

APPENDIX A

UNIFORM RULES FOR DISPUTE RESOLUTION PROGRAMS

The following rules apply to those courts which have elected to use the alternative dispute resolution (hereinafter referred to as ADR) processes of mediation, non-binding arbitration, case evaluation or early neutral evaluation, summary jury trial, mini trial or combinations thereof in a court-annexed or court-referred program.

1. GENERAL RULES.

1.1. The court will make information about ADR options available to all litigants.

2. REFERRAL TO ADR.

2.1. Any contested civil case, criminal case, or juvenile case may be referred to mediation by the judge to whom the case is assigned. Any contested civil case may be referred to non-binding arbitration, case evaluation or early neutral evaluation or multi-door program by the judge to whom the case is assigned. If cases are referred on a case-by-case basis, the time of referral is within the discretion of the referring judge.

2.2. Cases may be referred to an ADR process by category. If cases are referred by category, the court may provide for the timing of diversion by rule.

2.3. Courts should develop mechanisms to provide some individual review of cases sent to an ADR process. Cases shall be screened by the judge or the program to determine (1) whether the case is appropriate for the process; (2) whether the parties are able to compensate the neutral if compensation is required; and (3) whether a need for emergency relief makes referral inappropriate until the request for relief is heard by the court.

2.4. 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.

2.5. Any party to a dispute may petition the court to refer the case to mediation, non-binding arbitration, case evaluation or early neutral evaluation, summary jury trial, mini trial or some combination thereof.

2.6. Parties may be ordered to attend a mediation session, a case evaluation or early neutral evaluation conference, or a non-binding arbitration. However, the order mandating attendance must clearly state that compliance does not require settlement or acceptance of an arbitration award.

2.7. If parties in a case have submitted the matter to an approved ADR process before filing suit, the case will not be referred to a duplicative ADR process by the court. If parties are required by statute to submit a dispute to an ADR process before filing suit, the court will not require submission to a successive ADR process.

2.8. In actions brought by state agencies seeking to enjoin activities injurious to the public interest, the agency may within 10 days of service of the action make a showing to the trial court that referral to ADR would adversely affect the public interest. Upon a showing of reasonable probability of such adverse effect, the court will proceed with emergency measures provided by law. Later referral to an ADR process may be appropriate if the emergency measures do not bring the case to conclusion.

Commentary: *The Georgia Supreme Court recommends that cases be referred to ADR processes on a case by case basis. The indiscriminate use of ADR processes may result in increased obstacles for litigants and in further expense, overcrowding, and delay. However,*

courts may find it convenient to refer cases by category. The Georgia Supreme Court strongly recommends that if cases are referred by category, some appropriate review procedure be established. The timing of referral should be late enough in the discovery process for the parties to have developed a realistic understanding of the strengths and weaknesses of the case and early enough to save discovery costs where possible. For example, where consistent with this premise, the time of diversion of a case selected for arbitration might be no later than the end of the six month discovery period. The time of diversion to case evaluation or early neutral evaluation and mediation might be within 60 days after the last responsive pleading. The court would retain the discretion to shorten or lengthen the time before diversion.

Although the Georgia Supreme Court believes that mandatory participation is an essential element of an effective court-annexed or court-referred ADR program, this court recommends that parties be allowed input into the referral decision wherever possible. For example, if parties or attorneys believe that mediation would be more helpful than arbitration in a specific case, this opinion should be considered by the referring court.

3. EXEMPTION FROM ADR.

3.1. Any party to a dispute may petition the court to have the case removed from mediation, non-binding arbitration, or case evaluation or early neutral evaluation.

3.2. Any party to a dispute may petition the court to refer the case to an ADR process other than the process to which it has been referred.

4. APPEARANCE AT AN ADR CONFERENCE OR HEARING.

4.1. The appearance of all parties and their attorneys is required at non-binding arbitration hearings and case evaluation or early neutral evaluation conferences. The appearance of all parties is required at mediation conferences. In every process, the presence of a representative with authority to settle without further consultation is required if the decision to settle depends upon an entity other than a party.

4.2. Failure to appear in the manner described above may subject a party to citation for contempt and to the imposition of sanctions permitted by law.

4.3. Attorneys are not required to attend mediation conferences but should be allowed and encouraged to do so. Attorneys of record should never be excluded from any process. The mediator may meet and consult privately with any party or any attorney during a mediation conference.

5. QUALIFICATIONS AND TRAINING FOR NEUTRALS.

5.1. All neutrals in a court-annexed or court-referred ADR program must be registered²⁴ by the Georgia Office of Dispute Resolution.

5.2. All neutrals should attend an orientation program on court procedures given by the court in which they will serve.

5.3. All neutrals should attend continuing education seminars. The Commission will establish the standards for continuing education of neutrals.

5.4. All neutrals must be competent.²⁵

²⁴ Appendix A was amended by the Georgia Supreme Court on December 2, 1993, to change the terminology for neutrals working in court programs from “certified” to “registered.”

²⁵ Appendix A was amended by the Georgia Supreme Court on April 28, 2002, to add the competency requirement. For this change to become part of the uniform rules of the superior, state, magistrate, probate and juvenile courts, their respective judicial councils must vote on and approve this change.

6. CONFIDENTIALITY AND IMMUNITY.

6.1. All parties in a court-annexed or court-referred ADR process are entitled to confidentiality to the extent described by the Georgia Supreme Court in the order to which these rules are appended.

6.2. Neutrals acting in a court-annexed or court-referred ADR process are entitled to immunity to the extent described by the Georgia Supreme Court in the order to which these rules are appended.

7. COMMUNICATIONS BETWEEN NEUTRALS, THE PROGRAM, AND THE COURT.

7.1. If any communication between the court and a neutral is necessary, the communication shall be in writing or through the program administrator. Copies of any written communication with the court should be given to parties and their attorneys.

7.2. Once an ADR process is underway in a given case, contact between the administrator of an 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;
- b. Communicating with the court with the consent of the parties concerning procedural action on the part of the court which might facilitate the ADR process;
- c. Communicating to the court the neutral's assessment that the case is inappropriate for that process;
- d. Communicating any request for additional time to complete the mediation, non-binding arbitration, or case evaluation or early neutral evaluation;
- e. Communicating information that the case has settled or has not settled and whether agreement has been reached as to any issues in the case;
- f. Communicating the contents of a written and executed agreement or memorandum of agreement²⁶ unless the parties agree in writing that the agreement should not be disclosed;
- g. Communicating with the consent of the parties any discovery, pending motions or action of any party which, if resolved or completed, would facilitate the possibility of settlement.

8. ENFORCEABILITY OF AGREEMENTS.

Written and executed agreements or memoranda 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.²⁷

9. SELECTION OF NEUTRALS.

9.1. Disputants outside of the court setting are always entitled to choose their own neutrals. Nothing in these rules will infringe upon the right of parties to choose any third party to assist in dispute resolution prior to filing a case with the court. However, when the parties have been referred to an ADR process by the court, the court is responsible for the integrity of the process. For this reason, neutrals in a court-annexed or court-referred ADR process will be chosen from neutrals registered by the Georgia Office of Dispute Resolution.

²⁶ Appendix A was amended by the Georgia Supreme Court on May 24, 1999, to limit communication about the contents of only written and executed agreements. For this change to become part of the uniform rules of the superior, state, magistrate, probate and juvenile courts, their respective judicial councils must vote on and approve this change.

²⁷ Appendix A was amended by the Georgia Supreme Court on May 24, 1999, to limit enforceability of agreements to only written and executed agreements. For this change to become part of the uniform rules of the superior, state, magistrate, probate and juvenile courts, their respective councils must vote on and approve this change.

9.2. If parties referred by the court to an ADR process are unable to agree upon a neutral within a reasonable time, the neutral will be selected by the court. In either event, the neutral will be selected from the roster of registered neutrals.

9.3. Any party may petition the court for the appointment of another neutral on the ground that the neutral selected by the court is disqualified because of a conflict or because the party feels that the objectivity of the neutral is in question.

9.4. A neutral registered by the Georgia Office of Dispute Resolution is registered to serve as a neutral anywhere in the state.

9.5. Nothing in these rules is intended to discourage courts from using a co-mediation model where appropriate.

10. EVALUATION.

10.1. Evaluation of the Program: Sufficient data will be collected on an ongoing basis to ensure the quality of the program. Such data will include evaluation by parties and attorneys of the ADR process as applied to their case, the performance of the neutral in the case, and ways to improve the effectiveness of the ADR program. Courts will use the data to improve the quality of programs. It is inappropriate to use data concerning settlement rate as the sole basis for program funding or program evaluation.

10.2. Evaluation of Neutrals:

- a. Courts must establish procedures to monitor the performance of neutrals on an ongoing basis. It is inappropriate to use data concerning settlement rate as the sole basis for evaluation of a neutral.
- b. Procedures should be established to remove incompetent, ineffective, or unethical neutrals from the roster. These procedures should also include reporting removal to the Georgia Office of Dispute Resolution so that registration may be reconsidered.

11. LOCAL PROGRAM RULES OF PROCEDURE FOR ADR.

Courts may present local program rules of procedure to the Georgia Commission on Dispute Resolution for approval. Approval of local program rules of procedure will be filed with the Georgia Supreme Court. Approved programs will be considered experimental pilot projects for one year under Uniform Superior Court Rule 1.2. It is the intention of the Georgia Supreme Court to work toward uniformity so that variations between programs will be eventually minimized. In order to assist lawyers and parties in discerning differences between the rules of different courts, the rules will be submitted with the following format:

1. Referral:
2. Timing of ADR processes:
3. Exemption:
4. Appointment of neutrals:
5. Qualifications of neutrals:
6. Compensation of neutrals:
7. Immunity:
8. Confidentiality:
9. Appearance:
10. Sanctions for failing to appear without good cause:
11. Communication with parties:
12. Communication with the court:
13. Completion of ADR processes: