

IN THE SUPERIOR COURTS FOR THE CONASAUGA CIRCUIT
STATE OF GEORGIA

FILED & RECORDED
WHITFIELD COUNTY, GA.
2019 JAN 30 AM 9:58
M. Williams
CLERK OF SUPERIOR COURT

RE: Court Annexed Mediation

ORDER

Pursuant to O.C.G.A. 15-23-10, and in order to provide for the speedy, efficient and inexpensive resolution of disputes, this circuit procedure is promulgated.

SECTION 1. This procedure applies to all parties in all civil actions, including but not limited to domestic relations actions as described and defined by Uniform Superior Court Rule 24.1, filed on or after December 11, 2000.

SECTION 2. Exhibit "A" which describes the mediation process and other rules applicable thereto and which is attached hereto and incorporated herein by express reference. Consistent with Exhibit "A", all parties shall be referred to mediation and are directed to negotiate in good faith in connection therewith.

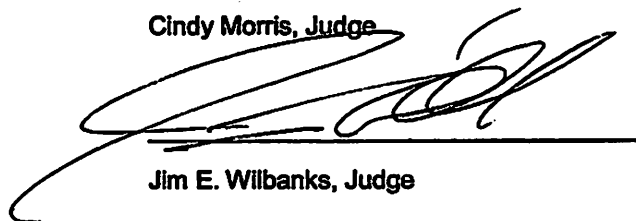
SECTION 3. For good cause shown, the assigned judge may waive the requirement of completion of this program in individual cases.

SO ORDERED this 29th day of January 2019.


William T. Boyett, Chief Judge



Cindy Morris, Judge



Jim E. Wilbanks, Judge


Scott Minter, Judge

FILED IN OFFICE

02/22/2022

Theresa A. Barnes

PREMIER COURT OF GEORGIA

Page 1 of 18

Appendix A

PROCEDURES OF THE SUPERIOR COURTS OF
THE CONASAUGA JUDICIAL CIRCUIT OF GEORGIA
FOR
ALTERNATIVE DISPUTE RESOLUTION

These amended ADR procedures apply to the Superior Courts of Whitfield and Murray Counties, and are provided to facilitate the continuing mediation process in these counties as mandated by this Court's Order, and supplement the terms and provisions thereof.

GENERAL POLICY:

The Court will make information about alternative dispute resolution (ADR) options available to all litigants.

DEFINITION:

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-annexed or court-referred mediation programs the parties may be ordered to attend a mediation session, any settlement is entirely voluntary. In the absence of settlement, the parties do not lose their rights to a jury trial.

RULE 1. REFERRAL TO ALTERNATIVE DISPUTE RESOLUTION ("ADR")

(a) Except as hereinafter provided, all contested civil or domestic matters shall be referred to mediation in the Superior Courts. Parties are ordered to cooperate in the selection of a mediator, scheduling of a mediation date, and to appear for mediation conference, either in-person or remotely. Compliance does not require that the parties reach a settlement. Cases shall be screened by the Judge or the dispute resolution office to determine:

Amended: 9 February 2022

- (1) Whether the case is appropriate for mediation;
- (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) Any party to a civil dispute may request that the Court refer the case back to mediation for a second mediation, or request that a matter be referred to another ADR process. The request for referral should be made to the Judge assigned to the case.

(d) 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.

(e) 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.

(f) If court personnel other than Judges are involved in ADR referral decisions, these individuals will receive appropriate training and will work within clearly stated written policies, procedures and criteria for referral. The Georgia Commission on Dispute Resolution will assist the Courts in developing guidelines for training court personnel in referral decisions.

RULE 2. CASES INVOLVING ISSUES OF DOMESTIC VIOLENCE

Amended: 9 February 2022

- (a) All domestic relations cases will be screened to determine whether mediation is appropriate:
- (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.
 - (2) Domestic Relations cases will be screened for domestic violence using the *Rules for Screening Cases Involving Issues of Domestic Violence*. These 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.
 - (3) If allegations of domestic violence arise in the context of a mediation, a mediator who is not registered in the Specialized Domestic Violence category must conclude the mediation and send the case back to the Court. In concluding the mediation, the mediator should take precautions to guard the safety of the other party and of the mediator.

- (4) No cases involving issues of domestic violence will be sent to mediation without the consent of the at-risk party given after a thorough explanation of the process of mediation. With the consent of the at-risk party, a case involving issues of domestic violence may be sent to mediation at the discretion of the Court. Safeguards will be in place to assure the safety of the parties, attorneys, and the mediator both during and after the session as follows:
- a. The parties should be living separately. The program should exercise care to avoid disclosure of the parties' place of residence by either the program staff or mediator.
 - b. The at-risk party shall have an attorney or advocate available for the entire session or sessions. If the at-risk party does not have an attorney, he/she may bring an advocate or friend to the mediation session to see him/her safely to his/her car.
 - c. Arrangements should be made for the parties to arrive and leave the mediation session separately.
 - d. The mediation shall be conducted at the courthouse with security notified or shall be held remotely with the parties in separate locations.
 - e. Arrangements should be made for the session to be held entirely in caucus if that is necessary.
 - f. Only mediators who are registered with the Georgia Office of Dispute Resolution 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 I or Tier II screening questions, or by any other indicator of domestic violence present in the case.

- g. At the earliest possible point in the mediation the mediator should explore power dynamics in order to 1) confirm the comfort of each party with the mediation format and, 2) confirm the ability of each party to bargain for him/herself.
- h. 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 *Supreme Court ADR Rules: Appendix D Rules for Mediation in Cases Involving Domestic Violence*.

RULE 3. TIMING OF REFERRAL TO ADR

- (a) Conference or Hearing Date. Unless otherwise ordered by the Court, the first mediation conference shall be held:
 - (1) within 60 days of filing of domestic cases;
 - (2) within 30 days of the filing of appeals from Magistrate Court;
 - (3) after 120 days from the filing of the last responsive pleading in general civil cases; and
 - (4) after 120 days from filing of an appeal in DOT condemnation cases and/or special master proceedings.
- (b) Notice. The parties shall select a mediator in accordance with Rules 5 and 6 herein. Within 10 calendar days after the case is referred to mediation, the parties will inform the mediation coordinator of the name of the mediator and the date and time for mediation. Notice to

the mediation coordinator is technically the plaintiff's responsibility. However, upon agreement, anyone may schedule the mediation.

- (1) If parties/attorneys want the case scheduled for mediation prior to the time frames indicated above, they should contact the Conasauga Judicial Circuit ADR Program at 706-278-5897, or visit one of the circuit websites www.whitfieldcountyga.com or www.murraycountyga.org for a referral form.
- (2) If parties/attorneys wish to use a mediator not on the roster for the Conasauga Circuit, please contact the ADR office for the necessary procedure.
- (3) Agreements between the parties for the selection of otherwise registered mediators or neutrals will be honored, provided that the selected alternate mediator thereafter submits a mediation report to the Conasauga Circuit ADR office.
- (4) In particular cases, the Court may modify or shorten the schedule for mediation by Order and notice to all parties.

(c) Once a mediation session is scheduled, **NO UNILATERAL RESCHEDULING IS PERMITTED**. The party or attorney who is requesting that a mediation session be rescheduled must obtain consent from opposing counsel and the assigned mediator. The dispute resolution office must also be notified of any rescheduling attempts.

(d) Cancellations, with no attempt to reschedule the mediation session, will not be permitted unless approved in advance by the Judge to whom the case has been assigned, or is in compliance with the Uniform Rule related to conflicts. If a session is canceled due to conflict, the attorney with the conflict must coordinate the rescheduling. If a case is resolved prior to the scheduled mediation session, the session may be canceled upon written notification to the

mediator and dispute resolution office of the settlement. **NO OTHER CANCELLATIONS WILL BE PERMITTED.**

(e) An Order providing for an extension of a discovery period shall not extend the time for scheduling mediation, unless approved by the Judge.

RULE 4. EXEMPTION FROM ALTERNATIVE DISPUTE RESOLUTION

(a) Any party to a dispute referred to mediation may petition the court to exclude the case from mediation if:

- (1) The issue to be considered has been previously mediated by a mediator registered with the Georgia Office of Dispute Resolution as mediator in the area of the dispute;
- (2) The issue presents a question of law only;
- (3) Other good cause is shown before the Judge to whom the case is assigned;
- (4) The issues have been referred by a Consent Order of the Court to a private provider of mediation services;
- (5) The case was filed under the Family Violence Act.

(b) The following actions shall **NOT** be referred to mediation except upon petition of all parties or upon sua sponte **ORDER** of the Court:

- (1) Appeals from rulings of administrative agencies, including challenges to zoning decisions by governmental units;
- (2) Forfeitures of seized property;

- (3) Habeas corpus and extraordinary writs;
- (4) Bond validations;
- (5) Child Support Matters brought by the Department of Human Resources;
- (6) Declaratory relief;
- (7) Uniform Interstate Family Support Act (UIFSA) actions
- (8) Matters where all issues are completely resolved by written agreement signed by all parties and filed in said action.

RULE 5. APPOINTMENT OF MEDIATOR

(a) The parties shall agree upon a mediator from the list of mediators registered by the Georgia Office of Dispute Resolution who have been chosen for service in the program.

- (1) Parties who have been through an approved ADR process privately may not be required to participate in duplicative process;
- (2) After a case is filed, parties are free to choose their own neutral and negotiate a fee with that neutral before a case is ordered to an ADR process; however, the confidentiality and immunity protections of the Georgia Supreme Court ADR Rules shall not apply to mediators not registered with the Georgia Office of Dispute Resolutions;
- (3) Once the case is ordered to an ADR process, parties are still allowed to choose their own neutral and proceed under that neutral's fee or negotiate a fee with that neutral provided the neutral chosen is registered with the Georgia Office of Dispute Resolution in the appropriate category;

- (4) Where possible, parties should be allowed input into the choice of process as well as choice of a neutral;
- (5) Should the parties fail to agree upon a mediator, the mediation coordinator will appoint a mediator from the roster qualified for service in the program and may set the fee.

(b) Any party may move to enter an order to disqualify a mediator for good cause. If the Court rules that a mediator is disqualified from a case, an Order shall be entered setting forth a qualified replacement from the list of mediators in good standing of the Conasauga Circuit Mediator Roster. The motion disqualifying the mediator shall be presented to the mediation coordinator who shall present the motion to the Judge to whom the case is assigned.

RULE 6. NEUTRAL QUALIFICATIONS FOR SERVICE IN THE PROGRAM

The qualifications and training for a neutral shall not be less than the minimum qualifications set out in the Georgia Supreme Court Alternative Dispute Resolution Rules. The neutrals must be registered with the Georgia Commission on Dispute Resolution. The program will maintain a roster of mediators chosen for service in the program. Mediators serving in the program will be evaluated by the program on an ongoing basis.

RULE 7. COMPENSATION OF NEUTRALS

(a) Parties are encouraged to agree upon compensation of the mediator at or before the first mediation conference. Mediators are required to list their fee schedules as part of their mediator roster information. When deemed appropriate, the mediator may be compensated a maximum of one hour preparation time per case.

(b) If the parties are unable to agree upon compensation of the mediator, then the assigned Judge at the interlocutory hearing or final trial may order either or both parties to pay or share the cost of the mediator.

(c) Before being placed on the Roster of Approved Mediators, 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 will be determined by the Superior Court Judges of the Circuit.

(d) The referring Judge may choose to not enter a Final Order in a case until such payments for mediation services have been fully made or other approved payment arrangements are in place.

RULE 8. CONFIDENTIALITY AND IMMUNITY

(a) **The extent of Confidentiality:** Any statement made during a court-annexed or court-referred mediation conference or as a part of intake by program staff in preparation for mediation is confidential, not subject to disclosure, may not be disclosed by the mediator or program staff, and may 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 is not subject to the confidentiality described above.

Any document or other evidence generated in connection with a court-annexed or court-referred mediation is not subject to discovery. An agreement resulting from a court-annexed or court-referred mediation conference is not immune from discovery unless the parties agree in writing. Otherwise discoverable material is not rendered

immune from discovery by use in mediation.

Neither the mediator 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 conference in any subsequent administrative or judicial proceeding. A mediator's notes or records of the court-annexed or court-referred program 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.

(a) **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 there are threats of imminent violence to self or others; the mediator believes that a child is abused or that the safety of any party or third person is in danger; or 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). 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 or 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 that information necessary to monitor the quality of a program is not considered a breach of confidentiality.

(b) **Immunity:** 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 9. APPEARANCE

The presence of parties at all mediation conferences is required unless the court finds that a party is a nonresident or is incapacitated or otherwise authorizes the party's absence. The requirement that a party appear at a mediation conference is satisfied if the following persons are physically present:

(a) The party and/or

(1) The party's representative who has

- a. Full authority to settle without further consultation and;
- b. 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. If deemed appropriate by the ADR office, parties, attorneys, and any representatives may have the option to appear remotely by videoconference or telephone.

(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 neutral from a mediation conference. An attorney should attend a mediation conference.

(c) In domestic relations cases involving temporary or permanent child support, alimony, equitable division of property, modification of alimony or attorneys' fees, a financial affidavit (DRFA) is required pursuant to U.S.C.R. 24.2. If a party fails to bring

a copy of a current, notarized financial affidavit, that party will be deemed to have not appeared and subject to the sanctions stated in Rule 11 below. **STRICT ADHERENCE IS REQUIRED.**

In addition to the information as provided for in the DRFA, and in order to maximize the opportunity of resolution of issues at the time of mediation, each party or their counsel shall then make available to the mediator and the opposing party or attorney additional basic financial data, including form W-2S and form 1099S for all income for the presiding tax year, a copy of their federal tax return for the past tax year, most recent status reports on any form of retirement plan, IRA's or similar funds, and other such easily accumulated data.

(d) In domestic relations cases in which the parties are required to attend the "Divorcing Parents Seminar" or other court approved seminar pursuant to a standing Court order or a specific order in the case, the parties are strongly encouraged to attend the seminar prior to the mediation session.

(e) Where an action is prosecuted against a public entity which is comprised of an elected body or board and the individual members are named as defendants, then the "appearance" requirement of Rule 9(a) shall be satisfied if the mediation conference is attended by the private party's attorney and a designed representative for the entity which is a party. In these particular kinds of actions, "full authority to settle" would be construed as the authority to make a recommendation subject to approval by a governing authority, elected body, or board.

RULE 10. SANCTIONS FOR FAILURE TO APPEAR

If a party fails to appear at a duly noticed mediation conference without good cause, fails to give 24 hours notice of cancellation or rescheduling, or fails to bring a current, notarized financial affidavit when required, the dispute resolution staff shall notify the Judge to whom the case is assigned. The Judge, upon motion, may impose sanctions including the award of mediator and attorney costs against the party failing to appear.

RULE 11. COMMUNICATIONS WITH PARTIES

The only ex parte communication between a party and 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. The mediator may meet privately with any party or any attorney during the mediation conference.

RULE 12. COMMUNICATIONS WITH THE COURT

(a) In order 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 through the dispute resolution coordinator. Copies of any written communication with the court should be given to parties and their attorneys.

(b) Once mediation is underway in a given case, contact between the dispute resolution coordinator and the Court concerning that case should be limited to:

- (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 that might facilitate the mediation;

- (3) Communicating to the Court the mediator's assessment that the case is inappropriate for that process;
- (4) Communicating any request for additional time to complete the mediation;
- (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 any agreements unless the parties agree in writing that the agreement should not be disclosed;
- (7) Communicating with the consent of the parties information concerning any discovery, pending motions or action of any party that, if resolved or completed, would facilitate the possibility of settlement.

RULE 13. COMPLETION OF MEDIATION

(a) Mediation shall in any event be completed prior to any scheduled **FINAL** hearing, trial or stipulation to any pre-trial calendar, and within the time frames specified at Rule 3(a) above, whichever is sooner, unless extended or otherwise authorized by Order of the Court.

(b) The length of the mediation session will depend on the nature of the contested issues and on the parties themselves. The parties should be prepared to spend a minimum of two hours at the initial session.

(c) The mediator may adjourn the mediation conference at any time and may set times for reconvening the adjourned conference notwithstanding Rule 3. No further notification is required for parties present at the adjourned conference.

(d) If an agreement is reached, it shall be reduced to writing. If possible, the agreement should be reduced to writing at the end of the mediation conference. In the event that

the agreement cannot be reduced to writing at the end of the mediation conference, it should be reduced to writing within 3 calendar days after the mediation. It is the mediator's responsibility to draw the agreement unless all parties determine otherwise.

(1) If parties are represented by counsel present at the mediation, the agreement should be reduced to writing by the mediator and signed by the mediator, parties, and attorneys at the end of the mediation conference.

(2) If any party is unrepresented or is represented by an attorney who is not present, the agreement should be reduced to writing by the mediator and signed by the mediator and parties at the end of the mediation conference. The parties will have an opportunity to have the agreement reviewed by an attorney. If there is no objection to the agreement within 3 calendar days following signing, the responsible party or counsel will file the agreement with the Court.

(e) If a partial agreement is reached, it shall be reduced to writing and signed by the parties and counsel, if any, in the same manner as outlined above for the full agreement.

(f) 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 dispute resolution director. The dispute resolution coordinator shall notify the Judge to whom the case was assigned of the lack of an agreement. With the 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 that, if resolved or completed, would facilitate the possibility of a settlement.

(g) 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 14. ROLE OF COUNSEL

Attorneys of record shall never be excluded from the mediation conference. The mediator shall at all times be in control of the mediation and procedures to be followed during the mediation. Counsel shall be permitted to communicate privately with their clients at any time. Counsel's presence at the mediation is a matter to be decided by the attorney and the client. If counsel is not present, any agreement reached is subject to counsel's review and approval. See Rule 13(d).

RULE 15. CONFLICTS

For the purpose of conflicts, as contemplated under the Uniform Rules of Superior Courts, the mediation procedure shall be construed as being a non-jury proceeding and counsel and the parties may rely upon said designation in resolving any scheduling conflicts.

RULE 16. EVALUATION

The dispute resolution coordinator will provide to the Georgia Office of Dispute Resolution information that will allow an evaluation of the program. This information will be provided on an ongoing basis. The model for this evaluation will be provided by the GODR. Participants will not be contacted for evaluation without their permission. The program should seek permission of the parties for this contact either at the beginning of the mediation or by

means of an exit survey. The ADR Program shall share all available data as requested by GODR to provide statewide statistics.