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

11-1-0005

ADR ORDER

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 dockets of the Cobb County Magistrate Court or the Cobb County Superior Court, the Clerks of those respective Courts shall, at the time of filing, collect $7.50 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 Judge 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 that the minimum qualifications set forth in the Uniform Rules for Alternative Dispute Resolution Programs and the Georgia Commission on Dispute Resolution shall approve the qualifications. The Clerk of the Superior Court shall make the qualifications publicly available on his or her the official website.

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Court Rule: www.cobbsuperiorcourtclerk.com
Jay C. Stephenson
Clerk of Superior Court Cobb County

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, temporary hearings in domestic relations cases, and motions or petitions for citation of contempt in domestic relations cases.

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 the adversarial process.

7.

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

8.

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.

9.

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

10.

If a Party fails to mediate in good faith or willful fails to comply with any provision of this Order, then the neutral or the ADR Office shall 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.

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NOTICE

11.

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

12.

If the Parties so agree, then they shall notify the ADR Office of such.

13.

If the Parties fail to agree on a neutral or on a date and time for the mediation conference, 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 notice the Parties as to the neutral and the date and time for the mediation conference.

TIMING

14.

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.

15.

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.

16.

If the mediation is canceled or rescheduled, or if the Parties settle or dismiss the case prior to a mediation conference, the Parties must notify the neutral of such at least 48 hours prior to the conference. If they 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.

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17.

Each mediation conference shall be scheduled to last for three hours, but the neutral may shorten or extend that time.

18.

The neutral may adjourn mediation proceedings at any time and may set times for reconvening the proceedings.

APPEARANCE

19.

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 with the Party, or (3) send a representative of the Party's insurance carrier who has full authority to settle the case without further consulting with 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.

PROCEEDINGS

20.

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

21.

No later than one week prior to the mediation conference, each Party (or their counsel) shall submit to the neutral a brief statement summarizing the facts of the case, their positions, and any previous settlement discussions. This statement shall be confidential and shall not be available to any other Party. The neutral may not file the statement in the case file.

22.

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

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23.

Any at 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.

COMPLETION

24.

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 Court.

25.

If the Parties do not reach an agreement, the neutral shall report the outcome of the mediation to the Court.

26.

If counsel for a Party is not present at the mediation when the mediation is completed, then the Party shall immediately send a written or electronic report of the result of the mediation to counsel, including a copy of the agreement if any.

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 matter for which the neutral shall be compensated, the neutral shall immediately pay $20.00 to the ADR Office.

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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 or other 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.

30.

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

JUDICIALLY HOSTED SETTLEMENT CONFERENCES & CASE EVALUATION

31.

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 no compensation, and (4) the neutral may not engage in ex parte communications with the Parties or with the Parties' counsel during the conference.

32.

Any Party 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.

33.

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

SO ORDERED this day of January 3, 2011.

Judge Dorothy A. Robinson

Judge George H. Kreeger

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SO ORDERED this day of January 3, 2011.

Judge Mary E. Staley

Judge James G. Bodiford

Judge S. Lark Ingram

Robert E. Flournoy, III

Judge Adele P. Grubbs

J. Stephen Schuster

Judge C. LaTain Kell

Judge Reuben M. Green

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