IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA

IN RE: ADR ORDER **CAFN: 24-1-9953**

52. STANDING ORDER REGARDING ADR IN THE COBB JUDICIAL CIRCUIT

The Cobb County Superior Court Alternative Dispute Resolution (ADR) Program offers parties alternative options for dispute resolution which may result in quicker, more economical, and beneficial outcomes than litigation. This Order supersedes and replaces all previous local ADR Orders and shall remain in effect until further Order of the Court. This Order is modeled substantially after the Georgia Supreme Court's Alternative Dispute Resolution Rules, including Appendices A, B, and D (Supreme Court ADR Rules). Except as may be inconsistent with the below, the Court hereby incorporates the Supreme Court ADR Rules as if fully set forth herein.

Accordingly, it is **HEREBY ORDERED** as follows:

1.

DEFINITIONS

A. Alternative Dispute Resolution. The term "alternative dispute resolution" (ADR) refers to any method other than litigation for resolution of disputes.

B. Case Evaluation or Early Neutral Evaluation. The terms "case evaluation" or "early neutral evaluation" mean a process in which a lawyer with expertise in the subject matter of the 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 in the case. This conference occurs early in the discovery process and is designed to streamline discovery and other pretrial aspects of the case. Case evaluation can also occur towards the end of a case, shortly before it goes to trial when each party's positions have been fully developed through discovery. It is similar to mediation, except that in a "late case evaluation," the neutral gives feedback to the parties and lawyers involved. The early neutral evaluation of the case may also provide a basis for settlement discussions. As used in this paragraph, the term "streamline" means to make the process more efficient and effective by employing faster or simpler working methods.

C. **Court ADR Program.** The term "court ADR program" or "court program" refers to the Cobb County Superior Court ADR Program.

D. **Mediation.** The term "mediation" means a process in which a neutral facilitates settlement discussions between parties. The neutral has no authority to make a decision or impose a settlement upon the parties. The neutral attempts to focus the attention of the parties upon their needs and interests rather than upon rights and positions. Although in the court program 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 bench or jury trial.

E. **Neutral.** The term "neutral" refers to an impartial person who facilitates discussions and dispute resolution between parties in mediation, case evaluation or early neutral evaluation. Mediators and case evaluators are neutrals.

F. **ADR Conference.** The terms "ADR conference" refers to the meeting between the parties, counsel, and neutral for mediation or case evaluation.

2.

REFERRAL TO ADR

A. Except as hereinafter provided, any contested civil matter filed in Cobb County Superior Court shall be referred to the court ADR program. Compliance shall not require that the parties reach a settlement. Cases shall be screened by the court ADR program staff to determine the following:

1. Whether the case is appropriate for ADR;
2. All domestic cases shall be screened by the ADR program staff according to the procedures outlined in the Georgia Supreme Court ADR Rules for Mediation in Cases Involving Issues of Domestic Violence, Appendix D, to determine whether ADR is appropriate;
3. Whether the party requesting a fee waiver is eligible under the applicable guidelines;
4. Whether a need for emergency relief makes referral inappropriate until the request for relief if is heard by the Court.

B. The following civil case types shall be exempt from ADR: petitions filed under the Family Violence Act, civil forfeiture cases, habeas corpus cases, bond validations, and Uniform Interstate Family Support Act (UIFSA) cases.

C. The scheduling of a case for an ADR conference shall not remove the case from assignment to a judge or interfere with discovery. A matter may be referred to the court ADR program before any court appearance or hearing.

D. Referral of a case to Alternative Dispute Resolution (ADR) does not limit any party's ability to file motions with the Court in their case. If a motion listed in Rule 3 E is pending, the requirement to complete the ADR process will pause unless the court orders otherwise. If the ADR process is suspended for any reason, the deadline for completing the ADR process will pause during the suspension.

E. Civil cases shall be referred for an ADR conference on a case-by-case basis or as a result of this Order. The court ADR program shall notify the parties that their case has been referred to the court program and that an ADR conference type (either mediation or early/late case evaluation) and neutral must be selected. Upon agreement or order of the Court, the case may be transferred to another form of dispute resolution. The ADR process will default to mediation if the parties do not notify the ADR office of an agreed upon selection.

F. Unless otherwise approved by the assigned judge, participation in an ADR conference shall be a prerequisite to a final trial.

G. In actions brought by state agencies seeking to enjoin activities injurious to the public interest, the agency may within ten days of service of the action make a showing to the assigned judge that referral to ADR would adversely affect the public interest. Upon a showing of reasonable probability of such adverse effect, the Court may proceed with emergency measures provided by law. Later referral to an ADR process may be appropriate if the emergency measures do not bring the case to conclusion.

3.

TIMING OF ADR AND SELECTION OF NEUTRALS

A. Unless otherwise ordered by the Court or by consent of all parties, all civil cases shall be referred to the court ADR program 30 days following good service of process or upon the filing of an answer. In multi-party cases, the case shall not be referred to the court ADR program until the time for an answer by all parties has expired.

B. Parties shall complete the ADR conference within 90 days from the initial referral, unless otherwise agreed to by all parties or ordered by the Court.

C. Cancellations and rescheduling will only be permitted with consent of both sides or in compliance with Uniform Superior Court Rule (USCR) 17.1(B). It is the responsibility of the party or attorney requesting a cancellation or rescheduling to obtain consent from the opposing party/counsel. Once an ADR conference is scheduled, absent an order or a pending motion pursuant to Rule 3E, no unilateral cancellation or rescheduling is permitted. The court ADR program must be immediately notified of any cancellation or

rescheduling attempts. The court ADR program must immediately notify the assigned neutral of any cancellation or rescheduling attempts.

D. The parties may change the date and time of the ADR conference provided that it is by consent of both parties and that they notify the neutral at least 72 hours in advance of the scheduled ADR conference. Absent consent of all parties, rescheduling may only occur with approval of the assigned judge.

E. The ADR Process, through the court ADR program, shall be put on hold upon the filing of any of the following motions: motion for summary judgement, motion for partial summary judgement, motion to enforce an agreement or prenuptial agreement, motion to enforce jurisdiction or venue, motion for judgment on the pleadings, notice of bankruptcy, suggestions of death, motion to dismiss, or a motion to continue mediation. The time for completing ADR shall be tolled while such motion is pending.

4.

EXEMPTION FROM ADR

Any party to a dispute may file a motion to have the party's case removed from the court ADR program. The assigned judge shall have discretion to remove the case from the court ADR program as they deem appropriate.

5.

SELECTION OF NEUTRALS

A. The parties shall mutually select a neutral in accordance with the process set forth herein. Within 30 calendar days after receipt of notice that the case is referred to ADR, the parties will inform the court ADR program staff of the name of the neutral and the date and time selected.

1. Parties may select a neutral from the registered neutral list maintained by the court ADR program.

2. Agreements between the parties to use a qualified neutral not on the registered neutral list maintained by the court ADR program will be honored, provided that the selected alternate neutral is registered with the Georgia Office of Dispute Resolution in the appropriate categories as outlined in Rule 6 and the neutral submits the required administrative fee and ADR conference paperwork to the court ADR program at the conclusion of the ADR conference.

B. Absent agreement on the selection of a neutral by the parties, the neutral will be appointed from a list of registered neutrals maintained by the court ADR program. Appointments will be performed on a rotational basis based on the

type of case and the neutral's experience, unless otherwise directed by the Court.

1. Any party may request that the court ADR program appoint a different neutral on the ground that the neutral selected by the program is disqualified because of a conflict, lack of expertise in the relevant subject area, or because the party believes that the objectivity of the neutral is in question.

6.

QUALIFICATIONS OF NEUTRALS

A. The Council of Superior Court Judges for the Cobb Judicial Circuit has determined the qualifications required for neutrals to be included on the court ADR program's list of approved neutrals.

1. The neutral must satisfy the qualification and training requirements set forth in Appendix B of the Georgia Supreme Court Rules.

2. In addition to the requirements in Appendix B, to serve as a neutral for any domestic case, registration with GODR in the Specialized Domestic Violence category is required.

B. The court ADR program will maintain a roster of qualified neutrals. Neutrals will be added and removed from the roster at the discretion of the Council of Superior Court Judges for the Cobb Judicial Circuit or its designee.

C. Neutrals serving in the program will be evaluated by the court ADR program on an ongoing basis as set forth in Rule 14.

D. All neutrals may be required to provide pro bono hours to parties who have qualified to have their fees waived.

E. A neutral must attend an orientation program on court procedures given by the ADR program.

7.

COMPENSATION OF NEUTRALS

A. Neutrals shall file their fee schedules with the court ADR program, and the parties may examine any neutral's fee schedule at any time. The parties shall immediately pay the neutral their full fee at the conclusion of the ADR conference. Unless otherwise ordered by the Court or agreed upon in writing by the parties and the neutral, the compensation shall be split equally between the parties.

B. 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 the $25.00 administrative fee to the court ADR program.

C. If a party contends that they cannot afford to pay the neutral' s fee, that party shall notify the court ADR program within 10 days of being notified of the referral. The party shall complete a financial waiver application (to be provided by the court ADR program) and other required financial information to support the party's contention of inability to pay. If said party fails to submit documentation, the party will be responsible for their share of the ADR conference costs. Fees may also be waived by the assigned judge at their discretion.

D. If a party is approved for a waiver of fees, then the neutral shall waive that party's hourly portion. If all parties qualify for fee waivers, then a neutral shall mediate the case pro bono and will not be required to submit the $25 administrative fee.

E. Neutrals who do not receive timely payment for their services may file a motion for the Court to enforce payment.

8.

CONFIDENTIALITY AND IMMUNITY

A. Any statement made during a court program ADR conference or as part of intake by program staff or neutral in preparation for an ADR conference shall:

1. Be confidential;
2. Not be subject to disclosure;
3. Not be disclosed by the neutral or program staff; and
4. Not be used as evidence in any subsequent administrative or judicial proceeding.

B. Any document or other evidence generated in connection with the ADR conference is confidential and not subject to discovery except for a written and executed agreement or memorandum of agreement. Further, a written and executed agreement or memorandum of agreement resulting from an ADR conference shall be discoverable unless the parties agree otherwise in writing. Otherwise, discoverable material shall not be rendered immune from discovery solely because such material was used in an ADR conference.

C. Neither the neutral nor any observer present with permission of the parties in an ADR conference may be subpoenaed or otherwise required to testify in any subsequent administrative or judicial proceeding concerning a

mediation, case evaluation or early neutral evaluation conference. A neutral's notes or records shall not be subject to discovery. Notes and records of a court ADR program shall not be subject to discovery to the extent that such notes or records pertain to cases and parties ordered or referred by the Court to the program.

D. The scope of the confidentiality of ADR proceedings shall be governed by the ADR Rules of the Supreme Court of Georgia and the Commission on Dispute Resolution's Advisory Opinions and Ethics Opinions.

E. No ADR program staff member, neutral, or court personnel may be held liable for civil damages for any statement, action, omission, or decision made in the course of carrying out any of the activities described in these rules or in any ADR conference.

9.

EXCEPTIONS TO CONFIDENTIALITY

A. Confidentiality on the part of court ADR program staff or the neutral shall not extend to the issue of appearance.

B. Confidentiality shall not extend to situations in which:

1. There are threats of imminent violence to self or others;
2. A neutral believes that a child is being abused;
3. The safety of any party or third person is in danger; or
4. A party that asserts that their capacity to conduct good-faith negotiations and to make informed decisions for themselves was impaired during the ADR conference. *See Wilson v. Wilson,* 282 Ga. 728 (2007).

C. Confidentiality shall not extend to documents or communications relevant to legal claims or disciplinary complaints brought against a neutral or court ADR program and arising out of an ADR conference, regardless of whether such claim or complaint is brought before the Georgia Commission on Dispute Resolution, made as a motion, sent to a court program's local complaint process, or raised in some other manner. Documentation of communications relevant to such claims or complaints may be revealed only to the extent necessary to protect the neutral or court ADR program. Nothing in this rule shall negate any statutory duty of a neutral to report information.

D. Parties should be informed of limitations on confidentiality at the beginning of each conference.

E. The collection of information necessary to monitor the quality of a court ADR program shall not be considered a breach of confidentiality.

10.

APPEARANCE AT AN ADR CONFERENCE

A. The appearance of all parties shall be required at any ADR conference scheduled pursuant to this Order and coordinated by the court ADR program. The requirement that a party appear at an ADR conference shall be satisfied if the following persons are present:

1. The party, the party's representative, or both the party and the party's representative. A party's representative must have full authority to settle without further consultation and have a full understanding of the dispute and full knowledge of the facts. In domestic relations cases, all parties must appear for ADR, physically or electronically, and may not send an agent or representative in their place.

2. A representative of the insurance carrier for any insured party, if any. An insurance carrier's representative must have full authority to settle without further consultation.

B. All attorneys for the parties should attend an ADR conference. An attorney shall not be excluded by the Court or the neutral from an ADR conference. However, unless ordered by the Court, an attorney shall be required to attend an ADR conference. If the attorney and client agree that the attorney shall not attend, written notice must be submitted to the court ADR program and to the assigned judge prior to the scheduled ADR conference.

C. Parties, attorneys, and any representatives may have the option to appear remotely by videoconference or telephone. For remote appearances, payment arrangements must be made with the neutral prior to beginning of the session.

11.

SANCTIONS FOR FAILURE TO APPEAR

A. If a party fails to appear at a duly noticed ADR conference without showing good cause, the court program shall notify the judge to whom the case is assigned. The assigned judge may find the party in contempt of this Order and impose appropriate sanctions in the judge's discretion.

B. The court ADR program staff or the neutral shall dismiss an ADR conference 30 minutes after the scheduled start time for failure to appear unless all parties consent to wait.

C. The neutral must be notified at least 72 business hours before the ADR conference of any rescheduling or cancellations unless otherwise agreed to in writing by the parties, counsel and the neutral. If the parties/attorneys fail to adhere to the cancellation policy, then the neutral may charge their cancellation fee as set forth on their fee schedule. That fee shall be divided equally between those parties who were responsible for cancelling or rescheduling the conference.

12.

COMMUNICATIONS WITH THE COURT

A. To preserve the objectivity of the Court and the neutrality of the neutral, there should be no unnecessary communication between the neutral and the Court. If any communication between the Court and a neutral is necessary, the communication shall be in writing and shall be made through the court program. Copies of any written communication with the Court shall be given to each party and the party's attorney.

B. Once an ADR conference is scheduled in a given case, contact between the court ADR program and the Court concerning that case shall be limited to the following:

1. The failure of a party to attend;
2. Procedural action on the part of the Court which might facilitate the ADR process;
3. The program's or neutral's assessment that the case is inappropriate for a ADR;
4. Any request for additional time to complete an ADR conference;
5. Information that the case has settled or has not settled and whether agreement has been reached as to any issues in the case; or
6. The contents of a written and executed agreement or memorandum of agreement unless the parties agree in writing that such agreement should not be disclosed, and any discovery, pending motions, or action of any party which, if resolved or completed, would facilitate the possibility of settlement.

13.

COMPLETION OF ADR

A. Parties shall complete the ADR conference within 90 days from the initial referral, unless otherwise agreed to by all parties or ordered by the Court.

B. ADR shall be completed prior to any scheduled final hearing, trial or stipulation to any pre-trial calendar, and within the time frames specified at Rule 3 above, whichever is sooner, unless extended or otherwise authorized by order of the Court.

C. The duration of an ADR conference will vary. A neutral may adjourn an ADR conference at any time and may set times for reconvening the adjourned conference. Failure to set a date for a second session within 45 days or failure to participate in scheduled second session shall result in an impasse.

D. If an agreement is reached, it shall be reduced to writing, if possible, at the end of the ADR conference or within a limited and specified time frame following the conference. The neutral should draft such agreement unless all parties agree otherwise.

E. If a party is represented by counsel who is present at the conference, an agreement should be drafted by the neutral and signed by all present at the end of the ADR conference.

F. If a partial agreement is reached, it shall be reduced to writing and signed by all present in the same manner as a full agreement as provided in this rule.

G. If parties do not reach an agreement as a result of the ADR conference, the neutral shall report the lack of an agreement to the court program. The court program shall notify the assigned judge of the lack of agreement.

H. Written and executed agreements or memoranda of agreement reached as a result of a court ADR conference are enforceable to the same extent as any other written agreement. Oral agreements shall not be enforceable.

I. At the conclusion of each ADR conference, the neutral shall submit the following documents to the ADR Program: guidelines signed by all parties present at the session (including observers), a disposition report, Tier I and Tier II screening forms (if not completed prior to the session), and a $25.00 administration fee. Failure to submit the required documents within the deadline may result in reporting the neutral's non-compliance to the Court, and the neutral may be required to appear in court before the assigned judge and provide the disposition report information.

14.

EVALUATION

A. Evaluation of the Program:

1. Data shall be collected on an ongoing basis to ensure the quality of the program and provided to GODR in a timely fashion when requested. Such data may include evaluation by parties and attorneys of the ADR

conference as applied to their case, the performance of the neutral in the case, and ways to improve the effectiveness of the ADR program.

2. Data concerning settlement rate shall not be used as the sole basis for program funding or program evaluation.

B. Evaluation of Neutrals:

1. The performance of neutrals shall be monitored on an ongoing basis. Settlement rates shall not be used as the sole basis for the evaluation of a neutral.

2. Incompetent, ineffective, or unethical neutrals will be removed from the roster. Removals of such neutrals shall be reported to GODR so that a neutral's registration may be reconsidered.

15.

JUDICIALLY HOSTED SETTLEMENT CONFERENCE

As an alternative to an ADR conference through the court program, the Court may *sua sponte* or upon motion by a party order the parties to participate in a judicially hosted settlement conference. In a judicially hosted settlement conference, the hosting judge may assess the strengths and weaknesses of each party's case, as well as assist the parties in narrowing the legal and factual issues in the case.

The process for a judicially hosted settlement conference is the same as any other ADR conference except:

1. The hosting judge shall be a former or retired judge selected by the assigned judge;

2. The assigned judge shall set the timing for the conference(s);

3. The hosting judge shall receive compensation unless otherwise disqualified by law or by the rules of the Supreme Court of Georgia; and

4. The hosting judge may not engage in *ex parte* communications with the parties or counsel during the conference.

16.

FUNDING AND ADMINISTRATION

When any civil matter is filed for docketing upon the official docket of the Cobb County Magistrate Court, the clerk of such court shall collect $7.50 at the time of filing, and when any estate case is filed in the Cobb County Probate Court, the clerk of such court shall collect $5.00 at the time of filing. When any civil matter is filed in the Cobb County Superior Court, the clerk of such court shall collect $10.00 at the time of filing. The collected money shall be used by the Board of Trustees of the Cobb

County Fund for the Administration of Alternative Dispute Resolution program. The Treasurer of the Fund is responsible for overseeing the collection and disbursement of these funds from the clerks of the aforementioned courts.

The ADR Office shall be directly supervised by the Court Administrator for Cobb County Superior Court. The Court Administrator shall establish and implement policies and procedures to ensure that the ADR Office and the court ADR program operate in conformity with the provisions of this Order.

SO ORDERED this 1st day of July, 2024.

A. Gregory Poole

A. Gregory Poole
Chief Judge, Superior Court of Cobb County
On behalf of the Council of Superior Court Judges
Revised as of 5.14.24