witnesses and discovery. C.R.S. § 13-22-217

2. **What issue is being arbitrated?**

   a. Parenting Time
   b. Property Disposition
   c. Language in Separation Agreement
   d. Private or public school
   e. Trust issues

3. **Are the parties represented?**

   a. Pro Se parties
   b. Pro Se party and a party represented by an attorney
   c. Both parties represented by counsel

4. **What rules apply?**

   a. Uniform Arbitration Act
   b. C.R.C.P. 16.2
   c. C.R.C.P. 26
   d. Colorado Rules of Evidence
   e. C.R.S. § 14-10-101 *et seq.*