ALTERNATIVE DISPUTE RESOLUTION RULES

The Georgia Constitution of 1983 mandates that the judicial branch of government provide "speedy, efficient, and inexpensive resolution of disputes and prosecutions." As part of a continuing effort to carry out this constitutional mandate the Supreme Court of Georgia established a Commission on Alternative Dispute Resolution under the joint leadership of the Chief Justice of the Georgia Supreme Court and the President of the State Bar of Georgia on September 26, 1990.

The Supreme Court charged the Commission to explore the feasibility of using court-annexed or court-referred alternative dispute resolution (ADR) processes to complement existing dispute resolution methods. The order creating the Commission directed that the Commission gather information, implement experimental pilot programs, and prepare recommendations for a statewide, comprehensive ADR system.

This court has now received the recommendations of the Commission and promulgates the following rules to establish a statewide plan for the use of alternative dispute mechanisms by the courts of Georgia.

I. DEFINITIONS.

The term Alternative Dispute Resolution (ADR) refers to any method other than litigation for resolution of disputes. A definition of some common ADR terms follows.

Neutral. The term "neutral" as used in these rules refers to an impartial person who facilitates discussions and dispute resolution between disputants in mediation, case evaluation or early neutral evaluation, and arbitration, or who presides over a summary jury trial or mini trial. Thus, mediators, case evaluators, and arbitrators are all classified as "neutrals."

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. The neutral attempts to focus the attention of the parties upon their needs and interests rather than upon rights and positions. Although in court 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.

Arbitration. Arbitration differs from mediation in that an arbitrator or panel of arbitrators renders a decision after hearing an abbreviated version of the evidence. In non-binding arbitration, either party may demand a trial within a specified period. The essential difference between mediation and arbitration is that arbitration is a form of adjudication, whereas mediation is not.

Case Evaluation or Early Neutral Evaluation. Case evaluation or early neutral evaluation is a process in which a lawyer with expertise in the subject matter of the litigation acts as a neutral evaluator of the case. Each side presents a summary of its legal theories and evidence. The evaluator assesses the strength of each side's case and assists the parties in narrowing the legal and factual issues in the case. This conference occurs early in the discovery process and is designed to "streamline" discovery and other pretrial aspects of the case. The early neutral evaluation of the case may also provide a basis for settlement discussions.

Multi-door Courthouse. The multi-door courthouse is a concept rather than a process. It is based on the premise that the justice system should make a wide range of dispute resolution processes available to disputants. In practice, skilled intake workers direct disputants to the most appropriate process or series of processes, considering such factors as the

relationship of the parties, the amount in controversy, anticipated length of trial, number of parties, and type of relief sought. Mediation, arbitration, case evaluation or early neutral evaluation, summary jury trial, mini trial, and various combinations of these ADR processes would all be available in the multi-door courthouse.

Summary Jury Trial. The summary jury trial is a non-binding abbreviated trial by mock jurors chosen from the jury pool. A judge or magistrate presides. Principals with authority to settle the case attend. The advisory jury verdict which results is intended to provide the starting point for settlement negotiations.

Mini Trial. The mini trial is similar to the summary jury trial in that it is an abbreviated trial usually presided over by a neutral. Attorneys present their best case to party representatives with authority to settle. Generally, no decision is announced by the neutral. After the hearing, the party representatives begin settlement negotiations, perhaps calling on the neutral for an opinion as to how a court might decide the case.

Settlement Week. During a settlement week there is a moratorium on litigation. Mediation is the ADR process most often used during settlement week. Appropriate cases are selected by the court and submitted to mediation. Lawyers and others who have undergone mediation training often act as volunteer mediators for these cases.

Court Program. The term "court program" encompasses the terms "court-connected," "court-annexed," or "court-referred" when used to refer to a court ADR program.

II. CENTRAL ORGANIZATION.

A. There is hereby created the Georgia Commission on Dispute Resolution.

1. The Georgia Commission on Dispute Resolution will consist of the current Chief Justice of the Georgia Supreme Court or the Chief Justice's designee, a judge of the Georgia Court of Appeals, a designee of the President of the State Bar of Georgia, three superior court judges, and two judges to be drawn from the other four classes of trial courts in Georgia. The remaining members of the Commission will be one member from the Georgia General Assembly, five members of the State Bar of Georgia, a trainer with an approved training program, a director of an approved court program, and two non-lawyer public members. All members of the Commission shall be appointed by the Georgia Supreme Court. The chair of the Commission and a chair-elect of the Commission shall be designated by the Georgia Supreme Court.

2. The Commission is charged with the following duties and responsibilities:
    a. To administer a statewide comprehensive ADR program;
    b. To oversee the development and ensure the quality of all court programs;
    c. To approve court programs;
    d. To develop guidelines for court programs;
    e. To develop criteria for training and qualifications of neutrals;
    f. To establish standards of conduct for neutrals;
    g. To establish and register with the Georgia Secretary of State a nonprofit organization, The Georgia Commission on Dispute Resolution, Inc. This corporation shall qualify at all times as a tax exempt organization under sections 501(a) and 501(c)(3) of the Internal Revenue Code. This corporation shall be governed by a board of directors made up of at least three and no more than five directors appointed by the Georgia Supreme Court in cooperation with the President of the State Bar of Georgia from members of the Georgia Commission on Dispute Resolution. This nonprofit organization shall be established for the sole purpose of

receiving and disbursing money from private grants and donations as a tax-exempt organization.

3. The first Commission will be appointed to serve terms as follows: the first term for three members will be one year, the first term for three members will be two years, the first term for four members will be three years, the first term for three members will be four years, the first term for three members will be five years. Thereafter, the term for Commission members will be five years. A Commission member shall not succeed himself or herself, except:

-- Commission members originally appointed to a term of two years or less would be eligible for reappointment to one additional five-year term; and

-- A Commission member appointed as Chair of the Commission during his or her term of service may serve the remainder of that original term and may continue to serve all or part of an additional five-year term as Chair. If the Chair's service concludes prior to the end of his or her original five-year term, the member may serve the remainder of that original term after serving as Chair.

If the status of a Commission member chosen to represent a particular category changes during his or her term, the member may continue to serve out his or her term. All appointments are subject to continuing approval by the Georgia Supreme Court.

4. Members of the Commission shall receive no compensation for their services but shall be entitled to reimbursement for expenses and mileage for travel in connection with Commission business.

5. The Commission has jurisdiction:

a. To receive, investigate, and hear complaints about or arising out of approved court programs;
b. To receive, investigate, and hear complaints about approved training programs or any person responsible for conducting, administering, or promoting such training programs;
c. To receive, investigate, and hear complaints about neutrals registered with the Commission; and
d. To receive, investigate, and hear complaints about or arising out of ADR conducted by a registered neutral in any ADR setting.

B. There is hereby created the Georgia Office of Dispute Resolution under the Georgia Supreme Court.

1. The Georgia Office of Dispute Resolution will be administered by a director who will serve at the pleasure of the Commission and be directly accountable to the Commission. The director's salary will be paid from the Office budget.

2. The Georgia Office of Dispute Resolution will implement the policies of the Commission. The responsibilities of the Georgia Office of Dispute Resolution will include, but will not be limited to, the following:

a. To serve as a resource for ADR education and research;
b. To provide technical assistance to new and existing court programs;
c. To develop the capability of providing training to neutrals in courts throughout the state;
d. To implement the Commission's policies regarding qualification of neutrals and quality of programs;
e. To register neutrals and remove neutrals from the registry if necessary;
f. To collect statistics from court programs in order to monitor the effectiveness of various programs throughout the state.

III. FUNDING.

The funding of court programs is primarily a public responsibility. Funding for the Commission's work through the Georgia Office of Dispute Resolution will be through a combination of fees for registration and reregistration of neutrals, fees for review and approval of trainings, fees paid by approved local ADR programs, legislative appropriation, grants, and any other appropriate sources of revenue.

IV. COURT PROGRAMS.

The Georgia Supreme Court encourages every court in Georgia to consider the use of ADR processes to provide a system of justice which is more efficient and less costly in human and monetary terms. The Georgia Supreme Court strongly urges that courts with established mediation programs cooperate with courts seeking to establish new programs. Courts should assist new programs by providing information and by allowing mediator trainees from new programs to observe veteran mediators mediating in established programs for the purpose of completing training requirements.

Any court desiring to develop an ADR program shall apply to the Commission for approval by making its application to the Georgia Office of Dispute Resolution in accordance with rules and guidelines promulgated by the Commission. Applications for programs shall include the following:

1. A description of existing dispute resolution services and resources in the area.
2. A demonstration of need, coordination with existing social services, support of the bench and bar, and community support.
3. A description of the program.
4. A budget for the program.
5. A demonstration of the administrative capacity of the applicant.

Although existing court programs must be approved under these rules, the above requirements should not be construed to prevent existing dispute resolution programs from applying for approval. Review and action of the Commission will be accomplished as efficiently as possible, and every effort will be made to avoid imposing unnecessary burdens upon any court. Funding obtained through local collection of filing fee surcharges will be used for the administration and development of local programs and payment of staff. As specified in the Georgia Court-Connected Alternative Dispute Resolution Act (O.C.G.A. §§ 15-23-1 to -12), only local court programs that have been approved by and remain in good standing with the Commission on Dispute Resolution may collect local ADR filing fees. The Commission on Dispute Resolution reserves the right to request financial audits of the Boards of Trustees of the local Funds for the Administration of Alternative Dispute Resolution Programs to ensure that the local court program under a Board's supervision is in compliance with the requirements of the Georgia Court-Connected Alternative Dispute Resolution Act and these ADR Rules and appendices. Appropriate administrative fees may be charged by the Georgia Office of Dispute Resolution for technical assistance and training.

Neutrals serving in court programs must meet the requirements of the Georgia Commission on Dispute Resolution for registration. Although these requirements are threshold requirements for neutrals serving in court programs, courts are free to impose higher qualifications for neutrals who serve in their programs.

Uniform rules governing these programs appear as Appendix A to this rule.

***Commentary**: The Georgia Supreme Court strongly recommends that the program have a full-time administrator.*

V. QUALIFICATION AND TRAINING OF NEUTRALS.

The qualification and training requirements for various kinds of neutrals differ according to the process or program involved. Requirements for qualification and training of neutrals will be established by the Georgia Commission on Dispute Resolution and subject to review by the Georgia Supreme Court. All training for neutrals in court programs will be in training programs approved by the Georgia Office of Dispute Resolution according to guidelines established by the Georgia Commission on Dispute Resolution. The Georgia Office of Dispute Resolution shall develop specific training programs for neutrals in accordance with requirements set by the Commission and subject to review by the Georgia Supreme Court.

Requirements for qualification and training of neutrals established by the Georgia Commission on Dispute Resolution will appear as Appendix B to this rule and will be published from time to time as amended. Ethical Standards for Neutrals established by the Georgia Commission on Dispute Resolution will appear as Appendix C to this rule and will be published from time to time as amended.

The Georgia Commission on Dispute Resolution will develop procedures to handle complaints against neutrals and ADR programs. The Georgia Commission on Dispute Resolution will have the authority to publish opinions resulting from the resolution of complaints and may, from time to time, publish advisory opinions as well.

Persons who have met the Commission's criteria as to qualifications and training may apply to the Georgia Office of Dispute Resolution for registration as a neutral. The Commission may set the amount of a registration fee which will accompany each application. The Commission may provide for periodic renewal of registration. Neutrals who have been trained prior to the promulgation of these rules may apply to the Georgia Office of Dispute Resolution for registration.

VI. COMPENSATION OF NEUTRALS.

There shall be no uniform, state-wide compensation system at this time. Local courts will have the responsibility for developing and testing a variety of approaches to compensation consistent with guidelines that may be established by the Commission. However, every court program in which neutrals are compensated by the parties must provide ADR services free of charge to indigent parties. All compensated neutrals should contribute some pro bono hours to the program.

***Commentary:** Although the contribution of volunteers to ADR programs throughout the country is inestimable, the Georgia Supreme Court believes that the comprehensive system of statewide ADR services envisioned by these rules cannot be handled entirely by unpaid volunteers. This court is convinced that in order to build and maintain a statewide system of ADR services of the extent and quality desired, there must be mechanisms for compensating neutrals at appropriate levels. This court also believes that the Georgia ADR program will require a combination of volunteers, salaried in-house neutrals, and free market neutrals in order to meet the highly varied demands and circumstances of courts in urban, rural, and suburban areas.*

VII. CONFIDENTIALITY AND IMMUNITY.

A. The Extent of Confidentiality:

Any statement made during a court-annexed or court-referred mediation or case evaluation or early neutral evaluation conference or as part of intake by program staff in preparation for a mediation, case evaluation or early neutral evaluation is confidential, not subject to disclosure, may not be disclosed by the neutral or program staff, and may not be used as evidence in any subsequent administrative or judicial proceeding. Unless a court's ADR rules provide otherwise, the confidentiality herein applies to non-binding arbitration conferences as well. A written and executed agreement or memorandum of agreement resulting from a court-annexed or court-referred ADR process is not subject to the confidentiality described above.

Any document or other evidence generated in connection with court-annexed or court-referred mediation or case evaluation, early neutral evaluation or, unless otherwise provided by court ADR rules, a non-binding arbitration, is not subject to discovery. A written and executed agreement or memorandum of agreement resulting from a court-annexed or court-referred ADR process is discoverable unless the parties agree otherwise in writing. Otherwise discoverable material is not rendered immune from discovery by use in a mediation, case evaluation or early neutral evaluation or a non-binding arbitration.

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 or case evaluation or early neutral evaluation conference or, unless otherwise provided by court ADR rules, a non-binding arbitration, in any subsequent administrative or judicial proceeding. A neutral's notes or records 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 of 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 of limitations on confidentiality at the beginning of the conference. Collection of information necessary to monitor the quality of a program is not considered a breach of confidentiality.

C. Immunity:

No neutral in a court 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.

VIII. EDUCATION.

In order to educate the bar about the benefits of ADR and the specifics of ADR processes, each member of the State Bar of Georgia shall be required to complete a one-time mandatory three hour CLE credit in dispute resolution. The ADR continuing legal education requirement shall be completed before March 31, 1996. Lawyers admitted to the bar from July 31, 1995, to February 2, 2005, may satisfy this requirement by attending the Bridge-the-Gap seminar conducted by the Institute of Continuing Legal Education in Georgia. Lawyers admitted to the bar thereafter may satisfy this requirement by completing the State Bar of Georgia Transition Into Law Practice Program or a comparable program approved by the Commission on Continuing Lawyer Competency.

Lawyers who have completed a class essentially devoted to the study of ADR in law school are deemed to have satisfied the above requirement. Lawyers who have been trained as a neutral in a training which was approved for CLE credit or would now be eligible for CLE credit are deemed to have satisfied the above requirement. Lawyers who have previously taken an approved CLE seminar devoted to ADR are deemed to have satisfied the above requirement. The Georgia Commission on Dispute Resolution will review requests for exemption from the CLE requirement on the basis of law school course work.

The Georgia Supreme Court recommends that the program required for every new member of the State Bar of Georgia incorporate an introduction to ADR processes. This court further recommends that information concerning ADR be incorporated into CLE ethics and professionalism seminars. Sponsors and seminars designed to satisfy the ADR CLE requirement must be approved by the Commission on Continuing Lawyer Competency and the Georgia Commission on Dispute Resolution.

APPENDIX A

UNIFORM RULES FOR DISPUTE RESOLUTION PROGRAMS

The following rules apply to those courts which have elected to use the alternative dispute resolution (hereinafter referred to as ADR) processes of mediation, non-binding arbitration, case evaluation or early neutral evaluation, summary jury trial, mini trial or combinations thereof in a court-annexed or court-referred program.

1. GENERAL RULES.

1.1. The court will make information about ADR options available to all litigants.

2. REFERRAL TO ADR.

2.1. Any contested civil case, criminal case, or juvenile case may be referred to mediation by the judge to whom the case is assigned. Any contested civil case may be referred to non-binding arbitration, case evaluation or early neutral evaluation or multi-door program by the judge to whom the case is assigned. If cases are referred on a case-by-case basis, the time of referral is within the discretion of the referring judge.

2.2. Cases may be referred to an ADR process by category. If cases are referred by category, the court may provide for the timing of diversion by rule.

2.3. Courts should develop mechanisms to provide some individual review of cases sent to an ADR process. Cases shall be screened by the judge or the program to determine (1) whether the case is appropriate for the process; (2) whether the parties are able to compensate the neutral if compensation is required; and (3) whether a need for emergency relief makes referral inappropriate until the request for relief is heard by the court.

2.4. 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.

2.5. Any party to a dispute may petition the court to refer the case to mediation, non-binding arbitration, case evaluation or early neutral evaluation, summary jury trial, mini trial or some combination thereof.

2.6. Parties may be ordered to attend a mediation session, a case evaluation or early neutral evaluation conference, or a non-binding arbitration. However, the order mandating attendance must clearly state that compliance does not require settlement or acceptance of an arbitration award.

2.7. If parties in a case have submitted the matter to an approved ADR process before filing suit, the case will not be referred to a duplicative ADR process by the court. If parties are required by statute to submit a dispute to an ADR process before filing suit, the court will not require submission to a successive ADR process.

2.8. 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 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.

Commentary: *The Georgia Supreme Court recommends that cases be referred to ADR processes on a case by case basis. The indiscriminate use of ADR processes may result in increased obstacles for litigants and in further expense, overcrowding, and delay. However,*

courts may find it convenient to refer cases by category. The Georgia Supreme Court strongly recommends that if cases are referred by category, some appropriate review procedure be established. The timing of referral should be late enough in the discovery process for the parties to have developed a realistic understanding of the strengths and weaknesses of the case and early enough to save discovery costs where possible. For example, where consistent with this premise, the time of diversion of a case selected for arbitration might be no later than the end of the six month discovery period. The time of diversion to case evaluation or early neutral evaluation and mediation might be within 60 days after the last responsive pleading. The court would retain the discretion to shorten or lengthen the time before diversion.

Although the Georgia Supreme Court believes that mandatory participation is an essential element of an effective court-annexed or court-referred ADR program, this court recommends that parties be allowed input into the referral decision wherever possible. For example, if parties or attorneys believe that mediation would be more helpful than arbitration in a specific case, this opinion should be considered by the referring court.

3. EXEMPTION FROM ADR.

3.1. Any party to a dispute may petition the court to have the case removed from mediation, non-binding arbitration, or case evaluation or early neutral evaluation.

3.2. Any party to a dispute may petition the court to refer the case to an ADR process other than the process to which it has been referred.

4. APPEARANCE AT AN ADR CONFERENCE OR HEARING.

4.1. The appearance of all parties and their attorneys is required at non-binding arbitration hearings and case evaluation or early neutral evaluation conferences. The appearance of all parties is required at mediation conferences. In every process, the presence of a representative with authority to settle without further consultation is required if the decision to settle depends upon an entity other than a party.

4.2. Failure to appear in the manner described above may subject a party to citation for contempt and to the imposition of sanctions permitted by law.

4.3. Attorneys are not required to attend mediation conferences but should be allowed and encouraged to do so. Attorneys of record should never be excluded from any process. The mediator may meet and consult privately with any party or any attorney during a mediation conference.

5. QUALIFICATIONS AND TRAINING FOR NEUTRALS.

5.1. All neutrals in a court-annexed or court-referred ADR program must be registered by the Georgia Office of Dispute Resolution.

5.2. All neutrals should attend an orientation program on court procedures given by the court in which they will serve.

5.3. All neutrals should attend continuing education seminars. The Commission will establish the standards for continuing education of neutrals.

5.4. All neutrals must be competent.

6. CONFIDENTIALITY AND IMMUNITY.

6.1. All parties in a court-annexed or court-referred ADR process are entitled to confidentiality to the extent described by the Georgia Supreme Court in the order to which these rules are appended.

6.2. Neutrals acting in a court-annexed or court-referred ADR process are entitled to immunity to the extent described by the Georgia Supreme Court in the order to which these rules are appended.

7. COMMUNICATIONS BETWEEN NEUTRALS, THE PROGRAM, AND THE COURT.

7.1. If any communication between the court and a neutral is necessary, the communication shall be in writing or through the program administrator. Copies of any written communication with the court should be given to parties and their attorneys.

7.2. Once an ADR process in underway in a given case, contact between the administrator of an ADR program and the court concerning that case should be limited to

a. Communicating with the court about the failure of a party to attend;
b. Communicating with the court with the consent of the parties concerning procedural action on the part of the court which might facilitate the ADR process;
c. Communicating to the court the neutral's assessment that the case is inappropriate for that process;
d. Communicating any request for additional time to complete the mediation, non-binding arbitration, or case evaluation or early neutral evaluation;
e. Communicating information that the case has settled or has not settled and whether agreement has been reached as to any issues in the case;
f. Communicating the contents of a written and executed agreement or memorandum of agreement unless the parties agree in writing that the agreement should not be disclosed;
g. Communicating with the consent of the parties any discovery, pending motions or action of any party which, if resolved or completed, would facilitate the possibility of settlement.

8. ENFORCEABILITY OF AGREEMENTS.

Written and executed agreements or memoranda of agreement reached as a result of a court-connected ADR process are enforceable to the same extent as any other agreements. Oral agreements shall not be enforceable.

9. SELECTION OF NEUTRALS.

9.1. Disputants outside of the court setting are always entitled to choose their own neutrals. Nothing in these rules will infringe upon the right of parties to choose any third party to assist in dispute resolution prior to filing a case with the court. However, when the parties have been referred to an ADR process by the court, the court is responsible for the integrity of the process. For this reason, neutrals in a court-annexed or court-referred ADR process will be chosen from neutrals registered by the Georgia Office of Dispute Resolution.

9.2. If parties referred by the court to an ADR process are unable to agree upon a neutral within a reasonable time, the neutral will be selected by the court. In either event, the neutral will be selected from the roster of registered neutrals.

9.3. Any party may petition the court for the appointment of another neutral on the ground that the neutral selected by the court is disqualified because of a conflict or because the party feels that the objectivity of the neutral is in question.

9.4. A neutral registered by the Georgia Office of Dispute Resolution is registered to serve as a neutral anywhere in the state.

9.5. Nothing in these rules is intended to discourage courts from using a co-mediation model where appropriate.

10. EVALUATION.

10.1. Evaluation of the Program: Sufficient data will be collected on an ongoing basis to ensure the quality of the program. Such data will include evaluation by parties and attorneys of the ADR process as applied to their case, the performance of the neutral in the case, and ways to improve the effectiveness of the ADR program. Courts will use the data to improve the quality of programs. It is inappropriate to use data concerning settlement rate as the sole basis for program funding or program evaluation.

10.2. Evaluation of Neutrals:

a. Courts must establish procedures to monitor the performance of neutrals on an ongoing basis. It is inappropriate to use data concerning settlement rate as the sole basis for evaluation of a neutral.

b. Procedures should be established to remove incompetent, ineffective, or unethical neutrals from the roster. These procedures should also include reporting removal to the Georgia Office of Dispute Resolution so that registration may be reconsidered.

11. LOCAL PROGRAM RULES OF PROCEDURE FOR ADR.

Courts may present local program rules of procedure to the Georgia Commission on Dispute Resolution for approval. Approval of local program rules of procedure will be filed with the Georgia Supreme Court. Approved programs will be considered experimental pilot projects for one year under Uniform Superior Court Rule 1.2. It is the intention of the Georgia Supreme Court to work toward uniformity so that variations between programs will be eventually minimized. In order to assist lawyers and parties in discerning differences between the rules of different courts, the rules will be submitted with the following format:

1. Referral:
2. Timing of ADR processes:
3. Exemption:
4. Appointment of neutrals:
5. Qualifications of neutrals:
6. Compensation of neutrals:
7. Immunity:
8. Confidentiality:
9. Appearance:
10. Sanctions for failing to appear without good cause:
11. Communication with parties:
12. Communication with the court:
13. Completion of ADR processes:

APPENDIX B

REQUIREMENTS FOR QUALIFICATION AND TRAINING OF NEUTRALS

ESTABLISHED BY THE GEORGIA COMMISSION ON DISPUTE RESOLUTION

I. REQUIREMENTS FOR QUALIFICATION AND TRAINING OF NEUTRALS.

The Georgia Commission on Dispute Resolution is dedicated to the principle that neutrals serving in court programs must be of the highest possible caliber in training and experience. All neutrals serving in Georgia programs must be of good moral character.

A. Mediation: Although mediators do not necessarily need subject matter expertise, they must have process expertise. Mediators are frequently called upon to operate outside of their area of expertise. For this reason, training of mediators must be more extensive than for other neutrals. Training for mediators who seek registration in the category of general mediation shall be no less than twenty-eight hours of classroom training (including role play and other participatory exercises), plus observation of or co-mediation with a registered mediator in at least five general civil mediations. In lieu of five observations and/or co-mediations, prospective mediators may substitute an approved general mediation practicum. Individuals must complete approved twenty-eight hour general mediation training prior to taking an approved practicum or performing their observations. New mediators should be observed several times before mediating alone.

Mediators should be drawn from a variety of disciplines and should reflect the racial, ethnic and cultural diversity of our society. Prospective mediators should be screened carefully for qualities such as the ability to listen actively, to isolate issues, and to focus discussion on issues.

Competencies for mediators include: (1) Skill in interacting with others and in helping others with their problems; (2) As guardian of the integrity of the mediation process, capacity to maintain the fairness of the process; (3) Capacity to assist parties in identifying their needs and interests, developing options for resolution, and realistically assessing their options for settlement; (4) Protecting the balance of the process by having the capacity to (a) remain neutral in the presence of significant interpersonal conflict between others, (b) understand the points of view of all parties to the dispute, and (c) demonstrate respect for all participants in the mediation conference; (5) Honoring the self-determination of the parties by (a) having the capacity to thoroughly explain the process to the parties, (b) having the capacity to assess the parties' capacity to participate in the mediation conference, (c) having the capacity to assure that the parties have sufficient capacity and information to bargain effectively and to participate in the development of any resolution reached; (d) having the ability to honor the right of parties to develop their own resolution free from any coercion of the mediator, and (e) having the ability to honor the boundaries between the role of mediator and any other professional capacity in which the mediator operates, scrupulously guarding against giving professional advice; and (6) having the capacity to guard the confidentiality of the process.

Domestic Relations Mediation: Mediators in divorce and custody cases shall have at least a baccalaureate degree from an accredited four-year college. An individual whose graduate degree was obtained after waiver of the requirement that the baccalaureate be completed shall be deemed to have completed the baccalaureate degree. Mediators in divorce and custody cases must satisfy the requirements for general mediators prior to taking domestic relations mediation training. The required domestic relations training is at least forty-two hours

of training which substantially meets the standards of the Family Section of the Association for Conflict Resolution. Mediators in divorce and custody cases shall receive special training in the subject of domestic violence. Mediators who seek registration in the category of domestic relations must observe at least one mediation of a divorce or custody case and participate in at least two co-mediations of divorce or custody cases. In lieu of one observation and two co-mediations of divorce or custody cases, prospective domestic relations mediators may substitute an approved domestic relations mediation practicum. Individuals must complete approved forty-two-hour domestic relations mediation training prior to taking an approved domestic relations practicum or doing the observation and co-mediations of divorce or custody cases.

Domestic Violence Mediation: Mediators who handle cases involving allegations of domestic violence must be currently registered as domestic relations mediators prior to taking specialized domestic violence training. Specialized domestic violence training shall be no less than fourteen hours of classroom training (including role plays and other participatory exercises) approved by the Georgia Office of Dispute Resolution.

Delinquency Mediation: Mediators who handle delinquency cases according to O.C.G.A. § 15-11- 2(6) in juvenile court must be registered as general civil mediators prior to taking delinquency mediation training. Delinquency mediation training shall be no less than twenty-one hours of classroom training (including role play and other participatory exercises). New delinquency mediators should be observed and should co-mediate delinquency cases prior to mediating alone.

Topics for training for delinquency mediators include, but are not limited to: child development & balancing power between adults and children; delinquency law, basic charges and case processing (sealing records); confidentiality issues; parties involved, interpreter's role; sex, drugs, alcohol and kids; diversity and cultural differences; options to address offenses; moral development; communication skills, reflecting, reframing; agreement writing, balancing adult and child's responsibilities, exercises; modeling conflict resolution; mandated reporter requirements; GODR rules; family violence.

Dependency Mediation: Mediators who handle dependency cases according to O.C.G.A. § 15-11-2(8) in juvenile court must satisfy the requirements for delinquency mediation registration prior to taking dependency mediation training. Further mediators who handle dependency cases must have a bachelor's degree from an accredited institution or the equivalent in child welfare experience. Dependency mediation training shall be no less than 28 hours of classroom training (including role plays and other participatory exercises) for mediators who are not already registered as domestic relations mediators. For mediators who are already registered in domestic relations mediation, dependency mediation training shall be no less than 21 hours (including role plays and other participatory exercises). New dependency mediators should be observed and should co-mediate dependency cases prior to mediating alone.

Topics for training for dependency mediators include, but are not limited to: mediation process for dependency cases (i.e., role of DFCS, who participates, managing other participants); dealing with attorneys in these mediations; if the mediator is an attorney this must be revealed; dependency law & juvenile court process (including information on panel reviews, DFCS policy); information about CASA/GAL/child advocates/ child attorneys role; family violence; child support worksheets; abuse/neglect issues and effects on the child; child development as relates to visitation issues and expectations of the child; philosophy of dependency cases different from other types of mediation; agreement writing; child support, types of custody, guardianship; Federal requirements, "contrary to the welfare language" and "reasonable efforts"; diversity and cultural issues; confidentiality issues; flexibility with the process and moving the process along; handling multiparty disputes; visitation/parenting issues.

B. Arbitration: Arbitration in court-annexed or court-referred non-binding arbitration programs may be conducted by panels of lawyers, panels made up of lawyers and experts, or by individual lawyers. If the arbitration is conducted by a panel, the chief of the panel shall be a lawyer with five years experience. Where the arbitration is conducted by a single arbitrator, that arbitrator shall be a lawyer with five years experience. All arbitrators shall receive at least six hours of training in a program which qualifies for CLE credits or, for judges and persons with acceptable experience as an arbitrator, such other training, experience, or education as approved by the Chair of the Committee on Training and Credentials and the Director of the Georgia Office of Dispute Resolution.

C. Case Evaluation or Early Neutral Evaluation: Case evaluators or early neutral evaluators shall be lawyers with extensive subject matter expertise in the area of the litigation in question. Case evaluators or early neutral evaluators shall receive at least six hours training for their role. The Commission recommends, but does not require, twenty-eight hours general mediation training for case evaluators or early neutral evaluators.

II. REGISTRATION OF NEUTRALS.

All neutrals working in court programs must be registered with the Georgia Office of Dispute Resolution. The application and training guidelines attached to this appendix set forth the specific requirements for registration. Neutrals must have registration in the appropriate categories for the cases in which they serve.

An individual who completed an approved general mediation training prior to July 1, 2003 shall apply for registration by December 31, 2004. Effective July 1, 2003, an applicant for registration as a general mediator shall apply for registration within eighteen (18) months after completing an approved general mediation training. Likewise, applicants for registration in any category shall apply for registration within eighteen (18) months after completing the appropriate approved training. When a training and practicum (or observations/co-mediations) are taken separately, the 18 months begin at the end of the training. When a training and practicum are combined (i.e., a 40-hour combination General Civil Mediation Training and Practicum), the 18 months begin at the end of the entire combined training.

Specialized Domestic Violence Mediation: Effective January 1, 2005, mediators who handle cases involving allegations of domestic violence must be registered in the category of specialized domestic violence. To be eligible to register in the category of specialized domestic violence, one must: 1) be registered as a domestic relations mediator; 2) have taken an approved 14-hour specialized domestic violence mediation training after June 1, 2004; and 3) provide a letter of recommendation from a director of a superior court ADR program who is familiar with the mediator's work as a domestic relations mediator.

A mediator who has had specialized domestic violence training prior to June 1, 2004, may apply for registration in the specialized domestic category if the mediator: (1) has had at least six hours of advanced domestic violence training provided by an approved domestic relations trainer in Georgia; and has been mediating domestic violence cases for court-connected programs for at least two years prior to June 1, 2004; and has mediated at least five domestic violence cases; and is recommended by a director of a court-connected program for which he or she has been mediating domestic violence cases; OR (2) has taken an advanced domestic violence training of at least twelve hours provided by an approved Georgia domestic relations mediation training provider and is recommended by the director of a court-connected program for which she or he has mediated domestic relations cases; OR (3) has taken one of

the specialized domestic violence trainings sponsored by the Georgia Office of Dispute Resolution in 2003.

Until January 1, 2005, the Director of the Georgia Office of Dispute Resolution, in consultation with the Commission's Training and Credentials Committee, shall have the discretion to permit registration of registered domestic relations mediators who have had domestic violence training provided by a court-connected ADR program and provide certification from a program director that the applicant has the necessary skills level.

Grandfathering of Juvenile Court Mediators: Registered mediators who are actively serving in juvenile courts at the time that juvenile mediation registration was instituted will have an opportunity to be "grandfathered" into registration as delinquency mediators, dependency mediators, or both. All applications for grandfathering will be reviewed independently by the Director of the Georgia Office of Dispute Resolution.

Grandfathering will begin May 1, 2012, and applicants will have 18 months from that date to apply for grandfathering. After the 18-month period, applications to be grandfathered as delinquency mediators or dependency mediators will be granted only rarely and only in the most unusual circumstances.

Applicants for grandfathering must provide the following information in their petition to the Georgia Office of Dispute Resolution. Compliance with the following procedures does not guarantee registration.

Delinquency: To qualify for grandfathering as a delinquency mediator, a registered general civil mediator must provide verification of having completed a delinquency mediation training; and verification of having mediated a minimum of 3 (three) delinquency cases within 1 year prior to application. Verification may consist of a letter or other documentation from a current court program that handles juvenile matters.

Dependency: To qualify for grandfathering as a dependency mediator, a registered general civil mediator must provide, verification of having completed a dependency mediation training; and verification of having mediated a minimum of 1 (one) dependency mediation within 1 year prior to application. Verification may consist of a letter or other documentation from a current court program that handles juvenile matters.

Verification from a current court ADR program that handles juvenile court matters may provide sufficient evidence that a general civil mediator has been actively mediating dependency and/or delinquency cases and possesses the requisite knowledge, skills and ability to be grandfathered in.

Veteran Mediators: Mediators who were actively working in court programs at the time that registration was instituted, January 1, 1994, have had an opportunity to be "grandfathered" into registration as general or domestic mediators even if they did not meet all requirements of Appendix B if, in the judgment of the Director of the Georgia Office of Dispute Resolution, their training substantially met the qualifications set forth above. Registration has been underway since the winter of 1994, and these candidates have had ample opportunity to come forward to seek registration. In the future, applications to be grandfathered into registration as a general mediator will be granted only rarely. Grandfathering of domestic mediators will be granted only in the most unusual circumstances.

Candidates for grandfathering may petition the Office of Dispute Resolution to be accepted for registration. Candidates may demonstrate their competence in the field by (1) describing the training they have received; (2) providing three letters of recommendation from a mediation program, clients, court personnel, registered mediators, or other professionals with whom the applicant has worked; and (3) providing evidence of having completed a minimum of

five mediations or ten hours of mediation in the twelve months preceding the registration request. Compliance with this procedure does not guarantee registration.

Mediators from Other States: A mediator from another state who (1) has received training which meets that state's qualifications and, at the discretion of the Director, has had substantially similar training to that approved in Georgia, (2) has mediated for one year, (3) has completed a minimum of five mediations or ten hours of mediation during that time, and (4) meets the educational requirements of Appendix B may ask to be waived in for Georgia registration on the basis of that training. A mediator from another state who is waived in must be observed by a staff member of the court in which he or she intends to serve or submit a letter from the office of dispute resolution or director of the court program for which he or she served in the other state before applying for registration by the Georgia Office of Dispute Resolution. A mediator from another state who applies for registration will be required to take and pass a test on Georgia ethics provided by the Georgia Office of Dispute Resolution as a prerequisite to registration. Mediators from other states may not be waived in for Georgia registration in specialized domestic violence mediation, delinquency mediation, or dependency mediation.

Ethics Pre-Certification of Fitness to Register: Those interested in registering as a neutral who are concerned that their past criminal or professional issues may prevent them from registering may request an ethics review of their background prior to their taking an approved Georgia training.

The Georgia Office of Dispute Resolution will make available upon request an ethics pre-certification application. A non-refundable fee of $50 will be charged, which will be credited toward any registration fees due if the applicant applies for registration later.

Upon receipt of a completed ethics pre-certification application and fee, the director of the Office or the Commission's designee will conduct an investigation into the pre-certification applicant's criminal and professional background according to established procedures for applicants for registration, including consultation with the Committee on Ethics if necessary.

If the Office or the Committee determine that the ethics pre-certification applicant's criminal or professional history renders the applicant unfit to register, the Office will notify the applicant in writing of the decision and the applicant's right to appeal the decision in accordance with Appendix B, Section III or Section IV.

If the Office or the Committee determine that the ethics pre-certification applicant is fit to register, the Office will notify the applicant and issue a letter of fitness for registration. The ethics pre-certification of fitness for registration will remain valid for a period of 12 months from the date the certification is issued or until the applicant completes and submits to the Office all registration requirements, whichever comes sooner. The applicant will be required to complete and submit to the Office all registration requirements before the certification expires. If the applicant does not do so before the certification expires, then the applicant will be required to apply for and pay for another pre-certification. The rule that permits trainees to apply for registration within 18 months of the completion of their training shall not apply to applicants who have received an ethics pre-certification of fitness.

Applicants are required to maintain the currency of their ethics pre-certification by notifying the Office in writing within thirty (30) days of any occurrence that would change their answer to <u>any</u> question on the pre-certification application.

Assuming nothing occurs within the certification period that would call into question the pre-certification applicant's fitness to register, and assuming the applicant meets all other application requirements and deadlines, the applicant will be registered in the appropriate category or categories.

If necessary, applicants may apply to renew their pre-certification by application to the Office not earlier than 30 days prior to the expiration of their certification. The applicant is responsible for making timely application for renewal of pre-certification. If the Office receives a completed ethics pre-certification application and fee, and if nothing has occurred that would call into question the pre-certification applicant's fitness to register, the applicant's pre-certification will be renewed for up to another 12 months. A pre-certification can be renewed only once.

Continuing Education of Neutrals: All registered neutrals are required to take three (3) hours of continuing education in a registration renewal cycle in order to maintain their registration. This three (3) hour requirement applies regardless of the number of categories for which a neutral is registered. There must be a nexus between the continuing education attended and enhancement of the neutral's skill, substantive knowledge and/or professionalism as a neutral. Live seminars, as well as video and online seminars, are acceptable as continuing education, as long as their agendas, curricula, and speaker qualifications meet the approval of the Georgia Office of Dispute Resolution. However, the Commission will not accept for CE or for registration any video or online instruction that purports to substitute for the core registration courses or practicums, which must always be taken live. Any neutral who fails to meet the continuing education requirement is subject to being removed from the registry of the Georgia Office of Dispute Resolution.

Registration Period and Renewal of Registration: A neutral is registered for a period not to exceed one year except as noted below or unless the neutral relinquishes or loses registration as part of an adverse action taken by the Commission on Dispute Resolution's Committee on Ethics. Neutrals who wish to continue their registration with the Georgia Office of Dispute Resolution shall file an application for registration renewal by December 31st every year. The first annual renewal cycle for a neutral shall begin on the date the neutral is approved for registration and shall end at midnight, December 31st of the same year, *provided that* neutrals whose initial registration is approved in October, November or December of any year shall have their initial registration period extend until midnight, December 31st the following year. Each subsequent renewal cycle shall begin January 1st and continue through midnight on December 31st twelve (12) months later. Neutrals seeking continued registration shall file a renewal application in the form provided by the Georgia Office of Dispute Resolution and pay the nonrefundable fee of $125, except for neutrals registered in domestic relations mediation, who will pay a nonrefundable fee of $150.

Renewal applications shall be postmarked or submitted online no later than midnight, December 31st each year, unless extenuating circumstances require the Commission to change the renewal deadline in a given year.

Volunteer Status: Neutrals who volunteer their services may submit a sworn affidavit each registration season requesting that their registration fees be waived. The affidavit also must be sworn and signed by the director of a court program for which the neutral volunteers. An affidavit form will be made available by the Georgia Office of Dispute Resolution. For purposes of determining neutral registration fees, a "volunteer" is defined as a neutral who receives no compensation – no matter how little – for providing ADR services, whether within or outside a court ADR program. Volunteer neutrals do not include neutrals who perform work within their local court ADR program and are paid for their services by the court or their local ADR board. A volunteer neutral who is granted a fee waiver and who afterward receives any compensation for providing ADR services must notify the Georgia Office of Dispute Resolution immediately and pay the required non-volunteer registration fee.

Lapsed Status: Neutrals who file a renewal application after midnight, December 31st of the year they must renew, or who fail to file a renewal application shall be placed in a lapsed status. A lapsed neutral may file a renewal application between 12:01 a.m. January 1st the year after the renewal application is due through midnight, April 30th of that year upon payment of an additional nonrefundable late fee equal to the applicable neutral renewal fee. So neutrals must pay a renewal fee of $250 to renew registration between January 1st and April 30th, except neutrals registered in domestic relations mediation, who must pay a renewal fee of $300. Neutrals may continue to serve in court-connected programs while in a lapsed status.

Inactive Status: After April 30th, all lapsed neutrals shall be placed in inactive status and may not provide services in court-connected cases. Neutrals in inactive status shall be required to take eight hours of appropriate CE in order to renew their registration status, and shall also be required to pay a late fee equal to their renewal fee in addition to their regular renewal fee. A neutral who is in an inactive status may remain in that status for up to two years from the date registration should have been renewed. Inactive neutrals who apply for renewal of registration after day 730 shall be required to meet the initial requirements for registration, including completion of an approved training course in each category for which they desire to renew their registration, observations or practicums that may be required for each category of registration for which they are seeking renewal, and requisite recommendation letter(s).

Failure to Meet CE Requirements: In the event a neutral has not met the continuing education requirement for a renewal cycle and postmarks or submits the renewal application online on or before midnight, December 31st of the year of renewal, the neutral shall be in a "lapsed" status until the deficiency in CE hours is cured or until April 30th, whichever comes first. If the renewal application is timely filed, the neutral shall have until midnight, April 30th to provide information that substantiates that this deficiency has been cured, at no additional cost. The neutral shall be placed in an inactive status if the deficiency is not cured by April 30th.

Hardship Exception: In cases of extraordinary hardship (e.g. military deployment or extreme illness or injury), a neutral may request an extension of time for renewal, and/or a waiver of the continuing education requirement, and/or any penalties by submitting such a request in writing to the Director of the Georgia Office of Dispute Resolution. The Director shall issue a written response. If such request is denied, an appeal may be taken to the Training and Credentials Committee of the Commission on Dispute Resolution within thirty (30) days of receipt of the Director's denial of the request for waiver. A decision of the Training and Credentials Committee shall be final.

Delayed Payment: A neutral who submits a renewal application online by midnight, December 31st of the year that renewal is due, but who chooses to submit the renewal fee through regular mail rather than online, shall mail the appropriate renewal fee so that it is received by GODR within ten (10) days of the submission of the application. If GODR does not receive payment within ten (10) days of submission, the neutral shall be placed in a lapsed status.

III. APPEAL FROM ADVERSE DECISIONS OF THE OFFICE OF DISPUTE RESOLUTION.

A. Registration decisions are made by the Georgia Office of Dispute Resolution. Applicants who are denied registration for any reason other than that described in § IV may appeal within thirty days of that denial to the Georgia Commission on Dispute Resolution's

Committee on Training and Credentials, which may grant a hearing to the applicant. The Committee on Training and Credentials will make a determination as to whether the applicant should be registered.

B. An adverse decision of the Committee on Training and Credentials may be appealed to the full Commission within thirty days of the date of such decision. The Commission may grant a hearing to the applicant.

IV. PROCEDURE FOR APPLICANTS FOR REGISTRATION OR RENEWAL OF REGISTRATION WHO HAVE BEEN CONVICTED OF OR PLED GUILTY OR NOLO CONTENDERE TO A VIOLATION OF THE LAW, WHO HAVE BEEN DISCIPLINED BY A PROFESSIONAL ORGANIZATION, WHO HAVE HAD PROFESSIONAL PRIVILEGES CURTAILED, AND/OR WHO HAVE RELINQUISHED ANY PROFESSIONAL PRIVILEGE OR LICENSE WHILE UNDER INVESTIGATION AND/OR WHO DO NOT MEET COMPETENCY STANDARDS.

A. Applicants for registration with the Georgia Office of Dispute Resolution must acknowledge the following information: (1) convictions of, guilty pleas to, or nolo contendere pleas to violations of the law, including traffic violations resulting in suspension or revocation of a driver's license and DUI offenses; (2) discipline by a professional organization; (3) curtailment of professional privileges, (4) relinquishment of any professional privilege or license while under investigation. An applicant against whom any of the above actions are pending shall likewise acknowledge this fact.

B. Upon request of the Georgia Office of Dispute Resolution, the applicant must amend his/her application to provide (1) information concerning the background of the offense which led to conviction, plea, discipline, curtailment of professional privileges and/or relinquishment of professional privilege or license; (2) information concerning the length of time which has elapsed since the conviction, plea, discipline, curtailment and/or relinquishment; (3) the age of the applicant at the time of the conviction, plea, discipline, curtailment and/or relinquishment; and (4) evidence of rehabilitation since the conviction, plea, discipline, curtailment and/or relinquishment.

C. The applicant may be asked to appear before the Committee on Ethics of the Georgia Commission on Dispute Resolution to discuss the information contained within the application. The Committee on Ethics will make a determination as to whether the applicant should be registered or have registration renewed.

D. If an applicant for registration or renewal of registration fails to acknowledge (1) that he/she has been convicted of or pled guilty or nolo contendere to a violation of the law, including traffic violations resulting in suspension or revocation of a driver's license and DUI offenses; (2) that he/she has been disciplined by a professional organization; (3) that he/she has had his/her professional privileges curtailed; (4) that he/she has relinquished any professional privilege or license while under investigation; or (5) that any such actions are pending, the Georgia Office of Dispute Resolution will immediately notify the applicant for registration or renewal of registration that he/she will be denied registration or renewal of registration or, if currently registered, removed from registration by the Georgia Office of Dispute Resolution.

E. An adverse decision of the Committee on Ethics may be appealed to the full Commission within thirty days of the date of such decision. The Commission may grant a hearing to the applicant.

V. REMOVAL FROM REGISTRATION.

A. A neutral who (1) has been convicted of or pled guilty or nolo contendere to a violation of the law, including traffic violations resulting in suspension or revocation of a driver's

license and DUI offenses; (2) has been disciplined by a professional organization; (3) has had his/her professional privileges curtailed; and/or (4) has relinquished any professional privilege or license while under investigation, may be removed from the registry of approved neutrals maintained by the Georgia Office of Dispute Resolution. A grievance concerning the ethical behavior of a neutral may result in that neutral being removed from the registry of approved neutrals maintained by the Georgia Office of Dispute Resolution.

B. Upon receiving information that a neutral has been convicted of or pled guilty or nolo contendere to a violation of the law as described above, been disciplined by a professional organization, had his/her professional privileges curtailed, or has relinquished any professional privilege or license while under investigation, or upon receiving a grievance concerning the behavior of a neutral, the Georgia Office of Dispute Resolution or the Georgia Commission on Dispute Resolution will refer the matter to the Committee on Ethics of the Georgia Commission on Dispute Resolution.

C. Both the neutral and the complainant may be asked to appear before the Committee on Ethics of the Georgia Commission on Dispute Resolution to discuss the complaint. The Committee on Ethics will make a determination as to whether the neutral should be removed from the registry. The Committee on Ethics will make written findings which will inform the neutral and the Commission of the basis of its decision.

D. An adverse decision of the Committee on Ethics may be appealed to the full Commission within thirty days of the date of such decision. The Commission may grant a hearing to the applicant.

APPENDIX C

CHAPTER 1: ETHICAL STANDARDS FOR NEUTRALS

A. Ethical Standards for Mediators

IN JUNE, 1994, THE GEORGIA COMMISSION ON DISPUTE RESOLUTION TURNED ITS ATTENTION TO THE DEVELOPMENT OF A CODE OF ETHICAL BEHAVIOR FOR MEDIATORS SERVING COURT PROGRAMS IN GEORGIA. WE INITIATED A DIALOGUE WITH PRACTICING MEDIATORS IN THE STATE. THIS DIALOGUE SERVED AS THE STARTING POINT FOR THE DEVELOPMENT OF THE CODE.

THE CODE CONSISTS OF TWO PARTS. THE FIRST PART CONTAINS STANDARDS OF PRACTICE, THE FOUNDATION OF ETHICAL BEHAVIOR BY MEDIATORS. BECAUSE THE COMMISSION IS COGNIZANT OF THE LIMITED GUIDANCE PROVIDED THROUGH MERE ARTICULATION OF STANDARDS, COMMENTARY, INCLUDING SPECIFIC EXAMPLES FROM PRACTICE, ACCOMPANIES EACH STANDARD, ENHANCING AND STRENGTHENING THIS FOUNDATION.

SPECIFIC PRACTICE RULES, TREATING MATTERS OF CONDUCT WHICH ARE SETTLED AND DO NOT LEND THEMSELVES TO THE EXERCISE OF DISCRETION ON THE PART OF THE MEDIATOR, APPEAR AS PART V. RULES OF FAIR PRACTICE.

INTRODUCTION

The Georgia Commission on Dispute Resolution believes that ethical standards for mediators can be most easily understood in the context of the three fundamental promises that the mediator makes to the parties in explaining the process: 1) the mediator will protect the self-determination of the parties; 2) the mediator will protect the confidentiality of the mediation process; 3) the mediator is a neutral who is impartial and is without bias or prejudice toward any party. Besides maintaining fidelity to these principles, a mediator acts as guardian of the overall fairness of the process.

I. SELF-DETERMINATION/VOLUNTARINESS.

Where the court orders that parties participate in a dispute resolution process other than trial, the process must be non-binding so as not to interfere with parties' constitutional right to trial. To that extent, all court-ordered ADR processes are voluntary. However, the self-determination of the parties which is a hallmark of mediation is of a different and far more subtle order.

Commentary: *The Georgia Commission on Dispute Resolution accepts the proposition that self-determination of the parties is the most critical principle underlying the mediation process. Control of the outcome by the parties is the source of the power of the mediation process. Further, it is the characteristic which may lead to an outcome superior to an adjudicated outcome.*

Self-determination is a difficult goal in our society in which people seem often unwilling to assume responsibility for their own lives, anxious for someone else to make the decisions for them. Mediation is antithetical to this attitude.

A. In order for parties to exercise self-determination they must understand the mediation process and be willing to participate in the process. A principal duty of the mediator is to fully explain the mediation process. This explanation should include:

1. An explanation of the role of the mediator as a neutral person who will facilitate the discussion between the parties but who will not coerce or control the outcome;

2. An explanation of the procedure which will be followed during the mediation session;

3. An explanation of the pledge of confidentiality which binds the mediator and any limitations upon the extent of confidentiality;

4. An explanation of the fact that the mediator will not give legal or financial advice and that if expert advice is needed, parties will be expected to refer to outside experts;

5. An explanation that where participation is mandated by the court, the participation of the parties is all that is required and settlement cannot be mandated;

6. An explanation that the mediation can be terminated at any time by the mediator or the parties;

7. An explanation that parties who participate in mediation are expected to negotiate in an atmosphere of good faith and full disclosure of matters material to any agreement reached;

8. An explanation that the parties are free to consult legal counsel at any time and are encouraged to have any agreement reviewed by independent counsel prior to signing;

9. An explanation that a mediated agreement, once signed, can have a significant effect upon the rights of the parties and upon the status of the case.

10. An explanation that the parties, by their participation, affirm that they have the capacity to conduct good-faith negotiations and to make decisions for themselves, including a decision to terminate the mediation if necessary.

B. The mediator has an obligation to assure that every party has the capacity to participate in the mediation conference. Where an incapacity cannot be redressed, the mediation should be rescheduled or canceled.

Self-determination includes the ability to bargain for oneself alone or with the assistance of an attorney. Although the mediator has a duty to make every effort to address a power imbalance, this may be impossible. At some point the balance of power may be so skewed that the mediation should be terminated.

Commentary: *Georgia mediators are confident of their ability to recognize serious incapacity. Situations in which there is a subtle incapacity are more troubling. Several mediators expressed concern about situations in which they questioned capacity to bargain but felt certain that the agreement in question would be in the best interest of the party and that going to court would be very traumatic. Should the mediation be terminated because of suspected incapacity if mediation is the gentler forum for a fragile person and the agreement*

which the other party is willing to make is favorable? Does the mediator's substituting his or her judgment for the judgment of the party destroy any possibility of self-determination? Is self-determination and the empowerment which it offers a rigid requirement in every mediation? Does it make a difference whether the suspected incapacity is temporary – i.e. a party is intoxicated – so the mediation could be rescheduled?

Example 1: *The husband, who is a doctor, is also an alcoholic. The mediator notes, "She could have said anything and he would have said yes. He just wanted to get it over with. It was really hard keeping him here. I had to make two pots of coffee during each session to keep him going. He was just ready to get out and go get a drink or something." The wife is represented, but he is not represented. Both parties are concerned about preserving his assets, and they both agree that she should get a large portion of the assets. There seems to be danger that the assets will disappear because of his alcoholism. The mediator is concerned that the husband is agreeing too readily and is worried about the balance of power. The party is not presently incapacitated -except to the extent that his desire to complete the mediation is interfering with his giving careful thought to the process. It may be that the level of self-determination which he is exhibiting is the highest level that is possible for him. Should this person be deprived of the benefits which he might derive from mediation because he is not able to bargain as effectively as the other party?*

Example 2: *During the mediation it becomes apparent to the mediator that one party is well-represented and the other party is not being adequately represented. What, if anything, should the mediator do? If the mediator interferes in the attorney-client relationship a number of issues are raised. Would interference infringe upon the self-determination of the party who has retained the attorney? Is neutrality compromised? Is the mediator crossing a line and in effect giving legal advice? If the mediator is compensated, will the mediator's action or inaction be influenced by the desire to maintain good relationships with attorneys for business reasons?*

Recommendation: Where a party is laboring under an incapacity which makes him or her incapable of effective bargaining, the mediator should terminate the mediation. Mediation is not an appropriate forum for the protection of the rights of a person who cannot bargain for him or herself.

If the incapacity is temporary – i.e. intoxication – the mediation should be rescheduled.

If there is a serious imbalance of power between parties, the mediator should consider whether the presence of an attorney, family member, or friend would give the needed support.

An obvious example of a power imbalance occurs when there is a history of domestic violence. Although the Commission has drawn up guidelines to assist court programs in identifying those cases which are not appropriate for mediation, information about a history of domestic violence may surface for the first time during the mediation. The questions the mediator faces are whether to terminate the mediation and, if so, how to safely terminate it. Factors which should be considered are whether there was more than one incident, when the incident or incidents occurred, whether the information surfaces during a joint session or during caucus, whether the alleged victim is

intimidated. If the mediator has any concern that the safety of any person will be jeopardized by continuing the mediation, the mediation should be terminated.

If one party is simply unable to bargain as effectively as another, it is probably inappropriate to deny those parties the benefits of the mediation process because of that factor.

If the imbalance occurs because of disparity in the ability of the parties' attorneys, the principle of self-determination, in this case in relation to the selection of an attorney, again prevails.

One mediator expressed his view this way: "I am reluctant to withdraw where there is an imbalance in power because I always try to look at the alternative. The alternative usually is that person is going to be no better off in litigation. I understand that there's a judge there that can look after the parties, but still my practical experience in litigation teaches me that most parties are not going to be much better of in litigation rather than mediation if lack of power is their problem."

C. Parties cannot bargain effectively unless they have sufficient information. Informed consent to an agreement implies that parties not only knowingly agree to every term of the agreement but that they have had sufficient information to bargain effectively in reaching that agreement. Self-determination of the parties in a mediation includes not only informed consent to any agreement reached but participation in crafting the agreement as well.

Commentary: *One mediator suggested that the parties who are operating without full information be asked to reconvene with attorneys present. This mediator said, "I have been more and more impressed with how effective a subsequent session can be with the attorneys present and everyone having prepared for it."*

Example 1: *One party says that there are assets which have been hidden and the other party denies the existence of the assets. The mediator faces the question of whether to push them forward on the facts that are established or give any credence to these alleged facts.*

Recommendation: The question is resolved in favor of terminating or rescheduling the mediation if there has not been sufficient discovery or the party claiming that assets have been hidden feels that she or he cannot bargain effectively. The closer question comes if there is unsubstantiated suspicion – i.e. "He must have made more than he reported on his income taxes in 1992, so where is it?"

Domestic relations mediators who work in court-annexed or court-referred programs may not have the luxury of several sessions so that parties can be assigned "homework." As long as the information on assets and budgets is available, the actual preparation of lists of assets and liabilities and the preparation of budgets may provide an important opportunity for collaborative work by the parties.

Example 2*: In a divorce mediation the wife is clearly dependent on the lawyer, as she had been on her husband while they were married. The lawyer is not cooperative in the mediation. At each session the lawyer comes in with a totally new agenda and without promised information. The mediator finds that she is spending an inordinate amount of time*

dealing with the lawyer. The mediator offers to meet with the parties alone, but the lawyers will not allow that.

Recommendation: The mediator may caucus with the lawyers alone and confront the lawyer who is obstructing the mediation. The mediator may also raise questions in caucus with the lawyer and the client which may alert the client to the need to control the lawyer. Beyond this, it is difficult to resolve this situation without compromising the self-determination of the client or compromising neutrality.

Commentary: *Yet another variation on the issue of missing information is the missing issue – should the mediator bring up issues which the parties have not identified? As one mediator expressed this: "What's our role when people say we want you to mediate this case? Are we to mediate the issues that they bring to us or are we to create issues for them to discuss and decide about? I guess that a lot of the conflict that we're talking about here is what do we as mediators have to initiate or inform people or educate people about: all the issues that can be and probably ought to be discussed in the context of a divorce mediation? You're potentially opening up all these cans of worms for people who don't necessarily want them opened." On the other hand, have the parties had an opportunity to mediate from a position of full information if they have not considered every relevant issue? Beyond this, will the agreement hold up if it is not made in the context of all issues in the dispute?*

D. The mediator must guard against any coercion of parties in obtaining a settlement.

Commentary: *Many mediators discussed the question of when to declare impasse. One mediator said that she loved the point of impasse because the parties have "gone through the conflict" to get to impasse. She felt that the moment of impasse is a moment of great opportunity. At some point, however, persistence becomes coercion. The question of when to terminate the mediation will be discussed further under the topic of fairness.*

E. It is improper for lawyer/mediator, therapist/mediator, or mediator who has any professional expertise in another area to offer professional advice to a party. If the mediator feels that a party is acting without sufficient information, the mediator should raise the possibility of the party's consulting an expert to supply that information.

Commentary: *Conversations with Georgia mediators who are trained as lawyers confirmed that this concept is extremely difficult for lawyer/mediators. Lawyers, having been trained to protect others, agonize over the perception that missing information, poor representation, ignorance of a defense, etc. may place a party in danger.*

Recommendation: The line between information and advice can be very difficult to find. However, failure to honor the maxim that a mediator never offers professional advice can lead to an invasion of the parties' right to self-determination and a real or perceived breach of neutrality.

II. CONFIDENTIALITY.

Confidentiality is the attribute of the mediation process which promotes candor and full disclosure. Without the protection of confidentiality, parties would be unwilling to communicate freely, and the discussion necessary to resolve disputes would be seriously curtailed.

Statements made during the conference and documents and other material, including a mediator's notes, generated in connection with the conference are not subject to disclosure or discovery and may not be used in a subsequent administrative or judicial proceeding. A written and executed agreement or memorandum of agreement resulting from a court-annexed or court-referred ADR process is discoverable unless the parties agree otherwise in writing. Any exceptions to the promise of confidentiality such as a statutory duty to report certain information must be revealed to the parties in the opening statement. Information given to a mediator in confidence by one party must never be revealed to another party absent permission of the first party.

Example 1: *A party reveals to the mediator in caucus that he has cancer and that he does not want his ex-wife to know about it. He is not sure how long he will be working because of his illness. This information could be very important to the wife. She may need to make other plans for the time when that money is not coming in. Because of the confidentiality, the mediator feels that she cannot say anything.*

Recommendation: This presents the classic dilemma of the collision between the promise of confidentiality and the need of the parties for complete information if they're to enter into an agreement voluntarily. The mediator is placed in the position of keeping a confidence of one party at the expense of the self-determination of the other party. If the mediation is terminated, there is no guarantee that the husband's condition would be revealed at trial, and the parties may lose the opportunity for a more creative agreement than the verdict imposed after a return to court.

The first tactic of the mediator is to encourage the person keeping the crucial secret to share it with the other party or allow the mediator to reveal the secret. If the secret is central to the creation of a solid agreement, and if the mediator cannot persuade the party with the crucial secret to share it, she may have no alternative but to terminate the mediation.

One mediator discussed the problem of information which, if made part of an agreement, might constitute a fraud upon the court. He felt that the ethical requirement that a lawyer is always an officer of the court would require that the lawyer/mediator not draft an agreement if there were a secret which made the agreement a fraud on the parties or on the court. "In other words, if one party says as soon as we sign this custody agreement I'm going to take my kids across the country, that would put me in an impossible conflict of interest. I would feel that I would be perpetrating a fraud on the other side if I allowed them to enter into an agreement."

Example 2: *A deceptively simple example of this problem can occur in jurisdictions where a "warrant fee" must be paid even if the warrant is not served or is dropped. As the parties enter into the mediation of this sub-issue after the mediation of the dispute which resulted in the warrant is completed, both parties refuse to pay a penny, saying that it is the responsibility of the other party. In caucus, one party says, "I'll pay half of it but don't tell them that." Or someone will say, "I think I should only have to pay half of it, but I'd pay it all to be finished with this, but don't tell them." The mediator has been given a piece of information that would make a difference in the settlement of perhaps the entire case and instructed not to tell.*

Recommendation: When the secret information is something that would foster settlement rather than something that would prevent settlement, the mediator is remiss if he or she does not push the parties toward revelation.

Commentary: *An interesting problem intersecting self-determination and confidentiality occurs because of the increasing use of guardians ad litem to represent the interest of the child in disputed custody cases. If the guardian is present at the mediation, should he or she be privy to the entire mediation, including caucuses? The interests of the child are not necessarily synonymous with the positions of parties. One solution to the issue would be to caucus separately with each party and with the guardian. Another question is whether the guardian, who has an obligation to report to the court, can be bound by confidentiality.*

Recommendation: The mediator's opening statement should include an explanation that the guardian ad litem is a party to the mediation whose interests may be separate from those of the other parties. Parties should be informed of the limits on confidentiality presented by the guardian ad litem's presence in the joint session. The mediator should caucus with the guardian ad litem separately. The guardian ad litem should not be present when the mediator conducts a caucus with a party.

III. IMPARTIALITY.

A. A mediator must demonstrate impartiality in word and deed. A mediator must scrupulously avoid any appearance of partiality. Impartiality means freedom from favoritism, bias or prejudice.

Example 1: *As one mediator expressed this problem: "I had a big case once upon a time where I thought the plaintiffs, who were represented by three attorneys, had made a very poor presentation of their case and this was a case that went on for multiple sessions. I don't remember whether it was the opening presentation. I think it may not have been the opening presentation, but a subsequent presentation, and it may have been on just a few issues or something like that. I felt like they did not present their case in as strong a form as they could have. Maybe that they were holding back some evidence. In caucus I just did some coaching. I don't mean to be so presumptuous as to say that I knew how to do it better than they did but I pointed out some things to them that I think they agreed with. They went back and made a more forceful, more cogent presentation and I think were able to move things along better. Because by making a weak presentation of their case, they were not going to be able to get what they knew or believed they were entitled to. So it was a matter of helping the other side see the strengths of the plaintiff's case that they had not been able to see through the original presentation."*

Recommendation: Several mediators discussed the problem of dealing with a party who is unable to bargain effectively and puzzled over an ethical way to coach that party while retaining neutrality. Helping a party to present his or her needs and interests in a way that can be heard by the other side is not a breach of neutrality but is, rather, an important part of the mediator's role. When the mediator helps each side to communicate effectively, the mediator is assisting the parties in establishing the common ground upon which a solid agreement can be based.

Commentary: *Mediators give very few examples of situations in which they felt such antipathy for a party that they were unable to remain neutral. Many mediators discussed the fact that when they began to search for needs and interests of a party they were able to reach a sufficient level of understanding that neutrality was not an issue.*

Although the classic dilemma regarding impartiality occurs when the mediator feels great sympathy or antipathy toward one party or another, the problem is more complicated when the loss of impartiality occurs because of behavior of someone other than a party.

Example 1: *During a mediation the attorneys begin to fight with each other to the extent that it is difficult to control the mediation. It is also difficult for the mediator to keep an open mind about how to deal with it because, as he expressed his own emotion, his stomach is churning. The mediator is faced not only with controlling the situation but in dealing with his own reaction to it. The mediation did not result in an agreement although the matter was settled before trial. The mediator wondered in hindsight if it might have been better if he had said "Look, because of the way I'm reacting to your fight, I can't be an effective mediator for you. You need a different personality to help you mediate."*

B. A mediator may not accept anything of value from a party or attorney for a party before, during, or after the mediation, other than the compensation agreed upon. Mediators should be sensitive to the fact that future business dealings with parties may give the appearance of impropriety. However, it is not improper for a mediator to receive referrals from parties or attorneys.

C. CONFLICTS OF INTEREST / BIAS

a. A mediator shall avoid a conflict of interest or the appearance of a conflict of interest during and after a mediation. A conflict of interest can arise from involvement by a mediator with the subject matter of the dispute or from any relationship between a mediator and any mediation participant, whether past or present, personal or professional, that reasonably raises a question of a mediator's impartiality. Mediators should avoid any dual relationship with a party which would cause any question about the mediator's impartiality.

b. A mediator shall make a reasonable inquiry to determine whether there are any facts that a reasonable individual would consider likely to create a potential or actual conflict of interest for a mediator. A mediator's actions necessary to accomplish a reasonable inquiry into potential conflicts of interest may vary based on practice context.

c. A mediator shall disclose, as soon as practicable, all actual and potential conflicts of interest that are reasonably known to the mediator and could reasonably be seen as raising a question about the mediator's impartiality. After disclosure, if all parties agree, the mediator may proceed with the mediation.

d. If a mediator learns of any fact after accepting a mediation that raises a question with respect to that mediator's service creating a potential or actual conflict of interest, the mediator shall disclose it as quickly as practicable.

After disclosure, if all parties agree, the mediator may proceed with the mediation.

e. If a mediator's conflict of interest might reasonably be viewed as undermining the integrity of the mediation, a mediator shall withdraw from or decline to proceed with the mediation regardless of the expressed desire or agreement of the parties to the contrary.

f. Subsequent to a mediation, a mediator shall not establish another relationship with any of the participants in any matter that would raise questions about the integrity of the mediation. When a mediator develops personal or professional relationships with parties, other individuals or organizations following a mediation in which they were involved, the mediator should consider factors such as time elapsed following the mediation, the nature of the relationships established, and services offered when determining whether the relationships might create a perceived or actual conflict of interest.

Commentary: *How a mediator conducts a conflicts check varies by practice context. For a complex case that comes to a mediator through his or her law firm, best practice consists of making a firm-wide conflicts check at the pre-mediation phase. By contrast, for a mediator of a matter outside the mediator or firm's areas of practice, making an inquiry of the parties and participants at the time of the mediation regarding potential conflicts of interest may be sufficient.*

In performing the mediator's role, an individual displays multiple analytical and interpersonal skills which may well lead a mediation participant to consider employing the mediator again. If a mediation participant, be it a party, party representative, witness or any other participant, wishes to employ the mediator in a subsequent mediation, or in another role (such as personal lawyer, therapist, or consultant), then the mediator must make certain that entering into such a new relationship does not cast doubt on the integrity of the mediation process.

Example 1: *A divorce mediation results in a full agreement. The parties do not want to take the agreement and spend the extra money on an attorney. And they ask the mediator to take the agreement to court and help them obtain an uncontested divorce. As the mediator described the problem, "I told them that technically I could but no I won't because I've been your mediator and must be neutral. I think it would be a conflict for me to go from mediator to attorney in the same case for the purpose of getting you your divorce and making it legal. They said that they really didn't want to go pay anybody else and asked me to prepare the papers. So I charged them an additional fee to prepare the papers, the decree and separation agreement, without my name on it and I told them to file it pro se. They were satisfied with that and I could sleep with that decision."*

Recommendation: The ethical problems that arise in the area of subsequent contact with parties have to do with neutrality and the perception that the mediator might capitalize upon the mediation experience to create a future business relationship with one or the other party. Here the mediator did legal work for both parties so that there was no question of a breach of neutrality. There was no question that the dual representation was clearly explained and understood by the parties. Further, the

mediator tried to distance himself by refusing to represent the parties in court, acting more as a scribe than a representative. He acted with great reluctance and only because the parties requested that they not be placed in a position of incurring additional expense. This mediator said that specific rules in this area would be helpful. It is the Commission's recommendation that a lawyer/mediator never accept any legal work arising out of the mediation. In the context of the example above, this recommendation is more for the protection of the mediator than for the parties.

IV. FAIRNESS.

The mediator is the guardian of fairness of the process. In that context, the mediator must assure that the conference is characterized by overall fairness and must protect the integrity of the process.

A. A mediator should not be a party to an agreement which is illegal or impossible to execute. The mediator should alert parties to the effect of the agreement upon third parties who are not part of the mediation. The mediator should alert the parties to the problems which may arise if the effectiveness of the agreement depends upon the commitment of persons who are not parties to the agreement. A mediator may refuse to draft or sign an agreement which seems fundamentally unfair to one party.

Commentary: *Georgia mediators expressed two concerns related to the fairness of a mediated agreement: How to handle the situation in which the parties agree to something which the mediator feels is unworkable; how to separate out the mediator's own bias that a party could have done better from the agreement which seems fundamentally unfair to the party.*

Example 1: *As one mediator expressed the tension, "You know, have you done this or that? Why don't we come back? 'No, I just want to get it over with.' God, you're paying such a price just to get it over with. But then, maybe they just really need to get it over with. I don't know how many times I've heard that, that I just want to get it over with. I don't care what it takes, I want it done, nobody's going to abide by this anyway. Whatever that whole bundle of things may be. That's my bugaboo. I don't know what advice to give other people about it. You can create some type of abstract standard [for mediators to handle this situation.]"*

Example 2: *In a juvenile court case the parties are working toward agreement and the mediator realizes that the child is agreeing to anything in order to get out of the room. The mediator also realizes that if the agreement is breached, the child will have to answer for the breach in court. The mediator's reality testing is to no avail.*

Example 3: *The mediator is concerned about the tax consequences of a property transfer, and the parties are unwilling to consult an outside expert. As one mediator set forth the problem: "So they come in with a house to sell or a business as part of their marital assets and you're talking about transferring all this property and then what about the taxes. Have you thought about the tax implications? They say no, and you say well you ought to go see a CPA and get this information. And they don't want to because they don't want to spend any more money and all of a sudden you're taking what appeared to be a simple situation and you're making it more complex and you're making it more expensive and where does it stop. That's our question."*

Example 4: *The parties have been married twenty-two years and have grown children. They come to mediation having settled everything but who is to get the Volvo, which is for them their most prestigious material possession. The husband suggests the solution of just selling the car, a solution which would make it possible to finalize the divorce. The wife, who is not ready for finality begins to cry hysterically and then says, "Just write it up and I'll sign anything."*

Recommendation: The mediator's tension may result from his or her concern that the agreement is not the best possible agreement. On the other end of the continuum, the mediator feels that the agreement is unconscionable. This is an area in which the mediator's sense of fairness may collide with the fundamental principle of self-determination of the parties. On the other end of the continuum, the mediator may feel that the agreement is unfair in that one party is not fully informed. In other words, the process by which agreement was reached was unfair because one party was not bargaining from a position of knowledge. An underlying question is whose yardstick should be used in measuring fairness.

The mediator has an obligation to test the parties' understanding of the agreement by making sure that they understand all that it involves and the ramifications of the agreement. The mediator has an obligation to make sure that the parties have considered the effect of the agreement upon third parties. If after testing the agreement the mediator is convinced that the agreement is so unfair that he or she cannot participate, the mediator should withdraw without drafting the agreement. Parties should be informed that they are, of course, free to enter into any agreement that they wish notwithstanding the withdrawal of the mediator.

B. A mediator is the guardian of the integrity of the mediation process.

Commentary: *Georgia mediators expressed concern about confusion of parties and neutrals as to the difference between various ADR processes. This confusion may result in the parties' not knowing what to expect of the mediation process. While there is room for variation in mediation style from the more directive to the more therapeutic, the mediator should recognize the line between mediation and a more evaluative process and be prepared to refer the party to another process if that would be more appropriate.*

Another concern mentioned by many Georgia mediators was how to recognize impasse and, perhaps more difficult, how to recognize when parties come to the table unwilling to bargain in good faith. Another variation on this theme is the attorney who has come to the table merely intending to benefit from free discovery or use mediation as a dilatory tactic. Yet another variation on this theme was the expectation of lawyers that the mediation could be completed in one session. These problems are experienced differently whether the mediator is being compensated on an hourly basis, per session, or is a volunteer. Many mediators and program directors struggle with the issue of good faith and the question of whether lack of good faith can ever be reported to the court.

Recommendation: When a mediator realizes that a party is not bargaining in good faith, he or she often experiences an understandable frustration and a desire to report the bad faith to the court. The pledge of confidentiality extends to the question of conduct in the mediation, excepting of course threatened or actual violence. The

possible damage to the process by reporting more than offsets the benefit in a given case. Further, if the lodestar of mediation is the principle of self-determination, the unwillingness of a party to bargain in good faith is consistent with that party's right to refuse the benefits of mediation.

V. RULES OF FAIR PRACTICE.

REFERRALS

Mediators should observe the same care to be impartial in their business dealings that they observe in the mediation session. In this regard, mediators should not refer parties to any entity in which they have any economic interest. As a corollary to this principle, mediators should avoid referrals to professionals from whom the mediator expects to receive future business. Similarly, mediators should avoid an ongoing referral relationship with an attorney that would interfere with that attorney's independent judgment.

It is not improper to receive referrals from attorneys or parties. However, mediators should be aware that their impartiality or appearance of impartiality may be compromised by referrals from parties or attorneys for whom they act as mediators on more than one occasion.

FEES

Mediators who are compensated by parties must be scrupulous in disclosing all fees and costs at the earliest opportunity. Fees may be based on an hourly rate, a sliding scale, or a set fee for an entire mediation as long as the fee structure has been carefully explained to the parties and they have consented to the arrangement.

Fees may never be contingent upon a specific result. It is imperative that the mediator have no "stake" in the outcome.

Mediators who serve for compensation in court programs are obligated to provide some pro bono hours in order to serve parties who are indigent.

COMPETENCE

Mediators are obligated to disclose their training and background to parties who request such information. Mediators are obligated not to undertake cases for which their training or expertise is inadequate. Mediators shall meet the competency standards of Appendix B. § 1.

Mediators who serve in court programs or receive referrals from courts must be registered with the Georgia Office of Dispute Resolution and must be in compliance with the Alternative Dispute Resolution Rules of the Supreme Court of Georgia. Any mediator who receives a court referral without being in compliance with the Supreme Court Rules is subject to being removed from the registry of the Georgia Office of Dispute Resolution. Further, the immunity protection of the Supreme Court Rules is not available to mediators who receive court referrals without being in compliance with said rules.

ADVERTISING

Mediators are permitted to advertise. Mediators have an obligation to the integrity of the mediation process. In that regard, all statements as to qualifications must be truthful. Mediators may never claim that they will guarantee a specific result. It is important to the public perception of mediation that advertisements by mediators are not only accurate, clear, and truthful, but that they are in no way misleading.

DILIGENCE

Mediators will exercise diligence in scheduling the mediation, drafting the agreement if requested to do so, and returning completed necessary paperwork to the court or referring agency.

Mediation may be terminated by either the mediator or the parties at any time. Mediators will be sensitive to the need to terminate the mediation if an impasse has been reached. However, mediators must be courageous in declaring impasse only when there is no possibility of progress.

APPENDIX C

CHAPTER 2: ETHICS PROCEDURES

These Ethics Procedures describe the steps for handling questions of a neutral's fitness that involve the neutral's character or alleged unethical conduct. Thus, "complaint," as used here, refers only to formal objections to a neutral's fitness that involve character or alleged unethical conduct. Questions of a neutral's fitness that do not involve character or alleged unethical conduct will be referred to the Committee on Training and Credentials of the Georgia Commission on Dispute Resolution.

I. Procedure for Applicants for Registration or Renewal of Registration Who Have Been Convicted of or Pled Guilty or *Nolo Contendere* to a Violation of the Law, Who Have Been Disciplined by a Professional Organization, Who Have Had Professional Privileges Curtailed, and/or Who Have Relinquished Any Professional Privilege or License While Under Investigation.

A. Applicants for registration with the Georgia Office of Dispute Resolution must acknowledge the following information:

(1) Convictions of, guilty pleas to, or *nolo contendere* pleas to violations of the law, including traffic violations resulting in suspension or revocation of a driver's license and DUI offenses;

(2) Discipline by a professional organization;

(3) Curtailment of professional privileges; and

(4) Relinquishment of any professional privilege or license while under investigation. An applicant against whom any of the above actions are pending shall likewise acknowledge this fact.

B. Upon request of the Georgia Office of Dispute Resolution, the applicant must amend the application to provide

(1) Information concerning the background of the offense which led to conviction, plea, discipline, curtailment of professional privileges and/or relinquishment of professional privilege or license;

(2) Information concerning the length of time which has elapsed since the conviction, plea, discipline, curtailment and/or relinquishment;

(3) The age of the applicant at the time of the conviction, plea, discipline, curtailment and/or relinquishment; and

(4) Evidence of rehabilitation since the conviction, plea, discipline, curtailment and/or relinquishment.

C. The Georgia Office of Dispute Resolution conducts a background check on every applicant for registration. The Office shall conduct background checks on renewing applicants on a random basis. The Office may also conduct a background check on renewing and registered applicants for cause. If the background check reveals an arrest but no disposition, the applicant will be contacted by the Office, or the Commission's designee for further information. Until there is a response from the applicant, the application will not be processed further. If there is no response from the applicant within

six months of a request for information, the file will be closed. Once the Office is satisfied that no conviction followed the arrest and the case is closed, the application process will continue.

D. If an applicant for registration or renewal of registration fails to acknowledge that:

(1) The applicant has been convicted of or pled guilty or *nolo contendere* to a violation of the law, including traffic violations resulting in suspension or revocation of a driver's license and DUI offenses;

(2) The applicant has been disciplined by a professional organization;

(3) The applicant had professional privileges curtailed;

(4) The applicant has relinquished any professional privilege or license while under investigation; or

(5) Any such actions are pending, the Georgia Office of Dispute Resolution has the discretion to immediately notify the applicant that registration or renewal of registration will be denied. If currently registered, a neutral may be summarily removed from registration by the Georgia Office of Dispute Resolution under these circumstances.

E. The Committee on Ethics of the Georgia Commission on Dispute Resolution will identify categories of cases in which the director of the Office of Dispute Resolution, or the Commission's designee, may exercise discretion in permitting registration without referral to the Committee. In other cases, the applicant may be asked to appear before the Committee to discuss the information contained within the application. The Committee will make a determination as to whether the applicant should be registered or have registration renewed.

F. The hearing is private and is not open to the public. The hearing is informal, and rules of civil procedure and rules of evidence do not apply. The rules of evidence may serve as a guide for the Committee. The standard of proof is a preponderance of the evidence. The applicant may bring legal counsel or a support person to the hearing. Although witnesses are not generally necessary in the hearing on an application, witnesses may be presented with permission of the Committee. If the applicant fails to appear or participate in good faith, the Committee will deny the application. The record in the case will consist of the application and any correspondence or documents gathered by the Committee or the Georgia Office of Dispute Resolution in connection with the application. The Committee will record the hearing. A copy of the recording will be made available to the applicant upon request.

G. An adverse decision of the Committee on Ethics may be appealed to the full Commission within thirty (30) days of the date of such decision. The Commission may grant a hearing to the applicant. Hearings before the Commission are private. A decision of the Commission is final.

(1) The review by the Commission is ordinarily confined to the record, which will consist of the material described in Section F above and the recording of the hearing before the Committee. However, if good cause is shown before the review, the Commission may grant leave to present additional evidence. The Commission will, upon request, receive briefs and hear oral argument.

(2) The Commission will not substitute its judgment for that of the Committee in regard to the weight of the evidence or facts but may reverse or modify the original decision upon a finding that substantial rights of the appellant have been prejudiced because the Committee's findings, inferences, conclusions, or decisions are:

(a) In violation of constitutional or statutory provisions;
(b) Beyond the authority of the Committee in either substance or procedure;
(c) Clearly erroneous; or
(d) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted discretion.

(3) The review will proceed as follows:

(a) The Commission will hear an opening statement and argument from the appellant/respondent and the counsel for appellant/respondent, if there be counsel.
(b) The Commission may hear additional evidence if good cause is shown.
(c) The Commission may question the Committee as to the basis of its decision.
(d) The Commission will deliberate outside the presence of the Committee and parties.

II. Procedures for Processing Complaints or Information Regarding a Neutral's Conduct or Violation of Some Professional Standard; Complaints Regarding an Approved Training Program; or Complaints Regarding a Court-Connected ADR Program.

A. Receipt of Information that a Neutral (1) Has Been Convicted of or Pled Guilty or *Nolo Contendere* to a Violation of the Law; (2) Has Been Disciplined by a Professional Organization; (3) Has Had Professional Privileges Curtailed; (4) Has Relinquished Any Professional Privilege or License While Under Investigation; or (5) Who is a Mediator Who Does not Meet Competency Standards. Upon receipt of information that a neutral has (1) been convicted of or pled guilty or *nolo contendere* to a violation of the law, including traffic violations resulting in suspension or revocation of a driver's license and DUI offenses; (2) been disciplined by a professional organization; (3) had professional privileges curtailed; and/or (4) relinquished any professional privilege or license while under investigation, and/or who is a mediator who does not meet competency standards, the director of the Georgia Office of Dispute Resolution, or the Commission's designee, will begin an investigation even in the absence of a formal complaint. The procedures for considering such information will be the same as those set out below for processing complaints against neutrals.

B. Complaints: A complaint against a neutral may be made by anyone having knowledge of the subject matter of the complaint. A complaint against a court program may be made by anyone having knowledge of the subject matter of the complaint. A complaint against an approved training program or any person responsible for conducting, administering, or promoting such a training program may be made by anyone having knowledge of the subject matter of the complaint.

Complaints may be made to or referred to the Georgia Office of Dispute Resolution. A complaint need not take any particular form but shall be made in writing and signed by the complaining party. Until made in writing and signed by the complaining party, it will

be considered only a grievance, and the Office, or the Commission's designee, will neither inform the neutral, court program or training program of the complaint, nor investigate it, nor refer it to the Ethics Committee of the Georgia Commission on Dispute Resolution.

Complaints regarding character or conduct will be handled in the first instance by the Georgia Office of Dispute Resolution and thereafter by the Committee on Ethics.

A complaint regarding a training program which is not approved by the Georgia Office of Dispute Resolution is not within the jurisdiction of the Commission. However, if such a training course is advertised as approved, the Commission will undertake appropriate action to correct the false impression that the course is approved.

C. Notice of a Formal Complaint: Once a complaint is made in writing and signed by the complaining party, it is considered a formal complaint. The complainant will receive confirmation of receipt of the complaint. Within ten (10) business days, the Office, or the Commission's designee, will send the complaint to the neutral, training program, or court program by certified mail and regular mail. The letter shall notify the neutral of the right to a hearing provided in Section I.

D. Response: A neutral, training program, or court program will be asked to respond in writing to the director of the Georgia Office of Dispute Resolution, or the Commission's designee, within thirty (30) days of receiving a formal complaint and whether a hearing is requested. Failure to request a hearing in writing within the 30-day period will constitute a waiver of the hearing.

E. Preliminary Review of the Complaint: Within thirty (30) days of receipt of the respondent's response, the director, or the Commission's designee, will make a preliminary review of the complaint to consider whether jurisdiction may exist and the allegations, if true, would constitute a violation of (1) the Georgia Supreme Court's Alternative Dispute Resolution Rules; (2) the Ethical Standards for Mediators contained in Appendix C of the Supreme Court ADR Rules; (3) the requirement in Appendix B of the Supreme Court ADR Rules that "[all] neutrals serving in Georgia programs must be of good moral character"; or (4) training guidelines set forth by the Georgia Commission on Dispute Resolution. If it is determined that jurisdiction may exist and the allegations, if true, would constitute a violation, the director, or the Commission's Designee, will proceed with an investigation. Complaints that may fall outside of the Commission's jurisdiction or do not rise to that level of alleging a violation will not be forwarded to the Ethics Committee. The director, or the Commission's designee, will, however, report all formal complaints to the Chair of the Committee, who may determine that the complaint should be reviewed by the Committee.

F. Investigation: The director, or the Commission's designee, will make an initial inquiry into the complaint by contacting the complainant, the neutral, other parties to the mediation, the program director, or the director of the training program, and any other person whose observations may be relevant to the complaint. Within sixty (60) days of a Preliminary Review which determines allegations of a violation(s), a Summary of the investigation shall be reported to the Chair of the Ethics Committee. This time period may be extended by the Chair of the Ethics Committee under special circumstances.

G. Discretion to Conduct Facilitated Meeting: If the director, or the Commission's designee, concludes that the complaint has arisen primarily from a misunderstanding that might be addressed in a facilitated meeting between the parties, then the necessary participants may be invited to such a meeting. If it is concluded that the complaint does not rise to the level of seriousness required for Committee review as described in Section E above, then the parties may be invited to a facilitated meeting.

H. Suspension of a Neutral or Training Program Pending Hearing: Upon receipt of sufficient evidence demonstrating that conduct complained of poses a threat of harm to parties in mediation or to the public, the Georgia Office of Dispute Resolution or the Committee on Ethics may petition the Georgia Commission on Dispute Resolution for suspension of a neutral or training program pending disciplinary proceedings predicated upon the conduct causing such complaint.

I. Right to Hearing: A neutral, program director or training program director against whom a complaint is lodged (the respondent) has the right to a hearing, if timely requested in writing pursuant to Section D, before the Committee on Ethics. If a hearing is requested, then the respondent will receive a notification letter advising as to the time and place of the hearing. The respondent will also be advised in the letter of any information that would assist in preparing for the hearing. The respondent has a right to review at the Office of Dispute Resolution in advance of the hearing any relevant written material submitted to the Committee by any person. With the approval of the director, copies of relevant documents and evidence may be mailed to a requesting party. This is in no way limits the right of the complainant or the respondent to submit additional written material or to call witnesses at the hearing before the Committee.

J. The Hearing: The hearing is private and is not open to the public. The hearing is informal, and rules of civil procedure and rules of evidence do not apply. The rules of evidence may serve as a guide for the Committee. The standard of proof is a preponderance of the evidence. The neutral and the complainant may bring legal counsel or a support person to the hearing. Testimony may be made by telephone, if good cause is shown to the Committee. The Committee may elect to sequester witnesses, if appropriate. Witnesses may be subpoenaed by the Committee as in civil cases in state courts of record. Witnesses will be entitled to receive the fees and mileage provided by law for witnesses in civil cases. If any witness so subpoenaed fails to appear, the Commission may apply to the superior court of the county where the matter is being heard for an order requiring obedience. Failure to comply with such order shall be cause for punishment as for contempt of court. If any party fails to appear or to participate in good faith, the Committee may proceed on the evidence before it. If the complainant fails to appear, the Committee may dismiss the complaint for want of prosecution. The record of any contested case will include the complaint, the response, and all correspondence. The Committee will record the hearing. A copy of the recording will be made available to the respondent upon request.

K. Findings by the Committee: In the event the Committee finds that:

(1) Jurisdiction exists for the Commission and its committees to receive, investigate, and hear the complaint; and

(2) A neutral has violated:

(a) The Ethical Standards for Mediators contained in Appendix C of the Supreme Court ADR Rules, or

(b) The requirement in Appendix B of the Supreme Court ADR Rules that "[all] neutrals serving in Georgia programs must be of good moral character"; or that

(3) A neutral has been convicted of or pled guilty or *nolo contendere* to a violation of the law, including traffic violations resulting in suspension or revocation of a driver's license and DUI offenses; has been disciplined by a professional organization; had his/her professional privileges curtailed; has relinquished any professional privilege or license while under investigation, for behavior which would constitute a violation of:

(a) The Ethical Standards for Mediators contained in Appendix C of the Supreme Court ADR Rules, or

(b) The requirement in Appendix B of the Supreme Court ADR Rules that "[all] neutrals serving in Georgia programs must be of good moral character"; or that

(4) A training program is in violation of guidelines promulgated by the Georgia Commission on Dispute Resolution,

then the Committee may impose discipline.

L. Discipline: The Committee may impose confidential and/or public discipline as follows:

(1) Confidential Discipline: The Committee may impose confidential discipline, including a letter of formal admonition or Committee reprimand, upon the neutral if the Committee finds that the neutral engaged in the sanctionable conduct:

(a) inadvertently;
(b) purposefully, but in ignorance of the applicable rules; or
(c) under such circumstances that the Committee concludes that the protection of the public and the rehabilitation of the neutral would be best achieved by the issuance of confidential discipline rather than any other form of discipline.

As part of confidential discipline, the Committee may also impose additional training, continuing education or mentoring.

Any confidential discipline shall be considered in aggravation in any subsequent complaints filed against the neutral. In the event of a subsequent disciplinary proceeding, the confidentiality of the imposition of confidential discipline shall be waived, and the Committee may use such information as aggravation of discipline.

(2) Public Discipline: The Committee may impose one or more appropriate public discipline options upon the neutral, including the following:

(a) Additional training;
(b) Restriction of types of cases to be mediated in the future;
(c) Continuing education; or

(d) Mentoring by an experienced mediator/mentor.

(3) Additional Public Discipline: In addition to any discipline listed above, if the conduct involves moral turpitude, is potentially injurious to the public, involves gross incompetence, or if the respondent has been the subject of repeated complaints, the Committee may also recommend the imposition of the following public discipline:

(a) Suspension for a specified term; or
(b) Removal from registration.

Failure of a respondent to comply with the discipline imposed by the Committee may result in removal from registration. Where a complaint against a court program or training program is found to be meritorious, discipline may range from technical assistance and mentoring to removal of approval.

M. The Decision of the Committee on Ethics: Within sixty (60) days of a hearing or the receipt of a Summary of Investigation if no hearing is requested, the Committee will make written findings which will inform the neutral, director of training program, or ADR program and the Georgia Commission on Dispute Resolution (the Commission) of the basis of its decision. The Committee may also elect to issue an advisory or ethics opinion. This time period may be extended by the Chair of the Ethics Committee under special circumstances.

N. Review of a Decision of the Committee on Ethics:

(1) A respondent may appeal an adverse decision of the Committee to the full Commission within thirty (30) days of the date of such decision. The Commission may grant a hearing to the appellant/respondent. Hearings before the Commission are private. A decision of the Commission is final.

(2) The review by the Commission is ordinarily confined to the record, which will consist of correspondence between the parties and the Georgia Office of Dispute Resolution, any evidence considered by the Committee, and the recording of the hearing before the Committee. However, if good cause is shown before the review, the Commission may grant leave to present additional evidence. The Commission will, upon request, receive briefs and hear oral argument. Witnesses may be subpoenaed by the Commission as in civil cases in state courts of record. Witnesses will be entitled to receive the fees and mileage provided for by law for witnesses in civil cases. If any witness so subpoenaed fails to appear, the Commission may apply to the superior court of the county where the matter is being heard for an order requiring obedience. Failure to comply with such order shall be cause for punishment as for contempt of court.

(3) The Commission will not substitute its judgment for that of the Committee in regard to the weight of the evidence or facts but may reverse or modify the original decision upon a finding that substantial rights of the appellant have been prejudiced because the Committee's findings, inferences, conclusions, or decision are:

(a) In violation of constitutional or statutory provisions;
(b) Beyond the authority of the Committee in either substance or procedure;
(c) Clearly erroneous; or

(d) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted discretion.

(4) The review will proceed as follows:

(a) The Commission will hear an opening statement and argument from the appellant/respondent and the counsel for appellant/respondent, if there be counsel.

(b) The Commission may hear a statement from the complainant and may hear additional evidence if good cause is shown.

(c) The Commission may question the Committee as to the basis of its decision.

(d) The Commission will deliberate outside the presence of the Committee and parties.

III. Confidentiality.

A. A mere grievance will be kept confidential.

B. The director, or the Commission's designee, will make a preliminary review of a formal complaint against a neutral to consider whether the allegations, if true, would constitute a violation of either (1) the Ethical Standards for Mediators contained in Appendix C of the Supreme Court ADR Rules, or (2) the requirement in Appendix B of the Supreme Court ADR Rules that "[all] neutrals serving in Georgia programs must be of good moral character." Complaints that do not rise to that level of seriousness will not be forwarded to the Committee on Ethics and will remain confidential except that all formal complaints will be reported to the Chair of the Committee, who may determine that the complaint should be reviewed by the Committee.

C. Once a complaint is forwarded to the Committee on Ethics, the existence of the complaint is no longer confidential. After a complaint has been forwarded to the Committee on Ethics, the Office of Dispute Resolution will accept inquiries about the existence of a complaint but will not make available the complaint or response of the neutral until after an opinion is rendered by the Committee on Ethics. However, confidential discipline by the Committee or the Commission shall not be made available to the public except as provided by Section II (L) (1) above.

D. If a neutral is suspended from the registry of neutrals (before or after a final opinion of the Committee on Ethics) or is removed from the registry of neutrals after a final opinion of the Committee on Ethics, the Office of Dispute Resolution will disseminate this information to program directors throughout the state.

E. If a training program is suspended or permanently removed from the list of approved training programs, the Office of Dispute Resolution will remove that program from the list of approved training programs disseminated in response to inquiries concerning training.

F. Once a final opinion is rendered in regard to a complaint, the complaint, response, and opinion will be treated as a matter of public record. However, confidential discipline by the Committee or the Commission shall not be made available to the public except as provided by Section II (L) (1) above. Regardless of whether the final opinion contains public or confidential discipline, the complaint, response and opinions of the Committee

on Ethics and the Commission on Dispute Resolution may form the basis for a formal ethics opinion, advisory opinion, or a synopsis of the case that may be published in the Office of Dispute Resolution's newsletter. The name of the neutral and other identifying information will not be included in the opinion or synopsis.

G. The confidentiality of a mediation, arbitration, or case evaluation session is deemed waived by the parties to the extent necessary to allow the complainant to fully present the case and to allow the neutral to fully respond to the complaint. The waiver relates only to information necessary to deal with the complaint. The Commission, the Committee, and the Office will be sensitive to the need to protect the privacy of all parties to an ADR process to the fullest extent possible commensurate with fairness to the neutral and protection of the public.

H. Information concerning procedures intended to remain confidential, such as a private letter of reprimand in lawyer discipline, will be kept confidential. Neutrals or applicants for registration or renewal of registration who have received private professional discipline will be asked to sign a release so that the surrounding circumstances can be reviewed. This information, as well as information obtained through a criminal background check, will be used only to determine an individual's eligibility for registration or continued registration.

I. Hearings before the Committee and the Commission are private. Any statement made during an ethics hearing before the Committee or the Commission or as part of investigation by the Georgia Office of Dispute Resolution and the Commission's designee in preparation for a hearing is confidential, not subject to disclosure, and may not be used as evidence in any subsequent administrative or judicial proceedings. Members of the Committee, the Commission or its designee, and staff of the Georgia Office of Dispute Resolution and the Administrative Office of the Courts (AOC), may not be subpoenaed or otherwise required to testify concerning an ethics investigation or hearing. Notes and records of members of the Committee, the Commission, designees, or the staff of the Georgia Office of Dispute Resolution and the AOC, are not subject to discovery to the extent that such notes or records pertain to investigation or hearing of an ethical complaint. Documents considered by the Committee, the Commission, the Office in connection with any ethical proceeding concerning a registered neutral or applicant for registration or renewal of registration may not be subpoenaed from the Committee, the Commission, designee, the Office or the AOC. The recording made of the hearing before the Committee is for the benefit of the Committee, the Commission, and the respondent or applicant for registration or renewal of registration and is not available for any other purpose.

IV Immunity.

No member of the Committee on Ethics, the Georgia Commission on Dispute Resolution, their designees, the staff of the Georgia Office of Dispute Resolution or the AOC, or individual reporting to or testifying before the Committee, Commission, or Office will be held liable for civil damages for any statement, action, omission or decision made in the course of any investigation or hearing of an ethics matter unless that statement, action, omission or decision is grossly negligent and made with malice.