

APPENDIX A¹

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.

¹ As amended March 29, 2021

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 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 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

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.

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 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

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.

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.