IN THE SUPERIOR COURTS OF ATKINSON, BERRIEN, CLINCH, COOK, AND LANIER COUNTIES

ALAPAHA JUDICIAL CIRCUIT

STATE OF GEORGIA

The Superior Court ADR Procedures of the Alapaha Judicial Circuit are hereby amended to read as follows:

GENERAL POLICY:

This program was established for the purpose of providing alternatives to litigation for parties involved in civil cases, and specifically all contested domestic relations and personal injury cases, filed in the Superior Courts of Atkinson, Berrien, Clinch, Cook and Lanier Counties, all in the Alapaha Judicial Circuit. Other civil cases from Superior, State, Probate, or Magistrate Court may be referred on a case by case basis.

DEFINITIONS:

Alternative Dispute Resolution/ADR: refers to any method other than litigation for resolution of disputes. Alternative dispute resolution methods include mediation, arbitration, early case evaluation or early neutral evaluation, summary jury trial, and mini-trial.

Case Evaluation or Early Neutral Evaluation: 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. The early neutral evaluation of the case may also provide basis for settlement discussions.

Court Program: The term "court program" encompasses the terms "court-connected", "court-annexed", or "court-referred" when used to refer to a court ADR program.

Mediation: 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 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.

Mediator: an impartial person who, at a definite time and place, with all parties present, facilitates communication between the parties to achieve a mutually agreeable settlement or understanding.

Mini trial: The mini trial is similar to the summary jury trial in that it is an abbreviated trial usually presided over by a neutral. Attorneys present their best case to party representatives who have authority to settle. Generally, no decision is announced by the neutral. After the hearing, the party representatives begin settlement negotiations, perhaps calling on the neutral for an opinion as to how a court might decide the case.

Neutral: an impartial third party trained to facilitate discussions and dispute resolution between disputants in ADR , case evaluation or early neutral evaluation, and evaluation, or who presides over a summary jury trial or mini-trial. Thus, mediators, case evaluators, and arbitrators are all classified as "neutrals".

Non-binding Arbitration: The term "arbitration" means a process that 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 reject the result by demanding a jury or bench trial in front of the court within a specified period. The essential difference between mediation and arbitration is that arbitration is a form of adjudication, whereas mediation is not.

Summary Jury Trial: A non-binding abbreviated trial by mock jurors ("advisory jury") chosen from the jury pool. A judge or magistrate presides. Principals with authority to settle the case attend. The advisory jury verdict which results is intended to provide the starting point for settlement negotiation.

The summary jury may explain their decision to the participants and respond to party's questions.

RULE 1. REFERRAL TO ADR

(a) Except as hereinafter provided, all contested domestic relations cases and personal injury cases still pending one hundred eighty (180) days after the original complaint is filed shall be referred to ADR. Likewise, any contested civil matter may be referred to ADR by consent of the parties or by court order. Parties may be ordered to appear for an ADR conference. Compliance does not require that the parties reach a settlement. Cases shall be screened by the judge or the ADR Office to determine:

(1) Whether the case is appropriate for mediation or some other form of dispute resolution;

(2) Whether a party requesting a fee reduction or waiver is eligible for such;

(3) Whether a need for emergency relief makes referral inappropriate until the request for relief is heard by the court.

(b) Domestic relations cases shall be screened to determine whether domestic violence issues are present, and whether mediation is appropriate as outlined below and as required by Alternative Dispute Resolution Rules and Appendices as declared by the Georgia Supreme Court.

1. All domestic relations cases shall be screened for domestic violence allegations using the *Rules for Mediation in Cases Involving Issues of Domestic Violence (Also referred to as Intimate Partner Violence and Abuse IPV/A)*. Those domestic relations cases referred to mediation directly from the bench are also subject to the same screening process. Intake procedures are designed to ensure that the mediation can be done safely and free from coercion, identify cases in which there are allegations of domestic violence, and to provide a process by which an at-risk party can make a decision based on informed consent whether or not to proceed with mediation.

2. Staff who conduct screening pursuant to the *Rules for Mediation in Cases Involving Issues of Domestic Violence (Also referred to as Intimate Partner Violence and Abuse IPV/A)* must have completed the screening training approved by the Georgia Office of Dispute Resolution.

3. Only neutrals who are registered with the Georgia Office of Dispute Resolution in the category of Specialized Domestic Violence Mediation and listed on the local Roster of Neutrals shall serve in cases involving issues of domestic violence as defined by the parties' responses to the Tier I or Tier II screening questions, or by any other indicator of domestic violence present in the matter.

4. If issues of domestic violence arise for the first time during a mediation session, the neutral or ADR program staff must follow the procedures outlined in the *Rules for Mediation in Cases Involving Domestic Violence (Also referred to as Intimate Partner Violence and Abuse IPV/A).*

(c) Expedited Sessions. The ADR Director has the authority to expedite a dispute resolution session for the purpose of obtaining immediate temporary relief where good cause is shown. Such a request must be made in writing and filed with an ADR Initiation Form, a copy of the complaint and a statement by the party that immediate relief is necessary.

(d) Request for ADR. Any party to a dispute may request that the court refer the case to ADR or request that a matter referred to the ADR process be referred to another ADR process if available.

(e) Effect of Referral Upon Process of the Case. The scheduling of a case for an ADR 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 ADR prior to any hearings before the court.

(f) Interim or Emergency Relief. A party may apply to the court for interim or emergency relief at any time. ADR shall continue while such a motion is pending absent a contrary order of the court or a decision of the parties to adjourn pending disposition of the motion. Time for completing any ADR process shall be tolled during any periods where it is interrupted pending resolution of such a motion.

(g) If court personnel other than judges are involved in ADR referral decisions, these individuals will receive appropriate training and will work within clearly stated written policies, procedures and criteria for referral.

(h) The Court may impose a users' fee upon any party participating in ADR who has not paid a filing fee surcharge at the time the action was filed.

RULE 2. TIMING OF ADR PROCESS

DOMESTIC RELATIONS AND PERSONAL INJURY CASES

(A) Initiation of ADR Process. Although the referral process of all contested domestic relations cases and of all personal injury cases begins with the filing of such case, ADR initiation is the responsibility of the parties and should be implemented as follows:

(i) If a contested domestic matter is still pending one hundred eighty (180) days after the original complaint is filed and determined by the Court or ADR Office after screening pursuant to the *Rules for Mediation in Cases Involving Domestic Violence (Also referred to as Intimate Partner Violence and Abuse IPV/A)* to be appropriate for mediation, a mediation conference shall then be scheduled by the parties to take place within thirty (30) days. Exceptions may be granted by the ADR Director for good and sufficient reason established, or by Order of the Court. The ADR Office must be notified by the parties once the conference is scheduled, and must be provided a report by the mediator as to the outcome of the conference.

(ii) If a personal injury case is still pending one hundred and eighty (180) days after the original complaint is filed, a mediation conference shall then be scheduled by the parties to take place within thirty (30) days. Exceptions may be granted by the ADR Director for good and sufficient reason established, or by order of the Court. The ADR Office must be notified once the conference is scheduled, and must be provided a report by the mediator of the outcome of the conference.

OTHER GENERAL CIVIL CASES

Other cases may be referred by agreement of all parties or by sua sponte Order of the court.

NOTICE

(1) If the parties do not select a neutral and schedule an initial ADR conference, the ADR Office may select a neutral registered with the Georgia Office of Dispute Resolution and listed on the local Roster of Neutrals, and schedule a conference. The ADR Office will then notify the attorney(s) indicated on the case initiation form of the assigned neutral's name, address and telephone number, and the date and location of the conference. If a party is pro se, the notice will be mailed directly to the party. Any conflicts of interest must be reported to the ADR Office for reassignment. The fees of the mediator will be shared equally between the parties.

RULE 3. EXEMPTION OR EXCLUSION OF CASES FROM ADR

(a) Any party to a dispute referred to ADR may petition the court to exclude the case from ADR if:

(1) The issue to be considered has been previously mediated by a neutral who is registered with the Georgia Commission on Dispute Resolution in accordance with Rules 4 and 5 herein;

(2) The issue presents a question of law only;

(3) Other good cause is shown before the judge to whom the case is assigned.

RULE 4. SELECTION OF THE NEUTRAL

(a) The neutral selected shall be registered with the Georgia Office of Dispute Resolution and with the ADR Office. A Roster of Neutrals may be obtained from the ADR Office. The parties scheduling the ADR conference shall notify the ADR Office of the name of the neutral, and the scheduled date, time and place for the ADR conference.

(b) If no neutral has been selected as provided in (a) above, the ADR Office may assign a neutral to the case. The ADR Director will select program neutrals from those neutrals who are registered with the Georgia Office of Dispute Resolution and with the ADR Office. The number of neutrals used for assignment purposes may be limited as the case load requires and

may be evaluated and approved by the program prior to being added to the list. Those selected shall be appointed cases on a rotation basis, unless the ADR office determines that circumstances require special selection.

(c) Disqualification of a Neutral. Any party aware of a conflict between a neutral and a party may notify the ADR Office and request a qualified replacement.

RULE 5. NEUTRAL QUALIFICATIONS FOR SERVICE IN THE PROGRAM

(a) The qualifications for service as a neutral in the program shall be determined by the Supreme Court Alternative Dispute Resolution Rules and these rules. The program will maintain a Roster of Neutrals from which attorneys and parties are to select a neutral. Neutrals serving in the program will be evaluated by the program on an ongoing basis.

(b) All neutrals added to the Roster of Neutrals will be provided a Handbook for Neutrals containing the Local Rule governing the Alapaha Judicial Circuit ADR Program, and documents utilized for participation in the Program.

(c) All neutrals on the Roster of Neutrals shall attend continuing education seminars as prescribed by the Supreme Court Rules from time to time.

RULE 6. COMPENSATION OF NEUTRALS

(a) Fees. Where the parties have selected a neutral, they are encouraged to agree upon compensation at or before the first ADR conference. Relevant factors to be considered in determining an appropriate fee include the complexity of the case, the degree of skill necessary to mediate, evaluate or arbitrate the dispute, and the ability of the parties to pay.

This fee provision may be altered by amendment, court order, or where emergency relief is requested by the Chief Judge.

(b) The ADR Director shall maintain a list of registered neutrals. From this list, neutrals will be selected for cases referred to the ADR Program in this circuit.

(c) The amounts charged and to be charged by a neutral in any case referred to ADR under this program shall be subject to approval or disapproval by the Chief Judge of the Alapaha Judicial Circuit.

(d) The parties in the ADR process shall be responsible for the payment of the neutral's fee, which shall be equally divided between the parties, unless otherwise agreed to or unless otherwise ordered by the presiding Judge.

(e) Satisfactory arrangements for payment of the neutral's fee shall be made between the parties and the neutral. The ADR Office shall not be liable or responsible for payment of any fee.

(f) Fee Waiver or Reduction. A party may petition the ADR Office for a fee reduction or waiver where circumstances warrant. Any such request must be accompanied by a properly executed Poverty Affidavit. Once a waiver application is granted or denied, the ADR Director shall notify the affected party, or if represented, their attorney. An Approval Form will be provided to applicants (or their attorney) who are granted a waiver of fees. The Approval Form is to be provided to the neutral on the date of the mediation. The neutral is then to submit a request for compensation of the indigent party's portion of the mediation fees directly to the Alapaha ADR Program, along with the Mediation Report and Administrative Fee. The ADR Director will submit the payment request to the Chief Judge, and upon receipt by the ADR Director of a Court Order directing the Secretary Treasurer of the Alapaha ADR Program to compensate the neutral for the requested amount, payment will be made to the neutral. The Alapaha ADR Program will compensate the neutral for no more than two (2) hours of actual mediation services, at a rate not to exceed $200 per hour, or the usual rate assessed by the neutral, whichever is less. The Program will not reimburse the neutral for preparation or travel time. *(as amended 2019).*

(g) Reporting. Within seven (7) days of the mediation conference, the neutral shall submit a report to the ADR Office which shall include a statement as to the length of the conference, the names of those present, and the outcome of the conference.

(h) Administrative Fee. A compensated neutral shall return $15.00 per case to the ADR Office along with the Mediation Report outlined in Paragraph (g).

(i) The ADR Office will contact a mediator when failure to timely file the Mediation Report accompanied by the Administrative Fee is noted. If the mediation has taken place as scheduled, the mediator will be given notice that the Report and Fee are due within fourteen (14) days. If the Report and Fee are not then received within fourteen (14) days after such notice, the mediator shall be suspended from the Roster of Neutrals of the Alapaha Judicial Circuit until such time that the required Report and Fee are received. If the mediator fails to comply with the reporting/fee requirement a second time, the mediator shall be removed from the Roster with the right to later reapply for placement on the Roster.

RULE 7. IMMUNITY

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 process.

RULE 8. CONFIDENTIALITY

(a) The rules of confidentiality as defined by the Georgia Supreme Court, and particularly in Section VII of the ADR Rule entitled "Confidentiality and Immunity", shall apply in all cases submitted to the program.

(b) Any document or other evidence generated in connection with a court-annexed or court-referred ADR or other form of dispute resolution is not subject to discovery.

(c) Neither the neutral nor any observer present with permission of the parties in court-annexed or court-referred ADR process may be subpoenaed or otherwise required to testify concerning an ADR conference in any subsequent administrative or judicial proceeding. The neutral's notes or records are not subject to discovery.

(d) Confidentiality shall not extend to situations in which: (1) there are threats of imminent violence to self or others; (2) a mediator believes that a child is being abused; (3) the safety of any party or third person is in danger; or (4) a party asserts that their capacity to conduct good-faith negotiations and to make informed decisions for themselves was impaired during the mediation as provided by the Supreme Court of Georgia in Wilson v Wilson, 282 Ga. 728 (2007).

(e) Confidentiality does not extend to documents or communications relevant to legal claims brought against a neutral or an ADR program and arising out of an ADR process. 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 program is not considered a breach of confidentiality.

RULE 9. APPEARANCE

The presence of parties at all ADR conferences is required unless the court orders otherwise. All parties shall have full settlement authority, or shall have a representative present or immediately available by telephone who has full settlement authority. At the beginning of each ADR conference, it will be the responsibility of the mediator/neutral to ascertain that each party or their representative with full settlement authority is present and that such representative has a full understanding of the dispute and full knowledge of the facts. In the event that the above conditions are not met, the opposing party may elect either to cancel the session immediately, or to continue as planned. In either event, the ADR Office will notify the judge to whom the case is assigned that all conditions of Appearance were not met. The judge may find that party in contempt and impose appropriate sanctions, including but not limited to, full compensation to the neutral for the canceled session, and/or dismissal of the offending party's pleadings.

(a) Attorneys. Attorneys are not required to attend ADR conferences but may not ever be excluded by the court or the neutral. If a party is represented by counsel, then counsel shall:

(1) attend the session; OR

(2) give written consent to the neutral (via the ADR Director) and to the opposing party that counsel does or does not consent to direct discussions with his or her client during the ADR session.

(b) Rescheduling. Completion of the ADR process is a prerequisite to trial. The party or attorney who is requesting that an ADR session be rescheduled must obtain consent from opposing counsel and the assigned neutral. The ADR Office must be also notified of any rescheduling attempts. The rescheduled session must take place within one week of the date originally assigned.

(c) Cancellations. Unilateral cancellations or reschedules will be not be permitted and are a violation of the Court rule of attendance.

(d) Settlement Prior to ADR Conference. Settlement before ADR conference is always encouraged but is still considered a cancellation if timely notice of cancellation is not given. Consequently, notice must be received by the neutral at least twenty-four (24) business hours in advance to avoid a cancellation fee established by the Chief Judge.

(e) Court programs may offer parties, attorneys, and any representative the option to appear remotely by videoconference or telephone.

RULE 10. IMPOSITION OF SANCTIONS

(a) Failure to Appear. If a party fails to appear at a duly noticed ADR conference without good cause, the ADR Director shall notify the judge to whom the case is assigned. The judge may find the party in contempt, assess ADR fees and impose any other appropriate sanctions.

If attorneys are scheduled to appear and are essential to the decision making process, they will be subject to the same sanctions as the parties.

RULE 11. COMMUNICATION WITH PARTIES

The only ex parte communication between a party and the neutral outside of the ADR conference shall be for the purposes of verifying appointment times and locations or answering questions about the ADR process and procedures. If a mediator wishes to begin the mediation process prior to the appointed time by receiving written reports or speaking with each party prior to a joint session, the mediator must review the mediation guidelines prior to such action with all parties, must inform the parties of the mediator's billing practices for this time, and must inform

all parties that these activities are taking place prior to the time set for the mediation session. The neutral may meet privately with any party or any attorney during the ADR conference.

RULE 12. COMMUNICATION WITH THE COURT

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

(b) Once an ADR process is underway in a given case, contact between the ADR Director 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 concerning procedural action on the part of the court which might facilitate the resolution process;

(3) Communicating to the court that an assessment of the case indicates that it is inappropriate for that process;

(4) Communicating any request for additional time to complete the ADR ;

(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 13. COMPLETION OF ADR

(a) ADR sessions may be terminated at any time by the parties or the neutral with charges assessed the parties per hour. Any part of an hour will be charged the full hourly rate in effect.

(b) Agreement. ADR should normally be completed within 30 days of the initial conference and the neutral shall file a report with the ADR office within seven (7) days of the initial conference. If an agreement is reached, the neutral shall draft a Memorandum of Agreement which should be signed by all parties (including attorneys, if present, and neutral) at

the end of the ADR conference. From the Memorandum of Agreement, the plaintiff's attorney (unless otherwise agreed) is to prepare the Agreement which is to be incorporated into the Final Order of the Court.

(c) If a partial agreement is reached, it shall be reduced to writing and signed by the parties and counsel, if any, in the same manner as the full agreement above.

(d) If the parties do not reach an agreement as to any matter as a result of ADR, the neutral shall report the lack of an agreement to the ADR Director, who shall notify the judge to whom the case was assigned.

RULE 14. ENFORCEABILITY OF AGREEMENTS

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

RULE 15. EVALUATION

A. Evaluation of the Program: Data shall be collected on an ongoing basis to ensure the quality of the Program. The Program shall provide all available data as requested by the GODR in a timely fashion as directed by the GODR. The Program may use such data to improve the quality of the Program.

B. Evaluation of Neutrals:

1. The Program shall establish procedures to monitor the performance of neutrals on an ongoing basis. Data concerning settlement rates will not be used as the sole basis for the evaluation of a neutral.

2. Procedures shall be established to remove incompetent, ineffective, or unethical neutrals from the Roster. Such procedures will also include reporting removal to the GODR so that a neutral's registration may be reconsidered.

RULE 16. ADMINISTRATION OF THE ALTERNATIVE DISPUTE RESOLUTION PROGRAM

The Director of the Dispute Resolution Office shall be appointed by the Chief Judge. Said Director shall be compensated in an amount set by the Chief Judge. The compensation shall be paid from the Alapaha Judicial Circuit Fund for the Administration of Alternative Dispute Resolution Programs. The Director shall be responsible for all administrative matters pertaining to the ADR program. These responsibilities include, but shall not be limited to:

(a) Receiving referrals from the Courts of this circuit.

(b) Scheduling neutrals equitably and ensuring timely ADR of all cases.

(c) Notifying presiding judges of the results of ADR.

(d) Evaluating procedures on an on-going basis and recommending changes if needed.

(e) Maintaining a Roster of Neutrals for the Alapaha Judicial Circuit comprised only of neutrals who have requested placement on the Roster and who are registered with the Georgia Office of Dispute Resolution (GODR).

(f) Performing such other duties as may be directed by the Superior Court Judges.

(g) If qualified, serving as a neutral when chosen or where no neutral is available to serve on a pro bono case involving indigent matters.

The Superior Court Judges of the Alapaha Judicial Circuit shall retain ultimate authority over the ADR program.

This 13 day of January, 2022.

CLAYTON A. TOMLINSON, CHIEF JUDGE,
ALAPAHA JUDICIAL CIRCUIT

RICHARD L PERRYMAN, JUDGE,
ALAPAHA JUDICIAL CIRCUIT

BOARD OF TRUSTEES OF THE ALAPAHA JUDICIAL CIRCUIT
ALTERNATIVE DISPUTE RESOLUTION FUND

Chief Judge, Alapaha Judicial Circuit

Judge, Magistrate Court, Atkinson County

Judge, Probate Court, Atkinson County

Clerk, Superior Court, Atkinson County

Judge, Magistrate Court, Berrien County

Judge, Probate Court, Berrien County

Clerk, Superior Court, Berrien County

Judge, Magistrate Court, Clinch County

Judge, Probate Court, Clinch County

Clerk, Superior Court, Clinch County

Judge, Magistrate Court, Cook County

Judge, Probate Court, Cook County

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Judge, Probate Court, Lanier County

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