

APPENDIX C

CHAPTER 2: ETHICS PROCEDURES⁸⁰

These Ethics Procedures describe the steps for handling questions of a neutral's fitness that involve his/her character or allegedly unethical conduct. Thus, "complaint," as used here, refers only to formal objections to a neutral's fitness that involve his/her character or allegedly unethical conduct. Questions of a neutral's fitness that do not involve character or allegedly unethical conduct will be referred to the Committee on Training and Credentials⁸¹ of the Georgia Commission on Dispute Resolution.

I. Procedure for Applicants for Registration or Renewal of Registration Who Have Been Convicted of or Pled Guilty or Nolo Contendere to a Violation of the Law, Who Have Been Disciplined by a Professional Organization, Who Have Had Professional Privileges Curtailed,⁸² and/or Who Have Relinquished Any Professional Privilege or License While Under Investigation.⁸³

A. Applicants for registration with the Georgia Office of Dispute Resolution must acknowledge the following information: (1) convictions of, guilty pleas to, or nolo contendere pleas to violations of the law, including traffic violations resulting in suspension or revocation of a driver's license and DUI offenses; (2) discipline by a professional organization; (3) curtailment of professional privileges; (4) relinquishment of any professional privilege or license while under investigation. An applicant against whom any of the above actions are pending shall likewise acknowledge this fact.

B. Upon request of the Georgia Office of Dispute Resolution, the applicant must amend his/her application to provide (1) information concerning the background of the offense which led to conviction, plea, discipline, curtailment of professional privileges and/or relinquishment of professional privilege or license; (2) information concerning the length of time which has elapsed since the conviction, plea, discipline, curtailment and/or relinquishment; (3) the age of the applicant at the time of the conviction, plea, discipline, curtailment and/or relinquishment; and (4) evidence of rehabilitation since the conviction, plea, discipline, curtailment and/or relinquishment.

C. The Georgia Office of Dispute Resolution conducts a background check on every applicant for registration or renewal of registration. If the background check reveals an arrest but no disposition, the applicant will be contacted by the Office for further information. Until there is a response from the applicant, the application will not be processed further. If there is no response from the applicant within six months of a

⁸⁰ The Ethics Procedures were made Chapter 2 of Appendix C on May 24, 1999.

⁸¹ This section was changed by the Commission effective September 20, 2000, after the Committee on Rules, Training and Credentials was split into the Committee on Rules and the Committee on Training and Credentials.

⁸² Section I was amended effective December 3, 1998, to remove references to a separate petition for registration.

⁸³ Section I was amended effective September 30, 1999, to include DUI offenses and relinquishment of professional privilege or license while under investigation. This change is reflected throughout Appendix C, Chapter 2.

request for information, the file will be closed. Any fee received beyond the \$25.00 non-refundable administrative fee will be returned to the applicant if requested. Once the Office is satisfied that no conviction followed the arrest and the case is closed, the application process will continue.

D. If an applicant for registration or renewal of registration fails to acknowledge (1) that he/she has been convicted of or pled guilty or nolo contendere to a violation of the law, including traffic violations resulting in suspension or revocation of a driver's license and DUI offenses; (2) that he/she has been disciplined by a professional organization; (3) that he/she has had his/her professional privileges curtailed; (4) that he/she has relinquished any professional privilege or license while under investigation; or (5) that any such actions are pending, the Georgia Office of Dispute Resolution has the discretion to immediately notify the applicant for registration or renewal of registration that he/she will be denied registration or renewal of registration. If currently registered, a neutral may be summarily removed from registration by the Georgia Office of Dispute Resolution under these circumstances.⁸⁴

E. The Committee on Ethics of the Georgia Commission on Dispute Resolution will identify categories of cases in which the Director of the Office of Dispute Resolution may exercise his/her discretion in permitting registration without referral to the Committee. In other cases, the applicant may be asked to appear before the Committee to discuss the information contained within the application. The Committee will make a determination as to whether the applicant should be registered or have registration renewed.

F. The hearing is private and is not open to the public. The hearing is informal, and rules of civil procedure and rules of evidence do not apply. The rules of evidence may serve as a guide for the Committee. The standard of proof is a preponderance of the evidence. The applicant may bring counsel or a support person to the hearing. Although witnesses are not generally necessary in the hearing on an application, witnesses may be presented with permission of the Committee. If the applicant fails to appear or participate in good faith, the Committee will deny the application. The record in the case will consist of the application and any correspondence or documents gathered by the Committee or the Georgia Office of Dispute Resolution in connection with the application. The Committee will record the hearing. A copy of the tape will be made available to the applicant upon request.

G. An adverse decision of the Committee on Ethics may be appealed to the full Commission within thirty days of the date of such decision. The Commission may grant a hearing to the applicant. Hearings before the Commission are private. A decision of the Commission is final.

(1) The review by the Commission is ordinarily confined to the record,⁸⁵ which will consist of the material described in Section F above and the tape of the hearing before the Committee. However, if good cause is shown before the review, the Commission

⁸⁴ Section I (D) was amended effective December 3, 1998, to allow for removal from registration of a neutral who fails to meet the reporting requirements of this section.

⁸⁵ Section I (G)(1) was amended effective December 3, 1998, to remove language stating that review by the Commission is not de novo. Similar references were removed throughout the Ethics Procedures.

may grant leave to present additional evidence. The Commission will, upon request, receive briefs and hear oral argument.

(2) The Commission will not substitute its judgment for that of the Committee in regard to the weight of the evidence or facts but may reverse or modify the original decision upon a finding that substantial rights of the appellant have been prejudiced because the Committee's findings, inferences, conclusions, or decisions are:

- (a) In violation of constitutional or statutory provisions;
- (b) Beyond the authority of the Committee in either substance or procedure;
- (c) Clearly erroneous;
- (d) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted discretion.

(3) The review will proceed as follows:

- (a) The Commission will hear an opening statement and argument from the appellant/respondent and the counsel for appellant/respondent, if there be counsel.
- (b) The Commission may hear additional evidence if good cause is shown.
- (c) The Commission may question the Committee as to the basis of its decision.
- (d) The Commission will deliberate outside the presence of the Committee and parties.

II. Procedures for Processing Complaints or Information Regarding a Neutral's Conduct or Violation of Some Professional Standard;⁸⁶ Complaints Regarding an Approved Training Program; or Complaints Regarding a Court-Connected ADR Program.

A. Receipt of Information that a Neutral (1) Has Been Convicted of or Pled Guilty or Nolo Contendere to a Violation of the Law; (2) Has Been Disciplined by a Professional Organization; (3) Has Had His/Her Professional Privileges Curtailed; (4) Has Relinquished Any Professional Privilege or License While Under Investigation; or (5) Who is a Mediator Who Does not Meet Competency Standards.⁸⁷ Upon receipt of information that a neutral has (1) been convicted of or pled guilty or nolo contendere to a violation of the law, including traffic violations resulting in suspension or revocation of a driver's license and DUI offenses; (2) been disciplined by a professional organization; (3) had his/her professional privilege curtailed; and/or (4) relinquished any professional privilege or license while under investigation, and/or who is a mediator who does not meet competency standards,⁸⁸ the Director of the

⁸⁶ Effective September 28, 1995, the Georgia Commission on Dispute Resolution promulgated Ethical Standards for Mediators. Ethical standards for other neutrals have not been developed. Therefore, disciplinary proceedings based upon alleged violation of ethical standards may be brought only against mediators. However, Appendix B to the Georgia Supreme Court Alternative Dispute Resolution Rules requires that all neutrals serving in Georgia court programs shall be of good moral character. Therefore, even in the absence of a code of ethical standards for neutrals other than mediators serving in Georgia court programs, complaints may be brought against other neutrals for conduct displaying a lack of good moral character. Further, the Committee on Ethics may conduct disciplinary proceedings and impose sanctions on the basis that a neutral has been convicted of or pled guilty or nolo contendere to a violation of the law, including traffic violations resulting in suspension or revocation of a driver's license and DUI offenses, has been disciplined by a professional organization, has had his/her professional privileges curtailed, or has relinquished any professional privileges or license while under investigation.

⁸⁷ Appendix C was amended by the Commission February 28, 2002, to provide for a competency requirement.

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Georgia Office of Dispute Resolution will begin an investigation even in the absence of a formal complaint. The procedures for considering such information will be the same as those set out below for processing complaints against neutrals.

B. Complaints: A complaint against a neutral may be made by anyone having knowledge of the subject matter of the complaint. A complaint against a court program may be made by anyone having knowledge of the subject matter of the complaint. A complaint against an approved training program or any person responsible for conducting, administering, or promoting such a training program may be made by anyone having knowledge of the subject matter of the complaint.

Complaints may be made to or referred to the Georgia Office of Dispute Resolution. A complaint need not take any particular form but shall be made in writing and signed by the complaining party. Until made in writing and signed by the complaining party, it will be considered only a grievance, and the Office will neither inform the neutral, court program or training program of the complaint, nor investigate it, nor refer it to the Ethics Committee of the Georgia Commission on Dispute Resolution.

Complaints regarding character or conduct will be handled in the first instance by the Georgia Office of Dispute Resolution and thereafter by the Committee on Ethics.

A complaint regarding a training program which is not approved by the Georgia Office of Dispute Resolution is not within the jurisdiction of the Commission. However, if such a training course is advertised as approved, the Commission will undertake appropriate action to correct the false impression that the course is approved.

C. Notice of a Formal Complaint: Once a complaint is made in writing and signed by the complaining party, it is considered a formal complaint. The Office will send the complaint to the neutral, training program, or court program by certified mail and regular mail.

D. Response: A neutral, training program, or court program will be asked to respond to the Director of the Georgia Office of Dispute Resolution (the Director) within twenty (20) days of receiving a formal complaint.

E. Preliminary Review of the Complaint: The Director will make a preliminary review of the complaint to consider whether the allegations, if true, would constitute a violation of (1) the Georgia Supreme Court's Alternative Dispute Resolution Rules; (2) the Ethical Standards for Mediators contained in Appendix C of the Supreme Court ADR Rules; (3) the requirement in Appendix B of the Supreme Court ADR Rules that "[all] neutrals serving in Georgia programs must be of good moral character"; or (4) training guidelines set forth by the Georgia Commission on Dispute Resolution. Complaints that do not rise to that level of seriousness will not be forwarded to the Ethics Committee. The Director will, however, report all formal complaints to the Chair of the Committee, who may determine that the complaint should be reviewed by the Committee.

F. Investigation: The Director will make an initial inquiry into the complaint by telephone conversation with the complainant, the neutral, other parties to the mediation,

the program director, or the director of the training program, and any other person whose observations may be relevant to the complaint.

G. Director’s Discretion to Conduct Facilitated Meeting: If the Director concludes that the complaint has arisen primarily from a misunderstanding that might be addressed in a facilitated meeting between the parties, she has the discretion to invite the necessary participants to such a meeting. If the Director concludes that the complaint does not rise to that level of seriousness required for Committee review as described in Section E above, she has the discretion to invite the necessary participants to such a meeting.

H. Suspension of a Neutral or Training Program Pending Hearing: Upon receipt of sufficient evidence demonstrating that conduct complained of poses a threat of harm to parties in mediation or to the public, the Georgia Office of Dispute Resolution or the Committee on Ethics may petition the Georgia Commission on Dispute Resolution for suspension of a neutral or training program pending disciplinary proceedings predicated upon the conduct causing such complaint.

I. Right to Hearing: A neutral, program director or training program director against whom a complaint is lodged (the respondent) has the right to a hearing before the Committee on Ethics. The respondent will receive a letter from the Chair of the Committee on Ethics advising him or her as to the time and place of the hearing. The respondent will also be advised in the letter of any information that would assist him or her in preparing for the hearing. The respondent has a right to review at the Office of Dispute Resolution in advance of the hearing any relevant written material submitted to the Committee by any person. With the approval of the Director, copies of relevant documents and evidence may be mailed to a requesting party. This in no way limits the right of the complainant or the respondent to submit additional written material or to call witnesses at the hearing before the Committee.

J. The Hearing: The hearing is private and is not open to the public. The hearing is informal, and rules of civil procedure and rules of evidence do not apply. The rules of evidence may serve as a guide for the Committee. The standard of proof is a preponderance of the evidence. The neutral and the complainant may bring counsel or a support person to the hearing.⁸⁹ Testimony may be made by telephone, if good cause is shown to the Committee. The Committee may elect to sequester witnesses, if appropriate. Witnesses may be subpoenaed by the Committee as in civil cases in state courts of record. Witnesses will be entitled to receive the fees and mileage provided by law for witnesses in civil cases. If any witness so subpoenaed fails to appear, the Commission may apply to the superior court of the county where the matter is being heard for an order requiring obedience. Failure to comply with such order shall be cause for punishment as for contempt of court.⁹⁰ If any party fails to appear or to participate in good faith, the Committee may proceed on the evidence before it. If the complainant fails to appear, the Committee may dismiss the complaint for want of prosecution. The

⁸⁹ Section II (J) was amended effective December 3, 1998, to remove language that allowed the neutral and complainant to bring “another advocate” besides legal counsel.

⁹⁰ The Georgia Supreme Court granted the Commission subpoena power on May 24, 1999. Section II (J) was amended effective 5/24/99 to establish procedures to subpoena witnesses and to punish those who fail to comply with the subpoena.

record of any contested case will include the complaint, the response, and all correspondence.⁹¹ The Committee will record the hearing. A copy of the tape will be made available to the respondent upon request.

K. In the Event That the Committee Finds That:

(1) a neutral has violated (a) the Ethical Standards for Mediators contained in Appendix C of the Supreme Court ADR Rules or (b) the requirement in Appendix B of the Supreme Court ADR Rules that “[all] neutrals serving in Georgia programs must be of good moral character,” or that

(2) a neutral has been convicted of or pled guilty or nolo contendere to a violation of the law, including traffic violations resulting in suspension or revocation of a driver’s license and DUI offenses; has been disciplined by a professional organization; had his/her professional privileges curtailed; has relinquished any professional privilege or license while under investigation, for behavior which would constitute a violation of (a) the Ethical Standards for Mediators contained in Appendix C of the Supreme Court ADR Rules or (b) the requirement in Appendix B of the Supreme Court ADR Rules that “[all] neutrals serving in Georgia programs must be of good moral character,” or that

(3) a training program is in violation of guidelines promulgated by the Georgia Commission on Dispute Resolution,

the Committee may impose sanctions.⁹²

L. Sanctions: Unless the conduct complained of involves moral turpitude, is potentially injurious to the public, involves gross incompetence, or has been the subject of repeated complaints, education and mentoring requirements may be imposed as sanctions. Where there are repeated complaints, gross incompetence, or conduct which rises to the level of moral turpitude or is potentially injurious to the public, removal from registration would be appropriate.

The Committee may recommend imposition of one or more appropriate sanctions upon the neutral, including the following:

- (a) Additional training
- (b) Restriction of types of cases to be mediated in the future
- (c) Continuing education
- (d) Mentoring by an experienced mediator/mentor
- (e) Suspension for a specified term
- (f) Removal from registration

Failure of a respondent to comply with sanctions imposed by the Committee may result in removal from registration.⁹³ Where a complaint against a court program or training

⁹¹ Section II (J) was amended effective December 3, 1998, to indicate that the record of any contested case will include the response, but not a summary of oral testimony. It was also amended to remove language that permitted any party to record a hearing.

⁹² Section II (K) was amended effective December 3, 1998, to remove language stating that the Committee will make findings of fact and conclusions of law.

program is found to be meritorious, sanctions may range from technical assistance and mentoring to removal of approval.

M. The Decision of the Committee on Ethics: The Committee will make written findings which will inform the neutral, director of training program, or ADR program and the Georgia Commission on Dispute Resolution (the Commission) of the basis of its decision. In lieu of a decision, the Committee may elect to issue an advisory opinion.

N. Review of a Decision of the Committee on Ethics:

(1) A respondent may appeal an adverse decision of the Committee to the full Commission within thirty (30) days of the date of such decision. The Commission may grant a hearing to the appellant/respondent. Hearings before the Commission are private.⁹⁴ A decision of the Commission is final.

(2) The review by the Commission is ordinarily confined to the record, which will consist of correspondence between the parties and the Georgia Office of Dispute Resolution, any evidence considered by the Committee, and the recording of the hearing before the Committee. However, if good cause is shown before the review, the Commission may grant leave to present additional evidence. The Commission will, upon request, receive briefs and hear oral argument. Witnesses may be subpoenaed by the Commission as in civil cases in state courts of record. Witnesses will be entitled to receive the fees and mileage provided for by law for witnesses in civil cases. If any witness so subpoenaed fails to appear, the Commission may apply to the superior court of the county where the matter is being heard for an order requiring obedience. Failure to comply with such order shall be cause for punishment as for contempt of court.⁹⁵

(3) The Commission will not substitute its judgment for that of the Committee in regard to the weight of the evidence or facts but may reverse or modify the original decision upon a finding that substantial rights of the appellant have been prejudiced because the Committee's findings, inferences, conclusions, or decision are:

- (a) In violation of constitutional or statutory provisions;
- (b) Beyond the authority of the Committee in either substance or procedure;
- (c) Clearly erroneous;
- (d) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted discretion.

(4) The review will proceed as follows:

- (a) The Commission will hear an opening statement and argument from the appellant/respondent and the counsel for appellant/respondent, if there be counsel.

⁹³ Section II (L) was amended effective December 3, 1998, to add this sentence.

⁹⁴ Section II (N) was amended effective December 3, 1998, to make hearings before the Commission private and not open to the public.

⁹⁵ The Georgia Supreme Court granted the Commission subpoena power on May 24, 1999. Section II(N)(2) was amended effective May 24, 1999, to establish procedures to subpoena witnesses and to punish those who fail to comply with the subpoena.

- (b) The Commission may hear a statement from the complainant and may hear additional evidence if good cause is shown.⁹⁶
- (c) The Commission may question the Committee as to the basis of its decision.
- (d) The Commission will deliberate outside the presence of the Committee and parties.

III. Confidentiality.

- A.** A mere grievance will be kept confidential.

- B.** The Director will make a preliminary review of a formal complaint against a neutral to consider whether the allegations, if true, would constitute a violation of either (1) the Ethical Standards for Mediators contained in Appendix C of the Supreme Court ADR Rules, or (2) the requirement in Appendix B of the Supreme Court ADR Rules that “[all] neutrals serving in Georgia programs must be of good moral character.” Complaints that do not rise to that level of seriousness will not be forwarded to the Committee on Ethics and will remain confidential except that the Director will report all formal complaints to the Chair of the Committee, who may determine that the complaint should be reviewed by the Committee.

- C.** Once a complaint is forwarded to the Committee on Ethics, the existence of the complaint is no longer confidential. After a complaint has been forwarded to the Committee on Ethics, the Office of Dispute Resolution will accept inquiries about the existence of a complaint but will not make available the complaint or response of the neutral until after an opinion is rendered by the Committee on Ethics.

- D.** If a neutral is suspended from the registry of neutrals (before or after a final opinion of the Committee on Ethics) or is removed from the registry of neutrals after a final opinion of the Committee on Ethics, the Office of Dispute Resolution will disseminate this information to program directors throughout the state.

- E.** If a training program is suspended or permanently removed from the list of approved training programs, the Office of Dispute Resolution will remove that program from the list of approved training programs disseminated in response to inquiries concerning training.

- F.** Once a final opinion is rendered in regard to a complaint, the complaint, response, and opinion will be treated as a matter of public record. A synopsis of the case may be published in the Office of Dispute Resolution’s *Symposium*. The name of the neutral will not be included in the synopsis.

- G.** The confidentiality of a mediation, arbitration, or case evaluation session is deemed waived by the parties to the extent necessary to allow the complainant to fully present his/her case and to allow the neutral to fully respond to the complaint. The waiver relates only to information necessary to deal with the complaint. The Commission, the Committee, and the Office will be sensitive to the need to protect the privacy of all

⁹⁶ Section II (N)(4)(b) was amended effective December 3, 1998, to change “The Commission will hear” to “The Commission may hear” and to allow the Commission to hear additional evidence if good cause is shown.

parties to an ADR process to the fullest extent possible commensurate with fairness to the neutral and protection of the public.⁹⁷

H. Information concerning procedures intended to remain confidential, such as a private letter of reprimand in lawyer discipline, will be kept confidential. Neutrals or applicants for registration or renewal of registration who have received private professional discipline will be asked to sign a release so that the surrounding circumstances can be reviewed. This information, as well as information obtained through a criminal background check, will be used only to determine an individual's eligibility for registration or continued registration.⁹⁸

I. Hearings before the Committee and the Commission are private. Any statement made during an ethics hearing before the Committee or the Commission or as part of investigation by the Georgia Office of Dispute Resolution in preparation for a hearing is confidential, not subject to disclosure, and may not be used as evidence in any subsequent administrative or judicial proceeding. Members of the Committee, the Commission, and staff of the Georgia Office of Dispute Resolution may not be subpoenaed or otherwise required to testify concerning an ethics investigation or hearing. Notes and records of members of the Committee, the Commission, or the staff of the Georgia Office of Dispute Resolution are not subject to discovery to the extent that such notes or records pertain to investigation or hearing of an ethical complaint. Documents considered by the Committee, the Commission, and the Office in connection with any ethical proceeding concerning a registered neutral or applicant for registration or renewal of registration may not be subpoenaed from the Committee, the Commission, or the Office. The recording made of the hearing before the Committee is for the benefit of the Committee, the Commission, and the respondent or applicant for registration or renewal of registration and is not available for any other purpose.⁹⁹

IV Immunity.¹⁰⁰

No member of the Committee on Ethics, the Georgia Commission on Dispute Resolution, the staff of the Georgia Office of Dispute Resolution, or individual reporting to or testifying before the Committee, Commission, or Office will be held liable for civil damages for any statement, action, omission or decision made in the course of any investigation or hearing of an ethics matter unless that statement, action, omission or decision is grossly negligent and made with malice.

⁹⁷ Georgia Supreme Court Alternative Dispute Resolution Rule VII.

⁹⁸ Section III (H) was added, pursuant to approval by the Georgia Supreme Court, on May 24, 1999.

⁹⁹ Section III (I) was added, pursuant to approval by the Georgia Supreme Court, on May 24, 1999.

¹⁰⁰ Section IV was added, pursuant to approval by the Georgia Supreme Court, on May 24, 1999.