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SUPREME COURT OF GEORGIA

ALTERNATIVE DISPUTE RESOLUTION PROGRAM RULES
FOR THE
SUPERIOR, STATE, PROBATE MAGISTRATE & JUVENILE COURTS
OF
FULTON COUNTY, GEORGIA

Adopted and approved by the
Board of Trustees of the
Fulton County Fund for the
Administration of
Alternative Dispute Resolution Program
Revised 2021
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**Alternative Dispute Resolution Program Rules
for the
Superior, State, Probate, Magistrate, and Juvenile Courts of
Fulton County, Georgia**

**Adopted by the Board of Trustees of the Fulton County Fund for the
Administration of Alternative Dispute Resolution Programs**

**The following rules and procedures have been approved by the Georgia
Commission on Dispute Resolution**

**Christopher Brasher, Chief Judge
Superior Court of Fulton County**

**Susan Edlein, Chief Judge
State Court of Fulton County**

**Cassandra Kirk, Chief Magistrate
Magistrate Court of Fulton County**

**Kenya Johnson, Judge
Probate Court of Fulton County**

**Juliette Scales, Chief Judge
Juvenile Court of Fulton County**

**Cathelene “Tina” Robinson, Clerk
Superior and Magistrate Courts of Fulton County**

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PREAMBLE

The use of Alternative Dispute Resolution (ADR) procedures by litigants in Fulton County is strongly encouraged. The adoption of these rules is not intended to prohibit rules of individual courts which are not in conflict with these rules.

DEFINITIONS

1. 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.
2. Judicially Hosted Settlement Conference - Judicially Hosted Settlement Conferences (JHSC) are very similar to mediation, but instead of a mediator, a senior judge assists the parties in negotiating a settlement of all or part of the dispute. The settlement judge does not impose settlement on the parties. The parties may agree to a binding settlement. If no settlement is reached, the case remains on the trial track. The parties' rights to obtain information and to have court hearings on certain matters are all preserved.
3. Mediation – Mediation is the 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 interest rather than upon rights and positions. Any settlement is entirely voluntary. In the absence of settlement, the parties lose none of their rights to a resolution of their dispute through litigation.
4. 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.”
5. Party – Reference to a “party” includes counsel of the party, if represented by counsel.

RULES

Rule 1. Referral to an ADR Procedure

- 1.1 At any time, upon motion by any party, by consent of all parties, or sua sponte by the court, the parties in any civil, criminal or juvenile matter may be ordered to utilize any ADR procedure (except that binding arbitration may only be ordered upon the consent of all parties).
- 1.2 Courts should make information about ADR options available to all litigants.
- 1.3 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).
- 1.4 Criminal cases involving domestic violence shall never be referred to mediation pursuant to Appendix D, Rule 1(a).
- 1.5 Cases arising solely under the Family Violence Act shall not be referred to mediation from any court. Mediators shall not facilitate the negotiation of issues related to criminal charges or the terms of any protective order in a domestic relations matter.
- 1.6 All court programs shall screen domestic relations cases using the screening process outlined in Appendix D.
 - A. Those domestic relations cases referred to mediation directly from the bench are also subject to the domestic violence screening process.
- 1.7 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.
- 1.8 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 the matter to ADR before any hearing before the court.

Rule 2. Timing of ADR Referral

- 2.1 The parties may be ordered to utilize and attend one or more ADR procedures. Cases may be referred on a case by case basis or by standing order.
 - A. The timing of the 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 costs where possible.

Rule 3. Exemption from ADR Procedures

- 3.1 Any party may move the court to have the matter removed from any particular ADR procedure or all ADR procedures. Any party may move the court to order the case to an

ADR procedure other than the procedure or procedures to which it has been ordered. The court has full discretion in determining whether to grant such requests.

Rule 4. Appointment of Neutrals

4.1 The parties, by agreement, may select their own neutrals, so long as they are registered with the Georgia Office of Dispute Resolution. The parties are encouraged to attempt to agree upon the selection of the neutral and the selection of the ADR procedure (s) to be utilized.

4.2 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. 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. The court program will select a neutral listed on the roster of neutrals registered with the Georgia Office of Dispute Resolution (GODR) and the Fulton County ADR Roster.

4.3 Any party may move for an order disqualifying a neutral for good cause.

Rule 5. Qualification of Neutrals

5.1 All neutrals selected by the court or its designee must be registered by the Georgia Office of Dispute Resolution. A neutral shall attend an orientation program on court procedures given by the court program in which the neutral will serve.

Rule 6. Compensation of Neutrals

6.1 If parties select their own neutral by agreement and the neutral is not listed on the Fulton County ADR Roster, the parties are responsible for providing the necessary compensation for the neutral they have selected. If the neutral is selected by the court, the compensation of the neutral will be determined by the court and paid from the funds set aside for the Alternative Dispute Resolution Program of the court, or as otherwise directed by the court.

Rule 7. Confidentiality and Immunity

7.1 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.

- 7.2 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.
- 7.3 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
- 7.4 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 8. Exceptions to Confidentiality

- 8.1 Confidentiality on the part of program staff or the neutral shall not extend to the issue of appearance.
- 8.2 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).
- 8.3 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.
- 8.4 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.

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

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

Rule 9. Appearances

9.1 The appearance of all parties or their attorneys is required by the court at non-binding arbitration hearings. The appearance of all parties and their attorneys is required at case evaluations or early neutral evaluation conferences. The appearance of all parties is required at mediation conferences. Additionally, the presence of a representative with authority to settle without further consultation (except by an immediate telephone consultation) is required by the court, particularly where the decision to settle involves entity other than a party.

- A. The 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.
- B. An insurance carrier's representative must have full authority to settle without further consultation.

9.2 Court programs may offer parties, attorneys, and any representatives the option to appear remotely by videoconference or telephone unless ordered by the court to attend all ADR processes.

9.3 Attorneys of record should never be excluded from any ADR Process, although it is not improper for a mediator to request to consult privately with any party or any attorney during a mediation procedure.

Rule 10. Sanctions for Failing to Appear

10.1. Failing to appear as required by the court may subject those absent to a citation for contempt and the imposition of sanctions permitted by the law including dismissal or entry of judgement after notice to the non-attending party and failure by the party to show good cause

for failure to appear. The court program shall notify the Judge to whom the case is assigned. The judge may find the party in contempt and impose the appropriate sanctions.

Rule 11. Communications between the Neutral and the Parties

11.1 Except in mediation, the parties and their attorney are not permitted to engage in ex parte communications with the neutral, prior to the conclusion of the ADR procedure, regarding the substance of the dispute to be resolved. However, in non-binding arbitration, no such communication is permitted until 31 days after the posting of the award.

11.2 The only ex parte communication between a party and the mediator outside of the conference shall be for the purposes of verifying appointment times and locations or answering questions about the mediation process and procedure. 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 12. Communication with the Court

12.1 In order to preserve the objectivity of the court and the neutrality of the neutral, there should be no communication between the neutral and the court unless it is in writing with copies to the parties and their attorneys, or through the ADR program administrator. It is recognized that the neutral may need to communicate in writing or through the ADR program administrator that the case has settled or has not settled regarding the failure of the party to attend. With the consent of the parties, the neutral may communicate to the court for the following reasons:

1. The neutral's assessment that the case is inappropriate for ADR
2. The particular ADR procedure ordered
3. To request additional time to complete ADR services
4. To advise of procedural actions on the part of the court which might facilitate the ADR procedure,
5. To communicate whether or an agreement has been reached as to particular issues in the case
6. To communicate contents of an agreement between the parties (unless the parties agree in writing that the agreement should not be disclosed)
7. To communicate information concerning discovery; pending motions or other action of the court, if resolved or completed would facilitate the progress of the ADR procedure or the possibility of settlement.

Rule 13. Completion of the ADR Procedure

13.1 The ADR procedure shall be completed within such time as ordered by the court.

13.2 If an agreement is reached during the ADR procedure, 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 the agreement unless all parties agree otherwise.

13.3 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.

13.4 Fulton County shall allow unrepresented parties five days to determine if the mediated agreement should be executed.

13.5 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.

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

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

Rule 14. Evaluation

Evaluation of the Program

14.1 Data shall be collected on an ongoing basis to ensure the quality of the program.

14.2 Court programs shall provide all available data as requested by GODR in a timely fashion as directed by GODR.

14.3 Data may include evaluations from parties and attorneys of the ADR process.

14.4 A court may use data to improve the quality of the program and shall be shared for statewide statistics. However, data concerning settlement rate shall not be used as the sole basis for program funding or program evaluation.

Evaluation of Neutrals

14.5 Court programs shall establish procedures to monitor the performance of neutrals. Settlement rate shall not be the sole basis of evaluation of a neutral.

14.6 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.