

BRUNSWICK JUDICIAL CIRCUIT
ALTERNATE DISPUTE RESOLUTION RULES

RULE 1. DEFINITIONS.

- A. *Alternate Dispute Resolution.* The term “Alternate Dispute Resolution” (hereinafter referred to as “ADR”) refers to any method other than litigation for the resolution of pending court cases, and in the context of these Rules refers specifically to mediation.
- B. The commonly used ADR terms referred to in these Rules are defined as follows:
- (1) *Mediator.* The term “Mediator” refers to an impartial person who facilitates discussions and the resolution of disputes between parties to pending contested court cases.
 - (2) *Mediation.* The term “Mediation” refers to a process in which a mediator facilitates settlement discussions between parties to a pending contested case. The mediator has no authority to make decisions or impose a settlement upon the parties. The mediator attempts to focus the attention of the parties on their needs and interests rather than on rights and positions. Although in court programs the parties may be ordered to attend and participate in good faith in a mediation session, any settlement of an issue or issues is entirely voluntary. In the absence of settlement, the parties lose none of their rights to a jury or non-jury trial.
 - (3) *Court Program.* The term “Court Program” refers to the Brunswick Judicial Circuit ADR Program.
 - (4) *DV Rules.* The term “DV Rules” refers to the Georgia Supreme Court ADR Rules, Appendix D: Rules for Mediation in Cases Involving Domestic Violence.

RULE 2. REFERRAL TO MEDIATION.

- A. Courts shall make information about mediation available to all litigants.
- B. Except as hereinafter provided, any contested matter filed in a participating superior, state, probate or magistrate court may be referred to ADR, and the parties may be ordered to appear either in person or remotely at an ADR session. Compliance with such order shall not require that the parties reach a settlement. Civil cases (other than domestic) shall be screened by the assigned judge or the Court Program to determine:
- (1) Whether the case is appropriate for mediation;

- (2) Whether the parties are able to compensate the mediator; and
- (3) Whether a need for emergency relief makes referral inappropriate until the request for relief, if entertained by the Court, is heard and determined.

C. All domestic relations cases shall be screened to determine whether domestic violence issues are present and whether mediation is appropriate as outlined below and as required by the DV Rules. Further, when issues of domestic violence are present, all cases of any type filed in any class of court should be screened using the following procedures:

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 which contains a count under the Family Violence Act is not precluded from referral to mediation and shall be screened pursuant to the DV Rules.

- (1) All domestic cases shall be screened for domestic violence allegations in accordance with the DV Rules. Those domestic relations cases referred directly from the bench are also subject to the same screening process. Intake procedures are designed to identify cases in which there are allegations of domestic violence, to ensure that the mediation can be performed safely and free from coercion, and to provide a process by which an at-risk party can make a decision, based on informed consent, whether or not to proceed with mediation.
 - (a) The detailed screening protocol implementing the DV Rules is set forth in detail in **Appendix A**, which is attached hereto and made a part hereof.
 - (b) Staff who conduct screening pursuant to the DV Rules must have completed the screening training approved by the Georgia Office of Dispute Resolution (“GODR”).
 - (c) Only mediators registered with the GODR in the category of specialized domestic violence mediation shall serve in cases involving issues of domestic violence as defined by the parties’ responses to the Tier I and Tier II screening questions, or by any other indicator of domestic violence present in the case.
 - (d) If issues of domestic violence arise for the first time during a mediation session, the mediator or ADR program staff must follow the procedures outlined in the DV Rules.

D. Any party to a pending case may request that the Court refer the case to mediation, or request that a case referred to mediation be referred to another ADR process.

- E. Effect of Referral upon progress of the case. The scheduling of a case for mediation shall not remove the case from assignment to the assigned judge, interfere with discovery, nor serve to postpone scheduled motions before the Court.
- F. 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 in which mediation is interrupted pending resolution of such motion.
- G. If court personnel other than judges are involved in ADR referral decisions, such individuals should receive appropriate training and shall work within clearly stated written policies, procedures, and criteria for referral. The GODR will assist courts in developing guidelines for training court personnel in referral decisions.
- H. 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 Court that referral to ADR would adversely affect the public interest. Upon a showing of reasonable probability of such adverse effect, the Court may proceed with emergency measures provided by law. Later referral to an ADR process may be appropriate if the emergency measures do not bring the case to conclusion.
- I. The Court may impose a user's fee upon any party participating in mediation who has not paid a filing fee surcharge at the time the action was filed.

RULE 3. TIMING OF MEDIATION PROCESSES.

- A. Domestic cases shall be mediated in accordance with the time frame specified in the Court's Standing Order which can be accessed online at www.glynncounty.org/adr OR by calling the ADR Office at (912) 554-7415.
- B. Civil cases shall be mediated in accordance with the Court's case-by-case orders requiring the cases to be mediated by a specified deadline.
- C. Any motion to extend the timeframe within which to complete mediation shall be submitted to the assigned judge, prior to the expiration of any deadline pursuant to 3(A) or 3(B) above and shall be contemporaneously copied to the ADR Office.

RULE 4. 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 mediation or any other ADR process if any of the following apply:
 - (1) The issue to be considered has been previously submitted to an approved ADR process;

- (2) The issues have been referred by consent order of the Court to a private provider of ADR services; or
 - (3) Other good cause is shown before the judge to whom the case is assigned.
- B. The following actions shall not be referred to mediation or any other ADR process except upon consent motion of all parties or upon the Court's own motion:
- (1) Appeals from rulings of administrative agencies;
 - (2) Forfeitures of seized property;
 - (3) Petitions for habeas corpus or extraordinary writs;
 - (4) Bond validations;
 - (5) Actions for declaratory relief;
 - (6) Child Support Enforcement actions and actions filed under the Uniform Interstate Family Support Act (UIFSA);
 - (7) Cases arising solely under the Family Violence Act (O.C.G.A. § 19-13-1 *et seq.*);
 - (8) Actions for annulment, paternity, or termination of parental rights; and
 - (9) Actions brought by state agencies to enjoin activities injurious to the public interest.

RULE 5. APPOINTMENT OF THE MEDIATOR.

- A. After a case is ordered to mediation, the parties shall mutually agree upon a mediator, provided the mediator selected is currently registered with GODR in the appropriate category, and is listed on the roster of approved mediators for the Brunswick Judicial Circuit. However, the parties may seek approval from the ADR Office to use mediators registered with GODR, but not listed on the official roster.
- B. If the parties to a case ordered or referred to mediation are unable or unwilling to agree upon a mediator, the parties shall notify the ADR Office and the mediator shall be selected by the Court Program Director. Provided however, the inability of the parties to agree shall be promptly communicated to the ADR Office, and such inability shall not be justification for a failure to comply with any timelines or deadlines set forth in the Standing Order attached hereto as Appendix A, or in a judge's order.

- C. Any party may petition the ADR Office to disqualify a mediator for good cause. If the ADR Office determines that a mediator should be disqualified, it will appoint a qualified replacement mediator.

RULE 6. MEDIATOR QUALIFICATIONS FOR SERVICE IN THE PROGRAM.

The qualifications for service as a mediator in the Court Program shall be determined by the Superior Court Judges of the Brunswick Judicial Circuit. The current qualifications shall be membership in the State Bar of Georgia and the qualifications set out in Appendix B of the Supreme Court Rules for Alternative Dispute Resolution Programs. This Court Program shall maintain a roster of mediators approved for service in the program. Parties may for good cause request permission to use mediators not listed on this Court Program's approved roster, provided they are registered with the GODR, and any grant of such permission shall be in the discretion of the Court Program Director.

RULE 7. COMPENSATION OF MEDIATORS.

- A. Mediators must list their fee schedules as part of their application for approval for service in the Court Program. The program will review each fee schedule for reasonableness.
- B. The assigned judge may order either or both parties to pay or share the cost of the mediator. When the compensation is set by the Court, the costs will be predicated on the complexity of the litigation, the degree of skill necessary to mediate the case, and the ability of the parties to pay.
- C. Before being approved for the Court Program's roster, a mediator must agree to provide *pro bono* and reduced rate hours to defray mediation costs for parties with limited ability to pay. The number of hours required shall be determined by the Superior Court Judges of the Circuit.
- D. A mediator compensated by the parties may be required to remit an administrative fee (the amount of which shall be in the discretion of the Superior Court Judges of the Circuit) to this Court Program by the close of the next business day following receipt of payment or partial payment of the mediation compensation.
- E. The Court Program may, with the concurrence of the assigned judge, provide for compensation of mediators in instances such as the failure of a party or parties to appear, or other circumstances in the discretion of the assigned judge.

RULE 8. CONFIDENTIALITY AND IMMUNITY.

- A. Any statement made during a mediation or as part of intake by program staff or a mediator in preparation for a mediation (1) shall be confidential; (2) shall not be subject to disclosure; (3) shall not be disclosed by the mediator or program staff; and (4) shall 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 mediation is not subject to discovery. A written or executed agreement or memorandum of agreement resulting from a mediation session shall be discoverable unless the parties agree otherwise in writing. Otherwise discoverable material shall not be rendered immune from discovery solely because such material was used in the mediation process.
- C. Neither the mediator nor any other observer present at the mediation with the permission of the parties may be subpoenaed or otherwise required to testify concerning a mediation in any subsequent administrative or judicial proceeding. A mediator's notes or records shall not be subject to discovery. Notes and records of the Court Program shall not be 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.

RULE 9. EXCEPTIONS TO CONFIDENTIALITY.

- A. Confidentiality on the part of the program staff or mediator shall not extend to the issue of appearance.
- B. Confidentiality shall 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 his/her capacity to conduct good-faith negotiations and make informed decisions was impaired during the mediation as provided by the Supreme Court of Georgia in *Wilson v. Wilson*, 282 Ga. 728 (2007).
- C. The scope of the confidentiality of ADR proceedings shall be governed by the ADR Rules of the Supreme Court of Georgia and the Commission on Dispute Resolution's Advisory Opinions and Ethics Opinions.
- D. Confidentiality shall not extend to documents or communications relevant to legal claims or disciplinary complaints brought against a mediator or a court program and arising out of an ADR process, regardless of whether such claim or complaint is brought before the Georgia Commission on Dispute Resolution, made as a motion, sent to a court program's local complaint process, or raised in some other manner. Documents or communications relevant to such claims or complaints may be revealed only to the extent necessary to

protect the mediator or the court program. Nothing in this rule shall negate any statutory duty of a mediator to report information.

- E. Parties should be informed of the limitations on confidentiality at the beginning of each conference.
- F. The collection of information necessary to monitor the quality of a Court Program shall not be considered a breach of confidentiality.
- G. Additional information regarding the specific exceptions to confidentiality can be found in the Georgia Supreme Court's ADR Rules and the Commission's Advisory Opinions and Ethics Opinions.
- H. No ADR program staff member, mediator or court personnel may be held liable for civil damages for any statement, action, omission, or decision made while carrying out any of the activities described in these Rules or in any ADR process.

RULE 10. APPEARANCE

- A. The appearance of all parties shall be required at any mediation scheduled pursuant to a Court Order and coordinated by the ADR Office. The requirement that a party appear at mediation shall be satisfied if the following persons are present:
 - (1) The party, the party's representative, or both the party and the party's representative. A party's representative must have full authority to settle without further consultation, have a full understanding of the dispute, and have full knowledge of the facts.
 - (2) A representative of the insurance carrier for an insured party, if any. An insurance carrier's representative must have full authority to settle without further consultation.
- B. Unless ordered by the Court, an attorney shall not be required to attend mediation; but the attorney should attend and shall not be excluded from mediation by the Court or mediator.
- C. The Court Program may offer parties, attorneys, or any representatives the option to appear remotely by videoconference or telephone.

RULE 11. SANCTIONS FOR FAILURE TO APPEAR.

If a party fails to appear at a duly-noticed mediation without showing good cause, the Court Program shall notify the assigned judge. The judge may find the party in contempt and impose appropriate sanctions.

RULE 12. COMMUNICATION WITH PARTIES.

The only *ex parte* communication between a party and a mediator outside of mediation shall be for the purpose of verifying appointment times and locations or answering questions about the mediation process and procedures (except that a mediator may, if necessary, begin the process prior to the appointed time for the mediation for the purpose of speaking with each party prior thereto, or obtaining written reports). Provided however, should a mediator wish to begin the process in advance of the scheduled time for mediation, the mediator must, prior to initiating the process:

- (1) Review the mediation guidelines with all parties,
- (2) Inform the parties of the mediator’s billing practices for this time in advance of the mediation, and
- (3) Inform all parties that these activities are taking place prior to the time set for mediation.

During mediation, the mediator may meet privately with any party or attorney.

RULE 13. COMMUNICATION WITH THE COURT.

- A. In the interest of preserving the objectivity of the Court and the neutrality of the mediator, there should be no communication between the mediator and the Court. If any such communication should be necessary, the communication shall be in writing and made through the Court Program Director. Copies of any written communication with the Court shall be given to the parties and their attorneys.
- B. Once mediation is underway in a given case, communication between the Court Program staff and the Court concerning the case should be limited to the following:
 - (1) The failure of a party to attend;
 - (2) Procedural action (with the consent of the parties) on the part of the Court which might facilitate the mediation process;
 - (3) The mediator’s assessment that the case is inappropriate for mediation;
 - (4) A request for additional time to complete the mediation process;
 - (5) Communicating information that the case has or has not been settled, and whether agreement has been reached as to any issue or issues in the case;

- (6) The contents of a written and executed agreement or memorandum of agreement, unless the parties agree in writing that such agreement should not be disclosed; and
- (7) Any discovery, pending motions, or actions of any party which, if resolved or completed, might facilitate the possibility of settlement.

RULE 14. COMPLETION OF MEDIATION.

- A. Unless extended by order of the Court, mediation shall be completed by the deadline set out in a Court Order referring a case to mediation, or within the timeframe established in the Standing Order of the Brunswick Judicial Circuit which can be accessed at www.glynncounty.org/adr OR by calling the ADR Office at (912) 554-7415.
- B. Within seven (7) calendar days of the completion of mediation, the parties must file a Notice of Completion in the format required by Section VIII of the Standing Order referenced in Section A above. The Notice must be contemporaneously copied to the ADR Office and the office of the assigned judge. In the event of a settlement or dismissal either (1) prior to mediation, or (2) subsequent to a mediation resulting in an impasse, the parties shall, within seven (7) calendar days thereof, notify both the ADR Office and the assigned judge of such settlement or dismissal.
- C. The duration of a mediation will vary. The mediator may adjourn the mediation at any time and may set times for reconvening the adjourned mediation notwithstanding Rule 3(a) above. Provided however, the mediator shall notify the ADR Office of such adjournment and the reasons therefor.
- D. If an agreement is reached, it shall be reduced to writing, if possible, within three (3) calendar days of the mediation. The mediator shall draft the agreement unless the parties mutually agree otherwise.
 - (1) If a party is represented by counsel who is present at the mediation, any agreement should be drafted by the mediator and signed by the mediator and all parties and counsel present at the mediation.
 - (2) If any party is unrepresented or is represented by counsel who is not present at the mediation, the agreement should be drafted by the mediator and signed by all present at the conclusion of the mediation. A party who does not have representation must have an opportunity to have the agreement reviewed by an attorney. If there is no objection to the agreement within three (3) calendar days following signing, the agreement may be filed with the Court.
- E. If a partial agreement is reached, the agreement should be drafted by the mediator and signed by all present at the conclusion of the mediation in the same manner as a full agreement as referenced above.

- F. The parties shall report the absence of an agreement as an impasse on the Notice of Completion form. The parties may by mutual consent notify the ADR Office of 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 settlement.
- G. Written 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. EVALUATION.

- A. Evaluation of the program: Data shall be collected on an ongoing basis to ensure the quality of the Court Program. Such data may include evaluation by parties and attorneys in an ADR process as applied to their case, the performance of the mediator in the case, and ways to improve the effectiveness of the ADR program. The Court Program will use such data to improve its quality and shall share all available data with the GODR to provide statewide statistics. Data concerning settlement rate shall not be used as the sole basis for program evaluation.
- B. Evaluation of mediators:
 - (1) The Court Program will monitor the performance of mediators on an ongoing basis. Data concerning settlement rate will not be used as the sole basis for the evaluation of a mediator.
 - (2) The Court Program will remove incompetent, ineffective, or unethical mediators from the roster, and will report the removal to the GODR so that a mediator's registration may be reconsidered.

**Detailed Screening Protocol Implementing the Commission on Dispute Resolution’s Rules
for Mediation in Cases Involving Issues of Domestic Violence**

- A. To facilitate screening by the ADR Office, the plaintiff/petitioner in all contested domestic cases shall comply with the following:
- (1) Attach to the complaint to be served upon defendant/respondent a Notice of Mandatory Screening and Mediation with the attached Tier I Survey (the form for which can be accessed at www.glynncounty.org/adr or by contacting the ADR Office via email to dmscn@glynncounty-ga.gov or by phone at (912) 554-7415.
 - (2) Complete and submit plaintiff/petitioner’s Tier I Survey form to the ADR Office within seven (7) calendar days of filing the petition. The Tier I Survey may be submitted by email,¹ U. S. Mail,² by hand delivery to the ADR Office located in the Historic Glynn County Courthouse, OR online using the pdf fillable form which can be accessed by using the link to the online screening tool in the menu bar at the top of the GODR website (www.godr.org).
- B. The defendant/respondent shall complete and submit the Tier I Survey to the ADR Office within seven (7) calendar days of receiving service of plaintiff/petitioner’s complaint/petition. The survey may be submitted by any of the methods set forth in (A)(2) above.
- C. If a party answers “yes” to any of Questions 1 through 6 or Question 8 of the Tier I Survey, or answers “no” to Question 7(b) of the Survey, then the screener in the ADR Office shall conduct Tier II screening by securing the party’s answers to the Tier II survey. The Tier II screening may be accomplished by telephone contact, mail, or email.
- D. The entire screening process shall be conducted in compliance with Georgia Supreme Court ADR Rules, Appendix D; Rules for Mediation in Cases Involving Domestic Violence.

APPENDIX A

¹ If sent via email, the survey should be emailed to dmscn@glynncounty-ga.gov

² If sent via U.S. Mail, the survey should be addressed to the ADR Office, 701 G Street, Brunswick, GA 31520