

## Survey of Family Law Cases 2004-2013

### 2012 Family Law Survey

## ALTERNATIVE DISPUTE RESOLUTION

In re the Marriage of Leverett, 2012 COA 69 (Colo. App. 2012), a post-dissolution contempt action, presents an issue of first impression in Colorado: whether the award of an arbiter appointed under C.R.S. §14-10-128.5, which has not been confirmed by the district court, is enforceable as a "court order" under Colorado's contempt rule. The Court of Appeals held that the answer is no.

At the time of dissolution, the parties entered into an arbitration agreement stating, "the parties understand that this process is an alternative to having their case heard in court by a judge," and the court appointed an arbiter pursuant to C.R.S. §14-10-128.5. The arbiter issued two final awards, one of which ordered husband to take two of the children to a particular therapist for family therapy. The arbiter's award was emailed to the parties in an email asking the parties to file the awards with the court. Neither spouse petitioned the district court to confirm the awards.

### Alternative Dispute Resloution in a Divorce

Husband took the children to a therapist other than the one selected by the arbiter. Wife filed a motion for contempt citation with a district court magistrate citing the arbiter's awards. Husband was found guilty of contempt for violating the arbiter's awards and was sentenced to two weeks in jail and a \$2,000 fine. Husband petitioned the district court for review of the magistrate's decision stating that he could not be held in contempt for alleged violations of unconfirmed arbitration awards, which was denied.

To find a party in contempt under C.R.C.P. 107, the fact finder must find that the contemnor did not comply with a lawful order of the "court," defined by C.R.C.P. 107(a)(6) as "any judge, magistrate, commissioner, referee, or a master while performing official duties." Because an arbiter is not included in this definition, and an arbiter's award is not an order of the court, a person cannot be held in contempt of court for violating an unconfirmed award of an arbiter.

### Domestic Resolutions in Family Law

C.R.S. §14-10-128.5 states the conditions for using an arbiter in domestic relations cases to resolve disputes between the parties concerning their minor or dependent children. However, it does not mention how to *enforce* an arbiter's award that has become effective if one party should fail to follow that award. Because it does not, and courts are to construe C.R.S. §14-10-128.5 in *pari materia* with the Uniform Arbitration Act (UAA) if possible, the Court of Appeals turned to the provisions of the UAA for guidance.

Under C.R.S. §13-22-222(1), an arbiter's award does not constitute an enforceable "order" of the district court unless and until a party makes a motion to the court for an order confirming the award and the court issues an order confirming the arbitration award pursuant to that section. Here, the arbiter appeared to recognize this requirement when she directed the parties to file the award with the court.

Where one party fails to comply with an arbitration award under C.R.S. §14-10-128.5, the other party may make a motion to the district court for an order confirming that award under C.R.S. §13-22-222(1).

Only once the court issues a confirming order is the order enforceable through a contempt action. Because neither party made a motion to the court for an order confirming the arbiter's awards, those awards were not enforceable as an "order of the court," and husband may not be held in contempt on that basis.