

# GEORGIA – SOUTHERN

## **LR 16.7 Alternative Dispute Resolution and Case Management Procedures.**

16.7.1 **Notice:** Except in the categories of exempt cases identified in LR 16.1(b) and in cases where all plaintiffs are proceeding *pro se*, upon the filing of the complaint the Clerk shall furnish plaintiff's counsel with sufficient copies of the Notice of ADR and Case Management Procedures, also referred to as a Litigant's Bill of Rights, for distribution to all parties to the litigation. The purpose of this Notice is to apprise counsel and parties of alternative dispute resolution opportunities, the availability of the use of a Magistrate Judge, the period of time expected for completion of discovery, and to alert the parties that they may be required to appear at a pretrial conference.

16.7.2 **Response:** The Notice [Litigant's Bill of Rights] shall be served with the complaint and summons or included in the materials giving notice of the suit and requesting waiver of service. Counsel for each represented party shall ensure that the notice is filled out, signed by the party, and returned to the Clerk's office for filing. The plaintiff shall return the form within fourteen (14) days after filing the complaint. The defendant shall return the form along with the answer or other responsive pleading. The Clerk shall have the authority to grant extensions of time of up to fourteen (14) business days to return the completed form.

16.7.3 **Format:** A copy of the Notice is in the Appendix of Forms to this section of these Local Rules.

### **16.7.4 Appointment of Mediators and Arbitrators:**

(a) In any case where the parties seek the appointment of a mediator or arbitrator by the Court, any Judge of the Court may appoint such person as the Court deems qualified and appropriate for the case under consideration; or

(b) If the parties to a case jointly request the appointment of a particular individual as a mediator or arbitrator, they shall petition the Court and state in the petition the qualifications of the person to be named. The Court may approve any person so recommended.

(c) Each person appointed as a mediator or arbitrator for a case shall take the oath or affirmation prescribed by 28 U.S.C. § 543 before serving. Any person selected as a mediator or arbitrator may be disqualified for bias or prejudice as provided in 28 U.S.C. § 144, and shall disqualify himself in any action in which he would be required to do so if he were a judicial officer governed by 28 U.S.C. § 455.

(d) Any person appointed pursuant to this rule may be relieved of responsibilities in a case at any time by order of the Court.

(e) Any member of the bar who is appointed as a mediator or arbitrator pursuant to these rules shall not for that reason be disqualified from appearing or acting as counsel in any other case pending before the Court.

#### 16.7.5 Court Annexed Mediation

(a) **Statement of Purpose.** The purpose of the following rules is to provide for an informal process conducted by a mediator with the objective of helping the parties reach a mutually acceptable settlement of their dispute. These rules are not intended to force settlement upon any party. The rules provide guidelines for parties who wish to follow a court approved mediation process, but they do not exclude any other alternative dispute resolution procedure that the parties may wish to adopt with court approval.

(b) **Mediation is Not Automatic Under This Rule.** It shall only apply where the parties to a case elect to participate under these rules, or as they may otherwise stipulate.

(c) **Time Period for Mediation.** Mediation may be held at any time which does not interfere with or delay status conferences, pre-trial conferences, or trial of a case.

#### 16.7.6 Procedures for Mediation

(a) **Scheduling the Mediation.** The mediation conference shall ordinarily be held in the office of the mediator, but may be held at any other place agreed to by the parties and the mediator. Because of space limitations, the federal courthouses are not available for mediation conferences. After conferring with the attorneys for the parties regarding scheduling matters, the mediator shall determine the place and time of the conference (within the period established by these rules), and give notice to the parties.

(b) **Submission of Position Papers to Mediator.** No later than seven (7) business days before the scheduled date of the mediation conference, any party may submit a confidential position paper to the mediator. The position paper shall be limited in length to five (5) pages, double-spaced, and may be accompanied by up to five (5) pages of exhibits. Position papers are confidential, shall be held so by the mediator, and need not be served on other parties. The purpose of these submissions is to help the mediator become familiar with the assertions of the parties, and the parties may agree to the submission of additional information if they believe the information will facilitate the mediated settlement conference.

(c) **Duties of Parties, Representatives, and Attorneys.** The following persons shall be physically present at the entire mediation conference unless excused by the mediator:

(i) Individual parties and an officer, manager, or director of a corporate or entity party, such representative to have full authority to negotiate on behalf of the entity and to approve or recommend a settlement;

(ii) At least one attorney of record for each represented party; and

(iii) A representative of the insurance carrier for any party against whom a claim is made. This representative must have full authority to settle the claim and must be a person other than the carrier's outside counsel.

Upon reaching a settlement agreement through mediation, the parties shall forthwith reduce the agreement to writing and prepare a stipulation of dismissal or consent judgment for presentation to the court.

(d) **Authority of the Mediator.** The mediator is authorized by these rules to exercise control over the mediation and to direct all proceedings therein. The mediator is specifically authorized to meet or consult privately with any party or their counsel during the conference. The mediator may report in writing to the court, with copies to the parties, any conduct of any party that may be in violation of these rules for mediation.

(e) **Duties of the Mediator.** At the beginning of the mediation conference, the mediator shall describe the following matters to the parties:

- (i) The process of mediation,
- (ii) The differences between mediation and other forms of conflict resolution,
- (iii) The costs of the mediation,
- (iv) The fact that the mediation is not a trial, the mediator is not a judge, and the parties retain their right to trial if they do not reach settlement,
- (v) The circumstances under which the mediator may meet alone with either of the parties or any other person,
- (vi) The conditions under which communications with the mediator will be held in confidence,
- (vii) The inadmissibility of negotiating statements and offers at trial,
- (viii) The fact that the Court will not permit parties in other litigations to conduct discovery regarding the mediation in this case,
- (ix) The duties and responsibilities of the mediator and the parties, and
- (x) The fact that any agreement reached will be reached by mutual consent of the parties.

The mediator may recess or suspend the conference at any time and set a schedule for reconvening. It is the duty of the mediator to determine if an impasse has been reached or mediation should for any reason be terminated. He shall then inform the parties that mediation is terminated.

(f) **Agreement to Modify Mediation Procedures.** By agreement filed with the Court, the parties, with the consent of the mediator, may modify the mediation procedures described in these rules, except that the parties may not alter time limitations set by these rules or order of the Court.

(g) **Sanctions for Failure to Appear.** If a person fails to attend a mediation conference without good cause, the Court may impose on that person (or any associated party) any lawful sanction, including, but not limited to, the imposing of the cost of attorney's fees, mediator's fees, and expenses of persons incurred in attending the conference.

#### **16.7.7 Completion of Mediation and Report to the Clerk**

(a) The mediation program established by these rules is experimental in nature and will be periodically reviewed by the Court. In all cases in which mediation or any other alternative dispute mechanism is employed, litigants shall report the same to the clerk. Litigants may also be requested to complete confidential evaluation reports at the completion of such a proceeding.

(b) When the mediation is completed, the mediator shall immediately submit to the clerk a report on the status of the case. If the case is resolved, it is the duty of the parties to file a stipulation of dismissal or consent judgment. If the case is not resolved, it proceeds without further order of the court in accordance with the Local Rules of Court.

#### **16.7.8 Confidentiality**

Except upon the mutual consent of the parties, all communications in the mediation conference and the results thereof are confidential and shall not be discoverable or admissible in any proceeding, and shall not be communicated to a judicial officer exercising jurisdiction over the case while the case is pending.