

IN THE SUPERIOR COURT OF CLAYTON COUNTY  
STATE OF GEORGIA

STANDING ORDER OF CLAYTON COUNTY JUDICIAL CIRCUIT  
UNDER O.C.G.A. §19-5-1 AND §15-23-1, ET SEQ.

RE: COURT ANNEXED MEDIATION

Pursuant to the inherent powers of the Court. Uniform Superior Court Rule 1.2 and Department of Transportation v. City of Atlanta, et al., 259 Ga. 305 and in order provide for the fair, efficient, and expeditious resolution of disputes

IT IS HEREBY ORDERED AS FOLLOWS:

THAT all parties in all civil actions, including but not limited to domestic relations actions as described and defined by Uniform Superior Court Rule 24.1 filed on or after May 1, 1996 and subject to referral to mediation.

THAT parties in every contested domestic matter shall be referred to mediation unless otherwise ordered by the assigned Judge. All parties shall have the financial affidavit, child support worksheets and parenting plans, where applicable, as required by the Uniform Superior Court Rules present at the scheduled mediation and are directed to negotiate in good faith throughout the mediation process, See Exhibit "A" which describes the mediation procedure and other rules applicable thereto and which is attached hereto and incorporated hereby by express reference.

THAT all parties in any contested civil matter may be referred to mediation and are directed to negotiate in good faith in connection therewith.

THAT upon a party's failure to engage in the mediation process in good faith pursuant to the rule, the assigned judge may take appropriate action, including but not limited to actions for contempt.

THAT for good cause shown, the assigned judge may waive the requirement of completion of this program in individual cases.

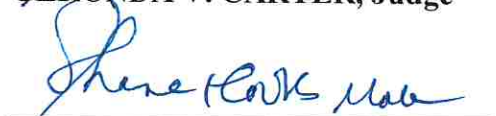
SO ORDERED this 11<sup>th</sup> day of January, 2023.

  
ROBERT L. MACK, JR., Chief Judge

  
AARON B. MASON, Judge

  
JEWEL C. SCOTT, Judge

  
GERONDA V. CARTER, Judge

  
SHANA ROOKS MALONE, Judge

**CLAYTON JUDICIAL CIRCUIT ALTERNATIVE DISPUTE RESOLUTION RULES  
(AS AMENDED 11/2/22)**

This alternative dispute resolution rule applies to all Superior, State, Probate, Magistrate, and Juvenile Courts of the Clayton Judicial Circuit.

**GENERAL POLICY:**

The court will make information about alternative dispute resolution (ADR) options available to all litigants. Mediation will be conducted through the circuit's dispute resolution office. All other types of alternative dispute resolution (ie. arbitration, case evaluation) will be referred by the ADR Director to private alternative dispute resolution providers.

**DEFINITIONS:**

**Court Program.** The term "court program" encompasses the terms "court-connected," "court-annexed," or "court-referred" when used to refer to a court ADR program.

**Mediator.** The term "mediator" refers to an impartial person who facilitates discussions and dispute resolution between disputants in mediation.

**Mediation.** Mediation is a process in which a neutral facilitates settlement discussions between parties. The neutral has no authority to make a decision or impose a settlement upon the parties. Settlement shall be attempted based upon the needs and interests of the parties rather than upon rights and positions. Although in 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 rights to a jury trial.

**RULE 1. Referral to Mediation**

(a) Except as hereinafter provided, every contested domestic matter shall be referred to the dispute resolution office of the circuit for mediation before being placed on a trial calendar, unless otherwise ordered by the judge to whom the particular case is assigned.

(b) Except as hereinafter provided, any contested civil matter may be referred to the dispute resolution office of the circuit for mediation in the Superior, State, Probate, and Magistrate Courts.

(c) Except as hereinafter provided, any matter in the Juvenile Court may be referred to the dispute resolution office of the circuit.

(d) Compliance with an order to appear for mediation does not require that the parties reach a settlement. All cases shall be screened on a case by case basis by the judge or the dispute resolution office to determine:

(1) Whether the case is appropriate for mediation;

Exhibit "A"

(2) Whether the parties are able to compensate the mediator if compensation is required (parties may request a fee waiver application at least 48 business hours prior to the scheduled mediation);

(3) Whether a need for emergency relief makes referral inappropriate until the request for relief is heard by the court;

(e) All domestic relations cases shall be screened to determine whether the mediation can be done safely and free from coercion as outlined in Appendix D of the Supreme Court Alternative Resolution Rules, attached herein. No case involving issues of domestic violence will be deemed appropriate for mediation without consultation with the at-risk party and provided safeguards are in place. These will include consultation with the at-risk party as to the process of dispute resolution allowing that party to make an informed decision and that the mediation session will be conducted by a mediator with advanced training in specialized domestic violence, with the presence of security outside of all mediation sessions. Sensitive information, such as the parties' places of residence, will be protected and information obtained by the ADR staff in any screening process for domestic violence will not be communicated to the court except to qualify the case as not appropriate for mediation. (See DV Rules within Appendix D of the Supreme Court of ADR Rules, attached herein)

Additional precautions may include:

i) requiring one party to arrive fifteen to thirty minutes before the other, providing a separate room or zoom room for each party and ending the session fifteen to thirty minutes early for one party,

ii) conducting the mediation entirely in caucus;

iii) allowing the at-risk party to have an advocate available for the entire session.

(f) Request for Mediation. Any party to a civil dispute may request that the court refer the case to mediation or request that a matter referred to mediation should be referred to another ADR process. The request for referral should be made to the judge assigned to the case.

(g) Effect of Referral upon Progress of the Case. The scheduling of a case for 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.

(h) Interim or Emergency Relief. A party may apply to the court for interim or emergency relief at any time. Mediation shall continue while such motion is pending absent a contrary order of the court or a decision of the mediator to adjourn pending disposition of the motion. Time for completing mediation shall be tolled during any periods where mediation is interrupted pending resolution of such a motion.

(i) In actions brought by state agencies seeking to enjoin activities injurious to the public interest, the agency may within ten (10) days of service of the action make a showing to the trial court of the injurious activity and the alleged adverse effect. 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 a conclusion.

(j) Except for domestic cases, the judge referring a case will enter an order referring the case to mediation. The original order will be filed with the clerk of court with copies sent to all attorneys of record and the dispute resolution office.

## **RULE 2. Timing of Referral to Mediation**

(a) For all domestic cases, the Clerk will inform the party/attorney of the mediation rule at the time of filing and provide a notice of the requirements. Before entering a domestic case on a contested calendar, the party/attorney will be required to present a "Release" document from the ADR office, confirming completion of the mediation requirement.

(b) Unless otherwise ordered by the Court, plaintiff shall contact the ADR office 31 days after defendant has been served, or upon the defendant filing an answer, whichever event comes first, in order to initiate setting the mediation session, as required by the standing order for domestic cases. Initiating the mediation session with the ADR staff is technically the plaintiff's responsibility. However, the Defendant, upon filing an answer and counterclaim, may also contact the ADR staff to initiate the scheduling of mediation. If either party fails to initiate scheduling mediation, the ADR staff may do so, in order to assist in moving the case along, as per the standing order.

(c) For all other cases, the timing of referral will be determined on a case by case basis and set forth in the order of referral. All mediation sessions will be concluded prior to the final hearing or trial date.

## **RULE 3. Exemption or Exclusion of Cases from Mediation**

(a) Any party to a dispute may petition the court to have the party's case removed from an ADR process if any of the following apply:

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

(b) 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, attached herein.

(c) The following actions shall not be referred to mediation except upon petition of all parties or upon order of the court:

- (1) Appeals from rulings of administrative agencies;
- (2) Forfeitures of seized property;
- (3) Habeas corpus and extraordinary writs;

- (4) Bond validations;
- (5) Declaratory relief;
- (6) Uniform Interstate Family Support Act (UIFSA) actions;
- (7) Injunctive Relief.

**Rule 4. Appointment of the Mediator.**

(a) If the parties cannot agree on a GODR registered neutral from the Clayton County Mediator roster, within 10 calendar days of either party initiating the scheduling of mediation, one will be assigned by the mediation program Director or ADR Case Manager from the Clayton County approved mediator roster at the assigned fee rate.

(b) Within 10 calendar days of initiating the scheduling of the mediation session, the parties may file a motion to the assigned judge for approval to use a mediator, who has not completed the requirements for approval as a mediator on the Clayton County approved mediator roster, or for a change in appointment of a neutral if a conflict is cited, a neutral's objectivity is questioned, or for other good cause shown. The petition shall be heard by the judge to whom the case is assigned.

**RULE 5. Scheduling and Rescheduling.**

(a) For domestic cases, the parties will contact the ADR office 31 days from the date the defendant is served to initiate setting the mediation, or upon the defendant filing an answer, whichever occurs first.

(b) Upon receipt of the referral order in all other cases, the parties will follow the terms of the order as to the time allotted to contact the ADR office to initiate scheduling the mediation.

(c) If the plaintiff fails to initiate the scheduling of the mediation, the dispute resolution staff can proceed to schedule the session. The session must be scheduled prior to any scheduled hearing, unless otherwise ordered by the Judge assigned to the case.

(d) If the parties cannot agree on a mediator within ten calendar days from the time of initiating the scheduling of the mediation, the ADR staff will assign a mediator, setting the date, time and place for the session and informing the parties of the assignment.

(e) Once a mediation is scheduled, no unilateral rescheduling is permitted. The party requesting a rescheduling must obtain consent from the opposing party or present a court conflict letter and must notify the ADR staff and the mediator, in writing (ie. Email or regular mail), and it must be received at least 48 business hours prior to the scheduled date and time of the mediation.

(f) Mediation must take place within 45 days of the day an Answer is due and must be completed within 55 days or before the case is scheduled on a Court Calendar.

**RULE 6. Qualification of Neutrals.**

(a) All neutrals are required to be registered with the Georgia Office of Dispute Resolution for each category the neutral is seeking to be registered in. (ie. General Civil, Domestic, Specialized Domestic Violence, Juvenile, etc.)

(b) All neutrals will attend an orientation session/meeting with the ADR Director, upon being added to the Clayton County mediator roster.

(c) In order to be placed on the Clayton County mediator roster, the applicant must be approved by the Clayton County ADR Director and then the mediator must meet the following requirements: 1. observe a mediation in each category (general civil, domestic, probate, juvenile) the neutral seeks to qualify in. 2. Co-mediate 2 mediations in each category the neutral seeks to qualify in. 3. Be observed by the ADR Director conducting a solo mediation in each category the neutral seeks to qualify in. 4. All observations, co-mediations, and solo mediations must be done in person.

(d) All neutrals will attend continuing education seminars as prescribed by the Georgia Office of Dispute Resolution.

**RULE 7. Compensation of Mediators.**

(a) For all cases in Superior, State, Magistrate, and Probate Court, the Mediators will be compensated as follows:

(1) Mediators will be compensated by the parties, each party being responsible for half of the neutral's fees, except that in the case in which there are more than two parties, the payment shall be borne equally among the parties unless otherwise assigned by the neutral. Neutrals shall set hourly fees to be approved by the mediation ADR Director. The neutrals' fees shall be available to the parties prior to their selection of a neutral.

(2) Parties who cannot afford the mediation fees may request indigent status by making application to the ADR Director, who shall be solely responsible for determining the indigency of the applicant based on the criteria established by law for the appointment of counsel in criminal cases. If the party qualifies for indigent status, that party will not be required to pay their half of the fee, and the ADR Fund will pay that party's portion of the mediation fee to the mediator. All requests for fee waiver are to be made to the ADR staff at least 48 business hours prior to the mediation session.

(3) The neutral chosen for each case shall submit a report including a statement as to the length of time and amount of compensation paid to them for that case.

(4) All neutrals will be required to provide services for indigent parties by completing 1 pro bono assigned mediation per calendar year.

(5) Parties shall pay the mediators for a minimum of two hours at the beginning of the mediation session.

(6) For any Superior Court, State Court, or Probate Court case: If the parties agree on the mediator, then the parties equally divide the private rate of the mediator. If the mediator is assigned by the ADR staff, the cost is \$100.00/hr. with a minimum \$200.00 for 2 hours or less, and a \$100.00/hr. thereafter, divided equally between the parties.

(7) If a party(s) is non-compliant (cancels, in writing, less than 48 business hours prior to the scheduled mediation date/time or fails to appear), the non-compliant party pays the ADR Fund a \$200.00 non-compliance fee, via money order, to reimburse the ADR Fund for the \$200.00 minimum the mediator is paid by the ADR Fund for his/her reserved time and preparation. If both parties are non-compliant, then each pays the ADR Fund \$100.00 via a money order.

(8) For Magistrate cases that are held via zoom, the mediator is assigned by the ADR staff and is paid a flat \$100.00 per mediation from the ADR Fund. If Magistrate Court is held onsite, and the mediator is onsite in the courtroom, but does not receive a case, the mediator is paid a flat \$75.00 for the morning session and a flat \$75.00 for the afternoon session. If the onsite mediator receives a case, the mediator is paid \$75.00 per case.

(b) The Juvenile Court may participate in a mediation program established by their rules and employ such mediators as may exist under the rules of this program, and such mediators shall be paid by the Juvenile Court. The ADR coordinator for this program may also coordinate other mediation programs, with the approval of the Board of Trustees of this ADR program.

#### **RULE 8. Immunity.**

No ADR program staff member, mediator, or court personnel may be held liable for civil damages for any statement, actions, omission, or decision made in the course of carrying out any of the activities described in these Rules or in any ADR process.

#### **RULE 9. Confidentiality.**

(a) Any statement made during a mediation or as a 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 agreement 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 court-referred mediation is not subject to discovery. An agreement resulting from a court-referred mediation conference is not immune from discovery unless the parties agree in writing. Otherwise, discoverable material is not rendered immune from discovery by use in a mediation.

(c) Neither the neutral nor any observer present with permission of the parties in a court-referred mediation conference or ADR process may be subpoenaed or otherwise required to testify concerning a mediation conference in any subsequent administrative or judicial proceeding. The staff of the dispute resolution office of the circuit may not be subpoenaed or otherwise required to testify concerning information obtained in the screening of cases. A neutral's notes or records of cases mediated in the court-referred program are not subject to discovery.

(d) Exceptions to Confidentiality: Confidentiality does not extend to situations in which: (1) there are threats of imminent violence to self or others; (2) a mediator believes that a child is being abused; (3) the safety of any party or third person is in danger; or (4) a party asserts that their capacity to conduct good-faith negotiations and to make informed decisions for themselves was impaired during the mediation as provided by the Supreme Court of Georgia in *Wilson v. Wilson*, 282 GA. 728 (2007). Nothing in the above rule negates any statutory duty of a neutral to report information. Parties should be informed of the limitations on confidentiality as defined in the Supreme Court's ADR Rules at the beginning of the conference. Collection of information necessary to monitor the quality of the program is not considered a breach of confidentiality.

(e) Parties and non-parties (observer, mediator in training, GAL, personal advocate, interpreter, and or anyone else present at the mediation that is not listed as a party to the action) must sign the Mediation Guidelines, acknowledging the confidentiality rules, before the mediation session can begin.

(f) Recordings of mediation are prohibited ie. Video, screen shots, audio, etc. and postings of any pictures or dialogue from the mediation session is a violation of the confidentiality rule.

#### **RULE 10. Appearance.**

(a) The appearance of all parties or their qualified representative is required at mediation conferences unless the court finds that a party is a nonresident or is incapacitated or otherwise authorizes the party's absence. A qualified representative is one who has full authority to settle without further consultation and a full understanding of the dispute and full knowledge of the facts. The presence of a representative with authority to settle is required if the decision to settle depends on an entity other than a party.

(b) The ADR Program may offer parties, attorneys, and any representative the option to appear remotely by videoconference or telephone. If the Court enters an emergency order due to a public health crisis or other similar event(s) that limit(s) in-person proceedings, the Court may temporarily suspend in-person appearances for mediation sessions and require parties to participate in mediation remotely, ie., through other telecommunication platforms, unless otherwise excused by the Court. The rules governing mediation sessions apply whether the session is held in person or remotely. As mediation is a confidential process, should telecommunication mediation be required, the parties shall find a private location by which to participate in mediation without the presence of any third parties. Furthermore, recording of any the proceedings is strictly prohibited.

(c) Failure of the parties to participate in mediation as described above may subject the party to citation of contempt or other impositions of sanctions as provided by law.

(d) Attorneys are not required to attend mediation conferences, but are encouraged to attend and are not excluded from any part of the process.



(e) In domestic relations cases involving temporary or permanent child support, alimony, equitable division of property, modification of alimony or attorneys' fees, a financial affidavit is required pursuant to U.S.C.R. 24.2 and a Child Support Worksheet is required for all cases involving child support pursuant to O.C.G.A. 19-6-15. If a party fails to bring a copy of a current, notarized financial affidavit and child support worksheet as indicated herein, that party may be deemed to have not appeared and subject to the sanctions stated in Rule 11 below.

(f) Failure to enable your camera to allow the mediator to see you in person virtually on camera is a violation and can result in ADR declaring the party non-compliant as a no show.

**RULE 11. Sanctions for Failure to Appear Without Good Cause.**

(a) If a party fails to appear at a duly noticed mediation conference without good cause, fails to give 48 business hours written notice of cancellation or rescheduling (excluding weekends and holidays), or fails to bring a current, notarized financial affidavit when required, the dispute resolution staff may charge the parties a non-compliant fee and shall notify the judge to whom the case is assigned. The judge, upon motion, may subject the party to citation for contempt and to the imposition of sanctions permitted by law, including the award of mediator and attorney costs against the party failing to appear.

**RULE 12. 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 and answering questions about the mediation 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 have parties review and sign 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 attorney during the mediation session.

**RULE 13. 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 ADR Director or ADR Case Manager. Copies of any written communication with the court should be given to parties and their attorneys.

(b) Once the mediation process is under way, communications between the ADR Director and ADR Case Manager and the court should be limited to the following matters:

- (1) Failure of parties to attend scheduled sessions.
- (2) Procedural questions.

- (3) Case assessment results showing the case is inappropriate for mediation.
- (4) Request for additional time for mediation.
- (5) Settlement agreement information concerning whether or not the case has settled, or whether agreement has been reached as to any issues in the case.
- (6) Contents of an agreement, unless the parties have agreed in writing that the agreement should not be disclosed.
- (7) Discovery, motions, or actions which, if resolved or completed, would facilitate settlement.

**RULE 14. Completion of Mediation.**

(a) Mediation shall be completed prior to any scheduled hearing or trial or within fifty-five (55) days of the date that a response is due in a domestic suit or from the referral order, whichever is sooner, unless extended by order of the court or attorney conflict letters filed.

(b) The length of the mediation session will depend on the nature of the contested issues and on the parties themselves. The parties should be prepared to spend a minimum of two hours at the initial session.

(c) The mediator may adjourn the mediation conference at any time. A second session may be set with agreement of the parties, notwithstanding Rule 2. No further notification of a subsequent session is required for parties present at the adjourned session.

(d) If an agreement is reached, it shall be reduced to writing at the end of the mediation session by the neutral and signed by the neutral, the parties, and their attorneys. A copy will then be forwarded to the ADR Director or ADR Case Manager. It shall be the responsibility of the parties to file this agreement as required by law and to schedule necessary procedures. The ADR office shall maintain a record of all agreements reached in mediation and make such available upon request of the court or the parties.

(e) If a party is unrepresented or represented by an attorney who is not present, the parties will have an opportunity to have the agreement reviewed by an attorney. If there is no objection in writing to the signed Mediated Agreement or signed Consent/Settlement agreement (signed during the mediation session), by the attorney or pro se party within ten (10) calendar days of the mediation conference, the agreement will become binding on all parties and enforceable as a settlement agreement. Any written objection by an attorney or pro se party must be given to opposing counsel and the ADR Director or ADR Case Manager within the 10 calendar day rescission period.

(f) If a partial or temporary agreement is reached, it shall be reduced to writing and signed by the parties and counsel, if any, in the same manner as outlined above for the full agreement. The same procedures apply for objection within ten (10) calendar days.

(g) 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 Director or ADR Case Manager. The ADR Director or ADR Case Manager shall notify the judge to whom the case is assigned of the lack of agreement, via a report or release document sent to the Clerk for filing.

(h) Written and executed agreements or memoranda of agreement reached as a result of a court ADR process are enforceable to the same extent as any other agreement. Oral agreements shall not be enforceable.

#### **RULE 15. Court Conflicts.**

For the purposes of conflicts, as contemplated under the Uniform Rules of Superior Courts, the mediation procedure shall be construed as being a non-jury proceeding and counsel and the parties may rely upon said designation in resolving any scheduling conflicts by filing a court conflict letter and forwarding a copy to the ADR staff.

#### **RULE 16. Evaluation.**

Upon request, the ADR Director will provide to the 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. The Clayton County ADR staff may conduct evaluations of the mediators, either via periodic observations of the mediation sessions or via surveys collected from the parties, upon the completion of a mediation session. Such evaluations shall remain in place, in order to remove incompetent, ineffective, or unethical mediators from the Clayton County mediator roster. Such procedures may include reporting removal to the GODR, so that a mediator's registration may be considered.

REVISED 11/2/22