

AMENDED
CORDELE JUDICIAL CIRCUIT MEDIATION RULES

GENERAL POLICY

The rules contained in this amended program are effective March 1, 2008.

By policy, all contested civil or domestic relations cases in the Superior Courts of the Cordele Judicial Circuit will be referred to alternative dispute resolution procedures, unless they are specifically exempted by the program rules contained in Rule 1, or by special action approved by the presiding judge. Civil cases may also be referred to mediation from the Magistrate and Probate Courts of the Cordele Judicial Circuit at the discretion of the appropriate judge. Cases referred to mediation from the Magistrate and Probate Courts will not be subject to the timing requirements of Superior Court cases.

DEFINITIONS:

Mediation. Mediation is 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 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.

Mediator. The Georgia Office of Dispute Resolution maintains a list of persons trained in various categories for mediation. Parties may select a mediator from that list if ordered to mediation by the Cordele Judicial Circuit. If the mediator is not also a program mediator, the parties will be responsible for negotiating the fee arrangement, time and location for the mediation. Parties are responsible for all fees.

Program Mediator. A program mediator is trained in specific categories and the procedures of the Cordele Judicial Circuit. A program mediator may mediate cases for which s/he is trained and registered with the Georgia Office of Dispute Resolution. If used in a Cordele Judicial Circuit case referred to mediation, the mediation program will pay the mediator for the first three hours.

RULE 1. REFERRAL TO MEDIATION

(a) Except as hereinafter provided, any contested civil or domestic matter case that is still pending one hundred and fifty (150) days after the original complaint is filed shall be referred to mediation. Parties may be ordered to appear for a mediation conference. Compliance does not require that the parties reach a settlement. Cases shall be reviewed by the judge or the mediation office to determine if the case is appropriate for mediation.

(b) Cases may, in the discretion of the court, be referred to mediation prior to the mandatory 150 day time period. The parties or the attorneys may also request the court to have their case referred to mediation. A court "ORDER" referring the case to mediation shall be executed by the presiding judge. The director of the mediation office shall be responsible for serving, by mail, a copy of the order on the parties and/or counsel of record.

(c) Cases in which there are allegations of domestic violence will be screened to determine if the case may be mediated.

(1) Criminal cases that involve domestic violence will not be referred to mediation from any court.

(2) All domestic relations cases will be screened for domestic violence allegations through intensive intake. Those domestic relations cases referred to mediation directly from the bench are also subject to the domestic violence screening process. Intake procedures are designed to identify cases in which there are allegations of domestic violence and to provide a process by which a party alleging violence will make a decision based on informed consent whether or not to proceed with mediation.

(3) Detailed domestic violence screening protocols implementing the Commission on Dispute Resolution's "Guidelines for Mediation in Cases Involving Issues of Domestic Violence" is attached hereto and incorporated in these rules.

(4) Staff who conduct screening for domestic violence allegations must be trained mediators who have had specialized domestic violence mediation training.

(5) Only mediators who are registered with the Georgia Office of Dispute Resolution in the category of specialized domestic violence mediation will serve in cases involving domestic violence allegations. If such allegations arise for the first time during a mediation session, a mediator who is not registered in the specialized domestic violence category must conclude the mediation and send the case back to the court. In concluding the mediation, the mediator should take precautions to guard the safety of all individuals involved in the mediation.

(6) No case involving allegations of domestic violence will be sent to mediation without the informed consent of the alleging party given after a thorough explanation of the mediation process and discussion of the circumstances of the case.

(d) Previous Participation in Mediation. If the parties have submitted the dispute to mediation prior to filing suit, the court will not require that the parties submit the case to mediation a second time.

(e) Request for Mediation. Any party to a dispute may request that the court refer the case to mediation.

(f) Effect of Referral upon Progress of the Case. The scheduling of a case for a mediation conference shall not remove the case from assignment to a judge, interfere with discovery, nor serve to postpone scheduled motions before the court. The court may refer the matter to mediation before any hearings before the court.

(g) Interim or Emergency Relief. A party may apply to the court for interim or emergency relief at any time. Mediation shall continue while such a motion is pending absent a contrary order of the court or a decision of the mediator to adjourn pending disposition of the motion.

(h) 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.

(i) The court may impose a users' fee upon any party participating in mediation who has not paid a filing fee surcharge at the time the action was filed.

RULE 2. TIMING OF ADR PROCESSES

(a) Within ten calendar days after the order is received by the parties/attorneys, they shall notify the mediation office of the mediator mutually agreed upon as well as their preferred dates for mediation. The mediator shall be selected from among the neutrals registered by the Georgia Office of Dispute Resolution in the appropriate category. Absent agreement by the parties on the selection of the mediator, or if the selected mediator is not available, the process shall follow as provided for by paragraph (a) (4) of Rule 4.

(b) Within five days after the parties have notified the mediation office of the selected neutral, the director shall contact them and inform them of the date, time and place of the scheduled mediation session.

(c) Unless otherwise ordered by the court, the mediation session shall be held within 45 calendar days after the parties have been notified of the date, time, and place of the session.

RULE 3: EXEMPTION/EXCLUSION OF CASES FROM MEDIATION.

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

- (1) The issue to be considered has been previously mediated;
- (2) The issue presents a question of law only;
- (3) Other good cause is shown before the judge to whom the case is assigned; or
- (4) The issues have been referred by consent order of court to a private provider of mediation services.

(b) The following actions generally shall not be referred to mediation:

- (1) Appeals from rulings of administrative agencies
- (2) URESA (Uniform Reciprocal Enforcement of Support Act) actions
- (3) Habeas corpus and extraordinary writs
- (4) Garnishments
- (5) Domestic Pro Se
- (6) Child Custody
- (7) Condemnations
- (8) Declaratory Judgments
- (9) Mandamus
- (10) Contempt
- (11) Bond validations
- (12) Forfeiture of seized property

RULE 4. APPOINTMENT OF THE MEDIATOR.

(a) The parties shall agree upon a mediator from the list of mediators registered by the Georgia Office of Dispute Resolution.

(1) After a case is filed, parties are free to choose their own mediator and negotiate a fee with that neutral before a case is ordered to an ADR process; however, the confidentiality and immunity protections of the Georgia Supreme Court ADR Rules do not apply in the absence of a court order referring the case to mediation.

(2) Once the case is ordered to an ADR process, parties are still allowed to choose their own neutral and proceed under that neutral's fee or negotiate a fee with that neutral provided the neutral chosen is registered with the Georgia Office of Dispute Resolution in the appropriate category.

(3) Where possible, parties should be allowed input into the choice of a mediator.

(4) Should the parties fail to agree upon a mediator, the court or mediation director will appoint a mediator from the list of mediators qualified for service in the program (program mediator) and may set the fee. The court will not order the parties to mediation with any private individual or entity without consent of the parties.

(b) Disqualification of a Mediator. Any party may move to enter an order disqualifying a mediator for good cause. If the court rules that a mediator is disqualified from hearing a case, an order shall be entered setting forth a qualified replacement from the list of certified mediators in the mediation office. The motion disqualifying the mediator shall be presented to the mediation office which shall present the motion to the judge to whom the case is assigned.

RULE 5. MEDIATOR QUALIFICATIONS FOR SERVICE IN THE PROGRAM.

The qualifications and training for service as a mediator in the program shall not be less than the minimum qualifications set out in Appendix B of the Supreme Court Rules for Alternative Dispute Resolution Programs. Appropriate use of non-lawyer mediators is encouraged. The mediators must be registered by the Georgia Office of Dispute Resolution in the appropriate category. The program will maintain a roster of mediators chosen for service in the program. Mediators serving in the program will be evaluated by the program on an ongoing basis.

RULE 6: COMPENSATION FOR MEDIATORS.

(a) Parties may choose to select a mediator from the list of Registered Neutrals maintained by the Georgia Office of Dispute Resolution that is not a program mediator. In such a case, the parties negotiate the fee for the service with the selected mediator.

(b) If a program mediator is selected, the Cordele Judicial Circuit pays for the first three hours of mediation, per case. Parties are responsible for payment of mediators beyond three hours. Fee schedules are shown on the Program Mediator Roster. Parties should agree, before the mediation session, on how the mediator will be paid for time beyond three hours. It is recommended that parties share the expense. Payment will be made at the end of the mediation session.

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

(d) Before being placed on the program roster, a mediator must agree to provide pro bono hours and hours at reduced rates to defray mediation costs for parties with limited ability to pay.

RULE 7. CONFIDENTIALITY AND IMMUNITY.

(a) The Extent of Confidentiality:

Any statement made during a mediation or as part of intake by program staff in preparation for a mediation is confidential, not subject to disclosure, may not be disclosed by the mediator or program staff, and may not be used as evidence in any subsequent administrative or judicial proceeding. A written and executed agreement or memorandum of agreement resulting from a court-annexed or court-referred mediation is not subject to the confidentiality described above.

Any document or other evidence generated in connection with a court-referred mediation is not subject to discovery. A written and executed agreement or memorandum of agreement resulting from a court-referred mediation is discoverable unless the parties agree otherwise in writing. Otherwise discoverable material is not rendered immune from discovery by use in a mediation.

Neither a mediator nor any observer present with permission of the parties in a court-referred mediation may be subpoenaed or otherwise required to testify concerning a mediation in any subsequent administrative or judicial proceeding. A neutral's notes or records are not subject to discovery. Notes and records of a court mediation 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 mediator or a Mediation Program and arising out of a mediation process. Documents or communications relevant to such claims or complaints may be revealed only to the extent necessary to protect the mediator or the program.

Nothing in the above rule negates any statutory duty of a mediator 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 mediator in a court-referred program shall be held liable for civil damages for any statement, action, omission or decision made in the course of any mediation unless that statement, action, omission or decision is:

- (1) grossly negligent and made with malice or,
- (2) is in willful disregard of the safety or property of any party to the process.

RULE 8. APPEARANCE.

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

(a) The party and/or

- (1) The party's representative who has
 - (i) full authority to settle without further consultation, and
 - (ii) a full understanding of the dispute and full knowledge of the facts;

(2) A representative of the insurance carrier for any insured party if that representative has full authority to settle without further consultation, except that telephone consultations with persons immediately available are permitted.

(b) Attorneys are not required to attend mediation conferences but may not ever be excluded by the court or the mediator.

RULE 9. SANCTIONS FOR FAILURE TO APPEAR.

If a party fails to appear at a duly noticed mediation conference without good cause, the mediation director shall notify the judge to whom the case is assigned. The judge may find the party in contempt and impose appropriate sanctions.

RULE 10. COMMUNICATION WITH PARTIES.

The only ex parte communication between a party and the mediator outside of the mediation conference shall be for the purposes of verifying appointment times and locations or answering questions about the mediation process and procedures. The mediator may meet privately with any party or any attorney during the mediation conference.

RULE 11. COMMUNICATION WITH THE COURT.

(a) In order to preserve the objectivity of the court and the neutrality of the mediator, there should be no communication between the mediator and the court. If any communication between the court and a mediator is necessary, the communication shall be in writing or through the program director. Copies of any written communication with the court should be given to parties and their attorneys.

(b) Once a mediation is underway in a given case, contact between the mediation director and the court concerning that case should be limited to:

- (1) Communicating with the court about the failure of a party to attend;
- (2) Communicating with the court with the consent of the parties concerning procedural action on the part of the court which might facilitate the mediation;
- (3) Communicating to the court the mediator's assessment that the case is inappropriate for that process;
- (4) Communicating any request for additional time to complete the mediation;
- (5) Communicating information that the case has settled or has not settled and whether agreement has been reached as to any issues in the case;
- (6) Communicating the contents of an agreement unless the parties agree in writing that the agreement should not be disclosed;
- (7) Communicating with the consent of the parties information concerning any discovery, pending motions or action of any party which, if resolved or completed, would facilitate the possibility of settlement.

RULE 12. COMPLETION OF MEDIATION.

(a) Mediation shall be completed within 60 days of the order referring the matter to mediation unless extended by order of the court. The motion asking for extension of the mediation shall be submitted to the Mediation Director, who shall present the motion to the judge to whom the case is assigned.

(b) Length of Mediation. The duration of the mediation conference is generally two or three hours. However, the conference may be shorter or longer depending upon the assessment of progress by the mediator and the parties.

(c) The mediator may adjourn the mediation conference at any time and may set times for reconvening the adjourned conference notwithstanding Rule 2 (c). No further notification is required for parties present at the adjourned conference.

(d) Agreement. If an agreement is reached, it shall be reduced to writing. If possible, the agreement should be reduced to writing at the end of the mediation conference. In the event that the agreement cannot be reduced to writing at the end of the mediation conference, it should be reduced to writing within 3 calendar days after the mediation. It is the mediator's responsibility to draw the agreement unless all parties determine otherwise.

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

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

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

(f) If the parties do not reach an agreement as to any matter as a result of mediation, the mediator shall report the lack of an agreement to the Mediation Director. The Mediation Director shall notify the judge to whom the case was assigned of the lack of an agreement. With the consent of the parties, the mediator's report may also identify any pending notices or outstanding legal issues, discovery processes, or other action by any party which, if resolved or completed, would facilitate the possibility of a settlement.

RULE 13. EVALUATION.

The mediation 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 ongoing 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 mediation or by means of an exit survey.