

BRUNSWICK JUDICIAL CIRCUIT COURT-ANNEXED MEDIATION RULES

DEFINITION:

Mediation. Mediation is defined as “...a process whereby a neutral third person called a mediator acts to encourage and facilitate the resolution of a dispute between two or more parties.” The purpose is to open lines of communication and to explore all possibilities of settlement in order to resolve the dispute. The role of the mediator is to help the parties analyze the issues and generate alternatives for a mutually agreeable and voluntary settlement. The role of the parties is to recognize that people involved in a dispute can come to the table to negotiate in good faith to try to resolve their differences. The role of the mediation program is to assist the Court in an administrative capacity to insure uniformity and efficiency. The mediation conference is informal, confidential and non-adversarial. The mediator has no decision making power. Any agreement reached will be by mutual consent of the parties. In the absence of settlement the parties lose none of their rights to a jury trial.

RULE 1. REFERRAL TO MEDIATION.

- A. Except as hereinafter provided, any contested civil or domestic matter may be referred to mediation. Parties to referred cases shall be ordered to appear for a mediation conference. Compliance does not require that the parties reach a settlement. Cases shall be screened by the judge or the mediation office to determine
- (1) Whether the case is appropriate for mediation;
 - (2) Whether the case should be mediated at the time indicated by these Rules;
 - (3) Whether the parties are able to compensate the mediator.
- B. Cases in which there are allegations of domestic violence will be screened to determine whether mediation is appropriate:
- (1) All domestic relations cases will be screened for domestic violence allegations through intensive intake. 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.
 - (2) The detailed domestic violence screening protocol implementing the Commission on Dispute Resolution’s *guidelines for mediation in cases involving issues of domestic violence and in their model* is attached hereto as Appendix A and incorporated into these rules.
 - (3) Staff who conduct screening for domestic violence allegations must be trained mediators who have had specialized training in domestic violence screening.
 - (4) 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.

- (5) 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.
- C. 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.
- D. 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. Time for completing mediation shall be tolled during any periods where mediation is interrupted pending resolution of such a motion.
- E. If Court personnel other than judges are involved in mediation referral decisions, these individuals will receive appropriate training and will work within clearly stated written policies, procedures and criteria for referral.
- F. Request for Mediation. Any party to a dispute may request that the Court refer the case to mediation or request that a matter referred to mediation be referred to another ADR process.

RULE 2. TIMING OF MEDIATION PROCESSES.

- A. Domestic Relations Cases: All domestic relations cases, after appropriate screening pursuant to Rule 1, shall be referred to mediation approximately sixty (60) days following the filing of the complaint.
- B. Non-Domestic Civil Cases: All non-domestic civil cases shall be referred to mediation one hundred twenty (120) days after the filing of the first Answer.
- C. Procedure:
 - (1) Referral to mediation is implemented by the Coordinator sending to all counsel of record for represented parties, and to all unrepresented parties, a “Notice of Referral”. Said notice is issued pursuant to the authority of the Standing Mediation Order of the active Superior Court judges of the Brunswick Judicial Circuit.
 - (2) Within ten (10) calendar days of the date of the Notice of Referral, the parties shall:
 - a. Select a mediator who must be registered with the Georgia Office of Dispute Resolution in the category appropriate to the case. (A list of approved mediators is attached to these Rules as Appendix B, and parties and counsel are urged to select mediators from the approved list.)
 - b. Provide the name of the mediator, the date, time, and location of the mediation in writing to the Coordinator. The date selected by the parties for the mediation shall be within forty-five (45) days of the date of the Notice of Referral.

- (3) It shall be the plaintiff's responsibility to insure that the information referred to in subsection (2) above is provided to the Coordinator. However, by agreement, any party may do so.
 - (4) Any party may move for 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 approved mediator list. A motion to disqualify the mediator shall be presented to the Coordinator who shall present the motion to the judge to whom the case is assigned.
 - (5) Postponements. The Coordinator has the authority to delay mediation for successive periods of from thirty (30) to ninety (90) days, not to exceed one hundred eighty days (180) days total, under the following circumstances:
 - a. In personal injury cases, where the plaintiff's attorney certifies in writing that the plaintiff is still receiving medical treatment such that evaluation of the case is premature;
 - b. Where any party, or their counsel, certifies in writing that more than one party has filed, or will file, an Answer and that one hundred twenty (120) days have not elapsed since the date the first Answer was filed or is due to be filed;
 - c. Any party, or their counsel, certifies in writing that a motion to add parties is pending, or will be filed within ten (10) days; or
 - d. Any party, or their counsel, certifies in writing that the case is of a particularly complex nature, where additional discovery must be completed before the parties will have sufficient information to afford the mediation a reasonable opportunity of success.
 - (6) All certifications referred to in subparagraph (5) above shall be in writing, sent to the Coordinator, and copied to all counsel of record and unrepresented parties.
 - (7) The mediator may adjourn the mediation conference at any time and may set times for reconvening the adjourned conference. No further notification is required for parties present at the adjourned conference. The mediator shall notify the Coordinator of adjournments and reschedulings.
 - (8) The Coordinator may at any time schedule a conference, either by telephone or, where practical, in person, with counsel for all parties, and unrepresented parties, to discuss the prospects for mediating the case, questions regarding scheduling or postponements, or any other matter affecting the Coordinator's performance of his responsibilities. Separate advisory guidelines for the Coordinator may be developed to assist the Coordinator in the performance of his duties.
 - (9) Any party not satisfied with the Coordinator's decision relating to postponement of mediation may seek review of the Coordinator's decision from the Court upon appropriate motion filed with the Clerk of Court, and served upon all parties and the Coordinator. During the pendency of such a motion, mediation shall not proceed in the absence of unanimous agreement among the parties.
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RULE 3. EXEMPTION OR 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 mediated¹;
 - (2) The issue presents a question of law only;
 - (3) The issues have been referred by consent order of court to a private provider of mediation services.
 - (4) Other good cause is shown before the judge to whom the case is assigned.
- B. The following actions shall not be referred to mediation except upon petition of all parties or upon *sua sponte* motion of the Court:
- (1) Actions brought by state agencies to enjoin activities injurious to the public interest;
 - (2) Actions for legitimation, annulment, paternity, or termination of parental rights;
 - (3) Appeals from rulings of administrative agencies;
 - (4) Bond validations;
 - (5) Child support enforcement and URESA (Uniform Reciprocal Enforcement of Support Act) actions;
 - (6) Civil or criminal contempt;
 - (7) Declaratory relief;
 - (8) Family Violence Act (O.C.G.A. Section 19-13-1, et. seq.);
 - (9) Forfeiture of bonds or forfeitures of seized property; and
 - (10) *Habeas corpus* and extraordinary writs.

RULE 4. APPROVED MEDIATORS.

A. The list of approved mediators attached hereto as Appendix A shall be provided to counsel for parties, and to unrepresented parties, with the Notice of Referral. Persons on the approved list shall be registered with the Georgia Office of Dispute Resolution and shall have agreed to have their names included on the approved list.

B. Should the parties fail to agree upon a mediator and/or no notification of the scheduling of the mediation is provided to the Coordinator in conformity with Rule 2.C.(2), the Coordinator will appoint a mediator from the list of approved mediators.

¹ A motion to exclude for this reason shall include the result of the mediation, as well as the qualifications of the person conducting the mediation and any other factors tending to demonstrate the *bona fides* of the previous mediation. Such a motion must be filed with the Court and served upon opposing parties and the Coordinator. Responses to the motion shall be governed by the Uniform Superior Court Rules.

RULE 5. MEDIATOR QUALIFICATIONS FOR SERVICE IN THE PROGRAM.

The qualifications for service as a mediator in the program shall be determined by the Superior Court judges of the circuit. The qualifications 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 qualifications for service in this program shall be approved by the Georgia Commission on Dispute Resolution and shall be filed with the Georgia Supreme Court as an appendix to these rules. The program will maintain a roster of mediators approved 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 COMPENSATED BY THE PARTIES.

A. Parties shall agree upon compensation of the mediator at or before the first mediation conference. Relevant factors to be considered in determining an appropriate fee include the complexity of the litigation, the degree of skill necessary to mediate the dispute, the training, experience, and qualifications of the mediator, and the ability of the parties to pay. Mediators are required to list their fee schedules as part of their applications. The Court may review the fee schedules for reasonableness.

B. If the parties are unable to agree upon compensation of the mediator, then the assigned judge may, upon motion of any party, order any or all parties to pay the cost of the mediator. The mediator shall be served with any such motion and is authorized to submit to the Court information relevant to his or her charges for the mediation within the time allowed by the Uniform Rules for responses to motions. The Court shall determine the amount to be paid to the mediator and the allocation of that cost between the parties, taking into consideration all factors that the Court deems appropriate.

C. Before being placed on the 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. The number of hours required will be determined by the Superior Court judges of the circuit.

RULE 7. CONFIDENTIALITY AND IMMUNITY.

A. The Extent of Confidentiality. Any statement made during a court-annexed or court-referred 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-annexed or court-referred mediation is not subject to discovery. A written and executed agreement or memorandum of agreement resulting from a court-annexed or 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 neutral nor any observer present with permission of the parties in a court-annexed or 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 neutral 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 neutral or mediation 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 neutral in a court-annexed or court-referred program shall be held liable for civil damages for any statement, action, omission or decision made in the course of the mediation process 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 mediation process.

RULE 8. APPEARANCE.

The attendance of parties at all mediation conferences is required unless excused by the Court. No person who is not a party to the particular case, other than the mediator and attorneys for the parties, may attend a mediation without the consent of all parties. Representatives of insurance companies and other corporate parties, who do not work or reside within the Brunswick Judicial Circuit, may attend a mediation by telephone. All participants in mediation shall be knowledgeable of the facts of the case and shall have full settlement authority or immediate access to persons having such authority.

RULE 9. SANCTIONS FOR FAILURE TO APPEAR.

If a party fails to appear at a duly noticed mediation conference without being excused by the Court, or without good cause, the Coordinator 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 Coordinator. Copies of any written communication with the Court should be given to the parties and their attorneys.
- (b) Once a mediation is underway in a given case, contact between the mediation coordinator and the Court concerning the 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 neutral's assessment that the case is inappropriate for that process;
 - (4) Communicating any requests 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. 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 business 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 who are 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. The agreement shall be binding upon the parties.
- (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, and if there is any objection to the agreement, notice thereof will be communicated in writing to the Program Coordinator and the opposing attorney (or party, if that party is unrepresented) within three (3) business days following signing. If there is no objection so communicated, the Program Coordinator will file the agreement with the Court.

B. 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 set forth above for a full agreement.

C. If the parties do not reach an agreement as to any matter as a result of mediation, the mediator shall report in writing the lack of an agreement to the Coordinator. The Coordinator shall notify the judge to whom the case is 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 Coordinator 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

APPENDIX "A"

DOMESTIC VIOLENCE SCREENING PROTOCOL

The Program Coordinator may not have received advanced domestic violence training at the time the program is initiated. Since the domestic violence screening guidelines² require that Phase II and Phase III screening must be conducted by a trained mediator who has had such training, the program will initially conduct Phase I screening only. If the Phase I screening reveals that a party or a party's attorney has indicated that there may have been domestic violence in the parties' relationship, the case will not be referred to mediation.

Until such time as program staff members have received advanced domestic violence mediation training, the following screening protocol will be followed in all domestic cases:

1. The Program Coordinator, prior to referral to mediation, shall first determine whether either party has filed a petition under the Family Violence Act, or whether there are allegations of domestic violence in the parties' pleadings. If either

² This reference is to the Phase I screening under the "Guidelines for Screening for Domestic Violence" as approved by the Georgia Commission on Dispute Resolution on May 20, 2003.

circumstance exists, the case will not be referred to mediation.

2. Even if the circumstances contemplated in paragraph 1 above do not exist, further screening must nevertheless be conducted. In the case of parties who are represented by counsel, the program shall contact the parties' attorneys with instructions to communicate with their respective clients, if they have not already done so, in order to determine whether there is any indication whatever of domestic violence in the relationship. If there should be any such indication, the case will not be referred to mediation.
3. In the case of unrepresented parties, they will be notified to appear at the mediation office at a designated time for an interview to determine whether their case is appropriate for mediation. In the interest of safety and confidentiality, the interviews of the parties will be scheduled for different days. If such interviews reveal any indication of domestic violence in the relationship, the case will not be referred to mediation.
4. If only one party is represented, the Court will communicate with the party's attorney in order to

ascertain whether there is any indication of domestic violence as contemplated in paragraph 2 above. The unrepresented party will be notified to appear for an interview, during which the Program Coordinator will inquire for the purpose of determining whether there is any such indication.

If the foregoing screening inquiries reveal that there is any indication of domestic violence in the relationship, the case will not be referred to mediation. Further screening as contemplated in Phase II and Phase III of the Guidelines will be implemented at such time as the Program Coordinator or a staff member has received advanced domestic violence training.