



## NINTH JUDICIAL ADMINISTRATIVE DISTRICT OF GEORGIA ALTERNATIVE DISPUTE RESOLUTION RULES

These alternative dispute resolution rules apply to the Superior, Juvenile, State, Probate, Magistrate and City Courts of Cherokee, Dawson, Fannin, Forsyth, Gilmer, Habersham, Hall, Lumpkin, Pickens, Rabun, Stephens, Towns, Union and White Counties in the Ninth Judicial Administrative District of Georgia.

### General Policy

Each court will make information about alternative dispute resolution (ADR) options available to all litigants.

### Definitions

The term Alternative Dispute Resolution (ADR) refers to any method other than litigation for resolution of disputes. A definition of some common ADR terms follows:

#### **NEUTRAL:**

The term “neutral” as used in these rules refers to an impartial person who facilitates discussions and dispute resolution between disputants in mediation, case evaluation or early neutral evaluators, arbitrators and judicially hosted settlement conference providers.

#### **MEDIATION:**

Mediation is a process in which a neutral facilitates settlement discussions between parties. The neutral has no authority to make a decision or impose a settlement upon the parties. The neutral attempts to focus the attention of the parties upon their needs and interests rather than upon their rights and positions. Although in court-annexed or court-referred mediation 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.

#### **CASE EVALUATION OR EARLY NEUTRAL EVALUATION:**

Case evaluation or early neutral evaluation is a process in which a lawyer with expertise in the subject matter or litigation acts as a neutral evaluator of the case. Each side presents a summary of its legal theories and

evidence. The evaluator assesses the strength of each side's case and assists the parties in narrowing the legal and factual issues of the case. This conference occurs early in the discovery process and is designed to "streamline" discovery and other pretrial aspects of the case. Early neutral evaluation of the case may also provide a basis for settlement discussions.

#### **ARBITRATION:**

Arbitration is a process in which an arbitrator or panel of arbitrators renders a decision after hearing an abbreviated version of the evidence. In non-binding arbitration, either party may demand a trial within a specified period. The essential difference between mediation and arbitration is that arbitration is a form of adjudication, whereas mediation is not.

#### **JUDICIALLY HOSTED SETTLEMENT CONFERENCE:**

A judicially hosted settlement conference (JHSC) is a confidential non-binding process in which a senior superior court judge (settlement judge) acts as a neutral mediator/evaluator of the case. Each side has the opportunity to present a brief summary of its evidence, legal theories and settlement desires. The settlement judge will assist the parties in settlement negotiations by assessing the strengths and weaknesses of each side's case. The settlement judge has no decision-making authority and is in no way acting in lieu of the assigned judge.

#### **ADR PROGRAM STAFF:**

Individuals employed by the 9<sup>th</sup> Judicial Administrative District ADR Combined Fund Chair and Executive Committee to include the 9<sup>th</sup> JAD ADR Executive Director and program staff charged with administering ADR services for all levels of court for the fourteen participating counties in the Ninth Judicial Administrative District.

#### **DOMESTIC VIOLENCE:**

- 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 others 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; it may also include the verification of the existence of a current or past temporary protective order through the Georgia State registry; it may also include examination of available records to determine if domestic

violence is an issue in the case. 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 taken seriously.

- C. At-Risk Party: the individual who is the focus of the alleged domestic violence after screening process to determine suitability for mediation.
- D. Domestic Violence 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 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 (mediation guidelines) as evidence of their understanding and agreement to the terms of confidentiality as outlined by the Supreme Court ADR Rules and Appendices.

#### **LIABILITY:**

The 9<sup>th</sup> Judicial Administrative District Alternative Dispute Resolution Executive Director, staff member, neutral, or court personnel cannot 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.

#### **RULE 1. REFERRAL TO MEDIATION**

- A. Cases may be referred to the Ninth Judicial Administrative District Court-Annexed Alternative Dispute Resolution Program (9<sup>th</sup> JAD ADR) upon request to the court by any or all parties, or sua sponte by the court. The parties in any civil case, domestic case, or juvenile case may be ordered to utilize ADR. Any contested civil case may be referred to non-binding arbitration, case evaluation or early neutral evaluation or judicially hosted settlement conference, by the judge to whom the case is assigned. Cases shall be screened by the judge and/or the 9<sup>th</sup> JAD ADR director, or his/her designee to determine:
  - a. Whether the case is appropriate for ADR.
  - b. Whether a party that is requesting a fee reduction is eligible.
  - c. Whether a need for emergency relief makes referral inappropriate until the request for relief is heard by the court.
  - d. Whether in domestic cases, allegations of domestic violence make the referral inappropriate for an alternative dispute resolution process.
- B. Cases may be ordered to an ADR process by category. Ie: all contested domestic cases
- C. Juvenile Court
  - a. Mediation is the only process available.
  - b. Mediators will be appointed by the 9<sup>th</sup> JAD ODR director, or his/her designee, unless otherwise directed by the court.
  - c. Either the court or 9<sup>th</sup> JAD ODR will determine the date of the mediation session and notify all stakeholders.
- D. Magistrate court
  - a. Mediation is the only process available.
  - b. The judge of the magistrate court will contact the 9<sup>th</sup> JAD ODR by email or fax of the date, time and number of cases for each mediation calendar at least 24 hours prior to the date of the

calendar so it may be ascertained how many mediators will be needed. As a general rule, calendars with more than 15 cases, given that some cases will fall off at the last minute, require additional mediators to be assigned so as not to compromise the integrity of the process.

- c. Mediators for all magistrate court cases will be assigned by the 9<sup>th</sup> JAD ODR director, or his/her designee.
- E. Any party to a dispute referred to an ADR process may petition the court to exclude the case from mediation if:
  - a. The issue to be considered has previously been through an ADR process with a neutral registered with the Georgia Office of Dispute Resolution in the areas of the dispute.
  - b. The issue presents a question of law only.
  - c. Other good cause is shown before the judge to whom the case is assigned.
  - d. The issues have been referred by consent of the 9<sup>th</sup> JAD ODR Director to a private provider of mediation services (the neutral is not on the 9<sup>th</sup> JAD ADR roster) and the private provider is currently registered with the Georgia Office of Dispute Resolution in the category in which the case to be mediated falls. The parties must request in writing permission to use a provider not listed on the 9<sup>th</sup> JAD ODR roster and receive consent prior to scheduling.
- F. Criminal cases that involve domestic violence shall never be referred to mediation from any court.
- G. Cases arising solely under the Family Violence Act shall not be referred to mediation from any court. Mediators shall not facilitate the negotiation of issues related to criminal charges or the terms of any protective order in a domestic relations matter.
- H. All domestic referrals shall be screened prior to mediation using the screening process outlined below. Domestic relations cases referred to mediation directly from the bench are also subject to the domestic violence screening process.

## **RULE 2. Screening of Domestic Relations Cases**

The purpose of the mediation screening process 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 director and staff, attorneys, mediators and parties. However, the final determination as to the appropriateness of mediation will be made by the ADR Program Executive Director or designated and trained staff member(s). All parties of domestic cases that are noticed by the 9<sup>th</sup> JAD ODR (or attorneys sending out notices without scheduling through the 9<sup>th</sup> JAD ADR office) will be provided the statewide domestic violence hotline number (1.800.33HAVEN) either verbally or in correspondence.

### A. Informed consent

- a. When screening a domestic case during the Tier II process, the 9<sup>th</sup> ADR Director (or designated staff members) will inform parties about the mediation process. The at-risk party(s) will be given the opportunity by the screener to exercise choice about whether to proceed with mediation prior to scheduling a mediation session. Should the 9<sup>th</sup> JAD ODR not screen a party, or if the mediation is scheduled without going through the 9<sup>th</sup> JAD ADR office, it is the mediator's responsibility at the beginning of the mediation session to screen the party(s) and allow the party to exercise choice about whether to proceed with the mediation.
- b. 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.

- i. **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 skills in balancing power, will not in any way serve as an advocate for the at-risk party (or any other party.)
  - ii. **Confidentiality:** an explanation of confidentiality of the mediation session and any limitations on the extent of confidentiality.
  - iii. **Termination:** an explanation that the mediation can be terminated at any time by either party or the mediator.
  - iv. **Legal counsel:** an explanation that the at-risk party may bring an attorney to the mediation or consult her/his attorney by telephone during the mediation as needed; and an explanation that if the at-risk party does not have an attorney, she/he may bring a DV advocate.
  - v. **Expert advice:** an explanation that the mediator will not provide any legal or financial advice to the parties.
  - vi. **Process:** an explanation of how mediation is conducted (joint sessions, caucus, etc.) with an explanation of the option of shuttle (caucus only) mediation.
  - vii. **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.
  - viii. **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.** 9<sup>th</sup> ADR director and program staff conducting screening for domestic violence shall keep information elicited confidential. Such information shall not be communicated to the court unless necessary for the safety of the parties and/or court personnel. If the 9<sup>th</sup> ADR director or the program staff determine that the case is inappropriate for mediation based on information gained in the screening process, then the court will simply be notified of that determination. Neither 9<sup>th</sup> ADR director or 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. Any notes and/or records of the 9<sup>th</sup> JAD ADR program that contain a party's response to the screening questionnaires are not subject to discovery.
- d. **Contacting the At-Risk Party.**
- i. In domestic relations cases where a party(s) is represented by counsel, the 9<sup>th</sup> JAD ODR director or designated program staff should consult with the party(s) attorney to gain permission to contact their client to conduct Tier I and/or Tier II screening. If the attorney does not grant permission, the case will be returned to court indicating in the case status report that the 9<sup>th</sup> JAD ODR was unable to gain permission to screen the party.
  - ii. Should during the screening process be determined that there are domestic violence allegations, the at-risk party will be provided information to make an informed choice about whether to participate in mediation. Should the party choose to communicate with their attorney prior to making a decision, this will be granted.

- iii. When communicating with any party or their attorney about a domestic mediation, the 9<sup>th</sup> JAD ADR director and program staff will take care not to provide any party's address or other contact information to the other party.
  - iv. When contacting a party to arrange an interview, the ADR director or designated program staff should take precautions to ensure 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 another time would be more convenient.
  - v. During telephone contact with a party, the 9<sup>th</sup> JAD ADR director and/or program staff should explain that all parties in domestic cases are being screened. If it is a Tier II screening, again the purpose of the screening should be communicated, which is to allow the person to make an informed choice.
  - vi. When conducting Tier I and/or Tier II screening, the ADR director and program staff should be aware that the screening process itself could place an at-risk party in danger and must therefore be conscious that when the screening is conducted as safe and confidential as possible given the information they have.
- e. Phases of screening.
- i. Tier 1. For Tier I screening the 9<sup>th</sup> JAD ODR should inform the parties and attorneys of the screening requirements in all domestic relations cases. If there is an attorney of record, the notice and Tier I information will be initially sent to the attorney. If there is no attorney, the notice and Tier I questions shall be sent directly to all parties in all domestic relations cases. Notice will be sent via email, USPS, facsimile, or any other means available. Parties may complete and return the Tier I questionnaire by email, USPS, facsimile, in person, or by telephone. The following statement will be included on the Tier I form when forwarded to every domestic party: "If you are concerned about the privacy of your responses or if you prefer to answer the questions by telephone, please telephone 770.535.6909 between 8:30a – 5:00p." The information from the screening will be maintained in the active case file and be destroyed in accordance with the 9<sup>th</sup> JAD ODR Retention Schedule.
  - ii. Should any party fail to submit Tier I screening after attempting to contact them by USPS and telephone, and any other means, it cannot be determined that there is no domestic violence. Therefore, the case should be returned to court.
  - iii. 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 (DFACS) 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:
      - a. Harm you
      - b. Harm the children
      - c. Harm other family members
      - d. Harm family pets

- e. Use a weapon to harm or intimidate you or others
    - f. Harm self
    - g. None of these apply
  - 7. Are you currently living in the same home/location as the other party? If so, do you think you would feel safe returning home or that location after discussing the issues in your case in mediation?
  - 8. Are there any other concerns about safety? If yes, please explain.
- iv. 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 the other party?
  - 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 the other party? If yes, what happens when you disagree? Would you feel able to disagree with the other party if the two of you were in separate rooms and the mediator worked with you one on one?
  - 6. Has the other party discouraged you from spending time with friends and family?
  - 7. Has the other party ever sent you repeated emails, phone calls, social media contacts or other unwanted communication after you asked him/her to stop? Has the other party monitored your communication, social media, or your whereabouts? If yes, please explain.
  - 8. Have you ever canceled a temporary protective order or allowed one to expire against the other party?
  - 9. Has the other party interfered with your ability to speak to an attorney or other advocate?
  - 10. Has the other party discouraged you from working, accepting promotions, going to school, or just being independent in general? If so, how?
  - 11. Has the other party ever hit, strangled, pushed or slapped you?
- v. Mediation recommendation. Based on the answers from the Tier questions and on the presence or absence of any other indicators of abuse or coercion as perceived by the screener, understanding the screener is not a mental health professional nor an investigator and is simply a scheduler of mediation cases, the screener or ADR program director should determine if the case is appropriate for mediation. Given the information that the screener has available to them if the screener determines the case is appropriate for mediation, screeners shall discuss the following with the at-risk party:
  - 1. If arrangements need to be made by the mediator for the parties to arrive and leave the mediation session separately.
  - 2. If the mediator needs to be notified that there are allegations of domestic violence in the case and the party(s) desire that the mediation session be held entirely in caucus.
- f. Next steps after screening.
 

After presenting information about the process of mediation and discussing the information elicited by the questions above, 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, uncoerced agreement.

g. Referral to mediation if domestic violence alleged.

After Tier II screening and the subsequent discussions described above, the at-risk party may choose whether or not he/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.

1. If the 9<sup>th</sup> ADR executive director, or program staff determines that the case is inappropriate for mediation based on the information from the screenings, then they should convey this information to the court.
2. If the at-risk party(s) prefers to proceed with mediation, the case shall be sent to mediation unless the director and/or program staff, or the court determines that there is a compelling reason that this particular case should not be referred.
3. If referred, the mediator will be notified of the allegations of domestic violence if the case is screened by the 9<sup>th</sup> JAD ODR . The mediator should take reasonable steps to ensure that the safeguards set forth below are in place for the mediation session.
4. 9<sup>th</sup> JAD ODR has final decision-making authority as to whether a mediation screened by staff shall proceed, with great weight given to the preferences of the party who is perceived by program staff to be at-risk.
5. 9<sup>th</sup> JAD ODR shall provide in correspondence or verbally to all domestic parties the telephone number for Georgia's Statewide Domestic Violence Hotline:(1.800.334.2836 – 1.800.33HAVEN).

h. Safeguards for the mediation session in cases involving issues of domestic violence.

1. All mediation sessions in cases involving allegations of domestic violence must be conducted by a mediator registered in the Specialized Domestic Violence category.
2. If the case did not go through the 9<sup>th</sup> JAD ODR scheduling and screening process, the mediator shall screen the parties separately immediately prior to the scheduled mediation. If domestic violence is indicated during this screening, mediation cannot proceed without Tier I, and if applicable, Tier II screening.
3. 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 formant, and
  - b. Confirm the ability of each party to bargain for her/himself.
4. 9<sup>th</sup> JAD ADR program staff and the mediator shall exercise care to avoid disclosure of the parties' place of residence, telephone numbers, email address, etc.
5. The 9<sup>th</sup> JAD ADR staff and/or mediator should encourage at-risk parties to have an attorney or DV advocate available for the entire session or sessions.
6. The mediator facilitating the mediation sessions shall offer to arrange for the parties to arrive and leave the mediation session separately and shall make such arrangement if requested.



7. The 9<sup>th</sup> JAD ADR staff, if scheduled and screened through them, or the mediator facilitating the mediation session shall offer the option of the entire session being in caucus and/or in a virtual environment and shall make such arrangements if requested.
8. All mediation sessions in cases involving allegations of domestic violence must be held in a secure venue. All cases with allegations of domestic violence scheduled and screened by the 9<sup>th</sup> JAD ODR will be held at the courthouse to ensure the mediation sessions are safe.
9. The 9<sup>th</sup> JAD ODR scheduling person is responsible for providing the selected mediator with 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.

### **Rule 3: Timing of Referral to Mediation**

- A. Conference or Hearing Date. Unless otherwise ordered by the court, the first mediation conference shall be held within 30 days of the order referring the case to mediation for domestic cases, and within 60 days of the order referring all other cases to mediation.
- B. Notice. The parties shall select a mediator in accordance with Rule 5 herein. Within 14 calendar days after the case is referred to mediation, the parties will inform the ADR office of the name of the neutral both parties agree on and the date, time and location of the mediation. Notice to the 9<sup>th</sup> JAD ODR is the plaintiff's responsibility. Should the parties fail to select a neutral, the 9<sup>th</sup> JAD ODR will select and schedule the mediation session.
- C. Rescheduling. Once a mediation has been scheduled, NO UNILATERAL RESCHEDULING IS PERMITTED. The party or attorney who is requesting that a mediation session be rescheduled must obtain consent from the opposing party/counsel and the assigned neutral. Unless so rescheduled, the mediation conference must be held as originally scheduled. The 9<sup>th</sup> JAD ODR must immediately be notified of any rescheduling by the party requesting the change.
- D. Conflict Cancellations. Cancellation of a scheduled mediation will only be permitted in compliance with the Uniform Superior Court Rule relating to conflicts. The attorneys and neutral have the responsibility of notifying the 9<sup>th</sup> JAD ODR of any Uniform Rule conflict cancellation. The session must be rescheduled within 14 days by the attorney with the conflict. If a party no longer desires mediation, the mediation can only be canceled by an order from the Judge to whom the case is assigned. Timely notice of cancellation (at least twenty-four (24) business hours) must be received by the neutral or a cancellation fee will apply. NO OTHER CANCELATIONS WILL BE PERMITTED AND WILL BE A VIOLATION OF THE COURT ORDER TO ATTEND.
- E. Settlement Prior to ADR Session. If a case is resolved prior to the scheduled ADR session the session may be canceled upon written notification from an attorney to the neutral and the 9<sup>th</sup> JAD ODR of the settlement. Parties who have settled all issues in their case prior to the mediation session must present the 9<sup>th</sup> JAD ODR office with a copy of the signed and filed agreement. Should the settlement fall within the twenty-four (24) business hours required notification, a cancellation fee will apply.
- F. Fee Reductions. Parties who feel they qualify for a fee reduction are responsible for contacting the 9<sup>th</sup> JAD ODR for a fee reduction form. This form may also be downloaded from our website at <http://www.adr9.com> or may be mailed, emailed or faxed. The original fee reduction form must be received in the 9<sup>th</sup> JAD ODR no less than ten (10) days prior to the scheduled mediation session with all requested information provided and form completely filled out and notarized. **All fee waiver**

**requests received less than ten (10) days prior to the scheduled mediation session or improperly or incompletely filled out will be rejected regardless of the person's ability to qualify for a fee reduction.**

#### **Rule 4. Exemption or Exclusion of cases from mediation**

The following actions should not be referred to mediation except upon petition of all parties or upon sua sponte motion of the court (Also please see 9<sup>th</sup> JAD ADR rule 1.E):

- A. Appeals from rulings of administrative agencies.
- B. Forfeitures of seized property.
- C. Habeas corpus and extraordinary writs.
- D. Bond validations.
- E. Declaratory relief.
- F. URESA (Uniform Reciprocal Enforcement or Support Act.)

#### **Rule 5. Appointment of Neutrals**

Parties may select an alternative dispute resolution provider from a list of registered and approved neutrals provided by the 9<sup>th</sup> JAD ODR. The current list is available on our website at <http://www.adr9.com>. If the parties cannot agree on a neutral or do not notify the 9<sup>th</sup> JAD ODR of their selections within fourteen (14) calendar days after the date of the order referring the case to mediation, one will be appointed by the 9<sup>th</sup> JAD ODR. The parties may make a request in writing to the 9<sup>th</sup> JAD ADR Executive Director for approval to use a neutral who is registered with the Georgia Office of Dispute Resolution in the category of the case to be mediated, and who is not on the 9<sup>th</sup> JAD ADR roster. A written request may also be submitted to the 9<sup>th</sup> JAD ODR Executive Director for a change in the appointed neutral if a conflict is cited, a neutral's objectivity is questioned, or for other good cause shown. If a selected neutral is disqualified by the 9<sup>th</sup> JAD ADR Executive Director, a qualified replacement from the approved list of neutrals for the 9<sup>th</sup> JAD ODR will be assigned to the case.

#### **Rule 6. Neutral Qualifications for Service in the 9<sup>th</sup> JAD ADR Program**

The qualifications for service as a neutral in the 9<sup>th</sup> JAD ADR Program are as follows:

- A. Neutral Registration and Approval
  - a. All neutrals must be registered with the Georgia Office of Dispute Resolution.
  - b. All neutrals must be observed facilitating a mediation session by the 9<sup>th</sup> JAD ADR Executive Director or their designee, and then approved by the 9<sup>th</sup> JAD ADR Executive Director prior to being added to the 9<sup>th</sup> JAD ADR approved roster of neutrals.
  - c. A roster of neutrals selected for service within the 9<sup>th</sup> JAD ADR program is available for review at the 9<sup>th</sup> JAD ODR or on our website at <http://www.adr9.com>.
- B. Training
  - a. All neutrals interested in being added to the 9<sup>th</sup> JAD ADR Roster of Neutrals shall provide copies of their training certificates along with copies of their registration status with the Georgia Office of Dispute Resolution prior to being considered for addition to our roster. For additional information on being added to the roster please visit our website at <http://www.adr9.com>.
- C. Background and Educational Requirements

- a. Superior, State and Probate Court mediators
  - i. General civil mediators must:
    1. Be a member in good standing with the State Bar of Georgia; or
    2. Have a graduate degree in finance, sociology, psychology, public administration or closely related field; or three (3) years of court related experience may be substituted for graduate education requirement as approved by the 9<sup>th</sup> JAD ADR Executive Director.
  - ii. Domestic mediators must:
    1. Be a member in good standing with the State Bar of Georgia; or
    2. Have a graduate degree in psychology, counseling, accounting, public administrative or closely related field; or, three years of court related experience may be substituted for graduate education requirement as approved by the 9<sup>th</sup> JAD ADR Executive Director.
  - iii. Arbitrators must meet the requirements of the Georgia Supreme Court Alternative Dispute Resolution Rules as set forth in Appendix B Section I. (A).
  - iv. Case evaluators or early neutral evaluators must meet the requirements of the Georgia Supreme Court Alternative Dispute Resolution Rules as set forth in Appendix B Section I. (C).
  - v. Magistrate and criminal case neutrals must meet the requirements set forth in Georgia Supreme Court Alternative Dispute Resolution Rules as set forth in Appendix B Section I. (B).
  - vi. Juvenile court mediators must be registered with the Georgia Office of Dispute Resolution in the following categories: general civil mediation, domestic mediation, specialized domestic violence, and juvenile mediation.
- b. Experience Prerequisites
  - i. General civil and domestic mediators must have:
    1. Two (2) years experience as an attorney; or
    2. Three (3) years related experience if not an attorney, and
    3. Domestic mediators must have the Specialized Domestic Violence training and have attended the Divorcing Parents Seminar used in the 9<sup>th</sup> JAD.
    4. Three (3) years court and/or mediation experience.
  - ii. Arbitrators must have:
    1. Five (5) years experience as an attorney and subject area expertise; or
    2. Five (5) years content area experience if not an attorney. Only an attorney can render a decision.
  - iii. Case evaluators/early neutral evaluators must have seven (7) years experience in the area of the litigation in question.
  - iv. Magistrate Court, City Court and Criminal Calendar mediators must meet the requirements set forth in the Georgia Supreme Court Alternative Dispute Resolution Rules for registration in general civil mediation and three (3) years of court and mediation experience.
  - v. Judicially Hosted Settlement Conference facilitators:
    1. Must have been appointed as a Superior Court of Georgia Senior Judge
    2. Must be registered with the GODR as a general civil mediator.
    3. Must have successfully completed the JHSC training offered by ICJE or the Judicial Administrative Districts.
- c. Continuing Education Requirements

- i. All neutrals shall complete eight (8) hours of approved continuing education training annually for renewed approval as mediator on the 9<sup>th</sup> JAD ADR Roster.
- ii. All mediators who are compensated by the parties must remit \$20.00 administrative fee to the 9<sup>th</sup> JAD ODR per mediated case, unless a fee reduction is attached from both parties or the cases are calendar cases where the mediator is paid a stipend. The remittance must be submitted within 24 hours of completion of the mediation in conjunction with the mediation report, signed agreement to mediate and either a copy of or the original agreement, if applicable.

## **Rule 7. Compensation of Neutrals**

Compensation for neutrals will be a combination of fees and stipends. Requests for fee reductions may be considered by the 9<sup>th</sup> JAD ODR in accordance with Rule 3F. As part of the application process, neutrals are required to submit their hourly fee schedules. The hourly rate submitted may not be changed without notification to the 9<sup>th</sup> JAD ODR Executive Director, who shall review all fee schedules for reasonableness. Rates can not be changed more than one time during a calendar year unless agreed to by the 9<sup>th</sup> JAD ODR Executive Director. Neutrals on the 9<sup>th</sup> JAD ADR Roster of Approved Neutrals will be required to provide pro bono hours.

- A. Superior State and Probate Courts: The fee for the neutral shall be equally divided among the parties (except upon agreement) who shall be prepared to pay the neutral at time of the ADR session. The parties and the neutral will determine the length of the session. The courts may impose sanctions on a party due to nonpayment.
- B. State court Victim-Offender Calendars, Magistrate Calendars: Mediators will receive a \$25.00 stipend per case mediated unless performing pro bono hours.
- C. Juvenile Court Dependency Cases: Mediators will receive their hourly rate up to \$300.00 per case mediated unless performing pro bono hours. Should the mediation not be able to move forward after the mediator has shown up for the case, they will receive a \$25.00 no-show fee.
- D. Juvenile Court Delinquency Cases: Mediators will receive a \$25.00 stipend for each mediation session. Should the mediation not be able to move forward after the mediator has shown up for the case, they will receive a \$25.00 no-show fee.
- E. No Shows or Cancellations: When assigned to a stipend case, mediators will not be entitled to any collection of monies from the 9<sup>th</sup> JAD ODR office in the case of party no shows or cancellations.

## **Rule 8. Confidentiality and Immunity**

- A. Immunity. Immunity for neutrals is governed by Rule VII, Georgia Supreme Court ADR Rules.
- B. Confidentiality. Confidentiality of the mediation process extends to 9<sup>th</sup> JAD ADR staff who as part of their employment are bound by confidentiality of anything that is learned or heard in their role as an employee of the 9<sup>th</sup> JAD ADR. Mediators are encouraged to contact the 9<sup>th</sup> JAD ODR should any question or circumstance arise during the mediation process in which they need guidance. Confidentiality is also governed by Rule 16 herein and as Rule VII, Georgia Supreme Court ADR Rules.

## **Rule 9. Appearance**

All parties, unless excused by the assigned judge, must physically appear at all scheduled ADR sessions. A party is deemed to appear if the following are physically present, with attendance limited to the following parties unless otherwise permitted by the neutral.

- A. For any 9<sup>th</sup> JAD ADR process:
  - a. For any insured party, an adjuster or other representative of the carrier with full authority to settle without further consultation; however, telephone consultations with persons immediately available are permitted.
  - b. Although not required, attorneys are encouraged to attend ADR sessions and may never be excluded by the court or the ADR provider.
  - c. As permitted by the court in response to the COVID-19 pandemic, parties may be permitted to attend mediation sessions virtually. Parties will be informed at time of notice of the mediation session of whether the session will be virtual or in-person. The assigned/selected mediator will reach out to the parties prior to the session with information concerning the virtual platform to be used for the mediation session and respond to any questions concerning the virtual mediation process and methods of payment they will accept. The courts may rescind permission to attend virtual mediation in lieu of in-person at their discretion.

## **Rule 10. Sanctions for Non-Attendance and/or Failure to Bring Financial Affidavit**

If a party fails to appear at any scheduled ADR session as set forth in Rule 9 above, fails to give twenty-four (24) business hour notice of approved cancellation or rescheduling, or fails to bring a current notarized financial affidavit for domestic relations cases, the 9<sup>th</sup> JAD ODR will notify the judge to whom the case is assigned. The judge upon motion may impose sanctions against the party failing to appear or present required documentation.

## **Rule 11. Communications with Parties**

Ex parte communications between a party and the mediator outside of the ADR session shall be for the purpose of selecting a neutral, verifying appointment times and locations, or answering questions about the ADR process and procedures. The neutral may meet privately with any party or any attorney during the ADR conference.

## **Rule 12. 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 9<sup>th</sup> JAD ADR Executive Director. Copies of any

written communication with the courts should be given to the parties and their attorneys.

- B. Once a mediation session is underway in a given case, contact between the 9<sup>th</sup> JAD ODR and the court concerning that case should be limited to:
- a. Communicating with the court about the failure of a party to attend.
  - b. Communication with the court, with the consent of the parties, concerning procedural action on the part of the court which might facilitate the mediation.
  - c. Communicating to the court the neutral's assessment that the case is inappropriate for that process.
  - d. Communicating any request for additional time to complete the mediation.
  - e. Communicating information that the case has settled or has not settled and whether an agreement has been reached as to any issues in the case.
  - f. Communicating the contents of an agreement unless the parties agree in writing that the agreement should not be disclosed.
  - g. 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 13. Completion of ADR**

ADR proceedings shall not delay or impede the trial of a case. Mediation shall be completed within thirty (30) days of the order referring the case to mediation in domestic cases, or within sixty (60) days of the order referring all other cases to the ADR process, unless otherwise ordered by the assigned judge.

- A. Mediation
- a. The duration of ADR sessions will depend upon the complexity of the case and the issues involved.
  - b. All parties and the neutral shall sign the Guidelines for Mediation before the ADR session commences. It is the responsibility of the neutral to return the original form to the 9<sup>th</sup> JAD ODR within twenty-four (24) hours of each mediation session.
  - c. All parties and the neutral shall complete and sign the Mediation Report at the end of each ADR session. It is the responsibility of the neutral to turn this form into the 9<sup>th</sup> JAD ODR within twenty-four (24) hours of each mediation session.
  - d. If an agreement or partial agreement is reached, the neutral shall prepare and review the agreement with the parties. The parties and counsel, if present, are required to sign the agreement reached, but the party(s) without counsel present at the ADR session shall have ten (10) calendar days, OR UNTIL THEIR COURT HEARING, whichever comes first, within which to have the agreement reviewed and approved by an attorney or to recant the agreement in writing. If either party is represented and their counsel attends the ADR session in which an agreement or partial agreement is reached, the agreement or partial agreement is considered final for the represented party(s). If either party is unrepresented at the ADR session and recants the agreement, the recanting party shall notify, **IN WRITING, THE 9<sup>TH</sup> JAD ODR**

**AND THE OPPOSING ATTORNEY/PARTY WITHIN THE ALLOTTED TEN (10) CALENDAR DAYS.** At the end of the allotted time, it is the plaintiff's responsibility to prepare the final order unless the parties determine otherwise. It is the responsibility of the neutral to forward the Mediation Agreement, Mediation Report, Guidelines for Mediation and \$20.00 administration fee to the 9<sup>th</sup> JAd ODR within twenty-four (24) hours of the ADR session.

- e. If the parties do not reach an agreement as to any matter as a result of the ADR session, the neutral shall report the lack of an agreement with twenty-four (24) hours to the 9<sup>th</sup> JAD ODR through the Mediation Report, along with the Agreement to Mediate along with the \$20.00 administrative fee. The 9<sup>th</sup> JAD ODR shall notify and provide the Mediation Report to the assigned judge so the case may be returned to the court's docket.

**B. Arbitration**

- a. The arbitrator or arbitration panel shall swear witnesses and receive evidence. The rules of evidence shall be the same as followed in equitable proceedings or at temporary restraining hearings, except as otherwise specified hearing. At least ten (10) business days prior to the arbitration hearing date, each party must specify in writing and provide to each party copies of all documents to be tendered into evidence. Failure to serve such copies in a timely fashion prior to the hearing will require such party to have the documents authenticated as provided by law at the time of the hearing, unless all parties agree to waive the service requirement. The arbitrator or arbitration panel may at its discretion exclude the document.
- b. The opposing party must, by written demand made at least five (5) business days prior to the arbitration date, identify those documents for which he or she will require live testimony for purposes of cross-examination or of attacking authenticity. If the arbitrator(s) decide live testimony is unnecessary, the party requiring the witness to be in attendance shall be liable for such person's witness fee and travel expenses. Documents not objected to prior to the five (5) business days shall be deemed authenticated but subject to objections as to admissibility at the time of the hearing. Parties are free to make stipulations or waive rules of evidence by agreement for arbitration.
- c. Before the arbitration hearing begins, all parties and the arbitrator shall read and sign the Arbitration Statement of Understanding. The arbitrator is responsible for turning the form into the 9<sup>th</sup> JAD ODR within forty eight (48) hours of the arbitration.
- d. At the arbitration hearing, the arbitrator or chief arbitrator has the full authority to rule on all objections, motions, and admissions of evidence.
- e. Arbitration hearings are intended to be brief evidentiary outlines of the case and not formal trials. Each party will be limited to a five (5) minute opening statement. At the discretion of the arbitrator (s) testimony may be admitted into evidence by way of summarization by the attorney. However, attorneys are not permitted to summarize witness testimony without the person available for cross-examinations, unless stipulated by all parties. Affidavits, dispositions, or portions of depositions may also be admitted into evidence.

Witnesses may be subpoenaed through the arbitrator as they would be to a trial. Closing arguments shall be limited to fifteen (15) minutes per party. Rebuttal is allowed as part of the plaintiff's allotted time. If any party fails to appear, the arbitrator(s) may proceed on the evidence put before him/her. Parties are encouraged to be present.

- f. The arbitrator shall file an award as to each party, including damages, on the Arbitration Award Form provided by the 9<sup>th</sup> JAD ODR. The arbitrator may provide findings of fact and conclusions of law, but is not required to do so. If a panel of arbitrators is used, a simple majority is required to return an award. The award will be filed with the 9<sup>th</sup> JAD ODR within forty-eight (48) hours of the arbitration hearing.
- g. The 9<sup>th</sup> JAD ODR shall submit all Arbitration Awards in a sealed envelope labeled Non-Binding Arbitration Award, to the Clerk of Court in the county in which the action is filed.
- h. Demand for Trial
  - i. Parties participating in non-binding arbitration may file post-arbitration demand for trial, within thirty (30) days of the arbitration hearing with the Clerk of Court in the county in which the action is filed.
  - ii. A demand for trial filed by any party returns the case to the trial calendar as to all parties.
  - iii. If no party files a demand for trial within this time frame, it shall be deemed a consent to the Arbitration Award and shall constitute a waiver of trial. After the expiration of such thirty (30) days without the filing of a demand, an appropriate judgment or order shall be prepared by the prevailing party.
  - iv. The Arbitration Award shall remain sealed and, should there be a demand for trial, the assigned judge shall not be advised of the award. The trial shall be conducted as though no arbitration proceeding has occurred. No reference shall be made as to the Arbitration Award in any pleading, brief, or other written or oral statement to the trial court or jury either before or during the trial, nor shall a jury be informed that there has been an arbitration proceeding.

#### **Rule 14. *Evaluation***

The 9<sup>th</sup> JAD ADR Executive Director will continue to evaluate the 9<sup>th</sup> JAD ADR program. Evaluation information will be provided to the 9<sup>th</sup> JAD ADR Executive Committee at their meetings. This information will also be provided as requested by the Georgia Office of Dispute Resolution. Participants in the mediation processes will not be contacted for evaluation without notification to the 9<sup>th</sup> JAD ADR Executive Director nor without participants permission. The program should seek permission of the parties for evaluative contact either at the beginning of the ADR session or by means of an exit survey.

#### **Rule 15. *Role of Counsel***



Attorneys of record shall never be excluded from any ADR process. The neutral shall at all times be in charge of the ADR process and procedures to be followed during the conference. Counsel shall be permitted to communicate privately with their clients at any time. Counsel's presence at the mediation is a matter to be decided by the attorney and the client, unless otherwise ordered by the court. If counsel is not present, any agreement reached is subject to counsel's review and approval in accordance with Rule 13.d.

### **Rule 16. *Peer Review Committee***

Any complaint concerning the ADR process in the 9<sup>th</sup> JAD District shall be forwarded in writing to the Executive Director of the 9<sup>th</sup> JAD ODR. This does not preclude anyone from submitting a complaint to the Georgia Office of Dispute Resolution. Should the Executive Director deem that the complaint has validity, the complaint will be forwarded to the Peer Review Committee for recommendations.