

**Sixth Judicial District
Alternative Dispute Resolution Program
Rules and Procedures
Flint, Griffin and Towaliga Judicial Circuits
State of Georgia**
(As amended November 3, 2021)

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SUPREME COURT OF GEORGIA

GENERAL POLICY:

These Alternative Dispute Resolution Rules apply to the Superior, State, Probate and Magistrate Courts of Butts, Fayette, Henry, Lamar, Monroe, Pike, Spalding, and Upson Counties, all in the Flint, Griffin and Towaliga Judicial Circuits.

DEFINITIONS:

Alternative Dispute Resolution (ADR): Refers to any method other than litigation for resolution of disputes. Alternative dispute resolution methods may include mediation, arbitration, and early neutral evaluation.

Arbitration: The reference of a dispute to a neutral “Arbitrator” or panel of neutrals who issue an award after a hearing at which both parties have an opportunity to be heard. 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 of time.

Domestic Relations Initiation Form (DRIF): The intake document required to be filed with the ADR Program for all domestic relations cases. This document contains the domestic violence screening questions required by the Supreme Court ADR Rules, Appendix D: *Rules for Mediation in Cases Involving Issues of Domestic Violence*. (This document may be obtained from the ADR Program or website www.adr6th.org.)

Domestic Relations Screening Form (DRSF): The document to be filed with the ADR Program to screen whether a domestic relations case is appropriate for ADR. This document is required to be completed by each party in a contested domestic relations case unless the party previously submitted the DRIF with the screening section completed. (This document may be obtained from the ADR Program or website www.adr6th.org.)

Domestic Violence (DV) Advocate: An individual who has specialized training and is employed by or volunteers for an organization that provides services and support to survivors of domestic violence (IPV/A). The DV Advocate’s role for the mediation session is to offer support and serve as a resource to the at-risk party. DV Advocates are required to sign the agreement to mediate as evidence of their understanding and agreement to the terms of confidentiality as outlined by the Supreme Court ADR Rules and Appendices.

Early Neutral Evaluation (ENE): 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.

General Civil Initiation Form (GCIF): The intake document required to be filed with the ADR Program in any civil case other than domestic relations referred to ADR. (This document may be obtained from the ADR Program or website www.adr6th.org).

Mediation: A process in which a neutral (“Mediator”) 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 a settlement the parties lose none of their future rights to a jury trial.

Neutral: An impartial third party trained to facilitate discussions and dispute resolution between parties in mediation, arbitration and early neutral evaluation. Thus, mediators, case evaluators, and arbitrators are all classified as “neutrals”.

FORMAT: Appendix A, Rule 16 B to the Georgia Supreme Court ADR Rules Uniform Rules for Dispute Resolution Programs requires that local rules contain specific topics and are set forth in a particular order. The captions for the rules required by Appendix A are underlined in the rules below and are set forth in the order required by Appendix A, Rule 16 B.

RULE 1. REFERRAL TO THE ALTERNATIVE DISPUTE RESOLUTION PROGRAM.

1.1 Except as hereinafter provided, all contested domestic relations cases filed in the Superior Courts shall be referred to the ADR Program. Cases shall be screened by the judge or the ADR Program to determine:

- (A) Whether the case is appropriate for ADR;
- (B) Whether a party requesting a fee reduction or waiver is eligible for such under the Federal Poverty Guidelines; or
- (C) Whether a need for emergency relief makes a referral inappropriate until the request for relief is heard by the court.

1.2 All civil cases involving home-building, construction, or home improvement disputes shall also be referred to the ADR Program for dispute resolution. Likewise, any contested civil matter filed in either the Flint, Griffin and Towaliga Judicial Circuits may be referred to the ADR Program by consent of the parties or by court order. Parties may choose mediation, arbitration or early neutral evaluation.

1.3 Parties may be ordered to appear for an ADR conference. Compliance does not require that the parties reach a settlement.

1.4 For the Flint and Towaliga Circuits, all personal injury cases shall be referred to the ADR Program for dispute resolution.

1.5 For those civil cases filed in the State Courts of Fayette County, Henry County, and Spalding County in the nature of complaints for personal injury or wrongful death; complaints for

damages arising from construction contracts or the breach thereof; complaints alleging professional malpractice of any nature may be referred to the ADR Program for dispute resolution.

1.6 Except as hereinafter provided, any contested civil matter filed in the Superior, State, Probate, and Magistrate Courts may be referred to the ADR Program by consent order or by order of the judge.

1.7 Expedited Session. The ADR Program Director has the authority to expedite an ADR session for the purpose of obtaining immediate temporary relief where good cause is shown. Such a **request must be made in writing** and filed with the ADR Program. All such requests must state the reason immediate relief is necessary.

1.8 Interim or Emergency Relief. A party may apply to the court for interim or emergency relief at any time. The ADR process shall continue while such a motion is pending absent a contrary order of the court or a decision of the parties to adjourn pending disposition of the motion. Time for completing an ADR session shall be tolled during any periods where it is interrupted pending resolution of such a motion.

1.9 Request for Referral to ADR Program. Any party to a dispute may request that the court refer the case to the ADR Program or request that a matter referred to an ADR process be referred to another process.

1.10 Effect of Referral upon Process of the Case. 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 the ADR Program prior to any hearings before the court.

1.11 If court personnel other than judges are involved in the ADR referral decision, these individuals will receive appropriate training and will work within clearly stated written policies, procedures and criteria for referral. The Georgia Office of Dispute Resolution will assist courts in developing guidelines for training court personnel in referral decisions.

RULE 2. INITIATION OF ADR PROCESS.

2.1 Domestic Relations.

(A) Initiation of ADR. Although the referral of all contested domestic relations cases begins with the filing of such a case, initiation of ADR is the responsibility of the parties and should be implemented as follows:

- (1)** For each domestic relations case, the Petitioner must attach a Guide to ADR to the pleadings to be served upon the Respondent.
- (2)** The Petitioner should then forward to the ADR Program a copy of a completed Domestic Relations Initiation Form (DRIF) within five (5) days after service upon Respondent.
- (3)** Likewise, the Respondent should forward a Domestic Relations Initiation Form (DRIF) to the ADR Program within five (5) days after the answer is due or filed.

(4) Both, the Petitioner and Respondent, must complete and return their required screening questions by either the DRIF or DRSF as least seven (7) days prior to any scheduled mediation session.

*****A completed DRIF including the screening portion is necessary in the filing of a domestic relations case with the ADR Program. Any case submitted with missing or omitted information on the DRIF may be returned to the party for completion. Be sure to indicate whether a fee waiver/reduction is being requested if applicable in the initial filing with the ADR Program.***

2.2 General Civil

(A) Initiation of the ADR Process. The referral will begin with the filing of a General Civil Initiation Form (GCIF) with the ADR Program within ten (10) days of the referral of the Court.

2.3 Personal Injury and Home-building disputes.

(A) Initiation of the ADR Process. Unless otherwise stated herein, the referral will begin with the filing of the case with the ADR Program within sixty days after the completion of discovery, upon submission by the parties or upon referral of the Court. No ADR forms shall be required for the filing of the initial complaint with the Clerk's Office.

(B) Conference or Hearing Date. Unless otherwise agreed, it is the Petitioner's responsibility to notify the ADR Program of the agreed upon method of dispute resolution, to provide a copy of the ADR Initiation Form and pleadings, notice of the selected neutral, and the date, time, and place of the session.

RULE 3. TIMING OF ADR PROCESS.

3.1 Timing of Mediation in Domestic Relations Cases. The first mediation conference shall be held within thirty (30) calendar days after the Respondent's answer is due or filed, whichever occurs first. Parties are to notify the ADR Program of the agreed upon date and time for mediation within five (5) days from the date the answer is filed or due. Failure to notify the ADR Program of said date and time will automatically place the case on the ADR calendar for the next available date. Exceptions may be granted by the ADR Program Director for good and sufficient reason established (i.e., one party is an out-of-state resident) or by order of the Court. The scheduling of a mediation session is not dependent on or interfere with discovery.

3.2 Timing of Arbitration. Unless otherwise agreed, it is the Petitioner's responsibility to notify the ADR Program of the Referral to Arbitration and to provide a copy of the pleadings and notice of the selected arbitrator, and the date, time and place of the session within ten (10) days of the referral. If the date, time and place are not selected/specified, the case will be scheduled for non-binding arbitration by the ADR Program on the next available date.

3.3 Timing of Early Neutral Evaluation. Unless otherwise agreed, it is the Petitioner's responsibility to notify the ADR Program of the Referral to ENE and to provide a copy of the pleadings and notice of the selected evaluator, and the date, time and place of the session within ten (10) days of Order of Referral. If the date, time and place are not selected/specified, the case will be scheduled for an early neutral evaluation session by the ADR Program on the next available date.

RULE 4. NOTICE OF ADR SESSION.

4.1 If the parties have not previously selected a neutral, the ADR Program will notify the attorney(s) indicated on the initiation form of the assigned neutral's name and contact information. If a party is unrepresented by counsel, the notice will be mailed or emailed directly to the party.

4.2 If the parties have not previously scheduled an initial ADR session, the ADR Program will notify the attorney(s) indicated on the initiation form of the scheduled session. Any conflicts of interest must be immediately reported to the ADR Program for rescheduling.

RULE 5. EXEMPTION OR EXCLUSION OF CASES FROM THE ADR PROGRAM.

5.1 Any party to a dispute referred to the ADR Program may petition the court to exclude the case from dispute resolution if:

- (A) The issue(s) to be considered has been previously submitted to an approved ADR process;
- (B) The issue(s) presents a question of law only;
- (C) Other good cause is shown before the judge to whom the case is assigned.

5.2 The following actions shall not be referred to the ADR Program except upon petition of all parties or upon motion of the court:

- (A) Appeals from ruling of administrative agencies;
- (B) Forfeitures of seized property;
- (C) Habeas corpus and extraordinary writs;
- (D) Bond validations;
- (E) Declaratory relief
- (F) Actions by the Office of Child Support Services or
- (G) Contempt actions filed in the Griffin Judicial Circuit

5.3 All cases referred to the ADR Program will be screened to determine whether the case is appropriate for dispute resolution.

5.4 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.

Staff (screeners) that conduct screening pursuant to the *Rules for Mediation in Cases Involving Issues of Domestic Violence* must have completed the screening training approved by the Georgia Office of Dispute Resolution (GODR). Screening procedures utilized to detect the presence of domestic violence will include:

(A): Reading of the pleadings and DRIF and DRSF and examination of available records through the Georgia State registry.. The DRIF and DRSF shall contain the required Tier 1 questions from the *Rules for Mediation in Cases Involving Issues of Domestic Violence (Appendix D)* which may indicate the presence of domestic violence.

(B): If a party answers yes to any question (with the exception of Question #7a), then a screener shall conduct Tier II screening contacting the party directly for further screening with required Tier 2 questions from the *Rules for Mediation in Cases Involving Issues of Domestic Violence (Appendix D)* after consulting with the party attorney, if represented, for consent to contact.

(C): Based on the answers from the Tier II questions and on the presence or absence of any other indicators of abuse or coercion as perceived by the screener, the screener of ADR program director should determine if the case is appropriate for mediation. If it is determined that the case is appropriate for mediation, screeners shall discuss the following with the at-risk party: If arrangements need to be made for the parties to arrive and leave the mediation session separately and/or for the session to be held entirely in caucus. The ADR session will be conducted either virtually or at the ADR Office, a courthouse, or other secure location for security purposes.

(E): Only mediators registered with the GODR in the categories of domestic relations and 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.

(F): If issues of domestic violence arise for the first time during a mediation session, the mediator or ADR program staff must follow the procedures outline in the *Rules for Mediation in Cases Involving Domestic Violence (Appendix D)*.

(G): If screening is not completed 24 hours prior to the scheduled mediation session, the mediator shall conduct Tier I screening and, if required, Tier II prior to beginning the mediation session. The mediator shall be entitled to charge the party for the time to complete Tier I and/or Tier II of the screening (\$50.00 per half hour).

For complete screening procedures and Rules, please refer to Appendix D, Rules for Mediation in Cases Involving Issues of Domestic Violence as adopted by the Georgia Office of Dispute Resolution.

RULE 6. CONDITIONAL RELEASE FOR TEMPORARY HEARING.

6.1 Any attorney or party to a dispute may petition the ADR Program for a Conditional Release for a Temporary Hearing if:

(A) A complaint has been filed in which temporary relief is requested or subsequently amended to request temporary relief or a party has filed a counterclaim for temporary relief:

AND

(B) The party against whom temporary relief is being requested has caused the continuation of two separate ADR sessions or has prolonged the scheduling of ADR in excess of

forty-five (45) days from the case was initiated with the ADR Office (but no sooner than forty-five [45] days after an answer has been filed or the time to file an answer has expired) as described herein for whatever the reason. Although a conditional release will allow the case to be placed on a temporary hearing calendar, it is not a final release and parties may be required to return to ADR following the temporary hearing.

RULE 7. RELEASE FOR A CONTEMPT HEARING.

7.1 Any attorney or party to a dispute may petition the ADR Program for a Release for a Contempt Hearing if:

(A) A complaint has been filed in which allegations are being made that the other party is refusing to pay monies owed, or has failed to do some other act pursuant to a previous court order;

AND

(B) The party whom the allegations are being made against has caused the continuation of two separate ADR sessions or has prolonged the scheduling of ADR conference in excess of sixty (60) days from date the case was initiated (but no sooner than sixty [60] days after an answer has been filed or the time to file an answer has expired) with the ADR Office as described herein in the civil action for whatever reason.

RULE 8. SELECTION OF THE NEUTRAL.

8.1 a) After a case is filed, parties are free to choose a neutral, provided they are registered in the appropriate category, and agree upon 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 do not apply in the absence of a court order referring the case to an ADR Process; b) Once the case is ordered to an ADR process, parties are still allowed to choose a neutral provided the neutral chosen is registered with the Georgia Office of Dispute Resolution in the appropriate category; c) Should parties fail to agree upon a neutral, the ADR Program will assign a neutral from the list of neutrals qualified for service in the program. The number of neutrals used for assignment purposes may be limited as the case load demands. All neutrals may be evaluated and approved by the program director prior to being added to the list.

8.2 Disqualification of a Neutral. Any party aware of a conflict between a neutral and a party may notify the ADR Program and request a qualified replacement. Public comments may be submitted in signed written form to the ADR Program and in turn related to the Court. The Court may add or remove any arbitrator, mediator or early neutral evaluator from the list at any time.

RULE 9. NEUTRAL QUALIFICATIONS FOR SERVICE IN THE ADR PROGRAM.

9.1 The qualifications for service as a neutral in the ADR Program shall be determined by the Supreme Court Alternative Dispute Resolution Rules, Appendix B. To mediate domestic relations cases, neutrals must be registered in both Domestic Relations AND Specialized Domestic Violence Mediation. The program will maintain a roster of neutrals registered for service in the program. Neutrals serving in the program will be evaluated by the program director on an on-going basis.

9.2 All neutrals shall attend an orientation program given by Sixth District ADR Program.

9.3 Pro Bono Requirement. Before being placed on the roster of the program neutrals, a neutral must agree to provide pro bono hours and hours at reduced rates to defray ADR costs for parties with limited ability to pay.

9.4 All neutrals must maintain current registration with the Georgia Office of Dispute Resolution. Failure to renew registration will result in immediate removal from the roster.

RULE 10. COMPENSATION OF NEUTRALS.

10.1 Fees. Where the parties have selected a neutral, they are encouraged to agree upon compensation at or before the first ADR conference. Relevant factors to be considered in determining an appropriate fee include the complexity of the case, the degree of skill necessary to mediate, evaluate or arbitrate the dispute, and the ability of the parties to pay.

In cases where parties have been assigned a neutral by the ADR Program, the fees will not exceed \$100.00 per hour for an assigned case. Neutrals assigned cases may charge up to, but not exceed the \$100.00 per hour limit.

This fee provision may be altered by the ADR Program by amendment, by court order, or where emergency relief is requested and is in accordance with the Federal Poverty Guidelines.

10.2 Fee Waiver or Reduction. A party may petition the ADR Program for a fee reduction or waiver where circumstances warrant. Requesting parties must fully complete a Request for Fee Waiver or Fee Reduction. Said form is available from the ADR Office or website www.adr6th.org. A requesting party represented by an attorney who has been paid (regardless of amount or payment method) will not be granted a waiver or reduction of fees. The ADR Program shall use the Poverty Guidelines as set forth in the Federal Register to determine eligibility. All applications for fee waivers/reductions must be made **three (3) days prior** to the ADR conference date. No application will be granted after an ADR conference has commenced.

10.3 Payment Due at Session. The fee for the ADR session is to be paid at the time of the session and shared equally by the parties unless otherwise arranged. Failure to pay the neutral may place the non-paying party in contempt of court, cause the case to be postponed or proceed immediately (whichever is appropriate as determined by the ADR Program Director) and/or entitle the neutral to petition the court for a judgment against the party. In assigned cases, parties are to be prepared to pay a minimum of one hour or \$100.00. Fees occurring after the first hour will be billed in half-hour increments with anything over an hour rounded up to the next half-hour.

10.4 Reporting. The neutral shall submit a report to the ADR Program which shall include a statement as to the length of time in the ADR conference, amount of compensation paid in each case, the result of the conference, and any other information which may be required by the ADR Program.

RULE 11. CONFIDENTIALITY AND IMMUNITY.

11.1 Confidentiality for Mediation and Early Neutral Evaluation.

(A) Any statement made during a mediation or as part of intake by program staff or mediator in preparation for a mediation shall: (1) be confidential; (2) not be subject to disclosure; (3) may not be disclosed by the mediator or program staff; and (4) not be used as evidence in any

subsequent administrative or judicial proceeding. A written and executed agreement or memorandum of understanding resulting from a court-annexed or court-referred mediation shall not be subject to the confidentiality described above.

(B) Any document or other evidence generated in connection with a mediation is not subject to discovery. A written and executed agreement or memorandum of understanding resulting from a mediation session 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 the mediation process.

(C) Neither the mediator 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 in any subsequent administrative or judicial proceeding. A mediator'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.

11.2 Confidentiality for Arbitration. Non-binding arbitration is not confidential. Any statement made during arbitration undertaken pursuant to these rules is not confidential, is subject to disclosure, and may be used as evidence in any subsequent administrative or judicial proceeding for any lawful purpose. Any document or other evidence generated in connection with such an arbitration proceeding is subject to discovery.

Any award resulting from a non-binding arbitration is not immune from discovery, unless all parties to the proceeding so agree in writing. Notwithstanding the foregoing, any otherwise discoverable material is not rendered immune from discovery by use in a non-binding arbitration held pursuant to this rule.

RULE 12. USE OF EXPERTS (ARBITRATION AND EARLY NEUTRAL EVALUATION).

Due to exceptional circumstances, the arbitrator or early neutral evaluator may require the expertise of an individual in another profession during the ADR process. The arbitrator or early neutral evaluator is authorized to have said individual present with the consent of all parties involved. Should the parties agree to have the expert present, the cost shall be shared equally by the parties.

RULE 13. WITNESSES AND EVIDENCE.

13.1 For arbitration sessions, the parties may request the presence of witnesses and presentation of evidence. The arbitrator or panel shall swear all witnesses and receive evidence. Rules of evidence shall be the same as followed in equitable proceedings or at TRO hearings, except as otherwise specified herein. Ten (10) days prior to the non-binding arbitration hearing date, each party must specify in writing and provide to each party copies of all documents to be tendered into evidence.

13.2 For early neutral evaluation sessions rules of evidence do not apply as there is no formal examination or cross examination of witnesses.

RULE 14. APPEARANCE.

14.1 All parties must physically appear at all scheduled ADR sessions; unless a party is a nonresident, is incapacitated, or excused by the assigned judge. An at-risk party may bring a DV Advocate to the mediation session. In every process, the presence of a representative with full authority

to settle without further consultation is required if the decision to settle depends upon an entity other than a party, unless otherwise ordered by the Court. Although not required, attorneys are encouraged to attend ADR sessions and may not be excluded. Virtual mediation sessions will only be conducted at the discretion of the ADR Program staff. Participants of a virtual mediation session must participate in a private location with limited distractions and hi-speed, secure internet. The mediation session is confidential, regardless of format. Participants must have the ability to both sign documents and pay their portion of the fee electronically.

14.2 Rescheduling. If ordered to the ADR Program, completion of an ADR process is a prerequisite to trial. The party or attorney who is requesting that an ADR session be rescheduled must obtain consent from opposing counsel/party (if unrepresented) and the ADR Program. The ADR Program must be notified of any rescheduling attempts. Notice of reschedule attempts must be received by the neutral and the ADR Program at least twenty-four (24) hours (excluding weekends and holidays) in advance or a cancellation fee (\$200.00) shall apply. The rescheduled session must take place within two weeks of the date originally assigned unless otherwise arranged.

14.3 Cancellations. Cancellations (with no attempt to reschedule) will only be permitted where one or both parties have applied for relief for good cause shown or are in compliance with the Uniform Superior Court Rules as they relate to conflicts. No other unilateral cancellations or reschedules will be permitted. Notice of cancellation must be received by the neutral and ADR Office at least twenty-four (24) hours (excluding weekends and holidays) in advance or a cancellation fee (\$200.00) shall apply.

14.4 Notification. The ADR Office and the neutral must receive notice at least twenty-four (24) hours in advance (not including weekends and holidays) of any rescheduling or cancellations, for whatever reason, regardless of whether relief has been granted by the Court. If proper notice is not given, the canceling party will be charged a maximum fee of the session rate (time reserved multiplied by the neutral's hourly rate) for the cancellation (minimum \$200.00). If the late rescheduling/cancellation is due to a stipulation between the parties, any fee charged by the neutral will be divided equally among the parties.

14.5 Conflicts. For purposes of conflict, as contemplated under the Uniform Rules of Superior Courts, the ADR procedure shall be construed as being a non-jury proceeding and counsel and parties may rely upon such designation in resolving any scheduling conflicts. Nonetheless, attorneys must reschedule the session in accordance with (14.2), (14.3) and (14.4) herein, provide written consent to the opposing party and make arrangements with the ADR Office.

14.6 Settlement Prior to ADR Conference. Settlement before ADR conference is always encouraged but is still considered a cancellation if timely notice is not given. Consequently, notice must be received by the neutral or ADR Office at least twenty-four (24) hours (excluding weekends and holidays) in advance to avoid the cancellation fee (minimum \$200.00). Written confirmation is required.

14.7 Requirement of Financial Data. In domestic relations cases involving temporary or permanent child support, alimony, equitable division of property, modification of alimony or attorney's fees, a domestic relations financial affidavit is required pursuant to Uniform Superior Court Rule 24.2. Furthermore, in cases involving child support, parties must bring the child support worksheets including all schedules required by O.C.G.A. § 19-6-15 (effective January 1, 2007, as thereafter amended or revised). If a party fails to bring a copy of a current, notarized financial affidavit, worksheets or schedules as required, that party may be deemed to have not appeared and subject to the sanctions in accordance with Rule 15.

RULE 15. IMPOSITION OF SANCTIONS.

15.1 Failure to Appear. If a party fails to appear at a duly noticed ADR conference without good cause, the ADR Program Director shall notify the judge to whom the case is assigned. The non-showing party will be responsible for cancellation fees of no less than two hours of the assigned rate of \$100.00 per hour (\$200.00) or two hours of the selected neutral's rate. The judge may find the party in contempt and impose any other appropriate sanctions.

If attorneys are scheduled to appear and are essential to the decision making process and fail to appear at a duly noticed ADR conference, they will be subject to the same sanctions as the parties.

15.2 Failure to Provide Financial Data. If a party fails to bring a current notarized financial affidavit and/or worksheet and schedules when required, the mediation session may be terminated by the complying party with the non-complying party responsible for the entire cost of the session (not less than \$100.00). The parties will be required to attend another ADR session. Failure to provide financial data at the second scheduled session may result in the termination of the ADR session with the non-complying party responsible for the entire cost of the session (not less than \$100.00). The case will then be released to proceed to court and the ADR Program Director shall notify the judge to whom the case is assigned of the party's failure to provide the required financial data. The judge may find the party in contempt and impose any other appropriate sanctions against the non-complying party. Enforcement of this Rule requires the issue of financial data be addressed at the beginning (within the first hour) of the mediation session.

15.3 Failure to perform. In the event of any breach or failure to perform prior to the final hearing, the case may proceed before the judge or jury. The judge may impose sanctions, including costs, attorney fees, ADR fees or other appropriate remedies including entry of judgment on the agreement.

RULE 16. COMMUNICATION 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 ADR process and procedures. 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 17. COMMUNICATION WITH THE COURT.

17.1 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. If any communication between the Court and a neutral is necessary, the communication shall be in writing or through the ADR Program Director. Copies of any written communication with the Court should be given to parties and their attorneys.

17.2 Once an ADR process is underway in a given case, contact between the ADR Program and the Court concerning that case should be limited to:

- (A) Communicating with the Court about the failure of a party to attend or comply with procedures as set forth herein;

- (B) Communicating with the Court with the consent of the parties concerning procedural action on the part of the Court which might facilitate the resolution process;
- (C) Communicating to the Court that an assessment of the case indicates that it is inappropriate for that process;
- (D) Communicating any request for additional time to complete the ADR process;
- (E) Communicating information that the case has settled or has not settled and whether an agreement has been reached as to any issues in the case;
- (F) Communicating the contents of a written agreement unless the parties agree in writing that the agreement should not be disclosed; or
- (G) Communicating with the consent of the parties information concerning any discovery, pending motions or action of any party which, if resolved or completed, would facilitate the possibility of settlement.

RULE 18. ENFORCEABILITY OF AGREEMENTS.

Written and executed agreements or memorandums of agreement reached as a result of a court-connected ADR process are enforceable to the same extent as any other agreements. Oral agreements shall not be enforceable.

RULE 19. COMPLETION OF MEDIATION.

19.1 The mediation process shall be completed within sixty (60) days of the written notice (completed Initiation Form or copy of court order) to the ADR Program, unless extended by the ADR Program Director or order of the Court. Notice to the ADR Program will be effective on the date it is received by the ADR Program.

19.2 Length of the mediation session. The length of time to successfully mediate is determined by a combination of several factors: the number and complexity of the issues, the negotiation styles of the parties and their attorneys, and how prepared the parties are to discuss the issues.

19.3 Mediation sessions may be terminated at any time by the parties or the neutral with charges assessed to the parties per half-hour after the first hour; parties must pay a minimum of one-hour, however.

19.4 The mediation process is complete when the ADR Program files a release with the Clerk of Court. Once the release is filed, the parties may request a hearing date.

(A) Agreement. If an agreement is reached, the mediator shall draft a Memorandum of Understanding which is to be signed by all parties (including attorneys, if present) at the end of the mediation conference. From the Memorandum of Understanding, the petitioner/petitioner's attorney (unless otherwise agreed) is to prepare the agreement which is to be incorporated into the Final Order of the Court.

(B) If a party is unrepresented at the mediation session and requests an opportunity to review a proposed agreement with counsel, a limited rescission period of no more than three (3)

business days may be written into the Memorandum of Understanding for that party. If all parties agree, a provision to reconvene the dispute resolution process should any objection be forthcoming may be included. The ADR Program has a responsibility to incorporate language regarding the limited rescission period and the possible reconvening of the dispute resolution process into the standard Memorandum of Understanding form used by the program and to instruct mediators to review this language with parties to a mediation agreement if one or more parties is unrepresented at the mediation session. Objections to the mediation agreement must be made in writing to the ADR Office within the specified rescission period. If applicable, the ADR Office shall schedule a time for the parties and mediator to reconvene to deal with any objection(s) raised to any part of the Memorandum of Understanding.

(C) 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 the full agreement above.

(D) 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 ADR Program Director, who shall notify the judge to whom the case was assigned. 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 which, if resolved or completed, would facilitate the possibility of a settlement.

(E) Where a mediation agreement has been reached in a contempt action, the action need not be immediately dismissed. However, the case should not be placed on a calendar for a hearing unless the defendant fails to perform as agreed.

RULE 20. COMPLETION OF ARBITRATION.

20.1 Arbitration hearings shall be conducted in a time frame of (3) three hours. The time frame shall be divided equally among all participants. Extensions for time may be granted by the Arbitrator or Panel of Arbitrators.

20.2 Arbitration Award. All awards rendered at a non-binding arbitration hearing will be posted at ADR Program within three (3) working days of the conference. All awards will remain posted for a time period of thirty (30) days.

20.3 Demand for jury trial. Any party may file a demand for jury trial within thirty (30) days of the filing of the arbitration award. Said demand for jury trial must be filed with the Clerk of Court of the county where the case is filed. The ADR Program shall also be notified immediately upon the filing of the jury demand.

20.4 Where a party's position, after demand for trial, is not substantially improved by trial or other judicial proceeding in the case, then the Trial Judge has the discretion to tax the arbitration fees against said party. For purposes of this rule, substantially improving a party's position shall mean either (a) reversal of the award or (b) increase or decrease of the award by 20 percent or more, depending upon whether the party demanding trial is a petitioner or a respondent. The Judge to whom the case has been assigned shall not be advised of the award, unless agreed to by all parties, until after verdict or other disposition.

RULE 21. COMPLETION OF EARLY NEUTRAL EVALUATION.

At the completion of the ENE session, the evaluator will make an assessment as to the issues. Parties will then be given the option to mediate prior to the disclosure of the evaluator's assessment of the case. Should parties be unable to reach an agreement through mediation, the parties will have the option to receive the evaluation. Parties may either accept or reject this evaluation. Parties always have the option to continue with mediation after the evaluation is given.

RULE 22. EVALUATION OF ADR PROGRAM.

The ADR Program Director will provide to the Georgia Office of Dispute Resolution information which will allow an evaluation of the program. This information will be provided on an on-going basis. The model for this evaluation will be provided by the Georgia Office of Dispute Resolution. 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 ADR session or by means of an exit survey. The ADR Program will also conduct on-going evaluations of the neutrals registered with this office.

This document supersedes any Sixth Judicial Sixth Judicial District Alternative Dispute Resolution Program Rules and Procedures prior to November 3, 2021.



Honorable W. Fletcher Sams
Chairperson, 6th Judicial District ADR Program

Date: 9/14/21