

SEVENTH JUDICIAL ADMINISTRATIVE DISTRICT MEDIATION RULES

This mediation rule applies to the Superior, State, Probate and Magistrate Courts of Bartow, Douglas, Gordon, Haralson, Paulding, and Polk Counties.

GENERAL POLICY:

The court will make information about alternative dispute resolution (ADR) options available to all litigants.

DEFINITION:

Mediation. Mediation is a process in which a neutral facilitates settlement discussions between parties. The neutral has no authority to make a decision or impose a settlement upon the parties upon their needs and interests rather than upon rights and positions. Although in court-annexed or court-referred mediation programs the parties may be ordered to attend a mediation session, any settlement is entirely voluntary. In the absence of settlement the parties lose none of their rights to a jury trial.

RULE 1. Referral to Mediation.

(a) Except as hereinafter provided, any contested civil or domestic matter may be referred to mediation in the Superior, Probate and Magistrate Courts. Parties may be ordered to appear for mediation conference. Compliance does not require that the parties reach a settlement. Cases shall be screened by the judge or the dispute resolution office to determine:

- (1) Whether the case is appropriate for mediation;
- (2) Whether the parties are able to compensate the mediator if compensation is required;
- (3) Whether a need for emergency relief makes referral inappropriate until the request for relief is heard by the court.

(b) Cases in which there are allegations of domestic violence will be screened to determine whether mediation is appropriate:

- (1) Criminal cases that involve domestic violence will not be referred to mediation from any court.
- (2) Civil cases will be screened for domestic violence through intensive intake. Intake procedures are designed to identify those cases which should not be referred to mediation and those cases which might benefit from mediation.
- (3) Until appropriate safeguards are in place, including screening and evaluation, civil cases involving issues of serious domestic violence (systematic use of force or threat of force, use of a weapon, or serious injury) should not be referred to mediation.
- (4) If allegations of domestic violence arise in the context of a mediation, a mediator who has had no special training in handling cases involving domestic violence should in most instances conclude the mediation and send the case back to the court. In concluding the mediation, the mediator should take precautions to guard the safety of the other party and of the mediator.
- (5) The court will develop a protocol for identification of civil cases involving issues of domestic violence which might benefit from mediation. Only mediators who have received special training should mediate such cases.
- (6) No case involving issues of serious domestic violence will be sent to mediation without the consent of the alleged victim given after a thorough explanation of the process of mediation. With the consent of the alleged victim a case involving issues of serious domestic violence may be sent to mediation at the discretion of the court. Safeguards will be in place to assure the safety of the parties, attorneys, and the mediator both during and after the session as follows:
 - a. The parties should be living separately. The program should exercise care to avoid disclosure of the parties' place of residence by either the program staff or mediator.

- b. The alleged victim shall have an attorney or advocate available for the entire session or sessions. If the alleged victim does not have an attorney, s/he should be invited to bring an advocate or friend to the mediation session to be available for consultation and to see him/her safely to his/her car.
- c. Arrangements should be made for the parties to arrive and leave the mediation session separately.
- d. The session itself should be made safe through adequate security and any other necessary means.
- e. Arrangements should be made for the session to be held entirely in caucus if that is necessary.
- f. The mediator conducting the session should have received special training in dealing with issues of domestic violence in the context of mediation.
- g. At the earliest possible point in the mediation the mediator should explore power dynamics in order to 1) confirm the comfort of each party with the mediation format and 2) confirm the ability of each party to bargain for him/herself.

(c) Previous Participation in Mediation. Parties who have been through an approved ADR process privately will not be required to participate in a duplicative process. If parties are required by statute to submit a dispute to any ADR process before filing suit, the court will not require submission to mediation.

(d) Request for Mediation. Any party to a civil dispute may request that the court refer the case to mediation or request that a matter referred to mediation be referred to another ADR process. The request for referral should be made to the judge assigned to the case.

(e) Effect of Referral upon Progress of the Case. The scheduling of a case for a mediation conference shall not remove the case from assignment to a judge, interfere with discovery, nor serve to postpone scheduled motions before the court. The court may refer the matter to mediation before any hearings before the Court.

(f) Interim or Emergency Relief. A party may apply to the court for interim or emergency relief at any time. Mediation shall continue while such a motion is pending absent a contrary order of the court or a decision of the mediator to adjourn pending disposition of the motion. Time for completing mediation shall be tolled during any periods where mediation is interrupted pending resolution of such a motion.

(g) If court personnel other than judges are involved in ADR referral decisions, these individuals will receive appropriate training and will work within clearly stated written policies, procedures and criteria for referral. The Georgia Office of Dispute Resolution will assist courts in developing guidelines for training court personnel in referral decisions.

(h) In actions brought by state agencies seeking to enjoin activities injurious to the public interest, the agency may within 10 days of service of the action make a showing to the trial court interest. Upon a showing of reasonable probability of such adverse effect, the court will proceed with emergency measures provided by law. Later referral to an ADR process may be appropriate if the emergency measures do not bring the case to conclusion.

(i) The court may impose a users' fee upon any party participating in mediation who has not paid a filing fee surcharge at the time the action was filed.

(j) Unless a standing order has been entered, the judge referring a case will enter an order referring the case to mediation. The original order will be filed with the clerk of court with copies sent to all attorneys of record and the dispute resolution office.

RULE 2. Timing of Referral to Mediation

(a) Conference or Hearing Date. Unless otherwise ordered by the Court, the first mediation conference shall be held within 30 days for domestic cases, 60 days for general civil cases after the filing of the last responsive pleading.

(b) Notice. The parties shall select a mediator in accordance with Rules 4 and 5 herein. Within 10 calendar days after the case is referred to mediation, the parties will inform the mediation coordinator of the name of the mediator and the date and time for mediation. Notice to the mediation coordinator is technically the plaintiff's responsibility. However, upon agreement, anyone may schedule the mediation.

(c) Rescheduling: Once a mediation session is scheduled, **NO UNILATERAL RESCHEDULING IS PERMITTED**. The party or attorney who is requesting that a mediation session be rescheduled must obtain consent from opposing counsel and the assigned mediator. The dispute resolution office must also be notified of any rescheduling attempts.

(d) Cancellations: Cancellations with no attempt to reschedule the mediation session will only be permitted where one or both of the parties has applied for relief from the judge to whom the case has been assigned, or is in compliance with the Uniform Rule related to conflicts. If a session is canceled due to conflict, the attorney with the conflict must coordinate the rescheduling. If a case is resolved prior to the scheduled mediation session, the session may be canceled upon written notification to the mediator and dispute resolution office of the settlement. **NO OTHER CANCELLATIONS WILL BE PERMITTED AND WILL BE A VIOLATION OF THE COURT RULE TO ATTEND.**

RULE 3. Exemption or Exclusion of cases from Mediation

(a) Any party to a dispute referred to mediation may petition the court to exclude the case from mediation if:

- (1) The issue to be considered has been previously mediated by a mediator registered with the State Office of Dispute Resolution as mediator in the area of the dispute;

- (2) The issue presents a question of law only;
- (3) Other good cause is shown before the judge to whom the case is assigned;
- (4) The issues have been referred by consent order of court to a private provider of mediation services;
- (5) The case was filed under the Family Violence Act.

(b) The following actions shall not be referred to mediation except upon petition of all parties or upon sua sponte motion of the court:

- (1) Appeals from rulings of administrative agencies;
- (2) Forfeitures of seized property;
- (3) Habeas corpus and extraordinary writs;
- (4) Bond validations;
- (5) Declaratory relief;
- (6) URESA (Uniform reciprocal Enforcement of Support Act);

RULE 4. Appointment of the Mediator.

(a) The parties shall agree upon a mediator from the list of mediators registered by the Georgia Office of Dispute Resolution who have been chosen for service in the program.

- i Parties who have been through an approved ADR process privately will not be required to participate in duplicative process;
- ii After a case is filed, parties are free to choose their own neutral and negotiate a fee with that neutral before a case is ordered to an ADR process; however, the confidentiality and immunity protections of the Georgia Supreme Court ADR Rules do not apply in the absence of a court order referring the case to mediation;
- iii Once the case is ordered to an ADR process, parties are still allowed to choose their own neutral and proceed under that neutral's fee or negotiate a fee with that neutral provided the neutral chosen is registered with the Georgia Office of Dispute Resolution in the appropriate category;

- iv Where possible, parties should be allowed input into the choice of process as well as choice of a neutral.
- v Should the parties fail to agree upon a mediator, the court or mediation coordinator will appoint a mediator from the list of mediators qualified for service in the program and may set the fee. The court will not order the parties to mediation with any private individual or entity without consent of the parties.

(b) Disqualification of a Mediator. Any party may move to enter an order disqualify a mediator for good cause. If the court rules that a mediator is disqualified from a case, an order shall be entered setting forth a qualified replacement from the list of mediators in good standing of the Seventh District Mediator Roster. The motion disqualifying the mediator shall be presented to the dispute resolution coordinator who shall present the motion to the judge to whom the case is assigned.

RULE 5. Mediator Qualifications for Service in the Program.

The qualifications for service as a mediator in the Seventh District Program shall be determined by the participating judges of the District in conjunction with the dispute resolution coordinator. The qualifications shall not be less than the minimum qualifications set out in the Supreme Court Rules for Alternative Dispute Resolution Programs. Appropriate use of non-lawyer mediators is encouraged. The qualifications for service shall be approved by the Georgia Commission on Dispute Resolution and shall be filed with the Georgia Commission on Dispute Resolution and shall be filed with the Georgia Supreme Court as an appendix to this rule. The program will maintain a roster of mediators chosen for service in the program. Mediators serving in the program will be evaluated by the program on an ongoing basis.

RULE 6. Compensation for Mediators Compensated by the Parties.

(a) Parties are encouraged to agree upon compensation of the mediator at or before the first mediation conference. Relevant factors to be considered in determining an appropriate fee include the complexity of the litigation, the degree of skill necessary to mediate the dispute, and the ability of the parties to pay. Mediators are required to list their fee schedules as part of their

applications. The court will review the fee schedules for reasonableness. Daily rather than hourly rates are encouraged. When deemed appropriate, the mediator may be compensated a maximum of one hour preparation time per case.

(b) If the parties are unable to agree upon compensation of the mediator, then the assigned judge at the interlocutory hearing or final trial may order either or both parties to pay or share the cost of the mediator. When the compensation is set by the court, the costs will be predicated upon the complexity of the litigation, the degree of skill necessary to mediate the case, and the ability of the parties to pay.

(c) Before being placed on the roster of approved mediators, a mediator must agree to provide pro bono hours and hours at reduced rates to defray mediation costs for parties with limited ability to pay. The number of hours required will be determined by the superior court judges of the circuit.

(d) A mediator who is compensated by the parties may be required to remit an administrative fee of up to \$15.00 per case to the mediation program by the close of the next business day following the receipt of payment or partial payment of mediation compensation.

RULE 7. Confidentiality and Immunity.

A. The extent of Confidentiality:

Any statement made during a court-annexed or court-referred mediation conference or as a part of intake by program staff in preparation for mediation is confidential, not subject to disclosure, may not be disclosed by the mediator or program staff, and may not be used as evidence in any subsequent administrative or judicial proceeding. A written and executed agreement or memorandum of agreement resulting from a court-annexed or court-referred mediation is not subject to the confidentiality described above.

Any document or other evidence generated in connection with a court-annexed or court-referred mediation is not subject to discovery. An agreement resulting from a court-annexed or court-referred mediation conference is not immune from discovery unless the parties agree in

writing. Otherwise discoverable material is not rendered immune from discovery by use in mediation.

Neither the neutral nor any observer present with permission of the parties in a court-annexed or court-referred ADR process may be subpoenaed or otherwise required to testify concerning a mediation conference in any subsequent administrative or judicial proceeding. A neutral's notes or records of the court-annexed or court-referred program are not subject to discovery. Notes and records of a court ADR program are not subject to discovery to the extent that such notes or records pertain to cases and parties ordered or referred by a court to the program.

B. Exceptions to Confidentiality:

Confidentiality on the part of program staff or the neutral does not extend to the issue of appearance. Confidentiality does not extend to a situation in which a) there are threats of imminent violence to self or others; or b) the mediator believes that a child is abused or that the safety of any party or third person is in danger. Confidentiality does not extend to documents or communications relevant to legal claims or disciplinary complaints brought against a neutral or an ADR program and arising out of an ADR process. Documents or communications relevant to such claims or complaints may be revealed only to the extent necessary to protect the neutral or ADR program. Nothing in the above rule negates any statutory duty of a neutral to report information. Parties should be informed necessary to monitor the quality of a program is not considered a breach of confidentiality.

C. Immunity:

No neutral in court-annexed or court-referred program shall be held liable for civil damages for any statement, action, omission or decision made in the course of any ADR process unless that statement, action, omission or decision is 1) grossly negligent and made with malice or 2) is in willful disregard of the safety or property of any party to the ADR process.

RULE 8. Appearance.

The presence of parties at all mediation conferences is required unless the court finds that a party is a nonresident or is incapacitated or otherwise authorizes the party's absence. The requirement that a party appear at a mediation conference is satisfied if the following persons are physically present:

(a) The party and/or

(1) The party's representative who has

a) full authority to settle without further consultation and;

b) a full understanding of the dispute and full knowledge of the facts;

(2) A representative of the insurance carrier for any insured party if that

representative has full authority to settle without further consultation, except that telephone consultations with persons immediately available are permitted.

(b) Attorneys are not required to attend mediation conferences but may not be excluded by the court or the mediator.

(c) In domestic relations cases involving temporary or permanent child support, alimony, equitable division of property, modification of alimony or attorneys' fees, a financial affidavit is required pursuant to U.S.C.R. 24.2. If a party fails to bring a copy of a current, notarized financial affidavit, that party will be deemed to have not appeared and subject to the sanctions stated in Rule 11 below.

(d) In domestic relations cases in which the parties are required to attend the "Children Cope with Divorce" seminar pursuant to a standing court order or a specific order in the case, the parties are strongly encouraged to attend the seminar prior to the mediation session.

RULE 9. Sanctions For Failure to Appear.

If a party fails to appear at a duly noticed mediation conference without good cause, fails to give 24 hours notice of cancellation or rescheduling, or fails to bring a current, notarized financial affidavit when required, the dispute resolution staff shall notify the judge to whom the

case is assigned. The judge, upon motion, may impose sanctions including the award of mediator and attorney costs against the party failing to appear.

RULE 10. Communication with Parties.

The only ex parte communication between a party and mediator outside of the mediation conference shall be for the purposes of verifying appointment times and locations or answering questions about the mediation process and procedures. The mediator may meet privately with any party or any attorney during the mediation conference.

RULE 11. Communication with the Court.

(a) In order to preserve the objectivity of the court the neutrality of the mediator, there should be no communication between the mediator and the court. If any communication between the court and a mediator is necessary, the communication shall be in writing or through the dispute resolution coordinator. Copies of any written communication with the court should be given to parties and their attorneys.

(b) Once a mediation is underway in a given case, contact between the dispute resolution coordinator and the court concerning that case should be limited to:

- (1) Communicating with the court about the failure of a party to attend;
- (2) Communicating with the court with the consent of the parties concerning procedural action on the part of the court that might facilitate the mediation;
- (3) Communicating to the court the neutral's assessment that the case is inappropriate for that process;
- (4) Communicating any request for additional time to complete the mediation;
- (5) Communicating information that the case has settled or has not settled and whether agreement has been reached as to any issues in the case;
- (6) Communicating the contents of any agreements unless the parties agree in writing that the agreement should not be disclosed;
- (7) Communicating with the consent of the parties information concerning any discovery, pending motions or action of any party that, if resolved or

completed, would facilitate the possibility of settlement.

RULE 12. Completion of Mediation

(a) Mediation shall be completed prior to any scheduled hearing or trial or within 30 days of the order referring the matter to mediation if it is a domestic case or within 60 days of the order referring the matter to mediation if it is a civil case, whichever is sooner, unless extended by order of the court. The motion asking for extension of the mediation shall be submitted to the dispute resolution coordinator, who shall present the motion to the judge to whom the case is assigned.

(b) The length of the mediation session will depend on the nature of the contested issues and on the parties themselves. The parties should be prepared to spend a minimum of two hours at the initial session.

(c) The mediator may adjourn the mediation conference at any time and may set times for reconvening the adjourned conference notwithstanding Rule 2. No further notification is required for parties present at the adjourned conference.

(d) Agreement. If an agreement is reached, it shall be reduced to writing. If possible, the agreement should be reduced to writing at the end of the mediation conference. In the event that the agreement cannot be reduced to writing at the end of the mediation conference, it should be reduced to writing within 3 calendar days after the mediation. It is the mediator's responsibility to draw the agreement unless all parties determine otherwise.

(1) If parties are represented by counsel present at the mediation, the agreement should be reduced to writing by the mediator and signed by the mediator, parties, and attorneys at the end of the mediation conference.

(2) If any party is unrepresented or is represented by an attorney who is not present, the agreement should be reduced to writing by the mediator and signed by the mediator and parties at the end of the mediation conference. The parties will have an opportunity to have the agreement reviewed by an

attorney. If there is no objection to the agreement within 3 calendar days following signing, the program coordinator will file the agreement with the court.

(e) If a partial agreement is reached, it shall be reduced to writing and signed by the parties and counsel, if any, in the same manner as outlined above for the full agreement.

(f) If the parties do not reach an agreement as to any matter as a result of mediation, the mediator shall report the lack of an agreement to the dispute resolution director. The dispute resolution coordinator shall notify the judge to whom the case was assigned of the lack of an agreement. With the consent of the parties, the mediator's report may also identify any pending notices or outstanding legal issues, discovery processes, or other action by any party that, if resolved or completed, would facilitate the possibility of a settlement.

RULE 13. Role of counsel.

Attorneys of record shall never be excluded from the mediation conference. The mediator shall at all times be in control of the mediation and procedures to be followed during the mediation. Counsel shall be permitted to communicate privately with their clients at any time. Counsel's presence at the mediation is a matter to be decided by the attorney and the client, unless otherwise ordered by the court. If counsel is not present, any agreement reached is subject to counsel's review and approval. See Rule 12(d).

RULE 14. Court conflicts.

For the purpose of conflicts, as contemplated under the Uniform Rules of Superior Courts, the mediation procedure shall be construed as being non-jury proceeding and counsel and the parties may rely upon said designation in resolving any scheduling conflicts.

RULE 15. Evaluation.

The dispute resolution coordinator will provide to the Office of Dispute Resolution information that will allow an evaluation of the program. This information will be provided on an ongoing basis. The model for this evaluation will be provided by the Georgia Office of

Dispute Resolution. Participants will not be contacted for evaluation without their permission. The program should seek permission of the parties for this contact either at the beginning of the mediation or by means of an exit survey.