

#17-1-0005

IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA
COBB JUDICIAL CIRCUIT

ADR ORDER

COBB SUPERIOR COURT CLERK

Debrae Newton

2017 APR 27 PM 3: 27

COBB COUNTY, GA
FILED IN OFFICE

The Council of Superior Court Judges for the Cobb Judicial Circuit **ORDERS:**

FUNDING & ADMINISTRATION

1.

When any matter is filed for docketing upon the official docket of the Cobb County Magistrate Court, the clerk of such court shall collect \$7.50 and when filed in the Cobb County Superior Court, the Clerk of such Courts shall collect \$10.00 at the time of filing for the use of the Board of Trustees of the Cobb County Fund for the Administration of Alternative Dispute Resolution ("ADR") programs and shall regularly remit the moneys collected to the treasurer of said Board.

2.

There shall be an Alternative Dispute Resolution Office ("ADR Office"). The Superior Court Administrator shall directly supervise the ADR Office.

3.

The Council of Superior Court Judges shall determine the qualifications for certification as a mediator or a case evaluator (mediators and case evaluators are hereinafter referred to as "neutrals"). The qualifications may not be less than the minimum qualifications set forth in the Uniform Rules for Alternative Dispute Resolution Programs and the Georgia Supreme Court Alternative Dispute Resolution Rules. The Clerk of the Superior Court shall make the qualifications publicly available on his or her official website.

GENERAL PROVISIONS

4.

This Order applies to all Parties in all civil cases, including domestic relations cases, with the exception of the following: appeals from decisions of administrative agencies, civil forfeiture cases, habeas corpus cases, extraordinary writs, bond validations, declaratory judgment actions, URESA cases, and motions or petitions for citation of contempt in domestic relations cases. In

multi-party cases, the case may not be referred to mediation until the time for an answer by all parties has elapsed.

(a) The scheduling of a case for a mediation conference shall not remove the case from assignment to a judge, interfere with discovery, nor serve to postpone scheduled motions before the Court. The Court may refer the matter to mediation before any hearings before the Court.

(b) In order to postpone mediation after discovery concludes, a motion or consent extension of time must be submitted.

(c) 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. Time for completing mediation shall be tolled during any periods where mediation is interrupted pending resolution of such a motion.

5.

Unless otherwise Ordered by the Court, all Parties in all civil cases (including domestic relations cases) shall mediate said cases in good faith.

6.

Mediation is "...a process whereby a neutral third person called a mediator acts to encourage and facilitate the resolution of a dispute between two or more parties." During the mediation process, the role of the neutral is to help the Parties analyze the issues and generate alternatives for a mutually agreeable and voluntary settlement, and the role of the Parties is to recognize that people in disputes can negotiate in good faith to resolve their differences without resorting to an adversarial process.

7.

A neutral has no decision-making authority and is in no way acting as an agent for the assigned judge or as an advocate or attorney for either party. The neutral's only job is to attempt to help the Parties to resolve their disputes.

8.

A party may move, within 15 days after the case is referred to mediation, to dispense with mediation if:

- (a) the issue to be considered has been previously mediated;
- (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 order of the Court, to a private provider of mediation services which meets the minimum qualifications set forth herein.

9.

At any time, any party may move to dispense with mediation, to change the date and time of mediation, to extend the time for mediation, or to disqualify the assigned neutral by filing a motion with the clerk of court. The moving party must submit copies of filed motion to the assigned judge and the ADR Office, as well.

10.

Unless otherwise Ordered by the Court, mediation shall be a prerequisite to final trial.

11.

If a party fails to mediate in good faith or willfully fails to comply with any provision of this Order, then the neutral or the ADR Office may notify the assigned judge of such by filing a report in the case file, and the assigned judge may then sanction that party or hold that party in contempt.

NOTICE

12.

The ADR Office shall notify the parties that the parties must agree on a neutral and a date and time for the mediation conference.

(a) Unless otherwise ordered by the assigned Judge, the parties shall choose a neutral from the list of certified neutrals in the ADR Office. Should the parties fail to agree upon a neutral, the ADR Office will appoint a neutral from the rotational list in the ADR Office.

(b) Disqualification of a Neutral. Any party may move to enter an order disqualifying a neutral for good cause. If the Court rules that a neutral is disqualified from hearing a case, an order shall be entered setting forth a qualified replacement from the rotational list of certified neutrals in the ADR Office. The

motion disqualifying the neutral shall be presented to the ADR Office, which shall present the motion to the assigned judge.

13.

If the Parties agree on a selected neutral, then they shall notify the ADR Office of such.

14.

If the Parties fail to agree on a neutral or on a date and time for the mediation conference within the initial 10-day deadline provided to the Parties, then (1) the ADR Office shall select a neutral, (2) the neutral shall select and inform the ADR Office of the date and time for the mediation conference, and (3) the ADR Office shall notify the Parties as to the neutral and the date and time for the mediation conference.

TIMING

15.

The first mediation conference shall occur within 60 days after the appointment of the neutral. The Parties shall complete mediation within 45 days of the first conference. If the initial conference is set for a continuation, failure to return for a second session within 45 days will result in a declaration of impasse.

16.

A mediation conference may be rescheduled by (1) Court Order or (2) consent of all Parties and the neutral, if the rescheduled conference falls within the permitted time limits. Cancellations are not permitted except by (1) Order of the Court or (2) conflict as defined and allowed by the Uniform Superior Court Rules.

(a) A pending unilateral motion to continue the mediation may also remove the scheduled mediation until the motion has been ruled on by the assigned judge.

(b) Any pending motion that can change the outcome or style of the case, including, but not limited to, a motion to dismiss, motion for summary judgment, or motion to add a party or parties, may postpone the mediation.

17.

The neutral must be notified at least 48 business hours before the mediation of any rescheduling or cancellations, for whatever reason, regardless of whether relief has been granted by the Court. If the parties or attorneys do not, then the neutral may charge his or her cancellation fee as set forth on his or her fee schedule. That fee shall be

divided equally between those Parties who were responsible for cancelling or rescheduling the conference.

18.

Each mediation conference shall be scheduled to last for three hours, but the neutral may shorten or extend that time. Mediation times may be approved by the ADR Office.

19.

If domestic violence or cruel treatment is alleged in a case by any party, the mediation must be held at the ADR Office and must conclude or be set for a time to reconvene by the close of the same business day, in accordance with the business hours set by the ADR Office and the Court Administrator. Also, a case where domestic violence is alleged may only be assigned to those neutrals registered in the category of specialized domestic violence. A case flagged with allegations of domestic violence or cruel treatment may be held at another location by order of the Court waiving security.

APPEARANCE

20.

Unless the Court orders otherwise, as to each mediation conference, each Party must (1) physically appear, (2) send an agent to appear in the Party's place who fully understands the facts of the case and has full authority to settle the case without further consulting the Party, or (3) send a representative of the Party's insurance carrier who has full authority to settle the case without further consulting the Party unless the consultation is by phone. In domestic relations cases, all Parties must physically appear at every mediation conference – a Party may not send an agent or representative in their place. With an order of the Court, a party in a domestic relations case may appear by telephone or by other means of electronic communication (e.g. Skype).

PROCEEDINGS

21.

Mediation proceedings shall be confidential and shall not be open to the public.

22.

Counsel for the Parties may be present at the mediation conferences. Counsel may privately communicate with their respective clients during conferences.

23.

At any time during a conference, the neutral may privately consult with any Party or with any Party's counsel. However, the neutral may not have any ex-parte communications with a Party or with counsel for a Party outside of a conference except to discuss conference scheduling issues.

COMMUNICATION WITH THE COURT

24.

(a) In order to preserve the objectivity of the court and the neutrality of the mediator, there should be no communication between the mediator and the court. If any communication between the court and a mediator is necessary, the communication shall be in writing or through the program coordinator. Copies of any written communication with the court should be given to parties and their attorneys.

(b) Once 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 the 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 of actions of any party which , if resolved or completed, would facilitate the possibility of settlement.

COMPLETION

25.

If the Parties reach an agreement during a mediation conference, then before the conference is concluded, the Parties and the neutral shall reduce the agreement to writing, and the Parties (and their counsel, if any) shall sign the written agreement. The

neutral shall then report the outcome of the mediation to the ADR Office, and the ADR Office will report such outcome to the Court.

26.

If the Parties do not reach an agreement, the neutral shall report the outcome of the mediation to the ADR Office, and the ADR Office will report such outcome to the Court.

COMPENSATION OF MEDIATORS

27.

Neutrals shall file their fee schedules with the ADR Office, and Parties may examine any neutral's fee schedule at any time. The Parties shall immediately pay the neutral his or her full fee at the conclusion of the mediation proceedings. Unless otherwise Ordered by the Court or agreed on in writing by the Parties and the neutral, the compensation shall be split equally between the Parties.

28.

When the neutral completes a court referred matter for which the neutral shall be compensated by one or both parties, the neutral shall immediately pay \$25.00 to the ADR Office.

29.

If a Party contends that they cannot afford to pay the neutral's fee, then that Party shall notify the ADR Office of such within 10 days of being notified of the mediation proceedings. The Party shall furnish a financial affidavit and other required financial information to the ADR Office to support the Party's contention. If the Party fails to do so, then the Party waives any argument that the Party cannot afford to pay for the neutral. Fee waivers will be determined according to the most current federal poverty guidelines. The assigned judge may also waive fees according to his or her judicial discretion.

30.

If a Party shows that they cannot afford to pay for mediation and is approved for a waiver of fees, then the neutral shall waive that Party's portion of their fee. If none of the Parties can afford to pay for mediation and are approved for a waiver of fees, then the neutral shall mediate the case pro bono.

31.

The neutral may file a motion for fees with the Court against one or both Parties for failure to compensate the neutral (when not approved for a fee waiver), which will require said party or parties to appear before the assigned judge at a rule nisi hearing.

CONFIDENTIALITY AND IMMUNITY

32.

(a) The Extent of Confidentiality:

Any statement made during a court-annexed or court-referred mediation or as part of intake by program staff in preparation for a mediation is confidential, not subject to disclosure, may not be disclosed by the mediator or program staff, and may not be used as evidence in any subsequent administrative or judicial proceeding. A written and executed agreement or memorandum of agreement resulting from a court-annexed or court-referred mediation is not subject to the confidentiality described above.

Any document or other evidence generated in connection with a court-annexed or court-referred mediation is not subject to discovery. A written and executed agreement or memorandum of agreement resulting from a court-annexed or court-referred mediation is discoverable unless the parties agree otherwise in writing. Otherwise discoverable material is not rendered immune from discovery by use in mediation.

Neither a neutral nor any observer present with permission of the parties in a court-annexed or court-referred mediation may be subpoenaed or otherwise required to testify concerning mediation in any subsequent administrative or judicial proceeding. A neutral's notes or records are not subjected to discovery. Notes and records of a court ADR program are not subject to discovery to the extent that such notes or records pertain to cases and parties ordered or referred by a court to the program.

(b) Exceptions to Confidentiality:

Confidentiality on the part of program staff or the neutral does not extend to the issue of appearance. Confidentiality does not extend to a situation in which (a) there are

threats of imminent violence to self or others; or (b) the mediator believes that a child is abused or that the safety of any party or third person is in danger.

Confidentiality does not extend to documents or communications relevant to legal claims or disciplinary complaints brought against a neutral or an ADR program and arising out of an ADR process. Documents or communications relevant to such claims or complaints may be revealed only to the extent necessary to protect the neutral or ADR program. Nothing in the above rule negates any statutory duty of a neutral to report information. Parties should be informed of limitations on confidentiality at the beginning of the conference. Collection of information necessary to monitor the quality of a program is not considered a breach of confidentiality.

(c)Immunity:

No neutral in a court-annexed or court-referred program shall be held liable for civil damages for any statement, action, omission or decision made in the course of any ADR process unless that statement, action, omission or decision is 1) grossly negligent, 2) made with malice, or 3) is in willful disregard of the safety or property of any party to the ADR process.

DOMESTIC VIOLENCE SCREENING

33.

Cases arising under the Family Violence Act or criminal cases that involve domestic violence will not be referred to mediation.

Court ADR coordinators will screen all domestic cases to determine if either party has filed a petition under the Family Violence Act or have alleged any mental or physical cruel treatment in the case pleadings.

Further, under cases where there is an indication of domestic violence, a domestic relations screening form shall be sent to the party for further information.

The alleged victim can submit a motion to the assigned Judge asking that the case be exempt from mediation.

Only neutrals registered in the category of specialized domestic violence will be assigned to mediate these cases. If an allegation or evidence of domestic violence first arises during the mediation, the mediator must terminate the session and notify the ADR director unless he or she is registered in the category of specialized domestic violence. The sheriff's department shall be notified of all scheduled mediation where domestic violence has been alleged.

Either party may request a deputy to be present during the mediation session.

JUDICIALLY HOSTED SETTLEMENT CONFERENCES & CASE EVALUATION

34.

As an alternative to mediation, any Party may move the assigned Judge to Order the Parties to participate in a judicially hosted settlement conference. This process is exactly similar to regular mediation, except that (1) the neutral shall be a judge selected by the assigned judge, (2) the assigned judge shall set the timing for the conference(s), (3) the neutral shall receive compensation unless otherwise disqualified by law or by the rules of the Supreme Court of Georgia, and (4) the neutral may not engage in ex-parte communications with the Parties or with the Parties' counsel during the conference.

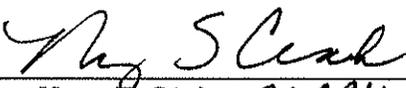
35.

Upon agreement, parties may request that the "case evaluation" process be used instead of the normal mediation process. The case evaluation process is exactly similar to regular mediation, except that the neutral, in addition to his or her normal obligations under this Order, also assesses the strengths and weaknesses of each Party's case and assists the Parties in narrowing the legal and factual issues in the case.

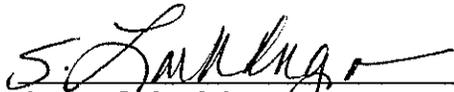
36.

If a Party has any questions about this Order, the Party should contact the ADR Office.

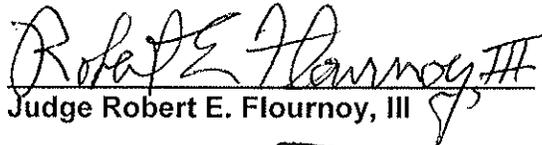
SO ORDERED this 18 day of April, 2017.



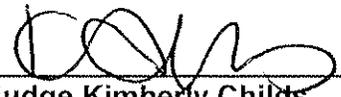
Judge Mary E. Staley CLARK



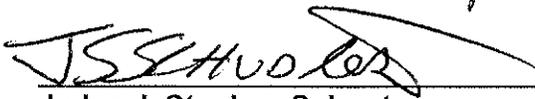
Judge S. Lark Ingram



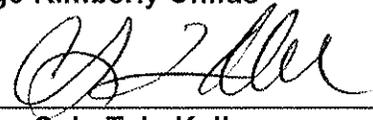
Judge Robert E. Flournoy, III



Judge Kimberly Childs



Judge J. Stephen Schuster



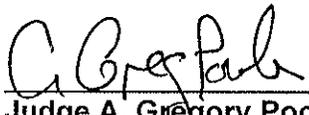
Judge C. LaTain Kell,
Chief Judge



Judge Reuben M. Green



Judge Robert D. Leonard, II



Judge A. Gregory Poole



Judge Ann B. Harris