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 three 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. Rules for mediation in cases involving issues of domestic violence will appear as Appendix D 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[1]

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 program for resolution of pending court cases.

Rule 1. DEFINITIONS

A. **Alternative Dispute Resolution**. The term "alternative dispute resolution" (ADR) as used in this appendix refers to any method other than litigation for resolution of disputes.

B. The commonly used ADR terms referred to in this appendix are defined as follows:

1. **Case Evaluation or Early Neutral Evaluation.** The terms "case evaluation" or "early neutral evaluation" mean 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. As used in this paragraph, the term "streamline" means to make the process more efficient and effective by employing faster or simpler working methods.

2. **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.

3. **Judicially Hosted Settlement Conference**: The term "judicially hosted settlement conference" means a process in which a settlement judge acts as a neutral mediator/evaluator of a case. Each side has the opportunity to present a brief summary of its evidence, legal theories, and settlement desires. The settlement judge will assist the parties in settlement negotiations by assessing the strengths and weaknesses of each side's case. The settlement judge has no decision-making authority and is in no way acting in lieu of the assigned judge.

4. **Mediation.** The term "mediation" means 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.

5. **Mini Trial.** The term "mini trial" means a process similar to a 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.

6. **Multi-door Courthouse.** The term "multi-door courthouse" means a concept rather than a

[1] As amended March 29, 2021

process that 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.

7. **Neutral.** The term "neutral" 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.

8. **Non-binding Arbitration.** The term "arbitration" means a process that 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 reject the result by demanding a jury or bench trial in front of the court within a specified period. The essential difference between mediation and arbitration is that arbitration is a form of adjudication, whereas mediation is not.

9. **Settlement Week.** The term "settlement week" means a week during which there is a moratorium on litigation. Mediation is the ADR process most often used during a 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 such cases.

10. **Summary Jury Trial.** The term "summary jury trial" means 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.

Rule 2. REFERRAL TO ADR

A. Courts should make information about ADR options available to all litigants.

B. Except as hereinafter provided, any contested matter filed in superior, state, probate, magistrate, juvenile, municipal, or civil court, or the Georgia State-wide Business Court, may be referred to alternative dispute resolution (ADR). Criminal cases involving domestic violence shall never be referred to mediation pursuant to Appendix D, Rule 1(a). Compliance shall not require that the parties reach a settlement. Cases shall be screened by the judge or court program to determine all the following:

   1. Whether the case is appropriate for ADR.

   2. Whether the parties are able to compensate the neutral if compensation is required.

   3. Whether a need for emergency relief makes referral inappropriate until the request for relief if is heard by the court.

C. Court programs shall develop mechanisms to provide some individual review and screening of cases sent to an ADR process pursuant to the Supreme Court Alternative Dispute Resolution Rules and appendices.

D. 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.

E. Parties should be allowed input into which type of ADR process their case should be referred if possible.[2]

F. 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.

G. The scheduling of a case for an ADR conference shall not remove the case from assignment to a judge, interfere with discovery, nor serve to postpone scheduled motions before the court. The court may refer a matter to ADR before any hearings before the court.

H. A party may apply to the court for interim or emergency relief at any time. ADR shall continue while such a motion is pending absent a contrary order of the court or a decision of the neutral to adjourn pending disposition of the motion. Time for completing ADR shall be tolled during any periods where ADR is interrupted pending resolution of such a motion.

I. In actions brought by state agencies seeking to enjoin activities injurious to the public interest, the agency may within ten 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 may proceed with emergency measures provided by law. Later referral to an ADR process may be appropriate if the emergency measures do not bring the case to conclusion.

Rule 3. TIMING OF ADR PROCESSES

A. Cases may be referred on a case-by-case basis or by standing order to an ADR process by category. If referred by standing order, the court program shall establish an appropriate review procedure.

B. If cases are referred by category, the court may provide for the timing for referral by rule. 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.[3] The court may shorten or lengthen the time before diversion.

Rule 4. EXEMPTION FROM ADR

A. Any party to a dispute may petition the court to have the party's case removed from an ADR process.

B. 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.

Rule 5. APPOINTMENT OR SELECTION OF THE NEUTRAL

A. A disputant outside of the court setting may choose a neutral. Nothing in this appendix shall infringe upon the right of parties to choose a third party to assist in dispute resolution prior to filing a case with the court. However, if the parties have been ordered or referred to an ADR process by the court, only registered neutrals shall be used in court programs. Neutrals providing services in local court

[2] 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] For example, where consistent with this premise, the time of diversion of a case selected for non-binding 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.

programs must be registered in the appropriate category for the type of case in which they are to serve.

B. If the parties referred or ordered by the court to an ADR process are unable to agree upon a neutral within a reasonable time, the neutral shall be selected by the court program. In either event, the neutral must be selected from the roster of neutrals registered with the Georgia Office of Dispute Resolution (GODR).

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

Rule 6. QUALIFICATIONS AND TRAINING FOR NEUTRALS

A. All neutrals in a court programs must register with the Georgia Office of Dispute Resolution in accordance with Appendix B of the Supreme Court Rules ADR Rules. A neutral registered with the Georgia Office of Dispute Resolution may serve as a neutral anywhere in the state.

B. A neutral should attend an orientation program on court procedures given by the court program in which the neutral will serve.

Rule 7. COMPENSATION FOR NEUTRALS

A. Neutrals may require payment from the parties but are not prohibited from providing services pro bono on a volunteer basis in their discretion.

B. An ADR board's fee schedule may provide for compensation of neutrals in instances such as a failure to appear of the parties or other circumstances in the board's discretion.

Rule 8. CONFIDENTIALITY AND IMMUNITY

A. Any statement made during a court program ADR session, or as part of intake by program staff or neutral in preparation for an ADR session shall: (1) be confidential; (2) not be subject to disclosure; (3) not be disclosed by the neutral or program staff; and (4) not be used as evidence in any subsequent administrative or judicial proceeding. Unless a court's ADR rules provide otherwise, the confidentiality provided for in this subsection shall apply to non-binding arbitration conferences. A written and executed agreement or memorandum of agreement resulting from a court ADR process shall not be subject to the confidentiality provided for in this subsection.

B. Unless otherwise provided by the local court program ADR rules, any document or other evidence generated in connection with a court program ADR process or non-binding arbitration is confidential and not subject to discovery. A written and executed agreement or memorandum of agreement resulting from a court program ADR process shall be discoverable unless the parties agree otherwise in writing. Otherwise discoverable material shall not be rendered immune from discovery solely because such material was used in an ADR process.

C. Unless otherwise provided by court ADR rules, neither the neutral nor any observer present with permission of the parties in a court ADR process may be subpoenaed or otherwise required to testify concerning a mediation, case evaluation or early neutral evaluation conference, or a non-binding arbitration in any subsequent administrative or judicial proceeding. A neutral's notes or records shall not be subject to discovery. Notes and records of a court ADR program shall not be 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.

D. No ADR program staff member, neutral, or court personnel may be held liable for civil damages for any statement, action, omission, or decision made in the course of carrying out any of the activities described in these rules or in any ADR process.

Rule 9. EXCEPTIONS TO CONFIDENTIALITY

A. Confidentiality on the part of program staff or the neutral shall not extend to the issue of appearance.

B. Confidentiality shall not extend to situations in which: (1) there are threats of imminent violence to self or others; (2) a mediator believes that a child is being abused; or (3) the safety of any party or third person is in danger; or (4) a party asserts that their capacity to conduct good-faith negotiations and to make informed decisions for themselves was impaired during the mediation as provided by the Supreme Court of Georgia in Wilson v. Wilson, 282 Ga. 728 (2007).

C. The scope of the confidentiality of ADR proceedings shall be governed by the ADR Rules of the Supreme Court of Georgia and the Commission on Dispute Resolution's Advisory Opinions and Ethics Opinions.

D. Confidentiality shall 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, regardless of whether such claim or complaint is brought before the Georgia Commission on Dispute Resolution, made as a motion, sent to a court program's local complaint process, or raised in some other manner. 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 this rule shall negate any statutory duty of a neutral to report information.

E. Parties should be informed of limitations on confidentiality at the beginning of each conference.

F. The collection of information necessary to monitor the quality of an ADR program shall not be considered a breach of confidentiality.

Rule 10. APPEARANCE AT AN ADR CONFERENCE OR HEARING

A. The appearance of all parties shall be required at any ADR conference scheduled pursuant to a court order and coordinated by a court program. The requirement that a party appear at a dispute resolution conference shall be satisfied if the following persons are present:

1. The party, the party's representative, or both the party and the party's representative. A party's representative must have full authority to settle without further consultation and have a full understanding of the dispute and full knowledge of the facts.

2. A representative of the insurance carrier for any insured party, if any. An insurance carrier's representative must have full authority to settle without further consultation.

B. Unless ordered by the court, an attorney shall not be required to attend an ADR conference. An attorney shall not be excluded by the court or the neutral from an ADR conference. An attorney should attend an ADR conference.

C. Court programs may offer parties, attorneys, and any representatives the option to appear remotely by videoconference or telephone.

Rule 11. SANCTIONS FOR FAILURE TO APPEAR

If a party fails to appear at a duly noticed ADR conference without showing good cause, the court program shall notify the judge to whom the case is assigned. The judge may find the party in contempt and impose

appropriate sanctions.

Rule 12. COMMUNICATIONS WITH THE COURT

A. To preserve the objectivity of the court and the neutrality of the neutral, there should be no unnecessary communication between the neutral and the court. If any communication between the court and a neutral is necessary, the communication shall be in writing and shall be made through the court program. Copies of any written communication with the court shall be given to each party and the party's attorney.

B. Once an ADR process is underway in a given case, contact between the court program and the court concerning that case shall be limited to the following:

1. Communicating with the court about the failure of a party to attend.
2. Communicating with the court with the consent of the parties concerning procedural action on the part of the court which might facilitate the ADR process.
3. Communicating to the court the program's or neutral's assessment that the case is inappropriate for an ADR process.
4. Communicating any request for additional time to complete an ADR process.
5. Communicating information that the case has settled or has not settled and whether agreement has been reached as to any issues in the case.
6. Communicating the contents of a written and executed agreement or memorandum of agreement unless the parties agree in writing that such agreement should not be disclosed.
7. 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.

Rule 13. COMPLETION OF ADR

A. The ADR process shall be completed within the timeframe ordered by the court. Court programs should consider a process for motions to extend the timeframe in which to complete an ADR process.

B. The duration of an ADR conference will vary. The neutrals may adjourn an ADR conference at any time and may set times for reconvening the adjourned conference notwithstanding Rule 3 (a) of this appendix.

C. If an agreement is reached, it shall be reduced to writing, if possible, at the end of the ADR conference or within a limited and specified timeframe following the conference. The neutrals should draft such agreement unless all parties agree otherwise.

D. If a party is represented by counsel who is present at the conference, an agreement should be drafted by the neutral and signed by all present at the end of the ADR conference.

E. Court programs should consider a rescission process for agreements reached when a party is unrepresented or if a party's counsel is not present.

F. If a partial agreement is reached, it shall be reduced to writing and signed by all present in the same manner as a full agreement as provided in subsection (c) of this rule.

G. If parties do not reach an agreement as a result of the ADR conference, the neutrals shall report the lack of an agreement to the court program. The court program shall notify the judge to whom the case is assigned of the lack of agreement.

H. Written and executed agreements or memoranda of agreement reached as a result of a court ADR process are enforceable to the same extent as any other written agreement. Oral agreements shall

not be enforceable.

Rule 14. EVALUATION

A. Evaluation of the Program: Data shall be collected on an ongoing basis to ensure the quality of the program. Court programs shall provide all available data as requested by the GODR in a timely fashion as directed by the GODR. Such data may 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. A court may use such data to improve the quality of programs and shall share it with the GODR to provide statewide statistics. Data concerning settlement rate shall not be used as the sole basis for program funding or program evaluation.

B. Evaluation of Neutrals:

1. Court programs shall establish procedures to monitor the performance of neutrals on an ongoing basis. Court programs shall not use data concerning settlement rate as the sole basis for the evaluation of a neutral.

2. Procedures should be established to remove incompetent, ineffective, or unethical neutrals from the roster. Such procedures should also include reporting removal to the GODR so that a neutral's registration may be reconsidered.

Rule 15. LOCAL PROGRAM RULES OF PROCEDURE FOR ADR

A. Courts shall present local program rules of procedure for newly created ADR programs to the Georgia Commission on Dispute Resolution for approval. Approval of local program rules of procedure for newly created ADR court programs shall also be filed with the Georgia Supreme Court. Approved programs shall be considered experimental pilot projects for one year under Uniform Superior Court Rule 1.2. Any changes to the local program rules for approved programs shall be submitted to the GODR for review. If upon review, the GODR finds any deficiencies, GODR will notify the court program of the nature of the deficiencies and allow the court program time to make corrections. GODR will then submit the changes to the Georgia Supreme Court Commission on Dispute Resolution for approval. As specified in the Georgia Court-Connected Alternative Dispute Resolution Act (O.C.G.A. §§ 15-23-1 to 15-23-12), 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.

B. It is the intention of the Georgia Supreme Court to work toward statewide uniformity so that variations between programs will be eventually minimized. To assist lawyers and parties in discerning differences between the rules of different courts, the local ADR rules shall be submitted with the following format:

1. Referrals.
2. Timing of ADR processes.
3. Exemptions.
4. Appointment of neutrals.
5. Qualifications of neutrals.
6. Compensation of neutrals.
7. Confidentiality and immunity.
8. Exceptions to confidentiality.

9. Appearance.
10. Sanctions for failing to appear.
11. Communication with parties.
12. Communication with the court.
13. Completion of ADR processes.
14. Evaluation of program and neutrals.

APPENDIX B
RULES FOR QUALIFICATION AND TRAINING OF NEUTRALS[4]

ESTABLISHED BY THE GEORGIA COMMISSION ON DISPUTE RESOLUTION

The Georgia Commission on Dispute Resolution (Commission) seeks to ensure that courts and litigants have access to well-trained, highly skilled neutrals who adhere to the highest ethical standards. All neutrals must have process expertise and some neutrals must have subject matter expertise. Neutrals should be drawn from a variety of disciplines and should reflect the racial, ethnic, and cultural diversity of our society. Local court alternative dispute resolution (ADR) programs should screen prospective neutrals carefully for qualities such as the ability to listen actively, to isolate issues, and to focus discussion on issues.

I. REGISTRATION CATEGORIES AND REQUIREMENTS

This section lists the categories in which neutrals may register with the Georgia Office of Dispute Resolution (GODR). Neutrals who completed training in programs not approved by the GODR should refer to Section II (J) of this Appendix. The requirements for approval and renewal of training programs for each category are found in Section III of this Appendix. Throughout these Rules, the term "approved" refers to approval by the GODR and the term "registered" refers to registration with the GODR.

A. **Non-binding Arbitration:** There is no prerequisite category in which a neutral must register before registering in non-binding arbitration. To register as a neutral in non-binding arbitration, an applicant must meet all the following requirements:

1. Successfully complete six hours of GODR-approved arbitration training.

2. Consent to a background check, cooperate with the background check process, and pass a background check pursuant to Appendix C of these Rules.

B. **General Civil Mediation:** This is the prerequisite course for all registration categories with the exception of non-binding arbitration. To register as a neutral in general civil mediation, an applicant must meet all the following requirements:

1. Consent to a background check, cooperate with the background check process, and pass a background check pursuant to Appendix C of these Rules.

2. Successfully complete 28 hours of GODR-approved general civil mediation training.

3. Complete either (a) or (b) as follows:

   a. A 12-hour GODR-approved practicum.

   b. Observe five civil (non-domestic and non-juvenile) mediation sessions totaling at least ten hours of mediation session time. Requirements for these observations are as follows:

If an applicant reaches ten hours of mediation session time in fewer than five mediations, the applicant still must observe a total of five mediations to completion, regardless of whether the five mediations ultimately run longer than ten hours.
Similarly, if an applicant finishes the five observed mediations in fewer than ten hours, the applicant must

[4] As amended March 29, 2021 to be effective July 1, 2021

continue observing mediations until they meet the ten-hour requirement.
The applicant must observe at least two different registered mediators.
The observations must be conducted live, either remotely or in-person. Pre-recorded videos may not be viewed as observations.

C. **Early Neutral Evaluation:** To register as an early neutral evaluator, an applicant must meet all the following requirements:

1. Be a registered neutral with the GODR.

2. Have practiced law or served as a judge (or a combination of both) for at least eight years preceding the date of application.

3. Have five years of relevant experience in the substantive area of dispute involved.

4. Have completed six hours of GODR-approved early neutral evaluation training.

5. Have served as an arbitrator or mediator in a minimum of ten court-connected or private ADR sessions.

D. **Domestic Relations Mediation:** To register as a neutral in domestic relations mediation, an applicant must meet all the following requirements:

1. Satisfy all requirements for registration in general civil mediation as provided in Section I (B) of this Appendix.

2. Hold a bachelor's degree from an accredited college or university.

3. Successfully complete 42 hours of GODR-approved domestic relations mediation training.

4. Complete either (a) or (b) as follows:

    a. A 12-hour GODR-approved domestic relations practicum taken ***after*** successful completion of the domestic relations training.

    b. Both of the following:

        i. Observe at least one mediation of a domestic relations case by a mediator who is registered in domestic relations. The observation must be conducted live, either remotely or in-person, and a pre-recorded video cannot be viewed as an observation.

        ii. Participate in at least two co-mediations of domestic relations cases with a mediator who is registered in domestic relations.

E. **Specialized Domestic Violence Mediation:** To register as a neutral in specialized domestic violence mediation, an applicant must meet all the following requirements:

1. Successfully register as a neutral in general civil mediation as provided in Section I (B) of this Appendix.

2. Successfully register as a domestic relations mediator as provided in Section I (D) of this Appendix.

3. Successfully complete 14 hours of GODR-approved specialized domestic violence mediation

training after registering as a domestic relations mediator as provided in Section I (D) of this Appendix.

F. **Delinquency Mediation:** To register as a neutral in delinquency mediation, an applicant must meet all the following requirements:

1. Successfully register as a neutral in general civil mediation as provided in Section I (B) of this Appendix.

2. Successfully complete 21 hours of GODR-approved delinquency mediation training.

G. **Dependency Mediation:** To register as a neutral in dependency mediation, an applicant must meet all the following requirements:

1. Successfully register as a neutral in general civil mediation as provided in Section I (B) of this Appendix.

2. Successfully complete 28 hours of GODR-approved delinquency training prior to taking a GODR-approved dependency mediation training.

3. Successfully complete a GODR-approved dependency mediation training.

4. Hold a bachelor's degree from an accredited college or university.

Mediators who are registered in domestic relations mediation may satisfy Section I (G) (3) of this Appendix by attending a GODR-approved dependency mediation training that is no less than 21 hours (including role plays and other participatory exercises).

Mediators registered in delinquency mediation, but not in domestic relations mediation, must satisfy the requirement to successfully complete a GODR-approved dependency mediation training by attending a GODR-approved dependency mediation training that is no less than 28 hours of classroom training (including role plays and other participatory exercises).

II. NEUTRAL REGISTRATION PROCEDURES AND CONTINUING EDUCATION

A. General Requirements

All neutrals practicing in court programs and in court-ordered mediation of cases shall be registered with the GODR. Prior to serving as a neutral in a court program or in court-ordered cases, neutrals shall register in the appropriate category for the type of case in which they wish to serve. Prospective neutrals must follow the procedures outlined for registration on the GODR website. The application guidelines available on the GODR website set forth the specific requirements for registration and may be amended by GODR from time to time.

B. Initial Registration Period for New Applicants

1. A neutral who completes an application for initial registration prior to October 1st in a calendar year remains registered only through the end of that calendar year, and the neutral must renew his/her/their registration prior to December 31st of the calendar year in which the neutral first registered.

2. A neutral who registers on or after October 1st remains in good standing through December 31st of the following calendar year. Thus, for example, a neutral registering on October 30th will be registered for 14 months and will not have to renew in the same

calendar year in which the neutral registered.

C. **Registration Procedures**

1. Registration for New Applicants in Non-binding Arbitration.

To register in non-binding arbitration, an applicant must meet all the following requirements:

a. Submit a completed application, including a signed consent form for background check and all required documentation.

b. Apply for registration no later than 18 months after completing a GODR-approved training.

c. Submit a non-refundable application fee set by the Commission. The application fee may be changed from time to time, and potential applicants should refer to the GODR fee schedule on the website for the latest information.

2. Registration for New Applicants in General Civil Mediation.[5]

To register in general civil mediation, an applicant must meet all the following requirements:

a. Submit a completed application, including a signed consent form for background check and all required documentation.

b. Apply for registration within 18 months from the last date on the 28-hour GODR-approved training certificate.

c. Submit a non-refundable application fee set by the Commission. The application fee may be changed from time to time, and potential applicants should refer to the GODR fee schedule on the website for the latest information.

3. Registration in Domestic Relations.

a. A neutral seeking to register in domestic relations must register no later than 18 months after the date the neutral completed the 42-hour GODR-approved training course.

b. If the training and practicum are taken as a combined course, the 18 months shall begin at the end of the entire combined training. If taken separately, the 18 months shall begin at the end of the course.

4. Registration in Early Neutral Evaluation, Specialized Domestic Violence, Delinquency, or Dependency Mediation.

a. A neutral seeking to register in the following categories must register no later than 18 months after the date the neutral completed each individual GODR-approved training course for registration.

D. **Renewal of Registration**

[5] This section applies to neutrals who took an approved GODR training. For applicants seeking a waiver of the requirement that they complete a GODR-approved training, please see Section II (J) of this Appendix.

1. Except as noted elsewhere in these Rules, a neutral shall be registered for a period of one year unless the neutral relinquishes or loses registration as part of an adverse action taken by the Commission, its Committee on Ethics, or both.

2. A neutral seeking to renew that neutral's registration must apply for renewal by December 31st each calendar year. A renewal application must be submitted online no later than noon on December 31st each calendar year, unless extenuating circumstances require the Commission to change the renewal deadline. Notice shall be given in advance if the renewal deadline is changed.

3. A neutral seeking to renew must complete a renewal application using the form provided by the GODR and must pay a nonrefundable fee set by the Commission.

4. A neutral who submits a renewal application online by noon on December 31st of the calendar year that renewal is due and chooses to submit the renewal fee via mail rather than online must mail the appropriate renewal fee so that it is postmarked by January 10th. If payment is not postmarked by January 10th, the neutral shall be placed in a lapsed status pursuant to Section II (E) of this Appendix.

5. As discussed in Section II (B) (2) of this Appendix, A neutral who completes an application for initial registration prior to October 1st must renew their registration by noon on December 31st of that calendar year, while neutrals registering on or after October 1st do not have to renew until noon on December 31st of the following calendar year.

6. A neutral may remove one or more specific registration category or choose to deregister altogether as a neutral. The neutral must complete a GODR-provided affidavit available on the website and submit it through the neutral's account. Once removed, a category may not be added back unless the neutral meets the initial training requirements for that specific registration category. Once deregistered, the neutral's registration may not be reinstated unless the neutral meets all of the requirements for initial registration.

E. **Lapsed Status**

1. A neutral who fails to file a renewal application by noon on December 31st of the calendar year the neutral is required to renew shall be placed in a lapsed status.

2. A lapsed neutral may file a renewal application between January 1st of the calendar year after his or her renewal application is due through noon on the last day of February. Such filing shall include all the following: payment of the renewal fee, payment of an additional nonrefundable late fee set by the Commission, and proof of completion of any continuing education (CE) hours still outstanding.

3. A neutral may continue to serve in court-programs and in court-connected cases while in a lapsed status.

F. **Inactive Status**

1. On March 1st of each calendar year, each lapsed neutral shall be placed in inactive status and may not provide services in court programs or in court-connected cases.

2. To reinstate his or her registration, a neutral in inactive status shall complete additional hours of CE and pay any late fees set by the Commission.

3. A neutral who is in an inactive status may remain in such status for up to five years from the date his or her registration should have been renewed.

4. Neutrals may apply for reinstatement by submitting the requisite number of continuing education hours and remitting fees as outlined in the GODR fee schedule. The reinstatement CE requirements are as follows:

    a. Inactive I: March 1-December 31 (within the same year of the missed late renewal period). Neutrals must submit six hours of CE.

    b. Inactive II: January 1-December 31 (year following Inactive I). Neutrals must submit seven hours of CE.

    c. Inactive III: January 1-December 31 (year following Inactive II). Neutrals must submit eight hours of CE.

    d. Inactive IV & V: January – December 31 (years following Inactive III or Inactive IV, respectively). Continuing education hours, training updates, or both will be determined by the Training and Credential Committee on a case-by-case basis. After application for reinstatement, the neutral will be notified in writing of specific education requirements for reinstatement.

5. A list of neutrals who are inactive shall be published on the GODR's website and disseminated to local court ADR programs.

G. **Deregistered Status**

1. After five years from the date registration was due, each inactive neutral shall be placed in a deregistered status.

2. A deregistered neutral who wants to register again must meet the initial requirements for registration, including completion of a GODR-approved training course in each category for which they desire to register. The deregistered neutral must also complete any and all observations or practicums that may be required for each category of registration for which they are seeking to register.

H. **Volunteer Status**

Neutrals who volunteer their services may qualify for a registration fee waiver. For purposes of determining neutral registration fees, a "volunteer" is defined as a neutral who receives no compensation – no matter how little – for providing any ADR-related services, whether within or outside of a court ADR program. Further, such ADR services rendered must include only instances in which zero compensation has been received by any person, organization, or entity from parties, unless otherwise approved by the Commission. Volunteer neutrals do not include court ADR program or court staff who receive any compensation, including wages, from a court, government office, or local ADR board. Those who qualify as a volunteer neutral under these terms must submit a sworn affidavit each registration renewal period, requesting that their registration fees be waived. Such affidavit, made available by the GODR, must be sworn and signed by the executive director of a court ADR program for which the neutral volunteers. A volunteer neutral who is granted a fee waiver and later receives any compensation for providing ADR services must notify the GODR immediately and pay the required non-volunteer registration fee.

I. **Military Servicemember Relief**

Neutrals who are military servicemembers may qualify for a stay of registration renewal requirements,

including a waiver of the continuing education, fees, or both. For purposes of determining eligibility under these Rules, in accordance with the federal Servicemembers Civil Relief Act, "military servicemember" means "active duty personnel in the [U.S.] Armed Forces (including reserves called to active duty); National Guard members called to active service for more than 30 consecutive days; commissioned officers of the [U.S.] Public Health Service or NOAA; in limited cases, dependents of SM (Service Members); holders of power of attorney for SMs; SMs absent for lawful cause or because of sickness, wounds, or leave."[6]. Such requests must be submitted in writing to the executive director of the GODR and may be applied retroactively, upon his or her/their discretion.

J. **Registration of Neutrals with Training Not Approved by GODR**

1. A prospective neutral seeking to register as a neutral with the GODR but who did not complete a GODR-approved training may apply for a waiver of GODR training requirements.

2. A request to waive GODR training requirements must demonstrate that the training and qualifications of the prospective neutral substantially meets those required for GODR registration in the category in which the applicant seeks to register. To be approved, the training must have contained the equivalent number of hours of instruction (not including breaks or meals) for the category in which they want to register and must have included training equivalent to that offered by a practicum or by observations or co-mediations if required by the GODR for registration in that category. The topics covered by the training must include all the required topics as outlined in the Training Program Guidelines, which are available on the GODR website, as described in Section III (A) of this Appendix.

3. As a prerequisite to registration, a prospective neutral who applies for a waiver must take and pass a test on Georgia ethics provided by the GODR.

4. Mediators with non-GODR-approved training may not be waived in for Georgia registration in specialized domestic violence mediation, delinquency mediation, or dependency mediation. To register in such categories, prospective neutrals must take a GODR-approved training.

5. If a waiver request is denied, the applicant may appeal the matter to the Training and Credentials Committee of the Commission no later than 30 days after receipt of the GODR executive director's denial of the request. The decision of the Training and Credentials Committee regarding a waiver request shall be final.

K. **Continuing Education of Neutrals**

1. General Rules.

a. A registered neutral must complete three hours of continuing education (CE) each calendar year to maintain his or her registration. Each neutral must ensure that the appropriate paperwork demonstrating completion of GODR-approved CE hours is submitted with that neutral's renewal application.

b. Proof of completion of CE hours should be submitted throughout the year as a neutral completes CE. Except for carryover CE, proof of CE completion must be submitted no later than noon on December 31st of the calendar year in which the CE was taken.

[6] From the *Servicemembers Civil Relief Act* bench card: *Application of the* SCRA—SCRA §§ 3911, 3912, "Individuals." See 50 USC §§ 3911; 3912.

c. A neutral must complete three hours total of CE each calendar year regardless of the number of categories in which a neutral is registered. Thus, a neutral registered in several categories need only complete a total of three hours of CE each calendar year.

d. A neutral may carry over three CE hours to the calendar year immediately following the calendar year in which the excess CE hours were earned. CE may not be carried over more than one calendar year.

e. A neutral is not required to complete CE in the first year of his or her registration. The CE requirement begins the year after the first year of a neutral's initial registration in general civil mediation or non-binding arbitration.

f. A neutral who is registered in general civil mediation or non-binding arbitration, and who becomes registered in another category in the next calendar year, or any subsequent calendar year may count his or her GODR-approved training for his or her CE requirement for one calendar year.

g. The GODR will post pre-approved CE courses on its website. Other continuing education courses may be acceptable as CE if there is a nexus between the continuing education attended and enhancement of the neutral's skill, substantive knowledge, or professionalism as a neutral. The agendas, curricula, and speaker qualifications must meet the approval of the GODR for the course to qualify as CE. Other professional continuing education credits may be eligible for the CE requirement for registered neutrals.

h. Any continuing judicial education (CJE) course approved by the Institute of Continuing Judicial Education of Georgia (ICJE) for CJE credit will be accepted as CE for registered neutrals.

i. CE may be taken in person or online.

2. Failure to Meet CE Requirements.

If a neutral fails to submit acceptable proof of completion of CE requirements by noon on December 31st, the neutral's application for registration will be denied. A neutral who fails to complete and timely submit CE will be considered lapsed pursuant to Section II (E) of this Appendix and must renew their registration in accordance with that section.

L. **Hardship Exception**

1. In cases of extraordinary hardship (e.g., illness, injury, or personal or family circumstances, etc.), a neutral may request any of the following: an extension of time for renewal, a waiver of the continuing education requirement, or a waiver of any penalties. Such a request shall be submitted in writing to the executive director of the GODR.

2. The GODR executive director may request additional information and documentation as needed to evaluate a hardship exception request. Failure to submit requested information or documents within the time required shall be treated by the GODR executive director as a withdrawal of the request for a hardship exception.

3. The GODR executive director shall issue a written response to a hardship exception.

4. If a request is denied, the neutral may appeal the denial to the Training and Credentials Committee of the Commission no later than 30 days after receipt of the GODR executive director's denial of the request for waiver. The decision of the Training and Credentials Committee regarding a request for a hardship exception shall be final.

III. APPROVAL AND RENEWAL OF TRAINING PROGRAMS

This section contains the rules and procedures for approval and renewal of training programs. Training program applicants must adhere to these rules and procedures in order to receive and maintain GODR approval. Additional requirements are contained in the Training Program Guidelines, which are available on the GODR website, as described in this section.

As used in this Appendix, the term "training program" includes both the organization offering the training and all the primary trainers associated with the training program. A training program must identify one or more administrators in its application and must ensure that the contact information of all administrators remains updated in the GODR registration system.

A. Training Program Guidelines

1. In Section V of the Supreme Court of Georgia's ADR Rules, the Commission is tasked with establishing guidelines for training programs for neutrals. To carry out this duty, the Commission has promulgated Training Program Guidelines (Guidelines). The Guidelines are a separate document available on the GODR website.

2. The Guidelines contain detailed procedures for those applying to provide a GODR-approved training program, as well as the substantive requirements for training programs in each registration category. They also contain guidelines for the renewal of GODR approval for training programs. A training program applicant must not only follow the procedural steps outlined in the Guidelines, but the applicant must also show that the proposed training program meets the substantive requirements for the registration category in which the applicant seeks to train.

3. An application for approval or renewal of GODR approval of a training program must meet the requirements of the Guidelines. Failure to follow either the substantive or the procedural requirements for training programs in the Guidelines shall result in a denial of approval of a training program application.

4. The GODR periodically updates the Guidelines. A training program applicant must adhere to the current version of the Guidelines available on the GODR website. Each applicant is responsible for reviewing and following the latest version of the Guidelines. Failure to follow these rules or the Guidelines may result in denial of approval of a training program application. A prospective trainer must review and become familiar with the Guidelines.

B. Initial Application Procedures

1. A training program applicant must apply via the GODR website.

2. An applicant must pay in full a non-refundable application fee set and collected by the GODR before his or her application is processed.

3. The GODR may deny an application for approval of a training program for failure to meet substantive quality standards as determined by GODR staff in their discretion. The denial of a training program application for failure to meet substantive quality standards may be appealed pursuant to Section IV of this Appendix. Before denying an application on these grounds, GODR shall inform the applicant of the deficiencies and allow a reasonable time, not to exceed 90 days, for the applicant to correct and resubmit his or her application.

4. Detailed application instructions are contained within the Guidelines. A training program application must include a proposed curriculum, a copy of the participant manual, and the

biography of each primary trainer. A training program application must also include any additional materials outlined in the Guidelines.

5. An applicant for training program approval must consent to observation and evaluation of his or her training program by GODR staff or their designee. GODR may observe an applicant's training program without notice prior to the observation.

6. After GODR review, a training program shall be denied or approved subject to Section III (F) of this Appendix.

C. **Requirements for Approved Training Programs**

1. Approved training programs must comply with all requirements to remain approved. A failure to comply can result in withdrawal of approval. Prior to revocation of approval, the training program will receive notice from GODR informing the training program of the nature of the deficiencies and allowing time for the training program to make corrections. GODR shall establish a timeline for the program to correct the issues and the training program must comply with the GODR-established timeline.

2. An approved training program must provide and collect evaluation forms for each training program session from all participants. Training programs must retain all evaluation forms for three calendar years from the date of completion of that particular training program session and make them available upon request to the GODR and in the manner requested by GODR.

3. A training program may include the fact that they are GODR-approved in their advertising. However, a training program must not imply that successful completion of a GODR-approved training entitles a participant to acceptance onto the roster of any court-connected ADR program. A disclaimer regarding this fact must be placed on all training program advertising. The exact language of the required disclaimer is contained within the Training Program Guidelines. Failure to include the required disclaimer language in any advertising related to the training program may result in immediate revocation of program approval.

4. GODR approval attaches to an individual training program and depends in part on the background and experience of each primary trainer as well as other factors. If there are any substantive changes in curriculum, addition or substitution of a primary trainer, or other substantive change, the training program must notify the GODR of the changes and may be required to resubmit its application for approval.

D. **Other General Requirements Applicable to All Training Programs**

1. All training programs shall provide participants with instruction for registration with GODR, to include:

    a. Educational prerequisites for registration in any category; and
    b. Training sequencing prerequisites for registration in any category; and

    c. Practicum or observation requirements for registration in the category of general civil or domestic relations.

2. A training program must award a certificate of completion to all participants who successfully complete the training program. The certificate must identify how the training was conducted (i.e., in-person, virtual, or hybrid).

3. Additional requirements are located in the Training Program Guidelines.

E. **Renewal of Approval of Training Programs**

1. Approval of a training program must be renewed pursuant to the renewal cycle established by the GODR.

2. Each applicant for renewal of approval of a training program must pay in full the non-refundable renewal application processing fee set and collected by the GODR, which is found in the fee schedule on the GODR website for a renewal application.

3. Detailed instructions are in the Training Program Guidelines. The GODR shall provide approved training programs notice of the timeline and schedule for renewal.

F. **Audit and Revocation of Approval of Training Program**

1. GODR staff or their designee may, in the discretion of GODR staff, audit and investigate training programs by observations, requests for evaluation forms, surveys of participants, or any other means. GODR may conduct audits of a training program without prior notice to such program.

2. Upon receipt of information that a training program is not in compliance with the GODR Rules or Training Program Guidelines, or that it is failing to teach the training program in accordance with its initial application, GODR staff or their designee shall conduct an audit and investigation unless GODR determines that such information does not require investigation.

3. If an audit or investigation reveals that the program is failing to meet substantive standards for a training program as outlined in these Rules and in the Training Program Guidelines or has significantly failed to follow the training program's agenda and course materials submitted with its application, GODR shall inform the training program in writing of the deficiencies. A deficiency notice shall provide a timetable for coming into compliance. GODR may provide assistance to the training program to cure the deficiencies as resources and budget permit, but GODR shall not be required to provide assistance. If a program does not come into compliance within the timelines established by GODR, GODR may revoke approval of a training program. GODR shall notify such program in writing that approval has been revoked. A notice of revocation of training program approval shall include the effective date of the revocation.

4. Refusal by a training program to cooperate with a GODR audit and investigation shall result in immediate revocation of approval of such program.

5. Upon revocation of approval of a training program, GODR shall remove such program from the list of GODR approved training programs on the GODR website.

6. Training programs may appeal a GODR decision to revoke approval using the procedures in Section IV of this Appendix.

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

A. Registration decisions shall be made by the GODR. Applicants who are denied registration for any reason other than that described in this Appendix may appeal to the Commission's Committee on Training and Credentials no later than thirty days after the date of notice of denial. The Committee which may grant a hearing to the applicant upon written request. The Committee on Training and

Credentials shall make a determination as to whether the applicant may be registered and notify the applicant.

B. An adverse decision of the Committee on Training and Credentials may be appealed to the full Commission no later than thirty days after the date of such decision. The Commission may grant a hearing to the applicant.

V. ETHICS PRE-CERTIFICATION OF FITNESS TO REGISTER

A. A person interested in registering as a neutral who is concerned that his or her past criminal or professional issues may prevent him or her from registering may request an ethics review of his or her background prior to taking an approved Georgia training.

B. The GODR shall make available upon request an ethics pre-certification application. Ethics pre-certification applicants shall pay a non-refundable fee pursuant to the fee schedule, which will be credited toward any registration fees due if the applicant applies for registration later.

C. After a completed ethics pre-certification application and fee is received, the GODR executive director or the Commission's designee shall conduct an investigation into the pre-certification applicant's criminal and professional background according to established registration procedures for applicants, including consultation with the Commission's Committee on Ethics if needed.

D. If the GODR executive director or the Committee on Ethics determines that the ethics pre-certification applicant's criminal or professional history renders the applicant unfit to register, the GODR shall notify the applicant in writing of the decision and the applicant's right to appeal in accordance with Sections IV of this Appendix.

E. If the GODR or the Committee on Ethics determines that the ethics pre-certification applicant is fit to register, the GODR shall 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 after the date the certification is issued or until the applicant completes and submits all registration requirements, whichever occurs first. The applicant shall complete and submit to the GODR all registration requirements before the date his or her certification expires. If the applicant does not submit all registration requirements in a timely manner, then the applicant must apply and pay for another pre-certification. The rule that permits a trainee to apply for registration no later than 18 months after the date of completion of his or her training shall not apply to applicants who have received an ethics pre-certification of fitness.

F. An applicant shall maintain the currency of his or her ethics pre-certification by notifying the GODR in writing no later than 30 days after the date of any occurrence that would change his or her answer to <u>any</u> question on the pre-certification application.

G. 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 GODR shall register such applicant in the appropriate category or categories.

H. If necessary, prior to the expiration date, an applicant may file his or her application to renew his or her pre-certification with the GODR no earlier than 30 days before the date his or her certification is set to expire. If the applicant applies for renewal of pre-certification within the time required, provides current information in his or her application, pays a renewal fee to the GODR, and nothing has occurred that would call into question the pre-certification applicant's fitness to register, the applicant's pre-certification shall be renewed for up to an additional 12 months. A pre-certification may may be renewed only once.

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.

APPENDIX D

RULES FOR MEDIATION IN CASES INVOLVING ISSUES OF DOMESTIC VIOLENCE[7]

(Also Referred to As *Intimate Partner Violence and Abuse [IPV/A]*)
As amended by the Georgia Commission on Dispute Resolution, May 5, 2021[8]
Effective January 1, 2021

The Georgia Commission on Dispute Resolution has studied the issue of domestic violence (DV) and its impact on the mediation process intermittently since 1994. In 1994, the Domestic Violence advocacy community was divided, with some members of the community believing mediation could be beneficial in these cases while others remained skeptical. The drafters ultimately decided that depriving a survivor of domestic violence the right to mediate could be seen as another form of victimization. Decreasing survivor autonomy by delaying or denying mediation rights could reduce empowerment and self-determination while increasing the costs associated with family law matters. On April 6, 1995, the Commission adopted the Guidelines for Mediation in Cases Involving Issues of Domestic Violence.

The Guidelines put in place were innovative for their time; however, a great deal of research and practice occurred in the intervening years. Therefore, in 2015, the Commission decided to revisit and update the processes used in Georgia for addressing these concerns in mediation. This effort became a collaboration between the Georgia Commission on Dispute Resolution, the Georgia Commission on Family Violence and individuals with expertise in the issue of domestic violence and/or mediation.

Throughout 2016-2018, a domestic violence working group composed of individuals with knowledge and experience in the areas of domestic violence, family violence, mediation, and Alternative Dispute Resolution (ADR) court policies and procedures met to update the guidelines and changed the policies to be consistent with new research in the field of domestic violence. Furthermore, the working group recommended that the Guidelines be changed to rules. The group also considered how courts currently address the issues and how clients experience mediation in court, as well as information from collaboration across fields.

As a key partner and contributor, the Georgia Commission on Family Violence has both endorsed these rules and is committed to continued collaboration with the Georgia Commission on Dispute Resolution.[9]

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[7] The Guidelines for Mediation in Cases Involving Issues of Domestic Violence, promulgated by the Georgia Commission on Dispute Resolution, are hereby repealed, effective January 1, 2021.

[8] The Rules for Mediation in Cases Involving Issues of Domestic Violence were adopted by the Georgia Commission on Dispute Resolution August 22, 2018, and amended on August 5, 2020 and May 5, 2021.

[9] On June 22, 2018, the Georgia Commission on Family Violence voted unanimously to endorse the Rules and to support a joint committee with the Commission on Dispute Resolution to oversee implementation, training, review, and revision of the Rules

GUIDING PRINCIPLES:

The Working Group developed the following Guiding Principles to frame the work done.

a) **Safety:** The rules should maximize safety for all participants. Cases referred to mediation must be properly screened for a history of violence and abuse. Mediators and program directors must be properly trained to understand the safety needs of victims during the process of mediation and understand the safety needs of victims and children in terms of any agreement obtained as a result of mediation.

b) **Self-Determination:** Mediators and program directors must be properly trained to understand the dynamics of domestic violence and potential power imbalances between the parties to provide the victim a meaningful opportunity for self-determination and the ability to use her (or his) voice to advocate for a desired outcome.

c) **Best Practices:** The rules should align with current best practices for providing safety to victims of violence and or abuse, conducting mediations, and training mediators.

d) **Practical Implementation:** As applied on an individual and program level, the rules should be reasonable to implement so that mediators and local mediation programs are able to fully comply while continuing to provide speedy, efficient, and inexpensive resolution of disputes.

DEFINITIONS:

a) **Domestic violence** (also known as Intimate Partner Violence and Abuse (IPV/A)): causing or attempting to cause physical harm to a current or former intimate partner or spouse/ partner; placing that person in fear of physical harm; or causing that person to engage involuntarily in sexual activity by force, threat of force, or duress. In addition to acts or threats of physical violence, for purposes of these rules, domestic violence may include abusive and controlling behaviors (such as intimidation, isolation, and emotional, sexual or economic abuse) that one current or former intimate partner or spouse/partner may exert over the other as a means of control, generally resulting in the other partner changing her or his behavior in response. Even if physical violence is not present in these circumstances, such a pattern of abusive behavior may be a critical factor in whether or not a party has the capacity to bargain effectively. Therefore, a person conducting screening for domestic violence must be alert to patterns of behavior that, while not overtly violent, may indicate a pattern of domestic abuse that shall be treated as domestic violence for purposes of these rules.

b) **Screening**: the evaluation of individuals to assess their suitability for participation in mediation; gathering information from parties to determine the presence of DV risk factors; the verification of the existence of a current or past temporary protective order through the Georgia State registry; the optional examination of available records to

determine if domestic violence is an issue in the case[10]. ADR Program staff will endeavor to encourage full and honest disclosure of any domestic violence history or concerns by reassuring the party that their sensitive information will be handled appropriately and their concerns are taken seriously.

c) **ADR Program Staff**: individuals charged with administering the ADR program.

d) **At-Risk Party**: the individual who is the focus of the domestic violence screening done to determine suitability for mediation.

e) **Domestic Violence (DV) Advocate**: An individual who has specialized training and is employed by or volunteers for an organization that provides services and support to survivors of domestic violence (IPV/A). The DV Advocate's role for the mediation session is to offer support and serve as a resource to the at-risk party. DV Advocates are required to sign the agreement to mediate as evidence of their understanding and agreement to the terms of confidentiality as outlined by the Supreme Court ADR Rules and Appendices.

GODR AND LOCAL PROGRAM REQUIREMENTS:

a) The Georgia Commission on Dispute Resolution and the Georgia Office of Dispute Resolution (GODR) has developed rules to assist courts in designing appropriate intake procedures and training for intake personnel. Existing programs shall send a description of their intake and screening procedures based on these rules to the Georgia Commission on Dispute Resolution for review. New programs shall provide a description of intake and screening procedures with any rules submitted to the Commission for approval.

b) The Georgia Commission on Dispute Resolution and the Georgia Office of Dispute Resolution will assist courts in developing appropriate screening training.

c) Every program should have no fewer than two mediators who are registered in Specialized Domestic Violence Mediation. All domestic violence mediators shall have completed 14 hours of *specialized issues of domestic violence in mediatio*n training and shall be registered in the category of Specialized Domestic Violence Mediation.

d) No ADR program staff member, neutral, or court personnel can be held liable for civil damages for any statement, action, omission or decision made in the course of carrying out any of the activities described in these Rules or in any ADR process.

[10] Temporary Protective Order, O.C.G.A. § 19-13-4 (2010).

RULES FOR MEDIATION IN CASES INVOLVING ISSUES OF DOMESTIC VIOLENCE (Also referred to as Intimate Partner Violence and Abuse IPV/A)

RULE 1. REFERRAL TO MEDIATION

a) Criminal cases that involve domestic violence shall never be referred to mediation from any court.
b) Cases arising solely under the Family Violence Act shall not be referred to mediation from any court.[11] Mediators shall not facilitate the negotiation of issues related to criminal charges or the terms of any protective order in a domestic relations matter.
c) All court programs shall screen domestic relations cases using the screening process outlined below.[12] Those domestic relations cases referred to mediation directly from the bench are also subject to the domestic violence screening process.

RULE 2. SCREENING

a) Purpose of screening. The purpose of the mediation screening is to determine whether mediation can be done safely and free from coercion. Screening for domestic violence is a shared responsibility of court personnel, ADR program directors and staff, attorneys, mediators, and parties. However, the final determination as to the appropriateness of mediation will be made by the ADR program staff. Mediation brochures and parenting seminars for divorcing couples may be vehicles for dissemination of this information. GODR will maintain a webpage with DV resources, including the statewide hotline number (1.800.33HAVEN).

b) Informed consent. The Ethical Standards for Neutrals (Appendix C, Chapter 1, Alternative Dispute Resolution Rules) place primacy on the principles of self-determination and voluntariness. These standards also require that parties be fully informed about the mediation process. In keeping with these principles and the necessity of protecting at-risk parties, ADR staff and court personnel, at-risk parties will be given the opportunity by the screener to exercise choice about whether to proceed with mediation prior to assignment of the case. The dynamics of a relationship characterized by a pattern of intimate partner violence and abuse may manifest in mediation. Thus, an at-risk party in such a relationship is provided with the choice of whether to mediate or not, in order to avoid further victimization and/or endangerment. To ensure that the at-risk party's choice to proceed with mediation is self-determined, the at-risk party must be

[11] A case filed as a divorce action or other domestic relations matter that contains a count under the Family Violence Act is not precluded from referral to mediation and should be screened pursuant to these rules. Mediators are specifically prohibited from mediating away protective orders or criminal charges related to criminal cases of domestic violence. This provision was added by the Georgia Commission on Dispute Resolution on March 22, 2005.

[12] While it is intended that the intake and screening protocol will be routinely applied to all domestic relations cases, programs should also use the screening process when allegations of domestic violence arise in other types of cases such as magistrate, juvenile, probate, and other court matters.

provided with sufficient information about the process to make an informed choice. Listed below are the elements of mediation that must be shared with the at-risk party to ensure informed consent.

1. Neutrality: 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; explanation that the mediator will not allow abusive behavior and, while having skills in balancing power, will not in any way serve as an advocate for the at-risk party.
2. Confidentiality: an explanation of confidentiality of the mediation session and any limitations on the extent of confidentiality.
3. Termination: an explanation that the mediation can be terminated at any time by either party or the mediator.
4. Legal counsel: an explanation that the at-risk party may bring an attorney to the mediation or consult her or his attorney by telephone during the mediation as needed; and an explanation that if the at-risk party does not have an attorney, she or he may bring a DV advocate.
5. Expert advice: an explanation that the mediator will not provide any legal or financial advice to the parties.
6. Process: an explanation of how mediation is conducted (joint sessions, caucus, etc.) with an explanation of the option of shuttle (caucus only) mediation.
7. Good faith: an explanation that parties will be expected to negotiate in good faith and therefore should be prepared to make full disclosure of matters material to any agreement reached; but that good faith does not in any way require parties to enter an agreement about which they have any reservations.
8. Effect of agreement: an explanation that a mediated agreement, once signed, can have a significant effect on the rights of the parties and the status of the case.

c) Confidentiality in Screening for Domestic Violence. ADR program directors and staff conducting screening for domestic violence shall keep information elicited confidential. Such information shall not be communicated to the court unless absolutely necessary for the safety of the parties and court personnel. If ADR program staff determine that the case is inappropriate for mediation based on the screening process, then the court will simply be notified of that determination. Neither ADR program staff nor the neutral in a court program ADR process may be subpoenaed or otherwise required to testify regarding information disclosed during the screening process or during a mediation. A neutral's notes or records are not subject to discovery. Notes and records of a court ADR program that contain a party's response to the screening questionnaires are not subject to discovery.

RULE 3. CONTACTING THE AT-RISK PARTY

a) If the at-risk party is represented by counsel, ADR program staff should consult with her or his attorney regarding the need to contact the at-risk party to conduct an interview to learn more about the allegations and to provide information about mediation so that the at-risk party can make an informed choice about whether to participate in mediation.

b) When communicating with either party about the mediation, the ADR program staff should take care not to provide the at-risk party's address or other contact information to the other party.

c) When calling to arrange an interview, ADR program staff should take precautions to ensure that the party is able to speak privately before beginning the screening; i.e. asking if the party is comfortable speaking on the subject at that time, or if they would prefer to reschedule.

d) During the phone contact with the at-risk party, ADR program staff should explain how the case came to his/her attention for further screening and the purpose of the screening, which is to allow the person to make an informed choice.

e) When screening, ADR program staff should be aware that the screening process itself could place an at-risk party in danger and must therefore ensure that the screening is conducted under safe and confidential circumstances.

RULE 4. PHASES OF SCREENING

a) **Tier I.** For Tier I screening, the program should inform the parties and attorneys of the screening requirements, which includes notice to complete the survey. If there is an attorney of record, the notice shall initially be sent to the attorney. If there is no attorney, the notice shall be sent directly to the parties. Notice may be sent by U.S. Mail, email, or other means as determined by the court program. If parties do not complete the survey online, they can email, mail, or call program staff to conduct the survey over the phone. The following statement shall be included in the questionnaire: "If you are concerned about the privacy of your responses or if you prefer to answer the question by telephone, please call____." The information from the screening will be easily accessed as needed by ADR program staff and mediators.

b) If parties do not submit the Tier I survey prior to the scheduled mediation OR if the Tier I survey is returned and a party answers yes to any question (with the exception of Question #7a), then a screener shall conduct Tier II screening, contacting each party, preferably by phone; if a phone number is not available, the contact shall be made by mail or email.

    1. If parties appear for mediation having never completed a DV screening, either the ADR program staff or the mediator shall conduct Tier I screening. The mediators shall be entitled to charge for the time it takes to complete both tiers of the screening.

    2. If there has been no response to the Tier I screening survey, it cannot be determined that there is no domestic violence, and therefore the mediation should only be assigned to and conducted by mediator who is registered in the category of specialized domestic violence.

c) **Survey Questions for Tier I.**
    1. Have you ever applied for or been granted a protective order, restraining order or

stalking order against the other party?

2. Is the Division of Family and Children Services (DFCS) and/or Adult Protective Services (APS) involved in this case? (Does not include requests for financial assistance).
3. Has the other party ever been arrested for an act of violence or making threats against another person?
4. Are you afraid of the other party?
5. Do you have any concerns for your safety when the other party does not get his/her/their way?
6. Has the other party ever tried or threatened during the course of the relationship to: (check all that apply)
    i. Harm you
    ii. Harm the children
    iii. Harm other family members
    iv. Harm family pets
    v. Use a weapon to harm or intimidate you or others
    vi. Harm self
    vii. None of these apply
7. A. Are you currently living in the same home with the other party?
   B. If so, do you think you would feel safe in returning home after discussing the issues in your case in mediation?
8. Are there any other concerns about safety? If yes, please explain.

d) **Survey Questions for Tier II**

1. Review Tier I Questions.
2. Do you know what mediation is and why it has been ordered in your case?
3. What happens when you speak your mind and express your point of view to [insert name]?
4. Has the other party ever denied you the right to access family resources such as money, transportation, a phone, etc.? If yes, please describe.
5. Are you afraid of disagreeing with [name]? If yes, what happens when you disagree? Would you feel able to disagree with [name] if the two of you were in separate rooms and the mediator worked with you one on one?
6. Has [name] discouraged you from spending time with friends and family?
7. Has the other party ever sent you repeated e-mails, calls, social media contacts or other unwanted communication after you asked him/her/them to stop? Has the other party monitored your communication, social media, or your whereabouts? If yes, please explain.
8. Have you ever cancelled a temporary protective order or allowed one to expire against [name]?
9. Has [name] interfered with your ability to speak to an attorney or other advocate?
10. Has [name] discouraged you from working, accepting promotions, going to school, and being independent in general? If yes, how so?
11. Has the other party ever hit, strangled, pushed, or slapped you?

e) **Mediation Recommendation**. Based on the answers from the Tier II questions and on

the presence or absence of any other indicators of abuse or coercion as perceived by the screener, the screener or ADR program director should determine if the case is appropriate for mediation. If it is determined that the case is appropriate for mediation, screeners shall discuss the following with the at-risk party:

1. If arrangements need to be made for the parties to arrive and leave the mediation session separately.
2. If arrangements need to be made for the session to be held entirely in caucus.

RULE 5. NEXT STEPS AFTER SCREENING

After presenting information about the process of mediation and discussing the information elicited by the questions in Rule 4(e), the screener shall ask whether the at-risk party needs any further information about the mediation process in order to decide whether or not the at-risk party is willing to mediate.

The mediation process should proceed only if accommodations can be put in place that will enable the parties to:

- ✓ Speak up and negotiate for themselves,
- ✓ Feel safe and secure during and after the mediation, and
- ✓ Reach a voluntary, un-coerced agreement.

RULE 6. REFERRAL TO MEDIATION IF DOMESTIC VIOLENCE ALLEGED

After Tier II screening and the subsequent discussions described in Rules 4(e) and 5, the at-risk party may choose whether or not he or she wants to proceed with mediation. If represented, the party should be encouraged to discuss that decision with counsel and be given an opportunity to do so before making that decision.

a) If the ADR program staff determines that the case is inappropriate for mediation based on the information from the screening, then they should convey this information to the court.

b) If the at-risk party prefers to proceed with mediation, the case shall be sent to mediation unless the ADR program staff or the court determines that there is a compelling reason that this particular case should not be referred.

c) If referred, the ADR program must take reasonable steps to ensure that the safeguards set forth in Rule 7 herein are in place for the mediation session.

d) ADR program staff has final decision-making authority as to whether the mediation shall proceed, with great weight given to the preferences of the party who is perceived by ADR program staff to be at risk.

e) ADR program staff and/or mediators shall provide at-risk parties the link to the GODR webpage and/or the Georgia's Statewide Domestic Violence Hotline (1.800.334.2836).

RULE 7. SAFEGUARDS FOR THE MEDIATION SESSION IN CASES INVOLVING ISSUES OF DOMESTIC VIOLENCE

a) All mediation sessions in cases involving issues of domestic violence must be conducted by a mediator registered in the Specialized Domestic Violence category.

b) If screening was not completed prior to the time of mediation, the program or mediator shall screen the parties separately immediately prior to the scheduled mediation. If domestic violence is indicated during this screening, mediation cannot proceed without appropriate Tier I and, if applicable, Tier II screening.

c) At the earliest possible point in the mediation, the mediator should explore power dynamics in order to:
    a. confirm the comfort of each party with the mediation format, and
    b. confirm the ability of each party to bargain for her/himself.

d) ADR program staff and the mediator shall exercise care to avoid disclosure of the parties' place of residence, telephone numbers, email address, etc., by either the program staff or the mediator.

e) The ADR program staff and/or mediator should encourage at-risk parties to have an attorney or DV advocate available for the entire session or sessions.

f) The ADR program staff and/or mediator shall offer to arrange for the parties to arrive and leave the mediation session separately and shall make such arrangement if requested.

g) The ADR program staff and/or mediator shall offer the option of the entire session being in caucus and/or in a virtual environment and shall make such arrangements if requested.

h) All mediations sessions in cases involving issues of domestic violence must be held in a secure venue. The ADR program staff shall take reasonable steps to make the mediation session safe.

i) ADR Program staff is responsible for ensuring that the mediator knows the status of the case and the outcomes of the screening. And, the mediator is responsible for ensuring that he or she is aware of the status of the case.