

# MODEL COURT JUVENILE MEDIATION RULES

## GENERAL POLICY:

To provide guidance to ADR court programs, litigants and parties as to the resolution of delinquent and dependency matters referred to mediation.

## DEFINITION:

**Mediation** is a process through which a neutral facilitates settlement discussions between parties. The neutral has no authority to make a decision or impose a settlement upon the parties. The neutral attempts to focus the attention of the parties on their needs, interests and mutual goals rather than on their 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 a settlement, the parties retain their right to a bench trial.

## RULE 1. REFERRAL TO MEDIATION

(a) Except as hereinafter provided, any juvenile matter may be referred to mediation by a judge or court designee. Parties and other individuals involved in the case may be ordered to appear for a mediation conference. Court mediation programs should make a determination of who the parties are in accordance with case law and statutory law. Compliance does not require that the parties reach a settlement. Cases shall be screened by the judge or the court designee to determine:

- (1) Whether the case is appropriate for mediation
- (2) Whether a need for emergency relief makes referral inappropriate until the request for relief is heard by the court.
- (3) Whether the parties agree to mediate.

(b) Cases in which there are allegations of domestic violence (as defined by the Georgia Commission on Alternative Dispute Resolution's *Guidelines for Mediation in Cases Involving Issues of Domestic Violence*) will be screened to determine whether mediation is appropriate:

The Georgia Commission on Dispute Resolution's Guidelines for Mediation in Cases Involving Issues of Domestic Violence define domestic violence as: *Causing or attempting to cause physical harm to a current or former intimate partner or spouse; placing that person in fear of physical harm; or causing that person to engage involuntarily in sexual activity by force, threat of force or duress.*

*In addition to acts or threats of physical violence, for purposes of these guidelines, domestic violence may include abusive and controlling behaviors (such as intimidation, isolation, and emotional, sexual or economic abuse) that one current or former intimate partner or spouse may exert over the other as a means of control, generally resulting in the other partner changing her or his behavior in response. Even if physical violence is not present in these circumstances, such a pattern of abusive behavior may be a critical factor in whether or not a party has the capacity to bargain effectively. Therefore, a person conducting screening for domestic violence must be alert to patterns of behavior that, while not overtly violent, may indicate a pattern of domestic abuse that should be treated as domestic violence for purposes of these guidelines.*

- (1) Criminal cases that involve domestic violence will not be referred to mediation from any court. Delinquency cases that involve domestic violence may be referred to mediation.
- (2) All juvenile court cases will be screened for domestic violence allegations through intensive intake. Those juvenile court cases referred to mediation directly from the bench are also subject to the domestic violence screening process. Intake procedures are designed to identify cases in which there

are allegations of domestic violence and to provide a process by which a party alleging domestic violence will make a decision based on informed consent whether or not to proceed with mediation.

(3) The detailed domestic violence screening protocol implementing the Commission on Dispute Resolution's *Guidelines for Mediation in Cases Involving Issues of Domestic Violence* is attached hereto and incorporated in these rules and shall be followed for screening purposes.

(4) ADR staff who conduct screening for domestic violence allegations must have Specialized Domestic Violence Screening Training.

(5) Only mediators who are registered with the Georgia Office of Dispute Resolution in the category of specialized domestic violence mediation will mediate cases involving domestic violence allegations. If such allegations arise for the first time during a mediation session, a mediator who is not registered in the specialized domestic violence category must terminate the mediation session and refer the case back to the ADR program or court. In terminating the mediation session, the mediator should take precautions to guard the safety of all individuals involved in the mediation.

(6) No case involving allegations of domestic violence will be sent to mediation without the informed consent of the party alleging domestic violence, which is given after a thorough explanation of the mediation process and discussion of the circumstances of the case.

(c) Request for Mediation. Any party, including a child in a dispute, may request that the court at any time in the progression of a case refer the case to mediation or request that a matter referred to mediation is referred to another ADR process.

(d) 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.

(e) 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.

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

(g) In actions brought by state agencies (including the Department of Human Services or the Department of Juvenile Justice) seeking to enjoin activities injurious to the public interest, the state agency may within 10 days of service of the action make a showing to the trial court that referral to ADR would adversely affect the public 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.

## **RULE 2. TIMING OF ADR PROCESSES**

(a) Conference or Hearing Date: Unless otherwise ordered by the court, the first mediation conference shall occur as soon as practicable and be scheduled within 30 calendar days of the order referring the matter to mediation, unless the time frame is extended by the court.

(b) Notice: The mediation coordinator or court will select a registered dependency or delinquency mediator. A notice will be given, preferably within two weeks prior to mediation, to all mediation participants and parties requiring their attendance at a scheduled mediation session.

## **RULE 3. EXEMPTION OR EXCLUSION OF CASES FROM MEDIATION**

Courts and mediation programs are strongly encouraged not to mediate a case where:

- (a) The issue to be considered has been previously mediated;
- (b) The issue presents a question of law only;
- (c) Other good cause is shown before the judge to whom the case is assigned;
- (d) The issue to be considered is the occurrence of sexual abuse by a party;

- (e) One or more parties is mentally incapacitated and is unable to contract and/or negotiate for themselves unless their interests are otherwise represented;
- (f) If there is a pending case in another court (Superior, State, Magistrate, Probate, Court of Appeals, Supreme Court or a court in another jurisdiction) pertaining to the same issues to be mediated. (For example, this includes a criminal case in Superior Court pertaining to assault that gave rise to the dependency allegations.)

Any party may petition the court to exclude the case from mediation if one of the above outlined (Rule 3 (a)- (f)) applies.

#### **RULE 4. APPOINTMENT OF THE MEDIATOR**

- (a) The mediation coordinator or court will appoint a mediator from the list of mediators registered by the Georgia Office of Dispute Resolution as dependency or delinquency mediators.
- (b) Disqualification of a Mediator: Any party may move to enter an order disqualifying a mediator for good cause. If the court rules that a mediator is disqualified from hearing a case, an order shall be entered setting forth a qualified replacement from the list of registered mediators in the mediation office. The motion disqualifying the mediator shall be presented to the mediation coordinator or the court, which shall present the motion to the judge to whom the case is assigned.

#### **RULE 5. MEDIATION COORDINATOR QUALIFICATIONS**

Mediation coordinators who screen juvenile delinquency cases to determine if they are appropriate to mediate must be registered delinquency mediators with the Georgia Office of Dispute Resolution. Mediation coordinators who screen dependency cases must be registered dependency mediators with the Georgia Office of Dispute Resolution. In addition, mediation coordinators must be trained in a Georgia Office of Dispute Resolution approved domestic violence screening training.

#### **RULE 6. COMPENSATION FOR MEDIATORS**

Mediators mediating juvenile delinquent or dependency cases will be compensated at a rate to be determined by the court or ADR board. If a party fails to appear for a mediation session, then the compensation will be determined by the court.

#### **RULE 7. CONFIDENTIALITY AND IMMUNITY**

(a) Confidentiality: All parties in the juvenile mediation program and referred mediation process are entitled to confidentiality to the extent described by the Georgia Supreme Court Alternative Dispute Resolution Rules. Mediation agreements are not confidential.

(b) Exceptions to Confidentiality:

- (1) There are threats of imminent violence to self or others;
- (2) The mediator believes that a child is abused or that the safety of any party or third person is in danger.

(c) Immunity: No neutral in a court-annexed/referred program shall be held liable for civil damages and 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, 2) made with malice, or 3) in willful disregard of the safety or property of any party to the ADR process.

## **RULE 8. APPEARANCE**

(a) The presence of notified participants and parties is required at all mediation conferences unless the court finds that a participant or party is incapacitated.

(b) If an interpreter is necessary, the appearance and cost of an interpreter is the responsibility of the court. All interpreters must be certified through the Georgia Commission on Interpreters.

## **RULE 9. SANCTIONS FOR FAILURE TO APPEAR**

If a mediation participant or party fails to appear at a duly noticed mediation conference without good cause, the mediation program shall notify the judge to whom the case is assigned. The judge may find the mediation participant or party in contempt and impose appropriate sanctions.

## **RULE 10. COMMUNICATION WITH PARTICIPANTS AND PARTIES**

The only *ex parte* communication between a mediation participant or party and the 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 mediation participant, party or attorney during the mediation conference.

## **RULE 11. COMMUNICATION WITH THE COURT**

(a) In order to preserve the objectivity of the court and the neutrality of the mediator, there should be no *ex parte* 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 mediation coordinator. Copies of any written communication with the court should be given to mediation participants, parties and their attorneys.

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

- (1) Communicating with the court about the failure of a mediation participant or party to attend;
- (2) Communicating with the court with the consent of the parties concerning procedural action on the part of the court which might facilitate the mediation;
- (3) Communicating to the court the mediator's or mediation coordinator'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 an agreement ;
- (7) Communicating with the written consent of the parties information concerning any discovery, pending motions or action of any party which, if resolved or completed, would facilitate the possibility of settlement.

## **RULE 12. COMPLETION OF MEDIATION**

(a) Mediation shall occur as soon as practicable and be scheduled within 30 calendar days of the order referring the matter to mediation, unless the time frame is extended by the court. The mediation shall address the issues the court referred to mediation. If an extension is needed, the mediation coordinator may present a request for an extension to the court.

(b) Number of Mediation Sessions: Additional mediation sessions may be necessary depending on the case.

(c) The mediator may adjourn the mediation conference at any time and may set times for reconvening the adjourned conference notwithstanding Rule 2(a). Mediation participants and parties shall be given notification at the adjourned conference of when the mediation will be reconvened.

(d) Agreement: If a full or partial agreement is reached, it shall be reduced to writing at the mediation conference.

(1) The written mediation agreement shall be signed at the end of the mediation conference by the mediator, parties, and attorneys if present, and any other participants deemed necessary by the mediation coordinator or court. The mediation agreement shall be presented to the judge for incorporation into a court order in compliance with Advisory Opinion 6 of the Commission on Dispute Resolution.

(2) The parties who do not have an attorney or who are represented by an attorney who was not present at the mediation conference, will have the opportunity to have the agreement reviewed by an attorney. If no written objections are made to the mediation coordinator within three business days of the mediation session, the mediation agreement shall be submitted to the judge to be incorporated into a court order in compliance with Advisory Opinion 6 of the Commission on Dispute Resolution.

(e) 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 mediation coordinator. The mediation coordinator shall notify the judge to whom the case was assigned of the lack of an agreement. With the written 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 which, if resolved or completed, would facilitate the possibility of a settlement.

### **RULE 13. MEDIATION CONFERENCE**

(a) The ultimate decision-making authority of whether or not to settle the case rests with the parties.

(b) Rescheduling Cases: The party or attorney who is requesting that a mediation session be rescheduled must obtain consent and future dates for mediation from the mediation coordinator or court, and opposing counsel. The mediation coordinator or court shall notify all mediation participants or parties of the new mediation date and time. Cancellation of the mediation, with no attempt to reschedule, will only be permitted where one or more parties has applied for relief from the judge to whom the case has been assigned or by leave of court. No other unilateral cancellations or reschedules will be permitted. Unilateral cancellations or reschedules are violations of the court rule to attend and may subject one or more parties to being in contempt of a subpoena or court order to attend mediation.

(c) The Role of Counsel: 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.

(d) Conflicts: For purposes of conflict, under the Uniform Rules of Superior Courts, the mediation procedure shall be construed as being a non-jury proceeding, and counsel and the parties may rely upon said designation in resolving any scheduling conflicts.

(e) Notifying the Mediator: The mediation coordinator or court shall notify the mediator, if possible at least 48 business hours before the mediation, of any rescheduling or cancellations, for whatever reason, regardless of whether relief has been granted by the court.

### **RULE 14. EVALUATION**

The mediation coordinator will provide to the Georgia 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.

### **RULE 15. MONITORING OF CASES**

The mediation coordinator or court shall monitor and track compliance of the delinquency mediation agreement. Upon completion, the mediation coordinator or court shall present a recommendation or court order to the appropriate court designee that the complaint be dismissed.

In dependency cases the parties are responsible for monitoring compliance of the mediation agreement. If a party is not complying with the mediation agreement that is incorporated into a court order, the other parties may file a contempt action against the non-complying party.

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