

## SAMPLE COURT ADR RULE

### GEORGIA

#### Ninth Judicial Administrative District of Georgia Alternative Dispute Resolution Rules

Statewide or local: Local

#### Processes:

- Mediation
- Early neutral evaluation
- Non-binding arbitration

#### Eligible cases:

- All civil cases
- All domestic relations cases
- All juvenile cases
- All criminal cases

#### Summary:

These broad rules provide for referral to ADR either by order of the court or by request of any or all parties. Civil cases may be referred to mediation, early neutral evaluation, or non-binding arbitration. Juvenile and criminal cases may only be referred to mediation. ADR neutrals are registered and approved by the court, although the parties may use an unregistered neutral with the consent of the office of the Dispute Resolution Director. In all but juvenile and criminal cases, the parties select the neutral. The neutrals are either paid by the parties or, in the case of criminal, juvenile, and deprivation cases, they are paid by the court.

#### Related authority:

The rule is written in conjunction with [Rule VII](#), Georgia Supreme Court Alternative Dispute Resolution Rules, which governs ethics, grievance procedures for mediator misconduct, immunity for neutrals and confidentiality. Certification of mediators is administered by the Georgia Office of Dispute Resolution. [LINK](#)

#### What is good about this rule:

- *Thoroughness*: It covers all aspects of the program and the processes. It also covers a broader array of case types than usual, as well as three process types.
- *Strong and reasonable deadlines*: Mediation should never lead to a lengthening of the time a case is on the docket. Strong deadlines assure that this will not happen. Reasonable deadlines provide for enough time to accomplish the task at hand without necessitating a motion to extend the deadline.
- *Good domestic violence section*: This section clearly outlines the procedures that need to be taken to ensure the safety of parties in mediation. Such procedures should be provided in any program that mediates cases involving domestic violence.

- ⇒ For another example of a screening protocol, see [Model Court Protocol for Domestic Violence and Child Abuse Screening in Matters Referred to Domestic Relations Mediation](#), Michigan Domestic Violence Prevention and Treatment Board
- *Detailed qualifications for neutrals*: Specifies the training, experience, and continuing education requirements for approved neutrals. This makes clear what the requirements are, which helps to promote confidence in the abilities of the neutrals and helps to maintain the quality of the mediators. One particularly good aspect is the requirement for the neutrals to complete continuing education hours.
  - ⇒ For a discussion of what mediator qualifications should include, see [National Standards for Court-Connected Mediation Programs](#), Center for Dispute Settlement
- *Explicit limitations on communication between mediation coordinator and court*: By clearly stating what can be communicated and what cannot, the rule minimizes the possibility of inappropriate communications and misguided pressure on the coordinator to make such communications.
- *Procedure for fee waiver*: Approved neutrals are required to provide pro bono hours. Since this program relies on party compensation to the mediator, it is essential that there be some exception to this for parties who cannot afford to pay. This ensures that more parties have access to the process.

**Additional points to note:**

- All mediators who are compensated by the parties must remit \$15 per case to the 9<sup>th</sup> Judicial Administrative District Office of Dispute Resolution to compensate for the overhead expenses of the ADR program.
- Attorneys are encouraged to attend ADR processes and cannot be excluded by the court or ADR provider.
- *Arbitration opening and closing arguments are limited to 5 and 15 minutes respectively*. While this may be done in the interest of limiting the cost of arbitration, it may be overly restrictive.
- *The mediation coordinator is responsible for providing information to the Georgia Office of Dispute Resolution (GODR) that will assist in the evaluation of the program*. Evaluation is always necessary. The efficacy of this provision relies upon the plan created by the GODR and the steps taken to enforce it.
  - ⇒ For more information on monitoring and evaluating ADR programs, see [Monitoring and Evaluating Court-Based Dispute Resolution Programs: A Guide for Judges and Court Managers](#), National Center for State Courts, 1997

**Further Reading:**

***Ethics***

*Mediation*

[National Standards for Court-Connected Mediation Programs](#), Center for Dispute Settlement  
[Model Standards of Conduct for Mediators](#), American Arbitration Association, American Bar Association, Association for Conflict Resolution

*Family*

[Model Standards of Practice for Family and Divorce Mediation](#), The Symposium on Standards of Practice

*Arbitration*

[The Code of Ethics for Arbitrators in Commercial Disputes](#), American Arbitration Association, American Bar Association

*Training*

[Guidelines for Implementation of Qualifications Standards for Neutrals](#), Massachusetts Supreme Judicial Court  
Standing Committee on Dispute Resolution

## NINTH JUDICIAL ADMINISTRATIVE DISTRICT OF GEORGIA

### ALTERNATIVE DISPUTE RESOLUTION RULES

These alternative dispute resolution rules apply to the Superior, Juvenile, State, Probate and Magistrate 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 evaluation, and arbitration, or who presides over a summary jury trial or mini trial. Thus, mediators, case evaluators, and arbitrators are all classified as “neutrals”.

**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.

**Arbitration:** Arbitration differs from mediation in that 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.

**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.

## **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 by the judge to whom the case is assigned. Cases shall be screened by the judge and/or the 9<sup>th</sup> Judicial Administrative District Office of Dispute Resolution (9<sup>th</sup> JAD ODR) director, or his/her designee to determine.
  - (1) Whether the case is appropriate for ADR;
  - (2) Whether a party requesting a fee waiver is eligible under the Federal Poverty Guidelines; and,
  - (3) Whether a need for emergency relief makes referral inappropriate until the request for relief is heard by the court.
- B. Cases may be referred to an ADR process by category.
- C. Juvenile Court
  - (1) Mediation is the only process available.

- (2) Mediators will be appointed by the 9<sup>th</sup> JAD ODR director, unless otherwise directed by the court.
- (3) A date for the mediation session will be set by the 9<sup>th</sup> JAD ODR and the parties will be notified by mail.

D. Magistrate Court

- (1) Mediation is the only process available.
- (2) The judge of the magistrate court will notify the 9<sup>th</sup> JAD ODR of the date, time and number of cases assigned to be mediated on a particular date.
- (3) Mediators will be appointed by the 9<sup>th</sup> JAD ODR.

E. Any party to a dispute referred to an ADR process may petition the court to exclude the case from mediation if:

- (1) 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 area of the dispute.
- (2) The issue presents a question of law only.
- (3) Other good cause is shown before the judge to whom the case is assigned.
- (4) The issues have been referred by consent of the 9<sup>th</sup> JAD ODR Director to a private provider of mediation services.
- (5) The case was filed under the Family Violence Act. If an alleged victim is also seeking a divorce or other civil relief which would be appropriate for mediation but for the alleged abuse, the case, if not released from the ADR requirement by the assigned judge, will be referred to the 9<sup>th</sup> JAD ODR for screening to determine appropriateness of mediation.

F. Divorce and other civil actions which include allegations of domestic violence, or in which documentation does not reflect whether or not there are allegations of domestic violence, will be screened for appropriateness.

- (1) Criminal cases that involve domestic violence should not be referred to mediation from any court and will not be mediated.

- (2) Civil cases will be screened for domestic violence through intensive intake. Intake procedures are designed to identify those cases which should not be referred to mediation and those cases which might benefit from mediation.
- (3) Until/unless appropriate safeguards are in place, including screening and evaluation, civil cases involving issues of serious domestic violence (systematic use of force or threat of force, use of a weapon, or serious injury) should not be referred to mediation.
- (4) If allegations of domestic violence arise in the context of mediation, a mediator who has no special training in handling cases involving domestic violence should, in most instances, conclude the mediation and send the case back to the 9<sup>th</sup> JAD ODR Director. In concluding the mediation, the mediator should take precautions to guard the safety of the other party and of the mediator.
- (5) The court will develop a protocol for identification of civil cases involving issues of domestic violence which might benefit from mediation. Only mediators who have received special training should mediate such cases.
- (6) No case involving issues of serious domestic violence will be sent to mediation without the consent of the alleged victim given after a thorough explanation of the process of mediation. With the consent of the alleged victim a case involving issues of serious domestic violence may be sent to mediation at the discretion of the court. Safeguards will be in place to assure the safety of the parties, attorneys, and the mediator both during and after the session as follows;
  - (a) The parties should be living separately. The program should exercise care to avoid disclosure of the parties' place of residence by either the program staff or the mediator.
  - (b) The alleged victim should have an attorney or advocate available for the entire session or sessions. If the alleged victim does not have an attorney, she/he should be invited to bring an advocate or friend to the

mediation session to be available for consultation and to see him/her safely to his/her car.

- (c) Arrangements should be made for the parties to arrive and leave the mediation session separately.
- (d) The session itself should be made safe through adequate security and any other necessary means.
- (e) Arrangements should be made for the session to be held entirely in caucus if that is necessary.
- (f) The mediator conducting the session should have received special training in dealing with issues of domestic violence in the context of mediation.
- (g) At the Earliest possible point in the mediation, the mediator should explore power dynamics in order to: 1) confirm the comfort of each party with the mediation format; and, 2) confirm the ability of each party to bargain for him/herself.

## **Rule 2. *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 medication.
- B. **Notice.** The parties shall select a mediator in accordance with Rule 4 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 and the date and time of the mediation. Notice to the 9th JAD ODR is the plaintiff's responsibility.
- C. **Rescheduling.** Once a mediation session is scheduled. NO UNILATERAL RESCHEDULING IS PERMITTED. The party or attorney

who is requesting that a mediation session be rescheduled must obtain consent from opposing 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 also 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 Rule related 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 cancelled 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 shall apply. NO OTHER CANCELLATIONS 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 cancelled upon written notification to the neutral and the 9<sup>th</sup> JAD ODR of the settlement. Notice must be received by the neutral and the 9<sup>th</sup> JAD ODR at least twenty-four (24) business hours in advance to avoid the cancellation fee. It is the Plaintiff's responsibility to notify the parties, the neutral, and the 9<sup>th</sup> JAD ODR of any settlement prior to the scheduled ADR session.
- F. **Fee Waivers.** Parties who feel they qualify for fee waiver are responsible for contacting the 9<sup>th</sup> JAD ODR for a fee waiver form, which may be downloaded from our website at [www.adr9.com](http://www.adr9.com) or may be mailed or faxed. The fee waiver request form must be received in the 9<sup>th</sup> JAD ODR ten (10) days prior to the scheduled mediation session

with all requested information provided. All fee waiver requests received less than ten (10) days prior to the scheduled mediation session or improperly completed will be rejected regardless of the person's ability to qualify.

### **Rule 3. 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.):

- (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) URESA (Uniform Reciprocal Enforcement or Support Act).

### **Rule 4. Appointment of the Neutral**

The 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. If the parties cannot agree on a neutral or do not notify the 9<sup>th</sup> JAD ODR of one's selection 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 ODR 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, who is not on the 9<sup>th</sup> Judicial Administrative District Roster. A written request may also be submitted to the 9<sup>th</sup> JAD ODR 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. The written request must be forwarded to the 9<sup>th</sup> JAD ODR Director for consideration. If an assigned neutral is disqualified by the 9<sup>th</sup> JAD ODR 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 5. Neutral Qualifications for Service in the Program**

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

### **A. Neutral Registration and Approval**

- (1) All neutrals must be registered with the Georgia Office of Dispute Resolution.
- (2) All neutrals assigned must be approved by the 9<sup>th</sup> JAD ODR Director.
- (3) A roster of neutrals selected for service in the 9<sup>th</sup> JAD ADR program is available at the 9<sup>th</sup> JAD ODR or on the web at [www.adr9.com](http://www.adr9.com).

### **B. Training**

All general mediators, domestic mediators, arbitrators and case evaluators shall have training and observations required by the Georgia Office of Dispute Resolution for registration in Georgia as a mediator/neutral.

### **C. Background Education Requirements**

- (1) Superior, state and probate courts
  - (a) General civil mediators must:
    - i. be a member in good standing of the State Bar of Georgia; or
    - ii. have a graduate degree in finance, health or closely related field; or, three (3) years of related experience may be substituted for graduate education requirement as approved by the 9<sup>th</sup> JAD ODR Director.
  - (b) Domestic mediators must:
    - i. be a member in good standing of the State Bar of Georgia; or
    - ii. have a graduate degree in psychology, counseling, accounting, or closely related field; or, three (3) years of related experience may be substituted for graduate education requirement as approved by the 9<sup>th</sup> JAD ODR Director.

- (c) Arbitrators must meet the requirements of the *Georgia Supreme Court Alternative Dispute Resolution Rules as set forth in Appendix B, Section 1 B.*
- (d) 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 1. C.*
- (2) Magistrate civil and criminal cases. Neutrals must meet the requirements set forth in the *Georgia Supreme Court Alternative Dispute Resolution Rules as set forth in appendix B, Section 1.B.*
- (3) Juvenile cases. Mediators must be registered with the Georgia Office of Dispute Resolution Rules as a General Mediator and have approved specialized juvenile mediation training.

**D. Experience Prerequisites**

- (1) General civil and domestic mediators must have:
  - (a) two (2) years experience as an attorney; or
  - (b) three (3) years related experience if not an attorney, and
  - (c) domestic mediators must attend the Divorcing Parents Seminar used in the Ninth Judicial Administrative District.
- (3) Arbitrators must have:
  - (a) five (5) years experience as an attorney and subject area expertise; or
  - (b) five (5) years content area experience if not an attorney.
- (4) Case evaluators or early neutral evaluators must have seven (7) years experience in the area of the litigation in question.
- (5) Magistrate Court mediators must meet the requirements set forth in the *Georgia Supreme Court Alternative Dispute Resolution Rules* for registration in general mediation.

- E. Continuing Education Requirements.** All neutrals shall complete eight (8) hours of approved training annually for renewed approval as a neutral with the 9<sup>th</sup> JAD ODR.

- F. **Administrative Fee Requirements:** All mediators who are compensated by the parties must remit \$15.00 to the 9<sup>th</sup> JAD ODR per mediated case, unless a fee waiver is attached from both parties, to compensate for overhead expenses of the 9<sup>th</sup> JAD ADR program. The remittance must be submitted within 24 hours of completion of the mediation in conjunction with the mediation report, signed waiver forms and agreement, if any.

## Rule 6. Compensation of Neutrals

Compensation for neutrals will be a combination of fees and stipends. Requests for fee waivers may be considered by the 9<sup>th</sup> JAD ODR in accordance with Rule 2 F. As part of the application process, neutrals are required to submit their hourly fee schedules. The hourly fee submitted may not be changed without notification to the 9<sup>th</sup> JAD ODR Director, who shall review all fee schedules for reasonableness. 9<sup>th</sup> JAD ODR approved neutrals will be required to provide *pro bono* hours.

- A. **Superior, State, and Probate Courts:** The cost of the neutral shall be divided equally among the parties (except upon agreement), who shall be prepared to pay the neutral at the time of the ADR session. The parties and the neutral will determine the length of the session. The court 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 Cases:** Mediators will receive a \$25.00 stipend per case mediated unless performing *pro bono* hours.
- D. **Deprivation Cases:** Mediators will receive a \$300.00 stipend per case mediated, or their hourly rate (whichever is less).
- E. **No Shows or Cancellations:** When assigned to stipend case, the 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 7. Confidentiality and Immunity**

- A. **Immunity.** for neutrals is governed by Rule VII, *Georgia Supreme Court Alternative Dispute Resolution Rules*.
- B. **Confidentiality.** Confidentiality is governed by applicable provisions of Rule VII, *Georgia Supreme Court Alternative Dispute Resolution Rules*.

## **Rule 8. 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.

- (1) For any 9<sup>th</sup> JAD ADR process:
  - (a) The individual party and/or the party(s) representative with full authority to settle without further consultation and with a full understanding of the dispute and full knowledge of the facts.
  - (b) 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.
  - (c) Although not required, attorneys are encouraged to attend ADR sessions and may never be excluded by the court or the ADR provider.

## **Rule 9. Sanctions for Non-Attendance/Failure to Bring Financial Affidavit**

If a party fails to appear at any scheduled ADR session as set forth in Rule 8 above, fails to give twenty-four (24) business hours notice of cancellation or rescheduling, or fails to bring a current, notarized financial affidavit when required, 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.

## **Rule 10. Communication with Parties.**

The only ex parte communication between a party and the neutral outside of the ADR session shall be for the purposes 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 11. Communication with the Court**

- (A) In order to preserve the objectivity of the court and the neutrality of the mediator, there should be no communication between the mediator and the court. If any communication between the court and a mediator is necessary, the communication shall be in writing or through the program coordinator. Copies of any written communication with the courts should be given to parties and their attorneys.
- (B) Once a mediation is underway in a given case, contact between the mediation coordinator and the court concerning that case should be limited to:
  - (1) Communicating with the court about the failure of a party to attend;
  - (2) Communicating with the court, with the consent of the parties, concerning procedural action on the part of the court which might facilitate the mediation;
  - (3) Communicating to the court the neutral's assessment that the case is inappropriate for that process;
  - (4) Communicating any request for additional time to complete the mediation;
  - (5) Communicating information that the case has settled or has not settled and whether agreement has been reached as to any issues in the case;
  - (6) Communicating the contents of an agreement unless the parties agree in writing that the agreement should not be disclosed;
  - (7) Communicating with the consent of the parties, information concerning any discovery, pending motions or action of any party which, if resolved or completed, would facilitate the possibility of settlement.

## Rule 12. Completion of ADR

ADR proceedings shall not delay or impeded 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:**

- (1) The duration of ADR sessions will depend upon the complexity of the case and the issues involved.
- (2) All parties and the neutral shall sign the *Guidelines for Mediation* before the ADR session begins. It is the responsibility of the neutral to return this form to the 9<sup>th</sup> JAD ODR within twenty-four (24) hours of each ADR session.
- (3) 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 in to the 9<sup>th</sup> JAD ODR within twenty-four (24) hours of each mediation session.
- (4) If an agreement or partial agreement is reached, the **neutral** will 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 have ten (10) calendar days within which to have the agreement reviewed and approved by an attorney or to recant the agreement **in writing**. If either party is represented at 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 ***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, Waiver to Mediate*, and \$15.00 administration fee to the 9<sup>th</sup> JAD ODR within twenty-four (24) hours of the ADR session.

- (5) 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 within twenty-four (24) hours to the JAD ODR through the Mediation Report along with the Waiver to Mediate and \$15.00 referral fee. The 9<sup>th</sup> JAD ODR shall notify and provide the Mediation Report to the assigned judge, and the case shall be immediately returned to the court's docket.

(B) **Arbitration**

- (1) 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 herein. 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 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 in its discretion exclude the document.
- (2). The opposing party must, by written demand made at least five (5) business days prior to the arbitration date, identify those document(s) 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 stipulation(s) or waive rules of evidence by agreement for arbitration.

- (3) 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 in to the 9<sup>th</sup> JAD ODR within forty-eight (48) hours of the arbitration.
- (4) At the arbitration hearing, the arbitrator or chief arbitrator has the full authority to rule on all objections, motions, and admissions of evidence.
- (5) 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 that 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 argument shall be limited to fifteen (15) minutes per party. Rebuttal is allowed as part of 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.
- (6) 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.
- (7) 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.
  - (a) Demand for Trial

- (i) Parties participating in non-binding arbitration may file a 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.
- (b) 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 had 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 13. Evaluation**

The mediation coordinator will provide to the Georgia Office of Dispute Resolution information which will allow an evaluation of the program. This information will be provided on an ongoing basis. The model for this evaluation will be provided by the Georgia Office of Dispute Resolution. Participants will not be contacted for evaluation without their permission. The program should seek permission of the parties for this contact either at the beginning of the mediation or by means of an exit survey.

## Rule 14. Role of Counsel

Attorneys of record shall never be excluded from the 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 12. (4).

This document supersedes any Ninth Judicial Administrative District Alternative Dispute Resolution Rules and Regulations and Internal Operating Procedures Prior to November 1, 2002.

PARTIES:

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Honorable Hugh W. Stone  
Chairperson, Executive Committee  
9<sup>th</sup> Judicial Administrative District

Date: \_\_\_\_\_

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George B. Collins, III  
District Court Administrator  
9<sup>th</sup> Judicial Administrative District

Date: \_\_\_\_\_