

MODEL COURT MEDIATION RULES

As Amended by the Georgia Commission on Dispute Resolution, March 29, 2021¹

Rule 1. DEFINITIONS

- A. **Alternative Dispute Resolution.** The term “alternative dispute resolution” (ADR) as used in these rules refers to any method other than litigation for resolution of pending court cases.
- B. The commonly used ADR terms referred to in these rules are defined as follows:
 1. **Mediator.** The term “mediator” refers to an impartial person who facilitates discussions and dispute resolution between disputants in mediation.
 2. **Mediation.** The term “mediation” means a process in which a mediator facilitates settlement discussions between parties. The mediator has no authority to make a decision or impose a settlement upon the parties. The mediator 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.
 3. **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.

Rule 2. REFERRAL TO MEDIATION

- A. Courts should make information about mediation 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). 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 mediator if compensation is required.
 3. Whether a need for emergency relief makes referral inappropriate until the request for relief is heard by the court.
- C. All domestic relations cases shall be screened to determine whether domestic violence issues are present and whether mediation is appropriate as outlined below and as required by Appendix D of the ADR Rules. All cases of any type filed in any class of court should be screened using these procedures when issues of domestic violence are present.
 1. Criminal cases that involve domestic violence or cases arising solely under the Family Violence Act shall not be referred to mediation from any court. However, 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 shall be screened pursuant to the Rules for Mediation in Cases Involving Issues of Domestic Violence, contained within Appendix D of the Supreme Court Alternative Dispute Resolution Rules.

¹ Appendix A was previously amended by the Georgia Commission on Dispute Resolution on September 11, 1997 and January 18, 2005.

2. All domestic relations cases shall be screened for domestic violence allegations using the *Rules for Mediation in Cases Involving Issues of Domestic Violence*. Those domestic relations cases referred to mediation directly from the bench are also subject to the same screening process. Intake procedures are designed to ensure that the mediation can be done safely and free from coercion, identify cases in which there are allegations of domestic violence, and to provide a process by which an at-risk party can make a decision based on informed consent whether or not to proceed with mediation.
 - a. The detailed screening protocol implementing the Commission on Dispute Resolution's *Rules for Mediation in Cases Involving Issues of Domestic Violence* is attached hereto and incorporated in these rules. ***[Each program shall have a screening protocol that is consistent with the Commission's Rules. This protocol must be attached to the program's rules as an appendix or must be included within the body of the rules.]***
 - b. Staff who conduct screening pursuant to the *Rules for Mediation in Cases Involving Issues of Domestic Violence* must have completed the screening training approved by the Georgia Office of Dispute Resolution (GODR).
 - c. Only mediators who are registered with the GODR in the category of specialized domestic violence mediation shall serve in cases involving issues of domestic violence as defined by the parties' responses to the Tier 1 or Tier II screening questions, or by any other indicator of domestic violence present in the case.
 - d. If issues of domestic violence arise for the first time during a mediation session, the mediator or ADR program staff must follow the procedures outlined in the *Rules for Mediation in Cases Involving Domestic Violence* (Appendix D).
- D. Request for Mediation or Alternative ADR Process. Any party to a dispute may request that the court refer the case to mediation or request that a matter referred to mediation be referred to another ADR process.
- E. Effect of Referral upon Progress of the Case. The scheduling of a case for a mediation conference shall not remove the case from assignment to a judge, interfere with discovery, nor serve to postpone scheduled motions before the court. The court may refer the matter to mediation before any hearings before the court.
- F. Interim or Emergency Relief. A party may apply to the court for interim or emergency relief at any time. Mediation shall continue while such a motion is pending absent a contrary order of the court or a decision of the mediator to adjourn pending disposition of the motion. Time for completing mediation shall be tolled during any periods where mediation is interrupted pending resolution of such a motion.
- G. If court personnel other than judges are involved in ADR referral decisions, such individuals should receive appropriate training and shall work within clearly stated written policies, procedures, and criteria for referral. The GODR will assist courts in developing guidelines for training court personnel in referral decisions.
- H. In actions brought by state agencies seeking to enjoin activities injurious to the public interest, the agency may within 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.
- I. The court may impose a users' fee upon any party participating in mediation who has not paid a filing fee surcharge at the time the action was filed.

Rule 3. TIMING OF MEDIATION PROCESSES

- A. Conference or Hearing Date. Unless otherwise ordered by the court, the first mediation conference shall be held within 60 calendar days after the filing of the last responsive pleading.
- B. Notice. The parties shall select a registered mediator from the roster of registered mediators provided by the program in accordance with Rules 5 and 6 of these rules. Within ten calendar days after the case is referred to mediation, the parties must inform the court program director or designated staff of the name of the mediator and the date and time for mediation. Providing notice to the court program director or designated staff is technically plaintiff's responsibility. However, upon agreement, anyone may schedule the mediation.

Rule 4. EXEMPTION OR EXCLUSION OF CASES FROM MEDIATION.

- A. Any party to a dispute may petition the court to have the party's case removed from an ADR process if any of the following apply:
 - 1. The issue to be considered has been previously submitted to an approved ADR process.
 - 2. Other good cause is shown before the judge to whom the case is assigned.
 - 3. The issues have been referred by consent order of court to a private provider of ADR services.
- B. The following actions shall not be referred to ADR except upon petition of all parties or upon the court's own motion:
 - 1. Appeals from rulings of administrative agencies.
 - 2. Forfeitures of seized property.
 - 3. Habeas corpus and extraordinary writs.
 - 4. Bond validations.
 - 5. Declaratory relief.
 - 6. Uniform Interstate Family Support Act (UIFSA) actions.

Rule 5. APPOINTMENT OF THE MEDIATOR

- A. The parties shall agree upon a mediator registered with the GODR who have been chosen for service by the court program.
- B. After a case is filed, parties are free to choose a mediator, provided they are registered in the appropriate category, before a case is ordered to an ADR process. The confidentiality and immunity protections of the Georgia Supreme Court ADR Rules shall not apply to mediators not registered with the GODR.
- C. Once the case is ordered to an ADR process, parties are still allowed to choose a mediator provided the mediator chosen is registered with the GODR in the appropriate category.
- D. Parties should be allowed input into the choice of process as well as choice of a mediator, if possible.
- E. If the parties referred or ordered by the court to an ADR process are unable to agree upon a mediator within a reasonable time, the mediator shall be selected by the court program. In either event, the mediator must be registered with the GODR.
- F. Any party may move to enter an order disqualifying a mediator for good cause. If the court rules

that a mediator is disqualified from hearing a case, an order shall be entered setting forth a qualified replacement from the court program's roster of registered mediators. The motion disqualifying the mediator shall be presented to the court program which shall present the motion to the judge to whom the case is assigned.

Rule 6. MEDIATOR QUALIFICATIONS FOR SERVICE IN THE PROGRAM

The qualifications for service as a mediator in the court program shall be determined by the superior court judges of the judicial circuit. The qualifications shall not be less than the minimum qualifications set out in Appendix B of the Supreme Court Rules for Alternative Dispute Resolution Programs. The program must maintain a roster of mediators chosen for service in the program. Mediators serving in the program must be evaluated by the program on an ongoing basis.

Rule 7. COMPENSATION FOR MEDIATORS COMPENSATED BY THE PARTIES

- A. Mediators must list their fee schedules as part of their application with the court program. The court program will review each fee schedule for reasonableness. When deemed appropriate, the mediator may be compensated a maximum of one-hour preparation time per case.
- B. The assigned judge may order either or both parties to pay or share the cost of the mediator. When the compensation is set by the court, the costs will be predicated upon the following: complexity of the litigation, degree of skill necessary to mediate the case, and ability of the parties to pay.
- C. Before being placed on the roster, a mediator must agree to provide pro bono hours and hours at reduced rates to defray mediation costs for parties with limited ability to pay. The number of hours required shall be determined by the superior court judges of the circuit.
- D. A mediator who is compensated by the parties may be required to remit an administrative fee to the mediation program by the close of the next business day following receipt of payment or partial payment of mediation compensation.
- E. Neutrals may require payment from the parties but are not prohibited from providing services pro bono on a volunteer basis in their discretion.
- F. 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 mediation or as part of intake by program staff or mediator in preparation for a mediation shall: (1) be confidential; (2) not be subject to disclosure; (3) may not be disclosed by the mediator or program staff; and (4) not be used as evidence in any subsequent administrative or judicial proceeding. A written and executed agreement or memorandum of agreement resulting from a court-annexed or court-referred mediation shall not be subject to the confidentiality described above.
- B. Unless otherwise provided by the local court program ADR rules, any document or other evidence generated in connection with a mediation is not subject to discovery. A written and executed agreement or memorandum of agreement resulting from a mediation session 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 the mediation process.
- C. Unless otherwise provided by court ADR rules, neither the mediator 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 in any subsequent administrative or judicial proceeding. A mediator'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.

Rule 9. EXCEPTIONS TO CONFIDENTIALITY

- A. Confidentiality on the part of program staff or the mediator 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; (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 mediator 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 mediator or ADR program. Nothing in this rule shall negate any statutory duty of a mediator 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.
- G. More details regarding the specific exceptions to confidentiality can be found in the Georgia Supreme Court's ADR Rules, and the Commission's Advisory Opinions and Ethics Opinions.
- H. No ADR program staff member, mediator, 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 10. APPEARANCE

- A. The appearance of all parties shall be required at any ADR conference scheduled pursuant to a court order and coordinated by a local 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 a mediation conference. An

attorney shall not be excluded by the court or the mediator from a mediation conference. An attorney should attend a mediation 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 mediation 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. COMMUNICATION WITH PARTIES

The only *ex parte* communication between a party and the mediator outside of the mediation conference shall be for the purposes of verifying appointment times and locations or answering questions about the mediation process and procedures. If a mediator wishes to begin the mediation process prior to the appointed time by receiving written reports or speaking with each party prior to a joint session, the mediator must review the mediation guidelines prior to such action with all parties, must inform the parties of the mediator's billing practices for this time, and must inform all parties that these activities are taking place prior to the time set for the mediation session. The mediator may meet privately with any party or any attorney during the mediation conference.

Rule 13. COMMUNICATION WITH THE COURT

- A. To preserve the objectivity of the court and the neutrality of the mediator, there should be no communication between the mediator and the court. If any communication between the court and a mediator is necessary, the communication shall be in writing and shall be made through the court program director. Copies of any written communication with the court shall be given to parties and their attorneys.
- B. Once a mediation is underway in a given case, contact between the court program staff and the court concerning that case should 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 mediation process.
 3. Communicating to the court the mediator's assessment that the case is inappropriate for mediation.
 4. Communicating any request for additional time to complete the mediation 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 14. COMPLETION OF MEDIATION

- A. Mediation shall be completed within 30 days of the order referring the matter to mediation unless extended by order of the court, or by the deadline provided for in any standing order or other order of the court. Any motion to extend the timeframe to complete the mediation process shall be submitted to the court program director, who shall present the motion to the judge to whom the case is assigned.
- B. Length of Mediation. The duration of the mediation conference will vary. The mediator may adjourn the mediation conference at any time and may set times for reconvening the adjourned conference notwithstanding Rule 3 (a) of these rules. No further notification is required for parties present at the adjourned conference.
- C. Agreement. If an agreement is reached, it shall be reduced to writing if possible at the end of the mediation session or within three calendar days after the mediation. The mediator shall draft the agreement unless all parties determine otherwise.
 - 1. If a party is represented by counsel who is present at the mediation, an agreement should be drafted by the mediator and signed by all present at the end of the mediation session.
 - 2. If a party is unrepresented or is represented by an attorney who is not present, the agreement should be drafted by the mediator and signed by all present at the end of the mediation session. A party who does not have representation present must have an opportunity to have the agreement reviewed by an attorney. If there is no objection to the agreement within three calendar days following signing, the agreement may be filed with the court.
- D. If a partial agreement is reached, the agreement should be drafted by the mediator and signed by all present at the end of the session, in the same manner as the full agreement above.
- E. If the parties do not reach an agreement as to any matter as a result of mediation, the mediator shall report the lack of an agreement to the court program. The court program director or designated staff shall notify the judge to whom the case was assigned of the lack of an agreement. With the written consent of the parties, the mediator's report may also identify any pending notices or outstanding legal issues, discovery processes, or other action by any party which, if resolved or completed, would facilitate the possibility of a settlement.
- F. 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 agreement. Oral agreements shall not be enforceable.

Rule 15. EVALUATION

- A. Evaluation of the program: Data shall be collected on an ongoing basis to ensure the quality of the program. Such data may include evaluation by parties and attorneys of the ADR process as applied to their case, the performance of the mediator in the case, and ways to improve the effectiveness of the ADR program. A court program may use such data to improve the quality of programs and shall share all available data 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 mediators:
 - 1. Court programs shall establish procedures to monitor the performance of mediators on an ongoing basis. Court programs shall not use data concerning settlement rate as the sole basis for the evaluation of a mediator.

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