

ALTERNATIVE DISPUTE RESOLUTION RULES

The Georgia Constitution of 1983 mandates that the judicial branch of government provide “speedy, efficient, and inexpensive resolution of disputes and prosecutions.” As part of a continuing effort to carry out this constitutional mandate the Supreme Court of Georgia established a Commission on Alternative Dispute Resolution under the joint leadership of the Chief Justice of the Georgia Supreme Court and the President of the State Bar of Georgia on September 26, 1990.

The Supreme Court charged the Commission to explore the feasibility of using court-annexed or court-referred alternative dispute resolution (ADR) processes to complement existing dispute resolution methods. The order creating the Commission directed that the Commission gather information, implement experimental pilot programs, and prepare recommendations for a statewide, comprehensive ADR system.

This court has now received the recommendations of the Commission and promulgates the following rules to establish a statewide plan for the use of alternative dispute mechanisms by the courts of Georgia.

I. DEFINITIONS.

The term Alternative Dispute Resolution (ADR) refers to any method other than litigation for resolution of disputes. A definition of some common ADR terms follows.

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.”

Mediation. 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 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.

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.

Case Evaluation or Early Neutral Evaluation. Case evaluation or early neutral evaluation is 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.

Multi-door Courthouse. The multi-door courthouse is a concept rather than a process. It 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.

Summary Jury Trial. The summary jury trial is 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.

Mini Trial. The mini trial is similar to the 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.

Settlement Week. During a settlement week there is a moratorium on litigation. Mediation is the ADR process most often used during 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 these cases.

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.

II. CENTRAL ORGANIZATION.

A. There is hereby created the Georgia Commission on Dispute Resolution.

1. The Georgia Commission on Dispute Resolution will consist of the current Chief Justice of the Georgia Supreme Court or the Chief Justice's designee, a judge of the Georgia Court of Appeals, a designee of the President of the State Bar of Georgia, three superior court judges, and three judges to be drawn from the other four classes of trial courts in Georgia. The remaining members of the Commission will be one member from the Georgia General Assembly, five members of the State Bar of Georgia, a trainer with an approved training program, a director of an approved court program, and two non-lawyer public members. All members of the Commission shall be appointed by the Georgia Supreme Court. The chair of the Commission and a chair-elect of the Commission shall be designated by the Georgia Supreme Court.

2. The Commission is charged with the following duties and responsibilities:

- a. To administer a statewide comprehensive ADR program;
- b. To oversee the development and ensure the quality of all court programs;
- c. To approve court programs;
- d. To develop guidelines for court programs;
- e. To develop criteria for training and qualifications of neutrals;
- f. To establish standards of conduct for neutrals;
- g. To establish and register with the Georgia Secretary of State a nonprofit organization, The Georgia Commission on Dispute Resolution, Inc. This corporation shall qualify at all times as a tax exempt organization under sections 501(a) and 501(c)(3) of the Internal Revenue Code. This corporation shall be governed by a board of directors made up of at least three and no more than five directors appointed by the Georgia Supreme Court in cooperation with the President of the State Bar of Georgia from members of the Georgia Commission on Dispute Resolution. This nonprofit organization shall be established for the sole purpose of receiving and disbursing money from private grants and donations as a tax-exempt organization.

3. The first Commission will be appointed to serve terms as follows: the first term for three members will be one year, the first term for three members will be two years, the first term for four members will be three years, the first term for three members will be four years, the first term for three members will be five years. Thereafter, the term for Commission members will be five years. A Commission member shall not succeed himself or herself, except:

– Commission members originally appointed to a term of two years or less would be eligible for reappointment to one additional five-year term; and

– A Commission member appointed as Chair of the Commission during his or her term of service may serve the remainder of that original term and may continue to serve all or part of an additional five-year term as Chair. If the Chair's service concludes prior to the end of his or her original five-year term, the member may serve the remainder of that original term after serving as Chair.

If the status of a Commission member chosen to represent a particular category changes during his or her term, the member may continue to serve out his or her term. All appointments are subject to continuing approval by the Georgia Supreme Court.

4. Members of the Commission shall receive no compensation for their services but shall be entitled to reimbursement for expenses and mileage for travel in connection with Commission business.

5. The Commission has jurisdiction:

- a. To receive, investigate, and hear complaints about or arising out of approved court programs;
- b. To receive, investigate, and hear complaints about approved training programs or any person responsible for conducting, administering, or promoting such training programs;
- c. To receive, investigate, and hear complaints about neutrals registered with the Commission; and
- d. To receive, investigate, and hear complaints about or arising out of ADR conducted by a registered neutral in any ADR setting.

B. There is hereby created the Georgia Office of Dispute Resolution under the Georgia Supreme Court.

1. The Georgia Office of Dispute Resolution will be administered by a director who will serve at the pleasure of the Commission and be directly accountable to the Commission. The director's salary will be paid from the Office budget.

2. The Georgia Office of Dispute Resolution will implement the policies of the Commission. The responsibilities of the Georgia Office of Dispute Resolution will include, but will not be limited to, the following:

- a. To serve as a resource for ADR education and research;
- b. To provide technical assistance to new and existing court programs;
- c. To develop the capability of providing training to neutrals in courts throughout the state;
- d. To implement the Commission's policies regarding qualification of neutrals and quality of programs;
- e. To register neutrals and remove neutrals from the registry if necessary;
- f. To collect statistics from court programs in order to monitor the effectiveness of various programs throughout the state.

III. FUNDING.

The funding of court programs is primarily a public responsibility. Funding for the Commission's work through the Georgia Office of Dispute Resolution will be through a combination of fees for registration and reregistration of neutrals, fees for review and approval of trainings, fees paid by approved local ADR programs, legislative appropriation, grants, and any other appropriate sources of revenue.

Amended June 12, 2013.

IV. COURT PROGRAMS.

The Georgia Supreme Court encourages every court in Georgia to consider the use of ADR processes to provide a system of justice which is more efficient and less costly in human and monetary terms. The Georgia Supreme Court strongly urges that courts with established mediation programs cooperate with courts seeking to establish new programs. Courts should assist new programs by providing information and by allowing mediator trainees from new programs to observe veteran mediators mediating in established programs for the purpose of completing training requirements.

Any court desiring to develop an ADR program shall apply to the Commission for approval by making its application to the Georgia Office of Dispute Resolution in accordance with rules and guidelines promulgated by the Commission. Applications for programs shall include the following:

1. A description of existing dispute resolution services and resources in the area.
2. A demonstration of need, coordination with existing social services, support of the bench and bar, and community support.
3. A description of the program.
4. A budget for the program.
5. A demonstration of the administrative capacity of the applicant.

Although existing court programs must be approved under these rules, the above requirements should not be construed to prevent existing dispute resolution programs from applying for approval. Review and action of the Commission will be accomplished as efficiently as possible, and every effort will be made to avoid imposing unnecessary burdens upon any court. Funding obtained through local collection of filing fee surcharges will be used for the administration and development of local programs and payment of staff. As specified in the Georgia Court-Connected Alternative Dispute Resolution Act (OCGA §§ 15-23-1 to -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. The Commission on Dispute Resolution reserves the right to request financial audits of the Boards of Trustees of the local Funds for the Administration of Alternative Dispute Resolution Programs to ensure that the local court program under a Board's supervision is in compliance with the requirements of the Georgia Court-Connected Alternative Dispute Resolution Act and these ADR Rules and appendices. Appropriate administrative fees may be charged by the Georgia Office of Dispute Resolution for technical assistance and training.

Neutrals serving in court programs must meet the requirements of the Georgia Commission on Dispute Resolution for registration. Although these requirements are threshold requirements for neutrals serving in court programs, courts are free to impose higher qualifications for neutrals who serve in their programs.

Uniform rules governing these programs appear as Appendix A to this rule.

***Commentary:** The Georgia Supreme Court strongly recommends that the program have a full-time administrator.*

Amended June 12, 2013.

V. QUALIFICATION AND TRAINING OF NEUTRALS.

The qualification and training requirements for various kinds of neutrals differ according to the process or program involved. Requirements for qualification and training of neutrals will be established by the Georgia Commission on Dispute Resolution and subject to review by the Georgia Supreme Court. All training for neutrals in court programs will be in training programs approved by the Georgia Office of Dispute Resolution according to guidelines established by the Georgia Commission on Dispute Resolution. The Georgia Office of Dispute Resolution shall develop specific training programs for neutrals in accordance with requirements set by the Commission and subject to review by the Georgia Supreme Court.

Requirements for qualification and training of neutrals established by the Georgia Commission on Dispute Resolution will appear as Appendix B to this rule and will be published from time to time as amended. Ethical Standards for Neutrals established by the Georgia Commission on Dispute Resolution will appear as Appendix C to this rule and will be published from time to time as amended. Rules for mediation in cases involving issues of domestic violence will appear as Appendix D to this rule and will be published from time to time as amended.

The Georgia Commission on Dispute Resolution will develop procedures to handle complaints against neutrals and ADR programs. The Georgia Commission on Dispute Resolution will have the authority to publish opinions resulting from the

resolution of complaints and may, from time to time, publish advisory opinions as well.

Persons who have met the Commission's criteria as to qualifications and training may apply to the Georgia Office of Dispute Resolution for registration as a neutral. The Commission may set the amount of a registration fee which will accompany each application. The Commission may provide for periodic renewal of registration. Neutrals who have been trained prior to the promulgation of these rules may apply to the Georgia Office of Dispute Resolution for registration.

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VI. COMPENSATION OF NEUTRALS.

There shall be no uniform, state-wide compensation system at this time. Local courts will have the responsibility for developing and testing a variety of approaches to compensation consistent with guidelines that may be established by the Commission. However, every court program in which neutrals are compensated by the parties must provide ADR services free of charge to indigent parties. All compensated neutrals should contribute some pro bono hours to the program.

Commentary: Although the contribution of volunteers to ADR programs throughout the country is inestimable, the Georgia Supreme Court believes that the comprehensive system of statewide ADR services envisioned by these rules cannot be handled entirely by unpaid volunteers. This court is convinced that in order to build and maintain a statewide system of ADR services of the extent and quality desired, there must be mechanisms for compensating neutrals at appropriate levels. This court also believes that the Georgia ADR program will require a combination of volunteers, salaried in-house neutrals, and free market neutrals in order to meet the highly varied demands and circumstances of courts in urban, rural, and suburban areas.

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VII. CONFIDENTIALITY AND IMMUNITY.

A. The Extent of Confidentiality:

Any statement made during a court-annexed or court-referred mediation or case evaluation or early neutral evaluation conference or as part of intake by program staff in preparation for a mediation, case evaluation or early neutral evaluation is confidential, not subject to disclosure, may not be disclosed by the neutral or program staff, and may not be used as evidence in any subsequent administrative or

judicial proceeding. Unless a court's ADR rules provide otherwise, the confidentiality herein applies to non-binding arbitration conferences as well. A written and executed agreement or memorandum of agreement resulting from a court-annexed or court-referred ADR process is not subject to the confidentiality described above.

Any document or other evidence generated in connection with court-annexed or court-referred mediation or case evaluation, early neutral evaluation or, unless otherwise provided by court ADR rules, a non-binding arbitration, is not subject to discovery. A written and executed agreement or memorandum of agreement resulting from a court-annexed or court-referred ADR process is discoverable unless the parties agree otherwise in writing. Otherwise discoverable material is not rendered immune from discovery by use in a mediation, case evaluation or early neutral evaluation or a non-binding arbitration.

Neither the neutral 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 or case evaluation or early neutral evaluation conference or, unless otherwise provided by court ADR rules, a non-binding arbitration, in any subsequent administrative or judicial proceeding. A neutral's notes or records 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.

B. 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

- a) there are threats of imminent violence to self or others; or
- b) the mediator believes that a child is abused or that the safety of any party or third person is in danger.

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 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 the above rule negates any statutory duty of a neutral to report information. Parties should be informed of limitations on confidentiality at the beginning of the conference. Collection of information necessary to monitor the quality of a program is not considered a breach of confidentiality.

C. Immunity:

No neutral in a court program shall be held liable for civil damages for any statement, action, omission or decision made in the course of any ADR process unless that statement, action, omission or decision is 1) grossly negligent and made with malice or 2) in willful disregard of the safety or property of any party to the ADR process.

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VIII. EDUCATION.

In order to educate the bar about the benefits of ADR and the specifics of ADR processes, each member of the State Bar of Georgia shall be required to complete a one-time mandatory three hour CLE credit in dispute resolution. The ADR continuing legal education requirement shall be completed before March 31, 1996. Lawyers admitted to the bar from July 31, 1995, to February 2, 2005, may satisfy this requirement by attending the Bridge-the-Gap seminar conducted by the Institute of Continuing Legal Education in Georgia. Lawyers admitted to the bar thereafter may satisfy this requirement by completing the State Bar of Georgia Transition Into Law Practice Program or a comparable program approved by the Commission on Continuing Lawyer Competency.

Lawyers who have completed a class essentially devoted to the study of ADR in law school are deemed to have satisfied the above requirement. Lawyers who have been trained as a neutral in a training which was approved for CLE credit or would now be eligible for CLE credit are deemed to have satisfied the above requirement. Lawyers who have previously taken an approved CLE seminar devoted to ADR are deemed to have satisfied the above requirement. The Georgia Commission on Dispute Resolution will review requests for exemption from the ADR CLE requirement on the basis of law school course work.

The Georgia Supreme Court recommends that the program required for every new member of the State Bar of Georgia incorporate an introduction to ADR processes. This court further recommends that information concerning ADR be incorporated into CLE ethics and professionalism seminars. Sponsors and seminars designed to satisfy the ADR CLE requirement must be approved by the Commission on Continuing Lawyer Competency and the Georgia Commission on Dispute Resolution.

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