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States' Alternative Dispute Resolution Statutes

State of Georgia

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States' Alternative Dispute Resolution Statutes

STATE OF GEORGIA

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Part 1. Arbitration Code Title 9, Chapter 9, Article 1.

Current through end of the 2008 Regular Session

§ 9-9-1. Short title

This part shall be known and may be cited as the “Georgia Arbitration Code.”

§ 9-9-2. Applicability

(a) Part 3 of Article 2 of this chapter, as it existed prior to July 1, 1988, applies to agreements specified in subsection (b) of this Code section made between July 1, 1978, and July 1, 1988. This part applies to agreements specified in subsection (b) of this Code section made on or after July 1, 1988, and to disputes arising on or after July 1, 1988, in agreements specified in subsection (c) of this Code section.

(b) Part 3 of Article 2 of this chapter, as it existed prior to July 1, 1988, shall apply to construction contracts, contracts of warranty on construction, and contracts involving the architectural or engineering design of any building or the design of alterations or additions thereto made between July 1, 1978, and July 1, 1988, and on and after July 1, 1988, this part shall apply as provided in subsection (a) of this Code section and shall provide the exclusive means by which agreements to arbitrate disputes arising under such contracts can be enforced.

(c) This part shall apply to all disputes in which the parties thereto have agreed in writing to arbitrate and shall provide the exclusive means by which agreements to arbitrate disputes can be enforced, except the following, to which this part shall not apply:

- (1) Agreements coming within the purview of Article 2 of this chapter, relating to arbitration of medical malpractice claims;
- (2) Any collective bargaining agreements between employers and labor unions representing employees of such employers;
- (3) Any contract of insurance, as defined in paragraph (1) of Code Section 33-1-2; provided, however, that nothing in this paragraph shall impair or prohibit the enforcement of or in any way invalidate an arbitration clause or provision in a contract between insurance companies;
- (4) Any other subject matters currently covered by an arbitration statute;
- (5) Any loan agreement or consumer financing agreement in which the amount of indebtedness is \$ 25,000.00 or less at the time of execution;
- (6) Any contract for the purchase of consumer goods, as defined in Title 11, the “Uniform Commercial Code,” under subsection (1) of Code Section 11-2-105 and subsection (a) of Code Section 11-9-102;
- (7) Any contract involving consumer acts or practices or involving consumer transactions as such terms are defined in paragraphs (2) and (3) of subsection (a) of Code Section 10-1-392, relating to definitions in the “Fair Business Practices Act of 1975”;
- (8) Any sales agreement or loan agreement for the purchase or financing of residential real estate unless the clause agreeing to arbitrate is initialed by all signatories at the time of the execution of the agreement. This exception shall not restrict agreements between or among real estate brokers or agents;
- (9) Any contract relating to terms and conditions of employment unless the clause agreeing to arbitrate is initialed by all signatories at the time of the execution of the agreement;
- (10) Any agreement to arbitrate future claims arising out of personal bodily injury or wrongful death based on tort.

§ 9-9-3. Enforcement of agreements to arbitrate without regard to justiciability of controversy

A written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit any controversy thereafter arising to arbitration is enforceable without regard to the justiciable character of the controversy and confers jurisdiction on the courts of the state to enforce it and to enter judgment on an award.

§ 9-9-4. Venue; orders for attachment and preliminary injunctions

- (a)(1) Any application to the court under this part shall be made to the superior court of the county where venue lies, unless the application is made in a pending court action, in which case it shall be made to the court hearing that action. Subsequent applications shall be made to the court hearing the initial application unless the court otherwise directs.
 - (2) All applications shall be by motion and shall be heard in the manner provided by law and rule of court for the making or hearing of motions, provided that the motion shall be filed in the same manner as a complaint in a civil action.
- (b) Venue for applications to the court shall lie:
- (1) In the county where the agreement provides for the arbitration hearing to be held; or
 - (2) If the hearing has already been held, in the county where it was held; or
 - (3) In the county where any party resides or does business; or
 - (4) If there is no county as described in paragraph (1), (2), or (3) of this subsection, in any county.

(c)(1) A demand for arbitration shall be served on the other parties by registered or certified mail or statutory overnight delivery, return receipt requested.

(2) The initial application to the court shall be served on the other parties in the same manner as a complaint under Chapter 11 of this title.

(3) All other papers required to be served by this part shall be served in the same manner as pleadings subsequent to the original complaint and other papers are served under Chapter 11 of this title.

(d) In determining any matter arising under this part, the court shall not consider whether the claim with respect to which arbitration is sought is tenable nor otherwise pass upon the merits of the dispute.

(e) The superior court in the county in which an arbitration is pending, or, if not yet commenced, in a county specified in subsection (b) of this Code section, may entertain an application for an order of attachment or for a preliminary injunction in connection with an arbitrable controversy, but only upon the ground that the award to which the applicant may be entitled may be rendered ineffectual without such provisional relief.

§ 9-9-5. Court discretion in applying bar of limitation of time; waiver of limitation of time; time for asserting limitation of time as bar

(a) If a claim sought to be arbitrated would be barred by limitation of time had the claim sought to be arbitrated been asserted in court, a party may apply to the court to stay arbitration or to vacate the award, as provided in this part. The court has discretion in deciding whether to apply the bar. A party waives the right to raise limitation of time as a bar to arbitration in an application to stay arbitration by that party's participation in the arbitration.

(b) Failure to make this application to the court shall not preclude a party from asserting before the arbitrators limitation of time as a bar to the arbitration. The arbitrators, in their sole discretion, shall decide whether to apply the bar. This exercise of discretion shall not be subject to review of the court on an application to confirm, vacate, or modify the award except upon the grounds hereafter specified in this part for vacating or modifying an award.

§ 9-9-6. Procedures for applications to compel arbitration

(a) A party aggrieved by the failure of another to arbitrate may apply for an order compelling arbitration. If the court determines there is no substantial issue concerning the validity of the agreement to submit to arbitration or compliance therewith and the claim sought to be arbitrated is not barred by limitation of time, the court shall order the parties to arbitrate. If a substantial issue is raised or the claim is barred by limitation of time, the court shall summarily hear and determine that issue and, accordingly, grant or deny the application for an order to arbitrate. If an issue claimed to be arbitrable is involved in an action pending in a court having jurisdiction to hear a motion to compel arbitration, the application shall be made by motion in that action. If the application is granted, the order shall operate to stay a pending or subsequent action, or so much of it as is referable to arbitration.

(b) Subject to subsections (c) and (d) of this Code section, a party who has not participated in the arbitration and who has not made an application to compel arbitration may apply to stay arbitration on the grounds that:

(1) No valid agreement to submit to arbitration was made;

- (2) The agreement to arbitrate was not complied with; or
- (3) The arbitration is barred by limitation of time.

(c) A party may serve upon another party a demand for arbitration. This demand shall specify:

- (1) The agreement pursuant to which arbitration is sought;
- (2) The name and address of the party serving the demand;
- (3) That the party served with the demand shall be precluded from denying the validity of the agreement or compliance therewith or from asserting limitation of time as a bar in court unless he makes application to the court within 30 days for an order to stay arbitration; and
- (4) The nature of the dispute or controversy sought to be arbitrated; provided, however, that the demand for arbitration may be amended by either party to include disputes arising under the same agreement after the original demand is served.

(d) After service of the demand, or any amendment thereof, the party served must make application within 30 days to the court for a stay of arbitration or he will thereafter be precluded from denying the validity of the agreement or compliance therewith or from asserting limitation of time as a bar in court. Notice of this application shall be served on the other parties. The right to apply for a stay of arbitration may not be waived, except as provided in this Code section.

(e) Unless otherwise provided in the arbitration agreement, a party to an arbitration agreement may petition the court to consolidate separate arbitration proceedings, and the court may order consolidation of separate arbitration proceedings when:

- (1) Separate arbitration agreements or proceedings exist between the same parties or one party is a party to a separate arbitration agreement or proceeding with a third party;
- (2) The disputes arise from the same transactions or series of related transactions; and
- (3) There is a common issue or issues of law or fact creating the possibility of conflicting rulings by more than one arbitrator or panel of arbitrators.

(f) If all the applicable arbitration agreements name the same arbitrator, arbitration panel, or arbitration tribunal, the court, if it orders consolidation under subsection (e) of this Code section, shall order all matters to be heard before the arbitrator, panel, or tribunal agreed to by the parties. If the applicable arbitration agreements name separate arbitrators, panels, or tribunals, the court, if it orders consolidation under subsection (e) of this Code section, shall, in the absence of an agreed method of selection by all parties to the consolidated arbitration, appoint an arbitrator.

(g) In the event that the arbitration agreements in proceedings consolidated under subsection (e) of this Code section contain inconsistent provisions, the court shall resolve such conflicts and determine the rights and duties of various parties.

(h) If the court orders consolidation under subsection (e) of this Code section, the court may exercise its discretion to deny consolidation of separate arbitration proceedings only as to certain issues, leaving other issues to be resolved in separate proceedings.

§ 9-9-7. Appointment of arbitrators

(a) If the arbitration agreement provides for a method of appointment of arbitrators, that method shall be followed. If there is only one arbitrator, the term “arbitrators” shall apply to him.

(b) The court shall appoint one or more arbitrators on application of a party if:

- (1) The agreement does not provide for a method of appointment;
- (2) The agreed method fails;
- (3) The agreed method is not followed for any reason; or
- (4) The arbitrators fail to act and no successors have been appointed.

(c) An arbitrator appointed pursuant to subsection (b) of this Code section shall have all the powers of one specifically named in the agreement.

§ 9-9-8. Hearing before arbitrators

(a) The arbitrators, in their discretion, shall appoint a time and place for the hearing notwithstanding the fact that the arbitration agreement designates the county in which the arbitration hearing is to be held and shall notify the parties in writing, personally or by registered or certified mail or statutory overnight delivery, not less than ten days before the hearing. The arbitrators may adjourn or postpone the hearing. The court, upon application of any party, may direct the arbitrators to proceed promptly with the hearing and determination of the controversy.

(b) The parties are entitled to be heard; to present pleadings, documents, testimony, and other matters; and to cross-examine witnesses. The arbitrators may hear and determine the controversy upon the pleadings, documents, testimony, and other matters produced notwithstanding the failure of a party duly notified to appear.

(c) A party has the right to be represented by an attorney and may claim such right at any time as to any part of the arbitration or hearings which have not taken place. This right may not be waived. If a party is represented by an attorney, papers to be served on the party may be served on the attorney.

(d) The hearing shall be conducted by all the arbitrators unless the parties otherwise agree; but a majority may determine any question and render and change an award, as provided in this part. If during the course of the hearing, an arbitrator for any reason ceases to act, the remaining arbitrator or arbitrators appointed to act as neutrals may continue with the hearing and determination of the controversy.

(e) The arbitrators shall maintain a record of all pleadings, documents, testimony, and other matters introduced at the hearing. The arbitrators or any party to the proceeding may have the proceedings transcribed by a court reporter.

(f) Except as provided in subsection (c) of this Code section, a requirement of this Code section may be waived by written consent of the parties or by continuing with the arbitration without objection.

§ 9-9-9. Subpoenas; notices to produce; list of witnesses; compensation of witnesses

(a) The arbitrators may issue subpoenas for the attendance of witnesses and for the production of books, records, documents, and other evidence. These subpoenas shall be served and, upon application to the court by a party or the arbitrators, enforced in the same manner provided by law for the service and enforcement of subpoenas in a civil action.

(b) Notices to produce books, writings, and other documents or tangible things; depositions; and other discovery may be used in the arbitration according to procedures established by the arbitrators.

(c) A party shall have the opportunity to obtain a list of witnesses and to examine and copy documents relevant to the arbitration.

(d) Witnesses shall be compensated in the same amount and manner as witnesses in the superior courts.

§ 9-9-10. Award

(a) The award shall be in writing and signed by the arbitrators joining in the award. The arbitrators shall deliver a copy of the award to each party personally or by registered or certified mail or statutory overnight delivery, return receipt requested, or as provided in the agreement.

(b) An award shall be made within the time fixed therefor by the agreement or, if not so fixed, within 30 days following the close of the hearing or within such time as the court orders. The parties may extend in writing the time either before or after its expiration. A party waives the objection that an award was not made within the time required unless he notifies in writing the arbitrators of his objection prior to the delivery of the award to him.

§ 9-9-11. Change of award

(a) Pursuant to the procedure described in subsection (b) of this Code section, the arbitrators may change the award upon the following grounds:

- (1) There was a miscalculation of figures or a mistake in the description of any person, thing, or property referred to in the award;
- (2) The arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or
- (3) The award is imperfect in a matter of form, not affecting the merits of the controversy.

(b)(1) An application to the arbitrators for a change in the award shall be made by a party within 20 days after delivery of the award to the applicant. Written notice of this application shall be served upon the other parties.

(2) Objection to a change in the award by the arbitrators must be made in writing to the arbitrators within ten days of service of the application to change. Written notice of this objection shall be served upon the other parties.

(3) The arbitrators shall dispose of any application made under this Code section in a written, signed order within 30 days after service upon them of objection to change or upon the expiration of the time for service of this objection. The parties may extend, in writing, the time for this disposition by the arbitrators either before or after its expiration.

(4) An award changed under this Code section shall be subject to the provisions of this part concerning the confirmation, vacation, and modification of awards by the court.

§ 9-9-12. Confirmation of award

The court shall confirm an award upon application of a party made within one year after its delivery to him, unless the award is vacated or modified by the court as provided in this part.

§ 9-9-13. Vacation of award

(a) An application to vacate an award shall be made to the court within three months after delivery of a copy of the award to the applicant.

(b) The award shall be vacated on the application of a party who either participated in the arbitration or was served with a demand for arbitration if the court finds that the rights of that party were prejudiced by:

- (1) Corruption, fraud, or misconduct in procuring the award;
- (2) Partiality of an arbitrator appointed as a neutral;
- (3) An overstepping by the arbitrators of their authority or such imperfect execution of it that a final and definite award upon the subject matter submitted was not made;
- (4) A failure to follow the procedure of this part, unless the party applying to vacate the award continued with the arbitration with notice of this failure and without objection; or
- (5) The arbitrator's manifest disregard of the law.

(c) The award shall be vacated on the application of a party who neither participated in the arbitration nor was served with a demand for arbitration or order to compel arbitration if the court finds that:

(1) The rights of the party were prejudiced by one of the grounds specified in subsection

(b) of this Code section;

- (2) A valid agreement to arbitrate was not made;
- (3) The agreement to arbitrate has not been complied with; or
- (4) The arbitrated claim was barred by limitation of time, as provided by this part.

(d) The fact that the relief was such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.

(e) Upon vacating an award, the court may order a rehearing and determination of all or any of the issues either before the same arbitrators or before new arbitrators appointed as provided by this part. In any provision of an agreement limiting the time for a hearing or award, time shall be measured from the date of such order or rehearing, whichever is appropriate, or a time may be specified by the court. The court's ruling or order under this Code section shall constitute a final judgment and shall be subject to appeal in accordance with the appeal provisions of this part.

§ 9-9-14. Modification of award

(a) An application to modify the award shall be made to the court within three months after delivery of a copy of the award to the applicant.

(b) The court shall modify the award if:

- (1) There was a miscalculation of figures or a mistake in the description of any person, thing, or property referred to in the award;
- (2) The arbitrators awarded on a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or

(3) The award is imperfect in a manner of form, not affecting the merits of the controversy.

(c) If the court modifies the award, it shall confirm the award as modified. If the court denies modification, it shall confirm the award made by the arbitrators.

§ 9-9-15. Judgment

(a) Upon confirmation of the award by the court, judgment shall be entered in the same manner as provided by Chapter 11 of this title and be enforced as any other judgment or decree.

(b) The judgment roll shall consist of the following:

- (1) The agreement and each written extension of time within which to make the award;
- (2) The award;
- (3) A copy of the order confirming, modifying, or correcting the award; and
- (4) A copy of the judgment.

§ 9-9-16. Appeal of judgment

Any judgment or any order considered a final judgment under this part may be appealed pursuant to Chapter 6 of Title 5.

§ 9-9-17. Expenses and fees of arbitrators

Unless otherwise provided in the agreement to arbitrate, the arbitrators' expenses and fees, together with other expenses, not including counsel fees, incurred in the conduct of the arbitration, shall be paid as provided in the award.

§ 9-9-18. Effect of death or incompetency of party in arbitration

Where a party dies or becomes incompetent after making a written agreement to arbitrate, the proceedings may be begun or continued upon the application of, or upon notice to, his executor or administrator or trustee or guardian or, where it relates to real property, his distributee or devisee who has succeeded to his interest in the real property. Upon the death or incompetency of a party, the court may extend the time within which an application to confirm, vacate, or modify the award or to stay arbitration must be made. Where a party has died since an award was delivered, the proceedings thereupon are the same as where a party dies after a verdict.

International Transactions

§ 9-9-30. Purpose

In order to encourage the use of arbitration in the resolution of conflicts arising out of international transactions effectuating the policy of the state to provide a conducive environment for international business and trade, this part supplements Part 1 of this article and shall be used concurrently with the provisions of Part 1 of this article whenever an arbitration is within the scope of this part.

§ 9-9-31. Applicability

(a) This part shall apply to arbitrations within its scope notwithstanding provisions in Part 1 of this article to the contrary.

(b) This part shall apply only to the arbitration of disputes between:

- (1) Two or more persons at least one of whom is domiciled or established outside the United States; or
- (2) Two or more persons all of whom are domiciled or established in the United States if the dispute bears some relation to property, contractual performance, investment, or other activity outside the United States.

(c) Notwithstanding the provisions of subsection (b) of this Code section, this part shall not apply to the arbitration of any of the exceptions set forth in Part 1 of this article.

§ 9-9-32. Agreements in writing

For purposes of this part, in particular, an agreement is in writing if it is contained in a document signed by the parties or in an exchange of letters, telex, telegrams, or other means of telecommunication which provide a record of the agreement, or in an exchange of statements of claim and defense in which the existence of an agreement is alleged by one party and not denied by another. The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement, provided that the contract is in writing and the reference is such as to make that clause part of the contract.

§ 9-9-33. Persons not precluded from acting as arbitrators by reason of nationality

No person shall be precluded by reason of his nationality from acting as an arbitrator, unless otherwise agreed by the parties.

§ 9-9-34. Arbitrators may rule on their own jurisdiction

The arbitrators may rule on their own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitrators that the contract is null and void shall not thereby invalidate the arbitration clause.

§ 9-9-35. Interim relief

The arbitrators may grant such interim relief as they consider appropriate and, in so doing, may require a party to post bond or give other security. The power conferred in this Code section upon the arbitrators is without prejudice to the right of a party to request interim relief directly from any court, tribunal, or other governmental authority, inside or outside this state, and to do so without prior authorization of the arbitrators.

§ 9-9-36. Selection of law governing arbitration

Selection of this state as the place of arbitration shall not in itself constitute selection of the procedural

or substantive law of that place as the law governing the arbitration.

§ 9-9-37. Language or languages to be used in arbitral proceedings

(a) The parties are free to agree on the language or languages to be used in the arbitral proceedings. Failing such agreement, the arbitrators shall determine the language or languages to be used in the proceedings. This agreement or determination, unless otherwise specified therein, shall apply to any written statement by a party, any hearing, and any award, decision, or other communication by the arbitrators.

(b) The arbitrators may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitrators.

§ 9-9-38. Experts

(a) Unless otherwise agreed by the parties, the arbitrators:

(1) May appoint one or more experts to report on specific issues to be determined by the arbitrators; and

(2) May require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods, or other property for his inspection.

(b) Unless otherwise agreed by the parties, if a party so requests or if the arbitrators consider it necessary, the expert shall, after delivery of his written or oral report, participate in a hearing where the parties have the opportunity to put questions to him and to present expert witnesses in order to testify on the points at issue.

§ 9-9-39. Statement of reasons for award; interpretation of award; fees and expenses

(a) A written statement of the reasons for an award shall be issued if the parties agree to the issuance thereof or the arbitrators determine that a failure to do so could prejudice recognition or enforcement of the award.

(b) If so agreed by the parties, a party, with notice to the other party, may request the arbitrators to give an interpretation of a specific point or part of the award. The interpretation shall form part of the award.

(c) The arbitrators may award reasonable fees and expenses actually incurred, including, without limitation, fees and expenses of legal counsel to any party to the arbitration and shall allocate the costs of the arbitration among the parties as it determines appropriate.

§ 9-9-40. Confirmation or vacation of award

The courts of this state shall confirm or vacate a final award, notwithstanding the fact that it grants relief in a currency other than United States dollars.

§ 9-9-41. Confirmation or vacation of award which has been reduced to judgment, etc.

If a final award has been reduced to judgment or made the subject of official action by any court, tribunal, or other governmental authority outside the United States, the courts of this state shall confirm or vacate the award without regard to any term or condition of the foreign judgment or official action and without regard to whether the award may be deemed merged into judgment.

§ 9-9-42. Recognition of awards on basis of reciprocity

An arbitration award irrespective of where it was made, on the basis of reciprocity, shall be recognized as binding and shall be enforceable in the courts of this state subject to the grounds for vacating an award under Part 1 of this article and providing that the award is not contrary to the public policy of this state with respect to international transactions. Reciprocity in the recognition and enforcement of foreign arbitral awards shall be in accordance with applicable federal laws, international conventions, and treaties.

§ 9-9-43. Time limitations

For arbitrations arising under this part, time periods set forth in the following Code sections of Part 1 of this article shall be modified as follows:

- (1) The time periods referred to in subsections (c) and (d) of Code Section 9-9-6 and in Code Section 9-9-11 shall be doubled;
- (2) The time period contained in subsection (b) of Code Section 9-9-10 shall not be applicable; and
- (3) The ten-day time period in subsection (a) of Code Section 9-9-8 shall be 30 days.

Court-Connected Alternative Dispute Resolution

Title 15, Chapter 23.

Current through end of the 2008 Regular Session

§ 15-23-1. Short title

This chapter shall be known and may be cited as the “Georgia Court-connected Alternative Dispute Resolution Act.”

§ 15-23-2. Definitions

As used in this chapter, the term:

- (1) “Alternative dispute resolution” or “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 minitrial.
- (2) “Board” means the board of trustees of a Fund for the Administration of Alternative Dispute Resolution Programs created by Code Section 15-23-3.
- (3) “Fund” means one or more funds created pursuant to Code Section 15-23-8.

§ 15-23-3. Creation of board of trustees

(a) There is created in each county in this state a board to be known as the Board of Trustees of the _____ County Fund for the Administration of Alternative Dispute Resolution Programs. The board shall consist of:

- (1) The chief judge of the superior court of the circuit in which the county is located, or the superior court judge with the longest service if there is no chief judge, or a superior court judge designated by the chief judge or the judge with the longest service;
 - (2) The chief judge of the state court, if any, or the state court judge with the longest service if there is no chief judge, or a state court judge designated by the chief judge or the judge with the longest service;
 - (3) The judge of the probate court;
 - (4) The presiding judge of the juvenile court, if any, or a juvenile court judge designated by that judge;
 - (5) The chief magistrate or a magistrate designated by the chief magistrate;
 - (6) The clerk of the superior court; and
 - (7) One practicing attorney appointed by other members of the board.
- (b) The superior court judge on the board shall serve as chairperson of the board. The member who is the practicing attorney shall serve at the pleasure of the other members of the board. All members shall serve without compensation. A majority of the members of the board shall constitute a quorum for the transaction of all business that may come before the board.
- (c) A member who represents a court which does not participate in the alternative dispute resolution program and against whose litigants the additional costs authorized by this chapter are not assessed may attend all meetings but will be a nonvoting member of the board. The presence of such a member shall not be counted in determining the constitution of a quorum.
- (d) Members of any board of trustees of any county fund and other personnel acting in a policy-making capacity shall be immune from any action arising from any act, statement, decision, or omission relating to the implementation of the purposes of this chapter unless the act, statement, decision, or omission is:
- (1) Grossly negligent and made with malice; or
 - (2) In willful disregard of the safety or property of any party to the alternative dispute process.

§ 15-23-4. Creation of office of secretary-treasurer of board of trustees

There is created an office to be known as secretary-treasurer of the board of trustees of the County Fund for the Administration of Alternative Dispute Resolution Programs in each county. The secretary-treasurer shall be selected and appointed by the board and shall serve at the pleasure of the board. The board may appoint one of its own members as secretary-treasurer or, in its discretion, may designate some other person to act as secretary-treasurer of the board. The secretary-treasurer of the board shall perform the duties provided for the treasurer in this chapter.

§ 15-23-5. Bond of secretary-treasurer

The secretary-treasurer of the board shall give a good and sufficient surety bond, payable to the fund in such an amount as may be determined by the board, to account faithfully for all funds received and disbursed by him or her. The premium on the bond shall be paid out of the fund in such county. A secretary-treasurer who is designated by a combined board of several counties as provided by Code Section 15-23-12 may satisfy the bonding requirement with one bond. If the secretary-treasurer is already bonded by virtue of being a state employee, such a bond as a state employee will satisfy the bonding requirement.

§ 15-23-6. Powers and duties of board

(a) The board is given the following powers and duties:

- (1) To provide for the collection of all money provided for in this chapter;
- (2) To manage, control, and direct such fund and the expenditures made therefrom;
- (3) To distribute the moneys coming into the fund in such manner and subject to such terms and limitations as the board, in its discretion, shall determine will best meet the purpose of this chapter in promoting the alternative resolution of disputes and the efficient administration of justice;
- (4) To contract for the investment, pooling, and expenditure of funds;
- (5) To adopt such rules and regulations as may be necessary to manage such fund and provide for such programs;
- (6) To keep records of all its meetings and proceedings; and
- (7) To exercise all other powers necessary for the proper administration of the funding mechanism provided for in this chapter.

(b) In addition to the powers and duties listed in subsection (a) of this Code section, the board is authorized in its discretion to create a nonprofit corporation for the purpose of administering an alternative dispute resolution program and soliciting funding for such a program from any lawful source. The trustees or directors of any such nonprofit corporation shall be appointed by the board for terms not to exceed three years.

§ 15-23-7. Costs

(a) For the purposes of providing court-connected or court-referred alternative dispute resolution programs, a sum not to exceed \$7.50, in addition to all other legal costs, may be charged and collected in each civil action or case filed in the superior, state, probate, and magistrate courts and other courts within the county that have the same powers and jurisdiction as state or magistrate courts.

(b) A case, within the meaning of this Code section, shall mean and be construed as any matter which is docketed upon the official dockets of the enumerated courts and to which a number is assigned, whether such matter is contested or not.

(c) The amount, if any, to be collected in each case shall be fixed in an amount not to exceed the applicable amount set out in subsection (a) of this Code section by the chief judge of the superior court or, if there is no chief judge, by the superior court judge with the longest service, who shall, after advising and notifying the chairperson of the county governing authority, order the clerk to collect said fees and remit them to the treasurer of the county fund for the administration of alternative dispute resolution programs. No such additional costs shall be charged and collected unless the chief judge of the superior court or such chief judge's designee, or if there is no chief judge, the superior court judge with the longest service or such judge's designee first determines that a need exists for an alternative dispute resolution program in one or more of the courts within the county. The chief judge of the superior court or the designee of the chief judge or, if there is no chief judge, the superior court judge with the longest service or the designee of such judge may propose, as to a given court, the collection of an amount exceeding \$7.00, but in no event to exceed the applicable amount set out in subsection (a) of this Code section; provided, however, that approval of the board member representing the affected court is necessary before imposition upon litigants of that court of costs authorized by this chapter exceeding \$7.00.

(d) The clerk of each and every such court in such counties shall collect such fees and remit the same to the treasurer of the board of the county in which the case was brought, on the first day of each

month. No change in the amount collected pursuant to this Code section may be made within a period of 12 months from the date of a previous change.

(e) Juvenile court supervision fees collected pursuant to Code Section 15-11-71 may be used for mediation services provided by court programs pursuant to this chapter.

§ 15-23-8. Funds

(a) The board shall have control of the funds provided for in this chapter. All funds received shall be deposited in a special account to be known as the _____ County Fund for the Administration of Alternative Dispute Resolution Programs. The board shall have authority to expend the funds in accordance with this chapter and to invest any of the funds so received in any investments which are legal investments for fiduciaries in this state.

(b) Boards shall comply with and be subject to the audit requirements of Code Section 36-81-7.

§ 15-23-9. Acceptance and use of gifts, grants, devises, and bequests

The board may take, by gift, grant, devise, or bequest, any money, real or personal property, or other thing of value and may hold or invest the same for the uses and purposes of the provision and operation of alternative dispute resolution programs.

§ 15-23-10. When program to be established

No alternative dispute resolution program shall be established for any court unless the judge or a majority of the judges of such court determine that there is a need for such program in that court. The funding mechanism set forth in this chapter shall be available to any court which, having determined that a court-annexed or court-referred alternative dispute resolution program would make a positive contribution to the ends of justice in that court, has developed a program meeting the standards of the Georgia Supreme Court's Uniform Rule for Alternative Dispute Resolution Programs. Pursuant to the standards set forth in the Georgia Supreme Court's Uniform Rule for Alternative Dispute Resolutions Programs, the funding mechanism set forth in this chapter shall be available to court programs in which cases are screened by the judge or by the program director under the supervision of the judge on a case-by-case basis to determine whether:

- (1) The case is appropriate for the process;
- (2) The parties are able to compensate the neutral if compensation is required; and
- (3) A need for emergency relief makes referral inappropriate until the request for relief is heard by the court.

§ 15-23-11. Compensation of nonvolunteer neutrals; user's fee

(a) Under guidelines promulgated by the Georgia Commission on Dispute Resolution, a court may set an hourly rate for compensation of nonvolunteer neutrals by the parties. Such costs shall be predicated upon the complexity of the litigation, the skill level needed by the neutral, and the litigants' ability to pay.

(b) Under guidelines promulgated by the Georgia Commission on Dispute Resolution, a court may set a user's fee for alternative dispute resolution processes.

§ 15-23-12. Combination of boards and funds and operation of joint programs

Notwithstanding any other provision of this chapter, the board of trustees of each county fund is authorized by contract to combine such fund with the fund of any other county or counties within the same judicial circuit, within the same administrative district, or in any other combination which would foster an efficient use of available resources. Any such combined fund created by any such contract shall be administered by a board of trustees which shall be composed of the judicial members and the clerks who are members of the boards of trustees of each participating county fund without the participating attorney members thereof but with one practicing attorney appointed by the members of the combined board. In the event two or more county funds are combined, the board of trustees of the combined fund may appoint a secretary-treasurer for the combined fund who shall perform such duties as may be provided by the combined board of trustees and who shall give bond in the same manner as provided by Code Section 15-23-5. The combined board shall be chaired by the chairperson of one of the constituent county boards elected by the combined board as provided by contract. In the event two or more boards combine as provided in this Code section, the judges of the courts within such combined territory are authorized to combine programs for such courts to provide for the most efficient use of available resources in providing alternative dispute resolution programs.

Seed Arbitration Council
Title 2, Chapter 11, Article 4.

Current through end of the 2008 Regular Session

§ 2-11-70. Legislative intent

(a) The intent and purpose of this article are to provide a method for assisting farmers, persons purchasing seed and commercial fruit and nut trees, and persons selling seed and commercial fruit and nut trees in determining the validity of complaints of seed and commercial fruit and nut trees purchasers against seed and commercial fruit and nut tree sellers relating to the quality and performance of the seed and the identity of the variety of fruit and nut trees by establishing a committee to investigate, hold informal hearings, make findings, and render recommendations in the nature of arbitration proceedings where damages suffered by seed and commercial fruit and nut trees purchasers are caused by the alleged failure of the seed to perform as represented or to conform to the description on the labeling thereof as required by law or to be the variety of fruit or nut tree represented by the seller.

(b) In order to effectuate the intent and purpose set out in subsection (a) of this Code section, there is created the “Seed Arbitration Council.”

§ 2-11-71. Definitions

As used in this article, the term:

- (1) “Commissioner” means the Commissioner of Agriculture or the designated official or department employed by the Department of Agriculture of this state.
- (2) “Council” means the Seed Arbitration Council.
- (3) “Person” means an individual, firm, partnership, corporation, or company.
- (4) “Purchaser” means the person who buys agricultural, flower, tree, shrub, or vegetable seed subject to Article 2 of this chapter or any commercial fruit or nut tree.

(5) "Seller" means any person who sells seed, including but not limited to the person who sold the seed to the purchaser and the person who actually labeled the seed that is the subject of the council's investigation and any person who sells commercial fruit or nut trees.

§ 2-11-72. Notice of requirement for filing complaint to be placed on seed container, label, or invoice covering bulk seed

(a) At the time of purchase of agricultural, vegetable, flower, tree, or shrub seed, except for vegetable and flower seed in packets weighing less than one pound for use in home gardens or household plantings or at the time of purchase of any commercial fruit or nut tree, language setting forth the requirement for filing a complaint shall be legibly typed or printed on the seed container, on the label affixed thereto, or printed on the invoice covering bulk seed or on a label attached to or on the invoice covering the commercial fruit or nut tree.

(b) Such language shall be in addition to the labeling requirements specified in Code Section 2-11-22 and shall contain a notice in a form acceptable in interstate trade as prescribed by rule and regulation promulgated by the Commissioner.

(c) If language setting forth the requirement is not so placed on the seed container, label, or invoice covering bulk seed or on a label or invoice covering the commercial fruit or nut tree, the filing of a complaint by the buyer shall not be required as a prerequisite to maintaining a legal action against the seller as provided in Code Section 2-11-73.

§ 2-11-73. Filing of complaints, responses, etc., with Commissioner

(a) When any farmer or seed purchaser alleges to have been damaged by the failure of any agricultural, flower, tree, shrub, or vegetable seed, except for vegetable and flower seed in packets weighing less than one pound for use in home gardens or household plantings, to conform to or perform as represented by the label required to be attached to such seed under Code Section 2-11-22 or by warranty or as a result of negligence, as a prerequisite to the purchaser's right to maintain a legal action against the seller, the purchaser shall submit a complaint against the seller alleging the damages sustained or to be sustained and shall file such complaint with the Commissioner within ten days after the alleged defect or violation becomes apparent to allow inspection of the alleged deficiencies if deemed necessary. Whenever any farmer or commercial fruit or nut tree purchaser alleges to have been damaged by the failure of any commercial fruit or nut tree to be the variety represented by the label or invoice or by warranty or as the result of negligence, as a prerequisite to the purchaser's right to maintain a legal action against the seller, the purchaser shall submit a complaint against the seller alleging the damages sustained or to be sustained and shall file such complaint with the Commissioner within ten days after the alleged defect or violation becomes apparent to allow inspection of the alleged deficiencies if deemed necessary. Upon receipt, the Commissioner shall send a copy of the complaint to the seller by registered or certified mail or statutory overnight delivery.

(b) A filing fee of \$75.00 shall be paid to the Commissioner with each complaint filed. Such fee shall be recovered from the seller upon recommendation of the Seed Arbitration Council. The filing fee shall be forfeited if the complaint is independently settled between the purchaser and seller prior to the informal hearing scheduled by the council. Such independent settlement serves to close the file on the complaint.

(c) Within ten days after the receipt of a copy of the complaint, the seller shall file with the Commissioner a response to said complaint. Upon receipt, the Commissioner shall send a copy of the response to the purchaser by registered or certified mail or statutory overnight delivery.

(d) Upon gathering the complaint and the response, the Commissioner shall refer the complaint and the response to the Seed Arbitration Council as provided in Code Section 2-11-75 for investigation, informal hearing, findings, and recommendations on the complaint.

(e) Upon receipt of findings and recommendations of the Seed Arbitration Council, the Commissioner shall transmit said items to the purchaser and seller by registered or certified mail or statutory overnight delivery.

(f) The purchaser and seller shall give written notice to the Commissioner of the acceptance or rejection of the council's recommendations within 30 days of the date the decision is mailed to the purchaser and seller.

§ 2-11-74. Seed Arbitration Council; creation; membership; terms; officers; meetings; expenses

(a) The Seed Arbitration Council shall be composed of five members. One member and one alternate shall be appointed upon the recommendation of each of the following individuals or executive committee:

- (1) The associate dean for the Cooperative Extension Service of the University of Georgia;
- (2) The associate dean for the experiment stations of the College of Agricultural and Environmental Sciences of the University of Georgia;
- (3) The president of the Georgia Farm Bureau Federation;
- (4) The executive committee of the Georgia Seedsmen's Association; and
- (5) The Commissioner of Agriculture.

(b) Each member and each alternate shall continue to serve until a replacement has been recommended by his or her appointing official. Alternate members shall serve only in the absence of the member for whom such person is an alternate.

(c) The council shall annually elect a chairperson and a secretary from its membership. The chairperson shall conduct the meetings and deliberations of the council and direct all activities. The secretary shall keep accurate records of all the meetings and deliberations and perform such other duties as the chairperson may direct.

(d) The council may be called into session upon the direction of the chairperson or by the Commissioner to consider matters referred to it by the Commissioner.

(e) Members of the council shall receive no compensation for the performance of their duties but shall be reimbursed for travel expenses by each representing organization.

§ 2-11-75. Hearings on complaints; investigations

(a) Upon receipt of a seed buyer complaint or a commercial fruit or nut tree buyer complaint and a seller response, the council shall schedule a hearing date within ten days and shall make a full and complete investigation of the matters stated in the complaint.

(b) Hearings scheduled by the council shall be conducted in Tifton, Macon, Athens, or Rome, Georgia, whichever is most convenient to the farmer or other seed or commercial fruit or nut tree purchaser filing the complaint, such determination to be made by the chairperson.

(c) The Commissioner shall provide administrative support for the council and shall adopt rules and regulations to govern investigations and hearings.

(d) In conducting its investigation, the council, in addition to other activities deemed necessary, is authorized to:

(1) Examine the purchaser on the use of the seed or commercial fruit or nut tree or trees about which the complaint is filed, the purchaser's operation and the seller on the packaging and labeling, and the seller's operations on the seed or commercial fruit or nut tree or trees alleged to be faulty or of a different variety;

(2) Grow to production a representative sample of the alleged faulty seed through the facilities of the state and under the supervision of the Commissioner, as deemed necessary;

(3) Hold informal hearings at a reasonable time as directed by the chairperson. At such hearing, the purchaser and seller shall be allowed to present their side of the dispute before the council. Attorneys may be present, provided that no attorney may participate directly in the proceeding; and

(4) Seek evaluations from authorities in allied disciplines when deemed necessary.

(e) Any investigation made by fewer than all of the councilmembers shall be by authority of a written directive by the chairperson, and such investigation shall be summarized in writing and considered by the council in reporting its findings and recommendations.

(f) The Attorney General shall provide legal services for the council.

§ 2-11-76. Report of findings and recommendations of council; report as evidence

(a) After completion of the informal hearing by the council, a report of findings and recommendations shall be transmitted to parties present at the arbitration process pursuant to subsection (e) of Code Section 2-11-73. In such report, the council may make any recommendations it deems fair and equitable under the circumstances presented. These recommendations are up to the discretion of the council and may include, but are not limited to, the following:

(1) That no action be taken;

(2) That money damages be paid to the purchaser as a result of the alleged failure of the seed to conform to or perform as represented by the seed label, container, or invoice;

(2.1) That money damages be paid to the purchaser of a commercial fruit or nut tree or trees as a result of the alleged failure of the tree or trees to be the variety represented to the purchaser. Such damages shall not be less than three times the purchase price in the case of fruit trees or six times the purchase price in the case of nut trees;

(3) That the seller reimburse the purchaser for the amount of the filing fee paid to enter the arbitration process; or

(4) Such other recommendation found by the council to be fair and equitable to the parties.

(b) In any litigation involving a complaint which has been the subject of arbitration under this Code section, any party may introduce the report of arbitration as evidence of the facts found in the report as the court may see fit. Findings and conclusions of the council are not admissible as evidence. However, the court may take into account any determinations of the council with respect to the failure

of any party to cooperate in the arbitration proceedings.

§ 2-11-77. Rules and regulations

Pursuant to Chapter 13 of Title 50, the “Georgia Administrative Procedure Act,” the Commissioner shall have authority to promulgate and enforce such rules and regulations as may be deemed necessary to carry out the provisions of this article.

Seed Arbitration

GA Comp. R. & Regs. 40-12-6-.01

Current through amendments received through October 2008

40-12-6-.01. Scope of Arbitration

(1) Pursuant to Code section 2-11-70, arbitration of complaints of seed and commercial fruit and nut tree purchasers against seed and commercial fruit and nut tree sellers relating to the quality and performance of the seed and the identity of the variety of fruit and nut trees is mandatory as a prerequisite to the purchaser's right to maintain a legal action against the seller. The Seed Arbitration Council, as established in Code section 2-11-74, shall investigate, hold informal hearings, make findings and render recommendations in the nature of arbitration proceedings where damages suffered by seed and commercial fruit and nut tree purchasers are caused by the alleged failure of the seed to perform as represented or to conform to the description of the labeling thereof as required by law or to be the variety of fruit or nut tree represented by the seller. Pursuant to Code section 2-11-76, findings and recommendations of the Council are not required to be accepted by either the purchaser or seller of seed or commercial fruit or nut trees and are not admissible as evidence in litigation. However, in any litigation involving a complaint which has been the subject of arbitration, any party may introduce Arbitration Council investigations and proceedings as the court may see fit.

(2) For the purpose of Seed Arbitration, "seed" is defined as stated in the Georgia Seed Law, Code section 2-11-21.

(3) For the purposes of Chapter 40-12-6 concerning commercial fruit and nut tree arbitration, the application of the term "seed" shall also apply to commercial fruit and nut trees.

(4) The use of a disclaimer or denial of warranty clause on any invoice, advertisement, label or labeling, or any other written, printed or graphic matter used in conjunction with the distribution of any seed shall not relieve or exempt any person from any provisions of seed arbitration according to the Georgia Seed Law.

40-12-6-.02. Label Notice

(1) The label or invoice language setting forth the requirement for filing an arbitration complaint under the Georgia Seed Law shall substantially comply with the format of the Recommended Uniform State Seed Law (RUSSEL) of the Association of American Seed Control Officials (AASCO). A label or invoice notice in the following language or its equivalent shall be considered to be in compliance with O.C.G.A. 2-11-72(a).

NOTICE OF REQUIRED ARBITRATION

Under the seed laws of several states arbitration is required as a prerequisite to maintaining a legal action against the seller of the seed in any dispute relating to the quality or performance of the seed sold. The purchaser shall file a complaint along with the required filing fee (where applicable) with the Commissioner or Chief Agricultural Officer within such time as to permit inspection of the crops, plant or trees by the designated agency and the seedsman from whom the seed was purchased. A copy of the complaint shall be sent to the seller by certified or registered mail or as otherwise provided by state statute.

(2) Additional information may be included for the purpose of providing more uniform labeling among the various states.

40-12-6-.03. Council Members' Tenure

(1) In order to provide continuity of experience within the Seed Arbitration Council, members and alternates appointed in 1994 by the Georgia Cooperative Extension Service, the University of Georgia Experiment Stations and the Georgia Department of Agriculture shall have four (4) year terms expiring December 31, 1997. Members and alternates appointed in 1994 by the Georgia Farm Bureau Federation and the Georgia Seedsmen's Association shall have two (2) year terms expiring December 31, 1995. Thereafter, terms of all members and alternates shall be four (4) years. Notwithstanding the above, each member and alternate shall serve at the pleasure of and until their replacement is recommended by their appointing official.

(2) Each alternate may attend any council meeting or hearing but shall serve only in the absence of the member for which he or she is the designated alternate.

(3) Unexpired terms of members or alternates shall be refilled as soon as possible through appointment by their appointing official.

(4) Members and alternates may be reappointed after completion of any specified term.

40-12-6-.04. Investigative Procedures

(1) Investigations of seed complaints officially filed shall be conducted only by Seed Arbitration Council members, alternates or persons designated by the Council.

(2) The Seed Arbitration Council shall assemble and record all available facts pertinent to a seed complaint officially filed and shall obtain an official seed sample(s) for reference when available.

(3) Investigations of seed complaints officially filed shall include:

(a) Examination and evaluation of complainant's farming operation, including inspection of the affected crop in the field, the recording of crop field conditions, the taking of plant counts and photographs as appropriate and the completion of a written report thereon.

(b) Examination of seed seller's records pertaining to the seed lot in question, including seed conditioning, seed packaging and labeling and completion of a written report thereon.

(c) If a seed sample is available, varietal grow-out, pathological assay, or other evaluation as appropriate.

40-12-6-.05. Hearing Procedures

(1) The Secretary of the Council shall be responsible for setting the tentative hearing date pursuant to Code section 2-11-75.

(2) Prior to scheduled hearings, the Secretary shall provide Council members and alternates with all seed complaint correspondence and investigation records.

(3) The informal hearing process shall provide a setting where each party involved in a seed dispute will be afforded the opportunity to present its side directly to the Council.

(4) Within ten (10) days of receipt of a response from the seller, the Council shall schedule an informal hearing. Notice shall be sent by certified or registered mail to all parties at least two (2) weeks prior to the scheduled hearing date.

(5) Four (4) members and/or alternates shall constitute a quorum and such quorum shall be present for the conducting of all Council business.

(6) All hearings shall be recorded and may be transcribed at the discretion of and upon vote of the Council.

(7) Attorneys may be present at hearings, but shall not participate directly in the hearing.

(8) The following guidelines are recommended for hearing agendas but are not required:

(a) Call to Order by Chairperson or Acting Chairperson.

(b) Introductory remarks and reading of written complaint by Chairperson or other designated member.

(c) Complainant is provided opportunity to describe complaint, present relevant facts and present written estimate of loss.

(d) Seed seller(s) is provided opportunity to present response to seed complaint including presentation of relevant facts.

(e) Council members and/or alternates are provided opportunity to report field observations and present written report.

(f) Agricultural specialists assigned to investigate seed quality and crop are provided opportunity to present their report.

(g) Council members or serving alternates are provided opportunity to examine complainant or seller and obtain any other pertinent information relating to the complaint.

- (h) Council receives and reviews any varietal grow-out test, pathological assays, or other evaluations, as required.
- (i) Opportunity given for Council members and/or alternates and other participants to ask questions for clarification.
- (j) All participants other than Council members and alternates are dismissed and Council deliberates on complaint and formulates recommendation in closed session.
- (k) Council transmits findings and recommendations to the Commissioner within thirty (30) days of the hearing date. In such report, the council may make any recommendations it deems fair and equitable under the circumstances presented. These recommendations are up to the discretion of the council and may include, but are not limited to, the following:
1. That no action be taken;
 2. That money damages be paid to the purchaser as a result of the alleged failure of the seed to conform to or perform as represented by the seed label, container, or invoice; or that money damages be paid to the purchaser of a commercial fruit or nut tree(s) as a result of the alleged failure of the tree(s) to be the variety represented to the purchaser. Such damages shall not be less than three times the purchase price in the case of fruit trees or six times the purchase price in the case of nut trees;
 3. That the seller reimburse the purchaser for the amount of the filing fee paid to enter the arbitration process; or
 4. Such other recommendation found by the council to be fair and equitable to the parties.
- (l) The Commissioner transmits the Council's findings and recommendations to the affected parties by certified or registered mail.
- (m) Within thirty (30) days of the date the Commissioner mails the Council's decision to the purchaser and seller, the purchaser and seller shall give written notice to the Commissioner of their acceptance or rejection of the Council's recommendations.
- (n) The Commissioner shall notify each party to the complaint of the acceptance or rejection by the purchaser and seller. If the Council's recommendations are rejected, the complainants are to be notified of their right to pursue legal action.

**State Court Rules
Alternative Dispute Resolution Rules**

Current with amendments received through October 2008

INTRODUCTION

The Georgia Constitution of 1983 mandates that the judicial branch of government provide “speedy, efficient, and inexpensive resolution of disputes and prosecutions.” As part of a continuing effort to

carry out this constitutional mandate the Supreme Court of Georgia established a Commission on Alternative Dispute Resolution under the joint leadership of the Chief Justice of the Georgia Supreme Court and the President of the State Bar of Georgia on September 26, 1990.

The Supreme Court charged the Commission to explore the feasibility of using court-annexed or court-referred alternative dispute resolution (ADR) processes to complement existing dispute resolution methods. The order creating the Commission directed that the Commission gather information, implement experimental pilot programs, and prepare recommendations for a statewide, comprehensive ADR system.

This court has now received the recommendations of the Commission and promulgates the following rules to establish a statewide plan for the use of alternative dispute mechanisms by the courts of Georgia.

RULE I. 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 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 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 a basis for settlement discussions.

Multi-door Courthouse. The multi-door courthouse is a concept rather than a process. It is based on the premise that the justice system should make a wide range of dispute resolution processes available to disputants. In practice, skilled intake workers direct disputants to the most appropriate process or series of processes, considering such factors as the relationship of the parties, the amount in controversy,

anticipated length of trial, number of parties, and type of relief sought. Mediation, arbitration, case evaluation or early neutral evaluation, summary jury trial, mini trial, and various combinations of these ADR processes would all be available in the multi-door courthouse.

Summary Jury Trial. The summary jury trial is a non-binding abbreviated trial by mock jurors 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 negotiations.

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 with 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.

Settlement Week. During a settlement week there is a moratorium on litigation. Mediation is the ADR process most often used during settlement week. Appropriate cases are selected by the court and submitted to mediation. Lawyers and others who have undergone mediation training often act as volunteer mediators for these cases.

RULE II. CENTRAL ORGANIZATION

A. There is hereby created the Georgia Commission on Dispute Resolution.

1. The Georgia Commission on Dispute Resolution will consist of the current Chief Justice of the Georgia Supreme Court or the Chief Justice's designee, a judge of the Georgia Court of Appeals, a designee of the President of the State Bar of Georgia, three superior court judges, and two judges to be drawn from the other four classes of trial courts in Georgia. The remaining members of the Commission will be one member from the Georgia General Assembly, four members of the State Bar of Georgia, and three non-lawyer public members. All members of the Commission shall be appointed by the Georgia Supreme Court. The chair of the Commission and a chair-elect of the Commission shall be designated by the Georgia Supreme Court.

2. The Commission is charged with the following duties and responsibilities:

- a. To administer a statewide comprehensive ADR program;
- b. To oversee the development and ensure the quality of all court-annexed or court-referred ADR programs;
- c. To approve court programs;
- d. To develop guidelines for court-annexed or court-referred programs;
- e. To develop criteria for training and qualifications of neutrals;
- f. To establish standards of conduct for neutrals;
- g. To establish and register with the Georgia Secretary of State a nonprofit organization, The Georgia Commission on Dispute Resolution, Inc. This corporation shall qualify at all times as a tax exempt organization under sections 501(a) and 501(c)(3) of the Internal Revenue Code. This corporation shall be governed by a board of directors made up of at least three and no more than five directors appointed by the Georgia Supreme Court in cooperation with the President of the State Bar of Georgia from members of the Georgia Commission on Dispute Resolution. This nonprofit organization shall be

established for the sole purpose of receiving and disbursing money from private grants and donations as a tax-exempt organization.

3. The first Commission will be appointed to serve terms as follows: the first term for three members will be one year, the first term for three members will be two years, the first term for four members will be three years, the first term for three members will be four years, the first term for three members will be five years. Thereafter, the term for Commission members will be five years. A Commission member shall not succeed himself or herself, except that Commission members originally appointed to a term of two years or less would be eligible for reappointment to one additional five-year term. If the status of a Commission member chosen to represent a particular category changes during his or her term, the member will continue to serve-out his or her term.

4. Members of the Commission shall receive no compensation for their services but shall be entitled to reimbursement for expenses and mileage for travel in connection with Commission business.

B. There is hereby created the Georgia Office of Dispute Resolution under the Georgia Supreme Court.

1. The Georgia Office of Dispute Resolution will be administered by a director who will serve at the pleasure of the Commission and be directly accountable to the Commission. The director's salary will be paid from the budget of the Georgia Supreme Court.

2. The Georgia Office of Dispute Resolution will implement the policies of the Commission. The responsibilities of the Georgia Office of Dispute Resolution will include the following:

- a. To serve as a resource for ADR education and research;
 - b. To provide technical assistance to new and existing court-annexed or court-referred programs at no charge;
 - c. To develop the capability of providing training to neutrals in courts throughout the state at no charge;
 - d. To implement the Commission's policies regarding qualification of neutrals and quality of programs;
 - e. To register neutrals and remove neutrals from the registry if necessary;
 - f. To collect statistics from court-annexed or court-referred programs in order to monitor the effectiveness of various programs throughout the state.
3. Funding for the activities of the Georgia Office of Dispute Resolution will be provided in part by fees derived from registration and reregistration of neutrals.

RULE III. FUNDING

The funding of court-annexed and court-referred ADR programs is primarily a public responsibility. Permanent funding for the Commission's work will be sought through a filing fee surcharge and fees for registration and reregistration of neutrals. Appropriate legislation will be sought to authorize permanent funding.

RULE IV. COURT PROGRAMS

The Georgia Supreme Court encourages every court in Georgia to consider the use of ADR processes to provide a system of justice which is more efficient and less costly in human and monetary terms. The Georgia Supreme Court strongly urges that courts with established mediation programs cooperate with courts seeking to establish new programs. Courts should assist new programs by providing information and by allowing mediator trainees from new programs to observe veteran mediators mediating in established programs for the purpose of completing training requirements.

Any court desiring to develop an ADR program shall apply to the Commission for approval by making its application to the Georgia Office of Dispute Resolution in accordance with rules and guidelines promulgated by the Commission. Applications for programs shall include the following:

1. A description of existing dispute resolution services and resources in the area.
2. A demonstration of need, of coordination with existing social services, support of the bench and bar, and community support.
3. A description of the program.
4. A budget for the program.
5. A demonstration of the administrative capacity of the applicant.

Although existing court-annexed or court-referred programs must be approved under these rules, the above requirements should not be construed to prevent existing dispute resolution programs from applying for approval. Review and action of the Commission will be accomplished as efficiently as possible, and every effort will be made to avoid imposing unnecessary burdens upon any court. Funding obtained through local collection of filing fee surcharges will be used for the administration and development of local programs and payment of staff. Appropriate administrative fees may be charged by the Georgia Office of Dispute Resolution for technical assistance and training.

Neutrals serving in court programs must meet the requirements of the Georgia Commission on Dispute Resolution for registration. Although these requirements are threshold requirements for neutrals serving in court programs, courts are free to impose higher qualifications for neutrals who serve in their programs.

Uniform rules governing these programs appear as Appendix A to this rule.

COMMENTARY

The Georgia Supreme Court strongly recommends that the program have a full-time administrator.

RULE V. QUALIFICATION AND TRAINING OF NEUTRALS

The qualification and training requirements for various kinds of neutrals differ according to the process or program involved. Requirements for qualification and training of neutrals will be established by the Georgia Commission on Dispute Resolution and subject to review by the Georgia Supreme Court. All training for neutrals in court-annexed or court-referred programs will be in training programs approved by the Georgia Office of Dispute Resolution according to guidelines established by the Georgia Commission on Dispute Resolution. The Georgia Office of Dispute Resolution shall develop specific training programs for neutrals in accordance with requirements set by the Commission and subject to review by the Georgia Supreme Court.

Requirements for qualification and training of neutrals established by the Georgia Commission on Dispute Resolution will appear as Appendix B to this rule and will be published from time to time as

amended. Ethical Standards for Neutrals established by the Georgia Commission on Dispute Resolution will appear as Appendix C to this rule and will be published from time to time as amended.

The Georgia Commission on Dispute Resolution will develop procedures to handle complaints against neutrals and ADR programs. The Georgia Commission on Dispute Resolution will have the authority to publish opinions resulting from the resolution of complaints and may, from time to time, publish advisory opinions as well.

Persons who have met the Commission's criteria as to qualifications and training may apply to the Georgia Office of Dispute Resolution for registration as a neutral. The Commission may set the amount of a registration fee which will accompany each application. The Commission may provide for periodic renewal of registration. Neutrals who have been trained prior to the promulgation of these rules may apply to the Georgia Office of Dispute Resolution for registration.

RULE VI. COMPENSATION OF NEUTRALS

There shall be no uniform, state-wide compensation system at this time. Local courts will have the responsibility for developing and testing a variety of approaches to compensation consistent with guidelines that may be established by the Commission. However, every court program in which neutrals are compensated by the parties must provide ADR services free of charge to indigent parties. All compensated neutrals should contribute some pro bono hours to the program.

COMMENTARY

Although the contribution of volunteers to ADR programs throughout the country is inestimable, the Georgia Supreme Court believes that the comprehensive system of statewide ADR services envisioned by these rules cannot be handled entirely by unpaid volunteers. This court is convinced that in order to build and maintain a statewide system of ADR services of the extent and quality desired, there must be mechanisms for compensating neutrals at appropriate levels. This court also believes that the Georgia ADR program will require a combination of volunteers, salaried in-house neutrals, and free market neutrals in order to meet the highly varied demands and circumstances of courts in urban, rural, and suburban areas.

RULE VII. CONFIDENTIALITY AND IMMUNITY

A. The Extent of Confidentiality. Any statement made during a court-annexed or court-referred mediation or case evaluation or early neutral evaluation conference or as part of intake by program staff in preparation for a mediation, case evaluation or early neutral evaluation is confidential, not subject to disclosure, may not be disclosed by the neutral or program staff, and may not be used as evidence in any subsequent administrative or judicial proceeding. Unless a court's ADR rules provide otherwise, the confidentiality herein applies to non-binding arbitration conferences as well. A written and executed agreement or memorandum of agreement resulting from a court-annexed or court-referred ADR process is not subject to the confidentiality described above.

Any document or other evidence generated in connection with a court-annexed or court-referred mediation or case evaluation, early neutral evaluation or, unless otherwise provided by court ADR rules, a non-binding arbitration, is not subject to discovery. A written and executed agreement or memorandum of agreement resulting from a court-annexed or court-referred ADR process is discoverable unless the parties agree otherwise in writing. Otherwise discoverable material is not

rendered immune from discovery by use in a mediation, case evaluation or early neutral evaluation or a non-binding arbitration.

Neither the neutral nor any observer present with permission of the parties in a court-annexed or court-referred ADR process may be subpoenaed or otherwise required to testify concerning a mediation or case evaluation or early neutral evaluation conference or, unless otherwise provided by court ADR rules, a non-binding arbitration, in any subsequent administrative or judicial proceeding. A neutral's notes or records are not subject 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 and made with malice or 2) is in willful disregard of the safety or property of any party to the ADR process.

RULE VIII. EDUCATION

In order to educate the bar about the benefits of ADR and the specifics of ADR processes, each member of the State Bar of Georgia shall be required to complete a one-time mandatory three-hour CLE credit in dispute resolution. The ADR requirement shall be completed before March 31, 1996. Lawyers admitted to the bar after July 31, 1995, may satisfy this requirement by attending the Bridge-the-Gap seminar conducted by the Institute of Continuing Legal Education in Georgia.

Lawyers who have taken a class essentially devoted to the study of ADR in law school are deemed to have satisfied the above requirement. Lawyers who have been trained as a neutral in a training which was approved for CLE credit or would not be eligible for CLE credit are deemed to have satisfied the above requirement. Lawyers who have previously taken an approved CLE seminar devoted to ADR are deemed to have satisfied the above requirement. The Georgia Commission on Dispute Resolution will review requests for exemption from the CLE requirement on the basis of law school coursework.

The Georgia Supreme Court recommends that the Bridge the Gap seminar required for every new member of the State Bar of Georgia incorporate an introduction to ADR processes. This court further recommends that information concerning ADR be incorporated into CLE ethics and professionalism seminars. Sponsors and seminars designed to satisfy the ADR CLE requirement must be approved by the Commission on Continuing Lawyer Competency and the Georgia Commission on Dispute

Resolution.

Appendix A. Uniform Rules for Dispute Resolution Programs

INTRODUCTION

The following rules apply to those courts which have elected to use the alternative dispute resolution (hereinafter referred to as ADR) processes of mediation, non-binding arbitration, case evaluation or early neutral evaluation, summary jury trial, mini trial or combinations thereof in a court-annexed or court-referred program.

RULE 1. GENERAL RULES

1.1 The court will make information about ADR options available to all litigants.

RULE 2. REFERRAL TO ADR

2.1 Any contested civil case, criminal case, or juvenile case may be referred to mediation by the judge to whom the case is assigned. Any contested civil case may be referred to non-binding arbitration, case evaluation or early neutral evaluation or multi-door program by the judge to whom the case is assigned. If cases are referred on a case-by-case basis, the time of referral is within the discretion of the referring judge.

2.2 Cases may be referred to an ADR process by category. If cases are referred by category, the court may provide for the timing of diversion by rule.

2.3 Courts should develop mechanisms to provide some individual review of cases sent to an ADR process. Cases shall be screened by the judge or the program to determine (1) whether the case is appropriate for the process; (2) whether the parties are able to compensate the neutral if compensation is required; and (3) whether a need for emergency relief makes referral inappropriate until the request for relief is heard by the court.

2.4 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.

2.5 Any party to a dispute may petition the court to refer the case to mediation, non-binding arbitration, case evaluation or early neutral evaluation, summary jury trial, mini trial or some combination thereof.

2.6 Parties may be ordered to attend a mediation session, a case evaluation or early neutral evaluation conference, or a non-binding arbitration. However, the order mandating attendance must clearly state that compliance does not require settlement or acceptance of an arbitration award.

2.7 If parties in a case have submitted the matter to an approved ADR process before filing suit, the case will not be referred to a duplicative ADR process by the court. If parties are required by statute to submit a dispute to an ADR process before filing suit, the court will not require submission to a successive ADR process.

2.8 In actions brought by state agencies seeking to enjoin activities injurious to the public interest, the

agency may within 10 days of service of the action make a showing to the trial court that referral to ADR would adversely affect the public interest. Upon a showing of reasonable probability of such adverse effect, the court will 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.

COMMENTARY

The Georgia Supreme Court recommends that cases be referred to ADR processes on a case by case basis. The indiscriminate use of ADR processes may result in increased obstacles for litigants and in further expense, overcrowding, and delay. However, courts may find it convenient to refer cases by category. The Georgia Supreme Court strongly recommends that if cases are referred by category, some appropriate review procedure be established.

The timing of referral should be late enough in the discovery process for the parties to have developed a realistic understanding of the strengths and weaknesses of the case and early enough to save discovery costs where possible. For example, where consistent with this premise, the time of diversion of a case selected for arbitration might be no later than the end of the six month discovery period. The time of diversion to case evaluation or early neutral evaluation and mediation might be within 60 days after the last responsive pleading. The court would retain the discretion to shorten or lengthen the time before diversion.

Although the Georgia Supreme Court believes that mandatory participation is an essential element of an effective court-annexed or court-referred ADR program, this court recommends that parties be allowed input into the referral decision wherever possible. For example, if parties or attorneys believe that mediation would be more helpful than arbitration in a specific case, this opinion should be considered by the referring court.

RULE 3. EXEMPTION FROM ADR

3.1 Any party to a dispute may petition the court to have the case removed from mediation, non-binding arbitration, or case evaluation or early neutral evaluation.

3.2 Any party to a dispute may petition the court to refer the case to an ADR process other than the process to which it has been referred.

RULE 4. APPEARANCE AT AN ADR CONFERENCE OR HEARING

4.1 The appearance of all parties and their attorneys is required at non-binding arbitration hearings and case evaluation or early neutral evaluation conferences. The appearance of all parties is required at mediation conferences. In every process, the presence of a representative with authority to settle without further consultation is required if the decision to settle depends upon an entity other than a party.

4.2 Failure to appear in the manner described above may subject a party to citation for contempt and to the imposition of sanctions permitted by law.

4.3 Attorneys are not required to attend mediation conferences but should be allowed and encouraged to do so. Attorneys of record should never be excluded from any process. The mediator may meet and consult privately with any party or any attorney during a mediation conference.

RULE 5. QUALIFICATIONS AND TRAINING FOR NEUTRALS

5.1 All neutrals in a court-annexed or court-referred ADR program must be registered by the Georgia Office of Dispute Resolution.

5.2 All neutrals should attend an orientation program on court procedures given by the court in which they will serve.

5.3 All neutrals should attend continuing education seminars. The Commission will establish the standards for continuing education of neutrals.

5.4 All neutrals must be competent.

RULE 6. CONFIDENTIALITY AND IMMUNITY

6.1 All parties in a court-annexed or court-referred ADR process are entitled to confidentiality to the extent described by the Georgia Supreme Court in the order to which these rules are appended.

6.2 Neutrals acting in a court-annexed or court-referred ADR process are entitled to immunity to the extent described by the Georgia Supreme Court in the order to which these rules are appended.

RULE 7. COMMUNICATIONS BETWEEN NEUTRALS, THE PROGRAM, AND THE COURT

7.1 If any communication between the court and a neutral is necessary, the communication shall be in writing or through the program administrator. Copies of any written communication with the court should be given to parties and their attorneys.

7.2 Once an ADR process is underway in a given case, contact between the administrator of an ADR program and the court concerning that case should be limited to

- a. Communicating with the court about the failure of a party to attend;
- b. Communicating with the court with the consent of the parties concerning procedural action on the part of the court which might facilitate the ADR process;
- c. Communicating to the court the neutral's assessment that the case is inappropriate for that process;
- d. Communicating any request for additional time to complete the mediation, non-binding arbitration, or case evaluation or early neutral evaluation;
- e. Communicating information that the case has settled or has not settled and whether agreement has been reached as to any issues in the case;
- f. Communicating the contents of a written and executed agreement or memorandum of agreement unless the parties agree in writing that the agreement should not be disclosed;
- g. Communicating with the consent of the parties any discovery, pending motions or action of any party which, if resolved or completed, would facilitate the possibility of settlement.

RULE 8. 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 9. SELECTION OF NEUTRALS

9.1 Disputants outside of the court setting are always entitled to choose their own neutrals. Nothing in these rules will infringe upon the right of parties to choose any third party to assist in dispute resolution prior to filing a case with the court. However, when the parties have been referred to an ADR process by the court, the court is responsible for the integrity of the process. For this reason, neutrals in a court-annexed or court-referred ADR process will be chosen from neutrals registered by the Georgia Office of Dispute Resolution.

9.2 If parties referred by the court to an ADR process are unable to agree upon a neutral within a reasonable time, the neutral will be selected by the court. In either event, the neutral will be selected from the roster of registered neutrals.

9.3 Any party may petition the court for the appointment of another neutral on the ground that the neutral selected by the court is disqualified because of a conflict or because the party feels that the objectivity of the neutral is in question.

9.4 A neutral registered by the Georgia Office of Dispute Resolution is registered to serve as a neutral anywhere in the state.

9.5 Nothing in these rules is intended to discourage courts from using a co-mediation model where appropriate.

RULE 10. EVALUATION

10.1 Evaluation of the Program: Sufficient data will be collected on an ongoing basis to ensure the quality of the program. Such data will include evaluation by parties and attorneys of the ADR process as applied to their case, the performance of the neutral in the case, and ways to improve the effectiveness of the ADR program. Courts will use the data to improve the quality of programs. It is inappropriate to use data concerning settlement rate as the sole basis for program funding or program evaluation.

10.2 Evaluation of Neutrals.

a. Courts must establish procedures to monitor the performance of neutrals on an ongoing basis. It is inappropriate to use data concerning settlement rate as the sole basis for evaluation of a neutral.

b. Procedures should be established to remove incompetent, ineffective, or unethical neutrals from the roster. These procedures should also include reporting removal to the Georgia Office of Dispute Resolution so that registration may be reconsidered.

RULE 11. LOCAL PROGRAM RULES OF PROCEDURE FOR ADR

Courts may present local program rules of procedure to the Georgia Commission on Dispute Resolution for approval. Approval of local program rules of procedure will be filed with the Georgia Supreme Court. Approved programs will be considered experimental pilot projects for one year under Uniform Superior Court Rule 1.2. It is the intention of the Georgia Supreme Court to work toward uniformity so that variations between programs will be eventually minimized. In order to assist lawyers and parties in discerning differences between the rules of different courts, the rules will be submitted with the following format:

1. Referral:
2. Timing of ADR processes:
3. Exemption:
4. Appointment of neutrals:
5. Qualifications of neutrals:
6. Compensation of neutrals:
7. Immunity:
8. Confidentiality:
9. Appearance:
10. Sanctions for failing to appear without good cause:
11. Communication with parties:
12. Communication with the court:
13. Completion of ADR processes:

Appendix B. Requirements for Qualification and Training of Neutrals

I. REQUIREMENTS FOR QUALIFICATION AND TRAINING OF NEUTRALS

The Georgia Commission on Dispute Resolution is dedicated to the principle that neutrals serving in court programs must be of the highest possible caliber in training and experience. All neutrals serving in Georgia programs must be of good moral character.

A. Mediation: Although mediators do not necessarily need subject matter expertise, they must have process expertise. Mediators are frequently called upon to operate outside of their area of expertise. For this reason, training of mediators must be more extensive than for other neutrals. Training for mediators who seek registration in the category of general mediation shall be no less than twenty-eight hours of classroom training (including role play and other participatory exercises), plus observation of or co-mediation with a registered mediator in at least five general civil mediations. In lieu of five

observations and/or mediations, prospective mediators may substitute an approved general mediation practicum. Individuals must complete approved twenty-eight hour general mediation training prior to taking an approved practicum or performing their observations. New mediators should be observed several times before mediating alone.

Mediators should be drawn from a variety of disciplines and should reflect the racial, ethnic and cultural diversity of our society. Prospective mediators should be screened carefully for qualities such as the ability to listen actively, to isolate issues, and to focus discussion on issues.

Competencies for mediators include: (1) Skill in interacting with others and in helping others with their problems; (2) As guardian of the integrity of the mediation process, capacity to maintain the fairness of the process; (3) Capacity to assist parties in identifying their needs and interests, developing options for resolution, and realistically assessing their options for settlement; (4) Protecting the balance of the process by having the capacity to (a) remain neutral in the presence of significant interpersonal conflict between others, (b) understand the points of view of all parties to the dispute, and (c) demonstrate respect for all participants in the mediation conference; (5) Honoring the self-determination of the parties by (a) having the capacity to thoroughly explain the process to the parties, (b) having the capacity to assess the parties' capacity to participate in the mediation conference, (c) having the capacity to assure that the parties have sufficient capacity and information to bargain effectively and to participate in the development of any resolution reached; (d) having the ability to honor the right of parties to develop their own resolution free from any coercion of the mediator, and (e) having the ability to honor the boundaries between the role of mediator and any other professional capacity in which the mediator operates, scrupulously guarding against giving professional advice; and (6) having the capacity to guard the confidentiality of the process.

Mediators in divorce and custody cases shall have at least a baccalaureate degree from an accredited four-year college. An individual whose graduate degree was obtained after waiver of the requirement that the baccalaureate be completed shall be deemed to have completed the baccalaureate degree. Mediators in divorce and custody cases must satisfy the requirements for general mediators prior to taking domestic relations mediation training. The required domestic relations training is at least forty-two hours of training which substantially meets the standards of the Family Section of the Association for Conflict Resolution. Mediators in divorce and custody cases shall receive special training in the subject of domestic violence. Mediators who seek registration in the category of domestic relations must observe at least one mediation of a divorce or custody case and participate in at least two co-mediations of divorce or custody cases. In lieu of one observation and two co-mediations of divorce or custody cases, prospective domestic relations mediators may substitute an approved domestic relations mediation practicum. Individuals must complete approved forty-two hour domestic relations mediation training prior to taking an approved domestic relations practicum or doing the observation and co-mediations of divorce or custody cases.

Mediators who handle cases involving allegations of domestic violence must be currently registered as domestic relations mediators prior to taking specialized domestic violence training. Specialized domestic violence training shall be no less than fourteen hours of classroom training (including role plays and other participatory exercises) approved by the Georgia Office of Dispute Resolution.

Specific training requirements for mediators in juvenile court cases shall be developed by the Commission.

B. Arbitration: Arbitration in court-annexed or court-referred non-binding arbitration programs may be conducted by panels of lawyers, panels made up of lawyers and experts, or by individual lawyers. If the arbitration is conducted by a panel, the chief of the panel shall be a lawyer with five years experience. Where the arbitration is conducted by a single arbitrator, that arbitrator shall be a lawyer with five years experience. All arbitrators shall receive at least six hours of training in a program which qualifies for CLE credits or, for judges and persons with acceptable experience as an arbitrator, such other training, experience, or education as approved by the Chair of the Committee on Training and Credentials and the Director of the Georgia Office of Dispute Resolution.

C. Case Evaluation or Early Neutral Evaluation: Case evaluators or early neutral evaluators shall be lawyers with extensive subject matter expertise in the area of the litigation in question. Case evaluators or early neutral evaluators shall receive at least six hours training for their role. The Commission recommends, but does not require, twenty-eight hours general mediation training for case evaluators or early neutral evaluators.

Adopted effective January 1, 1994; amended effective December 1, 1994; June 1, 1995; October 1, 1995; April 30, 1998; September 20, 2000; February 28, 2002; August 20, 2002, eff. July 1, 2003; March 27, 2003; May 11, 2004; January 18, 2005; July 1, 2007.

II. REGISTRATION OF NEUTRALS

All neutrals working in court programs must be registered with the Georgia Office of Dispute Resolution. The application and training guidelines attached to this appendix set forth the specific requirements for registration.

An individual who completed an approved general mediation training prior to July 1, 2003 shall apply for registration by December 31, 2004. Effective July 1, 2003, an applicant for registration as a general mediator shall apply for registration within eighteen (18) months after completing an approved general mediation training.

Specialized Domestic Violence Mediation: Effective January 1, 2005, mediators who handle cases involving allegations of domestic violence must be registered in the category of specialized domestic violence. To be eligible to register in the category of specialized domestic violence, one must be: 1) registered as a domestic relations mediator; 2) have taken an approved 14 hour specialized domestic violence mediation training after June 1, 2004; and, 3) provide a letter of recommendation from a director of a superior court ADR program who is familiar with the mediator's work as a domestic relations mediator.

A mediator who has had specialized domestic violence training prior to June 1, 2004, may apply for registration in the specialized domestic category if the mediator: (1) has had at least six hours of advanced domestic violence training provided by an approved domestic relations trainer in Georgia; and has been mediating domestic violence cases for court-connected programs for at least two years prior to June 1, 2004; and has mediated at least five domestic violence cases; and is recommended by a director of a court-connected program for which he or she has been mediating domestic violence cases; OR (2) has taken an advanced domestic violence training of at least twelve hours provided by an approved Georgia domestic relations mediation training provider and is recommended by the director of a court-connected program for which she or he has mediated domestic relations cases; OR (3) has

taken one of the specialized domestic violence trainings sponsored by the Georgia Office of Dispute Resolution in 2003.

Until January 1, 2005, the Director of the Georgia Office of Dispute Resolution, in consultation with the Commission's Training and Credentials Committee, shall have the discretion to permit registration of registered domestic relations mediators who have had domestic violence training provided by a court-connected ADR program and provide certification from a program director that the applicant has the necessary skills level.

Veteran Mediators: Mediators who were actively working in court programs at the time that registration was instituted, January 1, 1994, have had an opportunity to be “grandfathered” into registration as general or domestic mediators even if they did not meet all requirements of Appendix B if, in the judgment of the Director of the Georgia Office of Dispute Resolution, their training substantially met the qualifications set forth above. Registration has been underway since the winter of 1994, and these candidates have had ample opportunity to come forward to seek registration. In the future, applications to be grandfathered into registration as a general mediator will be granted only rarely. Grandfathering of domestic mediators will be granted only in the most unusual circumstances.

Candidates for grandfathering may petition the Office of Dispute Resolution to be accepted for registration. Candidates may demonstrate their competence in the field by (1) describing the training they have received; (2) providing three letters of recommendation from a mediation program, clients, court personnel, registered mediators, or other professionals with whom the applicant has worked; and (3) providing evidence of having completed a minimum of five mediations or ten hours of mediation in the twelve months preceding the registration request. Compliance with this procedure does not guarantee registration.

Mediators from Other States: A mediator from another state who (1) has received training which meets that state's qualifications and, at the discretion of the Director, has had substantially similar training to that approved in Georgia, (2) has mediated for one year, (3) has completed a minimum of five mediations or ten hours of mediation during that time, and (4) meets the educational requirements of Appendix B may ask to be waived in for Georgia registration on the basis of that training. A mediator from another state who is waived in must be observed by a staff member of the court in which he or she intends to serve or submit a letter from the office of dispute resolution or director of the court program for which he or she served in the other state before applying for registration by the Georgia Office of Dispute Resolution.

Continuing Education of Neutrals: All registered neutrals are required to take six (6) hours of continuing education in a two-year registration renewal cycle in order to maintain their registration; provided, however, that in the first renewal cycle after initial registration a neutral is only required to take three (3) hours of continuing education. This six (6) hour requirement applies regardless of the number of categories for which a neutral is registered. A neutral may carry over up to three (3) hours of continuing education to the next renewal cycle. There must be a nexus between the continuing education attended and enhancement of the neutral's skill, substantive knowledge and/or professionalism as a neutral. Any neutral who fails to meet the continuing education requirement is subject to being removed from the registry of the Georgia Office of Dispute Resolution.

Registration Period and Renewal of Registration: A neutral is registered for a period not to exceed two

years unless the neutral relinquishes or loses registration as part of an adverse action taken by the Commission on Dispute Resolution's Committee on Ethics. Neutrals who wish to continue their registration with the Georgia Office of Dispute Resolution shall file an application for registration renewal by December 31st every other year. The first two year renewal cycle for a neutral shall begin on the date the neutral is approved for registration and shall end at midnight, December 31st of the following year, provided that neutrals whose initial registration is approved in December of any year shall have their initial registration period extend until midnight, December 31st two years later. Each subsequent renewal cycle shall begin January 1st and continue through midnight on December 31st twenty-four months later. Neutrals seeking continued registration shall file a renewal application in the form provided by the Georgia Office of Dispute Resolution and pay the following nonrefundable fees:

Neutrals who, in the preceding two years, have earned less than \$2500 from the provision of ADR neutral services \$25.00

Neutrals who, in the preceding two years, have earned \$2500 or more from the provision of ADR neutral services \$125.00

Renewal applications shall be postmarked or submitted online no later than midnight, December 31st of the year the renewal application is due.

Lapsed Status: Neutrals who file a renewal application after midnight, December 31st of the year they must renew, or who fail to file a renewal application shall be placed in a lapsed status. A lapsed neutral may file a renewal application between 12:01 a.m. January 1st the year after the renewal application is due through midnight, April 30th of that year upon payment of an additional nonrefundable late fee equal to the applicable neutral renewal fee. For example, a neutral who must pay a renewal fee of \$25 must pay \$50 to renew registration between January 1st and April 30th. A neutral who must pay a renewal fee of \$125 must pay \$250 to renew registration between January 1st and April 30th. Neutrals may continue to serve in court-connected programs while in a lapsed status.

Inactive Status: After April 30th, all lapsed neutrals shall be placed in inactive status and may not provide services in court-connected cases. Neutrals in inactive status shall be required to take eight hours of appropriate CE in order to renew their registration status, and shall also be required to pay a late fee equal to their renewal fee in addition to their regular renewal fee. A neutral who is in an inactive status may remain in that status for up to two years from the date registration should have been renewed. Inactive neutrals who apply for renewal of registration after day 730 shall be required to meet the initial requirements for registration, including completion of an approved training course in each category for which they desire to renew their registration, observations or practicums that may be required for each category of registration for which they are seeking renewal, and requisite recommendation letter(s).

Failure to Meet CE Requirements: In the event a neutral has not met the continuing education requirement for a renewal cycle and postmarks or submits the renewal application online on or before midnight, December 31st of the year of renewal, the neutral shall be in a "lapsed" status until the deficiency in CE hours is cured or until April 30th, whichever comes first. If the renewal application is timely filed, the neutral shall have until midnight, April 30th to provide information that substantiates that this deficiency has been cured, at no additional cost. The neutral shall be placed in an inactive status if the deficiency is not cured by April 30th.

Hardship Exception: In cases of extraordinary hardship (e.g. military deployment or extreme illness or injury), a neutral may request an extension of time for renewal, and/or a waiver of the continuing education requirement, and/or any penalties by submitting such a request in writing to the Director of the Georgia Office of Dispute Resolution. The Director shall issue a written response. If such request is denied, an appeal may be taken to the Training and Credentials Committee of the Commission on Dispute Resolution within thirty (30) days of receipt of the Director's denial of the request for waiver. A decision of the Training and Credentials Committee shall be final.

Delayed Payment: A neutral who submits a renewal application online by midnight, December 31st of the year that renewal is due, but who chooses to submit the renewal fee through regular mail rather than online, shall mail the appropriate renewal fee so that it is received by GODR within ten (10) days of the submission of the application. If GODR does not receive payment within ten (10) days of submission, the neutral shall be placed in a lapsed status.

III. APPEAL FROM ADVERSE DECISIONS OF THE OFFICE OF DISPUTE RESOLUTION

A. Registration decisions are made by the Georgia Office of Dispute Resolution. Applicants who are denied registration for any reason other than that described in § IV may appeal within thirty days of that denial to the Georgia Commission on Dispute Resolution's Committee on Training and Credentials, which may grant a hearing to the applicant. The Committee on Training and Credentials will make a determination as to whether the applicant should be registered.

B. An adverse decision of the Committee on Training and Credentials may be appealed to the full Commission within thirty days of the date of such decision. The Commission may grant a hearing to the applicant.

IV. PROCEDURE FOR APPLICANTS FOR REGISTRATION OR RENEWAL OF REGISTRATION WHO HAVE BEEN CONVICTED OF OR PLED GUILTY OR NOLO CONTENDERE TO A VIOLATION OF THE LAW, WHO HAVE BEEN DISCIPLINED BY A PROFESSIONAL ORGANIZATION, WHO HAVE HAD PROFESSIONAL PRIVILEGES CURTAILED, AND/OR WHO HAVE RELINQUISHED ANY PROFESSIONAL PRIVILEGE OR LICENSE WHILE UNDER INVESTIGATION AND/OR WHO DO NOT MEET COMPETENCY STANDARDS

A. Applicants for registration with the Georgia Office of Dispute Resolution must acknowledge the following information: (1) convictions of, guilty pleas to, or nolo contendere pleas to violations of the law, including traffic violations resulting in suspension or revocation of a driver's license and DUI offenses; (2) discipline by a professional organization; (3) curtailment of professional privileges; (4) relinquishment of any professional privilege or license while under investigation. An applicant against whom any of the above actions are pending shall likewise acknowledge this fact.

B. Upon request of the Georgia Office of Dispute Resolution, the applicant must amend his/her application to provide (1) information concerning the background of the offense which led to conviction, plea, discipline, curtailment of professional privileges and/or relinquishment of professional privilege or license; (2) information concerning the length of time which has elapsed since the conviction, plea, discipline, curtailment and/or relinquishment; (3) the age of the applicant at the

time of the conviction, plea, discipline, curtailment and/or relinquishment; and (4) evidence of rehabilitation since the conviction, plea, discipline, curtailment and/or relinquishment.

C. The applicant may be asked to appear before the Committee on Ethics of the Georgia Commission on Dispute Resolution to discuss the information contained within the application. The Committee on Ethics will make a determination as to whether the applicant should be registered or have registration renewed.

D. If an applicant for registration or renewal of registration fails to acknowledge (1) that he/she has been convicted of or pled guilty or nolo contendere to a violation of the law, including traffic violations resulting in suspension or revocation of a driver's license and DUI offenses; (2) that he/she has been disciplined by a professional organization; (3) that he/she has had his/her professional privileges curtailed; (4) that he/she has relinquished any professional privilege or license while under investigation; or (5) that any such actions are pending, the Georgia Office of Dispute Resolution will immediately notify the applicant for registration or renewal of registration that he/she will be denied registration or renewal of registration or, if currently registered, removed from registration by the Georgia Office of Dispute Resolution.

E. An adverse decision of the Committee on Ethics may be appealed to the full Commission within thirty days of the date of such decision. The Commission may grant a hearing to the applicant.

V. REMOVAL FROM REGISTRATION

A. A neutral who (1) has been convicted of or pled guilty or nolo contendere to a violation of the law, including traffic violations resulting in suspension or revocation of a driver's license and DUI offenses; (2) has been disciplined by a professional organization; (3) has had his/her professional privileges curtailed; and/or (4) has relinquished any professional privilege or license while under investigation, may be removed from the registry of approved neutrals maintained by the Georgia Office of Dispute Resolution. A grievance concerning the ethical behavior of a neutral may result in that neutral being removed from the registry of approved neutrals maintained by the Georgia Office of Dispute Resolution.

B. Upon receiving information that a neutral has been convicted of or pled guilty or nolo contendere to a violation of the law as described above, been disciplined by a professional organization, had his/her professional privileges curtailed, or has relinquished any professional privilege or license while under investigation, or upon receiving a grievance concerning the behavior of a neutral, the Georgia Office of Dispute Resolution or the Georgia Commission on Dispute Resolution will refer the matter to the Committee on Ethics of the Georgia Commission on Dispute Resolution.

C. Both the neutral and the complainant may be asked to appear before the Committee on Ethics of the Georgia Commission on Dispute Resolution to discuss the complaint. The Committee on Ethics will make a determination as to whether the neutral should be removed from the registry. The Committee on Ethics will make written findings which will inform the neutral and the Commission of the basis of its decision.

D. An adverse decision of the Committee on Ethics may be appealed to the full Commission within thirty days of the date of such decision. The Commission may grant a hearing to the applicant.

