

# SOUTHERN JUDICIAL CIRCUIT MEDIATION RULES

FILED IN OFFICE

November 10, 2021



SUPREME COURT OF GEORGIA

## Rule 1. DEFINITIONS

- A. **Alternative Dispute Resolution.** The term “alternative dispute resolution” (ADR) as used in these rules refers to any method other than litigation for resolution of pending court cases.
- B. The commonly used ADR terms referred to in these rules are defined as follows:
  1. **Neutral.** The term “neutral” refers to an impartial person who facilitates discussions and dispute resolution between disputants in mediation.
  2. **Mediation.** The term “mediation” means 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. The neutral attempts to focus the attention of the parties upon their needs and interests rather than upon rights and positions. Although in court programs 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.
  3. **ADR Program.** The term “ADR program” encompasses the terms “court-connected,” “court-annexed,” or “court-referred” when used to refer to a Court ADR program.

## Rule 2. REFERRAL TO MEDIATION

- A. Except as hereinafter provided, **any** contested civil or domestic relation cases that are still pending after one hundred fifty (150) calendar days after the original complaint is filed shall be referred to ADR. Compliance shall not require that the parties reach a settlement. Cases shall be screened by the Judge or the ADR Program to determine all the following:
  1. Whether the case is appropriate for ADR.
  2. Whether the parties are able to compensate the neutral.
  3. Whether a need for emergency relief makes referral inappropriate until the request for relief is heard by the Court.
- B. Cases may, in the discretion of the Court, be referred to ADR prior to the mandatory one hundred fifty (150) day period. The parties or their attorneys may also request the Court to have their case referred to ADR. A Court “**ORDER**” referring the case to ADR shall be executed by the presiding Judge. The original Order shall be filed in the case file in the office of the Clerk of Court making the referral. The ADR Program shall be responsible for serving by mail or e-file a copy of said Order on the parties and counsel of record.
- C. 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 Alternative Dispute Resolution rules and appendices as declared by the Georgia Supreme Court. All cases of any type filed in Court shall be screened using these procedures when issues of domestic violence are present.
  1. Criminal cases that involve domestic violence or cases arising solely under the Family Violence Act **shall not** be referred to mediation from 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

Appendices of the Supreme Court Alternative Dispute Resolution Rules.

2. All domestic relations cases shall be screened for domestic violence allegations using the *Rules for Mediation in Cases Involving Issues of Domestic Violence*. Those domestic relations cases referred to mediation directly from the bench are also subject to the same screening process. Intake procedures are designed to ensure that the mediation can be done safely and free from coercion, identify cases in which there are allegations of domestic violence, 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 Commission on Dispute Resolution's *Rules for Mediation in Cases Involving Issues of Domestic Violence* is attached hereto and incorporated in these rules.
  - b. Staff who conduct screening pursuant to the *Rules for Mediation in Cases Involving Issues of Domestic Violence* must have completed the screening training approved by the Georgia Office of Dispute Resolution.
  - c. Only neutrals who are registered with the Georgia Office of Dispute Resolution 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 1 or 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 neutral or ADR program staff must follow the procedures outlined in the *Rules for Mediation in Cases Involving Domestic Violence*.
- D. Request for Mediation. Any party to a dispute may request that the Court refer the case to mediation. The request for referral shall be made to the presiding Judge.
- E. Effect of Referral upon Progress of the Case. The scheduling of a case for a mediation shall not 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.
- 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 neutral 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.

### **Rule 3. TIMING OF MEDIATION PROCESSES**

- A. Within ten (10) calendar days after the case is referred to ADR, the parties shall inform the Dispute Resolution Office of the neutral mutually agreed upon by the parties. The neutral 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 neutral, the process shall follow as herein provided by **Rule 5**.
- B. Within five (5) calendar days after the parties have notified the ADR Program of the selected neutral, the selected neutral shall contact the parties and inform them of the date, time and place for the scheduled ADR session.
- C. Unless otherwise Ordered by the Court, the ADR session shall be held within fifteen (15) calendar days after the parties have received notification from the selected neutral of the ADR session.

- D. A request for continuance to extend the time frame to complete the mediation process shall be submitted to the ADR Program Administrator.

#### **Rule 4. EXEMPTION FROM MEDIATION**

- A. Any party may, within ten (10) days after the case is referred to mediation, petition the Court to dispense with mediation 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 Court to a private provider of ADR services.
  3. The issue presents a question of law only.
  4. Other good cause is shown before the presiding Judge.
- B. The following actions shall not be referred to ADR except upon petition of all parties or upon the Court's own Order:
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. In Rem Condemnations.

#### **Rule 5. SELECTION, APPOINTMENT AND ASSIGNMENT OF NEUTRALS**

- A. The parties shall agree upon a neutral registered with the Georgia Office of Dispute Resolution.
- B. After a case is filed, parties are free to choose a neutral, provided they are registered in the appropriate category. The confidentiality and immunity protections of the Georgia Supreme Court ADR Rules shall not apply to neutrals not registered with the Georgia Office of Dispute Resolution.
- C. Parties shall be allowed input into the choice of a neutral.
- D. If the parties are referred or Ordered by the Court to an ADR process are unable to agree upon a neutral, the neutral shall be selected by the ADR Program. In either event, the neutral shall be registered with the Georgia Office of Dispute Resolution.
- E. Any party, for good cause shown, may request the ADR Administrator for appointment of another neutral.
- F. A neutral shall be assigned by the Administrator of the ADR Program when one or both parties have applied for indigence and has been determined to be indigent. The neutral assigned for indigence **shall** be the neutral mutually selected by the parties or the appointed neutral.

## **Rule 6. NEUTRAL QUALIFICATIONS FOR SERVICE IN THE PROGRAM**

- A. The qualifications shall be:
  - 1. All neutrals must maintain the minimum qualifications set out in the Georgia Supreme Court ADR Rules.
  - 2. All neutrals must be in good standing and in “active/approved” status with the Georgia Office of Dispute Resolution.
  - 3. All neutrals must provide current contact information to the ADR Administrator and be willing to comply with all ADR program requirements.
  - 4. All neutrals may be subject to additional review of the Judges of the Superior Court.
- B. The program will maintain a list of registered neutrals. Said list will be posted on the Southern Judicial Circuit website.
- C. Neutrals serving in the program will be evaluated by the program on an ongoing basis.

## **Rule 7. COMPENSATION FOR NEUTRALS COMPENSATED BY THE PARTIES**

- A. Neutrals must list their fee schedules as part of their application with the ADR Program. The ADR Program will review each fee schedule.
- B. The Judge may Order either or both parties to pay or share the cost of the neutral. When the compensation is set by the Court, the costs will be predicated upon the following: complexity of the litigation, degree of skill necessary to mediate the case, and ability of the parties to pay.
- C. Before being placed on the list, a neutral must agree to provide hours at reduced rates to defray costs for parties with limited ability to pay.
- D. The parties in the ADR process shall be responsible for the payment of the selected or appointed neutral's fee, which shall be equally divided between the parties, unless otherwise ordered by the presiding Judge.
- E. Any party may apply with the ADR Program for a determination of whether or not said party is indigent and unable to pay the fee of the selected or appointed neutral. If the ADR Program determines that such party is indigent, the ADR Program will provide payment for the services of the neutral from the Southern Judicial Circuit ADR Fund.
- F. Satisfactory arrangements for payment of the selected or appointed neutral's fee shall be made between the parties and the neutral.

## **Rule 8. CONFIDENTIALITY AND IMMUNITY**

- A. Any statement made during a mediation or as part of intake by program staff or neutral in preparation for a mediation shall:
  - 1. Be confidential.
  - 2. Not be subject to disclosure.
  - 3. May not be disclosed by the neutral or program staff.
  - 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. Unless otherwise provided by these ADR Program rules, any document or other evidence generated in connection with a mediation is not subject to discovery. A written and 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. Unless otherwise provided by these ADR Program rules, neither the neutral nor any observer present with permission of the parties in a Court ADR process may be subpoenaed or otherwise required to testify concerning a mediation in any subsequent administrative or judicial proceeding. A neutral's notes or records shall not be subject to discovery. Notes and records of a ADR 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 program staff or the neutral 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 neutral believes that a child is being abused.
  - 3. the safety of any party or third person is in danger.
  - 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).
- 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 used for legal claims or disciplinary complaints brought against a neutral or an ADR 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 the ADR Program, or raised in another manner. Documents of communications used for such claims or complaints may be revealed only to the extent necessary to protect the neutral or ADR program. Nothing in this rule shall negate any statutory duty of a neutral to report information.
- E. Parties should be informed of limitations on confidentiality at the beginning of each session.
- F. The collection of information necessary to monitor the quality of an ADR program shall not be considered a breach of confidentiality.
- G. More details regarding the specific exceptions to confidentiality can be found in the Georgia Supreme Court's Alternative Dispute Resolution Rules.
- H. No ADR program staff member, neutral, or court personnel may be held liable for civil damages for any statement, action, omission, or decision made in the course of carrying out any of the activities described in these Rules or in any ADR process.
- I. Recording devices are not allowed in mediation.

## **Rule 10. APPEARANCE**

- A. The appearance of all parties shall be required at any ADR session. The requirement that a party appear at a 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 and have a full understanding of the dispute and full knowledge of the facts.
  - 2. An insurance carrier's representative must have full authority to settle without further consultation; telephonic or video consultations with such persons shall be permitted.
- B. In all domestic relations cases attorneys **are required** to appear and attend the entirety of the mediation process. If said requirement is not met then sanctions as provided by Rule 11 shall apply.
- C. Neutrals, parties, and attorneys may use the option to appear remotely by video conference or telephone.
- D. 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. If a party fails to bring a copy of a current, notarized financial affidavit, that party will be deemed to have not appeared and subject to the sanctions stated in Rule 11 below.

## **Rule 11. SANCTIONS FOR FAILURE TO APPEAR**

- A. If a party fails to give forty-eight (48) hours advance notice, excluding weekends and holidays, to the neutral of rescheduling, settlement or cancellation, **or**
- B. If a party or attorney fails to appear at a duly noticed mediation session after being ordered to do so, the ADR Program shall notify the presiding Judge. The requirements for appearance at a duly noticed ADR session are that the party:
  - 1. Pay the neutral at such duly noticed ADR session; and
  - 2. Listen to the opening statements of the neutral.

If the above requirements are **not** satisfied, the offending party may, in the discretion of the presiding Judge, be subject to the sanctions of contempt, the imposition of the costs and fees of the neutral, attorney fees, expenses and lost wages of the other party, and such other sums as the interest of justice may require.

## **Rule 12. COMMUNICATION WITH PARTIES**

The only *ex parte* communication between a party and the neutral outside of the mediation session shall be for the purposes of verifying appointment times and locations or answering questions about the mediation process and procedures. If a neutral 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 neutral must review the mediation guidelines prior to such action with all parties, must inform the parties of the neutral'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 neutral may meet privately with any party or any attorney during mediation.

### **Rule 13. COMMUNICATION WITH THE COURT**

- A. To preserve the objectivity of the Court and the neutrality of the neutral, there should be no communication between the neutral and the Judge. If any communication between the Court and a neutral is necessary, the communication shall be in writing and shall be made through the ADR Program Administrator. Copies of any written communication with the Court shall be given to parties and their attorneys.
- B. Once a mediation is underway, contact between the ADR Program staff and the Court concerning that case should be limited to the following:
  - 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 process.
  - 3. Communicating to the Court the neutral's assessment that the case is inappropriate for mediation.
  - 4. Communicating information that the case has settled or has not settled and whether agreement has been reached as to any issues in the case.
  - 5. Communicating 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.
  - 6. Communicating with the consent of the parties any discovery, pending motions, or action of any party which, if resolved or completed, would facilitate the possibility of settlement.
  - 7. Communicating any request for additional time to complete the mediation process.

### **Rule 14. COMPLETION OF MEDIATION**

- A. Mediation shall be completed within thirty (30) days of the first session. A request for continuance to extend the time frame to complete the mediation process shall be submitted to the ADR Program Administrator.
- B. The duration of the mediation session will vary. The neutral may adjourn the mediation session at any time and may set times for reconvening the adjourned session.
- C. If an agreement is reached, it shall be reduced to writing if possible at the end of the mediation session or within three (3) calendar days after the mediation. The neutral shall draft the agreement unless all parties determine otherwise.
  - 1. If a party is represented by counsel who is present at the mediation, an agreement should be drafted by the neutral and signed by all present at the end of the mediation session.
  - 2. If a party's attorney is not present at mediation, the agreement should be drafted by the neutral and signed by all present at the end of the mediation session. A party who does not have representation present must have an opportunity to have the agreement reviewed by his/her attorney. If there is no objection to the agreement within three (3) business days following signing, the agreement may be filed with the Court.
- D. If a partial agreement is reached, the agreement should be drafted by the neutral and signed by all present at the end of the session, in the same manner as the full agreement above.
- E. If the parties do not reach an agreement as to any matter as a result of mediation, the neutral shall

report the lack of an agreement to the ADR Program. The ADR Program Administrator or designated staff shall notify the presiding Judge and the Clerk of Court who referred the case to ADR of the lack of an agreement.

- F. 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.

#### **Rule 15. EVALUATION**

- A. Data shall be collected quarterly to ensure the quality of the program. The ADR Program may use such data to improve the quality of the program and shall share all available data with the Georgia Office of Dispute Resolution to provide statewide statistics.
- B. Evaluation of neutrals:
  - 1. The ADR Programs shall establish procedures to monitor the performance of neutrals on an ongoing basis. Data concerning settlement rate will not be used as the sole basis for the evaluation of a neutral.
  - 2. Procedures shall be established to remove incompetent, ineffective, or unethical neutrals from the list. Such procedures should also include reporting removal to the Georgia Office of Dispute Resolution so that a neutral's registration may be reconsidered.

## APPENDIX D

### RULES FOR MEDIATION IN

#### CASES INVOLVING ISSUES OF DOMESTIC VIOLENCE<sup>1</sup>

(Also Referred to As *Intimate Partner Violence and Abuse [IPV/A]*)

As amended by the Georgia Commission on Dispute Resolution, May 5, 2021<sup>2</sup>

Effective January 1, 2021

The Georgia Commission on Dispute Resolution has studied the issue of domestic violence (DV) and its impact on the mediation process intermittently since 1994. In 1994, the Domestic Violence advocacy community was divided, with some members of the community believing mediation could be beneficial in these cases while others remained skeptical. The drafters ultimately decided that depriving a survivor of domestic violence the right to mediate could be seen as another form of victimization. Decreasing survivor autonomy by delaying or denying mediation rights could reduce empowerment and self-determination while increasing the costs associated with family law matters. On April 6, 1995, the Commission adopted the Guidelines for Mediation in Cases Involving Issues of Domestic Violence.

The Guidelines put in place were innovative for their time; however, a great deal of research and practice occurred in the intervening years. Therefore, in 2015, the Commission decided to revisit and update the processes used in Georgia for addressing these concerns in mediation. This effort became a collaboration between the Georgia Commission on Dispute Resolution, the Georgia Commission on Family Violence and individuals with expertise in the issue of domestic violence and/or mediation.

Throughout 2016-2018, a domestic violence working group composed of individuals with knowledge and experience in the areas of domestic violence, family violence, mediation, and Alternative Dispute Resolution (ADR) court policies and procedures met to update the guidelines and changed the policies to be consistent with new research in the field of domestic violence. Furthermore, the working group recommended that the Guidelines be changed to rules. The group also considered how courts currently address the issues and how clients experience mediation in court, as well as information from collaboration across fields.

As a key partner and contributor, the Georgia Commission on Family Violence has both endorsed these rules and is committed to continued collaboration with the Georgia Commission on Dispute Resolution.<sup>3</sup>

#### **GUIDING PRINCIPLES:**

The Working Group developed the following Guiding Principles to frame the work done.

- a) **Safety:** The rules should maximize safety for all participants. Cases referred to mediation must be

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<sup>1</sup> The Guidelines for Mediation in Cases Involving Issues of Domestic Violence, promulgated by the Georgia Commission on Dispute Resolution, are hereby repealed, effective January 1, 2021.

<sup>2</sup> The Rules for Mediation in Cases Involving Issues of Domestic Violence were adopted by the Georgia Commission on Dispute Resolution August 22, 2018, and amended on August 5, 2020 and May 5, 2021.

<sup>3</sup> On June 22, 2018, the Georgia Commission on Family Violence voted unanimously to endorse the Rules and to support a joint committee with the Commission on Dispute Resolution to oversee implementation, training, review, and revision of the Rules

properly screened for a history of violence and abuse. Mediators and program directors must be properly trained to understand the safety needs of victims during the process of mediation and understand the safety needs of victims and children in terms of any agreement obtained as a result of mediation.

- b) **Self-Determination:** Mediators and program directors must be properly trained to understand the dynamics of domestic violence and potential power imbalances between the parties to provide the victim a meaningful opportunity for self-determination and the ability to use her (or his) voice to advocate for a desired outcome.
- c) **Best Practices:** The rules should align with current best practices for providing safety to victims of violence and or abuse, conducting mediations, and training mediators.
- d) **Practical Implementation:** As applied on an individual and program level, the rules should be reasonable to implement so that mediators and local mediation programs are able to fully comply while continuing to provide speedy, efficient, and inexpensive resolution of disputes.

### **DEFINITIONS:**

- a) **Domestic violence** (also known as Intimate Partner Violence and Abuse (IPV/A)): causing or attempting to cause physical harm to a current or former intimate partner or spouse/ partner; placing that person in fear of physical harm; or causing that person to engage involuntarily in sexual activity by force, threat of force, or duress. In addition to acts or threats of physical violence, for purposes of these rules, domestic violence may include abusive and controlling behaviors (such as intimidation, isolation, and emotional, sexual or economic abuse) that one current or former intimate partner or spouse/partner may exert over the other as a means of control, generally resulting in the other partner changing her or his behavior in response. Even if physical violence is not present in these circumstances, such a pattern of abusive behavior may be a critical factor in whether or not a party has the capacity to bargain effectively. Therefore, a person conducting screening for domestic violence must be alert to patterns of behavior that, while not overtly violent, may indicate a pattern of domestic abuse that shall be treated as domestic violence for purposes of these rules.
- b) **Screening:** the evaluation of individuals to assess their suitability for participation in mediation; gathering information from parties to determine the presence of DV risk factors; the verification of the existence of a current or past temporary protective order through the Georgia State registry; the optional examination of available records to determine if domestic violence is an issue in the case<sup>4</sup>. ADR Program staff will endeavor to encourage full and honest disclosure of any domestic violence history or concerns by reassuring the party that their sensitive information will be handled appropriately and their concerns are taken seriously.
- c) **ADR Program Staff:** individuals charged with administering the ADR program.
- d) **At-Risk Party:** the individual who is the focus of the domestic violence screening done to determine suitability for mediation.
- e) **Domestic Violence (DV) Advocate:** An individual who has specialized training and is employed by or volunteers for an organization that provides services and support to survivors of domestic

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<sup>4</sup> Temporary Protective Order, O.C.G.A. § 19-13-4 (2010).

violence (IPV/A). The DV Advocate's role for the mediation session is to offer support and serve as a resource to the at-risk party. DV Advocates are required to sign the agreement to mediate as evidence of their understanding and agreement to the terms of confidentiality as outlined by the Supreme Court ADR Rules and Appendices.

**GODR AND LOCAL PROGRAM REQUIREMENTS:**

- a) The Georgia Commission on Dispute Resolution and the Georgia Office of Dispute Resolution (GODR) has developed rules to assist courts in designing appropriate intake procedures and training for intake personnel. Existing programs shall send a description of their intake and screening procedures based on these rules to the Georgia Commission on Dispute Resolution for review. New programs shall provide a description of intake and screening procedures with any rules submitted to the Commission for approval.
- b) The Georgia Commission on Dispute Resolution and the Georgia Office of Dispute Resolution will assist courts in developing appropriate screening training.
- c) Every program should have no fewer than two mediators who are registered in Specialized Domestic Violence Mediation. All domestic violence mediators shall have completed 14 hours of *specialized issues of domestic violence in mediation* training and shall be registered in the category of Specialized Domestic Violence Mediation.
- d) No ADR program staff member, neutral, or court personnel can be held liable for civil damages for any statement, action, omission or decision made in the course of carrying out any of the activities described in these Rules or in any ADR process.

**RULES FOR MEDIATION IN  
CASES INVOLVING ISSUES OF DOMESTIC VIOLENCE  
(Also referred to as Intimate Partner Violence and Abuse IPV/A)**

**RULE 1. REFERRAL TO MEDIATION**

- a) Criminal cases that involve domestic violence shall never be referred to mediation from any court.
- b) Cases arising solely under the Family Violence Act shall not be referred to mediation from any court.<sup>5</sup> Mediators shall not facilitate the negotiation of issues related to criminal charges or the terms of any protective order in a domestic relations matter.
- c) All court programs shall screen domestic relations cases using the screening process outlined below.<sup>6</sup> Those domestic relations cases referred to mediation directly from the bench are also subject to the domestic violence screening process.

**RULE 2. SCREENING**

- a) **Purpose of screening.** The purpose of the mediation screening is to determine whether mediation can be done safely and free from coercion. Screening for domestic violence is a shared responsibility of court personnel, ADR program directors and staff, attorneys, mediators, and parties. However, the final determination as to the appropriateness of mediation will be made by the ADR program staff. Mediation brochures and parenting seminars for divorcing couples may be vehicles for dissemination of this information. GODR will maintain a webpage with DV resources, including the statewide hotline number (1.800.33HAVEN).
- b) **Informed consent.** The Ethical Standards for Neutrals (Appendix C, Chapter 1, Alternative Dispute Resolution Rules) place primacy on the principles of self-determination and voluntariness. These standards also require that parties be fully informed about the mediation process. In keeping with these principles and the necessity of protecting at-risk parties, ADR staff and court personnel, at-risk parties will be given the opportunity by the screener to exercise choice about whether to proceed with mediation prior to assignment of the case. The dynamics of a relationship characterized by a pattern of intimate partner violence and abuse may manifest in mediation. Thus, an at-risk party in such a relationship is provided with the choice of whether to mediate or not, in order to avoid further victimization and/or endangerment. To ensure that the at-risk party's choice to proceed with mediation is self-determined, the at-risk party must be provided with sufficient information about the process to make an informed choice. Listed below are the elements of mediation that must be shared with the at-risk party to ensure informed consent.
  - 1. Neutrality: an explanation of the role of the mediator as a neutral person who will facilitate the discussion between the parties but who will not coerce or control the outcome; explanation that the mediator will not allow abusive behavior and, while having

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<sup>5</sup> 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 should be screened pursuant to these rules. Mediators are specifically prohibited from mediating away protective orders or criminal charges related to criminal cases of domestic violence. This provision was added by the Georgia Commission on Dispute Resolution on March 22, 2005.

<sup>6</sup> While it is intended that the intake and screening protocol will be routinely applied to all domestic relations cases, programs should also use the screening process when allegations of domestic violence arise in other types of cases such as magistrate, juvenile, probate, and other court matters.

- skills in balancing power, will not in any way serve as an advocate for the at-risk party.
2. Confidentiality: an explanation of confidentiality of the mediation session and any limitations on the extent of confidentiality.
  3. Termination: an explanation that the mediation can be terminated at any time by either party or the mediator.
  4. Legal counsel: an explanation that the at-risk party may bring an attorney to the mediation or consult her or his attorney by telephone during the mediation as needed; and an explanation that if the at-risk party does not have an attorney, she or he may bring a DV advocate.
  5. Expert advice: an explanation that the mediator will not provide any legal or financial advice to the parties.
  6. Process: an explanation of how mediation is conducted (joint sessions, caucus, etc.) with an explanation of the option of shuttle (caucus only) mediation.
  7. Good faith: an explanation that parties will be expected to negotiate in good faith and therefore should be prepared to make full disclosure of matters material to any agreement reached; but that good faith does not in any way require parties to enter an agreement about which they have any reservations.
  8. Effect of agreement: an explanation that a mediated agreement, once signed, can have a significant effect on the rights of the parties and the status of the case.

**c) Confidentiality in Screening for Domestic Violence.** ADR program directors and staff conducting screening for domestic violence shall keep information elicited confidential. Such information shall not be communicated to the court unless absolutely necessary for the safety of the parties and court personnel. If ADR program staff determine that the case is inappropriate for mediation based on the screening process, then the court will simply be notified of that determination. Neither ADR program staff nor the neutral in a court program ADR process may be subpoenaed or otherwise required to testify regarding information disclosed during the screening process or during a mediation. A neutral's notes or records are not subject to discovery. Notes and records of a court ADR program that contain a party's response to the screening questionnaires are not subject to discovery.

### **RULE 3. CONTACTING THE AT-RISK PARTY**

- a) If the at-risk party is represented by counsel, ADR program staff should consult with her or his attorney regarding the need to contact the at-risk party to conduct an interview to learn more about the allegations and to provide information about mediation so that the at-risk party can make an informed choice about whether to participate in mediation.
- b) When communicating with either party about the mediation, the ADR program staff should take care not to provide the at-risk party's address or other contact information to the other party.
- c) When calling to arrange an interview, ADR program staff should take precautions to ensure that the party is able to speak privately before beginning the screening; i.e. asking if the party is comfortable speaking on the subject at that time, or if they would prefer to reschedule.
- d) During the phone contact with the at-risk party, ADR program staff should explain how the case came to his/her attention for further screening and the purpose of the screening, which is to allow the person to make an informed choice.
- e) When screening, ADR program staff should be aware that the screening process itself could place

an at-risk party in danger and must therefore ensure that the screening is conducted under safe and confidential circumstances.

#### **RULE 4. PHASES OF SCREENING**

- a) **Tier I.** For Tier I screening, the program should inform the parties and attorneys of the screening requirements, which includes notice to complete the survey. If there is an attorney of record, the notice shall initially be sent to the attorney. If there is no attorney, the notice shall be sent directly to the parties. Notice may be sent by U.S. Mail, email, or other means as determined by the court program. If parties do not complete the survey online, they can email, mail, or call program staff to conduct the survey over the phone. The following statement shall be included in the questionnaire: “If you are concerned about the privacy of your responses or if you prefer to answer the question by telephone, please call \_\_\_\_.” The information from the screening will be easily accessed as needed by ADR program staff and mediators.
  
- b) If parties do not submit the Tier I survey prior to the scheduled mediation OR if the Tier I survey is returned and a party answers yes to any question (with the exception of Question #7a), then a screener shall conduct Tier II screening, contacting each party, preferably by phone; if a phone number is not available, the contact shall be made by mail or email.
  1. If parties appear for mediation having never completed a DV screening, either the ADR program staff or the mediator shall conduct Tier I screening. The mediators shall be entitled to charge for the time it takes to complete both tiers of the screening.
  2. If there has been no response to the Tier I screening survey, it cannot be determined that there is no domestic violence, and therefore the mediation should only be assigned to and conducted by mediator who is registered in the category of specialized domestic violence.
  
- c) **Survey Questions for Tier I.**
  1. Have you ever applied for or been granted a protective order, restraining order or stalking order against the other party?
  2. Is the Division of Family and Children Services (DFCS) and/or Adult Protective Services (APS) involved in this case? (Does not include requests for financial assistance).
  3. Has the other party ever been arrested for an act of violence or making threats against another person?
  4. Are you afraid of the other party?
  5. Do you have any concerns for your safety when the other party does not get his/her/their way?
  6. Has the other party ever tried or threatened during the course of the relationship to:  
(check all that apply)
    - i. Harm you
    - ii. Harm the children
    - iii. Harm other family members
    - iv. Harm family pets
    - v. Use a weapon to harm or intimidate you or others
    - vi. Harm self
    - vii. None of these apply
  7. A. Are you currently living in the same home with the other party?

B. If so, do you think you would feel safe in returning home after discussing the issues in your case in mediation?

8. Are there any other concerns about safety? If yes, please explain.

d) **Survey Questions for Tier II**

1. Review Tier I Questions.
2. Do you know what mediation is and why it has been ordered in your case?
3. What happens when you speak your mind and express your point of view to [insert name]?
4. Has the other party ever denied you the right to access family resources such as money, transportation, a phone, etc.? If yes, please describe.
5. Are you afraid of disagreeing with [name]? If yes, what happens when you disagree? Would you feel able to disagree with [name] if the two of you were in separate rooms and the mediator worked with you one on one?
6. Has [name] discouraged you from spending time with friends and family?
7. Has the other party ever sent you repeated e-mails, calls, social media contacts or other unwanted communication after you asked him/her/them to stop? Has the other party monitored your communication, social media, or your whereabouts? If yes, please explain.
8. Have you ever cancelled a temporary protective order or allowed one to expire against [name]?
9. Has [name] interfered with your ability to speak to an attorney or other advocate?
10. Has [name] discouraged you from working, accepting promotions, going to school, and being independent in general? If yes, how so?
11. Has the other party ever hit, strangled, pushed, or slapped you?

e) **Mediation Recommendation.** Based on the answers from the Tier II questions and on the presence or absence of any other indicators of abuse or coercion as perceived by the screener, the screener or ADR program director should determine if the case is appropriate for mediation. If it is determined that the case is appropriate for mediation, screeners shall discuss the following with the at-risk party:

1. If arrangements need to be made for the parties to arrive and leave the mediation session separately.
2. If arrangements need to be made for the session to be held entirely in caucus.

**RULE 5. NEXT STEPS AFTER SCREENING**

After presenting information about the process of mediation and discussing the information elicited by the questions in Rule 4(e), the screener shall ask whether the at-risk party needs any further information about the mediation process in order to decide whether or not the at-risk party is willing to mediate.

The mediation process should proceed only if accommodations can be put in place that will enable the parties to:

- ✓ Speak up and negotiate for themselves,
- ✓ Feel safe and secure during and after the mediation, and
- ✓ Reach a voluntary, un-coerced agreement.

## **RULE 6. REFERRAL TO MEDIATION IF DOMESTIC VIOLENCE ALLEGED**

After Tier II screening and the subsequent discussions described in Rules 4(e) and 5, the at-risk party may choose whether or not he or she wants to proceed with mediation. If represented, the party should be encouraged to discuss that decision with counsel and be given an opportunity to do so before making that decision.

- a) If the ADR program staff determines that the case is inappropriate for mediation based on the information from the screening, then they should convey this information to the court.
- b) If the at-risk party prefers to proceed with mediation, the case shall be sent to mediation unless the ADR program staff or the court determines that there is a compelling reason that this particular case should not be referred.
- c) If referred, the ADR program must take reasonable steps to ensure that the safeguards set forth in Rule 7 herein are in place for the mediation session.
- d) ADR program staff has final decision-making authority as to whether the mediation shall proceed, with great weight given to the preferences of the party who is perceived by ADR program staff to be at risk.
- e) ADR program staff and/or mediators shall provide at-risk parties the link to the GODR webpage and/or the Georgia's Statewide Domestic Violence Hotline (1.800.334.2836).

## **RULE 7. SAFEGUARDS FOR THE MEDIATION SESSION IN CASES INVOLVING ISSUES OF DOMESTIC VIOLENCE**

- a) All mediation sessions in cases involving issues of domestic violence must be conducted by a mediator registered in the Specialized Domestic Violence category.
- b) If screening was not completed prior to the time of mediation, the program or mediator shall screen the parties separately immediately prior to the scheduled mediation. If domestic violence is indicated during this screening, mediation cannot proceed without appropriate Tier I and, if applicable, Tier II screening.
- c) At the earliest possible point in the mediation, the mediator should explore power dynamics in order to:
  - a. confirm the comfort of each party with the mediation format, and
  - b. confirm the ability of each party to bargain for her/himself.
- d) ADR program staff and the mediator shall exercise care to avoid disclosure of the parties' place of residence, telephone numbers, email address, etc., by either the program staff or the mediator.
- e) The ADR program staff and/or mediator should encourage at-risk parties to have an attorney or DV advocate available for the entire session or sessions.
- f) The ADR program staff and/or mediator shall offer to arrange for the parties to arrive and leave the mediation session separately and shall make such arrangement if requested.

- g) The ADR program staff and/or mediator shall offer the option of the entire session being in caucus and/or in a virtual environment and shall make such arrangements if requested.
- h) All mediations sessions in cases involving issues of domestic violence must be held in a secure venue. The ADR program staff shall take reasonable steps to make the mediation session safe.
- i) ADR Program staff is responsible for ensuring that the mediator knows the status of the case and the outcomes of the screening. And, the mediator is responsible for ensuring that he or she is aware of the status of the case.