



Georgia Office of Dispute Resolution

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Advisory Opinion Summaries

1. [Advisory Opinion #1 \(1996\)](#): Advisory Opinion #1 addresses the issue of compensation to ADR program directors and coordinators that are mediating cases assigned to their ADR program. A director or coordinator should not be compensated for cases that are handled during time for which they are also compensated as the director or coordinator of an ADR program.
2. [Advisory Opinion #2 \(1996\)](#): Advisory Opinion #2 is an opinion that addresses the issue of domestic violence and the appropriateness of sending cases with issues of domestic violence to mediation. The Georgia Office of Dispute Resolution notes that this opinion was published prior to the enactment of Appendix D, which governs mediation in cases that involve issues of domestic violence and sets forth requirements to which mediators must adhere. This opinion emphasized that cases involving issues of domestic violence should never be sent to mediation absent the consent of the victim, and further highlights the importance that the court system never punish a victim for denying to participate in mediation where issues of violence may be discussed and negotiated. Please see the Supreme Court ADR Rules, Appendix D, for current rules and requirements on mediating cases with issues of domestic violence.
3. [Advisory Opinion #3 \(1996\)](#): Advisory Opinion #3 raises the issue of neutrality when a mediator plays a dual role in a case. Mediators who also serve the parties as a case evaluator, GAL or other professional capacity undermine key ethical standards including neutrality, confidentiality, and self-determination. The Ethics Committee also recommended that courts never appoint a mediator who has served the parties in any other professional capacity.
4. [Advisory Opinion #4 \(1997\)](#): Advisory Opinion #4 addresses the potential conflict-of-interest issues that arise when mediators accept business referrals following a mediation. This opinion also addresses the appearance of impropriety in accepting those referrals and cautions mediators to keep in mind factors such as the passage of time, and whether both parties have consented to said subsequent representation.
5. [Advisory Opinion #5 \(2004\)](#): Advisory Opinion #5 addresses whether disclosing a juvenile's participation in a mediation session violates the confidentiality provision of the Supreme Court ADR Rules. This opinion arises out of the difficulty of ADR Programs in scheduling mediation



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sessions for juvenile court cases. In this case, the program contacted a school to make contact with the juvenile. The Commission found that while these contacts may have negative consequences for the juvenile, they do not violate the confidentiality provision of the ADR rules because they do not disclose any confidential communications from mediation.

6. **[Advisory Opinion #6 \(2005\)](#)**: Advisory Opinion #6 provides a broad overview and interpretation of the rules concerning confidentiality of mediation as those provisions relate to communications from mediators to ADR program staff and the referring courts. This opinion examines the application of ADR Rule VII and Appendix A, Rule 7, and discusses the policy concerns underlying those provisions. The opinion states that mediators may not directly or indirectly share with the courts any information, including impressions or observations of conduct, from a mediation session. As guidance for mediators, the opinion provides responses to frequently asked questions regarding communications with judges.
7. **[Advisory Opinion #7 \(2007\)](#)**: Advisory Opinion #7 was published following the implementation of the new child support statute, O.C.G.A. §19-6-15, and addresses concerns about the unauthorized practice of law by mediators. The newly created child support statute and calculating software do not increase the risk of mediators engaging in the unauthorized practice of law or violating legal ethics rules. Mediators may help parties to use the software to make child support calculations and incorporate them into the draft memorandum of understanding or settlement agreement. However, mediators should be careful not to provide advice or direction that may constitute the unauthorized practice of law or undermine the ethical principles of self-determination and impartiality.
8. **[Advisory Opinion #8 \(2013\)](#)**: Advisory Opinion #8 focuses on the ethical obligation of mediation confidentiality and the ethical conduct to which all mediators, attorneys and parties involved in mediation should aspire. This opinion serves as a guide to address what is considered confidential in a mediation, who is obligated by confidentiality, and when confidentiality applies following the mediation session. It is the mediator’s responsibility to ensure that all mediation attendees understand the concept of, and the obligation embedded in mediation confidentiality. Two rules of thumb can help all attendees avoid problems: “What happens in mediation stays in mediation” and “Mediation confidentiality is forever.”



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9. **Advisory Opinion #9 (2016)**: Advisory Opinion #9 focuses on a Georgia Court of Appeals case and the practice of negotiating past-due child support. *Wright v. Burch*, 331 Ga. App. 839, 771 S.E.2d 490 (2015) prohibits any action by the court or the parties that reduces the total amount of child support owed under an existing court order. Parties may not lower the child support amount owed, but they may negotiate a repayment schedule of the arrearage owed. Any child support arrearage that is unknown must be reserved for judicial determination.

10. **GODR Advisory Memo (2022)**: Confidentiality is the cornerstone of the mediation process and allows parties to freely negotiate their cases without fear that their statements will later be used against them. The recording of a mediation session presents many ethical problems and does not replace a signed agreement reached at mediation. Mediators and the participating parties are prohibited from recording mediations, as it threatens the integrity of the alternative dispute resolution process and discourages open discussions in mediation.